



Broadcasting Regulatory Policy CRTC 2010-499

PDF Version

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Additional references: 2009-418-1, 2009-418-2, 2009-418-3 and 2009-418-4

Ottawa, 22 July 2010

Campus and community radio policy

This document sets out the Commission's revised policy for both campus and community radio. The Commission considers it appropriate to establish a single policy for this sector that makes provision for differences in the two types of stations where appropriate.

The matters addressed by the policy include:

- *the role, definition and mandate of campus and community radio stations;*
- *a simplified approach to licensing campus and community stations, including elimination of the campus instructional category, elimination of the distinction between Type A and Type B community stations, and revised provisions for developmental stations;*
- *programming requirements;*
- *the role of volunteers;*
- *a new approach to funding the campus and community radio sector through basic Canadian content development contributions from commercial radio stations and the tangible benefits packages established in ownership transactions;*
- *easing of limits on advertising on campus stations;*
- *technical matters, including the Commission's approach to low-power stations;*
- *how the Commission will deal with competitive applications;*
- *other means of delivering programming, such as new media;*
- *Canadian ownership and control requirements and collection of ownership information;*
- *cultural diversity; and*
- *other matters relating to the campus and community radio sector.*

Finally, the Commission sets out how it will implement the various aspects of the new policy.

A summary of the new policy is provided in Appendix 1.

A dissenting opinion by Commissioner Marc Patrone is attached.

I. The process

1. On 13 July 2009, the Commission issued Broadcasting Notice of Consultation 2009-418 (the Notice of Consultation) initiating a review of its policy for campus radio set

out in Public Notice 2000-12 and its policy for community radio set out in Public Notice 2000-13. The Commission announced that the proceeding would include a public hearing in the National Capital Region. The Commission also set out a list of questions for parties to address in written submissions.

2. In addition, the Commission placed the following documents on the public file to assist parties in preparing their comments:
 - a study on the use of turntablism and audio art on campus stations;
 - a study of approaches to the regulation and funding of the community radio sector outside Canada;
 - a summary of meetings held by Commission staff with representatives of the campus and community radio sector; and
 - aggregate financial summaries for campus and community radio stations.¹
3. The public hearing took place during the week of 18 January 2010. Those appearing at the hearing included parties from the campus and community sector, commercial broadcasters and other interested parties.
4. The Commission accepted final written comments filed after the hearing from parties that participated in the proceeding.
5. The Commission wishes to thank all who participated in this review. The complete record is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. In the remainder of this document, the Commission discusses and sets out its determinations on various issues related to its policy for campus and community radio. The Commission provides a summary of its determinations in Appendix 1.

II. A single policy for the sector

7. Section 3(1)(b) of the *Broadcasting Act* (the Act) states, in part, that the Canadian broadcasting system operates primarily in the English and French languages and includes public, private and community elements.² The community element helps the broadcasting system fulfil objectives of the Act, for instance, through the exchange of cultural expression and provision of educational programming.

¹ Hyperlinks to these financial summaries are included in Broadcasting Notices of Consultation 2009-418-2 and 2009-418-3.

² In their joint intervention, the Alliance des radios communautaires du Canada, the Association des radiodiffuseurs communautaires du Québec and the National Campus and Community Radio Association requested that the Commission replace the French-language expression "radio communautaire" with "radio de communauté." The Commission has considered this request and finds that it is appropriate to continue to use the term "communautaire" since it is consistent with the *Broadcasting Act*, which employs the term "communautaire" to describe that element of the broadcasting system.

8. Currently, two policies govern the campus and community radio sector, each with similar definitions, mandates, goals and roles for the stations involved. In the Notice of Consultation, the Commission asked whether campus and community stations should be defined primarily by their programming, whether the current objectives are still relevant and, whether two distinct policies for the sector are necessary.

Positions of parties

9. Parties associated with campus and community radio unanimously rejected any mandate, definition or role that defines campus or community radio stations in terms of their programming and in negative terms vis-à-vis other sectors. The notion of programming being “alternative” to that provided by other types of stations was therefore not well received. They highlighted the importance of programming being a product of the organizational structure of the stations, emphasizing openness to community members, training, a volunteer component and the not-for-profit nature of the stations. Most parties favoured a single policy, however the ministère de la Culture, des Communications et de la Condition féminine du Québec (MCCCQ) was of the view that campus and community radio stations were different enough that separate policies would be preferable. The submission by the Alliance des radios communautaires du Canada (ARC du Canada), the Association des radiodiffuseurs communautaires du Québec (ARC du Québec) and the National Campus and Community Radio Association (NCRA) (collectively, “the Associations”) set out a draft framework of objectives as well as their views on the purpose, definition and mandate of campus and community radio.

Commission’s determinations

Single policy

10. The Commission considers that the campus and community radio sector has provided, and should continue to provide, distinctive programming opportunities for its listeners and volunteers and opportunities for access to the Canadian broadcasting system. While the Commission acknowledges that there are differences between community and campus stations, the Commission is of the view that these differences can be recognized in a single policy document.
11. **Accordingly, the Commission considers that it is appropriate to regulate campus and community radio by way of a single policy that provides for differences in the two types of stations where appropriate. In light of the comments received, the Commission considers that it is appropriate to adopt the role, definition and mandate for campus and community radio set out below.**

Role and definition

12. The Commission considers that campus and community radio distinguishes itself by virtue of its place in the communities served, reflection of the communities’ needs and values, and the requirement for volunteers in programming and other aspects of station operations. This helps ensure that the programming is different from that of

commercial and public radio. The programming of campus and community radio should distinguish itself from that of the commercial and public sectors in both style and substance, offering programming that is rich in local information and reflection. The programming provided by campus and community radio should meet the needs and interests of the communities served by these stations in ways that are not met by commercial radio stations and the Canadian Broadcasting Corporation (CBC).

13. A campus or community radio station is owned, operated, managed and controlled by a not-for-profit organization that provides for membership, management, operation and programming primarily by members of the community served. In its openness to community involvement, campus and community stations offer ongoing opportunities for training in the operation of their station to volunteers from the community served.
14. Campus and community stations offer programming based on the needs and interests of a community through:
 - maximum use of Canadian-produced programming;
 - the broadcast of local and regional news and information;
 - the broadcast and promotion of local cultural and artistic expression;
 - the promotion of Canadian emerging talent with an emphasis on local musical and spoken word talent; and
 - the broadcast of local and regional content related to social, economic and community issues.

Mandate for community stations

15. Community radio guarantees local broadcasting service through community ownership, which means that community stations cannot be privately purchased by a for-profit organization. Community radio:
 - permits and facilitates communication among members of the community by fostering diversity in the broadcasting of opinions, spoken word content and musical programming;
 - participates in the stimulation of socio-economic endeavours and in the cultural enrichment of communities; and
 - reflects the diversity of the communities served. Local programming is produced, in part, by volunteers.

Mandate for campus stations

16. The Commission emphasizes the importance of student involvement in campus community stations as well as the relationships that these stations should maintain with the post-secondary institutions with which they are associated.
17. Campus radio shares the entirety of the mandate of community radio. However, campus radio distinguishes itself as follows:

- local programming is produced in part by volunteers from the student body as well as the broader community;
- the board of directors includes campus representatives, including a balanced representation from the student body and representation from the administration of the post secondary institution, station volunteers and the community at large; and
- there is access to funding through student levies.

Reflection of cultural diversity and linguistic duality

18. Section 3(1)(d)(iii) of the Act states, in part, that the Canadian broadcasting system should reflect the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples. The cultural diversity present in many Canadian communities places campus and community stations serving those centres in a position to make a strong contribution to the reflection of that cultural diversity, especially by providing exposure to new and emerging artists from underserved cultural groups, namely ethnocultural minorities, Aboriginal peoples and persons with disabilities. Campus and community stations are also well placed to provide spoken word programming that reflects the perspectives and concerns of diverse cultural groups, including official language minority communities. The Commission expects campus and community stations to maintain and strengthen their efforts in these areas in their programming, volunteer involvement and employment practices.
19. The Commission acknowledges the significant role played by campus and community stations in providing third-language programming to the ethnocultural communities resident within their service areas. The Commission encourages all participants in the campus and community radio sector to continue their efforts in this area. The Commission addresses the amount of ethnic programming that campus and community stations may broadcast in paragraphs 81 and 82 of this document.

III. Types of stations

Licensing campus and community stations

Current approach

20. The Commission currently licenses Type A and Type B community radio stations. A community radio station is a Type A station if, at the time of licensing, no other radio station, other than one owned by the CBC, is operating in the same language in all or part of its market. A community radio station is a Type B station if, when the licence is issued, at least one other station, other than a station owned by the CBC, is licensed to operate in the same language in all or any part of the same market.
21. The Commission also licenses community-based and instructional campus stations. A community-based campus station is a campus station with programming produced primarily by volunteers who are either students or members of the community at large. The training of professional broadcasters is not the station's primary objective.

By contrast, an instructional station is a campus station that has the training of professional broadcasters as its primary objective.

22. In the Notice of Consultation, the Commission sought comment on whether the distinction between Type A and Type B community stations as well as the distinction between community-based and instructional campus stations are still relevant.

Positions of parties

23. Many parties saw the distinction between Type A and Type B stations as being less relevant than in the past. The Association des radios régionales francophones (ARRF) expressed its opposition to any blurring of the distinction between the community and commercial sectors. MCCCQ advocated an expanded set of licence types for community radio. Many saw a strong distinction between community-based campus stations and instructional stations. Some parties, CHUO in particular, advocated that instructional stations migrate to Internet broadcasting.

Commission's determinations

24. With respect to community radio stations, the Commission notes that the current Type A and Type B distinction is based on the presence of another broadcaster other than the CBC operating in the same language in the market. The Commission has enforced this distinction through different programming requirements. However, evidence has been provided to the Commission indicating that the presence of a commercial broadcaster is not as significant as in the past in its influence on the programming of community stations. Some Type A stations have also seen the introduction of commercial stations into their markets. The Commission further notes that market size will be more of a factor in determining a station's ability to attract volunteers and provide diverse programming. Therefore, the programming criteria on which distinctions between Type A and Type B stations were made no longer appear to be relevant.
25. **The Commission therefore abolishes the distinction between Type A and Type B community stations.**
26. The Commission notes that there are currently only a few undertakings licensed as campus instructional stations. They are distinct within the campus and community radio sector as they operate with close ties to the administration of their respective post-secondary institutions and are often used as tools to attract students.
27. The Commission has not licensed a new instructional station since 2007. The Commission further notes that instructional stations are meant to train future commercial broadcasters. In the Commission's view, such training could just as easily be provided through closed-circuit, carrier current or Internet-based broadcasting using much of the same studio equipment. Broadcasting schools that do not currently have a licensed station could therefore offer such training.

