

Appendix A – CAB Responses to CRTC Questions

MAPL system

Q1. In light of the new trends in music production:

- **Is the current definition of a Canadian music selection adequate in the digital era? If not, how would you amend it or what would you replace it with?**
- **Do the four conditions of the MAPL system remain appropriate to contribute to the discoverability and promotion of performers, lyricists and composers by Canadian audiences? If not, how should they be modified?**

A1. The relative health of and relationship between the Canadian music and radio sectors has been fundamentally changed due to the internet and the impact of online platforms.¹ While both sectors have experienced severe negative impacts from COVID-19, longer term trends are more positive for Canadian music than for radio. Essentially, for the music industry, the impact of the digital era is now a net positive from a discoverability, diversity, export and a revenue generation perspective. Unfortunately, the same cannot be said of radio.

In this climate, while the current definition of a Canadian music selection, and four conditions of the MAPL system, remain broadly appropriate, the CAB believes that modifications are necessary in order to reflect:

1. The international nature of music production, by updating the P (performance) criteria in MAPL to include production by a Canadian; and
2. A greater focus on the Artist as the key creative element, by adjusting the A (Artist) criteria in MAPL to count for 2 points.

Equally important, we believe that appropriate commercial radio contributions "to the discoverability and promotion of performers, lyricists and composers by Canadian audiences" must lead public policy to where it can do the most good in the least intrusive manner. We discuss proposed airtime credits designed to incentivise support for emerging Canadian, including French-vocal music artists below.

Q2. Does the broadcasting and music industry allow for an effective traceability of Canadian performers, lyricists and composers? Explain how the industry allows for (or does not allow for) effective traceability and how traceability could be enhanced, if applicable.

A2. Accurate metadata helps ensure effective tracking of cultural audio content for Canadian content designation purposes, but its primary purpose is international in nature, used by copyright societies for copyright royalties.

Canadian radio broadcasters have not been called upon to play any specific role on traceability other than to pass through any metadata imbedded in soundtracks.

¹ As evidenced by the market trends and examples referenced by the Commission in *Harnessing Change* and at paragraphs 30, 35 and 36 of the Notice, and as discussed in detail in Sections IV and V of the CAB's Intervention.

Unfortunately, in using this metadata for Canadian content designation purposes, there can be inaccuracies or incomplete identification of a musical selection's origin and contributors. In such cases, supplementary information has to be obtained.

The fact that this "poses a sizeable challenge for the Commission" may be more readily resolved by changing the Commission's tracking and compliance processes than expecting that every qualifying Canadian soundtrack can be easily traced. As discussed at Q1 and Q5, an updated MAPL system that reflects increased production volume and international collaboration would be a first important step.

We note in this regard the current Radio Monitoring project which aims to "set up a digital surveillance system ... which will include a music database that will allow the industry not only to obtain information on Canadian and French music and on music in various categories, but this system will also allow support industry standards, identify and track musical selections using the data and metadata attached to them."²

While we welcome this initiative, we fear its goals may be overly ambitious, given that the Commission's regulatory oversight does not extend to the Canadian and international players responsible for metadata.

An entirely different approach to monitoring and compliance may be warranted. Rather than trying to confirm Canadian content designation for every track so-identified by radio broadcasters, the Commission should consider evolving to a "trust but audit" approach. Such an approach would appear appropriate to discovery requirements ultimately imposed on digital players, and provide more equity. As discussed at Section VI of the CAB's Intervention, the CAB proposes that this be addressed as part of a broader examination of:

- The necessity of current reporting requirements on radio stations;
- Introduction of new materiality tests; and
- Application to online undertakings.

We propose that the Commission make only a few high level directional decisions on compliance and reporting in this proceeding and then form an industry-Commission working group to develop a more specific road map.

Q3. Does the broadcasting and music industry promote the discoverability of performers, lyricists and composers by Canadian audiences? Explain how the system promotes (or does not promote) discoverability and how discoverability could be enhanced, if applicable.

A3. As discussed in our Intervention at Section IV, radio plays a major role in promoting Canadian performers through airplay and back-selling, free ad time, commentary, artist interviews and features, special contests and promotions with record labels, listing of upcoming local performances both on the air, on websites and through social media platforms.

² CRTC staff letter dated January 8, 2021, *Radio Monitoring project update*.

The Canadian music star system is oriented towards performers; radio is generally not called upon to promote discoverability of lyricists and composers. However, as a mainstream 'hit' driven medium, radio has never been in a position to promote all Canadian performers - particularly those in niche genres or with niche audiences, be they solo pianists, fiddlers, or tribute bands. Moreover, digital now provides (a) Canadians with a massive diversity of music offerings, and (b) Canadian artists with unlimited opportunities for collaboration, experimentation, production, exposure and engagement.

Q4. Should the definition of a Canadian musical selection be extended to compilations of pre-recorded vocals and musical sounds? If so, how could the MAPL system be applied to determine whether this type of content qualifies as a Canadian musical selection?

A4. If by "compilations of pre-recorded vocal and music sounds" this question is referring to what in popular parlance would be "mixed tapes", it would be our view that this would already be covered by the MAPL system. As with montages, a predominance test would determine whether a sound track should be considered Canadian or not.

Q5. If the MAPL system stays the same, should the points awarded to the different conditions be reviewed? If so, how?

A5. As summarized in our response to Q1, and set out at paragraph 132 of the CAB's Intervention, CAB proposes greater weight and emphasis be placed on the role of the Canadian artist, through the following:

- Adjust the A (artist) criteria in MAPL to count for 2 points; and
- Update the P (performance) criteria to include production by a Canadian.

Rules for certain types of music and stations

Q6. What is the impact (positive or negative) of Canadian content quotas on (i) broadcasters, (ii) the great diversity of Canadian artists, including Indigenous artists and artists from different ethnic or cultural backgrounds, and (iii) the full spectrum of Canadian audiences?

A6. Canadian content quotas are highly beneficial to Canadian artists, particularly popular artists in a variety of genres, both in promotional terms (translating into touring revenues) and copyright royalties (which are based on radio usage).

Canadian content quotas are of less value to emerging artists and niche artists of lesser interest to a broad/mainstream public. While such niche musical artists cannot be expected to receive significant airplay from a commercial broadcast media such as private radio, as discussed in response to Q15, more could be done to incentivise airplay for emerging artists. Indigenous artists and artists from different ethnic or cultural backgrounds who choose popular music genres in English and French are heard on commercial radio, however, Commission policy has primarily advanced such artists, and particularly music in their native tongue, through the

licensing of ethnic and native radio stations. Going forward, incentives to encourage greater airplay on mainstream commercial radio of Indigenous artists and artists from different ethnic or cultural backgrounds may well be appropriate.

Canadian audiences have arguably benefited from Canadian content quotas to the extent that they resulted in a greater diversity of Canadian artists receiving airplay. The demonstrated downside, however, has been over-exposure or burn out of certain Canadian artists and musical selections, that by virtue of Canadian content quotas receive far greater than "market-based" levels of airplay. As discussed at paragraphs 119 to 125 of the CAB's Intervention, as this has been one of the causes of Canadians abandoning radio for other music options, including online streaming, the impact of current Canadian content quotas on broadcasters is increasingly negative.

Q7. Are the existing Canadian content quotas listed below still appropriate to ensure that Canadian artists, including Indigenous artists or artists from different ethnic backgrounds have a prominent place on commercial radio? If not, what would you replace the quotas with? For example, should there be different thresholds or a completely different regulatory tool? Please explain your reasoning and provide supporting evidence.

