CRTC Call for Comments on the Commercial radio policy framework review

Appel aux observations du CRTC – Examen du cadre réglementaire relatif à la radio commerciale

Broadcasting Notice of Consultation CRTC 2020-374

Avis de consultation de radiodiffusion CRTC 2020-374

Intervention of the
Canadian Association of Broadcasters

Intervention de l'Association canadienne des radiodiffuseurs

March 29, 2021/29 mars 2021

Executive Summary

i. For more than a century, private commercial radio has been an integral part of communities, large and small, from coast to coast to coast. Week in and week out, private radio enlightens, entertains and informs millions of Canadians. It is a major contributor to Canadian culture, a significant producer of Canadian content and is of vital importance to listeners who rely on radio for details about what is happening where they live on a daily basis.

ii. Radio's value is rooted in the fact that it is local, audio-based and ubiquitous. These key characteristics manifest themselves in the numerous ways in which radio makes a difference to Canadians, including: connecting communities; providing a lifeline during times of crisis; helping drive local economies; and offering a window for local music development and promotion of Canadian talent.

The Changing Business Landscape

iii. While a relatively low-tech medium in a high-tech world, private radio's appeal and relevance continues to endure. However, the environment in which it operates has changed dramatically since the Commission's last comprehensive review of its private radio policy framework more than fourteen years ago.

iv. Radio once benefitted from operating in a 'closed' system where market entry could be managed and controlled. Like other Canadian media, this system is now open and Canadian radio faces unprecedented competition from foreign digital services across multiple 'markets'.

v. Radio does not merely compete in the 'audio market', as typically tracked by the Commission. It competes in the 'news and information market'. It competes in the 'music market' with services like Spotify and Apple Music, leading online music streaming services. It competes in the 'media advertising and marketing market', including with local digital advertising on an array of platforms. And it competes for time and attention with a whole host of electronic, screen or smart-phone activities from TikTok videos to Candy Crush.

vi. While Canadian private radio operators have responded in many ways to remain competitive and relevant to Canadians in the face of digital, including developing a strong presence on online and mobile platforms and launching next generation apps such as Radioplayer and iHeartRadio Canada, the reality is that unregulated foreign-owned digital platforms are now having a major impact on commercial radio – from an audience and, even more, revenue perspective. And the impact was evident long before the onset of the COVID-19 pandemic.

vii. The growth of digital competition is connected to four interrelated trends:

- The growth in smartphone adoption, the commensurate increase in larger data plans, and the plethora of social media, music and other apps;
- The ubiquity of 'smart' devices (smart phone, smart speaker, computer) generally, replacing the radio receiver (kitchen top, stereo, in-car) as the principal device for audio/music;

- Reduced drive time listening, impelled by integration of competing audio services (music streaming, satellite radio, etc.), and, through the pandemic, the work at home phenomenon; and
- Social media as an on-demand source of local/community news and information.

viii. Prior to the pandemic, per capita hours tuned to radio declined from 17.6 in 2010 to 13.9 by Fall 2019, or 21%. Over essentially the same period, smartphone ownership rose from 27% in 2010 to 88% by 2020, media streaming became a majority behaviour (from 34% to 68%) and larger data plans became the norm (50% reported having 5 GBs or more in 2020) helping to drive digital competition.

ix. From a financial perspective, private radio's situation is even more troubling. In the first six months of the 2020 broadcast year, revenues declined an unprecedented 6.8% (from the same period in 2019). By the time COVID-19 hit in March, 2020, private radio had already experienced six-and-a-half successive years of systemic (not cyclical) revenue declines, with annualized revenues ending $270 million or 16.5% lower than they were in 2013. Moreover, despite an aggregate PBIT margin of 17% in 2019, over 40% of commercial radio stations entered the pandemic unprofitable.

x. Historically, radio could have reasonably been seen to represent a unique advertising market, today private radio effectively competes in two broader overlapping economic markets – the Canadian audio and advertising markets. As at 2019, private radio represented 54% of the broader audio market and only 10% of the media advertising market, down from 14% in 2009. These declines are breaking down the advertising-supported local programming model, particularly, like other media, for news.

xi. A key indicator of fundamental shifts in radio advertising is observable in retail trade. Because of the local nature of the medium, radio advertising has historically been linked to retail. These linkages remained within relatively narrow ranges from 1979-1992 (about $4.00 per $1,000), and from 1993-2012 (about $3.50 per $1,000). However, the linkage fell sharply after 2012, from $3.31 per $1,000 in 2013 to $2.34 per $1,000 in 2019. Such significant change is an indicator of both the changing structure of the retail market and the increase in the number of competitors for local advertising, due to online digital alternatives (and the retailers themselves moving online).

xii. COVID-19 has been devastating for the industry and has also accelerated its challenges. Local retailers cancelled bookings, many finding themselves unable to continue with or pay for current campaigns. Average monthly declines (from the same month in 2019) were 65.5% in April and 67.3% in May, with some stations experiencing monthly declines as high as 80%. Despite occupying less than half of the 2020 broadcast year, COVID-19 left private radio revenues $375 million or 26% lower in 2020 than 2019, and 21% lower than otherwise would have been expected.

xiii. The post COVID-19 financial picture for private radio is highly concerning. This is not just due to the digital revolution that has already taken hold or accumulated losses during the pandemic, but also the fact that habits formed during the pandemic are unlikely to go away when COVID-19 is no longer an issue. This includes working from home and spending less time in cars, but also advertiser and audience use of other media like streaming audio or video and social media. All of these changes in behaviour, combined with broader shifts in advertising markets, have a negative impact on the viability of private radio. And while radio broadcasters are counting on a "bounce back" as the pandemic wanes, private radio's revenues will be considerably down from the lows reached pre-pandemic, and are expected to continue to decline.

Keeping Radio Relevant to Canadians Through a Fair and Equitable Regulatory Framework

xiv. Radio is not as resilient as once thought and, even if it were, an open system means it is no longer possible to control entry or impose regulations without consequence. Excessive regulatory obligations, be they content restrictions or ownership limitations, that reduce radio's competitiveness or increase its cost structure simply drive audiences and advertisers to digital platforms, further exacerbating the problem.

xv. In the last two years, both the CRTC and Government have recognized the need to move towards a more fair and equitable regulatory framework between Canadian broadcasters and online platforms. The Commission's June 2018 *Harnessing Change* report sets out a road map, but called for legislative change as a precursor to regulating digital platforms. Bill C-10 answers that call. Regardless of legislative reform, however, this proceeding must take steps towards a more equitable regulatory framework between radio and online platforms.

xvi. The objective for this proceeding should be clear – it is about setting the conditions for a sustainable Canadian commercial radio sector in a vastly different environment, one in which private radio can survive and thrive in ways that also meet core public policy objectives.

xvii. Much of past regulation of private radio has focused on supporting the Canadian music industry and 50 years of Canadian content quotas have undeniably helped make Canadian music an international success story. Going forward, however, Canadian music's path is more digital, driven by streaming and the communities that social media helps create. Today's Canadian content and French-language vocal music (FVM) levels are out of sync with consumer demand. They are not only higher than natural market levels, they vastly exceed them. In the open system of today, such levels are not only inequitable, but they make radio less viable and do not increase the domestic market share of Canadian artists. Put simply, they ultimately help no one.

xviii. Maintaining private radio's viability, including its role as a local news and information medium, must now shift to be the number one priority. Prescriptive regulation – such as requiring scheduled newscasts on a hits station with a young demographic, or increasing news on any music station – cannot achieve this. Helping radio preserve audiences and revenues through more reasonable Canadian content and FVM requirements while cutting non-programming costs through consolidation is the only effective approach.

xix. The path forward should not be more regulation of private radio but less. To this end, the CAB submits that the Commission should implement a framework that relies more on market forces to meet objectives like diversity and local programming, including:

- *A more targeted approach to the support of Canadian music and French-vocal music, that better reflects competitive realities, and supports Canadian artists, including emerging artists, first and foremost.* This includes ensuring Canadian music exhibition and French-language vocal music requirements are more flexible, realistic and effective. It also involves updating MAPL and starting to incent, instead of mandate, airplay for certain groups, such as emerging Canadian artists.
- *The relaxation of rules designed to ensure content and ownership diversity in the radio segment.* Canadian private radio companies compete with global companies orders of magnitude larger. There is no lack of content diversity generally, but a lack of Canadian content on competing digital platforms. The CAB recommends that the Commission adopt a new Common Ownership Policy that would permit greater station ownership at the local market level, while still ensuring radio remains the most diversely owned and operated local medium in Canada. This would help radio operators to recover from severe revenue declines, and navigate future anticipated declines, while ensuring programming diversity and enhancing their ability to offer locally-relevant news and information. For similar reasons, the CAB is also recommending the Commission change its policies on local management agreements (LMAs) and local sales agreements (LSAs).
- *A move towards a more fair and equitable regulatory framework in terms of expenditure obligations and compliance and monitoring.* This includes (a) no new or increased expenditure obligations; (b) modest reductions in tangible benefits payable; and, (c) introducing greater flexibility on CCD contributions, monitoring and compliance.

xx. At the end of this Executive Summary, the CAB has included a table detailing all of its recommendations.

List of Recommendations

Policy	Recommendation
Exhibition Requirements for Popular Canadian Music	Reduce the exhibition requirement from 35% to 25%.
French-language vocal music (FVM)	Make FVM requirements more flexible, realistic, attainable and effective.
MAPL	Adjust the A (Artist) criteria in MAPL to count for 2 points. Update the P (performance) criteria in MAPL to include production by a Canadian.
Emerging Artists	Create an emerging artist credit so that every spin of an emerging artist would count as 1.5 spins against popular music and French-language vocal music requirements.
Specialty Formats	Any station licensed to operate in a specialty format should continue to be required to seek CRTC approval to switch out of that specialty format.
Oldies Formats	Update the 5% relief on exhibition requirements for oldies formats by setting the benchmark year to 2001 for English-language licensees and 2010 for French-language licensees.
Category 3 Music Requirements for Category 2 Music Stations	Eliminate all Category 3 music requirements for mainstream stations.
Broadcast Window	Revise the current measurement window to 5 a.m.-7 p. m. Monday to Friday and 5 a.m.-1 a.m.all week.
Common Ownership Policy (COP)	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. 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. 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.

AM/FM Simulcast	Permit simulcast of AM stations on FM in order to assist in transitioning AMs to FMs
LMAs/LSAs	Eliminate pre-approval requirements for bone fide LSAs. Eliminate pre-approval for LMAs to same levels as CAB's COP proposal.
Canadian Content Development (CCD)	Impose no new expenditure requirements. Maintain basic CCD contributions at current levels. Maintain flexibility to direct discretionary CCD contributions to local initiatives. Establish clearer criteria on eligibility, and a staff pre-clearance mechanism.
Tangible Benefits	Reduce tangible benefits payable on radio transactions to 3% of the value of the transaction.
Compliance, Reporting and Exemptions from Licensing	Eliminate unnecessary legacy reporting requirements and overall regulatory burden. Ultimately move from logging and reporting to spot audits. Introduce greater flexibility on CCD compliance.

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I. Introduction

1. The Canadian Association of Broadcasters (CAB) is pleased to submit this intervention in response to Broadcasting Notice of Consultation CRTC 2020-374, *Call for comments – Commercial radio policy framework review* (the Notice). The CAB represents a significant majority of private radio stations in Canada – more than 500 AM and FM radio stations owned by both small and large operators in major, medium and smaller markets, offering French, English, indigeneous and ethnic services.

2. Our intervention includes this document, responses to the Commission's questions, aggregate responses to a CAB members' survey and five expert reports on audience, advertising, economic, and technology trends affecting private radio, its provision of local news and support for Canadian music.

Private Radio – A Canadian Success Story for Over a Century

3. For over a hundred years, private commercial radio has been an integral part of communities large and small, from coast to coast to coast. Week in and week out, private radio enlightens, entertains and informs millions of Canadians. It is a major contributor to Canadian culture (through our support of Canadian music and our reflective predominantly local programming), a significant producer of Canadian content (virtually all radio programming is Canadian) and is of vital importance to the Canadians who rely on it (from day-to-day traffic and weather to being notified about local emergencies).

4. Radio's value proposition to Canadians stems from the fact that it is local, audio-based and ubiquitous. These key characteristics manifest themselves in the numerous ways in which radio makes a difference in Canadians' lives, including:

   - The pivotal role of radio in times of crisis, as demonstrated through floods, hurricanes, fires and hazardous spills, and now, through COVID-19. This goes well beyond radio's rebroadcast of centralized automated emergency alerts, our trusted personalities and other on-the-ground radio personnel make an incalculable difference.
   - When communities suffer a loss of electrical power, radio is often the only fully reliable and fully available local method of mass communication. It is free, it is available on multiple types of devices, at home, work and in the car, over the air, in addition to through wireless, online and television distribution.
   - Radio plays a key role in the provision of local news, information, and community connection for non-profits. Today, 58% of Canadians identify radio as a top source of local news, and 80% of Canadians have historically indicated that they receive at least some news from radio.[1]
   - Radio is a key method for local businesses to market their goods and services. These advertisers form part of the backbone of local economies.

[1] *Canadian Consumers & Radio: The lessons from COVID-19* (Consumer Study), February, 2021, Solutions Research Group (SRG) at slide 15 (attached at Appendix C) and *nlogic Thinktv* OmniVu Survey, December 2015, National A 18+. These findings are consistent with the CRTC's Ipsos Research, *Attitudes and opinions towards commercial radio in Canada*, which found that 57% of Canadians believe it to be important to have access to local news content on commercial AM/FM radio.

- Radio provides a window for local music development and promotion of Canadian talent.

5. Private radio in Canada is an increasingly vital source of news and information to over 300 communities across the country. In times of emergency or crisis, private radio is unparalleled in its ability to reach Canadians through multiple distribution media. It is the #2 source for local news (behind TV and ahead of print) and the #5 ranked medium for daily use.[2] Together with affiliated online national news brands or local portals, radio is poised to become the dominant, and in many communities, only truly local Canadian medium.

6. While a relatively low-tech medium in a high-tech world, private radio's appeal and relevance continues to endure.

The Changing Landscape

7. This proceeding represents the first comprehensive review of the private radio policy framework in nearly fifteen years. Since that time, the environment in which private radio operates has changed dramatically:

   - In 2006, Facebook was not yet mainstream, digital music services such as iTunes, YouTube, Spotify, Clubhouse and Apple Music were either nascent or had not yet launched, the iPhone, Instagram, TikTok, Twitter, Twitch and Waze didn't exist and Internet advertising only represented $901 million annually, or less than 9% of total media advertising;[3]
   - By 2019, private radio accounted for only 54% of the Canadian market for audio, smartphones were ubiquitous, Internet advertising had grown to more than $8 billion annually, with over three quarters going to foreign platforms, and the Internet accounting for more than 50% of all media advertising in Canada[4].

8. In its 2006 Radio Policy, the CRTC anticipated that private radio would face technological and other challenges:

   > … while the radio industry is currently healthy, it is entering a period of uncertainty as it comes to grips with the challenges and opportunities that will be provided by new technologies for the distribution of audio programming. Many radio broadcasters are themselves exploring ways of using new distribution platforms to complement the service provided by their conventional radio stations.[5]

9. Unfortunately, as outlined in further detail throughout this submission, the challenges facing radio and other Canadian local media, and their ultimate consequences have been consistently underestimated.

10. While the Commission spoke as recently as the June 2018 *Harnessing Change* report about the "resilience" of private radio, less than two years later, the cracks in the foundation of the radio

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[2] Ibid.
[3] Thinktv.
[4] Thinktv; IAB Canada; Communications Management Inc.
[5] 2006 Commercial Radio Policy "2006 Policy" (Broadcasting Public Notice CRTC 2006-158), para 31.

industry were on full display – even before broadcasters began to feel the impact of the COVID-19 pandemic. Between 2013 and February 2020, the private radio industry saw annualized revenues decline by approximately $270 million or 16.5%. Moreover, despite an aggregate PBIT margin of 17% in 2019, over 40% of commercial radio stations went into the pandemic unprofitable.[6]

11. The immediate impact of COVID-19 was devastating in both speed and magnitude. Local retailers cancelled bookings, many finding themselves unable to continue with or pay for current campaigns. Average monthly declines (from the same month in 2018) were 65.5% in April and 67.3% in May, with some stations experiencing monthly declines as high as 80%.[7] Despite occupying less than half of the 2020 broadcast year, COVID-19 left private radio revenues $375 million or 26% lower in 2020 than 2019, and 21% lower than otherwise would have been expected.[8]

12. Notwithstanding these challenges, private radio stations kept operating. They pivoted, they dug into reserves, they kept their employees safe, they accommodated the needs of local businesses, and most of all they kept Canadians informed and comforted. However, the situation is not sustainable.

