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Sent via Intervention Form

22 September 2023

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Re: Comments of the Canadian Association of Broadcasters with respect to Broadcasting Notice of Consultation CRTC 2023-280
Call for comments – Proposed new Broadcasting Fees Regulations

1. As the national voice of small, medium and large Canadian privately-owned and controlled radio, television and discretionary broadcasters, both independent and vertically integrated, including services operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its comments on the CRTC's above noted Call for comments on proposed new *Broadcasting Fees Regulations* (the proposed Regulations).
2. The CAB fully supports the Commission's intent to integrate online broadcasting undertakings into the fee regime and to ensure equity overall among fee-payers. And we urge the Commission to implement the new regime as quickly as possible, and certainly in time for the fiscal year starting April 2024. That said, the CAB notes that it is challenging to make meaningful comments when there are so many unknown variables, including determinations on who will be included in the fee regime or not, what the CRTC's costs will be going forward, and the estimated total fee revenues of broadcasting undertakings, less any exemption level(s). Nevertheless, the CAB wishes to provide the following comments on the broad principles and questions raised by the Commission's notice.

Executive Summary

3. The CAB is concerned about the Commission's proposed "group-based" approach and, in particular, the potential impact on smaller broadcasting undertakings – i.e., those stations and services earning less than the existing exemption levels set out in the current regulations.

4. To address these concerns, and consistent with its comments with respect to the proposed registration of online undertakings,[1] the CAB recommends against adopting a group-based approach and in favour of maintaining the existing exemption levels. If the Commission nevertheless proceeds with the application of fees to ownership groups, the CAB recommends that the exemption level for the payment of fees be applied by type of undertaking, i.e., to groups of radio stations and groups of television stations, and so on, separately. The CAB also recommends that the exemption levels that currently apply continue to apply to individual undertakings, even if the Commission proceeds with a group-based assessment of fees. We elaborate on each of these points in the following sections.

Introduction

5. In the first instance, it is important to acknowledge that we are being asked to comment on a new fee regime in the absence of many important details. The Commission has stated that, for the purposes of the proposed Regulations, it intends to adopt an exemption level consistent with the exemption level for the registration of online undertakings, which will be established as a result of the proceeding initiated by Broadcasting Notice of Consultation 2023-139.[2] The Commission has further stated that undertakings not exempted from the obligation to register are expected to become liable for fees under the new Regulations.
6. In that proceeding,[3] parties made a wide array of arguments in favour of either expanding or contracting the types of undertakings that will be required to register – including raising important questions about which activities should be captured and which should not. Further, parties put forward a number of arguments for different registration thresholds. In the absence of final determinations on who will be required to register and at what revenue threshold, it is very difficult to comment on the impact of the Commission's proposed fee regulations.
7. The challenge is further compounded by the lack of information on the CRTC's expected broadcasting regulatory costs going forward. Further, we have no reliable way to estimate the total fee-assessable revenues of impacted broadcasting undertakings, less any exempted revenue amounts.

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[1] *Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations*, Broadcasting Notice of Consultation 2023-139, 12 May 2023.
[2] The Commission also notes that the proposed threshold aligns with a preliminary view expressed in the *Revised Commercial Radio Policy* (Broadcasting Regulatory Policy 2022-332, para 99). However, we hasten to point out that the Commission has not yet consulted on this matter and has therefore not heard the industry's views on the possible pros and cons of such an approach. CAB Members look forward to sharing their views when the Commission launches its call for comments on revisions to spending obligations.
[3] And the related proceedings launched in *Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Notice of Consultation 2023-140, 12 May 2023, and *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, Broadcasting Notice of Consultation CRTC 2023-138, 12 May 2023.

8. Notwithstanding this vacuum of information, the CAB wishes to comment on and make recommendations with respect to the broad principles and questions raised by the Commission's call for comments, so that the Commission can implement the new regime by April 2024.

Reevaluate the proposed application to "broadcasting ownership group"

9. While the CAB understands that a group-based approach may contribute to reduced regulatory and administrative burden for the Commission, the CAB is concerned about the potential impact on smaller broadcasting undertakings, particularly those who are currently exempt from paying fees (or submitting fee returns) under the thresholds set out in the current regulations, and which may now be captured by a threshold applied to them as an ownership group.