- 1. Content category 2 – Popular Music: 35% in a broadcast week; 35% from 6:00 a.m. to 6:00 p.m., Monday to Friday**
- 2. Content category 3 – Special Interest Music: 10% in a broadcast week**
- 3. Content subcategory 31 – Concert: 25% in a broadcast week**
- 4. Content subcategory 34 – Jazz and Blues: 20% in a broadcast week**

A7. The CAB recommends that the Canadian content (Cancon) quota for content category 2 (popular music) be reduced to 25%, to strike a more effective balance between promoting popular Canadian music and ensuring music based popular Canadian commercial radio stations can compete with unregulated foreign music platforms.

The CAB also recommends that the Commission update the 5% Cancon relief policy for oldies formats. This rule was first implemented over 20 years ago at which time the benchmark year was set at 1981 to qualify for the exemption. Today it is clearly two decades out of date, and should be moved from 1981 to 2001. To keep it in sync with competitive realities, going forward, we recommend that the benchmark year become a floating benchmark that is calculated by subtracting 20 years from the current date.

To the extent they remain, the CAB recommends that the Canadian content quota levels for other music categories be reduced by a similar percentage, namely:

- Content category 3 – Special Interest Music: 7% in a broadcast week;
- Content subcategory 31 – Concert: 15% in a broadcast week; and
- Content subcategory 34 – Jazz and Blues: 10% in a broadcast week.

Q8. Are Canadian recordings in specialty genres (content category 3) still limited and difficult to find? Please provide supporting evidence.

A8. Quality Canadian recordings can still be limited and difficult to find in specialty genres. Moreover, overly stringent application of definitions can lead to specialty recordings not being deemed as such. Radio programmers report, for example, that in the blues genre, content subcategory 34, CRTC analysts have rejected tracks by Healey and Phillip Sayce. In classical music, the same rejection took place with a recording by Canadian Jan Lisiecki's "Beethoven: Complete Piano Concertos", despite receiving a 2020 Juno Award nomination for Classical Album of the Year: Large Ensemble.

Q9. Given the challenges of categorizing musical selections and the strong competition that specialty music stations face, the Commission is questioning the need to maintain music categories and is wondering what the impact of eliminating musical genres would be on musical diversity in the market. Since music categories apply to all broadcasters (campus and community stations, Indigenous stations, ethnic stations, specialized radio stations (Christian music), and CBC/SRC public radio stations), the Commission is asking broadcasters for input on this particular issue.

A9. CAB members agree, that as an immediate step, following this review, the Commission should eliminate requirements for content category 3 on non-specialty format stations, for any such station that has completed a first term of licence. This would be consistent with current Commission policy that requires a station to fulfil commitments central to licensing for a full term of licence, but eliminate the ongoing competitive disadvantage inherent in these requirements.

The CAB submits however that stations awarded a specialty licence (in any applicable format) through a competitive licensing process or with clear commitments as set out in conditions of licence should continue to require approval from the CRTC to switch out of a specialty format. Such stations have applied for and accepted a specialty format, and proposed that specialty format – and the diversity it provides – as a material public policy benefit. Many operators in smaller or overlapping markets also believe that stations should not be able to switch out of a specialty format without an opportunity for assessment of impact.

Accordingly, while the CAB believes that there should be no barriers to switching into a specialty format, any licensee operating in a specialty format (i.e. made a commitment to the Commission, and has a condition of licence (COL) to that effect) should continue to be required to seek CRTC approval to switch out of that specialty format. A licensee that never applied to operate in a specialty format (i.e. never made a commitment to the Commission, or have a COL to that effect), but chose to operate in one anyway, would not be required to seek CRTC approval to flip out (i.e. no application), as is the case now with music formats.

Q9. 1) If music genres (content categories 2 and 3) were eliminated, what would be the impact on musical diversity and the regulatory burden of commercial radio stations?

A9. 1) The CAB interprets this question as asking about the effect of eliminating content category 3 specific Canadian content requirements.

Eliminating requirements for content category 3 on non-specialty stations would not have a material effect on musical diversity, given that they tend to represent a relatively small percentage of music played by such stations, but would reduce regulatory burden from both an administrative and competitive impact basis.³

Allowing specialty stations to abandon their specialty formats in favour of popular music formats does however risk reducing diversity and increasing mainstream format competition at the precise time that commercial radio stations are trying to recover from the worst economic period of their existence. A jazz or Christian station that adopts a mainstream popular music format means both a loss of that format in the market mix, and the introduction of a new competitor. While larger market broadcasters generally believe the benefits of reduction in regulatory burden outweigh any such competitive impact, smaller market broadcasters are concerned.

Q9. 2) Should certain musical genres be protected to ensure that particular content types remain available for defined markets and audiences (e.g., classical music or sport)? If so, specify the types of content, the markets and the reasons that would justify this protection.

A9. 2) The CAB has no comment on a clearly definable market and/or audience-based rule for musical genres at this time.

Q9. 3) If the Commission were to eliminate music genres and impose a single Canadian content and FVM quota on commercial radio stations, what would be the appropriate thresholds for the broadcast week and peak listening hours?

A9. 3) The imposition of a single Canadian content and FVM quota on commercial radio stations regardless of music genre would have to be low enough so as not to effectively force former specialty music stations to abandon their formats. A Canadian content quota of 15%-20% would be appropriate in such circumstance, applicable to the proposed expanded broadcast week and peak listening hours set out in response to Q13, below. A FVM quota would have to be in the 45% range.

Q9. 4) Music categories and subcategories are also used by non-commercial stations, namely campus and community, Indigenous, ethnic, and CBC/SRC public radio stations, notably to calculate Canadian content. What would be the impact of eliminating music genres on these stations?

³ A typical content category 3 commitment would be in respect of 10% of musical selections. The Commission has been prepared to remove category 3 requirements after a first term of license, but has required evidence of "economic need", which is not always easy or practical to demonstrate. See, for example, decisions related to CKLO-FM London <https://crtc.gc.ca/eng/archive/2019/2019-100.htm> and CISO-FM Orillia <https://crtc.gc.ca/eng/archive/2020/2020-181.htm>. In the CISO-FM Orillia Decision, the Commission concluded that "the applicant has demonstrated sufficient economic need to justify the amendment", noting that the licensee had suffered significant financial losses in the past five years. In the CKLO-FM London Decision, the Commission noted that "while Blackburn did not cite an economic need in its application, the Commission acknowledges that the deletion of the conditions of licence would ease the competitive imbalance that the station has faced in the London market."

- A9. 4) Music categories and subcategories arguably play a lesser role vis-à-vis competitive impact when the target audience is clearly identified. An ethnic station targeting a distinct ethnic audience in ethnic languages, or an indigenous station serving an indigenous audience in indigenous languages, would have limited impact on commercial English or French-language stations regardless of the genres of music played. Without language, advertising or other safeguards, however, eliminating genre requirements may lead stations to abandon their distinct audiences or content niches, to compete directly commercial English or French-language stations. Given this risk, the CAB would oppose a wholesale elimination of genre requirements on such stations at this time.