13. Current projections are that in the 2021 broadcast year, private radio advertising revenues will likely be worse than in 2020. In fact, the CAB does not expect the immediate effects of the pandemic to have subsided until 2023. From 2020 to 2023, over $800 million in private radio revenues will have evaporated, never to return.[9]

14. Perhaps worse still, all evidence suggests that behavioural trends, exacerbated by COVID-19, will accelerate. This includes advertiser and consumer shifts to digital platforms, and increased work from home, with commensurate loss of drive time radio tuning. There is no going back to the old 'normal'.

15. The pandemic also has shown that while radio's business model is challenged, it remains extremely relevant to millions of Canadians – from delivering essential local news and information in this time of crisis, to providing companionship and comfort in familiar personalities and popular music.

16. The decisions made by the Commission in this proceeding, the public policy priorities chosen and the means used to advance them, will play a critical role in determining private radio's continued sustainability and relevance in an increasingly crowded marketplace. As outlined in detail throughout this submission, the CAB strongly believes that the right regulatory framework – one that continues and expands on the Commission's historic lighter-handed approach – will allow commercial radio to compete more effectively while still providing vital news and information in our communities, airing and promoting more Canadian music than any other

6 CRTC Statistical Summaries and CMI Report with industry TRAM monthly tracking for September, 2019 to February, 2020. While TRAM tracks only select larger Canadian markets, it has proven over the years to track total radio advertising revenues closely (typically no more than a 1% deviation).

7 TRAM monthly tracking.

8 CMI Report.

9 CMI Report. Accumulated difference between pre-COVID-19 and current projections.

medium, and serving as many local communities as possible with diverse choices in English, French, indigenous and ethnic languages.

II. Private Radio – The Evolving Operating Environment

The Growth and Impact of Digital Competition

17. Like other Canadian media, Canadian commercial radio now faces unprecedented competition from foreign digital services across multiple 'markets'. Private radio stations do not merely compete in the 'radio market' or even just the 'audio market'. Private radio stations compete in the 'news and information market'. They compete in the 'music market' with services like Spotify and Apple Music, leading online sources of music streaming. They compete in the 'media advertising and marketing market', including with local digital advertising, on an array of platforms.[10] And they compete, for time and attention with a whole host of electronic, screen or smart-phone activities from TikTok videos to Candy Crush.

18. Canadian private radio, collectively and individually, has responded in many ways to remain competitive and relevant to Canadians in the face of digital. Initiatives include:

- A strong Internet presence on online and mobile platforms, which typically includes online streaming of the radio station;
- New generation radio apps, such as Radioplayer and iHeartRadio[11], which combine convenient aggregation of stations with music purchase and other info;
- A renewed pan-industry marketing emphasis, including the launch of Radio Connects in 2016[12]; and
- Selective major market rollout of HD Radio (pursuant to the CRTC's permissive experimental CRTC regime).

19. However, notwithstanding the industry's efforts, unregulated foreign-owned digital platforms are now having a major impact on commercial radio – from both an audience and revenue perspective.

Increased consumer choice, changing habits and radio tuning

20. The relationship between media consumption and advertising revenue, while obvious, is far from a direct connection. Changes in advertising tend to lag changes in audiences – certainly on the way up, but also often on the way down. Competing media have different characteristics; advertising may be bought and sold differently; targeting, metrics, convenience all contribute. And one cannot dismiss intangible factors, preferences, perceptions and biases.[13]

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10 *Marketing Radio in the Digital Age and the impact of COVID-19*, Radio Connects.
11 iHeartRadio was launched in Canada by Bell Media in October, 2016. A competing platform, Radioplayer, was launched in Canada by other Canadian radio operators in 2017. See http://www.iheartradio.ca/home, http://radioplayer.ca/
12 See, generally, *Marketing Radio in the Digital Age and the impact of COVID-19*, Radio Connects.
13 Ibid.

21. For some local advertisers, the personal touch of radio sales brings real added value. However, for other advertisers, radio is no longer a preferred medium.

22. The challenges go beyond declines in ratings. Issues of perception, increasing competition from digital advertising at the local level, and the integration of digital sales, marketing and advertising at the retail level are all significant factors.

23. To help explain these challenges, the CAB commissioned the following three reports:

- First, Radio Connects provides insights on how Canadian private radio compares with other media, the basics of radio sales, and the challenges in perception and reality in selling against digital. This report, *Marketing Radio in the Digital Age and the impact of COVID-19* (Radio Connects Report) is attached at Appendix C.
- Second, Solutions Research Group (SRG) conducted original research on Canadians' attitudes towards radio relative to competing digital media in the context of the pandemic. SRG's report, from a poll of 1,000 Canadians taken in December 2020, *Canadian Consumers & Radio: The lessons from COVID-19* (Consumer Study) is attached at Appendix D.
- Third, SRG examined radio tuning and reach trends in the context of digital technology and media consumption. The resulting report, *Radio Tuning Forecasts: Beyond a Decade of Digital Evolution and the Pandemic* (Tuning Report) is attached at Appendix E.

24. Public opinion research commissioned by the CRTC, and placed on the public record of this proceeding on February 23, 2021 (CRTC Ipsos Report)[14] echoes many of the findings of the CAB's commissioned research.

A. Perceptions of radio

25. The Radio Connects Report reveals, among other things, that private radio in Canada punches above its weight compared to other countries. Radio is not underperforming in Canada. To the contrary, it outperforms, making the challenge for radio marketers in ensuring radio receives a reasonable share of advertising campaigns going forward all the more difficult.

26. Studies conducted in 2017 and 2020 by Ipsos Canada examined Canadians' and advertising industry perceptions of advertising and media. In virtually every comparison test, because of their personal relationships and habits, marketing and advertising professionals overestimated how much time the average Canadians engages with digital technologies and platforms compared to traditional media such as AM/FM Radio.[15] For example, while 58% of Canadian

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[14] *Attitudes and opinions towards commercial radio in Canada,* Ipsos Public Affairs, January 2021. (CRTC Ipsos Report) The research includes focus group research with 88 participants conducted March 19 to March 31, 2020 and an online survey of 1735 Canadians 18+ conducted between November 12 and 26, 2020. https://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2021/090-19-e/index.html

[15] This would appear to be particularly true of government. In 2018/2019 federal government radio spending was just under $800,000. It increased to $2.4 million in 2019/2020, largely occurring in March 2020 when the government began to address the COVID-19 pandemic – still only representing little more than 5% of federal government advertising (half of radio's average total revenue share) as compared to 55% on digital and therefore a greater bias against radio and to digital than even private advertisers. *Annual Report on Government of Canada Advertising Activities*, prepared by the Auditor General, and published by Public Services and Procurement Canada (PSPC). https://www.tpsgc-pwgsc.gc.ca/pub-adv/rapports-reports/2019-2020/tdm-toc-eng.html

marketers and advertisers have "smart speakers" in their homes, only 19% of Canadian consumers do.[16] As an executive at a global media agency noted:

> The biggest risk for AM/FM radio is the 26-year-old planner who lives in New York or Chicago and does not commute by car and does not listen to AM/FM radio and thus does not think anyone else listens to AM/FM radio.[17]

B. Consumer Trends

27. Private radio marketers work hard to battle incorrect perceptions. But they cannot change the impacts of digital competitors on the retail and advertising markets. As both SRG Reports attest, these fundamental changes in the media landscape come down to four interrelated trends, most exhibiting themselves over the last decade:

- First, the growth in smartphone adoption, the commensurate increase in larger data plans, and the plethora of social media, music and other apps;
- Second, the ubiquity of 'smart' devices generally (smart phone, smart speaker, computer), replacing the radio receiver (kitchen top, stereo, in-car) as the principal device for audio/music;
- Third, reduced drive time listening, impelled by integration of competing audio services (music streaming, satellite radio etc.), and, through the pandemic, the work from home phenomena; and
- Fourth, social media as an on-demand source of local/community news and information.

28. Declines in radio tuning over the last decade align with increases in smartphone adoption. Prior to the pandemic, per capita weekly hours tuned to radio declined from 17.6 in 2010 to 13.9 by Fall 2019 or 21%. Over essentially the same period, smartphone ownership rose from 27% in 2010 to 88% by 2020.[18]

29. Over the last decade, media streaming became a majority behaviour (from 34% to 68%) and larger data plans became the norm (50% reported having 5 GBs or more in 2020).[19]

30. The growth of online alternatives to radio was tracked by the Commission in its *Harnessing Change* report, updated by the Commission in more recent Monitoring Reports and by Communications Management Inc. (CMI). As demonstrated by the chart below, the overall market for audio services has grown, but radio's hours and share have declined. Whereas radio once had a virtual monopoly in the Canadian audio market, it now competes with a plethora of tailored digital media with less or no advertising.

Average weekly hours of tuning to traditional radio vs. listening to streamed audio services, by Canadians 18+, 2013-2019:

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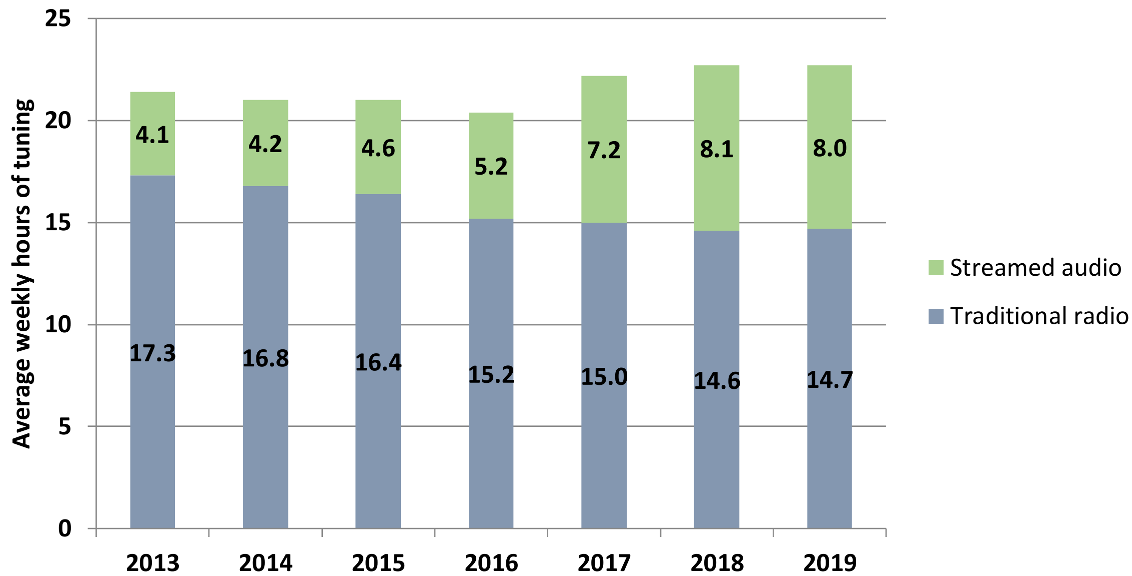
16 Radio Connects Report, p. 14-15. Ad Nation 2020, Ipsos Canada, thinktv.

17 Ibid.

18 *Radio Tuning Forecasts: Beyond a Decade of Digital Evolution and the Pandemic*, Solutions Research Group.

19 Ibid.



Source: CRTC, *Communications Monitoring Report*, 2020.

31. It is clear that radio has now reached a tipping point and the situation is only going to worsen. All indications are that many of the habits formed during the pandemic are not going away.

32. The CRTC Ipsos Opinion Research asked respondents "When responding to the following questions, please consider your typical listening habits before the current situation with COVID-19 began." Based on these instructions:

- Approximately four in ten (39%) report listening to steaming music services on a weekly basis and approximately two in ten report listening to either satellite radio (17%) or podcasts (22%);
- Car radio is by far the most commonly used device to listen to commercial AM/FM radio (80%). Nearly four in ten (38%) listen to commercial AM/FM radio on a traditional radio;
- "Relatively few" listen to commercial radio on desktop computers and smartphones (10%) or a desktop computer, laptop or tablet (12%); and
- Podcasts (52%) and streaming music services (58%) are most frequently listened to on smartphones, followed by a desktop computer, laptop or tablet (45% and 43% respectively).

33. The SRG Tuning Report reveals a number of new digital behaviours brought on by COVID-19, including making Zoom-style video calls (59%), watching live music performances online (32%), and participating online fitness classes (23%). The SRG Consumer Study reveals other pandemic induced changes:

- Three-in-four Canadians believe this pandemic is not a 'one-time event' with passing impact but one that will impact their behaviours and habits on a long-term basis. They project retaining some of the 'home-centered' and online-enabled behaviours of the lockdowns 'long after' the pandemic is over.

- COVID-19 has had a material impact on radio tuning in terms of time spent. Consumers are quick to identify spending less time in their cars as the main reason for this. Less in-car time impacted adults' tuning but also that of their children's who are driving with their parents less.
- Time lost by radio during the pandemic is not being replaced by other 'audio' options but by streaming video, social media, gaming and other options.

34. More people say they are listening 'less' to radio (29%) compared to the percentage of those saying they are listening 'more' (20%).[20] The sharpest listening decline has been among those who are now working from home but used to work outside the home (40% say they are listening less).

C. Tuning and Reach

35. In a Reference Document released by the Commission in the lead up to the *Harnessing Change* report, the Commission projected that private radio audiences would decline 16% from 2017 to 2021, from an average of 14.2 hours to 11.9 hours per week, excluding radio streaming. Moreover, the Commission stated, "If listening to traditional radio continues to decline at the current rate, we could see it drop by over 33% in the next 10 years. This decline is driven by music listening shifting to digital platforms."[21]

36. While still concerning, tuning declines between 2017 and 2019 were less than the Commission's projections in 2018.[22] SRG projects per capita tuning declines to 12.8 hours in Fall 2020,[23] but a bounce back to 13.1 hours in Fall 2021. SRG projects per capita tuning to decline to 12.5 hours by 2024.

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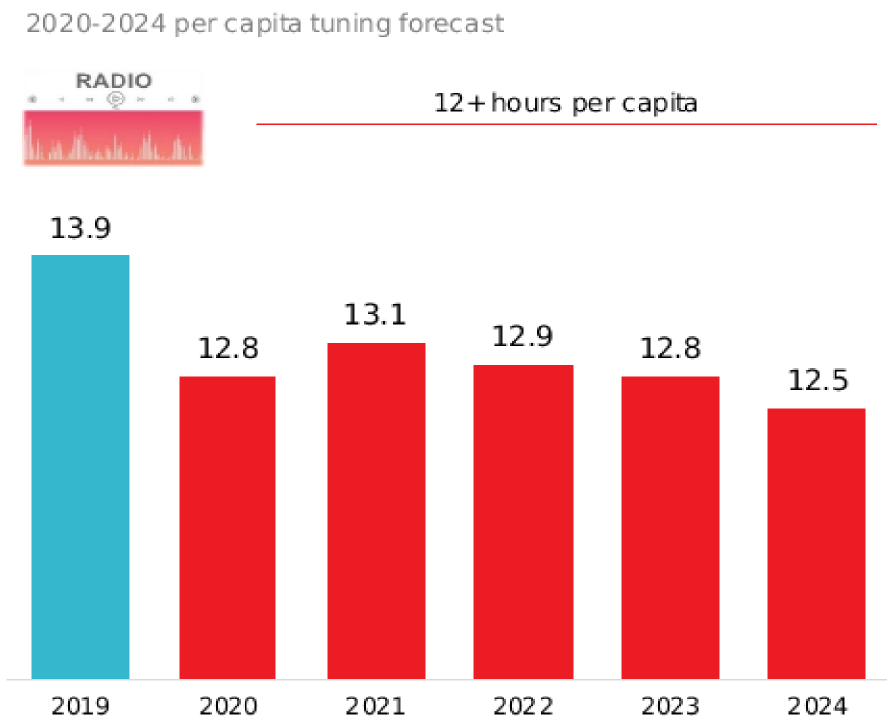
20 On unscripted responses, the 'biggest difference' in radio listening most frequently cited (14% of respondents) is 'drive less so listen less' – the second biggest reason is 'listen more/have more time to listen' (10% of respondents).

