October 16, 2009 *Via Epass*

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: **Broadcasting Notice of Consultation 2009-418 –** ***Review of campus and community radio (BNC 2009-418)***

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.

2. In Broadcasting Notice of Consultation 2009-418 the Commission initiated a review of its regulatory policies governing community and campus radio. According to the Commission, the review was necessitated by the many changes that have occurred to the broadcasting environment since its last review of community and campus radio in 2000. The changes cited by the Commission include commercial radio consolidation, changes to CBC programming, the introduction of satellite subscription radio, the rise of new media technologies and convergence between broadcasting and telecommunications technologies.

3. BNC 2009-418 seeks input from interested parties with respect to the following topics:
   - The role of community/campus radio in the broadcasting system
   - Licensing mechanisms for community/campus radio
   - Approaches to funding
   - Spectrum issues
   - The role and participation of community/campus radio in new media
   - Approaches to cultural diversity

4. In the context of this proceeding the CAB will limit its comments and recommendations to: (i) the role of community/campus radio in the broadcasting system; (ii) licensing mechanisms for community/campus stations; (iii) approaches to funding; and (iv) spectrum issues.

## Introduction

5. Although the current proceeding addresses issues related to the not-for-profit radio sector, the Commission's determination with respect to the policy and regulatory framework applicable to campus and community radio stations could have a significant impact on the commercial radio sector.

6. The current public proceeding initiated by the Commission is taking place at the juncture of two worldwide phenomena that are having, and will continue to have, a profound impact on the broadcasting industry for years to come. This proceeding occurs at a time when Canada is being economically challenged by the most severe worldwide economic downturn concurrent with fundamental changes to the business model of traditional media in general. These changes are being propelled by disruptive technologies and new platforms that have collectively changed the way people consume media as well as the way advertisers spend to reach their audiences.

## Global Economic Transformation

7. On the economic front, while we are seeing indications that Canada (as well as other countries) may have begun turning the corner from the most significant downturn, most experts caution that the road ahead remains treacherous and uncertain. The economic recovery is predicted to be slow. The Economist recently declared that while the global recession may be coming to an end, the ingredients of a lasting recovery are still missing. Increasingly concerns are being raised about growing government budget deficits and their short term relief that *"solid global recovery demand healthy and balanced growth in private demand. Unfortunately that still seems far off."*[1] The Economist further noted that even if the housing market stabilizes in the U.S., *"consumer spending will stay weak as households pay down debt. In America and other post-bubble economies, a real V-shaped bounce seems fanciful."* Rather *"a gloomy U with a long, flat bottom of weak growth is the likeliest shape of the next few years."*[2]

8. In its September 24th, 2009 edition, the Economist reported on an analysis released on September 22nd by IMF economists who studied the aftermath of 88 banking crises over the past four decades. The article states that *"It is not surprising that trouble in the banks results in big drops in GDP: the IMF finds that output per head falls steadily for three years after a typical banking crisis. Recovering from that takes a long time, even after return to pre-crisis growth rates. Seven years after a typical banking crisis has ended output per head is 10 % lower, on average, than it would have been in the absence of a crash. The IMF also finds that recessions (such as this one) that are associated with the banking crises lead to output declines that are about three times as large in the medium term as those that follow currency crises (222 of which the fund's economists also scrutinized)."*[3]

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[1] http://www.economist.com/opinion/displaystory.cfm?story_id=14085688 .

[2] The Economist article entitled "U,V or W For Recovery" dated August 20, 2009.

[3] The Economist article entitled "Snail's pace" dated September 24, 2009, electronic edition.

9. These cautious views are shared by other economists such as Nouriel Roubini, one of the few experts who correctly predicted in advance the current economic crisis. In an Op-Ed piece published in the Financial Times, Roubini submitted that *"In countries running current account deficits, consumers need to cut spending and save much more, yet debt-burdened consumers face a wealth shock from falling home prices and stock markets and shrinking incomes and employment."*[4] This combined with massive public deficits, the need for financial institutions to deliver much more than has been done so far and the fact that commodities like oil and food prices are increasing faster than fundamentals warrant, leads Roubini to conclude that *"the recovery is likely to be anemic and below trend in advanced economies and there is a big risk of a double-dip recession."*[5]

## Changing Economic Realities

10. Reduced consumer spending during and after the recession is translating into reduced advertising revenues for traditional media. For an industry, like private radio, which relies on a healthy economy and which is sensitive to retail trends to generate new products that need to be advertised, the short term forecast will remain cautionary especially with the projected declines in global advertising spending.

11. This coincides with the so called media revolution whereby the traditional media business model is being significantly challenged by technological developments that have changed the way people consume media and, as a result, are driving a shift in advertising spending away from traditional media such as private radio. In fact many experts are now saying that the recession is only accelerating and exacerbating the disrupting trend that is forcing traditional media, including private radio, to redefine its business model.