10. We recognize that the pool of fee-paying undertakings will grow, and that ultimately, as a result, the total fees paid by licensed broadcasters must correspondingly decrease. However, a group-based approach will capture more licensees rather than fewer and will capture smaller broadcasting undertakings that are currently exempt from paying fees.

11. For example, we are aware of at least one radio group, with multiple radio licenses, all earning revenues lower than the thresholds set out in the current regulations and thus exempt from paying any broadcasting fees.[4] Under the Commission's proposed group-based approach, this group would now have to pay fees for the first time, raising concerns about their ability to continue operating all of the stations in their ownership group at the same level as before. It would also be unfair for a station to have to pay fees when competitors in the same market do not, only because it is part of a group earning more than $10 million.

12. On this basis, the CAB recommends that the Commission reevaluate its proposal to apply the proposed Regulations to broadcasting ownership groups and to raise the exemption levels so significantly from the current $1.5 million for television and $2 million (and $0.5 million) for radio. We recommend instead that the Commission maintain an undertaking-based approach, as well as the existing exemption levels. The CAB also proposes alternatives below.

Apply any group-based threshold to like undertakings

13. If the Commission decides to proceed with a group-based approach to fees, the CAB recommends that the threshold apply based on the type of undertaking, for example, that it apply to groups of radio stations and groups of television stations separately, rather than combining all types of undertakings owned by a broadcasting group together.

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[4] As set out in more detail below – 81% of private radio stations have revenue at or lower than the current exemption level of $2 million and the remaining 19% are subject to an exemption level of $500,000 for each station. These exemption levels need to be maintained.

14. As noted above, at $10 million, a group-based approach to fee assessment will capture many undertakings that are currently exempt. For example, an owner of 10 radio stations each earning less than, say, $1.5 million does not have to pay broadcasting fees under the existing exemption levels but would be required to file fee returns and pay fees under the proposed new fee regime

15. The negative consequences of an ownership group approach are multiplied once television revenue is combined with radio revenue, and online revenue is added to the mix. This approach will capture many stations and services that are currently exempt and could have an impact on their operations.

16. For example, at least one of our members has a mix of radio and television stations that are currently exempt from paying fees, but if their radio and television assets are combined, and their revenue from online broadcasting activities are also added in, collectively they would be over the $10 million threshold proposed by the Commission, requiring them to pay broadcasting fees and submit fee returns for the first time. These are smaller stations, in smaller markets, that are already struggling and cannot afford additional regulatory burden.

17. It is for this reason that the CAB recommends that, should the Commission maintain the group-based assessment, it apply the exemption thresholds separately, i.e., to groups of radio stations and groups of TV stations, and so on.

18. Nevertheless, the CAB believes that the Commission can meet its objectives and ensure a fair allocation of fees with minimal impact on smaller broadcasters by continuing to apply fees only on an undertaking basis. It is even more important that the Commission maintain the existing exemption levels as described below.

Maintain the current exemption levels

19. As noted above, the CAB is particularly concerned about the potential impact of the Commission's proposals on those radio and television operators who are currently exempt from paying broadcasting fees, whether entirely or in part. For example, there are ownership groups operating stations whose revenues are below the current threshold of $2 million for radio or $1.5 million for television but, when their stations are combined, and any applicable online revenue added, would be above the $10 million group threshold proposed by the Commission. Further, by looking at their combined revenues, the Commission would be creating an unfair competitive advantage for standalone and foreign online undertakings that would not have to pay fees on the first $10 million of revenue, whereas broadcast groups with radio and television stations earning that much would effectively have to pay on the first dollar of online revenue.

20. The CAB is thus concerned about the possible unintended consequences of applying a group threshold and the resulting increase in administrative burden for groups operating lower revenue stations, which often correlates with operating in smaller markets.