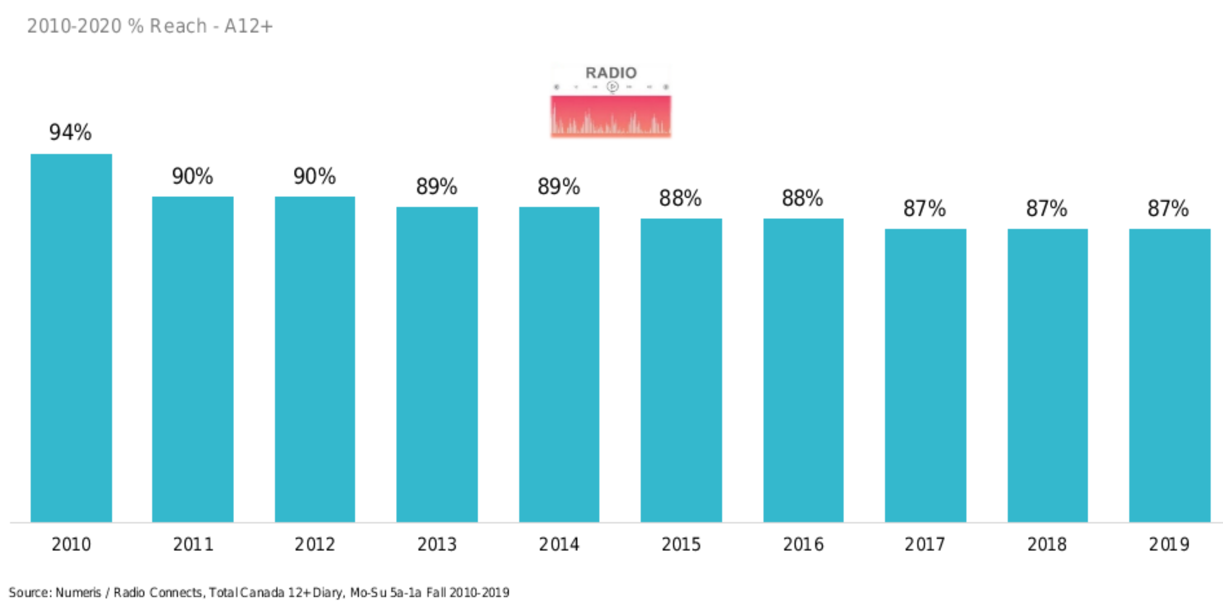
21 *Harnessing Change*, June 2018, https://crtc.gc.ca/eng/television/program/s15r.htm Chart 9. 12+. In releasing the projections, the Commission made it clear that "they are not the Commission's view of the future. They are merely an extrapolation of current trends."

22 13.9 hours by Fall 2019 rather than the CRTC extrapolated 13.1 hours; that is only 0.3 hours lower than 2017 (2%) rather than the projected 1.1 hour (8%) drop. CRTC projected declines going forward (to 10.3 hours for 2024) are also greater than that of SRG.

23 Numeris did not conduct a typical Fall 2020 diary survey given operational challenges posed by COVID-19. SRG's projection was based on modelling from available data, including that 2020 Fall 12+ PPM (Meter) data (Numeris) which showed a decline of 7.5% in average hours per listener. See SRG Tuning Report, p. 5.



37. Moreover, at 87% of Canadians weekly in 2019, radio's reach remained high prior to COVID-19, with little per capita decline over the previous 5 years.[24] COVID-19 caused reductions in reach of as high as 15%.[25] Following COVID-19, broadcasters expect reach levels to return to the low 80% range. Taken together, this data paints the picture of an industry that remains highly relevant to Canadians. However, as discussed below, commercial radio faces unprecedented financial headwinds.



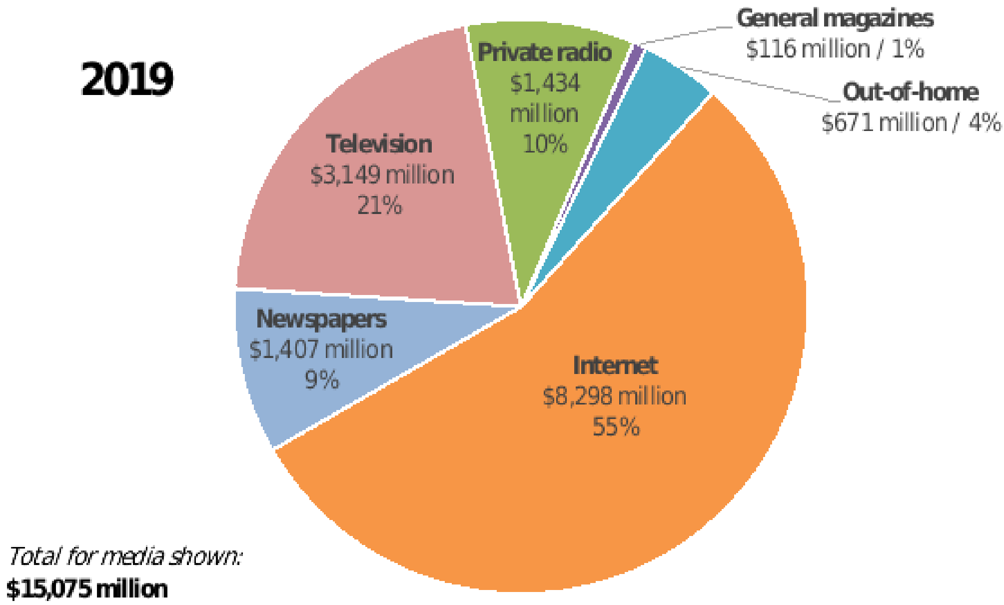
24 SRG Tuning Report, p. 17.
25 SRG Tuning Report, p. 18-19.

Financial Trends – Pre, during and post COVID-19

38. As context for its submissions in this proceeding, the CAB commissioned an economic scan from CMI of Canada's commercial radio industry. The CMI Report, *Listening to the Future: Planning for the first decade of the second century of radio in Canada*, updates and expands on financial data and forecasts, including those resulting from COVID-19, originally published in August 2020.[26] To inform CMI's work, and COVID-19 related impacts more generally, the CAB also conducted a survey of private radio groups in January 2021 (CAB Survey, attached at Appendix B).[27]

39. The CMI Report speaks to both the nature and extent of competition increasingly faced by private radio, and its economic consequences. The report notes that while historically radio could reasonably be seen to be a separate market in and of itself, today private radio effectively competes in two broader overlapping economic markets – the Canadian audio and advertising markets. In 2019, private radio represented 54% of the broader audio market and only 10% of the media advertising market, down from 14% in 2009.[28]

Advertising market shares for selected media, **2019**:



SOURCE: ThinkTV; Statistics Canada; Communications Management Inc.

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26 The Crisis in Canadian Media and the Future of Local Broadcasting, Communications Management Inc. (CMI), August 24, 2020. https://www.cab-acr.ca/english/media/news/20/cmi_report_aug24.pdf

27 This survey was sent to CAB members as well as non-member recipients of the $22.5 million in federal government COVID-19 Emergency Relief Funding, administered by the CAB. Responses represented 80% of stations and a slightly greater proportion of industry revenues.

28 CMI Report. pp. 4-7. One could also define other relevant markets, such as the music and news media markets and the local advertising markets.

40. Specifically, while the Commission's Monitoring Reports cite the largest radio groups' "significant" 64% share of private radio revenues, in fact, they only account for only 35% of the broader audio market, which, as CMI states, is "a much more realistic assessment of their actual competitive position".[29]

41. The CMI Report examines revenue trends in the two decades preceding the last full pre-COVID broadcast year 2019. As the Commission itself has documented, peak radio revenues of $1.6 billion were reached in 2013, and were $170 million lower in 2019 than they were in 2013, and lower than they had been since 2006.[30] Worse still, given that the number of private radio stations grew significantly in the last two decades – from 493 in 1999 to 737 in 2019 – the average revenue per station was approximately the same in 2019 as it was in 1999 – about $1.98 million.[31]

42. These pre-pandemic declines are actually worse than the Commission projected. In 2018, the CRTC projected 2019 commercial radio revenues of $1,503 million. In fact, they were $1,453 million, or 3.3% worse. And while no one could have predicted the pandemic, at $1,059 million in 2020, revenues will be 29% worse than the $1,487 million projected by the Commission in 2018.

43. Retail trade has historically been a particularly important indicator of radio's fortunes, and recent changes in the retail sector are impacting radio. As CMI notes,

> Because of the local nature of the medium, radio advertising has historically been linked to retail trade. The linkage can be expressed as radio advertising revenues per $1,000 of retail trade. As indicated in Figure 10, those linkages stayed within relatively narrow ranges from 1979-1992 (about $4.00 per $1,000), and from 1993-2012 (about $3.50 per $1,000). However, the linkage fell sharply after 2012, from $3.31 per $1,000 in 2013 to $2.34 per $1,000 in 2019.
>
> …
>
> That change helps to explain the revenue decline over the same time period, and is an indicator of a) the changing structure of the retail market; and b) the increase in the number of competitors for local advertising, particularly from online digital alternatives. And the change in the relationship between radio advertising and retail trade might also be signalling serious concerns about future trends in radio advertising.[32]

44. Those "serious concerns" have been substantiated by recent events during the pandemic. As SRG notes, all local retailers are now to some extent online retailers. That disconnect from the physical local community to a virtual community has driven declines in local retail advertising, that will not simply revert back post-pandemic.

45. Ongoing weakness in the retail sector is expected to continually depress private radio revenues. In its report, CMI provides updated revenue projections for the private radio sector, and found radio to be in even worse condition than previously estimated. Notably, in August 2020, CMI

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29 Ibid, p. 4.

30 CRTC Financial Summaries. $160 million lower than they were in 2014. Ibid, p. 14.

31 Ibid, p.15. in current dollars. In 1999 dollars (after inflation), average revenue per station in 2019 would be approximately $1.3 million or approximately 66% of what it was two decades ago.

32 Ibid, p. 16.

projected that, because of the pandemic-related economic downturn, radio advertising revenues would fall from $1,434 million in 2019 to $1,051 million in 2020 – a decline of 26.7 per cent. Based on the subsequently-released industry tracking data, the decline from 2019 to 2020 appears to have been 27.3 per cent.[33] Moreover, given lockdowns associated with COVID-19 subsequent waves and delays in vaccination, 2021 revenues are now expected to be further down to $1.02 billion, or almost $300 million less than that projected a year ago.

46. In sum, the COVID-19 report card for private radio can best be described as a narrowly avoided disaster. The fact that radio stations have not closed, or even cut back significantly on local news and information, can be attributed to three factors:

- Retained earnings and other available financial resources. Sixty percent of private radio stations and groups entered the pandemic profitable, meaning that they had some capacity to ride out immediate sudden downturns in advertising;
- The Canada Emergency Wage Subsidy (CEWS). In the early months of the pandemic when *average* private radio revenues were down more than 65%, CEWS was a life saver. Covering up to 75% of wages, and close to 50% of private radio revenue declines, CEWS allowed private broadcasters to keep staff and stay on air. Unfortunately, while still of significant assistance, CEWS support is now down to a third of previous levels, and is currently slated to end in June 2021; and
- Regulatory flexibility. The Commission's relatively lighter-handed approach to radio regulation allowed private radio to respond quickly, by cost cutting as necessary. The lack of major fixed regulatory costs, and the Commission's understanding that broadcasters might require good faith flexibility in meeting regulatory requirements through the pandemic, was pivotal. The hope that this review will result in increased regulatory and operational flexibility has also helped keep operators holding on.

47. While CMI projects that private radio revenues will slowly rebound through to 2024, they are never expected to reach anticipated pre-COVID-19 levels of decline. Private radio revenues in 2029 are projected at $1,025 million – down 28.5% from the pre-COVID 2019 level of $1,434 million.[34]

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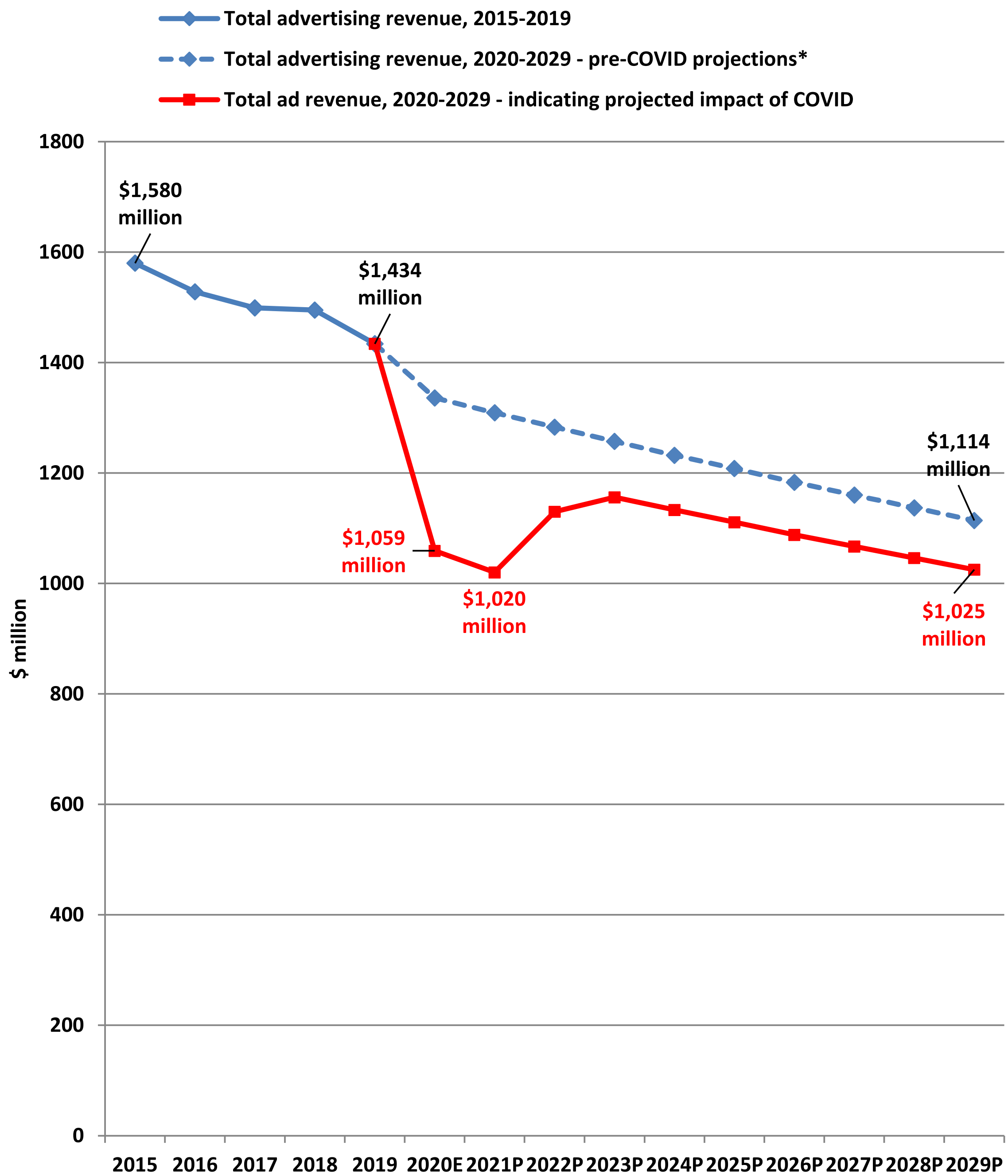
33 Ibid, p. 20.

34 Figure 13, CMI Report reproduced below. CMI's projections assume radio advertising's linkage to retail trade continues to decline further through to 2029.

Actual advertising revenue, private radio, Canada, 2015-2019, and projected advertising revenue to 2029, indicating pre-pandemic and post-pandemic projections:



* The "pre-COVID projections" indicate the projections derived from data that were current to the end of February 2020.

SOURCE: Statistics Canada; Communications Management Inc.

48. While the CAB respects that the Commission has to be careful in its assessment of short-term economic impacts, there can be little doubt that commercial radio operators will exit COVID-19 in considerably worse financial shape than they entered it. It is unrealistic to expect that any rebound will bring radio revenues back to levels they would have otherwise had.

Implications for the future

49. All signs point to radio exiting the pandemic with its relevance to Canadians high, but its business model increasingly challenged. Its tuning will be higher than the Commission projected in 2018, but its financial situation considerably worse.

50. Radio's ability to sustain its reach speaks to both its enduring relevance and the opportunities for the future. Canadians still want radio, but they will not continue to want it (or as much of it) unless radio operators can offer as good a product as their digital competitors.

A. Remaining local and relevant

51. Radio's continuing relevance and value to Canadians offers helpful guidance for industry and policy makers. First, radio has to continue to be able to provide a competitive product, and requires flexibility and financial resources to do so. Second, radio's competitive edge will remain its local content. How each individual station achieves this will depend on its format, the audience, market and day part it targets as well as financial resources and strategic outlook. There is no one-size-fits-all solution.