12. In an interview with the Wall Street Journal, Sir Martin Sorell, Chief executive of WPP PLC, the world's largest communications company by revenue, raised concerns regarding the recovery of traditional media including radio. Asked what will occur post-recession for traditional media such as radio, newspaper and television, Mr. Sorell answered: *"We describe the recession as L-shaped, which implies that it will never go back to where it was before. The forecast for levels of increase in ad spending, both traditional and non traditional, are pretty anemic for the next two or three years."*[6]

13. In its 2009 Advertising Forecast, Zenith Optimedia estimates that as overall advertising spending drops 10.6 % in the US, ad spending on American commercial radio is projected to fall 14.4 % to $16.4 billion (second only to Newspaper's decline of 42 %), while advertising spending on the

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[4] Page 7 of the Financial Times article entitled "The Risk of a Double-Dip Recession is Rising", Nouriel Roubini, dated August 24, 2009.

[5] Ibid.

[6] Page B1 of the Wall Street Journal article entitled "WPP Chief Tempers Hopes for Ad Upturn", by Suzanne Vranica, dated September 21, 2009.

Internet will grow by 13 % to $22 billion. Zenith Optimedia further forecast that revenue for broadcast radio in the US will have declined by 27 % over the period 2007 and 2011.[7]

14. In its 2009 radio advertising outlook, SNL Kagan forecasted that advertising spending on radio would decline by more than 15 %, following a fall of close to 10 % in 2008.[8] Yet, as early as last February it stated that *"The declines being reported for radio advertising revenue pacing's are of a much larger magnitude than any we have seen since our records began in 1970 and more extreme than broadcasters expected even at the end of 2008. Broadcasters are responding by taking a machete to expenses, cutting dividends and putting all cash toward debt repayment to ride out the year."*[9]

15. To get a better understanding of the situation faced by American radio broadcasters one has only to look at the current stock price performance of some of radio's public companies compared to their 2005 level.

Selected US Radio Company Stock Prices in 2005, $US

| | Current Stock Price | 52 Weeks High | 52 Weeks Low |
|---|---|---|---|
| **Beasley** | 13.65 | 18.29 | 12.32 |
| **Citadel** | 11.62 | 14.72 | 11.09 |
| **Cumulus Media** | 12.77 | 15.18 | 10.81 |
| **Emmis** | 18.20 | 24.49 | 15.29 |
| **Radio One** | n/a | n/a | n/a |

Source: Forbes and thestreet.com

Selected US Radio Company Stock Prices in 2009, $US

| | Current Stock Price | 52 Weeks High | 52 Weeks Low |
|---|---|---|---|
| **Beasley** | 3.04 | 4.49 | 0.71 |
| **Citadel** | 0.06 | 0.90 | 0.01 |
| **Cumulus Media** | 1.55 | 4.57 | 0.33 |
| **Emmis** | 0.83 | 1.37 | 0.24 |
| **Radio One** | 0.83 | 0.98 | 0.06 |

Source: SNL Kagan

[7] Page B1 of the Wall Street Journal article entitled "Radio Firms Beg Lenders for Mercy" by Sarah McBride, dated September 2, 2009.

[8] SNL Kagan, Radio and Television station annual outlook, 2009 Edition, page 7.

[9] SNL Kagan article entitled "Revenue pacing declines of more than 20 % blowing away historical averages, by Robin Flynn, February 24, 2009

16. SNL Kagan offers the following observations about the health of the radio industry in the US:

*"The radio industry is facing one of the most challenging periods of its history: declining revenues, a frozen financial system inhibiting the deal market and access to capital, a collapse of radio shares due to leverage concerns, and doubts about its ability to recover due to competition for ad dollars from the Internet and digital media. Radio has faced down tough times before, and emerged stronger. Radio revenues have remained flat the past six years due to internal industry issues, more local competition and migration of ad dollars to the Internet".* [10]

17. SNL Kagan now forecasts that all of the 300 US radio advertising markets it surveys will have a negative compound annual rate for the period 2008-2013, from -0.4 % in Washington and San Diego to as much as -4.2 % in Ann Arbour, Michigan, even though for the same period it forecast retail sales growth on a CAGR basis in every market surveyed.[11] In fact, SNL Kagan's long-term projections for radio in the US do not show advertising revenue returning to 2008 levels until…2018.[12]Furthermore, it does not suggest that after 2018 radio will ever return or surpass the peak level reached in 2006.