Q10. One proposal put forward in the FVM proceeding was to move the following three genres of music from content category 2 to content category 3:

- **Country and country-oriented (content subcategory 22);**
- **Urban, including techno, house, drum 'n' bass, jungle and other electronic music (content subcategory 21); and**
- **Hip hop and rap (content subcategory 21).**

1. **To what extent would moving these genres of music spur the creation of new specialty stations and foster diversity in music formats?**
2. **To what extent would is there genuine interest in launching specialty stations among both English- and French-language broadcasters for these musical genres?**

- A10. The CAB does not support this proposal. It would lead to more rather than less regulation, including potential requirements for approval should a popular music station wish to change its format to country or urban. Instead we propose that content category 3 requirements be eliminated for non-specialty format stations (see Q9 above), allowing the greatest possible flexibility in popular music formats.

Q11. To what extent does the categorization of musical genres as set out in Broadcasting Regulatory Policy 2010-819 promote the discovery of a wide variety of Canadian music, including music by Indigenous and French-language artists? Should the Commission consider adding or modifying some music subcategories?

- A11. Except in the case of distinct specialty formats, greater categorization of musical genres cannot in itself promote the discovery of a wide variety of Canadian music, including music by Indigenous and French-language artists.

A broadcast medium, such as commercial radio, cannot be expected to be a major vehicle for discovery of culturally specific music sub-categories. Incentives and targeted government funding, and in particular music streams provided by the public broadcaster, are a more appropriate vehicle.

Q12. What other measures, regulatory or non-regulatory, might the Commission consider to encourage the discovery and broadcast of new music formats?

- A12. As discussed in our Intervention, with increasing availability and use of digital platforms, Canadians have a plethora of options available to them to discover and listen to music. The public policy challenge is not content diversity generally, it is the availability of underrepresented or financially challenged and Canadian or FVM content. In this environment, greater reliance on market forces rather than regulatory measures, and increased common ownership are the two most important tools at the Commission's disposal to encourage the discovery and broadcast of new music formats on commercial radio.

The Bob/Jack Classic Hits format, Indie 88's new and emerging artist format, the introduction of Flow in Toronto the Hip-hop/urban format and Elmnt FM (Ottawa and Toronto) for aboriginal content are examples of new diverse formats introduced by commercial radio stations, based on their assessment of commercial potential, in the last two decades.

It is a well understood operating principle that an operator owning multiple stations in a given market is incentivized to make them both as different and, together, as popular as possible. In radio, this leads to operators maximizing the distinctions and separate demographic appeal of each station in a local operating group in order to maximize overall revenues.

In contrast, competing stations owned by different operators have a tendency to overlap – each seeking to have the largest possible share of the most popular formats and target demographics.

The role of public broadcaster in music discovery and broadcast of new formats should also not be underestimated. Evidence from its recent licence renewal proceeding suggests that CBC/Radio Canada plays an important role in this regard on radio and digital streaming music platforms, although some of the Corporation's digital playlists appear to fall short in the Canadian content department.⁴

- Q13. Do the current peak listening hours (6:00 a.m. to 6:00 p.m., Monday to Friday), which are subject to Canadian content quotas (35%), allow for maximum access to and promotion of Canadian content, and why? If not, should the peak listening hours for Canadian content be changed, and how?**

- A13. As set out in the Music Report at Appendix H to the CAB's Intervention, current peak listening hour regulation of Canadian content does not accurately reflect today's prime time listening window. Commercial radio now identifies morning drive as starting at 5 a.m. during the week. Key morning show talent start their shows at either 5 a.m. or 5:30 a.m., not 6 a.m. Station advertising rate cards reflect this in their time blocks. The reality is that today's work environment features flexible and often longer working hours, the result of which is more and more tuning taking place prior to 6 a.m. Similarly, the current industry afternoon time block is 3 p.m. to 8 p.m. for sales purposes, which again accounts for the increase in duration of work workforce hours. In particular, there is a significant amount of tuning taking place up to 7 p.m.

For these reasons, the CAB proposes that the current peak listening hours for the purposes of Canadian content quotas be extended from 6:00 a.m. to 6:00 p.m. to 5:00 a.m. to 7:00 p.m.,

⁴ See, for example, OAB Intervention, BNC 2019-379.

Monday to Friday. In addition to reflecting listening and advertising market realities, such an extension would provide commercial radio broadcaster a modicum of increased flexibility in the scheduling of Canadian music selections.

The CAB notes that the Commission has not asked questions concerning current broadcast week requirements. For the sake of completeness, we will therefore make some observations here.

In the Create TV Policy,⁵ the Commission concluded that exhibition requirements "will be a less and less effective tool in an increasingly on-demand environment", and decided that, for television, exhibition requirements would only "remain for those time periods where they have the most impact". The CAB accepts that there are significant content and operational differences between commercial radio and television, and is not suggesting that such conclusions be automatically applied to the commercial radio regulatory framework. However, it is clear that commercial radio-like exhibition requirements do not currently apply, and are unlikely ever to be applied, to competing foreign online audio services and platforms. Therefore, the notion of applying commercial radio exhibition requirements to "those time periods where they have the most impact", or at least providing greater flexibility in meeting those requirements, is an appropriate policy shift for the Commission to consider. For commercial radio, the CAB submits that the time period that would have the most impact and provide the most flexibility to compete would be if the Commission adopted a single period for Canadian content quotas, namely an extended broadcast week, 5 a.m. to 1 a.m. Monday to Sunday. This would be more reflective of general radio listening hours and maximize programming flexibility. At minimum, the CAB proposes that if the Commission chooses to retain both broadcast week and peak listening hour requirements, that both be on the extended bases herein described.

Q14. In the FVM proceeding, some parties proposed changing the existing peak listening hours for FVM (6:00 a.m. to 6:00 p.m., Monday to Friday) as follows:

- add additional peak listening hours on weekends (9:00 a.m. to 6:00 p.m., Saturday and Sunday), during which the broadcast quota would also apply; or
- extend the existing peak listening hours to include weekends (6:00 a.m. to 6:00 p.m., Monday to Sunday).

Should the current peak listening hours for Canadian content be changed as described in either of the above proposals? If so, please specify the proposal and suggest Canadian content levels.

A14. The CAB does not support the imposition of additional FVM requirements for weekends. Those periods are already subject to an overall FVM quota level of 65%. The CAB's proposal to extend the weekday prime time period, as set out in response to Q13, is more reflective of Canadian consumer listening patterns.

⁵ <https://crtc.gc.ca/eng/archive/2015/2015-86.htm>

Policy on emerging artists

Q15. In your opinion, how can commercial radio contribute more or differently to the support and discovery of emerging Canadian artists?

A15 As discussed in our Intervention at Sections III and IV, commercial radio can and agrees it is in a position to contribute more and differently to the support and discovery of emerging Canadian artists. However, its ability to do so is constrained both by its financial condition and the reality that new prescriptive regulations risk making radio stations less attractive to their audiences, less viable and hence less competitive. This is especially so considering the capacity of radio's digital competitors to promote music discovery in a way that is customized to each listener thanks to on-demand technology and advanced algorithms.

The CAB accordingly urges the Commission to consider only incentive-based schemes in respect of the new approaches to support and discovery of emerging Canadian artists. This would be consistent with additional tools established by the CRTC in 2015 to "incent the promotion of Canadian [Television] programming", its thinking as set out in *Harnessing Change*, and the Government's proposed approach for Bill C-10.⁶

The cornerstone of the incentive-based approach recommended by the CAB would be a new 150% emerging artist airplay credit that would entitle each qualified emerging artist to an additional 50% spin count (i.e. 1.5 spins) that would count towards their minimum weekly Cancon commitment of 25%.