1) Local programming

52. The Commission's local programming policy states:

> Under the local programming policy, licensees of commercial FM stations in markets served by more than one private commercial radio station are required to devote at least one-third of the broadcast week to local programming. Commercial FM licensees broadcasting less than one-third local programming must, by condition of licence, refrain from soliciting or accepting local advertising.[35]

53. This sensible, flexible policy does not require local programming, but creates a strong financial incentive to provide it. The policy has both succeeded and stood the test of time. For almost thirty years, this policy has aligned private broadcaster commercial interests with public policy objectives. Even through COVID-19, private radio stations have proven that they will provide as much local programming as they can, appropriate to their individual circumstances, programming strategies and financial resources. This policy has successfully maximized local programming – including local news and information – for the system as a whole.

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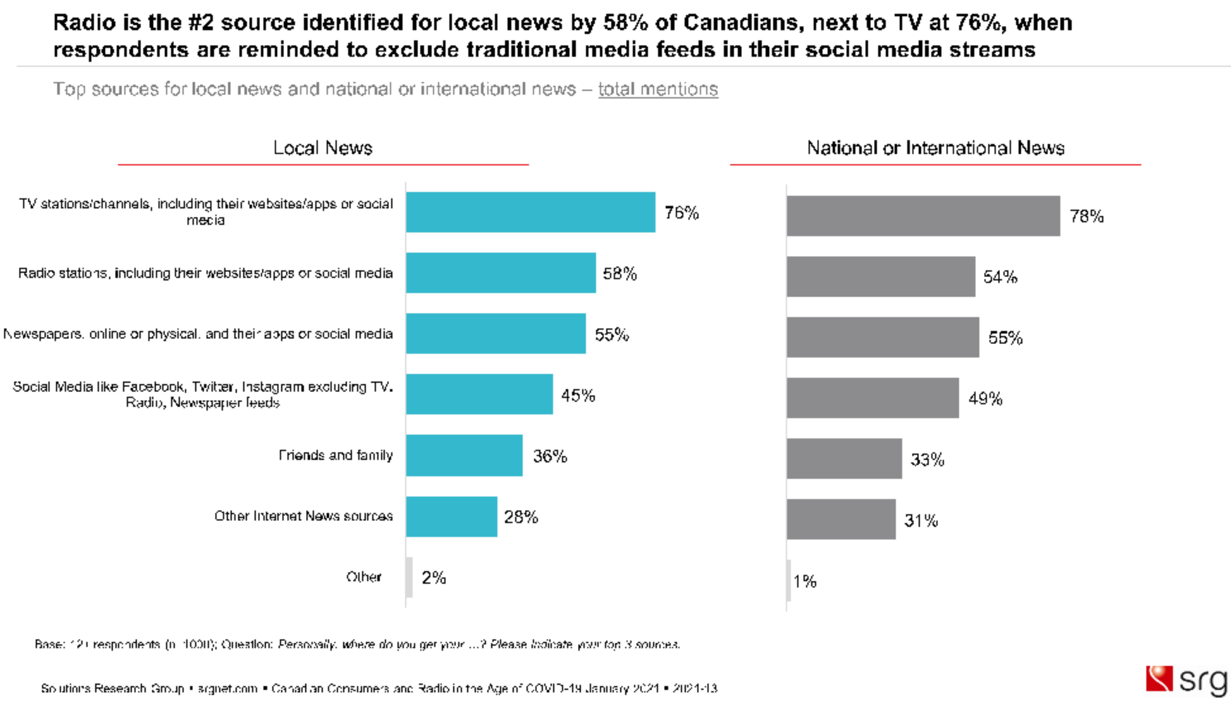
[35] *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38. See also paras 182 through 218 of the 2006 Radio Policy. No changes were made in 2013. Broadcasting Public Notice 2006-158 defines local programming for commercial radio as "programming that originates with the station or is produced separately and exclusively for the station." This appropriate definition allows local programming to also be produced remotely as long as it is for station concerned. https://crtc.gc.ca/eng/archive/2006/pb2006-158.htm



54. The CAB survey results attest to the success of this incentive-based regulatory approach:

- Radio stations exercise highly differentiated local programming strategies, appropriate to their audience demographics, formats, and markets and epitomized by their approach to local news:[36]
    - Private radio groups report that 75% of news is comprised of 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%.
    - The number of scheduled newscasts a day (for music-based stations) also covers a full range – a group average of 12, from a high of 24 to a low of 3.
    - Similarly, on average, 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%.
- Despite revenue declining by over a quarter from 2019, respondents reported a 6.9% and anticipated 5.4% increase in news hours 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.
- Instead, broadcasters responded to the pandemic by cutting lesser priority expenses – which regrettably include other spoken word and programming expenses. Compared to 2019 levels, programming and production was down 10.9% in 2020, and is projected to be down 12% in

[36] The CAB Survey asked for information on news and spoken word programming. As a matter of practice, almost all radio news is local programming, produced exclusively at or for a local station. Some spoken word may be syndicated, but the majority would also be local.

2021. Spoken word was down 8.5% from 2019 levels in 2020 and is projected to be down 12% (from 2019) in 2021.

2) Local news and information

55. At present, the Commission asks radio broadcasters to report on hours devoted to news programming and (for larger groups) expenditures on news personnel,[37] but it does not typically impose news-related conditions of licence on radio stations. The Commission's current definition of radio news is as follows:

> ***Content Subcategory 11: News***
>
> The recounting and reporting of local, regional, national and international events of the day or recent days, with particular emphasis on the topicality of the events or situations selected, or on the constant updating of information, or both as well as background material about current events when included in newscasts but excluding weather, traffic and sports and entertainment reports.[38]

56. Radio spoken word is defined as anything other than news, music and advertising.[39]

57. In reviewing this definition, it is clear that it understates radio's news and information contribution:

- First, by excluding from news all information on "weather, traffic and sports and entertainment"; and
- Second, implicitly by biasing in favour of formal newscasts and downplaying the role of radio personalities in combining what might be dismissed as 'banter' with relevant and appreciated snippets of news and information.

58. In this context, it is worth noting that the definition of television news (Category 1) specifically includes "newscasts, newsbreaks, and headlines" and "may include weather reports, sportscasts, community news, and other related features or segments contained within 'News Programs.'" Moreover, TV broadcaster regulation of 'news' generally includes Category 2a) Analysis and Interpretation, i.e. "Programs on various topics that include analysis or discussion, for example, talk or panel shows, consumer affairs or reviews, newsmagazines and documentaries that do not fall under Category 2b)".[40] This category excludes programs presenting information primarily for "entertainment value."

59. Radio's 'informal' news and information role is no less important. It speaks to the fundamental differences between the radio medium and other media, and Canadians varied and different expectations of what their radio stations should offer. Some listeners only want to hear music

[37] See, for example, Annual Aggregate Return disclosed for larger radio groups at https://crtc.gc.ca/eng/industr/ann.htm

[38] https://crtc.gc.ca/eng/archive/2010/2010-819.htm

[39] *Content Subcategory 12: Spoken word-other:* All programming with the exception of material falling under subcategory 11-News and categories 2, 3, 4 and 5 (Popular Music, Special Interest Music, Musical Production and Advertising).

[40] This is also how the Federal Government approached support for news in the CAB administered $22.5 million COVID-19 Emergency Relief Fund for independent broadcasters.

for long periods of time with minimal, to no, interruptions. Others want news or spoken word content. Another group may not want "the news", *per se*, but want to be in the know. Being in the know may be as much about Drake's latest collaboration, the newest song from Les Cowboys Fringants, Jamal Murray's latest buzzer-beater, or who is performing at your local music venue, as it is about the latest COVID-19 numbers.

60. Moreover, how Canadians consume news on radio increasingly mirrors how they do it on digital media. They want information in bite-sized bits, not long dissertations. They get it from a variety of sources – short and long form, text, video and audio. They want it when they want it, and don't necessarily want to wait till top of hour. And what they want from radio is information that is predominantly local.

61. The Commission's definition of radio news captures the notion of "topicality"; what it does not capture is that topicality needs to be delivered in ways appropriate to the audience. Topicality provided in a conversational, informal manner by radio personalities may not meet any easily definable or measurable regulatory construct, but that does not mean it is not serving the news and information needs of Canadians – to the extent that they want those needs met by radio.

3) Maintaining the flexibility to compete

62. Private radio can never be a hyper niche medium; it cannot appeal to all possible tastes, it cannot support every type of Canadian music, report on every newsworthy event, or provide in-depth coverage.[41] What radio stations do – and must be positioned to continue to do – is offer competitive audio programming including popular music and the right amount and type of news and information content for a given daypart, market and audience.

63. Each and every radio operator in Canada exercises different resources, synergies and strategies in their curation of the different elements of its value proposition. Radio will only be able to compete if it has the flexibility to make decisions as to the right mix of music and spoken word, news, information and personality, to attract the largest possible audience in the demographic, market and niche served.

64. COVID-19 has also proven that talk radio (including news and sports) has the most challenging business model of all. Spoken word programming is expensive – the programming budgets of all-talk stations often exceeding those of music-based stations by multiples. Because of this, talk stations have only ever been viable in larger Canadian markets,[42] where sufficient audience can be monetized, and where they can be part of a local ownership group that share overhead.[43] While French-language talk stations are mostly on the FM dial, English-language talk stations

41 That is not to say that radio news does not probe the issues of the day, or that talk shows do not include expanded discussion and debate. Radio stations do, however, routinely refer listeners to other sources for news and information 'details' – sometimes reliable third-party sources (municipal websites, sports venues, cultural spaces etc.) but often their websites, portals and affiliate news brands.

42 Talk formats exist in markets as small as Winnipeg, and have been attempted in smaller markets, but with little success. For example, Rogers launched news/talk stations in Halifax, Moncton and Saint John in 2004. As of 2014, only the Halifax station remains in a news/talk format.

43 While stand-alone music format stations can thrive in markets of any size, the CAB is aware of no stand-alone news/talk stations. Without the synergies of a three or four station local operating group, it would be almost impossible for an all-talk station to be viable.

suffer the additional burden of being almost exclusively on AM – a technology ill-suited to metropolitan markets to begin with, and one whose audio fidelity is less and less acceptable even to its historic core 55+ demographic.[44] The inability of English-language AM stations within local ownership groups to transition to FM, and the current lack of a viable future business model or transition plan, is a key cause for closures and cuts at AM stations over the last ten months.[45]

65. The broader lesson: in-depth local news and information programming is essentially no longer viable on radio without support. While it may be able to continue to survive based on internal cross subsidy temporarily, ultimately, just as external support has been necessary for TV news[46] and print news[47], it is becoming necessary for local radio news.

B. Technological challenges and opportunities

66. Radio's digital future is being shaped as much by third party platforms as its own. As stated in the report, *Status of Digital Broadcasting Technologies for Radio* (Technical Report, at Appendix G) prepared by Kirk Nesbitt, advisor to the CAB Technical Coordinating Committee:

> Canada is nowhere near transitioning to digital radio broadcasting. Possibly, it may never occur …. For the purposes of the next seven to ten year planning horizon, policy makers should assume listeners will increasingly migrate to digital platforms. Those platforms will not be OTA digital radio broadcasting platforms – they will be fixed and wireless Internet platforms.[48]

1) Multi-platform synergies

67. Canadian radio broadcasters have adapted to recognize that multi-platform distribution is essential – including ensuring that free radio signals are always available to consumers, be it through receivers, computers, smartphones or smart speakers. HD Radio remains nascent in Canada, and is at least a decade away from having any material benefit for mainstream, commercial radio stations.[49]

68. Radio streaming apps, such as Radioplayer and iHeartRadio Canada, provide a competitive advertising-supported alternative to foreign streamers, allowing Canadians to easily access loved brands, and a multiplicity of genres. Station groups with strengths in particular music genres,

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44 See, re AM Radio limitations, Status of Digital Broadcasting Technologies for Radio, CAB Technical Coordinating Committee. The CAB noted in its 2013 Intervention, serious declines in tuning to AM, from 24.1% of all 12+ tuning in 2006, to 17.5% in 2012 – including, an average decline in French markets of more than double that in English markets (-11.1% to -4.7%), but still a massive decline in 55+ tuning to AM in Canada's three major English-language markets from over half of all hours tuned in 2006 (51.7%) to 40.5% in 2012. (Paras 18-21.) AM tuning declines have continued to outpace FM tuning declines since 2012.

45 This includes the closure of CHRF 980 AM, Montreal, a French-language talk/music station owned by the Evanov Radio Group.

46 As recognised by the CRTC in the *Policy framework for local and community television*. https://crtc.gc.ca/eng/archive/2016/2016-224.htm

47 As recognized by the federal government in introducing the Journalism Tax Credit.

48 Paragraph 13.

49 Technical Report, paras. 27-52. HD Radio has notional consumer benefits, including up to three multiplex channels on FM, but technical and adoption challenges remain.

or music generally, find synergies beyond streaming radio signals. For example, Indie88 Toronto has parlayed its unique status as Canada's first indie music station into making its website a destination for independent artist music and information.

69. Multi-platform strategies go far beyond distribution and promotion. They are now an essential content production strategy as well. In the recent CBC/Radio-Canada renewal proceeding, the Corporation spoke about its integrated cross-platform approach, particularly for news and information programming, and how it now goes to the level of local reporters filing stories for at least two of radio, print and TV.[50]

70. For those broadcasters with applicable synergies, this is very much the case for private radio too, and for both large and small players:

- Similar to CBC/SRC, the largest radio-TV-online news players (Bell Media, Corus, Rogers) leverage both their key brands and local cross platform resources to appropriately feed these local media assets with news and information content appropriate to their market, nature and audiences; and
- Local independent radio stations with strong local/regional news and information portals/websites also promote, share and, as appropriate, co-produce local news and information content across their local and regional platforms.[51]

2) Key technological trends and radio's increasingly mixed distribution model

71. The key technological trends affecting radio were identified in the *Harnessing Change* report, including:

- The growth in broadband Internet — faster speeds, more data consumption;
- Increasing adoption of music streaming services;
- The use of multiple internet-connected devices (smartphone, tablet, smart speaker);
- Declines in time spent listening to music radio stations attributable to broader choice driven by new technology platforms;
- Continuing dominance of AM/FM radio is the audio source most used in the car;
- Advertising revenue flowing more to companies investing in platforms and data, and less to media companies investing in content;
- Streaming music revenues growing and compensating for the decline in music sales; and
- User-uploaded content offering nearly unlimited choice.[52]

72. As is also clear from both the SRG and CMI Reports, these trends are no longer some future theoretical concern. They are very real, have impacted radio for at least the last decade, and will continue to do so going forward. For radio, somewhat linked and somewhat separate changes

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50 See, for example, Transcript Volume 1, Line 498, and 927-928.

51 In smaller markets, in particular, many independent radio broadcasters established significant online local news and information a decade or more ago. While most report that these online portals and websites have not been profit generators, they have helped such broadcasters retain and expand their local news and information presence and relevance.

52 *Harnessing Change*, June 2018, select Market Insights.

in the distribution of listening and advertising are the key underlying, and largely immovable, factors. And on the listening side, declines in drive time listening are the biggest single ongoing risk.

73. For the industry as a whole, in Fall 2019, in-car listening represented 71% of radio's reach and 40% of tuning.[53] But the *financial value* is even greater. For most radio stations, the six to eight hours of morning and evening drive time bring in between a half and three quarters of advertising revenues.

74. Therefore, declines in in-car listening – caused by shifts to digital platforms and, pre/post COVID-19, the work at home phenomenon – directly correlates to declines in radio audiences and hence advertising revenues.

75. The way in which Canadians listen to radio is also changing. For the first sixty years of radio's existence, there was only one way to receive it: over the air through AM or FM frequencies. The expansion of cable television in the 70s and 80s brought other means of radio distribution, but there is little evidence of its widespread use.

76. In the late 90s, seeing the world go digital, radio started to take this path – in Canada, with a European digital audio broadcasting standard, DAB. However, by the mid 2000s, Canada had effectively abandoned its failed DAB experiment, attributable to limited receiver availability and insufficient consumer value added.[54] The US launched HD Radio around the same time that Canada was launching DAB. It is now also a voluntary standard in Mexico, and holds experimental status in Canada.