18. Such a phenomenon is not limited to the US. According to PwC, globally, terrestrial radio advertising will drop 12 per cent this year, and will decline at a CAGR of 2.9 per cent through 2013 to $28.1B (US) long after the recession will be over[13]. From a peak of $34.6B (US) reached in 2007 to a trough of $26.6B (US) which PwC estimates will be reached in 2011, private radio advertising revenue, globally, is forecasted to decline by 23 %. PwC's analysis also shows that countries like France, Japan, the United Kingdom and the United States have all seen their terrestrial radio's advertising revenue decline prior to the start of the worldwide recession; Japan and the UK as early as 2005, while the decline in France and the United States started in 2007.[14] PwC also forecasts that in these markets radio's advertising revenues will not hit bottom until at least 2012.[15]

19. These forecasts and analyses clearly show that the decline in advertising revenue for the radio sector in many countries are not only cyclical in nature but result from a wider, profound, structural problem that is significantly impacting private radio's advertising business model.

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[10] SNL Kagan, Advertising Forecast: US Market Trends and Data for all Major Media. 2008 Edition, p. 183.

[11] Ibid, SNL Kagan, Radio and Television station annual outlook, 2009 Edition, page 12 to 17.

[12] SNL Kagan article entitled "What direction for broadcast station revenues in 2010?" by Robin Flynn, September 25, 2009.

[13] PricewaterhouseCooper, Global entertainment and media outlook: 2009-2013, page 30.

[14] Ibid, page 30. PwC forecast that between peak and trough, radio's revenue will have declined by 28.4 % in France, 30.3 % in Japan, 32.7 % in the US and 39.2 % in the UK.

[15] Ibid, page 30.

20. Closer to home, the Canadian private radio sector has not been immune from the impact of the worldwide recession. While contrary to other jurisdictions Canada's private radio revenue grew at a healthy pace of 5.6 % in broadcast year 2008 (September 2007 to August 2008), it is virtually certain that broadcast year 2009 will show a decline in advertising revenue for Canada's private radio. Advertising trends in the biggest radio markets tracked by the Radio Marketing Bureau (RMB) indicate that from September 2008 through August 2009 private radio's advertising revenue in the seventeen radio markets surveyed by RMB declined by more than 7 %. During this period every market surveyed except one showed negative growth in radio advertising revenue both local and national. Given that historically the markets surveyed by RMB represents on average close to 60 % of total revenue for the private radio sector, the CAB estimates that the advertising revenues for the private radio sector could decline at the high end by 4.7 % to a low end of 8.7 % for the broadcast year 2009.

21. This would be the most severe decline in advertising for private radio stations in Canada since revenue data were first collected in 1963, outpacing the 6.7 % decline in revenue that took place in 1993, the last year private radio saw a (broadcast) year-over-year decline of its advertising revenue. Moreover, during (and even beyond) the last full fledge recession of 1991-1992, private radio stations in Canada suffered two years of revenue decline; after advertising revenue fell by 3.5 % in 1991 compared to 1990, it bounced back by more than 5 % the following year but declined even more abruptly (6.7 %) in 1993, even after the recession officially terminated. This W shape recovery contributed to the weakening of the private radio sector and significantly impacted on the sector's profitability level well into the mid nineties. In fact, it took private radio five years (1995) to re-attain 1990's level of advertising revenues achieved in 1990.

22. For the purpose of comparison, if we transpose the advertising trend data for radio on a calendar year basis rather than on a broadcast year basis, the 2009 picture for private radio so far looks even bleaker as illustrated by the chart below:

<u>Calendar Year Radio Advertising Market in Selected Countries</u>

| | **Q1 2009** | **Q2 2009** | **H1 2009** |
|---|---|---|---|
| **Australia** | n/a | n/a | -4.4 % |
| **Canada** | -6.4 % | -13.2 % | -10.2 % |
| **United States** | -24 % | -22 % | -23 % |

*Based on advertising revenues generated in 17 radio markets amongst the biggest in Canada representing about 60 % of the Canadian radio advertising market.
Source: Commercial Radio Australia, Radio Advertising Bureau (US), Radio Marketing Bureau (Canada), SNL Kagan

23. Finally, according to PwC, the Canadian radio advertising market is forecasted to decline by a 2.1 % compound annual rate between 2009 and 2013[16]. PwC forecast that the Canadian market will see year over year decline until 2012 well after the recession is over. According to this forecast, between peak and trough, Canada's private radio revenue will have declined by close to 20 %.

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[16] PricewaterhouseCooper, Global entertainment and media outlook: 2009-2013, page 401.

24. Even in a year where overall advertising revenue grew at a healthy pace such as broadcast year 2008, more than a third of all private radio stations were unprofitable. It is therefore reasonable to believe that this situation will have worsened in 2009 and this also pushes marginally profitable stations in 2008 into the red.

25. Despite these forecasts and preliminary data for 2009, we believe that there are positive signs that the radio advertising market has or is close to bottoming out and we are cautiously optimistic that broadcast year 2010 will exceed 2009. Irrespective, given its reliance on advertising as its near exclusive source of revenue, the road to recovery for private radio might be treacherous and the future full of uncertainties.