As outlined in the Music Report, an artist would be considered "emerging" when a period of five years or less has elapsed since the release of the artist's first commercially marketed title.

Commercial radio's financial support for emerging Canadian artists is primarily accomplished through Canadian Content Development (CCD), as discussed at Q35 to Q45 below.

Q16. Are the existing definitions of English- and French-language emerging Canadian artists still appropriate? If not, how should they be changed?

A16. The current definition for English-language emerging Canadian artists was established by the CRTC in 2011 on the basis of proposals made by the CAB and the Canadian Independent Music Association (CIMA), the core of which is:

An artist would be considered an "Emerging Canadian Artist" if he/she is Canadian (that is, meets the "A" criterion of the MAPL system) and has never previously charted or reached the Top 40 position on the music charts listed

⁶ See, *Create Policy*, Part A, <https://crtc.gc.ca/eng/archive/2015/2015-86.htm>, *Harnessing Change*, Conclusions, at Section 4, and Potential Options. The draft Direction, while not definitive, is clearly indicative of current government policy. It calls on the Commission to "use flexible, dynamic, and incentive-based regulatory tools ... ensuring that greater weight be afforded to supporting objectives that would not otherwise be met by the market." *Preliminary Draft Direction, as of August 2020*, s. 8.

in Schedule A or the Top 25 position on the music charts listed in Schedule B.

An artist would retain the status of "Emerging Canadian Artist" for a period of 36 months from the date he/she reaches the positions on the music charts mentioned above.⁷

Similarly, the current definition for French-language emerging Canadian artists was established by the CRTC in 2011 on the basis of proposals made by the CAB and the *Association québécoise de l'industrie du disque, du spectacle et de la vidéo* (ADISQ), the core of which is:

A Canadian French-language artist shall be considered an emerging artist until one of the following thresholds has been reached:

- A period of 6 months has elapsed since sales of one of the artist's albums have reached Gold Record status according to SoundScan.
- A period of 48 months has elapsed since the release of the artist's first commercially marketed album.

The acceptance of these proposed definitions was preceded by a 2008 initiated review of options, in which the Commission considered the following objectives as fundamental:

- the definition or definitions should be based, to the extent possible, on a combination of the most relevant measures of popularity, such as airplay, sales, airplay and sales, etc.;
- the definition or definitions should be based on information easily accessible to all in order to allow broadcasters of all sizes and the Commission itself to monitor the level of musical selections by emerging artists on station playlists; and
- the definition or definitions should strike a balance between the achievement of meaningful name recognition of artists by radio listeners and consumers of recorded music and ensuring a constantly refreshing roster of emerging artists.⁸

At that time, the Commission took the "preliminary view that, for English-language artists, a definition based on the highest position attained by artists on the trade charts used by the Commission to determine hits appears to be the most practical" and suggested a similar chart-based approach "might be appropriate" for French-language artists.⁹ The Commission also took the preliminary view that a "Top 40, under one year" definition of an emerging artist, as proposed by the CAB in the 2006 radio, review would strike an appropriate balance.

In confirming the current definitions in 2011, the Commission did not specifically comment on its reasons for acceptance of the proposals to extend the duration for eligibility of emerging artists to up to three years from charting (English) and up to four years post commercial release (French).

⁷ <https://crtc.gc.ca/eng/archive/2011/2011-316.htm#b3>, at paragraph 5 and 8.

⁸ <https://crtc.gc.ca/eng/archive/2008/pb2008-16.htm>, paragraph 8.

⁹ Ibid, paragraphs 10-11.

As evident from CAB's response to Q15, the CAB's recommended definition of emerging artist for the purposes of the proposed 150% emerging artist credit would:

1. exclusively adopt the commercial release metric currently used to define one of the French-language emerging artist thresholds; and
2. adopt a common five period in which an artist would be considered "emerging" for both French- and English-language musical artists.

The CAB believes that this amended definition would strike a better and more appropriate balance between the Commission's 2008 stated objectives for the audio environment of today and tomorrow.

- First, it would be a simpler approach, consistently used for both French- and English-language musical artists;
- Second, in using the more standard and commonly understood metric of "commercial release", it would avoid being subject to the increasing variability and unpredictability of music charts, and be based on when an artist truly 'emerges' rather than when they merely hit a threshold of popularity; and
- Third, in using a standard five-year period from commercial release, it would provide sufficient time for an artist to break through.

Q17. Should an artist who decides to launch its career in Canada's other official language be granted a new emerging Canadian artist status? What about an artist who decides to launch their career in an Indigenous or non-official language?

A17. The CAB agrees that some accommodation could be given to re-granting emerging status to an artist that re-launches in a new language and can demonstrate that their previous career provides no material cross-over benefit or name recognition. The CAB would be inclined to support any incentive-based proposal of this nature.

Q18. Should the Commission impose quotas requiring the broadcast of music by emerging artists? If so, what should be the percentage be? How should this type of programming be measured for monitoring purposes? How should the percentage vary depending on a station's music format or language?

A18. No, this would be neither a practical nor effective means of promoting the airplay of emerging artists.

From a purely practical perspective, the Commission does not control product flow available to radio, nor does it mandate sub-quotas of Canadian selections released by independent or major international labels operating in Canada. At any given time, the number of genre appropriate emerging artists available to broadcasters may vary significantly.

Moreover, holding broadcasters to a defined emerging artist quota would stifle diversity of formats and further hamper our ability to compete with non-regulated streaming services.

An incentive-based approach, as recommended by the CAB at Q15 and which is the approach used by the Commission in its Create TV Policy, is a more appropriate regulatory mechanism for this second century of radio broadcasting.

Q19. What mechanisms should be put in place to ensure that broadcasters do more to promote emerging artists and foster musical diversity? On which platform(s) should these mechanisms be implemented (e.g., over-the-air broadcasts, the station's website or social media)? How could these mechanisms be measured by the Commission for monitoring purposes?

As noted at Q15 and Q18, any mechanisms should be incentive-based and, unless and until equivalent obligations to promote and support Canadian music are placed on foreign platforms operating in Canada, limited to Canadian commercial radio stations. There should be no express mechanisms or monitoring applied to station websites or social media.

Moreover, as a matter of principle, the Commission should resist increased micro-monitoring of broadcaster activity. Monitoring should be increasingly broad and look to whether policy objectives are being met generally, not at a specific platform or broadcaster level.

Policy on hits in bilingual markets

Q20. Do you think the definition of a hit and the list of charts used to identify hits are still adequate? If not, what updates do you suggest?

A20. As noted by the Commission, under Broadcasting Regulatory Policy 2009-61, a "hit" is defined as any musical selection that, at any time, has reached one of the Top 40 positions in the charts used by the Commission to identify hits. Paragraph 30 of that Policy states:

Since the last policy review in 1997, several of the charts used to determine hits were discontinued. Given that the policy regarding the broadcast of hits remains in effect for English-language commercial FM radio stations serving the bilingual markets of Montréal and Ottawa-Gatineau and for campus radio stations, the Commission expands the lists of charts to determine hits to include Nielson BDS Country Spins Chart and the Billboard Canadian Hot 100 Chart. The Commission received no comments opposing the addition of the two charts. The list shall now read as follows:

- Nielson BDS Country Spins
- Billboard Canadian Hot 100
- Billboard Hot 100 Single
- Billboard Hot Country

The evolution of hit charts has continued since 2009. While the Commission adopted BDS, an increasingly dominant tracking tool in North America, including Canada, is MEDIABASE.