77. But something far more significant than digital radio happened to radio distribution in the last ten to 15 years: the landline Internet, the wireless Internet, combined with the computer, smartphone and other connected devices. Today, upwards of 32% of Canadians report listening to radio more than an hour a day on their smartphone and 31% on a PC, laptop and tablet – higher than any other means including via portable radio, stereo or radio station website.[55]

78. This has profound effects on both radio distribution and competition. Whereas for its first eighty-five years, radio had a virtual monopoly as the only audio medium, now radio is increasingly distributed with a plethora of competing digital media. Over the air – in analog or digital – radio competes with other local radio stations; on the Internet, it competes with everything the world has to offer.

79. While it is in the industry's self-interest to maintain a viable direct radio owned and controlled over the air path to the consumer, technology may ultimately pass that by. At this stage, it is more likely that in twenty years 5G will become a more dominant distribution path to the consumer than FM or HD. Indeed, there is a possibility that Canadian radio will ultimately all but skip the generation of digital distribution altogether.

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53 Fall 2019. SRG Tuning Report, p. 18.
54 See Technical Report, Appendix B, para. 84-90.
55 SRG Consumer Report, p.40.

80. What is clear, for the purposes of the next five to seven year horizon, is that radio will have an increasingly mixed distribution model – analog, online, wireless, HD all being elements. Cheaper data plans and 5G will usher in more wireless listening. HD may grow, and potentially become a more material means of receiving AM services in metropolitan markets and niche services generally. AM will continue to be vital in reaching rural and communities across vast geographic areas, while FM will continue to be a competitive broadcaster-owned medium everywhere.

III. Updating the Commercial Radio Policy Framework to Respond to Changing Business Realities

81. For the last 50 years, the policy objectives for Commercial radio have remained remarkably consistent:

- Maximizing exposure for Canadian music and Canadian talent;
- Maintenance of programming diversity;
- Ensuring programming of high standard, including local programming; and
- A strong, well-financed commercial radio sector in both official languages.[56]

82. Today's open broadcasting system is, however, revealing the necessity for both a different emphasis and tools.

83. In its *Harnessing Change* report, the Commission accepted this reality:

> Traditional Canadian services have historically operated in a closed economic and regulatory system, with closely guarded borders, protecting them from competitors outside and in many cases within Canada. Those borders are now being forced open, creating new benefits and challenges. …. Though Canadians' expectations are higher than ever before in terms of what video and audio content they consume and where and how they consume it, traditional Canadian television and radio services will face increasing difficulties in meeting those expectations.
>
> … an important risk is that the legislative and regulatory frameworks currently employed in Canada are not easily adaptable to the changing reality. Whatever the future holds, more innovative and adaptable tools will be necessary to address the risks and opportunities of technological change impacting the video and audio markets.[57]

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56 See, for example, the objectives expressed in the 2006 Commercial Radio Policy (Broadcasting Public Notice CRTC 2006-158), including developing "A strong, well-financed commercial radio sector in both official languages capable of contributing to the fulfillment of the policy objectives set out in the *Broadcasting Act* (the Act)."
See also Public Notice CRTC 1990-111, *An FM Policy for the Nineties* and *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41. Today, there are notable parallels to the 1995 *Review of Certain Matters Concerning Radio*, where the Commission stated, "the Canadian radio industry as a whole continues to experience financial difficulties. The Commission wishes to ensure that radio stations have the flexibility necessary to make programming adjustments and to implement economies while still meeting the objectives of the Act … the Commission's own decreasing resources coupled with its increased workload provide an additional impetus to review its regulations and policy guidelines to ensure that they are still necessary and effective." https://crtc.gc.ca/eng/archive/1995/pb95-60.htm

57 Opportunities and Risks. Opportunity 5 / Risk 7: New developments at https://crtc.gc.ca/eng/publications/s15/eval.htm

New challenges, new priorities

84. Radio is not as 'resilient' as once thought, and even if it were, an open system means it is no longer possible to control entry or impose regulations without consequence. Excessive regulatory obligations, be they content restrictions or ownership limitations, that reduce radio's competitiveness or increase its cost structure simply drive audiences and advertisers further to digital platforms. This serves no one's interests. Moreover, radio does not just compete in the audio space, or the music space or local news and information space – radio now competes for time and advertising dollars with social media platforms, video, gaming and more.

85. Local news and information programming – always a core private radio strength, but not historically identified as a policy priority – has emerged as the area of content most valued and at most risk.

86. All local media – now including radio – are suffering from the breakdown in the advertising supported business model for local news. Communities across the country have lost their daily newspapers, and now risk losing their local TV stations and radio stations – or, more immediately, the local news and information programming that makes these stations "local".

87. Another area of concern caused by the rise of streaming services is the need to ensure continued language diversity. In a closed system, the Commission could control the amount of competition French-language radio would face. However, in today's borderless broadcasting environment, French-language stations must compete directly with foreign streaming services, almost all of which offer predominantly English-language programming.

Success in achieving other priorities – content diversity and Canadian music

88. By contrast, significant progress has been made on other radio policy objectives. Aided by a half century of support from commercial radio, Canadian music has become an international success story.[58] Moreover, content diversity, particularly that of music content, is being enhanced by the plethora of new digital options, and it can be demonstrated, would benefit further on radio by more flexible common ownership limits.[59]

89. Private broadcasters already provide as much local news and information programming in English, French, ethnic and indigenous languages as is appropriate to their services and formats and as is financially sustainable. Placing scheduled newscasts on a hits station with a young demographic, or increasing news on any music station to an extent or in dayparts that listeners are not demanding, will lead to lower audiences and revenues.

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58 As stated by the Commission, "Canada's support mechanisms (e.g. CCD, music quotas, funds) have helped nurture successful artists. Year after year, Canadian recording artists and music selections appear on the charts for the most popular musical artists and best-selling tracks and albums worldwide. There is also a star system closer to home, with Canadian French-language musicians occupying the top spots for the highest-selling albums in Quebec in 2017. In addition, several Canadian French-language artists also shine on the international stage (e.g. Coeur de Pirate and Pierre Lapointe), with album sales in France that are as high as sales in Quebec." *Harnessing Change* report, Market Insight 22.

59 The CRTC Ipsos research asked about diversity of music within commercial radio but did not ask about diversity across all media. Even within commercial radio alone, however, Ipsos found that 32% of respondents found 'diversity of song, genres and artists' satisfactory and only 11% found it unsatisfactory. CRTC Ipsos Report p.19.

90. In effect, this is what is also already happening in respect of Canadian music, including FVM. At 35% or more for popular music, Canadian content levels are twenty five percentage points higher than, or more than three times, a normal "market" rate. At 65%, FVM music is at least twenty percentage points above a natural "market" rate.

91. Unfortunately, music content requirements at these levels are not helping record sales or touring revenues, nor are they helping radio stations build audiences and advertising, or allowing stations to reinvest those revenues into local programming. They are just driving listeners from private radio to unregulated platforms.

92. The CAB respectfully submits that radio regulatory policy can no longer rely on restrictive tools. The path forward should not be more regulation of private radio but less. The CAB urges the Commission to implement a framework that relies more on market forces to meet objectives like diversity and local programming. It should reduce content obligations and ownership restrictions to help stem the loss of audiences and advertisers, and allow stations to cut operational costs other than local programming. It should use incentives to encourage behaviour – such as more support for emerging artists – rather than prescriptive regulations. And it should anticipate and encourage funding support from government and online platforms in lieu of increased obligations on private radio stations.

93. The objective for this proceeding should be clear – it is about setting the conditions for a sustainable Canadian commercial radio sector in a vastly different environment, one in which private radio has an opportunity to survive and thrive in ways that also meet core public policy objectives.

Towards a future fair and equitable regulatory framework

94. In the Notice, the Commission states:

> This proceeding will consider current objectives of the *Broadcasting Act*. If a change is made to the *Broadcasting Act* during this process, the Commission will notify the interested parties of how to proceed to take this into account.

95. The CAB accepts that this current proceeding can only be based on the *Broadcasting Act* (the Act) as it exists today. To that end, nothing the CAB is proposing in this proceeding relies on, or even necessarily anticipates, a new Government-led policy framework, be it through the power of direction, Bill C-10 or other legislation.

96. However, there is nothing legally preventing the Commission from initiating a process to consider rescinding or amending the Digital Media Exemption Order (DMEO)[60] and applying contribution requirements on foreign audio, music, or possibly even audio-visual news and information players, such as Spotify, YouTube or Facebook. And doing so is critical. As the Commission noted in the *Harnessing Change* report:

60 Broadcasting Order CRTC 2012-409.

> The current regulatory approach to audio and video content establishes benefits for traditional players, as well as related obligations. Neither these benefits nor these obligations are applied to the many online international services also operating in Canada and playing increasingly important roles in the broadcasting system. These services draw significant revenues from Canada and Canadians and, in some cases, also make important contributions, but neither their roles and responsibilities nor their contributions are currently recognized—and are certainly not guaranteed. These services are not identical and so should not make identical contributions. Instead, their contributions should be appropriate to their circumstances, while providing the greatest benefit to Canadians. These contributions, however, should be equitable to ensure that all players can compete fairly and effectively, which also benefits Canadians.[61]

97. The recommendations the CAB is putting forward in this proceeding optimistically presume that in the next two to three years obligations will be imposed on online players, including equitable contributions from music streaming services (audio and audio visual). This submission merely proposes the minimum changes necessary to keep radio competitive as we finally begin to move towards equity with online players.

98. Any change made to the *Act* as a result of Bill C-10 would therefore have no impact on the CAB's proposals. However, our proposals do assume that any proceeding held within three years on equitable contributions from foreign online platforms would expressly include a review of the contributions of private broadcasters, and whether they require further adjustment to achieve equity. They also assume that if no such hearing is held within three years of a substantive decision in this proceeding, the Commission would entertain a further review of commercial radio's contribution requirements.

IV. The Canadian Music Industry is well positioned for the future

99. The changing fortunes of the Canadian music and radio industries and their interplay, is the subject of a report by Ross Davies, a radio consultant and former executive, *The Road Ahead – The new relationship for Canadian Radio and Music,* (Music Report) attached as Appendix H.

100. As noted in the Music Report, the introduction of Canadian content requirements on AM stations just over 50 years ago ushered in what most would agree was one of the most successful combined cultural/industrial policies ever.

101. At the time, AM radio was itself 50 years old. It was well established and reasonably profitable. The new "competing" medium was FM radio – not a 'foreign' threat, but a new technology that was to usher in more Canadian radio stations, more choice, and better signal quality.

102. In the 50 years since then, both the Canadian music and Canadian radio industries have grown significantly. Generations of Canadian music artists have been able to take advantage of the platform radio provided, and build successful careers. Radio stations withstood the growth of television, and carved out their niche as local audio media.

103. Nevertheless, the last 15 years has brought significant changes in the operating environment for both industries. As noted in the Music Report:

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61 *Harnessing Change*, June 2018, Conclusions 4(ii) at https://crtc.gc.ca/eng/publications/s15/pol1.htm#pr2

> By the time the next radio review was conducted in 2006 Napster had come on the scene and free file sharing through various pirate sites decimated record sales. iTunes only had its initial launch in 2003 and was a very new service as people got used to listening to music on their digital devices. Between 2000 and 2006, revenues from physical sales in Canada dropped from $1.3 billion to $564 million, a decline of over 57%. Digital services, having just begun and still in the early stages, represented only $34.5 million, for a total of $618 million.[62] The music industry was in retreat - there were several rounds of downsizing staff, lower investment in artist recordings and mergers of the major labels as the industry was forced to contract.[63]

104. By 2013, the music industry had hit rock bottom, while private radio in Canada was relatively healthy. However, by the time the pandemic hit in early 2020, the tables had turned:

> While it's a little early to have 2020 revenue figures from last year the trend is clear and the music industry is building its revenue back thanks almost entirely to streaming.[64] In 2018 streaming revenue alone was worth $343 million which was almost 10 times the revenue generated in 2014.[65] This number increased again in 2019 by 31% and by mid-year 2020 this trend had stayed on track with an increase of 16%[66]. This all points to streaming revenue for 2020 in excess of $500 million and total revenue for the Canadian music industry, even with COVID-19 impacts, of $1 billion.

105. From 2013 to 2018, Canadian recorded music revenues grew 20.1%, while private radio revenues declined 6.8%.[67] Put another way, since the CRTC's targeted radio policy review, the "revenue gap" between the private radio and recorded music – between regulated and a portion of beneficiary revenues – had declined by over 16%.[68]

106. Through these massive changes, radio's Canadian content requirements remained unchanged, and its financial support for Canadian music artists were both relatively stable and much greater than CCD contributions alone. Combined amounts to CCD and copyright collectives for the use of Canadian music averaged $100 million a year over the last 10 years (2010-2019).[69]

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62 Music Canada statistics https://musiccanada.com/wp-content/uploads/2014/06/2006.pdf

63 Sony and BMG merged in August 2004 and EMI was sold to Universal in 2012 reducing the major label music companies from five to three.

64 A trend noted by the CRTC in its 2018 *Harnessing Change* Report. See Figure 30: Streaming music revenues are growing and have compensated for the decline in music sales. https://crtc.gc.ca/eng/publications/s15/mar3.htm

65 Music Canada statistics (https://musiccanada.com/wp-content/uploads/2019/04/2018-Stats.pdf)

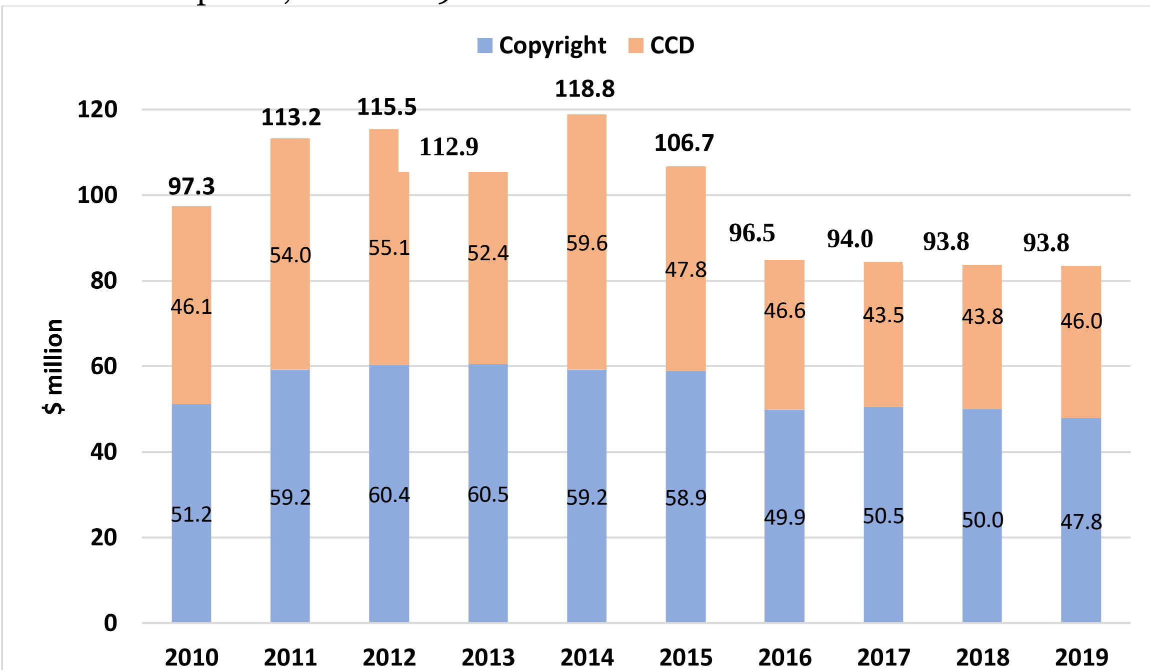
66 https://www.billboard.com/p/nielsen-music-mrc-datas-us-year-end-2019-report-canada

67 Music industry revenues from Music Canada "Total Music Market" statistics (physical and digital recording sales, and other revenue streams such as performance rights and synchronization licenses), but excluding touring and merchandizing. Private radio revenues from CRTC Financial Summaries.

68 In reality, the Canadian music industry, writ large (and absent COVID-19) is significantly larger than Canadian private radio, and has been for some time. A 2015 report commissioned by Music Canada found that live music companies in Ontario alone generated $628 million in revenue from live music activities in 2013 and generated profits of $144 million. https://musiccanada.com/wp-content/uploads/2015/12/Live-Music-Measures-Up.pdf. While live music all but shut down during the pandemic, it is poised to return post pandemic with a vengeance.

69 CMI Report, p.10.

Total of CCD and copyright payments from Canadian private radio broadcasters to Canadian recipients, 2010-2019:



Note: The copyright payments shown here have been adjusted to exclude the estimated portion of those payments that went to recipients outside of Canada.

