



Sent via Intervention Form

14 June 2024

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

**Re: Comments of the Canadian Association of Broadcasters with respect to
*Proposed orders imposing conditions of service and expenditure requirements for
carrying on certain online undertakings***

As set out in Broadcasting Regulatory Policy CRTC 2024-121

1. As the national voice of small, medium and large Canadian privately-owned and controlled radio, TV and discretionary broadcasters both independent and vertically integrated, including those operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its comments on the proposed orders set out in the Appendix to Broadcasting Regulatory Policy CRTC 2024-121 (the Orders).
2. The CAB wishes to propose two clarifying amendments to the Orders, as summarized below, and to share some important observations about the Commission's approach to the modernization of the Canadian broadcasting framework.
3. The CAB recommends the following amendments to the proposed orders to properly capture the intent of the Commission's determinations in *The Path Forward – Supporting Canadian and Indigenous content through base contributions*¹ (the Regulatory Policy):
 - First, and most importantly, the Commission should change the wording of the Orders to specify that payments must be made on a monthly basis rather than permitting online undertakings to make contributions only “by 31 August of each broadcast year.” We are concerned that, as drafted in the Orders, funds for areas of critical need will not flow as quickly as the Commission intends and will only be contributed on 31 August 2025 – some 14 and a half months from now. A monthly contribution model for online undertakings also aligns with the contribution requirements of broadcast distribution undertakings;

¹ Broadcasting Regulatory Policy CRTC 2024-121, 4 June 2024.

- Second, to provide clarity to contributing parties, the CAB recommends a minor administrative wording amendment to clause 2(c) of the Orders to clarify that the funding to the Canadian Starmaker Fund and Fonds RadioStar should be directed to the CAB, who will in turn distribute to the Canadian Starmaker Fund and Fonds RadioStar, in accordance with the Commission's directions.

General comments on the Commission's proposed orders

4. The CAB believes that the Commission's determinations in the Regulatory Policy are a step on the road to leveling the playing field between online providers and Canadian radio and television broadcasters.
 - We wholeheartedly support the Commission's conclusion that in light of the mandated contributions already made by Canadian "traditional" broadcasters, no affiliated online undertakings should be required to make additional contributions at this time.
 - Our independent television station members are relieved to know that the Independent Local News Fund (ILNF) will be bolstered through additional funding from online undertakings, which will provide them with sustained funding and critical support to continue to produce local news for their communities.
 - Similarly, our radio members with stations outside the major markets welcome the new funding to support their production of news in the face of significant declines in advertising revenue.
5. However, we are concerned that the Commission has not gone far enough to level the playing field between online providers and Canadian broadcasters. And we are very surprised that the Commission would consider permitting deductions from the base contribution at this time.

Leveling the playing field remains an urgent priority

6. The CAB's members remain concerned about their ability to compete with online providers in the face of significant disruption, and burdensome regulations. As we have repeatedly urged the Commission, we must move quickly to provide additional flexibility to Canadian radio and television broadcasters so that they can adjust to market changes and innovate in response to consumer demand.
7. Nowhere in the CRTC's *Regulatory plan to modernize Canada's broadcasting framework* do we see the proceeding during which the Commission will address the obligations of Canadian radio and television broadcasters, which remain disproportionately higher than those of online broadcasters. Television stations and discretionary services, for example, have higher and more prescriptive spending obligations, and Canadian broadcasters are also subject to content quotas, detailed logging requirements, and numerous reporting obligations, among others.

8. In fact, what we see in the plan is several proceedings that are likely to increase regulatory obligations, rather than decrease them. We are left wondering when we can expect to move forward with “Step 2” of the Commission’s *Path Forward*, the one where the Commission will consider changes to the existing contributions and regulatory requirements of Canadian radio and television broadcasters.
9. A deeper examination of the Commission’s plan suggests that the Commission will only consider amendments to existing obligations during the “implementation phase” of its modernization of the broadcasting framework, with results unlikely before 2026.
10. That will be a case of too little, too late for many radio and television broadcasters.
11. We are very concerned that the Commission has not grasped the need for urgent changes in the face of massive disruption in the radio and television sectors. According to the results published by the CRTC for the broadcast year ending August 2023, private conventional television’s profit before interest and taxes (PBIT) was **negative \$423 million**; and the PBIT margin of private radio stations dropped to an all-time low of 4.6%. Such results are not sustainable.
12. The ability of Canadian broadcasters to continue to meet cultural goals and make meaningful ongoing contributions to the many public policy objectives set out in the *Broadcasting Act* rests on their financial health and viability. If it intends to continue to extract benefits from our sector, the Commission needs to take steps to reset the regulatory bargain and reprioritize the success of Canadian owned and controlled broadcasters as the foundation of our domestic media marketplace.
13. Further, it is vital that the Commission recognize that the challenges in providing professional news programming are just as significant for vertically integrated broadcasters and those operating in larger markets as they are for smaller, independent broadcasters outside those markets. Their ability to continue to contribute to Canadian broadcasting policy objectives – including providing news programming that is critical to Canada’s well-being – must be addressed on an urgent basis.

It is too soon to permit deductions from the base contribution requirement

14. In *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*,² the Commission laid out a plan for three categories of contribution, as follows:

21. The first category of contributions, referred to as a base requirement, could require broadcasting undertakings or ownership groups to make a financial contribution to specified funds that support Canadian artists or programming and the policy objectives outlined above.

22. The second category, referred to as a flexible financial requirement, could require broadcasting undertakings or ownership groups to contribute an additional amount, with undertakings choosing where to direct their contributions from among a number of options.

² Broadcasting Regulatory Policy CRTC 2023-138, 4 June 2024.