With the recent announcement by Billboard to now incorporate music video streaming data from Facebook users into its chart positions,¹⁰ the net effect of this change will further

¹⁰ <https://www.nmc.com/news/music/billboard-charts-will-now-count-facebook-music-video-streams-2893595>

accelerate a song's rise up the charts without regard to that song's relevance or airplay on commercial radio. In other words, a song could become a "hit" long before radio even decides to add the song to its playlist. This will further weaken radio's ability to compete against the digital streaming services already eroding its audience.

As CAB members have differing positions on an appropriate policy on hits in bilingual markets, the CAB takes no specific position on updates to the current definition of a hit at this time.

Q21. Can the method used to identify hits be simplified and standardized using industry standards? If so, which ones?

A21. The CAB takes no position on this issue at this time.

Q22. In your opinion, is the policy regarding the broadcast of hits still a relevant and efficient means of promoting linguistic duality in bilingual markets? If not, what policy changes or other regulatory means could the Commission apply?

A22. The CAB takes no position on this issue at this time.

Q23. If the quotas for hits were waived for English-language commercial radio stations in bilingual markets, should their French-language counterparts also receive regulatory relief (e.g., lower FVM quotas)? If so, how?

A23. Yes. We also note that there is precedent for such an approach. In 1974, a year after it was introduced, the Commission provided some relaxation in the FVM quota for bilingual markets. Effective September 1, 1974, French-language commercial stations operating in the bilingual markets of Montreal and Ottawa-Hull (now Gatineau) had a 65% FVM quota, and those operating elsewhere in Quebec had a 75% FVM quota. This distinction was eliminated in 1975, when the Commission introduced the uniform 65% quota for French-language stations that we have today.

Q24. What other innovative measures within the Commission's jurisdiction should be considered to help the commercial radio sector better support Canadian English- and French-language artists, to better meet the needs and interests of their listeners and reflect their culture, particularly with respect to linguistic duality?

A24. The CAB believes that incentive-based approaches, such as the emerging artist credit discussed at Q15 to Q19 are the only appropriate direct measures the CRTC should be considering. Generally reducing unnecessary regulatory burden, and granting greater operational and content flexibility, as discussed throughout CAB's Intervention is even more important. Without viability, there can be no support for public policy objectives.

It is also within the Commission's jurisdiction under the *Broadcasting Act, 1991* to regulate foreign streaming providers in Canada. Independent of passage of Bill C-10, the Commission should initiate a proceeding to introduce an appropriate regulatory framework on online digital media as soon as possible. This would allow both direct support for Canadian English- and

French-language artists from such providers, and allow the Commission to implement a fair and equitable regulatory environment.

French-language music programming

Q25. The Commission's practice has been to consider a musical selection as FVM if over 50% of the duration of the selection's vocal portion is in French. The Commission intends to codify this practice in the Regulations. Do you agree with this proposal?

1. If so, explain your reasoning.
2. If not, should the Commission's practice be more aligned with industry practices (e.g., integrating the calculation of lyrics into the metadata of songs)? If so, please explain what these practices are, and how they would work.

A25. The CAB believes that a predominance rule remains appropriate. The CAB is largely indifferent as to whether the Commission codifies this practice in the Regulations, but does not believe this to be a priority.

Q26. Are the current FVM quotas (65% during the broadcast week; 55% during peak times) still appropriate? Explain your reasoning.

A26. The CAB generally believes that current FVM quotas are inflexible, increasingly unattainable and do not reflect current realities.

When first introduced by the Commission in 1973, as then led by Chair Pierre Juneau,¹¹ the broadcasting industry faced none of the competition from foreign audio and advertising platforms that it does today. Accordingly, the imposition of these requirements at that time were able to be made with little regard to the negative competitive impact on commercial radio stations.

The CAB notes that over the past ten years (2010 to 2019):

- French-language sound recordings have captured an average of 36.71 percent of total sales of sound recordings in Quebec; and¹²
- By contrast, English-language sound recordings generated an average of 58.54 percent of total record sales in Quebec.¹³

Moreover, a recent analysis of consumption of music via on line streaming services such as Spotify, Apple Music, Tidal, You Tube, Soundcloud and Amazon Music. reveals that the percentage of FVM being streamed represents only 0.6% of all streaming in Canada or under

¹¹ The measure took the form of a letter from the then President of the CRTC, Pierre Juneau, sent in August 1973 to the President of the CAB informing him that as of September 1, 1973, French-language commercial radio stations would henceforth be required to ensure that 75 percent of all popular music on their airwaves were French-language songs. To our knowledge, the Commission's decision at the time was not based on any analysis that enabled it to determine the level of the quota on the basis of factual data.

¹² L'Observatoire sur la culture et les communications du Québec, Rapport 2020, (2010-2019) page 11.

¹³ Ibid.

2.6% of streaming by French-speaking listeners, significantly lower than the 7.2% streaming to Canadian content overall.¹⁴

This points to both the extent of the public policy challenge of maintaining FVM on popular media in Canada, and the considerable downside of a policy that attempts to address this challenge by imposing excessive FVM on regulated broadcasters that will just further drive audiences to unregulated alternatives.

Q27. Does the current peak time period (Monday to Friday from 6:00 a.m. and 6:00 p.m.) applicable to FVM quotas (55%) best support content access and promotion? If yes, why? If not, should the peak listening period for FVM selections be redefined? How?

A27. The CAB supports application to FVM quotas of the same proposed expansion of the peak time period for Canadian content (5 a.m. to 7 p.m.) as that set out in response to Q13 for the same general reasons.

Q28. In your opinion, should the current peak FVM listening period (Monday to Friday from 6:00 a.m. to 6:00 p.m.) be changed according to one of the following proposals? If so, please propose Canadian content thresholds for the chosen proposal.

- **Add an additional peak time period on the weekend (Saturday and Sunday from 9:00 a.m. to 6:00 p.m.) during which the broadcasting quota would also apply;**
- **Extend the current peak time period to include the weekend (Monday to Sunday from 6:00 a.m. to 6:00 p.m.).**

A28. The CAB does not support the imposition of additional FVM requirements for weekends. Those periods are already subject to an overall FVM quota level of 65%. The CAB's proposal to extend the weekday prime time period, as set out in response to Q27, is more reflective of Canadian consumer listening patterns.

Montages

Q29. The Commission intends to count montage excerpts individually for French-language stations rather than consider them single musical selections. In your opinion, would this new calculation method better reflect the true standing of FVM selections in music programming? Would it reinforce the promotion and discoverability of French-language Canadian artists, including emerging artists and artists from OLMCs?

A29. No. The Commission's current approach to montages remains appropriate.

¹⁴ MRC BDS top 10,000 titles streamed in Canada for the 5-month period on a weekly basis from October 2020 to February 2021, per Music Report, Appendix H to the CAB Intervention. Canada's French speaking population was estimated at 22.8% of the total by Statistics Canada in 2016, with the French population by mother tongue being 21%. <https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/statistics.html>. Conservatively assuming all listening to FVM is by French-speaking listeners would mean that 0.6%/22.8% (or more accurately 5,186,346/893,702,946/22.8% = under 2.6% of French-speaking listener streaming) is to FVM.

Local programming

Q30. Do the current regulations provide Canadians with access to varied local programming reflecting different viewpoints and relevant, high-quality programming in sufficient quantity? If not, what measures could be put in place to remedy the situation? Should these measures apply to all commercial radio stations?