SOURCE: CRTC; Statistics Canada; Communications Management Inc.

107. COVID-19 hit both sectors hard, and neither is expected to recover overnight. And yet Canadian music shines. Instead of complaining about Canadian ads on the Super Bowl, Canadians witnessed the Weeknd anchor halftime, the first ever Canadian artist to do so, and the first artist ever to headline it alone.[70]

108. While radio cannot ever be expected to approach 2019 revenue levels again, the music industry is poised for global growth, with Canadian artists playing an even greater role. Pent up demand for live concerts is strong, with virtual performances a new source of revenue.[71] Regulatory contributions from foreign platforms, should they be introduced, will add another level of support for Canadian talent.

109. By any reasonable measure, the future looks bright for Canadian music. In contrast, the future for Canadian private radio is much more challenging.

The artist's path

110. As set out in the Music Report, as important as radio has been to Canadian music, not every musical artist's path benefits from radio airplay and exposure. Radio is a mainstream 'hit'-driven

[70] In the past, the Super Bowl has, however, featured Canadian stars such as Shania Twain and Dan Ackroyd.
[71] See, for example, Music Report, p. 6.

medium. It can help create stars. But just as all talented hockey players do not make the NHL, many talented musicians do not become radio stars, or choose a different path. Unlike sports players, however, many musical artists can build careers in cover bands, in folk, instrumental and other niche musical genres. And while radio CCD contributions may help along the way, radio airplay is not a factor.

111. What is a factor, and what has been a major boost to such music artists, is the ability to build a community on the Internet. This factor, and its significance for public policy, has exploded since the targeted radio review in 2013. And it goes well beyond streaming revenue:

> Whereas in 1998 artists would be funded by the labels to record an album, make two or three expensive videos and have big campaigns to increase profile at retail – none of these things exist today for most artists. … For most developing Canadian artists, the goal is to build a fan base using digital platforms, social media and touring to increase and solidify a loyal fan base. Videos get made cheaply and can be promoted on artist websites, YouTube or Instagram. For artists at all stages of their career, post COVID-19, touring revenue is going to be their predominant source of revenue.
>
> This recent trend towards streaming platforms is a welcome change, particularly for more niche artists, because the customized playlists allows for promotional opportunities to reach a specific fanbase with specific tastes. While there have always been examples of successful artists who do not garner significant radio airplay (Dave Matthews, Metallica, Jack Johnson), there are now even more avenues for developing artists to gain audiences unique to their specific style which may not suit more mainstream targeted radio formats.[72]

Radio's support for Canadian music remains important, but it is no longer the only vehicle

112. As the Commission states in the Notice, radio "remains the leading audio distribution platform for music, news and spoken word content across Canada". However, it is no longer the primary source for support and exposure for Canadian artists. Given the various different platforms on the Internet, artists now have new self-directed avenues of promotion, awareness and distribution available. As a result, the artist's path to a meaningful career has changed dramatically over the past decade.

113. Understanding today's reality for the discoverability of Canadian music and exposure of artistic talent is vital for the Commission in this proceeding. A new regulatory framework must both embrace and support the new path Canadian music and Canadian radio must carve for survival and indeed success. In the CAB's view, this requires both a greater targeting of radio's support for Canadian music and a recognition that Canadian content levels help no one when they start to make radio less viable and do not increase the domestic market share of Canadian artists.

V. Establishing a new Commercial Radio Policy Framework

114. A new policy framework for commercial radio must recognize four realities:

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[72] Music Report, p.5-6.

- First, that radio's core competitive advantage and greatest public policy contribution is its localness;
- Second, every radio station will respond in a different programmatic way, appropriate to their demographic target, music genre, personalities, market, synergies and resources;
- Third, private radio's operating environment is being increasingly challenged – listeners spend less time and advertisers spend less money; and
- Fourth, today's open system means that it is no longer possible for the Commission to control entry or impose regulations without negative consequence.

115. For private radio to continue to succeed, it must evolve and the regulatory framework must evolve with it. Radio cannot maintain current levels of ownership diversity, support for Canadian music, and local programming, including local news and information, and remain viable at the same time. Something has to give, and in 2021, we have seen that if something does not change, radio's viability and local programming will suffer.

116. It is important that every decision made in this proceeding be looked at through the prism of competitiveness. If it helps radio compete, it will serve the broader public interest – the public interest in at least one viable strong local medium in hundreds of markets across Canada that connects people to their communities.

117. The CAB's regulatory proposals in this proceeding have all been developed in recognition of the new realities facing commercial radio, and their consequences.

118. To achieve this, we respectfully request:

- A more targeted approach to the support of Canadian music and French-vocal music, that better reflects competitive realities, and supports Canadian artists, including emerging artists, first and foremost. This involves updating MAPL and starting to incent, rather than just mandate, airplay.
- The relaxation of rules designed to ensure content and ownership diversity in the radio segment. Canadian private radio companies now compete with global companies orders of magnitude larger. There is no lack of content diversity generally, but a lack of Canadian content on competing digital platforms.
- A moves towards a more fair and equitable regulatory framework, including (a) no new or increased expenditure obligations, (b) reductions in tangible benefits payable and (c) greater flexibility on CCD contributions, monitoring and compliance, and eliminating unnecessary rules that can never be expected to placed on digital platforms.

A more targeted approach to Canadian content (Cancon) exhibition

A. Cancon levels closer to, but still significantly higher than, natural market levels

119. At 35% or more for popular music, Canadian content levels are more than three times reasonable measures of normal "market" level, such as (a) the market share of Canadian artists

on domestic music streaming charts (10.4% in 2017;[73] (b) Canadian music sales as a percentage of total (10-15%);[74] (c) the percentage of top 100 songs played by Canadian radio stations that are Canadian (6%);[75] and (d) the percentage of BDSradio top 1000 titles streamed in Canada that are Canadian (7.2% in 2021).[76]

120. When mandated Cancon levels become so out of sync with market reality, they become a material competitive disadvantage. Radio stations are forced to over play musical selections that may not attract listeners.[77]

121. What makes this all the more problematic in the current environment is that at the same time as competing unregulated music services are flourishing, the discrepancy between mandated Cancon levels and market levels is actually increasing.

122. Statistics Canada data filed by the CAB in the 2006 Radio Review indicated that Canadian recordings only comprised 17% of total sales of recordings in 1998 and 16% of total sales of recordings in 2000 and 2003.[78] The 35% Cancon level was therefore then twice a reasonable proxy for a market level.

123. A Cancon level two times greater than the market is a significant obligation. But radio programmers have been able to successfully meet that challenge, and are prepared to continue to do so. A Cancon level of three times the market or more starts to have the opposite effect of what it was intended to accomplish. Instead of promoting and helping Canadians discover music, it turns them away.

124. Results from the CRTC's Ipsos Report are mixed on Cancon requirements. In Ipsos Focus Groups, "awareness of Canadian Content Requirements was mixed to low"[79]. While, in principle, a majority of "Canadians support the Canadian content and French-language music rules currently in place for commercial radio and relatively few are opposed"[80], they oppose the imposition of any such obligations on streaming services that would "interfere with consumers' ability to choose the content they want."[81]

125. For this reason, the CAB proposes that the Commission reduce the current exhibition requirement for popular Canadian music from 35% to no more than 25%.

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73 Notice, para 30. *Evaluation of the Canada Music Fund 2012–2013 to 2017-2018.* Streaming being today's most common alternative to radio and hence a more relevant statistic than sales.

74 See generally, Music Report, p.10-11.

75 DB Media and P1 Media Group *Music Test Analysis*, Appendix A to Music Report.

76 BDSradio top 1000 titles, *Audio Streaming Report*, Forsyth Consulting, March 2021, Appendix B to Music Report.

77 Supported by research findings that only 6% of the top 100 songs played by Canadian radio stations are Canadian (6%), also find that roughly 59% of the worst testing 100 songs are Canadian. Ibid.

78 CAB filing for Broadcasting Public Notice CRTC 2006 - 158 (Page 7, P 52).

79 CRTC Ipsos Report, p.24.

80 Ibid, p. 22.

81 Ibid, p.32. In addition, "there was a view that the percentages per se were less of an issue, rather the issue being that a handful of very famous Canadian artists and bands tend to dominate the airwaves. This in turn led to calls for more support for the rest of the Canadian artist industry." p. 5.

B. Updated Expectations Concerning French-language Vocal Music (FVM)

126. Current FVM levels similarly exceed what can be reasonably considered market levels by a wide margin. Notably:

- Over the last ten years, French-language sound recordings have captured an average of 36.71% percent of total sales of sound recordings in Quebec;[82] and
- By contrast, English-language sound recordings generated an average of 58.54% of total record sales in Quebec.[83]

127. Moreover, a recent CAB-commissioned analysis of consumption of music via online streaming services such as Spotify, Apple Music, Tidal, YouTube, Soundcloud and Amazon Music reveals that the percentage of FVM being streamed by French speaking listeners represents only 0.6% of all streaming in Canada or under 2.6% of streaming by French-speaking listeners.[84] This compares to 7.2% listening to Canadian content overall – in itself, a significant enough departure from regulated Cancon levels, but nowhere near the disconnect that exists between private radio FVM requirements and streaming FVM reality.

128. 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.

129. By making FVM requirements more flexible, realistic and attainable, the Commission would also make them more effective at achieving their public policy objective.

C. Modernizing MAPL, Airplay Incentives and Other Content Specific Rules

130. In anticipation of this proceeding, the CAB convened a committee of radio programmers from member stations across the country to review and make recommendations on MAPL and airplay options. The Music Report identifies those recommendations, which the CAB addresses in detail in response to the Commission's questions.

131. Each of CAB's recommendations follow those set out in the Music Report and serve at least one of the following three objectives:

    1. To place greater weight and emphasis on the role of the Canadian artist, reflecting both their unique and irreplaceable contribution to Canadian creativity and the way in which technology has changed how that contribution is made;

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

83 Ibid.

84 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.

2. To incent greater airplay of emerging artists; and
3. To update outdated rules and better reflect current circumstances.

132. In placing greater weight and emphasis on the role of the Canadian artist, CAB proposes the following:

- **Adjust the A (artist) criteria in MAPL to count for 2 points**. This would recognize that the A in MAPL is the most important defining element of a Canadian song. It would end the counterproductive practice of denying recognition of songs by Canadian artists who seek to take advantage of collaboration opportunities on the global stage. It defies common sense when songs like "Everything I Do, I Do It For You" by Bryan Adams, "Sorry" by Justin Bieber, "I'm Yours" by Alessia Cara, "My Heart Will Go On" by Celine Dion, "You Needed Me" by Anne Murray, "In The Night" by The Weeknd or "Forever and For Always" by Shania Twain do not count as Canadian content, because of current definitions. In the minds of all Canadians, these songs are clearly "Canadian".
- **Update the P (performance) criteria in MAPL to include production by a Canadian.** While the P in MAPL currently includes "a live performance that is recorded wholly in Canada", it excludes Canadian producers using non-domestic production facilities. When the Commission first issued the MAPL criteria, the "P" was designed to assist the Canadian production industry by allowing performances produced in a Canadian studio to qualify. The rule was later adjusted to refer only to "performance", that is, where the musical selection consisted of a live performance that is recorded in Canada or wholly performed in Canada. This provides little assistance to, or incentive to use, Canadian producers, and fails to recognize their creative value.

133. The other two components of the MAPL system would remain unchanged and two points would continue to be required for a song to be counted as a Canadian selection.

134. In addition, to incent greater airplay of emerging artists, the CAB proposes:

- **Creating a 150% Emerging Artist Credit.** All stakeholders agree that fostering and developing future music stars must always be a priority, and that Canadian radio is a good vehicle to help. As the CRTC has recognised in other such circumstances, an incentive-based approach is the best way to achieve public policy objectives while not compromising competitiveness. The proposed credit would provide a material incentive for current music-based formats to focus on featuring new and emerging artists as part of their daily playlist. 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 song. Each qualified artist would be credited as receiving an additional 50% spin count (i.e. 1.5 spins) that in turn would help stations maintain their minimum weekly Cancon commitment. The 150% spin credit would also be applied against FVM requirements.
- **Create a spin credit for a Quebec artist singing in another language**. This would also be applied against FVM requirements, and would help French-language radio better compete while still supporting homegrown artists. The credit would reduce FVM quotas by a percentage equivalent to the percentage of vocal musical selections by Quebec artists singing in a language other than French, up to 10%.

135. Finally, other rules that should be updated to better reflect current circumstances include:

- **Update the 5% Cancon relief policy for oldies formats.** This rule was first implemented over 20 years ago, with the benchmark year to qualify for relief set at 1981. While it served its purpose at the time, today it is two decades out of date. Resetting the date to 2001 would allow gold-based formats where 90% or more of their songs are pre-2001 to qualify for the 5% benefit (i.e. a new 20% overall Cancon commitment). Going forward, we recommend that the benchmark year become a floating benchmark that is calculated by subtracting 20 years from the current date. This will ensure this guideline stays up to date automatically. Given the unique situation in Quebec and the even greater problem of over exposure of FVM, the benchmark should be ten years or more for French-language licensees.
- **Eliminate all Category 3 conditions of licence for Category 2 music stations.** In an effort to promote diversity of formats, some non-specialty format radio stations are mandated by their licence to play a percentage of Category 3 music, often in the range of 10-15%. The typical result is that otherwise mainstream stations play jazz or blues music for a few hours late at night, generally to very low ratings. Today, the need to provide that kind of diversity on Canadian radio is diminished by the presence of digital music services. Canadian services like Stingray Music, CBC Music, Radioplayer Canada and iHeartRadio provide dedicated digital streaming channels of non-stop specialty music formats like jazz, blues, and classical.[85] International providers like Spotify, Apple Music and Amazon Music also do the same. Listeners who wish to hear specialty music now have access to it 24/7 via digital streams, and they are less likely to tune into a mainstream radio station for a late-night or weekend specialty music program. These conditions of licence now only serve to prevent terrestrial radio stations from maximizing their potential audience.
- **Revise the current measurement window to 5:00 a.m. – 7:00 p.m. M-F and 5:00 a.m. – 1:00 a.m. all week.** This would more accurately reflect today's prime time listening window. Commercial radio now identifies morning drive starting at 5am during the week. Key morning show talent start their shows at either 5:00 or 5:30 a.m., not 6:00 a.m. Station advertising rate cards reflect this in their time blocks. Further, today's work environment features flexible 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 3:00-8:00 p.m. for sales purposes, which again accounts for the increase in flexible hours in the workforce. There is a significant amount of tuning taking place up to 7:00 p.m.

136. The effect of these proposed changes would depend on station formats and programming strategies. Modelling suggests that emerging artist airplay would materially increase in formats conducive to emerging and independent music, and represent aggregate increases across the sector.[86] More Canadian music played by radio would feature Canadian performers and artists, be they vocalists, instrumentalists or producers. Rather than being disincented from

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85 Radioplayer Canada and iHeartRadio provide diversity through out of market radio stations; other services have even more niche, including personalized, music streams.

86 Music Study, p. 13.

collaborating internationally, Canadian musical artists would have more incentive to shine on a global stage, enhancing opportunities for touring and royalties.

137. In return, Canadian radio stations would be better positioned to play more Canadian music that resonates with their listeners, and closer to natural market levels.

Increased opportunities for local operational efficiency

138. For five decades, regulators have operated on the assumption that diversity in Canadian radio must be assured through regulation, not entrusted to the market. When radio could be considered a market unto itself, placing stringent limits on ownership of multiple stations in a given market may have been reasonable.

139. Similarly, when advertising sales were logically segmented between different media appealing to different demographics at different times and in different ways, severe restrictions on local ownership generally did not undermine radio stations' profitability.

140. However, the market has changed dramatically. With local radio losing market share to a plethora of digital media, when every dollar counts, the public policy focus must change. Specifically, it must shift from finding room for new stations to furthering the survival of existing stations, under current or new ownership. It must position incumbent stations to take advantage of greater operational efficiencies.

141. These are not theoretical issues. CRTC financial statistics demonstrate that through to 2018, despite revenue declines, radio programming expenditures held.[87] Private radio stations have done this by managing costs elsewhere in their operations. They took advantage of the latest digital technologies for music storage and playback, studio space and reporting. They centralized national sales, accounting, billing, human resources, promotion, creative and strategic management, and made them as efficient as possible.