21. The current thresholds were established in 1997, ostensibly to help *reduce* regulatory burden, as set out in the following excerpt:

> *The existing regulations require that the licensee of each broadcasting undertaking pay to the Commission an annual licence fee based on the revenue earned by that undertaking during the return year or portion of the return year. The minimum licence fee currently payable is $25. In the case of any undertaking whose revenues exceed the specified limits, the licensee is required to pay $25 plus 1.8% of the amount by which revenues exceed exemption amounts. …*
>
> *By contrast, the proposed regulations would eliminate the $25 basic licence fee, and require that only those undertakings with revenues in excess of specified exemption levels file a licence fee return and pay the applicable licence fee amount. The calculation of the licence fees would be based on gross fee revenue amounts, less the applicable exemption levels. Furthermore, the proposed regulations would expand the classes of undertakings exempt from the requirements of these regulations, to include native, community and educational broadcasting undertakings.* ***The Commission considers that this streamlining initiative would reduce the regulatory burden placed on small undertakings, since it is estimated that in excess of 2,000 broadcasting undertakings that currently pay the basic $25 fee would no longer be required to file an annual licence fee return or pay licence fees.*** [Emphasis added][5]

22. The application of new fees to smaller radio and television stations will have a significant impact on their ongoing operations, particularly for stations already facing significant disruption as a result of increased competition for audiences and advertising revenue from online services, as elaborated on below.

Canadian private radio and television stations cannot face additional regulatory burden

23. As the CAB has highlighted in several recent submissions, Canadian radio and television stations face significant structural challenges, as demonstrated by significant declines in revenue and profitability, and an increasingly challenging and competitive broadcasting environment.

[5] *Proposed New Broadcasting Licence Fee Regulations,* Public Notice CRTC 1996-149, 22 November 1996.

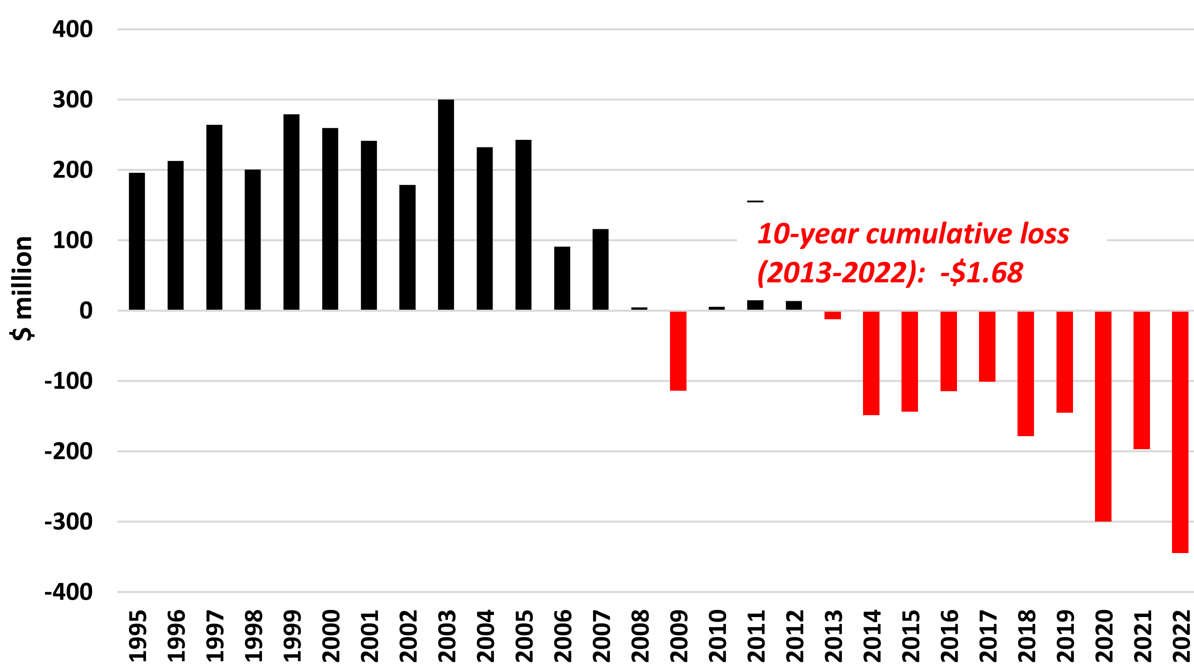
Television

24. These challenges are particularly acute for private conventional television, which according to data from Statistics Canada, had negative PBIT in 2022 of $344 million.

25. As demonstrated in the following chart, research prepared by Communications Management Inc. (attached as Appendix 1) shows that private conventional television has had a **10-year cumulative loss of $1.68 billion**. And, almost three-quarters of private conventional television stations had negative PBIT in 2022.