A30. Yes. Commercial radio stations in Canada have consistently proven over the decades their commitment to local programming including local news and information. COVID-19 has once again proven that – even with drastic revenue losses, radio stations have prioritized local news and information. As the CMI Report and CAB Survey reveal, despite reported declines in revenues of 26% from 2019 to 2020, and anticipate declines of 29% from 2019 to 2021 levels, respondents report a 6.9% and 5.4% increase in news hours from 2019 levels in 2020 and 2021 respectively. Spending on news has decreased by only a fraction of decreases in revenues – down only 2.3% and a projected 0.8% from 2019 levels in 2020 and 2021 respectively.

Moreover, as the CRTC's Ipsos Report attests, Canadians are generally satisfied with commercial radio's local programming.¹⁵

As noted at paragraphs 84 and 85 of the Notice:

[C]ommercial FM stations that do not serve a single-station market are subject to a standard condition of licence, set out in the appendix to Broadcasting Regulatory Policy 2009-62, requiring that at least one-third of programming (42 hours) in the broadcast week be devoted to local programming in order for them to solicit or accept local advertising. Since a local radio station's success has traditionally greatly depended on the depth of its local roots and the quality of the local programming it offers, the Commission has not imposed a minimum standard broadcast threshold or other regulatory constraint.

This sensible, flexible policy, which, while not requiring local programming, creates a strong financial disincentive to not providing it. It recognizes, as continues to be amply demonstrated in practice, that local programming plays an important role in a local station's success. However, it also recognizes that how each individual station provides local programming will depend on its format, the audience, market and daypart it targets as well as financial resources and strategic outlook.

As discussed in our Intervention at Section IV, there is simply no basis for introducing new regulatory requirements on local programming, nor is there any evidence that such measures would be successful. Any reductions in local programming are directly related to radio's viability – thus the best thing the Commission can do to support local programming is to introduce measures that increase radio's viability and competitiveness.

¹⁵ *Attitudes and opinions towards commercial radio in Canada*, Ipsos Public Affairs, January 2021.

Q31. Is the standard condition of licence linking the possibility of soliciting or accepting local advertising to the broadcasting of local programming still relevant and appropriate? If not, how would you change it? What positive and negative effects would this change have on competition?

A31. Yes, given that on average local advertising represents 70% of radio revenues, the current standard condition remains a reasonable and effective mechanism for establishing local programming requirements.

Q32. Is the spoken word content on commercial radio stations, particularly news bulletins, relevant and of high quality? Does it properly address the communities served? Does it adequately reflect local culture? If not, what measures could the Commission implement to ensure that spoken word content fully meets the needs and interests of the communities served?

A32. The CRTC's Ipsos Report reveals that Canadians are generally satisfied with commercial radio's spoken word programming.

Spoken word content covers a diverse range of programming: local, regional, national and international news and information, weather, traffic and sports and entertainment reports. Some of this spoken word is delivered in formal newscasts and some via interstitial host talk or 'banter'.

The CAB's Survey confirms that a private radio station's chosen spoken word programming is very much attuned to its audience and market:

- On average, private radio groups report that 47% of spoken word is news, but on a per group basis, there is a full range – from 100% to less than 10%;
- The number scheduled newscasts a day (for music-based stations) also covers a full range – a group average of 12 scheduled newscasts a day, from a high of 24 to a low of 3; and
- Groups report that 80% of news is scheduled newscasts, and 26 out of 48 reporting radio groups place all their reported hours news in scheduled newscasts. The remaining 22 groups occupy full range of scheduled newscast utilization for news – from less than 20% to over 90%.

Unfortunately, the significant revenue impacts of the pandemic have witnessed the start of an erosion in spoken word, particularly as it effects non-news programming. Spoken word program expenditures are reportedly down 8.5% from 2019 levels in 2020, and projected to be down and 11% from 2019 levels in 2021.

Q33. According to the established definition, local news is part of local programming.

- 1. To what extent does the broadcasting of local news by commercial radio stations play a particular role for communities?**

2. **Should specific regulations be established with respect to the number of minutes and hours of local news broadcast during a broadcast week in addition to the regulations on local programming?**
3. **Should content created by online audio services be considered local content? If so, what would be the appropriate thresholds, should the Commission decide to expand the requirements for all platforms, including digital platforms? What measures should be implemented to ensure that listeners are served accurately by online platforms?**

A33. As discussed in our Intervention, it is the CAB's strong view that the Commission's current "light-handed approach" to the regulation of local programming is appropriate, and will remain even more so going forward. A lighter-handed regulatory approach will allow commercial radio to compete more effectively while still providing as much news and information programming as appropriate and possible in the circumstances.

As evident from CAB's response to Q13, the current regulatory approach allows private radio stations to maximize the level of news and information appropriate to their market, format and demographic, consistent with their financial resources. Specific regulations "with respect to the number of minutes and hours of local news broadcast during a broadcast week in addition to the regulations on local programming" would do nothing to improve radio's capacity to produce news, they would simply result in intrusive one-size fits all micro-management of radio's product, to the detriment of its competitiveness and revenues.

Moreover, as also noted at paragraphs 55-61 of CAB's Intervention, the CRTC's current definition of radio news understates radio's local news and information role. Standard minimum exhibition levels on radio station local news are therefore not a necessary, appropriate or effective mechanism.

In respect of online news content, while many radio stations have a significant online news presence, most of radio's online news and information presence is alphanumeric. Any potential CRTC regulation of radio's digital platforms would not therefore reflect radio's full contribution to news and information. In any event, any contemplation of such regulation should await Commission examination of contributions from online players.

This proceeding and the co-development of a new Indigenous broadcasting policy

Q34. Although these issues will be considered in more depth during the process for the co-development of a new Indigenous broadcasting policy, in your opinion, are there specific obstacles to the success of Indigenous music and artists in the current commercial radio policy? If yes, what are they? Please note that any comment on the effects of specific policies on Indigenous music and artists can also be made in response to any other question in this notice.

A34. The CAB does not believe there are there specific obstacles to the success of Indigenous music and artists in the current commercial radio policy. There are certainly obstacles faced by all unestablished artists, and may be opportunities to incentivise greater exposure and airplay for Indigenous music and artists, as reflected in the CAB's responses to Q11, Q15, Q17 and Q18.

Canadian Content Development (CCD)

Q35. Taking into account the projected CCD amounts set out above, will future CCD contributions be sufficient to ensure that commercial radio and CCD funding continue to fulfill the *Broadcasting Act's* policy objectives? Should the formulas for calculating contributions be modified to maintain the current contribution level? Should the Commission use formulas that consider the number of stations operated by licensees? What changes should be made to the formulas?

A35. As discussed in the CAB's Intervention at Section V (paragraphs 174-180), given the vastly increased financial and competitive challenges now faced by commercial radio, there should be no increases in current CCD contribution levels, and tangible benefit contribution levels should be reduced to 3% of the purchase price (discussed further at Q37).

The formulas for calculating contributions should generally be maintained, with the possible exception of including station local news and information programming expenses as a new eligible CCD recipient category (discussed further at Q39).

Q36. Should the Commission change how it defines revenues to calculate basic CCD contributions? If so, how?

A36. The CAB is aware of no reason or basis to change how it defines revenues to calculate basic CCD contributions.

Q37. Should the Commission require a higher tangible benefit contribution than the current minimum of 6% of the value of a transaction to acquire the ownership or effective control of a commercial radio undertaking? If so, what would be the appropriate contribution percentage and what effect would such an increase have? Please explain your reasoning and provide supporting evidence.