142. Before the pandemic hit, broadcasters had trimmed non-programming costs by $77 million, or over 10%, during the previous five years,[88] but faced with sudden revenue losses caused by COVID-19, virtually all station groups were forced to more deeply cut both programming and non-programming costs, almost overnight. Radio broadcasters conducted line by line budget reviews to reduce or eliminate any non-essential line items, with maintaining local news and information programming through the pandemic the highest priority.[89]

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87 In fact, as both a percentage of revenues and expenses, programming and production expenses actually increased two percentage points over this period. Programming and production expenses for commercial radio were $510M in 2015, $499M in 2016, $501M in 2017 and $503M in 2018, despite revenue declines totalling $89M over this period. Programming and production declined to $488M in 2019; on a percentage of revenue basis, however, 2019 did not represent a decline from 2018.

88 From $747m to $670m between 2015 and 2019. CRTC Financial Summaries.

89 As confirmed by the CAB Survey.

143. Thanks to the CEWS, staff cuts were initially avoided.[90] Unfortunately, as CEWS support has diminished,[91] and the extent and duration of the pandemic's effect on revenues become clearer, radio operators have had to make difficult choices to ensure short and longer term viability. These include:

- Limiting local event coverage;
- Relying more heavily on third party news feeds;
- Voice-tracking more day parts;
- Regionalizing more daytime programming; and
- Producing more local programming remotely.

144. Few additional opportunities for operational efficiencies remain under the current regulatory regime, and difficult decisions loom for every operator in the country.

145. Entering their second century, private radio operators will have to be even more nimble, cost effective, and free to meet listener and advertiser needs to be successful. Radio regulatory policies needs to position private radio for success, beginning with revisions to the Common Ownership Policy (COP).

146. An updated COP, reflecting today's business realities and policy priorities, will be positive for all concerned.

- Canadians will benefit from radio stations that have more resources available for on-air programming;
- Operators who do not believe they, or certain of their stations, are in the best position to make the transition can sell;
- Operators who see a solid, albeit challenging, future in radio can trade or buy; and
- The Commission will have created a policy environment that assists viability and ensures the resources are available to invest in local news and information.

A. Achieving a new common ownership balance

147. The Commission established the current COP over twenty years ago, in 1998, based on the operating conditions that existed at that time.[92]

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90 Independent radio broadcasters have also benefited from $14 million out of $22.5 million in Emergency funding provided by the Government of Canada, and issued in Q1 and Q2 of the 2021 broadcast year. Recipients report that this funding helped maintain news and information programming over those periods; but given the ongoing impacts of the pandemic, it will have little lasting effect.

91 While CEWS was ultimately extended to June 2021, given lower revenue impacts and adjustments to CEWS eligibility, radio broadcasters report receiving one third as much support from CEWS starting in Fall 2020 than early Summer 2021. CAB Survey.

92 First established in *Public Notice 1998-41* (the 1998 Commercial Radio Policy), confirmed in the *Public Notice 2008-4* (the Diversity of Voices Policy), and the 2013 targeted radio review *Broadcasting Regulatory Policy CRTC 2014-554*. The rules are:

148. Canada's COP for radio is far more restrictive than what is allowed in the U.S. Since 1996, the U.S. Federal Communications Commission (FCC) has used four market tranches and allows common ownership of up to five radio stations in markets with 14 or fewer radio stations, and eight stations in markets with 45 stations and over.[93] In response to a December 2018 FCC Notice of Proposed Rulemaking, the U.S. National Association of Broadcasters (NAB) proposed that entities in the top 75 Nielsen Audio Metro markets be permitted to own up to eight commercial FM stations and an unlimited number of AM stations, and that all ownership limits on radio stations be eliminated in all other markets.[94]

149. The CAB's ownership policy proposal borrows from the current U.S. multi-tranche approach, but is nowhere near as aggressive as broadcasters in the U.S. now propose. It is designed to allow radio operators to recover from severe revenue declines and position them better to navigate future challenges. By permitting consolidation, the CAB proposal would balance the interests of larger and smaller players, buyers, sellers and those who choose to maintain the status quo. It is broadly endorsed by radio operators across Canada.

150. The CAB's COP proposal would eliminate band restrictions and be comprised of three tranches, as follows:

- In markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band
- In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.

Prior to 1998, the Commission generally restricted a person to ownership of a maximum of one AM and one FM undertaking operating in the same language and in the same market. The CAB's proposal in the 1998 Commercial Radio Policy Review was:

- In a market served by five stations in a given language, a person would be restricted to ownership of no more than three stations, provided that this number includes at least one AM and at least one FM station.
- In markets served by seven or more English-language stations, common ownership would be restricted to no more than three AM and two FM stations, while in markets served by seven or more French-language stations, such ownership would be restricted to no more than two AM and three FM stations.

In addition, a person may own or control one digital radio undertaking for every analog radio undertaking. The rule does not reflect the presence of public, community or exempt radio stations.

93 The US rules:

- In a radio market with 45 or more stations, an entity may own up to eight radio stations, no more than five of which may be in the same service (AM or FM).
- In a radio market with between 30 and 44 radio stations, an entity may own up to seven radio stations, no more than four of which may be in the same service.
- In a radio market hosting between 15 and 29 radio stations, an entity may own up to six radio stations, no more than four of which may be in the same service.
- In a radio market with 14 or fewer radio stations, an entity may own up to five radio stations, no more than three of which may be in the same service, as long as the entity does not own more than 50 percent of all radio stations in that market.

https://www.fcc.gov/consumers/guides/fccs-review-broadcast-ownership-rules

94 https://www.federalregister.gov/documents/2019/02/28/2019-03278/2018-quadrennial-regulatory-review-review-of-the-commissions-broadcast-ownership-rules.
https://www.nielsen.com/wp-content/uploads/sites/3/2019/09/market-populations-and-rankings.pdf The current 75th market, El Paso, is a metropolitan population of just under 700,000, and on the order of 20 radio stations.

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.
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.

151. As is the case with the current COP, these rules would apply to radio transactions on a case-by-case basis in an appropriate public policy proceeding, and could permit exceptions that the Commission deems to be in the public interest.[95] In order to reflect the particular circumstances of smaller markets and/or needs of smaller broadcasters, they would be subject to additional safeguards, as discussed immediately below.

B. Support and safeguards in smaller markets

152. Providing radio service in smaller communities comes with unique challenges. Some of these differences are obvious. For example, the smaller the market, the smaller the advertising revenue base, and the smaller the number of radio stations it can sustain. Conversely, smaller markets cannot sustain the format niches like indie or urban music format stations, ethnic stations, or all-talk stations.

153. Other differences are less obvious. For example, the Commission has long recognized that in the smallest markets, a single operator with two or three stations is typically better positioned to serve the needs of that market than multiple operators. Multiple licence ownership ensures limited market revenues can efficiently serve different formatted stations, which a single owner is incented to make as diverse as possible.

154. Essentially, the Commission has recognized that while encouraging greater competition between radio operators in larger markets generally benefits consumers, competition in smaller markets should be tempered, in the public interest.

155. Today, frequencies are severely limited in Canada's largest markets, so the issue of whether such markets can sustain new radio station entry is all but academic. That is not the case for smaller markets, where frequencies often remain available.

156. Moreover, while commercial radio operators' major competitive threats lie with digital media (not each other) this is particularly true in larger markets. In larger markets, smaller single station operators can and do carve out effective niches, and compete successfully with multiple station

95 This would include grounds of "economic necessity", recognized by the Commission as early as 1985, when the Commission granted "the Windsor exception ... based on the severe economic challenges faced by Canadian radio operators, given Windsor's proximity to the large Detroit market." Decision 85-66. See also Broadcasting Information Bulletin 2010-341.

groups owned by much larger companies. The business strategies of a single operator cannot fundamentally alter competitive balance in local radio or broader advertising markets.

157. This is not necessarily the case in smaller markets. Smaller markets include fewer local media choices, less direct national advertising and less developed local digital advertising. Collectively, this means incumbent radio operators rely to a greater degree on local advertising. A new entrant in a three or five station market that drops ad rates to gain share can severely depress revenues for incumbents. Conversely, a single station operator may find itself unable to compete with a large local multi-station group.

158. The CAB believes the Commission's general approach and philosophy to the provision of commercial radio service in smaller markets remains sound. However, to ensure that a new market entry and COP framework serves the needs of smaller markets and smaller broadcasters, and reflects their particular competitive challenges, the CAB proposes the following additional policy provisions:

- In a single operator market of three stations or less, an existing incumbent would be entitled to apply for an additional station or stations, up to the maximum of four stations, without triggering a call for applications.[96] Additional stations would not be subject to a condition of licence requiring operation in a specialty format. This would ensure the provision of additional programming choice as well as solidifying the position of the sole operator in the market.
- The Commission’s market capacity test would be amended to draw a distinction between the capacity of a market to sustain a new incumbent-owned station vs. a new entrant (the former having lower of burden of proof to demonstrate that entry is sustainable). Barring exceptional circumstances, priority would be given to granting new licences to incumbents.

C. Impact of the CAB COP Proposal

159. The CAB provides an assessment of the impact of its COP proposal in response to the Commission’s Questions. Based on CRTC Local Broadcast Market Data[97], we expect that adoption of the CAB proposal would have the following results:

- Stations in all market sizes would benefit from fewer station closures and local programming cuts than would otherwise occur;
- In markets of 10 or fewer stations, the number of owners in the market would drop by no more than one;
- Mid-sized markets of 11 to 16 stations would generally see the number of owners drop by no more than two;
- Larger markets could see more significant drops in the number of owners, but given their much greater local media diversity to begin with, they would still retain far more distinct local media voices than smaller markets; and

96 This would effectively add another ground for exception to the requirement to issue a call as set out in Broadcasting Regulatory Policy CRTC 2014-554.

97 https://crtc.gc.ca/ownership/eng/dov_ind.htm.

- Overall ownership diversity would remain far higher than other local media.

160. It should be noted that such outcomes are market specific. Among other things, they would depend on the decisions of willing sellers and willing buyers. Ultimately, operators will maintain their status quo or seek to buy or sell based on their individual cost-benefit assessments. No operator would be forced to do anything, but greater opportunities for local operational savings would be available to those who choose to take advantage of them.[98]

D. Local cooperation on sales and operations

161. In the past, broadcasters regularly entered and exited Local Management Agreements (LMAs), including Local Sales Agreements (LSAs), to bring efficiencies in operations and were allowed to do so without Commission prior approval.

162. However, the Commission began imposing increasing restrictions on LMAs and LSAs in 1999. At that time, the Commission began requiring prior approval and generally authorized such arrangements only where: they involved unprofitable stations; the number of stations in the LMA did not exceed what would be allowed under the COP policy; and, the arrangement is a "temporary alternative business model"[99]. As a result, very few LMA/LSA arrangements exist today.[100]

163. Given the current state of the radio market and what is expected in a post-pandemic world, CAB urges the Commission to revisit its approach to LMAs/LSAs. We strongly believe that permitting greater flexibility in the use of these arrangements would serve the public interest. In particular for stand-alone stations or smaller operators, such agreements could act as practical and immediate alternatives to cuts, sales or closures. A more flexible LMA/LSA policy would provide additional opportunities to achieve local operational efficiencies.

164. The CAB therefore urges the Commission to:

- **Eliminate pre-approval requirements for bona fide LSAs.** Competing broadcasters in the same local market can already hire the same sales agents.[101] Accordingly, there is no principled reason to restrict a broadcaster from outsourcing its sales to another broadcaster.
- **Eliminate pre-approval requirements for LMAs that are consistent with CAB's proposed COP.** Pre-approval requirements would remain for LMAs that are in excess of those limits**.**

165. Clear criteria could easily be established to distinguish LSAs from LMAs. Registration could be required of LMAs, regardless of scope. Given no registration requirements currently exist with

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98 CRTC commissioned research also suggests that Canadians are generally unconcerned about ownership. Little more than half (53%) of commercial radio station listeners claim to even know the names of at least some the company(ies) that operate the commercial radio station(s) that they listen to. CRTC Ipsos Report p. 23-24.

99 *Local Management Agreements*, Public Notice CRTC 1999-176, para 13.

100 CAB is aware of only twenty current LMAs/LSAs among its radio members.

101 This already happens all the time with national sales. Private radio broadcasters tend to outsource to one of two companies, Canadian Broadcast Sales or Target Broadcast Sales.

respect to outsourcing of sales, CAB does not believe a registration requirement for LSAs would not be necessary or appropriate.

E. The particular challenges of AM stations

166. As discussed, all commercial radio stations across Canada are suffering. That said, as CRTC statistics confirm, AM stations generally remain in worse financial shape than FM. For example, in 2019, AM stations had PBIT levels of 3.4% compared to 17.3% for the industry as a whole. Moreover, AM stations experienced a -3.1% CAGR decrease from 2015 to 2019, compared to -2.4% CAGR for the industry as a whole.[102]

167. AM radio's challenges are well known.[103] Its audio quality remains poor relative to FM stations, satellite radio and digital. There remain significant costs to operate large antenna towers. Signal interference in large city centres compromises the fidelity of AM stations in these important markets. Increasingly, new model vehicles are not offering AM radio. Nevertheless, the AM band remains home to a large share of the total news, information, and other local programming available on Canadian radio. AM stations are worth supporting.

168. By allowing AM stations to transition to FM, or be supported by additional FMs, under the same ownership, the CAB's COP proposal will finally help resolve the precarious situations of urban AM stations. Along the same lines, CAB strongly encourages the Commission to permit simulcasting of AM stations on FM. Providing station owners this flexibility would undoubtedly assist them to transition the highly valued AM programming to superior FM frequencies.

F. CAB's Proposals strike the right balance

169. A broad cross-section of Canadian radio broadcasters have endorsed the CAB's COP and LMA/LSA proposals. This includes large, mid-sized and small companies, serving markets of all sizes across the country.

170. We believe that CAB's proposals strike a balance between operators' interests, future perspectives and public policy objectives, and encourages the Commission to adopt new approaches to radio ownership.

- Radio ownership must 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, 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 common ownership and/or LMAs on a market specific basis;
- Smaller 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

[102] CRTC Financial Summaries.
[103] As noted at para 64, above, and at paras 13 and 79 in the Technical Report.

benefit from some specific measures that would offer a greater opportunity to grow and compete; and

- Radio would still have more smaller business ownership than any other local medium.

Increased flexibility and modest reductions in financial obligations

171. Section 3 of the *Act* mandates private radio, as an important element of the Canadian broadcasting system, to:

- be readily adaptable to scientific and technological change;
- contribute in an appropriate manner to the creation and presentation of Canadian programming;
- make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming;[104] and
- provide programming of high standard; and specifically:

(i) contribute significantly to the creation and presentation of Canadian programming, and
(ii) be responsive to the evolving demands of the public

to an extent consistent with the financial and other resources available.

172. Notably, nothing in the *Act* requires radio undertakings to directly support artists or producers of content *per se*. It is the creation and presentation of Canadian programming that the *Act* expects radio broadcasters to support, not the creators behind it. That is not to say creators are unimportant – to the contrary, as the CAB's proposals in respect of Canadian content exhibition recognize, Canadian musical artists are the most essential input to the supply and production of Canadian music.

173. While some radio stations acquire syndicated U.S. talk or music countdown shows, and many subscribe to foreign news feeds, the vast majority of radio station programming expenses are to Canadian programming – representing $491 million in 2019, a third of industry revenues. Programming expenses include compulsory licences for the use of music, at rates established by the Copyright Board. Total copyright royalties amounted to $80 million annually as of 2019, which is 54% higher than they were at the time of the last full radio review, and on a lower revenue basis.[105] More disconcerting still, an unnecessary bilateral agreement, arising from the CUSMA negotiations, to apply national treatment to neighbouring rights is poised to see these royalties increase to the sole benefit of foreign interests.[106]

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104 Unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources.

105 CAB estimates. In contrast to the figures at the chart below paragraph 106, this figure includes copyright royalties to non-Canadian artists.

106 For 32 years, since the Rome Convention and later under the WPPT, Canada has required reciprocity on neighbouring rights. A Ministerial Statement issued April 7, 2020 removed a standing exclusion of US stakeholders from radio neighbouring rights payments that reflected the reciprocity convention given US radio stations pay no neighbouring rights royalties. The amendment will effectively *double* the number of compensable plays on Canadian private radio stations, and so *double* their royalty payments, costing Canadian private radio broadcasters an additional $20M a year. 100% of the extra money will go to US interests. There was no legal requirement for this change.

A. There is no public policy basis for increasing radio CCD requirements or decreasing flexibility

174. Part of radio's long history of support for Canadian music has come in the form of funding and other in-kind support for Canadian talent such as on-air interviews and concert promotions, including extensive initiatives at the community level. Radio's role in funding Canadian talent has always been but one part of a larger mix of public and private monies flowing to the Canadian music industry, supporting a range of initiatives and largely targeting music infrastructure.

