

19 October 2020

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage
Les Terrasses de la Chaudière, Central Building
Gatineau, QC J8X 4B1

Dear Mr. Doucet,

Subject: Broadcasting Notice of Consultation CRTC 2020-336

1. Sirius XM Canada Inc. (SiriusXM) is pleased that the Commission is considering the concerns raised by Canadian broadcasters and is working with us to find a resolution. Especially in these uncertain times, open communication and cooperation with the CRTC will prove essential as we navigate the challenges the COVID-19 pandemic has imposed upon the Canadian broadcasting industry.
2. With respect to **Broadcasting Notice of Consultation CRTC 2020-336** (the Notice) and the proposal made by the Canadian Association of Broadcasters (the CAB) for regulatory relief, please find SiriusXM's responses to the Commission's questions below.

Proposed outcomes

Q1. Does the CAB's proposal align with the outcomes for this proceeding as set out above? If not, how could the CAB's proposal be modified to better align with these outcomes?

Answer 1.

In SiriusXM's opinion, the regulatory relief proposed by the CAB is in alignment with the Commission's stated outcomes.

While artists and venues reliant on large-scale live performance events open to the public have been adversely impacted by COVID-19, the Commission is correct in highlighting the impact on radio and audio broadcasting as well. As the Commission points out in paragraph 8 of the Notice, radio tuning has declined due in part to unemployment and to a stationary work-from-home workforce. With many companies in a state of partial or total remote work assignment, former commuters no longer have any reason to spend that time in the car on a daily basis, reducing their reliance on terrestrial and satellite radio as a result. Moreover, given that the economic impact of this pandemic is not yet clear and that we are presently in the midst of a second wave of infections that could very well be worse than the first, it is likely that Canada's radio broadcasters have yet to see the entirety of the economic fallout from COVID-19.

With this in mind, while SiriusXM acknowledges that it is important to consider the impact of any relief granted to broadcasters will have on parties that currently benefit from requirements imposed by the Commission (“Other Parties”), we also believe it must be acknowledged that the current extraordinary situation was not contemplated when these requirements were imposed on the industry. As such, the Commission’s efforts to strike a reasonable balance between broadcasters and those Other Parties cannot be maintained without granting some additional flexibility to broadcasters. Calculations of amounts payable to Other Parties based solely on *previous year’s* “gross revenues” certainly lacks flexibility, requiring ongoing payments by broadcasters regardless of profitability during this Pandemic and thereby putting the lion’s share of the impact from this pandemic on Broadcasters. While the Commission’s suggested approach of considering compliance over a ‘more protracted period of time’ might help somewhat, that would still mean that the impact of the pandemic would be disproportionately placed on the shoulders of broadcasters. Those broadcasters would still, albeit over a protracted period of time, have to provide all amounts owed to Other Parties under the regulations and/or their current conditions of Licence.

As a Canadian broadcaster, SiriusXM has always been committed to Canadian musical and spoken-word artists and events. Even in these challenging times, SiriusXM has continued to work with artists and event organizers to find new and creative ways to bring innovative Canadian content to local and international audiences. The CAB’s proposal of amnesty for financial contributions in the 2019-2020 Broadcast Year is the most effective measure to ensure that SiriusXM and fellow Canadian radio broadcasters have the flexibility to remain competitive and continue investing in Canadian content in the long term.

Commission’s preliminary views on the CAB’s proposal

Q2. Does the approach align with the outcomes for this proceeding as set out above? Please explain. If not, how could this approach be modified to better meet the outcomes?

Answer 2.

While SiriusXM recognizes the Commission’s hesitation to proceed on a “deemed compliance” basis, Sirius XM submits that the proposed protracted timeline to fulfil financial obligations is not a reasonable or balanced response to the challenges faced by Canadian broadcasters. As previously stated above, even with a protracted timeline, a disproportionate responsibility for the economic fallout from COVID-19 would be shouldered by broadcasters that are already contending with disruptive non-contributing digital entrants seeking Canadian market-share. Regulatory relief that involves merely spreading the regulatory obligations out over subsequent years will continue to disadvantage Canadian broadcasters relative to unlicensed new digital entrants as they manage their own financial recovery. Further it also represents an imbalanced approach between Canadian broadcasters and Other Parties, both of whom should share the burden inflicted on the broadcasting industry by COVID-19.

To properly balance the needs of Other Parties, such as CCD beneficiaries, with those of Canadian broadcasters, the Commission must seek to preserve the competitiveness of Canadian licensees.