26. For the radio sector to turn the corner and grow advertising revenue again, it must be able not only to remain relevant to its listeners but also to grow its listenership in an environment where the Canadian consumer has access to a plethora of content choices through alternative delivery platforms. To this end, the CAB notes that over the course of the last ten years (1998-2008), total listening hours tuned to Canadian radio music format stations have declined by a fifth (20 %), despite the fact that the number of music stations licensed by the Commission has increased by more than 30 %. Over the same period, total listening hours tuned to Canadian talk radio format stations more than doubled (115 %). Yet, the significant increase of tuning to Canadian talk radio stations did not offset losses of tuning to music radio stations. As a result, between 1998 and 2008, total hours tuned to Canadian radio decreased by five percent (5 %).

27. It is therefore against this backdrop that the CAB is intervening in the context of the current proceeding. As stated at the outset of this submission, the CAB will limit its comments and recommendations to: (i) the role of community/campus radio in the broadcasting system; (ii) licensing mechanisms for community/campus stations; (iii) approaches to funding; and (iv) spectrum issues. As an outcome of the current proceeding the CAB makes the following recommendations:

- that the Commission eliminate the distinction both between the types of community stations and campus stations, as well as the distinction between campus stations and community stations creating one not-for-profit class of licence to be governed by one policy and regulatory framework. That policy must ensure that the not-for-profit radio sector remains community focused and complementary to the other components in the system by setting out clear requirements with respect to programming diversity;

- that the Commission exempt elementary or high school based stations from licensing provided that there are at least three FM frequencies available in their market unless it is proposed to use an AM frequency in which case there would not be spectrum restrictions;

- that the Commission maintain its current policy which authorizes private radio stations to direct their CCD contribution, on a voluntary basis to the Community Radio Fund of Canada (CRFC). However the policy should also recognize as eligible CCD funding provided by private radio stations in support of individual campus/community radio stations operating in their local market, irrespective of the use of that support by campus or community radio stations;

- that the Commission refrain from establishing any new financial requirements on the private radio sector in regards of the funding of not-for-profit stations; and

- that, in accordance with its jurisdiction, the Commission refrain from setting aside spectrum for the expansion of the campus/community radio sector.

28. In what follows, the CAB sets out its arguments supporting its recommendations with respect to the campus/community radio policy review.

## The Role of Community and Campus Radio in the Broadcasting System

29. In BNC 2009-418 the Commission noted that diversity is achieved through diversity at three levels; a) diversity of element; b) plurality of editorial voices within the private element; and c) diversity of programming. It further noted that the first and third of these elements was of particular importance to the campus and community radio sector. According to the Commission, the not-for-profit nature and the participation of community members in community and campus radio render it an important contributor to the diversity of the broadcasting system. Similarly, the local content and reflection (in addition to national and regional reflection) contributed to the diversity of programming.

30. With respect to the role of community and campus radio in the broadcasting system, the Commission seeks comments on topics such as the defining feature and objectives of community/campus radio; means of streamlining the regulatory obligations; circumstances under which experimental music can be considered musical selections; and how to ensure the availability of content to official language minority communities (OLMC).

31. In the context of this submission, the CAB will provide comments only on the defining feature and objectives of community/campus radio and make recommendations on the regulatory framework that should, in our view, apply to this sector to ensure it continues to play an important yet complementary role to the private radio sector within the Canadian broadcasting system.

32. As noted in BNC 2009-418, *"the primary objective for campus stations is that they provide programming that is different in style and substance from that provided by the commercial and public elements of the broadcasting system. To that end, campus stations must provide access by community groups and individuals to the airwaves and offer alternative programming that reflects the cultural diversity of the community they serve."* It is also noted that *"the Commission expects these stations to allow for a balance representation on their boards of directors from among the student body, the associated college and university, station volunteers and the community at large. Additionally, campus stations are expected to provide ongoing training for volunteers. The Commission*

*also expects campus stations to broadcast music that is not often played by commercial stations while also providing spoken word programming that reflects the perspectives and concerns of the community they serve."*[17]

33. As for the community radio sector, BNC 2009-418 states that *"All community stations are to offer programming that is different from and complementary to the programming of other stations in the markets they serve. As with campus stations, community stations must provide access for community groups and individuals to the airwaves and offer programming that reflects the cultural diversity of the communities they serve. The Commission also expects community stations to allow members of the community at large to sit on the board of directors, as well as permit access by volunteers to the day-to-day operations of the stations. Community stations are also expected to provide training to volunteers. These stations should be different from other elements in the broadcasting system and provide programming that is varied by broadcasting a diversity of music and spoken word."*[18]

34. The objectives of both campus radio stations and community radio stations are, for the most part, identical. The only differences lie in the specifics of the regulatory framework that applies to each category of stations.

