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30 April 2010

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

Dear Mr. Morin:

Re: *Call for comments on the reporting requirements for new media broadcasting undertakings, Broadcasting Notice of Consultation CRTC 2010-97, 18 February 2010 (“BNC 2010-97” or the “Notice”)*

1. Sirius Canada Inc. (“Sirius”) is one of two satellite subscription radio undertakings in Canada.
2. Canada’s satellite subscription radio undertakings (“SSRUs”) contribute millions of dollars each year to Canadian content development. In fact, as the Commission is aware from the Annual Reports we are required to submit each year, satellite subscription radio’s annual contributions to Canadian content development are already in excess of the annual basic contribution made by all of Canada’s terrestrial radio licensees combined.
3. However, SSRUs face vigorous competition from NMBUs whose streaming audio activities, combined with underlying mobile or fixed Internet access, render them functionally substitutable for certain programming activities of SSRUs. The proceeding initiated by the Notice provides the opportunity to measure the degree to which this is occurring.

Mind the Gaps

4. In Broadcasting Regulatory Policy CRTC 2009-329 (“BRP 2009-329”), the CRTC determined that the Exemption Order for New Media Broadcasting Undertakings should be renewed as,

[b]ased on the record of the Proceeding, the Commission does not consider that broadcasting in new media currently poses a threat to traditional broadcasting licensees' ability to meet their obligations. In fact, new media is currently being used in a complementary manner by many broadcasters for activities such as providing audiences with the ability to catch up on missed programs, promoting broadcast offerings and building brand loyalty.

5. Sirius submits that audio media constitute a gap in the CRTC’s review of broadcasting in new media.

6. The *Broadcasting Act* address both audio and video media markets. Audio media, including terrestrial radio and satellite subscription radio, are an important part of the Canadian broadcasting system. What is more, it is in the audio media sphere that competition between heavily-regulated players such as SSRUs and their NMBU counterparts is most advanced.
7. Unregulated NMBUs place SSRUs at a significant disadvantage in the marketplace. Internet radio, whether delivered to the home or to the car (via cell phone or separate stand-alone devices), is satellite radio's largest competitor next to terrestrial radio.
8. Sirius acts as both an SSRU and an affiliated audio NMBU. Indeed, as technologies including Bluetooth, third-generation wireless networks, and, generally, Internet access on mobile devices become pervasive, the functional difference between an SSRU and an Internet-delivered audio NMBU is blurring swiftly.
9. For these reasons, Sirius submits that the CRTC ought to ensure that its decision in this proceeding not focus exclusively on audiovisual media. Rather, the Commission should consider monitoring requirements for audio NMBUs, too. This would allow the Commission to place itself and market participants in a position to evaluate whether the above statement, that broadcasting in new media currently poses no threat to traditional licensees such as Sirius, applies to the audio sector.
10. In particular, Sirius proposes that reporting requirements for audio NMBUs should focus on audio streaming services, which are the most substitutable for regulated audio broadcasting undertakings. These reporting requirements should cover four areas—*who* listens to audio NMBUs, *what* they listen to, *where* they listen to it, and *when* they do so.¹
11. These reporting requirements would apply to the largest audio streaming services. While the criteria for these is to be determined, Sirius submits that they could simply be defined as any service, whether or not affiliated with a traditional undertaking, which provided streaming audio over a wireless telephone. or over the Internet, to at least 1000 unique Canadian users or visitors during any month of the previous year.² The Commission ought to make every effort to cooperate with such services, regardless of their domicile. In any case, such services must clear rights in Canada in order to concord with the Commission's note that "it is only interested in obtaining data from undertakings that have the appropriate legal rights in Canada to the content in question."³

Who

12. To determine who listens, the Commission should collect data on the number of unique Canadian visitors to, or users of, the most-used audio NMBUs, and how many hours they listened, on average, per month.

¹ These criteria, set out in further detail below, are responsive to Q.1-Q.4 at paragraphs 11-12 of the Notice.

² These criteria are response to Q.7 and Q.8 at paragraphs 18-21 of the Notice.

³ BNC 2010-97, paragraph 8.

13. These should be segmented by platform: (a) *on-deck* applications; (b) *off-deck* applications, such as those obtained from an applications store or downloaded; and (c) *Web*, where a streaming audio NMBU is accessed directly through the all-purpose browser application.

What

14. To determine what they listen to, the Commission should endeavour to seek information as to the proportion of Canadian content streamed on the largest streaming audio NMBUs.
15. Sirius recognizes that even very large unregulated audio NMBUs with significant investments in back-end systems and bandwidth may not measure or, generally, pay attention to whether or not they program music connected to Canadian artists, much less whether such music qualifies as Canadian under MAPL rules.⁴
16. Accordingly, Sirius proposes that such services simply describe their ability or inability to estimate the proportion of Canadian music that they stream; that, where there has been a misunderstanding. The Commission could then, in its annual *Communications Monitoring Report*, include in its information as to audio NMBUs the proportion of users attributed to services that cannot estimate and do not attend to the use of Canadian music. This would be instructive to market participants such as Sirius, and address directly the exemption issue identified by the Commission in Broadcasting Regulatory Policy CRTC 2009-329.