28. **As a result, the Commission considers that it is not necessary to maintain a distinction between campus instructional and community-based campus stations. The Commission will not licence campus instructional stations in the future and will instead licence all such stations as campus stations in accordance with this policy.**
29. **All campus radio stations provide training to volunteers. The Commission notes the specific role that stations currently licensed as campus instructional play in training broadcasters who will work for commercial radio stations. The Commission encourages these stations to pursue this goal within the new campus station framework, or through alternative means of broadcasting (e.g. the Internet, closed circuit or carrier current).**
30. **At their next licence renewal, existing campus instructional stations will have the opportunity to request conditions of licence specific to their circumstances within the campus radio licensing structure.**

Licensing developmental stations

Current approach

31. In Public Notices 2000-12 and 2000-13, the Commission introduced the concept of licensing developmental stations. The purpose of this approach was to allow new campus and community stations to begin operations quickly under more limited requirements with a view to developing into full-fledged campus and community stations. Developmental stations are subject to certain fundamental requirements set out in the *Radio Regulations, 1986* (the Regulations) and the policies for campus or community radio. Developmental stations are not, however, subject to other requirements regarding programming or the number of hours that they must broadcast.
32. Developmental stations are licensed for a term of three years after which licensees may apply to be licensed as full-fledged campus or community stations or let the licence lapse. Developmental licences are therefore not renewable.
33. In the Notice of Consultation, the Commission sought comment on the relevance of the current approach to licensing developmental stations, whether the approach should be changed and, if so, what changes should be made.

Positions of parties

34. Parties generally favoured the concept of licensing developmental stations in that it allows such stations to determine overall community support and sources of financing prior to engaging in a long-term project with a long licence term. Some, however, including the NCRA, expressed discomfort with the current approach. They suggested modifications that would allow for a five-year rather than a three-year licence term followed by automatic graduation to licensing as a full-fledged campus or community station if a licensee demonstrates financial and organizational viability.

Commission's determination

35. The decision on whether to renew or issue a new licence is based on the information presented to the Commission in an application. The Commission is therefore not willing to entertain the notion of automatically moving stations from the developmental class to the community or campus class as described above.
36. **The Commission will therefore maintain the current approach to licensing developmental stations. Licensees of such stations must continue to adhere to the requirements as set out in the Regulations and the Act, including those concerning Canadian ownership, technical certification by the Department of Industry (the Department) and adherence to standard industry self-regulatory codes. Developmental stations will also be expected to conform to those portions of this policy governing the roles of campus or community stations and the structure of the board of directors. Further, developmental stations must fulfil the Canadian content and French-language vocal musical requirements set out in the Regulations, as well as other regulations including those regarding the retention of logger tapes.**
37. **Developmental stations will continue to be limited to a transmitter power of 5 watts or less for AM stations, or an effective radiated power of 5 watts or less for FM stations.**
38. The Commission, nevertheless, sees value to a longer licence term for developmental stations in that it would permit the establishment of more stable and viable campus and community radio organizations while also taking into consideration that licensees may take up to two years to implement their services. **Accordingly, the Commission will issue licences for developmental campus or community radio stations for a five-year term rather than the current three years.**
39. When applying for a licence for a full-fledged campus or community station, the Commission will expect applicants to indicate clearly the manner in which they will meet the goals and objectives of the policy for campus or community stations set out in this document. Applicants should be able to describe how their stations have developed and the manner in which they will meet these goals and objectives going forward.

High school and elementary school stations

Current approach

40. The Commission does not licence campus AM or FM stations associated with high schools and elementary schools. This general policy does not, however, prevent the Commission from licensing an over-the-air station that is housed in a high school or elementary school, but that otherwise operates as a community station and fulfils all aspects of the community radio policy. The Commission has also acknowledged, in certain licensing decisions, the benefit of providing programming geared toward a younger population.

41. Section 3(1)(i)(i) of the Act states that the Canadian broadcasting system should provide programming for men, women and children of all ages, and section 3(1)(iii) states that the system should include educational programs and community programs. In light of those two statements and the approach set out above, the Commission sought comment on the appropriateness of licensing high school and elementary school campus stations.

Positions of parties

42. Parties provided limited comments on this issue, and no one proposed a comprehensive framework for licensing high school and elementary school stations.

Commission's determinations

43. The Commission is not convinced that a station associated with a high school or elementary school could provide consistent high quality programming as required under the Act, especially in the summer months when school is not in session. The Commission further notes that the number of frequencies available for radio stations is limited in many markets. The Commission therefore considers that broadcasting by high school or elementary school students would be more appropriate using the Internet.
44. **Accordingly, the Commission will maintain its policy of not generally licensing campus AM or FM stations associated with a high school or elementary school. However, the Commission notes that an over-the-air station that operates as a community station and fulfils all aspects of the policy for community radio set out in this document may locate its studios in a high school or elementary school.**

IV. Programming requirements

45. The Commission sought comment on current programming requirements, the effects of changes that might be made to such requirements, as well as the manner in which the Commission can ensure a diversity of voices in the broadcasting system through the campus and community radio sector.

Spoken word programming

Current approach

46. Current spoken word programming requirements are set out in Public Notice 2000-157 for community stations and Broadcasting Regulatory Policy 2009-63 for campus stations. Type A community stations are required by condition of licence to devote at least 15% of the broadcast week to spoken word programming. This requirement increases to 25% for Type B community stations and all types of campus stations.

Positions of parties

47. Opinion was split among the parties. Parties that supported the current requirements, including some from the campus and community radio sector, considered that spoken

word programming is an important factor that distinguishes the programming of campus and community radio from the programming of other types of stations. ARRF was concerned that elimination of this requirement could lead to competition with commercial radio stations. Others, notably the Associations, the Association des radios communautaires acadiennes du Nouveau-Brunswick (ARCANB), CKUW and CJAM all indicated some unease with the current spoken word requirements. The Associations, in particular, suggested a 15% level for all stations in the sector. For its part, the Canadian Association of Broadcasters (CAB) argued for a 30% spoken word requirement with reasonable distribution throughout the broadcast day.

Commission's determinations

48. The record of this proceeding indicated that it has been difficult for campus and Type B community stations to fulfil the 25% spoken word requirement.
49. In the Commission's view, locally relevant spoken word programming produced by campus and community stations is an important way in which these stations can fulfil their mandates and roles in the communities served and in the broadcasting system as a whole. Further to information filed following the hearing, the Commission is satisfied that all stations in the sector would be able to meet a requirement for 15% spoken word programming, all of which would be locally produced.
50. Accordingly, **the Commission will require, by condition of licence, that all campus and community stations broadcast a minimum of 15% spoken word each broadcast week. For the purpose of this requirement, all spoken word shall be locally produced.** The Commission will, however, be willing to consider requests by stations in smaller markets for greater flexibility with respect to the requirement that all spoken word programming be local.
51. At the time of licensing or renewal, applicants and licensees should clearly demonstrate how their spoken word programming specifically meets the needs and interests of the communities served. Applicants and licensees should describe news, public affairs and other programs that have a specific local focus and indicate how much of this programming is produced by volunteers. The Commission may impose any of these commitments as a condition of licence, as necessary.

Volunteer participation

Current approach

52. The Commission has always considered that volunteers are an important part of campus and community radio.

Positions of parties

53. At the hearing, stations spoke with pride about the number of volunteers they involve, especially in programming. However, some noted that the level of volunteer participation varies significantly from a very high level at some stations to a low level

at others. A fixed minimum level of volunteer programming was not discussed at length.

Commission's determinations

54. Volunteer participation is a key factor that distinguishes campus and community radio from other sectors, and the Commission considers that a minimum level of volunteer participation would help ensure access by the community to the airwaves. **Accordingly, the Commission intends to initiate a separate process on participation by volunteers in campus and community radio. The Commission notes that many campus and community stations' licences are scheduled for renewal in 2011. The Commission intends to finalize its policy on volunteer participation in time for these renewals.**

Formal educational programming

55. Campus instructional stations must, by condition of licence, devote two hours of the broadcast week to formal educational programming.

Positions of parties

56. The NCRA suggested removing the formal educational requirement for campus instructional stations due to a perceived difficulty in sourcing this type of programming. The NCRA further submitted that such programming does not serve the intended audience of instructional stations or their mission to train commercial broadcasters.

Commission's determinations

57. The Commission is of the view that formal educational programming can be obtained through other means, notably online where, increasingly, colleges and universities have made tools that complement their regular courses available to students. The Commission also considers that formal educational programming does not further the mandate of instructional stations to train future commercial broadcasters. Moreover, the presence of an instructional station and its integration in the curriculum of the school in which it is housed is in and of itself a forum for formal education.
58. In light of the above, and given its prior decision to eliminate the instructional campus licensing category, **the Commission removes the requirement for campus instructional stations to provide formal educational programming.** Existing instructional stations may apply to the Commission to remove this condition of licence.

Canadian content

Current approach

59. Campus and community stations are generally subject to the following minimum Canadian content requirements:

- 35% for Category 2 music (imposed by regulation); and
- 12% for Category 3 music (imposed by condition of licence).

Positions of parties

60. Parties proposed various options for Canadian content levels. For instance, ARRF suggested adding a requirement that Canadian selections be reasonably distributed throughout the broadcast day and week. The CAB proposed that the Commission increase the minimum level of Category 3 music to 30%, with reasonable distribution. Some campus and community stations noted that they regularly exceed current Canadian content requirements. Additional scenarios were discussed at the hearing with the different parties, but no proposals for firm increases were presented. The Commission received no further argument on the particular issue of specific increases in Canadian content levels in the replies.

Commission's determinations

61. The Commission notes that the sector is well positioned to exceed minimum levels for Canadian content set out in the Regulations and that an increased requirement for Canadian content would provide stations with a greater incentive to serve the needs of the community. Such an increase will also help guarantee the exposure of Canadian talent on the airwaves, increase diversity and enhance the distinctiveness of the campus and community sector. **The Commission is therefore of the view that it is appropriate to increase the minimum Canadian content requirement for category 2 music. Given that this issue was not discussed at length in the course of this proceeding, the Commission is of the preliminary view that the Canadian content level for category 2 music should increase to a minimum level of at least 40 % for all campus and community stations. The Commission will issue a call for comments on whether 40% or a higher level would be an appropriate level of Canadian content for category 2 music.**
62. The Commission notes that campus and community radio stations are currently required, by condition of licence, to devote at least 12% of all Category 3 musical selections aired during each broadcast week to Canadian selections. **As is the case with category 2 music, the Commission is of the preliminary view that the Canadian content level for category 3 music should increase. However, this issue was not discussed at length in the course of this proceeding. The Commission will therefore issue a call for comments on whether a 15% or higher level would be an appropriate level of Canadian content for category 3 music.**

Requirement for the broadcast of musical selections drawn from categories other than sub-category 21

Current approach

63. Community stations are required, by condition of licence, to devote a minimum of 20% of their musical selections to selections other than those originating from sub-

category 21 (Pop, Rock and Dance). This requirement adds to the diversity of music played by community stations. Campus stations are not subject to this requirement.

Positions of parties

64. The Associations proposed that elimination of a Category 3 musical requirement be balanced by a requirement for all campus and community stations that at least 20% of all musical selections be drawn from categories other than sub-category 21. The CAB proposed a 30% requirement in this area. L'association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) pointed out that the Commission has, in the past, stated that the imposition of a requirement to play music outside of sub-category 21 could stifle diversity, in particular for campus radio. ADISQ submitted that sub-category 21 music includes a wide variety of musical genres including Rock, Pop, Heavy Metal, Modern Rock, Alternative Rock, other varieties of Rock, Soul, Dance, Rap, HipHop, Urban, R&B, Techno and others.