35. For instance, both campus and community radio stations must devote a portion of their programming schedule to spoken word programming, but the requirement varies depending on the type of station. As such, Type A community radio stations must devote 15 % of the broadcast week to spoken word, while the minimum spoken word level for type B community stations as well as campus stations is 25 % of the broadcast week[19].

36. Likewise, both campus and community radio stations are expected to draw a portion of their musical selections from subcategories other than subcategory 21 (Pop, Rock and dance). But while both categories of stations are expected to ensure that at least 5 % of all musical selections played in a broadcast week qualify as Special Interest Music (Category 3 music), community stations are also required to ensure that at least 20 % of all musical selections played each broadcast week are drawn from subcategories other than subcategory 21. For their part, English-language campus stations cannot devote more than 10 % (30 % in the case of instructional campus stations) of all musical selections played during the broadcast week to hit music selections whereas there are no limitations on the level of hits that community stations may broadcast.

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[17] BNC 2009-418, paragraph 4.

[18] BNC 2009-418, paragraph 9.

[19] A community radio station is considered a Type A station where there is no other radio station, other that one owned by the CBC, operating in the same language in all or part of the market. All other community stations are licensed as Type B.

37. The CAB notes that, in consultation with stakeholders conducted by the Commission leading up to the release of BNC 2009-418; participants indicated it may be useful to revisit the manner in which community and campus stations are conceived. Many were of the view that, beyond providing complementary programming, their mandates encompassed the opportunity for more participatory community involvement for community and social organizations, businesses, artists and politicians.

38. Consultation participants questioned the ongoing relevance of certain regulatory requirements including the 25% spoken word requirement and requirements to broadcast special interest music. Several participants argued in favour of removing rigid requirements and imposing goals or objectives such as for programming diversity or local musical requirements based on a number of artists or distinct selections. Other administrative requirements such as keeping logs and measuring music were also flagged as burdensome.

39. The CAB notes that consultation participants voiced their support for the continued divide in the manner that community versus campus radio was treated.

*The CAB's position*

40. The CAB is of the view that there are not enough distinctions between the nature of the service and policy objectives to justify maintaining separate policies for campus radio stations and community radio stations. The CAB is also of the view that even within each category of licence, the distinctions between campus-community and campus instructional as well as the distinction between community Type A and Type B stations are no longer warranted. Therefore, the CAB considers that all distinctions between the different types of not-for-profit stations should be eliminated. In its place, the CAB recommends that the Commission adopt one class of licence – for not-for-profit undertakings, whether linked to an educational institution or to the community - and govern said not-for-profit undertakings by one policy. Such a policy would set out the broad objectives and regulatory requirements of any not-for-profit stations, be they campus-based or community-based.

41. The CAB understands the need for streamlining the regulatory framework for the not-for-profit sector. Yet, at the same time the CAB also believes that there should be clear regulatory programming requirements enshrined in the new not-for-profit radio policy to ensure this sector will continue to provide an offering that complements, rather than competes with, programming offered by the private commercial radio sector.

42. The CAB notes that one of the challenges of the not-for-profit radio sector is a significantly high turnover of both managers and volunteers which contributes to the instability of many campus or community radio stations. This high turnover may have contributed to having some of these stations drift away from their original complementary mandate. Case in point: the Commission revoked the licence for CJWV-FM, a campus instructional station operating in Winnipeg following numerous and repeated major non-compliances with the Commission's campus radio policy and the station's conditions of licence. This station had strayed from its original instructional mandate by adopting a popular music format clearly aimed at competing head on with commercial radio services licensed to serve the Winnipeg market.

43. The CAB further notes that in smaller markets, especially in French-language markets where the community radio tradition is well established, the distinction between programming provided by private radio stations and community based radio stations is often tenuous at best. In fact, in many cases, the only distinction is that one station is a commercial undertaking while the other is a not-for-profit undertaking.

44. Accordingly, the CAB considers that setting out goals or objectives aimed at ensuring programming diversity would not suffice to ensure that the not-for-profit campus and community radio sector remain complementary to the commercial radio sector. To this end, the CAB recommends that the Commission adopt a revised, streamlined, yet measurable regulatory and policy approach to govern the not-for-profit radio sector. The new policy would set out uniform programming regulatory requirements with respect to spoken word programming, musical selections to be drawn for music categories other than sub-category 21 (Pop, Rock and dance) and set out limits on music hits.

45. The policy would be based on the 30/70 approach which would apply uniformly to campus-based and community-based radio stations and require that:

- At least 30 per cent of the broadcasting week be devoted to programming predominantly devoted to spoken word, and that these programs be reasonably distributed throughout the broadcast week;

- At least 30 per cent of all musical selections aired in each broadcast week be devoted to musical selections drawn from subcategories other than subcategory 21 (Pop, Rock and dance), and that these selections be reasonably distributed throughout the broadcast week; and

- No more than 30 per cent of all subcategory 21 musical selections aired during each broadcast week be hits and should also be reasonably distributed throughout the broadcast week.