Where

17. Above, we suggested that streaming audio NMBU users be tallied, as a result of reporting from the largest such undertakings, according to whether their use is via an on-deck application, an off-deck application, or the Web.
18. In addition to this, however, we strongly recommend that the Commission request that reporting entities present user data that distinguishes fixed from mobile use, to the extent such entities measure these internally.
19. The combination of these requirement with those above would result in the following table, which audio NMBUs such as Sirius and others should be asked to complete electronically:

Canada		
<i>Audio Streaming Use</i>	Fixed	Mobile
On-Deck Application	#	#
Off-Deck Application	#	#
Web	#	#

20. It is submitted that the above data is collected routinely by many streaming audio NMBUs. This data would further permit the drawing of inferences with regard to

⁴ *Radio Regulations*, SOR/86-982, subsection 2.2(2).

competition in such markets as in-vehicle audio, which is hotly contested between terrestrial radio, SSRUs, and streaming NMBUs.

When

21. Finally, the Commission should collect information as to how listenership to the different forms of streaming NMBU fluctuate over the course of the day:

Canada – On-Deck Applications (Fixed)

am		pm				am
5:00 – 9:30	9:30 – 12:00	12:00 – 1:30	1:30 – 4:30	4:30 – 6:30	6:30 – 12:00	12:00 – 5:00
#	#	#	#	#	#	#

22. This would complement the picture in important ways as to the degree to which traditional audio media and streaming audio NMBUs are competitive or complementary.

Reporting Burden

23. Like other market participants, Sirius is sensitive to the question of reporting burden. At the same time, we submit that, as the audiovisual markets regulator in Canada, the Commission is in a position to play a key role by injecting transparency and certainty into the market.
24. Indeed, Sirius believes that researching, monitoring and reporting market-wide indicators is a key role for the Commission in a forward-looking, competitive environment. By acting as a trusted intermediary that aggregates individual market participants' confidential information into anonymized, standardized market-wide data, the Commission can provide a view of overall market size and movement that would otherwise be unavailable.
25. As a result, Sirius submits that, in order to minimize reporting burden and maximize utility, the Commission's ongoing efforts in this respect should be guided by the following three principles:
26. First, **collect what is collected.** The commercial New Media Broadcasting Undertakings which participate in the markets the Commission ought to monitor are sophisticated and data-driven. A reporting burden arises when a firm is required to do something that it would not otherwise do. The Commission can most simply avoid imposing significant a reporting burden, while collecting useful information, by designing individual monitoring requirements so as to collect data in the industry-standard formats and metrics used widely throughout the industry.
27. Second, **use more than one method.** The data the CRTC collects from New Media Broadcasting Undertakings, and aggregates to create market-wide indicators, are only one source of information. They will not tell the whole story—so relying on them to do so can only ratchet up the reporting burden beyond what is reasonable.
28. The Commission has already proceeded down this path by coordinating its efforts with other government departments such as Industry Canada and Statistics Canada. Sirius commends the Commission for doing so and supports continued such coordination. However, Sirius further submits that the Commission should ensure that it collects,

consults, and integrates the findings of third-party financial and industry research reports. To do so, the Commission's research and monitoring staff should continue and deepen their outreach activities with their private-sector counterparts.

29. To that end, Sirius proposes that the Commission modify its monitoring and reporting process by issuing a *Draft Communications Monitoring Report* by way of a Broadcasting and Telecom Notice of Consultation. The purpose of this paper-based proceeding would be to reach out to the industry, collecting the financial, industry, and market research industries; collect critical commentary which may highlight errors introduced through lack of exposure to third-party studies; and incorporate these, as the Commission deems appropriate, into a final *Communications Monitoring Report* to be published each year.
30. Third, **do no harm**. The Commission has, in the past, generally avoiding publishing data for individual services not otherwise required to make such data public, particularly where such release could harm the service in the marketplace. Similarly, the Commission has avoided publishing aggregated data for markets in which such publication would enable third parties to deduce individual services' information, such as in markets with only two players. Sirius submits that the Commission ought to maintain this practice with respect to streaming audio NMBUs.

Conclusion

31. Sirius appreciates the opportunity to participate in this proceeding and looks forward to addressing, in its reply, those submissions which pertain to the activities of streaming audio NMBUs.

Yours truly,

(signed in original)

Sherry Kerr
Vice President & General Counsel
Sirius Canada Inc.