Commission's determinations

65. The Commission is aware of the diversity of music within sub-category 21 and can foresee that diversity within this sub-category will likely increase rather than decrease over time. The Commission removed a requirement for campus stations to broadcast music drawn from categories other than sub-category 21 during the last policy review due to the ability of campus stations to “contribute significantly to the musical diversity of the broadcasting system” with selections that “still fall within sub-category 21 (Pop, Rock and Dance).”
66. The Commission notes that campus station volunteers are often young and do not program musical selections from the easy listening, acoustic and, to some extent, country genres, which are also included in Category 2.
67. The Commission further notes that campus stations are subject to an additional limit on the broadcast of hits (10% of all selections or 30% in the case of currently licensed campus instructional stations), ensuring a greater diversity of the music broadcast and limiting commercial impact.
68. **Based on the foregoing and the increased requirement for the broadcast of Canadian content discussed above, the Commission is of the view that it is appropriate to maintain the current requirement for community stations to broadcast musical selections drawn from categories other than sub-category 21. The Commission will not impose such a requirement on campus stations.**

Category 3 music requirement

Current approach

69. All campus and community stations are required, by condition of licence, to devote a minimum of 5% of their musical selections to category 3 (Specialty) music.

Positions of parties

70. Some parties, such as CFRO and CKUA, had no objection to this requirement. Others, notably the Associations, CHGA, CKUW and MCCCQ advocated removal of the requirement for category 3 music. Some indicated that the category 3 music requirement rarely meets the needs of the communities served, and others submitted that finding volunteers to provide and produce such programming is problematic. Many noted that other services offering specialty music, such as online radio and pay audio services, fulfil the musical needs of those who enjoy specialty music. ADISQ, on the other hand, expressed great concern about the removal of the category 3 music requirement, noting that campus and community radio has an important impact on the diversity of music broadcast, especially in Quebec.

Commission's determinations

71. The Commission notes that community radio stations appear to regularly exceed the category 3 music requirement and that campus stations appear to follow this trend. Further, it appears that the majority of category 3 music programming is locally produced by volunteers. It is therefore reasonable to assume that the communities served have an interest in such music. Further, given the resources available, it should be relatively easy to source such music.
72. The Commission further considers that the broadcast of this type of music ensures a minimum level of diversity in markets served by the campus and community radio sector. **The Commission therefore maintains the requirement that campus and community stations devote at least 5% of the musical selections aired each broadcast week to selections from category 3.**

Experimental music

Current approach

73. In Public Notices 2000-12 and 2000-13, the Commission acknowledged that turntablism and radio art are forms of artistic expression that could be important parts of the programming of some stations. The Commission considered, however, that it had not received sufficient input at that time to properly define those forms of artistic expression for the purpose of Canadian content requirements. It further indicated that it would follow developments in this area and review its approach as necessary.
74. The Commission studied this form of expression and placed its findings on the public record of this proceeding. The Commission sought comment on a proposed definition of experimental music and on the circumstances under which musical selections falling into the experimental category should qualify as Canadian selections. The Commission further proposed to recognize turntablists and performers of radio art as artists for the purpose of measuring Canadian content.

Positions of parties

75. The Commission received generally favourable comment for the definition as proposed. Some parties, notably the NCRA and CHUO, took issue with the term “classical instruments” included in the proposed definition while others such as CKUT proposed an expansion of the types of “music” that could be included in the definition. The NCRA proposed different definitions and a limit on the length of the final piece of music produced.

Commission’s determination

76. **Given the comments provided, the Commission deems it appropriate to implement the following definition for sub-category 36 (Experimental music):**

The unconventional and non-traditional uses of instruments and sound equipment to create new sounds and an orchestration of these sounds. This includes audio-art, turntablism, *musique actuelle*, electro acoustic and sound ecology.³ While it may involve the use of previously recorded sounds to create new sounds and orchestrations, it does not include spinning or beat mixing where the alterations of previously recorded tracks are limited to mixes between two or more pieces or samples.

77. For the purpose of measuring Canadian content, the Commission finds that when determining the requirements of the MAPL designation system, **the Artist component may be fulfilled if the turntablist or sound artist is Canadian. In the event that more than one artist collaborates in the development of the musical selection, the Artist component of the MAPL designation system will be satisfied where a majority of the collaborators (i.e. at least half of the collaborators involved) are Canadian.**
78. For the purpose of the MAPL definition for Canadian selections under section 2.2(2)(v) of the Regulations, **the Commission will continue to use, where appropriate and applicable, the records of a recognized performing rights society in order to determine the credit accorded to Canadians and non-Canadians for collaboration.**

French-language vocal music

79. **The Commission will maintain the requirement relating to French-language vocal music set out in section 2.2(1) of the Regulations. Campus and community radio stations operating in the French language must devote, in a broadcast week, 65% or more of their vocal musical selections from content category 2 to musical selections in the French-language broadcast in their entirety.**

³ Definitions of *musique actuelle*, electro acoustic and sound ecology are set out in the appendix to Broadcasting Notice of Consultation 2009-418. Please also see the study on the use of turntablism for a discussion of audio art and turntablism.

New and emerging Canadian talent

80. Campus and community radio has always played a pivotal role in the development of new and emerging Canadian talent. Many musical artists and other talent received their first exposure on campus and community stations. **The Commission expects campus and community stations to continue to emphasize the development of Canadian talent, including providing airplay for the music of new and emerging artists and opportunities for other talent.**

Level of ethnic programming

81. Section 7(4) of the Regulations states that licensees of Type A community stations or campus stations broadcasting in a market where there is no ethnic station, may devote no more than 40% of a broadcast week to third-language programs. Given that the Commission has decided to abolish the distinction between Type A and Type B community stations, the Commission plans to amend the Regulations to harmonize requirements as follows.
82. **Campus and community stations will have the flexibility to devote no more than 40% of the broadcast week to third-language programs in markets not served by an ethnic station. Stations in markets served by an ethnic station will have the flexibility to devote not more than 15% of the broadcast week to third-language programs and may apply for a condition of licence allowing them to increase their third-language programming to a maximum of 40%.**

V. Funding

Principle of funding from diverse sources

Current approach

83. Canada, with the exception of the province of Quebec, employs a patchwork funding system for campus and community radio that is generally project-based rather than directed to operational requirements such as staff salaries, technical upgrades and other capital expenditures. In Canada there is no stable core funding that is available to all campus and community stations. Even in Quebec, where operational funding is most widespread, campus stations are not eligible, although they generally have access to student levies to support their operations. Elsewhere in the country, grants are generally given only on application and then only to a few stations.
84. The Community Radio Fund of Canada (CRFC), an independent organization, was developed to provide additional funding support for campus and community radio. Given the manner in which it obtains its funding, the CRFC is concerned mainly with funding particular projects. The CRFC currently receives the majority of its funding from tangible benefits paid in the context of the transfer of ownership of commercial stations as well as commitments made in applications for new stations.

85. The Commission sought comment on the challenges that the campus and community radio sector faces with respect to funding, the manner in which the CRFC has affected funding for campus and community stations, as well as alternative funding models, including whether the commercial radio sector should be mandated to direct certain portions of its Canadian content development (CCD) contributions to the CRFC.

Positions of parties

86. Parties from the campus and community radio sector all agreed that funding is the central concern for their stations. They listed several current challenges. These include low advertising revenue, unstable fundraising income, fewer grant opportunities, staff retention, funding that is limited to particular projects, costs associated with the management of volunteers and other issues such as copyright tariffs. Parties also noted that some post-secondary institutions have reduced or removed levies on student fees to support campus stations.
87. In order to address these difficulties, the CRFC proposed a wide ranging funding model that would include, among other things, support from the commercial radio sector through mandatory CCD contributions to campus and community radio as well as a percentage of tangible benefits from the sale of commercial radio stations. In order to ensure that funds are properly disbursed, the CRFC proposed, in consultation with campus and community stations, to set up an approach for funding based on outcomes.
88. CKUA and ARRF presented alternative funding options. AARF suggested that the Commission adopt a funding model for campus and community stations that is similar to that which is used in the United Kingdom (UK). Under the UK model, no more than 50% of revenues can come from a single source. ARRF also urged the Commission to consider funding for activities that serve to recruit and train volunteers. However, ARRF strongly opposed the idea of the commercial radio sector funding campus and community radio. AARF noted that such stations often compete with commercial stations, which face their own financial challenges, especially in small markets. Instead, ARRF suggested that the campus and community sector focus on alternative funding approaches.
89. The CAB also expressed concern about funding campus and community radio through mandatory contributions from the commercial radio sector, advocating instead that contributions remain discretionary. The CAB submitted that, since the CRFC has only been in existence for a short time, it is premature to determine whether the current voluntary approach to funding will be successful. The CAB noted that there is no statutory requirement indicating that one element of the broadcasting system must necessarily support another. It was also concerned that there is nothing on the public record to demonstrate how any funding provided by commercial stations would be used and disbursed.
90. However, the CAB stated that, if the Commission were to mandate funding from commercial stations for campus and community stations, there should be no increase

in overall CCD contributions. Any funding to the CRFC should be taken from existing contributions to FACTOR and MUSICACTION rather than from discretionary initiatives.

Commission's analysis and determinations

91. As part of this review, the Commission published aggregate financial data for the campus and community radio sector. Based on a sample of 93 stations across Canada that have consistently filed their annual returns, annual revenues were as follows:

2006	2007	2008
\$25,272,603	\$25,431,953	\$28,188,373

92. For the 2008 broadcast year, the figure set out above represents an average revenue of \$238,509 per station. Given that the campus and community radio sector faces funding challenges, the Commission considers that it is appropriate to implement a funding mechanism that would aid in providing such stations with steady and predictable funding.

CCD contributions

93. Pursuant to section 15 of the Regulations, commercial radio licensees must make the following basic annual contributions to CCD:
- stations with revenues less than \$625,000 make a \$500 contribution;
 - stations with revenues greater than \$625,000 but less than \$1.25 million make a \$1,000 contribution;
 - stations with revenues in excess of \$1.25 million make a contribution of \$1,000 plus .05% of revenues that exceed \$1.25 million.
94. The contributions are based on the revenues of the previous broadcast year.
95. All stations are required to devote 60% of these contributions to FACTOR or MUSICACTION except ethnic stations and spoken word stations, which are granted the flexibility to not contribute to FACTOR or MUSICACTION since those organizations do not serve those stations' programming needs.
96. The Commission is of the view that, in order to ensure stable funding for the campus and community radio sector, it would be appropriate for commercial radio stations to contribute a portion of their basic CCD contributions to the CRFC. It is of the view that spoken word stations and ethnic stations should also contribute, given that the campus and community radio sector trains many volunteers who specialize in spoken word programming, third-language programming and the broadcast of music which would generally be heard on an ethnic station (including world music and music sung in third languages). However, the Commission is also conscious of the objections made by AARF on the record concerning funding of its small market competitors.

Therefore the Commission deems it appropriate to require only those stations generating revenues in excess of \$1.25 million to contribute to the CRFC.