46. The CAB also submits that the not-for-profit radio policy should reflect the fact that Canadian music exhibition requirements for Category 3 music (Special Interest Music) were increased in the 2006 Commercial Radio Policy to 20 % for Jazz music and 25 % for classical music. Accordingly, and in keeping with the intent of the policy by which both campus stations and community stations were required to meet a higher level of Canadian music when airing Special interest Music, the CAB believes that the Commission should require not-for-profit stations to broadcast a minimum weekly level of **30 % Canadian selections** for Category 3 music during each broadcast week. The CAB, however, recommends that the minimum weekly requirement for Canadian selections for category 2 (popular music) remain at 35 %, and that these selections be reasonably distributed across the broadcast day. Likewise, the CAB recommends that French-language not-for-profit station continue to be required to devote at least 65 % of all category 2 vocal music selections to selections in the French-language and that these selections also be reasonably distributed across the broadcast day.

47. The CAB believes that by combining the campus radio policy and community radio policy into one not-for-profit radio policy with clear and streamlined policy objectives and regulatory requirements will provide the not-for-profit radio sector with clarity, predictability and fairness while ensuring the sector will continue to be complementary to, rather than competing with, the commercial radio sector. We therefore submit that adoption of this proposal serves the public interest.

## Licensing Mechanism and Accelerated Authority

48. As noted in BNC 2009-418, the Commission currently has five classes of licence relating to the campus and community radio sector. While in the past, the Commission has indicated that it will not license campus AM or FM stations associated with high schools, let alone those associated with elementary schools it has, from time to time, shown a willingness to license radio stations whose programming is geared towards a young population. In BNC 2009-418, the Commission seeks input on the appropriateness of licensing elementary school or high school based campus stations. More specifically, it asks the following questions:

a) Should the Commission license elementary or high school based stations, or should they be exempted from licensing?
b) What requirements should the Commission impose on these stations as criteria for licensing or for exemption from licensing? Such requirements could relate to programming, ownership, composition of the board of directors and technical considerations?

*The CAB's position*

49. The CAB is of the view that elementary or high school based stations should be exempted from the requirement of being licensed provided that such stations operate a low power AM or FM frequency, and provided that there is a clear demonstration that there exist at least three (3) FM frequencies available in the market in which an elementary or high school based station wish to operate. However, we do not suggest any spectrum restrictions with respect to those exempt undertakings who wish to launch on the AM band.

## Approaches to Funding

50. In BNC 2009-418, the Commission stated that *"the campus and community radio sector has emphasized, through its interventions in other Commission proceedings, the pressing need for sustained funding to help ensure the long term viability of its operations, programming and community involvement."* It also reiterated that it formally recognized community and campus radio stations as eligible recipients of funding from commercial radio stations in the 2006 Commercial Radio Policy, under a revised funding regime for CCD. Specifically, it recognized the Community Radio Fund of Canada (CRFC) as eligible for CCD funding. The Commission also recognized the funding issue for the not-for-profit sector in its broadcasting in official language minority communities report (OLM) and notes

that, while certain provincial and federal funding mechanisms (for OLM community stations) were available, core funding to the entire sector is elusive.

51. With respect to funding, the Commission poses questions in regards to the challenges of the sector, fundraising successes, the impact of the CRFC and short, medium and long term funding solutions including funding from the commercial radio sector. In the context of this submission, the CAB will limit its comments to answering the Commission's question: should the commercial radio sector be mandated to devote certain portions of its funding directed at CCD to the CRFC?

*The CAB's position*

52. In preparation of this submission, the CAB reviewed the analysis of the funding approaches for community and campus radio in other countries provided by the Commission as part of its BNC 2009-418 proceeding. The CAB notes that France is the only country of the twelve countries studied by the Commission where community radio stations receive a portion of their funding from revenues that would otherwise flow to private commercial radio stations. Funding for community and campus radio in France is sourced from a government-based fund that in turn is funded by a tax levied on the advertising revenue of French commercial broadcasting undertakings (both radio and television programming services). The tax levied on French commercial broadcasters amounted to 26 million euros in 2008.

53. While the CAB acknowledges that private radio stations in France are mandated by regulation to directly subsidize France's community radio sector, it is important to point out that these commercial radio stations are not required to provide direct funding support to their domestic music industry like Canadian private broadcasters do. Canadian private radio is providing mandatory funding support to music funding agencies such as FACTOR and MusicAction through their annual CCD contributions; contributions required when a new commercial radio licence is issued; or, as benefits flowing from a transfer of ownership. Canada remains the only country in the world where private radio is required by regulation to provide direct funding assistance to the domestic music industry.