26. These television stations cannot sustain additional regulatory burden in the form of new or increased broadcasting fees nor the administrative burden of completing and filing fee returns, in some cases, for the first time.

Profit before interest and taxes (PBIT), private conventional television, Canada, 1995-2022



SOURCE: Statistics Canada; Communications Management Inc.

Radio

27. Similar concerns apply with respect to the private radio sector, where revenues have also declined – from a high of $1.63 billion in 2013 to $1.12 billion in 2022, and PBIT has declined from 17.1% in 2019 (the last full year before the pandemic) to 5.4% in 2022.

28. In fact, research undertaken by Communications Management Inc. (see Appendix 2) identifies **167 private radio stations as “at risk”, given profitability levels lower than negative 20%,** as set out in the following table.

29. This isn't just an academic statement – just a few months ago, six radio stations were shuttered and others are being forced to make serious cutbacks.

Private radio by total operating revenue, PBIT, and by groups of stations within selected ranges of positive and negative PBIT, Canada, 2022:

	Number of stations	Total operating revenue ($'000)	Profit before interest and taxes (PBIT) ($'000)	PBIT as % of total operating revenue
Total private radio stations	**749**	**1,116,880**	**60,602**	**5.4%**
Private FM stations	628	924,101	81,309	8.8%
Private AM stations	121	192,778	-20,707	-10.7%
Stations grouped by PBIT as % of total operating revenue:				
+20% or greater	194	352,977	114,686	32.5%
10% up to 20%	134	248,707	36,675	14.7%
0% up to 10%	103	143,406	7,320	5.1%
-10% up to 0%	94	152,312	-5,870	-3.9%
-20% up to -10%	57	64,602	-9,271	-14.4%
['AT RISK'] -20% or worse	167	154,876	-82,939	-53.6%
Total stations with negative PBIT	***318***			

SOURCE: Statistics Canada

30. As set out in the following table, the vast majority (81 per cent) of private radio stations had total operating revenue lower than the current exemption level of $2 million in 2022. And it also appears likely that most of the "at risk" stations are found within that revenue category. These stations do not currently pay broadcasting fees, but under the group approach, many will be required to do so, imposing an additional burden on those that can least afford it.

Private radio total operating revenue and PBIT, by groups of stations with total revenue above or below $2 million, Canada, 2022:

	Number of stations	Total operating revenue ($'000)	Profit before interest and taxes (PBIT) ($'000)	PBIT as % of total operating revenue
Total private radio stations	**749**	**1,116,880**	**60,602**	**5.4%**
Stations with revenue up to and including $2 million	607	452,659	-361	-0.1%
Stations with revenue above $2 million	142	664,221	60,963	9.2%

SOURCE: Statistics Canada.

31. While there are a number of different ownership arrangements for those radio stations, removing the current $2 million exemption for a substantial number of smaller stations could well lead to additional pressure on viability and/or other unintended effects.

Conclusion

32. The data presented in this submission are not simply abstract statistics – these are the radio and television services on which Canadians rely for local news and community information, for coverage of Canadian sports, for discovering Canadian programming and music, for accessing programming in their language of comfort, and for critical alerts in times of emergency.

33. The addition of a new obligation to pay fees (and file fee returns) could have a very serious impact on stations with lower revenues and would represent an additional administrative burden contrary to Section 5(2)(g) of the *Broadcasting Act.*

34. The CRTC must tread carefully when considering new approaches that may have unintended consequences for smaller radio and television stations whose revenues are already low and decreasing. Introducing a new regulatory burden at this time of considerable disruption and massive competition for advertising and audiences could be the "last straw" for many companies already struggling to maintain service to their communities. The risk is stations shutting down or curtailing truly local programming and reducing live talent.

35. The CRTC can help to avoid this harsh reality by maintaining the current undertaking-based assessment of fees, or at least maintaining the current exemption levels within its proposed group-based approach.

36. For similar reasons, should the Commission decide to pursue the group-based assessment, the CAB recommends that it apply to groups of like undertakings, (i.e., groups of radio stations, and groups of TV stations, and so on), rather than combining the separate revenue streams of radio, television and online services together.

37. All of which is respectfully submitted.

Yours sincerely,

Kevin Desjardins
President

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