97. The Commission has examined the impact on FACTOR and MUSICACTION if a portion of the basic CCD contribution were diverted from those organizations to the CRFC. After this examination, it considers that it would be appropriate to implement the following approach:
98. **Upon amendment of the Regulations, all commercial radio stations (including ethnic stations and spoken word stations) earning in excess of \$1.25 million shall contribute 15% of their basic annual CCD contribution to the CRFC. This amount shall be reallocated from contributions which would normally be made to FACTOR or MUSICACTION.**
99. **Under this approach commercial radio stations, other than ethnic stations and spoken word stations, with revenues in excess of \$1.25 million would be subject to the following allocation of contributions for basic CCD:**
 - **45% to FACTOR or MUSICACTION**
 - **40% to discretionary initiatives**
 - **15% to the CRFC**
100. Although this approach involves diverting some funding from FACTOR and MUSICACTION to the CRFC, the Commission continues to recognize the important role that both FACTOR and MUSICACTION play in supporting new, emerging and independent Canadian artists. This limited reduction in funding should not be viewed as a comment on the activities of those organizations. Rather, the Commission is of the view that, through this plan, the CRFC can be supported without an undue impact on the activities of FACTOR or MUSICACTION.
101. In this regard, the Commission notes that, in a scenario in which all commercial licensees were subject to section 15 of the Regulations and based on estimates of contributions to CCD by the commercial radio sector for 2009, which reflect the revenues of the previous broadcast year, annual plan revenues for FACTOR would be reduced by approximately \$580,000 while revenues for MUSICACTION would be reduced by approximately \$195,000. This would amount to a reduction in revenues of approximately 3.2% for FACTOR and 2.4% for MUSICACTION. However, this decreased revenue could be offset by the licensing of new commercial radio stations and increased revenues from existing commercial stations.
102. On the other hand, the plan would result in approximately \$775,000 in additional funds for the CRFC. This support will allow campus and community stations to stabilize certain aspects of their operations by making additional resources available to support volunteers, programming and community participation. This will, in turn, lead to increased exposure of new and local talent.

103. **Ethnic stations and spoken word stations would allocate their contributions as follows:**
- **85% to discretionary initiatives**
 - **15% to the CRFC**
104. **The implementation of this approach is conditional on: a) an approved accountability structure developed by the CRFC, as discussed below, b) approved restructuring of the CRFC, and c) adoption of necessary amendments to the Regulations.**
105. In summary, the Commission considers that the approach set out above will:
- address the concerns of small market broadcasters;
 - provide close to \$775,000 per year to the CRFC;
 - not increase the overall CCD expenditures by commercial broadcasters;
 - have a minimal impact on FACTOR and MUSICACTION, given their current revenues;
 - would not rule out additional discretionary contributions by commercial stations.

Tangible benefits

106. Applicants also make commitments to CCD in the context of applications for the transfer of ownership or control of commercial radio undertakings. Such applicants are currently required to develop a tangible benefits package that amounts to a minimum direct financial contribution of 6% of the value of the transaction to CCD. Total tangible benefits paid for the 2008 broadcast year related to the transfer of commercial radio undertakings amounted to approximately \$16 million.
107. Tangible benefits must be distributed as follows:
- 3% to the Radio Starmaker Fund or Fonds Radiostar;
 - 2% to FACTOR or MUSICACTION;
 - 1%, at the discretion of the purchaser, to any eligible CCD initiative.
108. The Commission is of the view that the allocation of a portion of tangible benefits packages to campus and community radio would help ensure stable funding for such stations. The Commission notes that the Radio Starmaker Fund and Fonds Radiostar receive all of their Commission-mandated funding from tangible benefits contributions – they are not eligible for basic CCD funding. Thus, the Commission considers that it would be appropriate to divert funding for the CRFC from FACTOR and MUSICACTION.

109. **Accordingly, the Commission will amend the formula set out above so that 0.5% of the value of a commercial radio transaction will be allocated to the CRFC. The amount allocated to FACTOR or MUSICACTION will be reduced from 2% to 1.5%. As a result the contribution will be distributed as follows:**

- **3% to the Radio Starmaker Fund or Fonds Radiostar;**
- **1.5 % to FACTOR or MUSICACTION;**
- **1%, at the discretion of the purchaser, to any eligible CCD initiative;**
- **0.5% to the CRFC.**

110. **This new approach will apply immediately. However, it will not apply to applications already approved by the Commission.**

111. The Commission notes that 1% of benefits may be paid to any eligible CCD initiative, including the CRFC, FACTOR and MUSICATION.

Eligible initiatives

112. The CCD system as set out in Broadcasting Public Notice 2006-158 helps ensure that money flows to organizations that will use it to support, promote, train and develop Canadian musical and spoken word talent. This approach replaced the former Canadian talent development policy which permitted contributions to a myriad of groups including performing arts groups and other well intentioned initiatives that had little to do with the on-air content that radio typically broadcasts.

113. At the hearing, some parties suggested that CCD funding directed to campus and community stations could be used to fund the development of technical briefs and could also include in kind technical support such as the provision of old equipment, expertise and tower rental fees. It was further suggested that funding could be used to:

- increase online presence;
- enhance programming;
- train volunteers.

114. The Commission considers that it is inappropriate to consider in kind support as outlined above as an eligible CCD contribution. In such cases, the value of equipment or expertise is set by the contributor, payments are not made to third parties, and such support does not provide aid directly related to audio content initiatives. Similarly, support for technical briefs does not provide aid directly related to audio content initiatives.

115. **The Commission considers that CCD support given to campus and community radio stations should be directed primarily to enhancing programming and volunteer training. While in kind and technical support will not be eligible, the Commission notes that nothing would stop commercial broadcasters from offering this kind of support by making additional contributions. The Commission encourages cooperative measures between commercial radio**

stations and the campus and community radio sector. Issues related to new media and on-line presence are addressed later in this document.

116. While the Commission considers that the campus and community radio sector will benefit from the funding mechanisms outlined above, it nevertheless maintains its view that the sector is best served when it receives funding from a diversity of sources. Accordingly, the Commission encourages the CRFC and individual stations to diversify the sources of funding, and maintains its positive view of funding for the sector from the private sector and other measures that could be taken by Government to reduce the financial burden that campus and community stations face.

Accountability measures and structure of the CRFC

117. When a sector of the broadcasting system will be supported by an existing or newly constituted funding mechanism, the Commission must ensure that allocations are made in a fair and transparent manner. Annual reports are generally made public. The Commission therefore expects that accountability structures, clear performance measures and clear oversight provisions are put in place.
118. Accordingly, the Commission considers that the CRFC must put measures in place to ensure that all funds are accounted for and spent according to this policy. Accordingly, **the CRFC must submit to the Commission for its approval, no later than 29 October 2010, a plan setting out the structure of the fund, and measures to ensure that:**
- **the CRFC is accountable to the Commission;**
 - **stations receiving funding are accountable to the CRFC; and**
 - **stations receiving funding are accountable to the Commission.**

a) Structure of the Fund:

The plan should include the following:

- **an administrative funding structure;**
- **a staffing plan, including the tasks and salaries of each staff member;**
- **a list of other administrative expenses;**
- **an appropriate governance structure that demonstrates independence from stations and the Associations;**
- **how funding will be allocated, with specific criteria and its intended use;**
- **a mechanism for collecting funds from commercial broadcasters; and**
- **station expenses that will be eligible for funding.**

b) Accountability to the Commission

The plan should confirm that the fund will continue to file annual reports providing audited financial statements and a report on how money has been spent.

c) Accountability by stations to the fund

The plan should set out:

- **how the CRFC will ensure compliance (i.e. that the funding will be used for its stated purpose);**
- **a reporting mechanism requiring that stations submit reports to the CRFC twice annually. These reports should set out the amount of money received from the CRFC, as well as by whom and for what this money was spent. These reports shall be made available to the Commission upon request to the CRFC, and shall be included in the CRFC's annual reports referred to in section b) above;**
- **measures to evaluate the success of funding. Such measures may include, but would not necessarily be limited to, a description of incremental increases in volunteer programming levels or Canadian content levels that occur as a result of funding.**

119. For its part, the Commission will:

- **create an oversight panel to facilitate interpretation of the Commission's directives concerning the expenses flowing from the CRFC to stations;**
- **verify, during the licence renewal process, that basic annual contributions are made by commercial stations. Licensees that do not make contributions will be subject to compliance reviews as set out in Circular 444, as amended from time to time.**

120. The Commission will also review the plan, and the plan will be published for public comment.

Advertising on campus stations

Current approach

121. Campus stations are permitted, by the condition of licence, to broadcast a maximum of 504 minutes of advertising during each broadcast week, with a maximum of 4 minutes of advertising in any one hour. Community stations are not subject to limits on the amount of advertising that they broadcast. In the Notice of Consultation, the Commission sought comment on the continued relevance of advertising limits for campus stations, and whether these limits should be maintained.

Positions of parties

122. Generally, parties expressed support for maintaining advertising limits, noting that limits are necessary to prevent advertising from being overly influential on the type of programming that stations broadcast. Some parties were also concerned that excessive advertising would only serve to alienate loyal listeners who view campus stations as an alternative to commercial radio. Furthermore, there was a general concern that outright removal of the current advertising limits could threaten access to student

funding. Student levies are a major source of funding for campus stations, significantly exceeding the amounts stations generally garner from advertising.

123. Many parties nonetheless supported increased flexibility within the current policy, with the NCRA, among others, recommending that the current strict limit of four minutes per hour be applied as an average across the broadcast day. Some also suggested that, at the very least, the Commission should be favourable to allowing exceptions to advertising limits where appropriate.
124. Although parties conceded that most stations do not fill every hour with four minutes of advertising, they considered that the added flexibility would allow them to maximize revenues by exceeding the limit during higher listening periods and during more popular shows.

Commission's determination

125. The Commission notes the support expressed for maintaining some advertising limits on campus stations, and will **maintain the limit of 504 minutes of advertising per broadcast week**. However, the Commission also sees merit in the calls for additional flexibility with respect to advertising on campus stations, and agrees that additional flexibility would allow stations to maximize revenues. **Accordingly, the Commission removes the limit of four minutes of advertising per hour on campus stations. Stations may concentrate advertising during certain hours or days as they wish, so long as they broadcast no more than 504 minutes of advertising during each broadcast week. As well, the Commission will no longer consider material from content sub-category 52: Sponsor Identification and subcategory 53: Promotion with sponsor mention when determining a station's compliance with the 504 minute per week advertising limit. The Commission will continue to expect campus stations to obtain revenues from a variety of sources.**

VI. Technical considerations

Reservation of frequencies or of a portion of the spectrum

Current approach

126. The Commission does not reserve frequencies or portions of the radio spectrum for future use by classes of radio undertakings.

Positions of parties

127. Most parties, including the NCRA, expressed a strong desire for the Commission to reserve frequencies or a portion of the FM spectrum for use by campus and community radio stations. Several parties suggested to the Commission that at least one FM frequency per market be set aside for campus and community radio stations, particularly in large urban centres where the FM spectrum is congested.

128. Others added that, with the possible adoption of new radio technologies, the Commission could consider designating a portion of the spectrum associated with these technologies to campus and community radio stations.
129. Opposing parties, such as the CAB, noted that the Commission has limited jurisdiction with regard to spectrum management. The CAB submitted that it would be inappropriate for the Commission to manage spectrum in the manner suggested by the NCRA and others, given that it is a limited public asset.