54. The CAB further notes that, over the course of the last ten years (1998 to 2008), private radio's contributions to CCD through ongoing operation, new licences and transfer of ownership have increased by thirteen fold (1,375 %) from $1.9 million in 1997-98 to $28.6 million in 2007-2008.[20] It should also be noted that of the $28.6 million spent on CCD last year, $22.7 million was directed in support of the Canadian music industry (Music funding agencies and direct support to Canadian music organizations).[21]

[20] Source: for 1997-98, CRTC Annual report on CTD contributions; for 2007-2008, Communications Monitoring reports 2009.

[21] Ibid, calculation by CAB.

55. As for support to the community radio sector, the CAB notes that without being required to do so, individual private radio broadcasters, such as Astral Media Radio and CHUM/CTVglobemedia have elected to commit financial contributions in support of the CRFC. These contributions combined represent spending commitments of $2.1 million over seven years already approved by the Commission, with an additional commitment of $300,000 submitted by Astral as part of an application currently under review by the Commission. If this application is approved, it will increase the total amount directed to the CRFC by private radio to $2.4 million over seven years.

56. Finally, as stated in filings made to the Commission by the National Campus and Community Radio Association (NCRA), l'Association des radios communautaires du Québec (l'ARCQ) and l'Alliance des radio communautaire du canada (l'ARC du Canada) the total funding sought for the Community Radio Fund of Canada is an annual amount of $18 million dollars, of which the promoters of the fund are seeking $5 million annually from the commercial radio sector. However, the CAB notes that even though the promoters of the CRFC insisted from the beginning – back in 2006 - that their fund would be funded for the most part by an annual federal government grant, we have yet to see any commitment on the part of the Department of Canadian Heritage or any other federal government agency.

57. The CAB further notes that the community radio sector also has access to provincial governments funding programs that financially support community radio activities.

58. In light of the above, and given the economic challenges faced by the private radio sector, the CAB strongly believes that the Commission should not amend its present policy that permits private radio stations to direct CCD contributions to the CRFC on a voluntary basis. Given the willingness demonstrated by private broadcasters to support this fund, the CAB considers that there are no policy justifications to mandate commercial radio stations, large or small, to financially contribute to this fund.

59. That said, should the Commission require a mandatory annual contribution to the CRFC is warranted, the CAB strongly believes that such a contribution must not be taken from the portion of private radio stations' annual CCD funding directed towards local eligible initiatives. Already, most private radio stations are required to devote 60 % of their annual CCD contributions towards national eligible initiatives, leaving only 40 % of funding to support local eligible projects. As the Commission itself stated on numerous occasions, radio is a local media. It would therefore be highly detrimental to private radio stations to reduce even further the CCD amount they can devote to support local cultural initiatives in the community they are licensed to serve.

60. The CAB further notes that requiring mandatory funding out of private radio's annual CCD discretionary funding envelop would have a disproportionate impact on small market/low revenue stations. Case in point: if a station is required under the current CCD policy to spend $1,000 in basic CCD contribution, it must direct $600 to FACTOR or MusicAction, leaving only $400 to spend on local initiatives. If a portion of the $400 envelop must be directed to the CRFC it would leave next to nothing to spend in the station's local community.

61. Accordingly, should the Commission determine that the commercial radio sector be required to devote certain portions of its funding directed at CCD to the CRFC, the CAB recommends that the Commission explicitly indicate in its determination that this funding requirement will have to be taken from the portion of the annual CCD contribution to be directed towards national eligible initiatives.

62. Furthermore, in recognition of the limited resources of the not-for-profit radio sector, the CAB considers appropriate for the Commission to broaden the scope of support private radio can provide to local campus-based and community-based radio stations. To this end, the CAB recommends that individual campus-based and community-based radio stations be recognized as eligible initiatives for CCD funding. The CAB further recommends that any type of financial support provided by private radio for any purpose that would help a local campus-based or community-based radio station should be recognized as eligible CCD contribution. This would create an incentive for private radio stations to use part of their discretionary CCD envelope to provide direct financial support to help one or more not-for-profit radio station(s) operating in the same market. By adopting this change, the Commission would be providing an opportunity to strengthen local not-for-profit stations while increasing support for diversity of news voices in local radio markets.

63. In summary, the CAB strongly opposes the establishment of new obligations related to the funding of not-for-for profit radio stations be they campus or community-based stations. The CAB has demonstrated the precariousness of which the private radio commercial industry now finds itself. The establishment of new obligations will simply weaken a sector that is already threatened. More importantly, the continued ability of the radio sector to continue its important contributions to the Canadian broadcasting system rests on the Commission recognizing that it must not take steps that will further jeopardize the financial health of this sector.

## Spectrum Considerations

64. As noted in BNC 2009-418, it is widely understood that the availability of spectrum in large markets across the country, and in areas adjacent to those markets, is a growing concern for all broadcasters seeking to implement a new radio undertaking. At the same time, the Commission is acknowledging that limited spectrum is also a concern for incumbent stations *"whose once unencumbered signals now face increasing possibilities of interference from undertakings using adjacent frequencies"*.