The specific options would be the subject of a future public process as part of Step 2, but the Commission envisions that these could include direct expenditures on certain types of programming (for example, original French-language programs, programs of national interestFootnote4 (PNI), local news, community programs and independent productions), spending on training and internships, or additional contributions to funds.

23. The third category, referred to as intangible requirements, could require broadcasting undertakings or ownership groups to make additional, less quantifiable commitments to support Canadian programming and creators. Again, the specific options would be the subject of a future public process as part of Step 2, but these requirements could include specific commitments to the promotion, discoverability or prominence of Canadian or Indigenous content, the carriage of services in French, Indigenous, or other languages, maintaining a certain percentage of Canadian and Indigenous content in an on-demand catalogue, commitments to achieving public policy objectives, or other commitments proposed by an undertaking and deemed acceptable by the Commission. [Emphasis added]

15. The intent clearly appeared to have been that an initial base contribution requirement would be directed to funds, and that the form or nature of any flexible contributions, including direct expenditures, would be subject to a separate process as part of Step 2.
16. With that as background, the CAB questions the Commission's decision to permit unaffiliated online undertakings to deduct a portion of their 5% base contribution, particularly given the small amount of money that will remain for the CMF. As noted above, the 5% contribution requirement is still low in comparison to the obligations of Canadian broadcasters. Allowing online undertakings to make a significant part of those contributions in the form of direct spending does not make it possible to achieve the Commission's desired objectives, nor does it ensure that they are contributing to the Canadian broadcasting system in a meaningful (and measurable) manner.
17. In the CAB's view, any direct programming expenditure requirements would more appropriately be discussed in future proceedings, which would also include a re-examination of the direct programming expenditure requirements of Canadian broadcasters. Further, any proposed deductions from the base contribution requirement should only be considered in that broader context.

Monthly payments

18. The Commission's framework is intended to ensure that "*areas of immediate need*" receive contributions quickly – it is why the Commission has relied on existing funds as much as possible. However, as drafted, the proposed Orders will require certain online undertakings to make contributions starting in the coming broadcast year, with payments due "*by 31 August of each broadcast year.*" The reality of this wording is – in our long experience – that most operators will wait until the 31st of August – a full 14 and a half months from now.
19. Many of these funds, particularly new funds, and their recipients, cannot wait until August 2025.

20. Accordingly, the CAB recommends that the Commission adopt a monthly payment model. We note that such a model currently applies under the *Broadcasting Distribution Regulations*, which state:

54 (1) Each contribution that is required under section 52 or 53 shall be made separately by the licensee in 12 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.

(2) The licensee may estimate the required monthly contribution for September, October and November.

(3) If a monthly contribution for September, October or November of a broadcast year is based on an estimate that is greater than the amount required, the licensee may deduct the excess from the amount of the contribution that is required for December of that broadcast year; however, if the contribution made by the licensee is less than the amount required, the licensee shall contribute the balance by December 31 of that broadcast year.

21. The CAB recognizes that certain details may need to be worked out – for example, the Commission intends to launch a focused review of the ILNF – and that it will take time to finalize the details of the temporary commercial radio news fund. However, in both cases, the CAB is equipped to receive and hold the funds (in trust) until the appropriate moment for their distribution. Other funds are also equipped to receive and distribute funds – in several cases, they can begin to do so immediately.
22. Therefore, as an alternative, in specifying that payments will be made on a monthly basis, the Commission should, in this first year, permit such payments to be prorated from the date the funds are deemed eligible to receive them.
23. We repeat that the broadcasting system cannot wait until August 2025.
24. Accordingly, to add clarity to the wording of the Orders and better reflect the Commission's intent that contributions be directed to areas of immediate need, the CAB recommends the following amendments to clause 1 of the Orders:

1. Commencing in the 2024-2025 broadcast year, the operation of an online undertaking providing audio-visual services shall, ~~by 31 August of each broadcast year,~~ devote not less than 5% of its annual contributions revenues derived from its audio-visual broadcasting activities from the previous broadcast year to the support of Canadian and Indigenous content, to be allocated as follows...

1.1 (a) Each contribution that is required under section 1 shall be made separately in 12 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.

(b) If a designated fund is not equipped to receive contributions by 1 September 2024, the contribution shall be held by the operator until the Commission deems the fund eligible, at which point the operator shall provide the funds on a prorated basis.

(b) The operator may estimate the required monthly contribution for September, October and November.

(c) If a monthly contribution for September, October or November of a broadcast year is based on an estimate that is greater than the amount required, the operator may deduct the excess from the amount of the contribution that is required for December of that broadcast year; however, if the contribution made by the operator is less than the amount required, the operator shall contribute the balance by December 31 of that broadcast year.

Minor wording adjustment

25. As a matter of practice, the CAB is currently the first recipient of contributions directed to the Canadian Starmaker Fund and Fonds RadioStar. We receive the payments from contributors and then distribute those contributions to the Funds in accordance with the Commission's decisions. They then handle distribution to eligible recipients pursuant to their program guidelines. For clarity, and to ensure that contributions are directed properly, we recommend the following minor amendment to clause 2(c) of the Orders:

*2(c) not less than 0.5% to the **Canadian Association of Broadcasters** ~~Canadian Starmaker Fund and Fonds RadioStar~~, of which 60% is to be allocated to the Canadian Starmaker Fund and 40% to Fonds RadioStar;*

Conclusion

26. We thank the Commission for this opportunity to comment on the *Proposed orders imposing conditions of service and expenditure requirements for carrying on certain online undertakings*.

Yours sincerely,



Kevin Desjardins
President
Canadian Association of Broadcasters

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