Commission's determinations

130. The Commission and the Department have different and often complementary responsibilities with regard to spectrum management. The Governor-in-Council is the only person given the express power to reserve frequencies under section 26(1) of the Act.
131. The Department is responsible for spectrum allocation and assignment. It is also responsible for the development of radio broadcasting allotment plans.⁴ These responsibilities derive from *Radiocommunication Act*.
132. The Commission is responsible for licensing radio broadcasting services, while ensuring the best use of the frequencies and taking into account all of the objectives of section 3 of the Act.
133. **Given these different responsibilities, the Commission considers that it is inappropriate to reserve frequencies or portions of the radio spectrum for use by specific classes of licences, such as campus or community stations.**

Protection of low-power frequencies

Current approach

134. Under the Department's *Broadcasting Procedures and Rules*, low-power stations and very low-power stations are not protected. In any given market, a low-power FM radio station with an "unprotected" or "secondary" status could be forced to cease operation if a radio station with a "protected" or "primary" status were to receive approval of an application for:
 - a frequency used by an existing low-power radio station as part of a new licence or a technical change;
 - a technical change that involves an extension of its coverage and results in it receiving interference from an existing low-power station; or

⁴ The terms allocation, assignment and allotment are defined on the Spectrum Management and Telecommunications website.

- a technical change that involves an extension of its coverage and results in generating interference on an existing low-power station. In this instance, the low-power station can either tolerate the interference or ask to change its operation in order to rectify the problem.

Applicants are not required to send an official letter of notification to affected low-power radio stations as they are to “protected” stations.

135. Applications must be submitted to the Commission and the Department simultaneously. Under the *CRTC Rules of Procedure*, low-power stations at risk of losing their frequency are only made aware when the Commission issues a Broadcasting Notice of Consultation calling for comments on the application or initiating a public hearing. Neither the Commission nor the Department is required to give notice to low-power radio stations. The Commission does not currently have any clear guidelines on if or how applicants must give notice or direction to low-power stations at risk of losing their frequency.

Positions of parties

136. Several parties pointed to the fact that many campus and community stations are unprotected, low-power operations. The parties also mentioned the need to give “reasonable” notice to low-power campus and community radio stations at risk of losing their frequencies. The Associations, in particular, noted that several of their members had been affected in this manner over the past five years. A sudden loss of frequency requires the investment of considerable time and resources, and for that reason, they considered these stations are entitled to be given notice.
137. Meanwhile, other parties, such as the CAB, objected to official notification of affected low-power stations. The CAB was concerned that such notification could compromise the confidentiality of an applicant’s proposed technical parameters. It added that the Department’s current rules enable broadcasters to negotiate compromises. The CAB stated that low-power stations are considered “secondary” services under the Department’s domestic protection rules and bilateral agreements with the United States.

Commission's determinations

138. The Commission’s jurisdiction does not extend to the protection of low-power radio stations. However, the Commission considers that it is appropriate that such stations be alerted when other parties propose to use the frequencies on which they operate in order that they may be prepared to find another frequency if necessary.
139. **In order to help ensure that low-power campus and community radio stations are given notice without necessarily breaching the confidentiality of the applicant’s proposed technical parameters, the Commission will require applicants to answer a series of questions on their application forms. Applicants will be asked to address whether and how notice has been given to low-power**

campus and community stations that will be affected, on a technical basis, by their application, or when they intend to notify them.

Collaboration with other radio sectors

140. The Associations submitted that, up to 1 February 2010, the commercial radio sector has never formally contacted the campus and community radio sector to discuss any form of collaboration, despite the fact that the community radio sector has endeavoured to contact them on this topic. In its final comments, the CAB offered opportunities for official communication between the commercial and campus and community radio sectors by proposing two formal meetings a year.
141. **While the CAB made comments at the public hearing regarding its willingness to communicate with the campus and community radio sector, the Commission notes that the CAB has undergone an operational restructuring. The Commission encourages individual commercial broadcasters and the regional associations that represent them to continue to engage in constructive communications with the campus and community radio sector.**
142. **The Commission further encourages representatives of the campus and community radio sector to attend the biannual meetings of the Broadcasting Technical Advisory Committee in order to raise technical concerns and discuss them with representatives of the commercial radio sector, the Commission and the Department.**
143. The Commission notes the publication of its report *Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications* (Navigating Convergence) in February 2010, which has a three-fold objective:
 - to compile cultural, economic and technological trends toward convergence, to reflect the pace at which change is occurring and to present the resulting challenges and opportunities for traditional regulatory models;
 - to outline the high-level structural changes and regulatory considerations that will need to be navigated between now and 2014; and
 - to provide a specific, but not exhaustive, list of mid-term issues that are expected to require regulatory treatment within the next five years.

The Commission encourages those associated with the campus and community radio sector to consult *Navigating Convergence* as it is amended from time to time.

VII. Licensing process in competitive situations

Criteria for evaluation in competitive processes

Current approach

144. In Decisions 99-480, 99-481 and 99-482, the Commission identified factors such as quality of application, diversity of news voices, market impact and competitive state of the market that would generally be among those relevant to the evaluation of competitive applications for commercial radio stations under the Commercial Radio Policy 1998 (Public Notice 1998-41).
145. The Commission also indicated that the relative weight and significance of the various factors would vary depending on the specific circumstances of the market concerned and noted that the Commission would continue to consider whether the proposed use of the frequency is optimal in all circumstances.
146. In the case of campus and community stations, the Commission expects applicants to fulfil the Commission's policies for such stations. Moreover, the Commission considers the information on the public record and the needs of the market in evaluating whether the application should be approved.
147. Given the scarcity of available spectrum in certain markets, it is foreseeable that the Commission will be faced with competing applications involving applicants for campus and community stations as well as applicants from other sectors. As part of the present review, the Commission sought comments on whether its current approach, as set out above, should be revised.

Positions of parties

148. Generally, parties representing the campus and community sector considered that the Commission has given insufficient priority to the licensing of campus and community stations. Some such as the NCRA suggested that the Commission should consider whether a market is adequately served by campus and community stations before approving applications for commercial and CBC stations. In contrast, the CAB and ARRF, in particular, indicated that the Commission should continue to assess applications for new radio licences on their merits, taking into account the best use of scarce frequencies.

Commission's determinations

149. The Commission is of the view that the current criteria for evaluating applications for campus and community stations within competitive processes remains appropriate in achieving a balance between the needs of the market and the optimal use of the available spectrum. **Accordingly, the Commission maintains its current framework for evaluating applications for campus and community radio stations in competitive scenarios.**

150. The Commission also reiterates its priority system for evaluating competing low-power radio applications, as set out in the appendix to Broadcasting Public Notice 2002-61.

VIII. Other means of delivery

New media

Introduction

151. In the Notice of Consultation, the Commission called for comments regarding the role and participation of campus and community radio broadcasters in the new media environment.

Positions of parties

152. The prevailing view among campus and community radio broadcasters is that conventional radio will not be replaced by new media but rather that new media will serve to extend the reach of over-the-air radio. They recognized that, although not all Canadians have affordable access to high-speed Internet as they do to radio, there is an increasing and widely held expectation among listeners that campus and community radio should provide programming using new media. Parties associated with campus and community radio stations stated that they are streaming audio content over the Internet in addition to the content they broadcast over the air.
153. Parties indicated that lack of core operating funds, funds to update studio production and transmission equipment, computer and software resources, as well as technical knowledge on the part of resident staff stand in the way of implementing new media in their programming activities. For this reason, several parties proposed ongoing funding as opposed to project-based funding to support ongoing efforts to enhance their Internet activities.
154. Concerns were also expressed regarding copyright payments. While new media make available more choices of both recently aired programming and older material, there is reluctance on the part of the campus and community radio sector to archive music because of copyright implications. As well, parties expressed concerns about posting podcasts due to related royalties.

Commission's determinations

155. The Commission does not expect new media to replace over the air broadcasting as the primary means of delivery for all campus and community radio services. Pursuant to Broadcasting Regulatory Policy 2009-329 (the New Media Policy) and Broadcasting Order 2009-660 (the New Media Exemption Order), the Commission does not regulate the content that campus and community stations choose to produce and broadcast via new media and cannot require any action in this regard from campus and community radio. The Commission considers, however, that it is important that new technologies become an integral part of radio broadcasting in

order to take advantage of innovative ways to make and deliver programming to as wide an audience as possible. It therefore encourages participation in new media.

156. The Commission has no jurisdiction over the rates for copyright material. It nevertheless recognizes parties' concerns about copyright payment for the material played by campus and community stations both over the air and via new media. The Commission also acknowledges the impact that future decisions on copyright may have on those stations and their decision to use the Internet to make Canadian programming more widely available.
157. The Commission believes that as broadband becomes widely available for all Canadians, it is the ideal vehicle for members of Official Language Minority Communities to communicate with each other and to foster their language and culture. Official Language Minority Communities should therefore make serious endeavours to adopt new media platforms for distribution.
158. The Commission also notes that keeping pace with developments in new media is an ongoing problem faced by campus and community radio operators. **The Commission considers that the cost of producing local content, implementing new media approaches and distributing programming by digital means could be offset by funding obtained from the CRFC.**

Micro radio stations

Introduction

159. In the Notice of Consultation, the Commission noted that a number of communities in the country could benefit from an alternate approach to radio broadcasting and could be served by micro radio stations. Such stations would operate at very low power in remote areas, have limited production facilities and be linked via the Internet, with programming shared on a central server. They would provide limited local programming mixed with programming obtained from networked production centres, and programming would vary at the discretion of the operator of each station. The Commission does not currently licence micro radio stations as such, but the Department of Canadian Heritage is funding a pilot project. In the Notice of Consultation, the Commission asked if it should licence or exempt micro radio stations from licensing and, if so, what requirements or exemption criteria should apply.

Positions of parties

160. The Commission received very few comments on this matter. Parties associated with the campus and community radio sector suggested that micro radio stations should be subject to requirements similar to those imposed on conventional campus and community stations. Little in the way of a licensing framework or reasons for exemption from licensing were submitted for the public record.

Commission's determinations

161. The Commission acknowledges that micro radio stations could enhance communication opportunities in remote areas, particularly in official language minority communities. Nevertheless, the Commission notes that it has not yet been presented with a formal licence application and is not convinced, given the information filed on the record, that such a project could not be subject to some current form of licensing. **Accordingly, the Commission will not establish a formal framework for licensing micro radio stations at this time. However, should the Commission receive an application for micro radio stations, it could consider a distinct licensing mechanism at that time if it is deemed appropriate and if the project is not readily adaptable to existing licensing or exemption mechanisms.**

IX. Ownership

Canadian ownership and control requirements

Current approach

162. Section 3(1)(a) of the Act states that the Canadian broadcasting system shall be effectively owned and controlled by Canadians. The *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 (the Direction), stipulates that no broadcasting licence can be issued to a non-Canadian. It also provides that a “qualified corporation” can be considered a Canadian pursuant to the Direction.
163. Because campus and community licensees are controlled by corporations without share capital, the relevant portion of the Direction’s definition of a “qualified corporation” is the following:
- a) the chief executive officer or, *where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer*, and not less than 80 per cent of the directors are Canadians. (italics added)
164. The Direction also provides that, where the Commission determines that an applicant is controlled by a non-Canadian – whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control in fact – the applicant is deemed to be a non-Canadian.
165. Decision making and effective control in the case of campus and community stations is often more diffuse than hierarchical in comparison with most commercial licensees. This results in a situation where the powers of the chief executive officer (CEO) are often split among multiple positions, thus requiring an analysis of the licensee’s governing documents and the particular powers granted to each position.