A37. As the Commission is aware, competing online undertakings are not subject to tangible benefit contributions, nor are such benefits being contemplated by the CRTC or Government. Moreover, BDU tangible benefits were eliminated in the late 1990s in recognition of competition and that there were no significant market barriers to entry.

In an equitable legislative/policy framework, there would be no benefits payable in radio transactions (or television transactions for that matter). However, as a compromise, CAB proposes that for a transitional period (i.e., the next 2 to 3 years) before online platforms can be expected to be required to contribute, 3% tangible benefits be payable on new radio transactions, excluding transactions involving AM to FM transitions or new news/info formats.

Combined with approval of the CAB's proposals for a new common ownership policy for commercial radio, as outlined at Q46 to Q54 below, this should result in a net increase in tangible benefits contributions beyond 2021 from that projected by the Commission.¹⁶

Q38. Should broadcasters be provided greater flexibility with respect to certain requirements (such as Canadian content broadcasting requirements) and place greater emphasis on CCD contributions or the promotion of Canadian content?

A38. Commercial radio cannot sustain an increase in asymmetric regulatory obligations. Even with the CAB's proposals for reductions in Canadian content broadcasting requirements, commercial radio will still contribute significantly more than online players in respect of Canadian music discovery, including any new discoverability commitments being realistically considered for digital music services. Thus to achieve overall equity it would be reasonable to impose higher CCD contribution requirements on digital music services than is the case for commercial radio. Increasing CCD contribution requirements on radio would simply exacerbate current inequities and competitive disadvantages.

Q39. Is the way contributions to funds are allocated in each component (basic contributions, over-and-above contributions, tangible benefits) appropriate? If not, what would be the appropriate allocation for each component?

A39. Consideration should be given to allowing commercial radio broadcasters to allocate a certain proportion of required CCD contributions to news and information programming. This would act as optional incentive for those broadcasters who wish to direct more financial resources into news and information than would otherwise be possible.

Q40. What would be the best way to balance funding between the funds supporting French Canadian artists (e.g., Musicaction) and English Canadian artists (e.g., FACTOR)? Should the Commission develop a formula or adopt another approach? Please explain.

A40. The current approach of English-language stations usually contributing to FACTOR and French-language stations to Musicaction remains appropriate.

Q41. Please comment on the option of requiring every licensee to submit to the Commission an annual report on its discretionary CCD spending, similar to the obligation imposed on BCE Inc, in Broadcasting Decision 2013-310 or to the reporting requirements discussed in Broadcasting Decision 2019-431, for Sirius XM Canada, which would include the following performance indicators and would be made publicly available:

- the number of music and spoken word artists supported;
- the percentage of discretionary funds distributed by music genre or spoken word;
- the percentage of total discretionary funds allocated to performance fees paid to artists;
- the number of audience attendees at events;

¹⁶ It is reasonable to assume that implementation of the CAB's MLO approach would result in significantly increased transaction activity, which even at a lower tangible benefits percentage, would result in more tangible benefits being paid overall.

- the number of shows or tours developed for music and spoken word artists;
- the number of new music and spoken word recordings supported;
- the percentage of discretionary funds spent on marketing or promotion expenditures;
- the number of English-language music and spoken word artists supported;
- the number of French-language music and spoken word artists supported; and
- the number of Indigenous music and spoken word artists supported

A41. The CAB is unclear on the value of collecting this level of detailed information, how it would help meet the public policy objectives of the *Broadcasting Act*, or what it would be used for. Imposing a greater regulatory burden at this time without a precise and crucial reason simply exacerbates inequities in the system.

The CAB notes that radio stations are already subject to significant reporting obligations, some of which no longer relate to areas the Commission regulates.

Currently, the Commission requires commercial radio licensees to fill out a minimum of six separate forms annually:¹⁷

- For the company:
 - REPB – Reporting Entity Profile – Broadcasting
 - REP-U – Contact Information – Response Manager and Executive Sponsor
- For each licensed station:
 - 1110 – Radio Station Financial Summary
 - 1120 – Radio Station Profile
 - 1130 – Radio – Expenses – Detail OR 1135 – Radio – Expenses - Summary
 - 1340 – Alcohol Advertising
- For some licensed stations:
 - 1150 – CCD Benefits
 - 1163 – CCD Contributions – New Station and Licence Renewal

This year the Commission added:

- 1420 - COVID-19 Government Assistance: A new form has been added to capture government financial assistance received relating to the COVID-19 pandemic as well as any resulting lockdowns and how these amounts were reported within the annual return.

Moreover, reporting obligations under the *Accessible Canada Act* are pending and, in this proceeding, the Commission has indicated that it is contemplating adding more reporting requirements, from minutes and hours of local news broadcast during a broadcast week to new annual reports on discretionary CCD spending.

¹⁷ https://crtc.gc.ca/eng/dcs/current/faq_71.htm

Q42. To lighten the administrative burden and make it easier to manage contributions, should the Commission remove the option of allocating a portion of the contributions to discretionary initiatives? Should it be removed for only some components (basic contributions, over-and-above contributions, tangible benefits)? Please explain your reasoning and provide supporting evidence.

A42. Removing the discretionary initiatives would reduce the ability of stations to support locally relevant talent development. For the reasons set out in the CAB's Intervention (paragraphs 203 to 207), to more effectively lighten the administrative burden, the Commission should move away from its current ex-post CCD compliance approach and:

- Maintain non-exhaustive public lists of approved discretionary recipients;
- Introduce an optional staff pre-approval mechanism; and
- Introduce a new more reasonable and objective approach to assessing non-compliance.

Q43. Should the Commission require discretionary CCD contributions for individual stations to be spent in a specific region or geographic area?

A43. No. The CAB believes this would be unduly limiting, and fail to recognize that the location of a CCD recipient is not always necessarily indicative of its geographic benefit. For example, contributions to Canada Music Week go to a recipient based in Mississauga, but clearly benefit musical artists from across Canada.

Q44. Are the eligibility criteria for discretionary initiatives set out in paragraphs 106 to 112 of the Commercial Radio Policy 2006 still relevant? If not, what changes should be made?

A44. As noted at Q42, the CAB recommends that the CRTC maintain flexibility to direct discretionary CCD contributions to local initiatives, but establish clearer criteria on eligibility, and a timely staff pre-clearance mechanism.

Q45. How can CCD contributions help launch and boost the careers of emerging artists?

A45. As is further outlined in the Music Report, CCD contributions are a valued and tangible way commercial radio stations help launch and boost the careers of emerging artists, especially before such artists are successful enough to warrant significant airplay. FACTOR, Musicaction, Starmaker and many discretionary initiatives are oriented to this end. However, digital platforms now offer many self-directed avenues for exhibition, performance and exposure. Thus, the relative importance of CCD contributions is decreasing.

Common Ownership Policy

Q46. Are the criteria for defining the size of a market (fewer than eight or eight or more stations) still appropriate and relevant? If not, please explain your reasoning and

propose new criteria for defining markets in the context of the Common Ownership Policy in the future.