175. The requirement for direct financial contributions from radio to Canadian (musical) talent development (CTD), now Canadian Content Development (CCD), has been in place for almost forty years. In the intervening radio policy reviews, the Commission has honed funding levels and criteria, including an increasing focus on emerging Canadian talent and expansion into non-music related support.[107]

176. As noted in the CMI Report, for the 10-year period through to 2019, Canadian private radio's total direct financial support to Canadian music in CCD and copyright payments exceeded $1 billion.

177. To the extent there is a perceived or demonstrated need for greater financial support for the Canadian music industry, the government should step in, or the Commission should act on its own initiative to secure contributions from online music platforms players. An increased transfer of wealth from private radio stations to the Canadian music industry would not fulfill the broader objectives of the *Act*.

178. To the contrary, it would only serve to divert funding from local news and information programming, which the Commission has identified as a core priority in this proceeding. This is especially true with respect to the current policy on tangible benefits that requires a purchaser to commit 6% of the value of the transaction to a variety of initiatives. As outlined earlier, greater local operational efficiencies are the key to the private radio's financial sustainability and ongoing ability to support public policy objectives. Consolidation will deliver those efficiencies. BDU transactions have not been subject to tangible benefits payments for decades and there are no rules involving mergers of foreign online streaming services. The current 6% tangible benefits requirement acts as an inequitable, competitive barrier for radio operators, and it is counterproductive from a policy perspective because it discourages consolidation that would drive operational efficiencies.

179. Finally, the Commission's suggestion in the Notice that it should end or limit local CCD initiatives is concerning. In the aftermath of the pandemic in particular, radio support for local concerts and other community music initiatives will be a vital and much appreciated measure to support artist exposure and touring.

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[107] See for example Public Notice CRTC 1995-196 and Broadcasting Public Notice CRTC 2006-158 (where CTD became CCD).

180. Accordingly, as further set out in response to the CRTC's questions, the CAB recommends that the Commission:

- Impose no new expenditure requirements;
- Maintain basic CCD contributions at current levels;
- Maintain flexibility to direct discretionary CCD contributions to local initiatives;
- Establish clearer criteria on eligibility, and a staff pre-clearance mechanism; and
- Reduce tangible benefits payable on radio transactions to 3%.

VI. The French-language private radio market

181. The distinctiveness of French-language broadcasting and the unique challenges faced by French-language radio stations have been long recognized in broadcasting policy and practice. As the CAB has observed in past radio review proceedings,[108] differences include the relative number of stations, AM versus FM presence, revenues and profitability:

- While the number of private English-language radio stations has grown by more than 200 over the last twenty years, reaching a peak of 599 stations in 2018 (estimated at 595 stations today), the total number of French-language stations held relatively steady through that same period, and has declined relatively faster (peaking at 100 stations in 2017; estimated at 96 today);[109]
- French-language broadcasting also has far smaller portion of AM stations (5% of total vs. 17% in English-Canada), and these stations have, on average, been more profitable than their English-language counterparts (13.4% vs. 2.3% PBIT);[110] and
- Revenues of French-language private radio broadcasters declined an estimated 18.3% from 2019 to 2020, compared to an estimated 27.3% for Canadian private radio broadcasters as a whole.[111]

182. The fundamental challenge for broadcasting policy in the French-language market is not receptivity to, or preference for, Canadian content, rather it is market sustainability. French-language content produced for the Quebec and broader French-Canadian marketplace must sustain itself on a domestic market a fifth to a quarter the size of the Canadian market for English-language content.[112]

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108 The CAB's 2006 Intervention (pages 107-146) contained detailed sections outlining *La Situation et Caractéristiques Particulières de la Radio de Langue Française* and *La Contribution de la Radio de Langue Française au Développement des Talents Canadiens*. While, as highlighted below, statistical and economic factors may have changed in the intervening fifteen years, the basic underlying dynamics and policy issues remain much the same. In particular, Canada remains virtually the only country in the world to impose linguistic music quotas and music talent financial contributions on private radio stations, and, by virtue of French vocal music requirements, obligations on French-language private radio broadcasters are effectively higher than those on English-language private radio stations.

109 CRTC Financial Summaries. Current station numbers adjusted for known COVID-19 closures.

110 Ibid.

111 CRTC Aggregate Annual Returns for Bell Média and Cogeco Média (representing 77% of the revenues of French-language private radio stations) vs. CMI Report estimates.

112 Canada's Q1 2021 population was estimated at 38,048,738 people, of which Quebec's population was 8,575,944. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901 Canada's French speaking population was estimated at 22.8% of the total in 2016, with the French population by mother tongue being 21%. Also, in 2016,

183. The CAB submits that, as supervisor and regulator of a Canadian broadcasting system under severe stress, the Commission no longer has the luxury of inaction. While French and English-language commercial broadcasters are being challenged in slightly different ways, the regulatory solutions are consistent, if not the same.

184. First and foremost, as in English Canada, revenue losses being suffered by French-language operators are substantial and not merely a COVID-19 blip. Operators have had no choice but to cut costs – including now programming costs. The question is not whether there will be permanent cuts to programming costs, but what programming will be cut.

185. Second, again as with English-language broadcasters, losses in audiences and revenues can be mitigated if radio regulation frees stations to provide the most competitive product possible, while still supporting policy objectives.

186. In both cases, the paramount public policy objective of maximizing news and information programming aligns with CAB's proposals that French-language radio operators be allowed to (a) increase efficiencies in their local operating base through greater local station ownership and (b) effectively reduce FVM to more reasonable levels.

187. Excessive reliance on FVM requirements on French-language radio are the wrong solution to the public policy challenge of supporting and promoting French-language content overall. French-language radio audiences don't listen to English-language hits to abandon their cultural heritage. They listen because they are hits. That is true of bilingual and unilingual French speakers alike. But listeners now have a myriad of other platforms to go to, and not come back. This, as the Commission noted back in 2015, first resulted in a shift to English-language stations, in bilingual markets[113] now it is resulting in a shift to unregulated foreign media.[114]

188. Inflexible FVM requirements risk reducing listening to all the French content – music, news and information – French-language radio stations carry. Not only does the measure fail in the end to support French music, it compromises broader engagement with Canadian French-language media.

189. Whatever specific decisions are made in this proceeding to support French-language content, including FVM, policy tools must start migrating to incentives and support from government or online players rather than excessive content restrictions on broadcasters.

VII. Compliance and Reporting

Canada's bilingual population was 17.9% of the total, 44.5% in Quebec. https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/statistics.html

113 In Broadcasting Notice of Consultation CRTC 2015-318, the Commission noted that young listeners of French-language stations were gradually migrating toward English-language stations in bilingual markets. In Montréal, the share of Francophones tuning in to English-language stations has increased among those aged 12-34, especially among those aged 18-24 (an increase of 11.3% from 2009 to 2014). In Ottawa/Gatineau, about three quarters of listeners aged 12-17 and two thirds of listeners aged 18-24 had migrated toward English-language radio.

114 While cause and effect is impossible to prove, the overall evidence is clear.

190. In today's highly competitive Canadian audio market, there remain many unnecessary compliance and enforcement requirements that represent a material 'inequity' and competitive disadvantage for radio operators. In many cases, radio operators must divert scarce resources from their programming to matters like correcting logs or responding to financial or CCD-related questions from Commission staff.

191. Meanwhile, online platforms have no such requirements, and are unlikely to ever have them. Consistent with the "open entry" philosophy of the Internet, there is no plausible scenario in which online undertakings will be required to adhere to the kind of content compliance and reporting requirements that radio operators have now. And, if/when regulated, only those services that have a "material effect on Canada's economy, national identity, or cultural fabric" [115] will likely have any obligations at all.

192. The CAB acknowledges that this proceeding may not be the ideal forum for a wholesale review of the CRTC's monitoring and enforcement practices. There are crucial policy issues that need to take priority, and a substantive exercise of regulatory streamlining would likely benefit from a less formal exchange of ideas and best practices.

193. We therefore propose that the Commission make only a few high-level directional decisions in this proceeding and then form an industry-Commission working group to develop a more specific road map. The following addresses our initial high-level recommendations.

A. Streamlined Reporting

194. Reporting required of radio broadcasters is material, and in the 2020 broadcast year included additional reporting on COVID-19. Regulations under the *Accessibility Canada Act* will soon add further reporting requirements. Moreover, 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.

195. The CAB urges the Commission to review whether all of the reporting information radio stations are currently required to provide is actually necessary given the changes in the business environment and the changes that will emerge from this proceeding. Moreover, it is also time to add a 'materiality test' to radio licensee reporting. This is both an expected element of future regulation of online platforms, and an area where the Commission has ample precedent itself. For example, the CRTC's current exemption practices eliminate the need for licensing and its associated detailed reporting for smaller discretionary services and BDUs. The Commission should adopt a similar approach for all broadcasting services going forward.

196. Though not yet in effect, the Commission should note the Government of Canada's proposed Direction to the CRTC pursuant in the context of Bill C-10. That document proposes to direct the Commission "to regulate and supervise the Canadian broadcasting system in a manner that is flexible, fair, and equitable, and which streamlines regulatory obligations so all broadcasting

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115 Preliminary Draft Policy Direction to the Canadian Radio-television and Telecommunications Commission, "Sustainable and Equitable Regulatory Framework for Broadcasting," s. 3(a).

undertakings are in a position to compete in the modern broadcasting environment."[116] Streamlining broadcasting regulation is the way of the future, and the Commission should begin that work in this proceeding.

For smaller broadcasters of any type, the current exemption from basic CCD requirements is certainly appreciated. Nevertheless, the CAB urges the Commission to consider reducing the reporting requirements of all radio stations. Thresholds for small stations should be updated annually according to the CPI. The current $1,250,000 threshold for CCD was established in 2013. In 2021 dollars that amount would be approximately $1,500,000.

B. Audit rather than logging

197. Radio regulatory compliance has become overly burdensome. The machinery for ensuring compliance with Canadian content requirements, including format requirements, hit restrictions, and levels of musical selections, now requires significant resources of both broadcasters and the CRTC alike, out of proportion to its public policy benefit.

198. Failure to accurately maintain a log is now cause for a short-term renewal (irrespective of no shortfall in Cancon exhibition).[117] Moreover, while daily logger tapes are recorded and kept for at least four weeks, and logs and records collected for every broadcast day and broadcast week, to be available for analysis at any time, a seven year licence term will, on average, be renewed on the basis of Commission compliance reporting for a given week.

199. With or without legislative reform, the CRTC should consider adopting a more fair and equitable means of compliance monitoring – one based on spot audits.

200. AI-based monitoring systems would permit the Commission to conduct random audits of broadcaster content exhibition compliance, be they licensed or exempt, traditional or online. A complaint-based system could help direct the Commission's compliance resources to where they are most effective. Sanctions and fines would be sufficient deterrents to non-compliance.[118]

201. There would be no need for logger tapes, no need to maintain logs or records, and no need for correcting logs and records and time-consuming exchanges between broadcaster and Commission staff. Expenditure obligations would require no specific reporting or "proof of payment".[119] Broadcasters would be free to use whatever tools and processes they felt appropriate to ensure they meet their obligations; the Commission would audit as or if required.

202. The CAB accepts that this would be a major change, not without a number of moving parts. But the benefits to both the CRTC and broadcaster would be significant. Both the Commission and licensees would be able to free up resources for bigger priorities. The CAB urges the Commission to undertake a process to evolve to an entirely audit-based compliance processes before, or in conjunction with, any decision to regulate online providers.

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116 Preliminary Draft Policy Direction to the Canadian Radio-television and Telecommunications Commission, "Sustainable and Equitable Regulatory Framework for Broadcasting," s. 6(e).

117 See https://crtc.gc.ca/eng/archive/2021/2021-68.htm

118 Enhanced by AMPs as contained in Bill C-10, but achievable otherwise with the Commission's current powers.

119 Proof of payment is required of CCD contributions, some as little as $1,000 or less.

C. Greater flexibility in CCD monitoring and compliance

203. The current policy on compliance by radio stations was established 2014. Under the Commission's approach to non-compliance set out in Broadcasting Information Bulletin 2014-608, "each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered."[120]

204. Decisions made by the Commission on CCD compliance pursuant to this approach over the last three broadcasting years include:

- Shortening a renewal term by one year because a CCD payment of $2,657 was made three-and-a-half months late.[121]
- "To address the harm" caused by a licensee's tardiness in paying $31,985 out of a total of required CCD contribution of $102,379 to CCD, because at the time it was unprofitable, the Commission imposed a short-term renewal of three years and required a licensee to broadcast an on-air announcement regarding its non-compliance three times a day for five consecutive days within a 14-day period.[122]
- A licensee that incurred a CCD shortfall of $600 over its licence term was required to make an additional $200 contribution in the subsequent licence term;[123] and
- A licensee that inadvertently failed to pay its over-and-above contribution to CCD of $600 per year for four years being was required to immediately make up a total $2400 shortfall and make a further $2400 contribution in the subsequent licence term.[124]

205. The CAB respectfully submits that the pendulum has swung far too far. Relatively minor issues associated with meeting regulatory obligations are most often due to honest mistakes and should not be treated as matters of compliance, especially where no one has complained. Accepting the reality of imperfection would not bring the CRTC into disrepute. On the contrary, it would give greater integrity to the Commission's practices and procedures, and be another small but tangible step in the direction of equitable regulation.

206. To that end, the CAB urges the Commission to introduce a more reasonable and objective approach to assessing non-compliance. Under CAB's proposed approach, CCD payments that depart from a required schedule but are nevertheless completed before the expiry of the licence term would be found compliant if:

a. Annual payments made were within +/- 10% of requirements;

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120 At para 6, as cited, for example, at https://crtc.gc.ca/eng/archive/2020/2020-239.htm, para 41.
121 https://crtc.gc.ca/eng/archive/2019/2019-250.htm
122 https://crtc.gc.ca/eng/archive/2020/2020-303.htm While the licensee, an ethnic radio station, "stated that over the last 13 years, there have been no complaints filed with the Commission in regard to CJRJ's programming", the Commission apparently justified its decision given pervious and other minor instances of non-compliance.
123 https://crtc.gc.ca/eng/archive/2017/2017-360.htm
124 https://crtc.gc.ca/eng/archive/2019/2019-271.htm

b. Any payment deemed by the Commission to not qualify as CCD is corrected/repaid within 90 days of notification of same; or
c. In the event a station has an operating margin of less than 5% in any one year, payments are deferred to the end of the licence term.

207. In circumstances where CCD payments are not completed before the expiry of the licence term, or in any other case of non-compliance, any fine imposed by the Commission would not exceed the penalties imposed by CRA for non-payment of taxes.

VIII. Conclusions

208. To conclude, private radio in Canada remains a relevant and important medium. However, its business model is severely challenged due to the rise in competition from foreign-owned digital services.

209. As a result, public policy priorities need to shift for the sector. The CAB submits that the Commission should adopt a flexible regulatory framework that relies more on market forces to meet objectives like diversity and local programming, including:

- *A more targeted approach to the support of Canadian music and French-vocal music, that better reflects competitive realities, and supports Canadian artists, including emerging artists, first and foremost.* This includes reducing Canadian music exhibition requirements from 35% to 25% and ensuring Canadian music exhibition and ensuring FVM music requirements are more flexible, realistic, and ultimately more effective. It is also involves updating MAPL and starting to incent, instead of mandate, airplay for certain groups, such as emerging Canadian artists.
- *The relaxation of rules designed to ensure content and ownership diversity in the radio segment.* Canadian private radio companies compete with global companies orders of magnitude larger. There is no lack of content diversity generally, but a lack of Canadian content on competing digital platforms. The CAB recommends that the Commission adopt a new Common Ownership Policy that would permit greater station ownership at the local market level, while still ensuring radio remains the most diversely owned and operated local medium in Canada. This would help radio operators to recover from severe revenue declines, and navigate future anticipated declines, while ensuring programming diversity and enhancing their ability to offer locally-relevant news and information. For similar reasons, the CAB is also recommending a change in the Commission's policies on LMAs and LSAs.
- *A move towards a more fair and equitable regulatory framework in terms of expenditure obligations and compliance and monitoring.* This includes (a) no new or increased expenditure obligations; (b) reductions in tangible benefits payable; and, (c) introducing greater flexibility on CCD contributions, monitoring and compliance.

210. The CAB firmly believes that if these proposals are implemented, it will better position private radio for success going forward, ensuring it can continue to serve its listeners, while still making a strong contribution to the Canadian broadcasting system and the objectives outlined in the *Act*.