Position of parties

166. There appears to be uncertainty in the sector as to how Canadian ownership requirements are implemented for campus and community stations. At least two parties raised issues regarding compliance with Canadian ownership requirements. The NCRA noted that decision-making processes at campus and community stations are unique and the management structure often involves external appointees. As such, the NCRA requested that the Commission work closely with licensees to “determine the most practical ways of applying the policy ... while avoiding the imposition of undue administrative burdens.”
167. CITR indicated that in order to prevent an unnecessary administrative burden, the application of the requirements to not-for-profit organizations must take into account their unique characteristics. In addition, parties noted that campus stations serve the entire student body, including international students. CITR noted that international students are often closely involved in their station as volunteers.

Commission’s determinations

168. **The Commission notes that the Act and the Direction are binding on the Commission and can be changed only by Parliament or the Governor-in-Council. All licensees must be controlled, in law and in fact, by Canadians.**
169. **The Commission’s role is to interpret and apply this test. As each licensee’s structure is unique, compliance with this test is always analyzed on a case-by-case basis. However, in the interest of providing clarity for the sector, the Commission considers that an overview of the requirements would be helpful. This overview is set out in Appendix 2 of this regulatory policy.**

Collection of ownership information

Current approach

170. In addition to the Canadian ownership requirements discussed above, Commission policy provides that campus and community stations be controlled by not-for-profit organizations. The boards of directors of campus stations must also include balanced representation from the student body, the associated college or university, station volunteers and the community at large. Similarly, community stations must provide for the membership, management, operation and programming of the station primarily by members of the community at large.
171. These requirements necessitate that licensees update the Commission as to the composition of their boards of directors. Within the seven-year licence term there are frequent changes to the boards of directors of campus and community radio licensees. The Commission notes, however, that there is no clearly articulated mechanism requiring that licensees regularly update the membership of the board of directors for the Commission’s files.

172. In Broadcasting Circular 2008-7, the Commission implemented a system to annually collect ownership information from broadcasting licensees: the Broadcasting Ownership Information Annual Filing (BOIAF). The Commission also announced that it would assess whether all licensees (commercial and non-commercial) should be subject to the annual filing requirement.

Positions of parties

173. A number of campus and community radio stations expressed willingness to submit updated ownership information on an annual basis. All emphasized, however, that the updated process should be simple and accessible. Some suggested on-line forms that could be downloaded and then submitted to the Commission. Others submitted that they should not have to supply the Commission with information that they already provide to their provincial corporate registrar.
174. The NCRA proposed the creation of a “web portal,” through which stations could log in to an account and view their license terms and conditions, any applicable decisions, as well as modify contact information, board of directors and other pertinent information.

Commission’s determination

175. The Commission considers that annual updates of ownership information are necessary to ensure compliance with the ownership requirements for campus and community radio. Due to the not-for-profit structure of licensees in the sector, ownership updates can consist of a register of the board of directors.
176. At this time, the Commission is not prepared to include campus and community licensees in the BOIAF. Nonetheless, as indicated in Broadcasting Circular 2008-7, as the project advances, the Commission may make further determinations about the scope of licensees to which it will apply.
177. **As such, the Commission expects all community and campus licensees to file yearly updates on the composition of their boards of directors. Licensees may submit such documentation via the Commission’s website. These annual updates can be submitted:**
- **at the time of submission of annual returns;**
 - **following annual board of directors elections; or**
 - **at any other time.**
178. Licensees may consult Appendix 3 to this regulatory policy for a sample of the information required, as well as for more information on how to submit ownership information to the Commission.

X. Approach to reporting on cultural diversity

Current approach

179. In Broadcasting Public Notice 2007-122, the Commission set out its approach to cultural diversity for private commercial radio operators.
180. This approach consists of requiring adherence to the CAB' *Best Practices for Diversity in Radio* (Best Practices) and demonstrating to the Commission how the Best Practices have been implemented, as a means to ensure that the Commission's diversity objectives are met by the private radio sector. The Best Practices are designed to assist commercial radio broadcasters in building on innovative and successful measures already put forward by other broadcasters in the field of cultural diversity, so as to improve their own efforts to more accurately reflect diversity in their programming.
181. Unlike medium and large sized operators, small radio operators are exempt from reporting on their diversity initiatives to the Commission throughout their licence terms due to their limited resources. However, they report on this matter in their licence renewal applications.
182. As a part of the present review, the Commission sought comment on whether its approach to cultural diversity for small commercial operators should apply to the campus and community radio sector.

Positions of parties

183. The NCRA and some member stations indicated that the Best Practices have largely been adopted. They submitted, however, that if they were to have a formalized obligation for cultural diversity, campus and community stations should be given the opportunity to develop their own approach, to be approved by the Commission.

Commission determinations

184. **In light of the above, the Commission will not add a reporting requirement relating to cultural diversity for campus or community radio licensees at this time. Licensees will continue to be expected to meet the cultural diversity objectives as set out in section 3(1)(d)(iii) of the Act and the section on cultural diversity and linguistic duality set out in paragraphs 18 and 19 of this document.**

XI. Other matters

Section 22 of the *Broadcasting Distribution Regulations*

Current approach

185. Pursuant to section 22 of the *Broadcasting Distribution Regulations* (the BDU Regulations), licensees of Class 1 broadcasting distribution undertakings (BDU) are currently required to distribute local community, campus and native radio stations, as

well as at least one English- and one French-language CBC radio station. Licensees of Class 2 BDUs that elect to distribute an audio programming service in their licensed areas are also subject to this requirement. Any of these requirements can be met by either analog or digital distribution. In Broadcasting Public Notice 2008-100, the Commission announced that it had decided to repeal these requirements as part of the new regulatory frameworks for BDUs and discretionary services. The changes are scheduled to come into effect on 1 September 2011.

Position of parties

186. Although the issue was not raised in the Notice of Consultation, some parties took the opportunity presented by this proceeding to submit that, for various reasons, the Commission should not proceed with the removal of the requirement set out in section 22 of the BDU Regulations.

Commission's determination

187. The Commission notes that all BDUs will continue to be authorized to distribute audio services, should they wish to do so, and that distribution of campus and community radio stations may therefore continue, as may be negotiated between the parties. The Commission further reminds the parties that, as noted in Broadcasting Public Notice 2008-100, BDUs will remain subject to a requirement to ensure that the majority of audio services received by subscribers are Canadian programming services.
188. **The Commission is therefore of the view that it remains appropriate to repeal section 22 of the BDU Regulations.**

The NCRA's proposal for a code of conduct

Current approach

189. Programming complaints about content standards fall under the high standard objective set out in Section 3(1)(g) of the Act and, when appropriate, the provision against the broadcast of abusive comment set out in section 3(b) of the Regulations. As a condition of license, all radio licensees must adhere to Industry Codes, which elaborate on certain matters relating to high standard. These codes are the *Equitable Portrayal Code* and the *Canadian Association of Broadcasters' Broadcast code for advertising to children*.
190. Other common programming content concerns, namely sexually explicit content and coarse or offensive language, are also matters of high standard. Private broadcasters have addressed these matters in the CAB's *Code of Ethics*.
191. Adherence to the CAB's *Code of Ethics* is not imposed as a condition of license for any radio broadcaster. Rather, private broadcasters adhere to it as a condition of membership of the Canadian Broadcast Standards Council (CBSC). The vast majority of campus and community stations are not CBSC members.

192. The Commission uses the CAB's *Code of Ethics* to guide its determinations of whether or not content is of high standard for *all* radio licensees, including campus and community radio licensees.⁵

NCRA's proposal

193. The NCRA requested that the Commission consider an approach specific to the campus and community radio sector for the adjudication of content complaints against its member stations by developing and proposing, for Commission approval, its own Code of Practice.
194. The NCRA submitted an outline for a Code of Practice to the Commission during its presentation at the hearing. Based on Public Notice 1988-13, the Code would be industry-administered through the active participation of the NCRA and its members. Moreover:
- it would be developed through a collaborative process involving the Commission, as well as the Canadian public;
 - it may address practices for diversity, programming standards and programming content guidelines; and
 - its administration would include reporting mechanisms and the creation of promotional materials for member stations and the public to inform them about the Code, its purpose and complaint procedures.
195. The NCRA stated that such a Code of Practice would be for their members only and that adherence would be voluntary.

Commission's determination

196. **The Commission does not have a sufficient record at this time to determine if a separate code for the campus and community radio sector is appropriate. Should the NCRA choose to pursue its plan to develop a Code of Practice as proposed in this proceeding, the Commission directs it to file its proposed code, for Commission approval, within one year of the date of this regulatory policy. Once the Code of Practice has been developed and submitted, the Commission will issue a notice inviting public comment, pursuant to the process set out in Public Notice 1988-13.**

XII. Implementation

197. The Commission notes that many of the changes announced in this policy will require additional steps before they can take effect.

⁵ See Broadcasting Decision 2007-87

198. Where a current requirement is imposed by condition of licence, the Commission intends to implement this policy by amending the condition of licence at the licensee's next licence renewal or in response to an application for an amendment. These changes include:
- the decrease in the minimum level of spoken word programming for community and campus stations to 15%;
 - removal of the limit of 4 minutes per hour of advertising from campus stations; and
 - removal of the requirement for the existing instructional campus licensees to broadcast formal educational programming.
199. Where a requirement is imposed by regulation, the Commission intends to publish for comment amendments to the Regulations as soon as measures related to CRFC accountability have been approved. These include:
- removal of the distinction between Type A and Type B community stations;
 - addition of "experimental music" to the list of content categories; and
 - the requirement for commercial stations to contribute CCD funding to the CRFC.
200. The Commission also intends to publish a notice of consultation calling for comment on the appropriate requirement for volunteer programming, the exact levels of content category 2 and 3 musical selections that must be Canadian, the accountability structure for the CRFC and the NCRA's proposed code of conduct in the near future.
201. All other determinations in this Regulatory Policy will take effect immediately.

Secretary General

Related documents

- *Amendments to the Exemption order for new media broadcasting undertakings (Appendix A to Public Notice CRTC 1999-97); Revocation of the Exemption order for mobile television broadcasting undertakings*, Broadcasting Order CRTC 2009-660, 22 October 2009
- *Review of campus and community radio – Notice of hearing*, Broadcasting Notice of Consultation CRTC 2009-418, 13 July 2009
- *Review of broadcasting in new media*, Broadcasting Regulatory Policy CRTC 2009-329, 4 June 2009
- *Conditions of licence for campus radio stations*, Broadcasting Regulatory Policy CRTC 2009-63, 11 February 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

- *Implementation of the Broadcasting Ownership Information Annual Filing*, Broadcasting Circular CRTC 2008-7, 21 November 2008
- *Complaints relating to the broadcast on CBC Radio One of A Literary Atlas of Canadian, episodes entitled Whiskeyjack Blues and Room Available*, Broadcasting Decision CRTC 2007-87, 16 March 2007
- *Canadian Association of Broadcasters' Best Practices for Diversity in Private Radio; Reporting requirements on cultural diversity for commercial radio operators*, Broadcasting Public Notice CRTC 2007-122, 2 November 2007
- *Commercial radio policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001
- *New licence form for community radio stations*, Public Notice CRTC 2000-157, 16 November 2000
- *Community radio policy*, Public Notice CRTC 2000-13, 28 January 2000
- *Campus radio policy*, Public Notice CRTC 2000-12, 28 January 2000
- *Introductory statement – Licensing new radio stations*, Decisions CRTC 99-480, 99-481 and 99-482, 28 October 1999
- *Commercial radio policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *Guidelines for Developing Industry-Administered Standards*, Public Notice CRTC 1988-13, 29 January 1988

Appendix 1 to Broadcasting Regulatory Policy CRTC 2010-499

Summary of determinations

Role, mandates and definitions

The Commission regulates campus and community radio by way of a single policy that provide for differences in the two types of stations where appropriate.