65. Participants to a consultation initiated by the Commission in preparation for the current proceeding reiterated their request that the Commission reserve frequencies for either existing or for extending the campus-based and community-based radio offering within all markets across Canada. Many participants further voiced their concern about interference from adjacent stations and stations in proximate markets. In this regard, the Commission was urged to always have regard to the community and campus radio sector in all of its licensing decisions regardless of whether an intervention is filed.

66. In light of this, the Commission is seeking comments on a range of questions from how it could expedite its processes when stations are at risk of losing their frequency, the impact of changes to the domestic protection regulation for FM stations, as well as views on long term solutions for FM frequency shortages. To this end, the Commission is specifically asking parties to comment on the reassignment of television spectrum (channels 5 and 6) to radio, and/or the adoption of a digital radio standard.

67. In the context of this submission the CAB will limit its comments to the approach it believes the Commission should take in regard to spectrum allocation.

*The CAB's position*

68. The CAB notes that the Commission recognizes that its jurisdiction with regard to spectrum management is limited. More specifically, the Commission states in BNC 2009-418 that *"questions concerning interference, protection, frequency allocation, and technical acceptability are the purview of the department [of Industry]".*

69. The CAB agrees with the Commission's interpretation of its mandate with respect to spectrum issues.

70. The CAB also notes that the Commission has identified as early as last spring what it perceives as solutions to the challenge of frequency shortage. In its report in response to Government's Order-in-Council on broadcasting in minority languages communities[22] the Commission noted that television channels 5 and 6 could be freed up and used as a way to allocate frequencies to community radio.

71. The CAB notes that the Commission's suggestion for a possible re-allocation of TV channels 5 and 6 (76-88 MHz) to radio is an idea that has also been raised in the US and appears to be gaining some traction south of the border. However, it is clear that the re-allocation of TV channels 5 and 6 remains a long-term scenario, since at best the spectrum could not be freed up before 2012 at the earliest.

72. In the meantime, the CAB is of the view that the Commission should continue to assess applications for new radio licences on their merits taking into account what constitute the best use of scarce spectrum resources. To this end, the CAB notes that on numerous occasions the Commission has licensed applications for new campus-based or community-based radio services. The CAB also notes that, unfortunately, in many instances frequencies awarded to community-based projects have not been implemented years after approval of the applications. For instance, many licences awarded to Aboriginal Voices Radio (AVR) were never implemented and were sent back to the Commission; also worth mentioning, the licence awarded to the Radio-Enfant project has still to be implemented. These examples, though regrettable, highlight

[22] CRTC 30 March 2009 report to the federal cabinet on English and French broadcasting services in linguistic minority communities in Canada. See http://www.crtc.gc.ca/eng/BACKGRND/language/ol0903-lo0903.htm

the fact that it would not be in the public interest to set aside spectrum for the purpose of expanding the offering of campus-based or community-based radio stations.

73. Furthermore, due to the level of new licences awarded in a number of spectrum congested markets it is critical to ensure that commercial radio broadcasters' signals are not impaired by the shoe-horning in of 1st and 2nd adjacent frequencies into these markets.

74. Finally, the CAB submits that other solutions are available to help the not-for-profit radio sector expand, such as the use of now vacated AM frequencies or the possibility to set up Internet radio services.

75. Accordingly, the CAB recommends that, in accordance with its jurisdiction, the Commission refrain from setting aside spectrum for the expansion of the campus/community radio sector.

## Conclusion

76. In conclusion, the CAB's recommendations are summarized as follow:

- that the Commission eliminate the distinction both between the types of community stations and campus stations, as well as the distinction between Campus stations and community stations creating one not-for-profit class of licence to be governed by one policy and regulatory framework. That policy must ensure that the not-for-profit radio sector remains community focused and complementary to the other components to the system by setting out clear requirements with respect to programming diversity;

- that the Commission exempt elementary or high school based stations from licensing provided that there are at least three FM frequencies available in their market unless it is proposed to use an AM frequency in which case there would not be spectrum restrictions;

- that the Commission maintain its current policy which authorizes private radio stations to direct their CCD contribution, on a voluntary basis to the Community radio fund of Canada (CRF), however the policy should also recognize as eligible CCD funding provided by private radio stations in support of individual campus/community radio stations operating in their local market;

- that the Commission refrain from establishing any new financial requirements on the private radio sector in regards of the funding of not-for-profit stations; and,

- that, in accordance with its jurisdiction, the Commission refrain from setting aside spectrum for the expansion of the campus/community radio sector.

77. The CAB appreciates the opportunity to provide its comments in this proceeding and wishes to appear at the January 18th, 2010 hearing that will be held in Gatineau.

Sincerely,

*Originally signed by:*

Pierre-Louis Smith
Vice-President, Policy and Chief Regulatory Officer

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