The most appropriate means to this end is some form of amnesty with due consideration to the decline suffered as a result of the economic shutdown, without any carryover into subsequent years since a full recovery cannot be guaranteed even without an additional financial burden. The CAB's proposed "deemed amnesty" for financial obligations in the 2019-2020 Broadcast Year is the most administratively expedient approach to buoy Canadian radio broadcast licensees through turbulent economic times while also allowing for a balance to be struck between the interests of broadcasters and Other Parties. Moreover, given that the pandemic is still ongoing and that we are in the midst of a second wave of infections, the economic ramifications of which are unclear, SiriusXM recommends that the Commission consider similar relief for the 2020-2021 Broadcast year.

Q3. Is this approach applicable equally to all expenditure- and exhibition-related requirements? If not, how should such requirements be treated?

Answer 3.

Any complete or partial amnesty or flexibility should be applied equally to all financial requirements.

Q4. To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?

Answer 4.

SiriusXM would support an equal application of any amnesty or flexibilities for all licensed Canadian broadcasters. Given the adverse impact that COVID-19 has already had on the entirety of the Canadian economy and in view of the fact that we are only now entering a second wave, which will surely bring further economic difficulties, SiriusXM would recommend that some form of amnesty apply to all broadcasters. The financial obligations that have been imposed on all licensees by the Commission did not contemplate the challenging global macroeconomic crisis we now face. As such, all broadcasters should be eligible to make use of the proposed flexibilities.

Q5. If the Commission were to adopt this approach, what period of time should be granted to broadcasters for meeting their regulatory obligations for the 2019-2020 broadcast year? Should these obligations be spread equally over a period of time or ramped up over time?

Answer 5.

For the reasons set out above, SiriusXM reiterates its support for the "deemed amnesty" proposal for both the 2019-2020 and 2020-2021 Broadcast Years. SiriusXM would also support any flexible structure that defers or otherwise reallocates any financial burden subsequent to the 2020-2021 Broadcast year to future broadcast years. Given the uncertain prospects and timeline for market recovery, SiriusXM would only support a ramp-up structure spread out over no less than ten (10) years.

Q6. What possible regulatory relief or flexibility other than that requested by the CAB or proposed by the Commission could be granted to Canada's broadcasters and would align

with the outcomes set out by the Commission? In proposing solutions, the following must be addressed:

- i. What regulatory requirements should be subject to these proposed flexibilities?**
- ii. To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?**
- iii. For how long should any flexibilities provided by the Commission to Canada's broadcasters apply?**

Answer 6.

In addition to financial impacts, government restrictions designed to curb the transmission of COVID-19 resulted in an extended closure of all manner of productions, affecting film and music industries alike. As a result, there has been a marked lapse in the production of new and emerging Canadian content. SiriusXM would propose that in addition to amnesty and/or flexibility for financial obligations, the Commission grant flexibility pertaining to broadcast requirements for new and emerging Canadian content. All broadcast licensees should be allowed to avail themselves of a temporarily expanded definition for new and emerging content, granting up to one (1) additional year of eligibility to recent productions.

Reporting and Compliance Monitoring

Q7. On which elements of any flexibility proposed in the context of this notice of consultation should the Commission require broadcasters to report? On which elements should they be required to publicly report?

Answer 7.

Given the competitive sensitivity of financial information, calculations and disclosures, SiriusXM strongly objects to public reporting of any monetary amounts subject to the Commission's amnesty or a flexible contribution structure. Moreover, SiriusXM emphasizes that incremental regulatory responsibilities would create an additional regulatory burden that would only serve to further disadvantage licensed broadcasters relative to unlicensed competitors that do not contribute to the Canadian broadcasting system.

Q8. What form and frequency should such reporting take? Are additional measures beyond current reporting requirements (relating, for example, to annual returns and the program logs) necessary in regard to reporting on and monitoring compliance with the proposed approach?

Answer 8.

SiriusXM takes the position that current annual reporting requirements are sufficient for compliance purposes, and that any further measures would put an undue administrative burden on

broadcasters. SiriusXM also reiterates that the CAB's proposed "deemed amnesty" approach provides the least administrative burden with respect to compliance.

Q9. Are there any elements of this reporting for which broadcasters should be granted confidentiality?

Answer 9.

Given the competitive sensitivity of financial information, calculations and disclosures, SiriusXM proposes that any and all reporting regarding monetary amounts subject to the Commission's amnesty or a flexible contribution structure should remain fully confidential.

3. SiriusXM appreciates the opportunity to provide an industry perspective on the CAB's application and on the Commission's proposals. We would again emphasize the importance of the Commission's consideration of similar relief for the 2020-2021 Broadcast year and beyond, depending on how the pandemic progresses. We look forward to continued collaboration in promoting Canadian artists and giving Canadian voices a far-reaching platform for expression during this trying time.

Respectfully,

Oliver Jaakkola
Senior Vice President & General Counsel