Campus and community stations offer programming based on the needs and interests of a community through:

- maximum use of Canadian-produced programming;
- the broadcast of local and regional information and services;
- cultural and artistic broadcasting and promotion;
- the promotion of Canadian emerging talent with an emphasis on local musical and spoken word talent;
- the broadcast of local and regional content related to social, economic and community issues.

Community radio guarantees local broadcasting service through community ownership, which means that community stations cannot be privately purchased by a for-profit organization. Community radio:

- permits and facilitates communication among members of the community by fostering diversity in the broadcasting of opinions, spoken word content and musical programming;
- participates in the stimulation of socio-economic endeavours and in the cultural enrichment of communities and
- reflects the diversity of the communities served. Local programming is produced, in part, by volunteers.

Campus radio shares the entirety of the mandate of community radio. However, campus radio distinguishes itself as follows:

- local programming is produced in part by volunteers from the student body as well as the broader community;
- the board of directors includes campus representatives including a balanced representation from the student body and representation from the administration of the post secondary institution; station volunteers and the community at large;
- there is an access to funding through student levies.

Cultural diversity and linguistic duality

Section 3(1)(d)(iii) of the Act states, in part, that the Canadian broadcasting system should reflect the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples. The Commission expects campus and

community stations to maintain and strengthen their efforts in these areas in their programming, volunteer involvement and in their employment practices.

Campus and community stations will have the flexibility to devote no more than 40% of the broadcast week to third-language programs in markets not served by an ethnic station. Stations in markets served by an ethnic station will have the flexibility to devote not more than 15% of the broadcast week to third-language programs and may apply for a condition of licence allowing them to increase their third-language programming to a maximum of 40%.

Types of stations

The Commission abolishes the distinction between Type A and Type B community stations.

The Commission considers that it is not necessary to maintain a distinction between campus instructional and campus-based community stations. The Commission will not licence campus instructional stations in the future and will instead licence all such stations as campus stations in accordance with this policy.

The Commission maintains the current approach to licensing developmental stations. Developmental stations will continue to be limited to a transmitter power of 5 watts or less for AM stations, or an effective radiated power of 5 watts or less for FM stations. The Commission will issue licences for developmental campus or community radio stations for a five-year term.

The Commission maintains its policy of not generally licensing campus AM or FM stations associated with a high school or elementary school.

Programming requirements

The Commission will require, by condition of licence, that all campus and community stations devote :

- a minimum of 15% of each broadcast week to spoken word. For the purpose of this requirement, all spoken word shall be locally produced.
- at least 5% of the musical selections aired each broadcast week to selections from category 3.

The Commission removes the requirement for instructional campus stations to provide formal educational programming. Existing instructional stations may apply to the Commission to remove this condition of licence.

The Commission is of the view that it is appropriate to increase the minimum Canadian content requirement. The Commission is also of the preliminary view that the Canadian content level for category 2 music should increase to 40 % for all campus and community stations. The Commission will issue a call for comments on whether 40% or a higher level would be an appropriate level of Canadian content for category 2 music.

The Commission is of the preliminary view that the Canadian content level for category 3 music should increase. The Commission will issue a call for comments on whether 15% or a higher level would be an appropriate level of Canadian content for category 3 music.

Campus stations are subject to an additional limit on the broadcast of hits (10% of all selections or 30% in the case of currently licensed campus instructional stations).

Community stations are required, by condition of licence, to devote a minimum of 20% of their musical selections to selections other than those originating from sub-category 21 (Pop, Rock and Dance). Campus stations are not subject to this requirement.

The Commission will implement the following definition for sub-category 36 (Experimental music):

The unconventional and non-traditional uses of instruments and sound equipment to create new sounds and an orchestration of these sounds. This includes audio-art, turntablism, *musique actuelle*, electro acoustic and sound ecology. While it may involve the use of previously recorded sounds to create new sounds and orchestrations, it does not include spinning or beat mixing where the alterations of previously recorded tracks are limited to mixes between two or more pieces or samples.

Campus and community radio stations operating in the French language must devote, in a broadcast week, 65% or more of their vocal musical selections from content category 2 to musical selections in the French-language broadcast in their entirety.

The Commission expects campus and community stations to continue to emphasize the development of Canadian talent, including providing airplay for the music of new and emerging artists and opportunities for other talent.

The Commission intends to initiate a separate process on participation by volunteers in campus and community radio.

Funding

Commercial radio stations, other than ethnic stations and spoken word stations, with revenues in excess of \$1.25 million would be subject to the following allocation of contributions for basic CCD:

- 45% to FACTOR or MUSICACTION
- 40% to discretionary initiatives
- 15% to the CRFC

Ethnic stations and spoken word stations would allocate their contributions as follows:

- 85% to discretionary initiatives
- 15% to the CRFC

The implementation of this approach is conditional on: a) an approved accountability structure developed by the CRFC, b) approved restructuring of the CRFC c) adoption of necessary amendments to the Regulations.

The Commission amends, effective immediately, the tangible benefits policy so that 0.5% of the value of a commercial radio transaction would be allocated to the CRFC. The amount allocated to FACTOR or MUSICACTION would be reduced from 2% to 1.5%. As a result the contribution will be distributed as follows:

- 3% to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5 % to FACTOR or MUSICACTION;
- 1%, at the discretion of the purchaser, to any eligible CCD initiative;
- 0.5% to the CRFC.

The Commission remains of the view that funding should come from a variety of sources.

Advertising

The Commission maintains the limit of 504 minutes of advertising per broadcast week for campus stations. The Commission removes, however, the limit of four minutes of advertising per hour on campus stations. As well, the Commission will no longer consider material from content sub-category 52: Sponsor identification and subcategory 53: Promotion with sponsor mention when determining a station's compliance with the 504 minute per week advertising limit.

Technical matters

The Commission considers that it is inappropriate to reserve frequencies or portions of the radio spectrum for use by specific classes of licensees, such as campus or community stations.

In order to help ensure that low-power campus and community radio stations are given notice without necessarily breaching the confidentiality of the applicant's proposed technical parameters, the Commission will require applicants to answer a series of questions on their application forms. Applicants will be asked to address whether and how notice has been given to low-power campus and community stations in the markets that will be affected, on a technical basis, by their application.

The Commission encourages constructive communication between the campus and community radio sector and the commercial radio sector.

Licensing

The Commission maintains its current framework for evaluating applications for campus and community radio stations in competitive scenarios.

New Media

The Commission encourages participation in new media. The Commission considers that the cost of producing of local content, implementing new media approaches and

distributing programming by digital means could be offset by funding obtained from the CRFC.

Micro radio stations

The Commission will not establish a formal framework for licensing micro radio stations at this time.

Canadian ownership and control requirements and collection of information on ownership

The Commission notes that the Act and the Direction are binding on the Commission and can be changed only by Parliament or the Governor-in-Council. All licensees must be controlled, in law and in fact, by Canadians. The Commission's role is to interpret and apply the Direction. In the interest of providing clarity for the sector, the Commission sets out brief overview of the requirements in Appendix 2 of this regulatory policy. The Commission expects all community and campus licensees to file yearly updates on the composition of their boards of directors. Licensees may submit such documentation via the Commission's website. These annual updates can be submitted:

- at the time of submission of annual returns;
- following annual board of directors elections; or
- at any other time.

Licensees may consult Appendix 3 to this regulatory policy for a sample of the information required, as well as for more information on how to submit ownership information to the Commission.

Approaches to cultural diversity

The Commission will not add a reporting requirement relating to cultural diversity for campus or community radio licensees at this time.

Other matters

The Commission is of the view that it remains appropriate to repeal section 22 of the *Broadcasting Distribution Regulations*.

Should the NCRA choose to pursue its plan to develop a Code of Practice as proposed in this proceeding, the Commission directs it to file its proposed code, for Commission approval, within one year of the date of this regulatory policy. Once the Code of Practice has been developed and submitted, the Commission will issue a notice inviting public comment, pursuant to the process set out in Public Notice 1988-13.

Appendix 2 to Broadcasting Regulatory Policy 2010-499

Overview of Canadian ownership and control requirements

Pursuant to the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 (the Direction), the Commission's role is to ensure that:

1. 80% of the station's directors are Canadians;
2. The CEO, or where there is no CEO, the person(s) performing functions similar to the functions performed by a CEO, is Canadian;
3. The station is not otherwise controlled by non-Canadians.

Step one can be verified through regular reporting of the composition of the board of directors.

With regard to step two, in cases where there is no CEO, or where the powers of a CEO are split among multiple positions, the Commission must examine the governance structures in place and ensure that the employees, volunteers or students performing the duties of the CEO are Canadian. Positions such as the program director, station manager, chair of the board of directors and others that have a role in the day-to-day management or operation of the station could be considered as performing some or all of the duties of a CEO.

To satisfy step three of the test, all broadcasting licensees must be controlled in fact by Canadians. Based on an analysis of the by-laws or other constituting documents of the station, the Commission may require that certain positions, including those referred to above, be held by Canadians pursuant to the Direction. All analyses of control are unique and are conducted on a case-by-case basis.

The Commission encourages current or prospective licensees to discuss their governance structures with Commission staff to ensure continued compliance. As indicated above, the key means by which the Commission enforces the Direction is by reviewing constituting documents such as by-laws or letters patent. Commission staff is available to review Canadian ownership and control requirements with licensees when modifications to those agreements are contemplated.

Appendix 3 to Broadcasting Regulatory Policy CRTC 2010-499

Submitting ownership information to the Commission

The Commission maintains a [submission page](#) on its website for licensees to submit updated information or documents.

From the CRTC home page, follow the link for the “Broadcasting Sector” then click on “Submit a broadcasting-related document online”. The page allows licensees to attach a word document or PDF which contains their complete board of directors.

Sample Information

For the purpose of updating the Commission as to the composition of a station’s board of directors, licensees should follow the example below:

Director name	Complete residential address	Citizenship	Appointment date	Affiliation (institution, community, etc.)

Dissenting opinion of Commissioner Marc Patrone

The *Broadcasting Act* (the Act) identifies the Canadian broadcasting system as being comprised of three elements; public, private and community. The intent is that Canadian culture might best be enriched through the diversity offered by contributions from each. Implicit in the Act's specific reference to the three is a sense that they are and should remain distinct from one another.

I would suggest that over time, there has been less that truly distinguishes one sector from the other. For instance, programming offered by 'Public' TV compared with 'Commercial' TV. Our national public broadcaster (CBC/Radio-Canada) engages in commercial activities with its television operations, airing programming clearly intended to generate advertising revenues, including American and other foreign productions. To its credit, CBC/Radio Canada's radio service has maintained a clearly distinct and complimentary place in the broadcasting system by remaining commercial free.