A46. In our Intervention at Section V, the CAB has proposed a new radio Common Ownership Policy (COP) which adds a third market-sized threshold and eliminates the AM-FM band restrictions:

1. In markets with eight (8) or fewer commercial stations operating in a given language, a person may be permitted to own or control as many as four (4) stations operating in that language;
2. In markets with between nine (9) and sixteen (16) commercial stations operating in a given language, a person may be permitted to own or control as many as six (6) stations operating in that language, provided that the person does not own or control more than 50 percent of all stations operating in that language; and
3. In markets with sixteen (16) commercial stations or more operating in a given language, a person may be permitted to own or control as many as eight (8) stations operating in that language.

Q47. In your opinion, should the number of stations of a particular language that one entity can own in a given market be different for large vertically integrated or national players than for independent or local players?

A47. No. Radio is, first and foremost, a local medium and the economies of scale that can be realized through consolidation occur primarily at the local level. That is why, historically, the radio common ownership policy has been assessed on a market-specific basis, not the holdings a particular ownership group has across Canada. As outlined in the CAB's submission, the environment in which commercial radio stations operate has changed fundamentally – not just for stations owned by smaller groups, but for all licensees. Consequently, CAB's proposals relating to the common ownership policy – which have received broad support from CAB members of all sizes and serving a diversity of languages and markets – were designed to apply to all radio licensees equally.

Q48. Should specific new measures (such as exemptions and consolidation criteria) be implemented to facilitate the strategic deployment and financial health of independent undertakings given the fierce competition from large vertically integrated or national players and online audio services? If so, which ones?

A48. As noted above in response to Q47, the issues commercial radio is facing apply to all stations regardless of ownership. And while radio stations in a given market will always compete for audience and market share, there is no evidence to suggest that such competition is any more "fierce" at the local level as a result of who owns a particular station. Today, the "fierce competition" comes from online platforms, of which audio services are just a small part. As pointed out in our Intervention, the CMI Report and SRG's research, online platforms of all types are taking significant audience and revenue share from commercial radio while being subject to no obligations concerning Canadian music and local programming or any limitations on their ability to grow or consolidate. The CAB's proposed revisions to the common ownership policy as well as other recommendations we are putting forward have been designed to help address this issue.

We do not agree that ownership structure should factor into a revised common ownership policy. Instead, other than certain limits or safeguards on multiple license ownership, which can serve a dual role of maintaining ownership diversity and a reasonable competitive environment within the radio segment, we respectfully submit that the Commission's focus should be on the inequitable competition faced by all radio vis-à-vis online audio and other platforms.

Q49. Are the guidelines regarding contour overlapping, which are used to determine the number of stations that can be operated by an entity in a particular language and on a particular frequency band, still appropriate and relevant?

A49. The Commission has a longstanding practice of considering rebroadcasting transmitters as part of the COP assessment, given the Commission's stated assumption that they can affect both the diversity of programming and the competitive balance in a given market.¹⁸

In today's operating environment, the CAB believes that these assumptions are no longer valid.

In respect of diversity, other than the possible need for the Commission to maintain rules to ensure diversity in programming language, spoken word formats and service to ethnic and aboriginal communities, the content diversity, and particularly the diversity of information and music available to Canadians across multiple platforms, has never been as pronounced as it is today.

In respect of competitive balance, while this is a lesser concern given that the 'relevant market' for radio now vastly exceeds that radio market alone, to the extent that it remains a consideration on the COP, the current station contour approach is not the best indicator.

The Commission has, in part, recognized this in its current guidelines in stating that:

Where the population in the overlapping area comprises 5%, but less than 15% of the market, the Commission will consider the following factors:

1. whether the station in question accepts advertising from local businesses in that market; and
2. whether that station broadcasts news and public affairs coverage of particular interest to listeners in that market.

In the CAB's view, where possible, the Commission should abandon the use of 15mV/m or 3mV/m contour overlapping as an indication of market presence in favour of a true market indicator, namely, Numeris markets.

As the Commission is aware, in monitored markets, Numeris ratings provide the 'currency' on which a station's advertising is sold.

¹⁸ See, for example <https://crtc.gc.ca/eng/archive/2020/2020-410.htm>.

Simply put, therefore, the best indicator of what market a radio station serves is the Numeris Control region it is assigned to, as this provides the economic basis for such a commercial radio station – i.e. the market upon which ad rates are negotiated.

As Numeris markets are generally aligned with Statistics Canada market definitions, such an approach would also have the benefit of being:

- Grounded in a definition of market served that is relevant to a broader policy perspective (i.e., cultural, industrial, public/community);
- Less cumbersome than contour maps for both the regulator and broadcaster; and
- Future-proof. As more and more AM/FM radio listening moves online, the whole notion of signal contours is becoming increasingly irrelevant.

Q50. Should the Commission go beyond the definition of market stipulated in the Regulations as well as contour overlapping in determining the maximum number of stations a single entity is permitted to operate in a given market? If so, what other criteria should be considered?

A50. See response to Q49 above.

Q51. Given that there are fewer AM listeners and the number of stations on this band is declining, is it still relevant to limit the number of stations in a particular language that a single entity can hold on the AM band in a market?

A51. The CAB believes that its proposal at Q46 would be a better way of addressing this.

Q52. Would you be concerned if the Common Ownership Policy allowed licensees to convert their AM stations to the FM band when they have maximized the number of FM stations in a particular language allowed in a market where they also operate AM stations in that language? If so, what would your concerns be?

A52. The CAB's proposal at Q46 addresses this concern.

Q53. Aside from the exceptions granted because of a recognized economic or technical need, exceptions to the Common Ownership Policy are rare and triggered by exceptional circumstances where the applicants have demonstrated to the Commission that approval of the application would be in the public interest. In your opinion, to which proposals seeking to serve the public interest should the Commission consider to granting exceptions?

A53. Assuming the CAB's COP proposal were to be adopted by the Commission, the current grounds for exception would remain appropriate.

Q54. Diversity of programming and editorial voices are essential components of the Canadian communications industry. Notably, they disseminate Canadian culture and support Canadians' participation in democracy. In light of the above, what would be the advantages for the financial health of Canada's commercial radio industry if a single entity was allowed to operate more than two FM stations in a particular

language in a given market? Would this invariably undermine the diversity of programming and editorial voices? If a diversity of voices occurs only in the presence of an independent or local player, how can their presence in markets be ensured?

A54. As outlined in the CAB's Intervention (paragraphs 138-151), while diversity of programming and editorial voices can indeed be said to be "essential components of the Canadian communications industry", the means by which they can be achieved in this century are fundamentally different than the means by which they could be achieved in radio's first century. Moreover, private commercial radio can achieve no policy objectives, however essential, if it is not viable.

Hence, as alluded to in the question "the advantages for the financial health of Canada's commercial radio industry" made possible through greater local station ownership must be a prime consideration in any relative assessment of policy priorities.

Based on available evidence, the CAB believes that approval of its COP and LMA/LSA proposals would strike the right balance between different operator interests, future needs, and public policy goals. In particular:

- Radio ownership should be compared to other media, including digital media (radio's main competition), who are far more consolidated and have far fewer barriers to consolidation;
- The trade-off of decreases in ownership diversity in return for stronger capacity to maintain local programming, including news, is, in today's circumstances, a necessary and appropriate one;
- Operators of all sizes will benefit from adoption of more permissive local operational rules, including, greater freedom to pursue LSAs and/or LMAs on a market specific basis;
- Smaller or independent radio operators do not need protection from larger radio operators. In the smaller markets where most smaller players operate, however, they and their listeners would benefit from some targeted measures and safeguards that would offer a greater opportunity to grow and compete; and
- Radio will still remain less consolidated with more smaller business ownership than any other local medium.