The 'fragmentation' of the advertising markets has been particularly challenging for private TV broadcasters, which are more dependent on 'commercial sources' of revenue than the public broadcaster. As a result, they have grown increasingly reliant on 'public subsidies' like the Local Programming Improvement Fund and the Canada Media Fund in order to meet their domestic programming obligations. This is not a comment on the ongoing appropriateness of those funds; only a recognition of the economic drivers making them increasingly necessary. I refer to this only to point out that the 'hybridization' of Canadian media has cut across all sectors.

While the impetus for this 'hybridization' may be economic, it could not happen without a passive disregard at the regulatory level. Thus far, we have yet to a) recognize the trend, and b) begin corrective measures to prevent or reverse it; hence my decision to prepare this dissenting opinion.

This brings me to the 'Community Radio' sector which has been the focus of the policy decision we have before us. My concern, based on submissions made during this proceeding, is that community radio may gradually become something more akin to a commercial venture. There is some evidence suggesting this is already happening.

Most of the community radio stations in Canada continue to offer programming 'distinct' from the commercial sector. However, some private commercial radio stations, particularly in French-language markets have grown increasingly concerned about the 'commercially competitive nature' of what are supposed to be 'community' non-profit operations. The privates argue that, in the absence of stricter regulatory 'dividers,' some community radio stations may find it financially expedient to forsake true 'community broadcasting' practices in order to become more commercial. With this proceeding, I believe an opportunity has been afforded us to undertake regulatory

measures that would have helped ensure that it doesn't happen. For the time being, it is an opportunity lost.

In this policy, we define the community radio sector in a sweeping declaration of laudable principles including the statement that:

The Commission considers that campus and community radio distinguishes itself by virtue of its place in the communities served, reflection of the communities' needs and values, and the requirement for volunteers in programming and other aspects of station operations ...”

I believe that such language is useful *when* reinforced by specific regulatory measures normally provisioned to support such principles. As I read it, such levers are absent in this new policy. In fact, not only did we reject the appeals of industry to strengthen regulations that would have distinguished the community sector from the commercial one, we watered down existing ones.

For instance, commercial operators voiced support for maintaining the ongoing distinction between Type A and Type B community radio stations. This wasn't a particular bone of contention for the community radio sector. The distinction was an acknowledgement of the differing competitive nature of the two types of stations. Type B stations operate in markets where a same-language radio station, other than a station owned by the CBC, also operates. Type A stations typically operate in markets where no other same-language radio undertaking is licensed, exclusive of the CBC.

Recognizing the differences between Type A and Type B allows us to be sensitive to the fact that private commercial stations in markets with no community station operate under different competitive dynamics to those in markets with community stations. Maintaining the distinction would have allowed us continued flexibility in tailoring any future regulatory measures to reflect those differences. In recognition of that, industry representative Association des radios régionales francophones (ARRF) asked that the lines between the two not be 'blurred'. With our decision to drop the distinction between Type A and Type B community radio stations altogether, we didn't just 'blur' the lines, we obliterated them.

In this decision we also watered down spoken word requirements. Type A community radio stations are required to devote at least 15% of the broadcast week to spoken word programming. This requirement increases to 25% for Type B community radio stations. This higher requirement recognized the need for Type B stations to be distinct from private commercial stations operating in the same market.

ARRF was concerned that dropping this requirement for Type B community radio stations could exacerbate competitive pressures faced by commercial radio stations. The Canadian Association of Broadcasters (CAB) argued for a 30% spoken word minimum requirement for all community radio stations, as measured over the broadcast week. Consider the language in our decision as it refers to those in the

community radio sector who differed somewhat with the CAB and ARRF on this issue.

Others, notably the Associations, the Association des radios communautaires acadiennes du Nouveau-Brunswick (ARCANB), CKUW and CJAM all indicated some unease with the current spoken word requirements.

There was little of what one might term ‘outcry’ concerning the nature of this programming requirement. If one agrees that the word ‘unease’ accurately reflects the sentiments of those in the community radio sector regarding this matter, then how does one justify our decision? Does mere ‘unease’ really warrant lowering the minimum spoken word requirements for Type B stations given the commercial private’s stated concerns on the matter?

Granted, this decision *does* require that the 15% spoken word requirement be fulfilled through the broadcast of locally produced spoken word content. But even here we fall down by adding the following stipulation:

The Commission will, however, be willing to consider requests by stations in smaller markets for greater flexibility with respect to the requirement that all spoken word programming be local.

Consider that the private radio station representatives who have raised red flags about commercially aggressive community radio stations represent radio stations that operate in the same small markets within which the above noted exception would apply.

For many if not most community radio stations, the ‘distinct’ nature of their programming is reflected in their ‘rough’ or ‘amateurish’ production. I take no issue with that aspect of their character because it’s a reflection of the volunteer component of their productions. On the issue of volunteerism, the majority decision is correct and unequivocal:

Volunteer participation is a key factor that distinguishes campus and community radio from other sectors and the Commission considers that a minimum level of volunteer participation would help ensure access by the community to the airwaves.

It is therefore disappointing that the matter of volunteerism, deemed so critical to the sector remaining accessible and distinct, has been put off to a future proceeding. I disagree with my learned colleagues on the point that we do not have a complete enough record to proceed with firm levels of volunteerism now. The record includes, for instance, a submission from Quebec industry groups who told the panel that volunteerism is one of the characteristics that allow community radio to be faithful to its mission (par. 4962). Mr. Marc-André Lévesque, speaking on behalf of ARRF (paragraph 4965), recommends that the Commission take steps to ensure that recruitment and training of volunteers as well as involvement in programming plays a

fundamental role in community radio and that the licensees of Type B stations be required to demonstrate this during their license renewal.

Mr. Lévesque goes on (beginning in paragraph 4968) to state that in his experience, community radio stations have made key promises pertaining to volunteer involvement during their licence applications only to forego those promises in a bid to improve their commercial competitiveness once they are awarded a licence. With this decision, the Commission unnecessarily puts off any action on this matter. In the absence of regulated levels of volunteer participation (even interim levels pending a future proceeding), I can see further abuses taking place in this regard.

Another missed opportunity is the decision not to impose a minimum level of 'emerging artist' content on community radio stations. There have been sentiments expressed that community radio stations are already playing adequate levels of what one might term 'emerging artist' music. I'm not sure how such a determination could be arrived at. Not only does the Commission lack the capacity to monitor the play of such content on community radio but we don't even know what 'adequate' means given the current absence of any official definition for what constitutes emerging artist content at this time.

One might well ask what the harm there would be in setting a 'minimum' broadcast level for emerging artist music for community radio stations based on the CAB definition, which currently serves as the industry standard. It could easily be implemented until the Commission determines an appropriate 'official' definition. It has been suggested that the application of a 'minimum' broadcast requirement might discourage those already playing high levels of what one might term 'emerging artist content' from continuing to do so. In other words; would the 'floor' become a 'ceiling'? I doubt this would be an issue with community radio operations where the playing of 'new' music is based on a philosophical view that such programming is the *raison d'être* of the sector.

Such a requirement *would* have the effect of providing a 'floor' for the play of such music in order to discourage community radio station operators tempted to veer too far into the realm of 'commercial' radio. I realize that emerging artist 'minimums' are not required for most community stations, but in the absence of related program requirements it has been tempting for some stations to morph into a more 'commercial' sound.

The line between commercial and community radio stations is further blurred by the lack of any regulatory stipulations on the play of 'hits' for community stations. We turned down industry requests to implement rules that would mandate that the broadcast of hit musical selections be spread out over the broadcast week. As a result, this decision does nothing to prevent the bunching of 'hits' during peak listening hours with a view to selling more ad time.

There are no requirements that community radio stations play music originating from the general area or region in which the station operates. That's regrettable enough, but

surely we could at least insist that ‘community’ stations play a preponderance of music originating from Canada. As it now stands, for Category 2 musical selections, Canadian content levels are the same for community stations as they are for commercial ones. There is little that separates the commercial and community stations when it comes to the play of Canadian content drawn from category 3 selections.

Many commercial radio stations are required, by condition of licence, to devote more than 35% of the musical selections drawn from Category 3 to the broadcast of Canadian content, as measured over the broadcast week. The fact that many community radio stations play higher levels than 35% as a matter of *choice* is fine. The fact that there currently is no *requirement* for them to play more than the commercial sector (in category 2 selections) is required to play is not fine. We could have increased Canadian content levels for community stations in this decision but chose to issue a call for comments. Again, we put off until tomorrow what we could have done today.

On the issue of funding, I’m in agreement with the majority decision. It states:

.... all commercial radio stations (including ethnic stations and spoken word stations) earning in excess of \$1.25 million shall contribute 15% of their basic annual CCD contribution to the CRFC. This amount shall be reallocated from contributions which would normally be made to FACTOR or MUSICACTION.

The majority went on to determine that:

For the 2008 broadcast year, the figure set out above represents an average revenue of \$238,509 per station. Given that the campus and community radio sector faces funding challenges, the Commission considers that it is appropriate to implement a funding mechanism that would aid in providing such stations with steady and predictable funding.

I agree, **but** if a station currently earns most of its revenues by running ads, it should **not** qualify for CCD funding under this program. The way I see it, either a community station decides it wants to be aggressively commercial **OR** it chooses to collect CCD funding. It should not have both.

ARRF proposed that Type B community radio stations be limited to no more than 50% of revenues from advertising. I believe this is a very reasonable proposal that should have been given serious consideration. Mr. Lévesque (ARRF), in answering a question by panel Chair M. Arpin, alluded to station CJVA of Caraquet NB as proof of the competitive nature of community stations in some markets.

Mr. Lévesque told the panel that CJVA, a commercial station in the Caraquet NB market, was forced to lay off 13 workers and convert its local station into a rebroad of its Bathurst station. He claims this was a direct result of CJVA facing competition from a community station based in nearby Pokemouche NB (paragraph 5010 pt 4 transcript). Mr. Lévesque told the Commission the community station in question

declared revenues of \$1.3 million, of which \$647,000 was derived from advertising. The year previous, Mr. Lévesque says that the same community station had revenues of \$1.2 million dollars of which \$675,000 came from advertising. These advertising revenues are significantly higher than those of the average Canadian community radio station but there are currently no measures that might provide limits to such clearly competitive practices.

When one compares these numbers with the advertising/revenue figures of most community stations in Canada, I believe it illustrates how different the practices of one community station can vary from another. Should a community station that earns \$400,000 more in advertising, than the *total* revenues of the average Canadian community station deserve to get as much CCD funding as the others? If you, as the operator of a ‘Community’ station have made the conscious decision to become more ‘commercial’ sounding in order to generate more ad dollars, should you really qualify for the same amount of CCD as every other community station?

I do not wish to lecture anyone on the need for regulation – only to make the point that rules are intended, not for the many already doing what we think they should, but the few who are not (or might not) in the future. I’m confident that over time the issues raised during this proceeding and which I’ve addressed in this dissenting opinion will eventually be dealt with not only on the community radio file but in other parts of the broadcasting system. The maintenance and encouragement of all three distinct broadcasting sectors is too important to allow them to gravitate to what is financially expedient. In this matter I would say, ‘Vive la différence.’

In conclusion I wish to commend staff and my fellow panel members – Rita Cugini, Suzanne Lamarre, Peter Menzies, Louise Poirier, Stephen Simpson – for their commitment and intelligence regarding this proceeding. I would especially like to thank Michel Arpin for chairing this panel in a way that allowed for all views to be presented in a professional, open and respectful manner throughout this proceeding.