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March 29th, 2021

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2020-374, *Call for comments – Commercial radio policy framework review* – Intervention by Stingray Group Inc.

1. Stingray Group Inc. ("Stingray") is pleased to file the following intervention in response to Broadcasting Notice of Consultation CRTC 2020-374[1] ("BNC 2020-374" or the "Radio Review"). Stingray, through its wholly-owned subsidiary Stingray Radio Inc., is one of Canada's largest commercial radio operators, with 74 originating stations in seven provinces and 7.5 million weekly listeners. Consequently, the outcome of this proceeding has the potential to significantly impact Stingray's business.

2. Stingray was heavily involved in the development and preparation of the Canadian Association of Broadcaster's ("CAB") intervention in this proceeding. Stingray supports the CAB's intervention, but is filing these comments to provide its perspective on certain issues where the CAB has either not offered a view or to augment the CAB's position.

[1] Broadcasting Notice of Consultation CRTC 2020-374, *Call for comments – Commercial radio policy review framework* (November 12th, 2020).

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The Current Business Landscape

3. The Radio Review comes at a critical time for the industry. Since the last full-scale review of the regulatory framework for commercial radio well over a decade ago, the operating environment for Canada's private radio broadcasters has radically changed. With no access to subscription revenue, commercial radio is entirely dependent on advertising and relies heavily on tuning in cars and at the office. The emergence of unregulated digital music streaming services like Spotify and Apple Music, proliferation of "connected devices" and migration of advertising dollars online (with Google and Facebook now controlling over 40% of the entire Canadian advertising market[2]) have left radio's traditional business model severely challenged. And these issues were evident long before COVID-19 changed the way in which the world lives.

4. As the CAB highlights in its intervention, radio revenues peaked in 2013 and have been declining steadily since. Revenues in 2019 were actually $160 million less than they were in 2014, their lowest point since 2006. While conditions were already troubling, the pandemic has devastated the industry as advertisers drastically cut spending in an effort to survive and work from home meant many fewer people were listening to radio in their cars.

5. The CAB discusses the financial impact of COVID-19 and the potential for recovery at length in its submission. While Stingray does not propose to repeat it here, we wanted to highlight our specific experience over the last 12 months.

6. The effect of COVID-19 on Stingray's radio operations was both sudden and profound. In the first six weeks of the pandemic, Stingray saw $30 million in bookings evaporate. Moreover, over the last 12 months, we've seen radio revenues drop by approximately 40% compared to the prior year and an even greater decline in operating profit. Even though revenues have now stabilized to an extent, they remain 20-30% lower than pre-pandemic levels. The uncertainty of further lockdowns and the timing of the eventual reopening of the economy continues to wreak havoc with our client base.

7. In BNC 2020-374, the Canadian Radio-television and Telecommunications Commission (the "Commission") notes that while the "exceptional situation related to COVID-19 may have a significant impact on commercial radio stations, it must develop its regulatory policies with a long term vision rather than in reaction to one-time events.[3]" While Stingray does not disagree, the Commission must recognize that this "one-time event" has expedited a structural decline for the radio industry that was already well under way. Changes brought on by the pandemic – such as remote working and an increased reliance on e-commerce – are enduring, will continue long after COVID-19 is no longer a threat to the wellbeing of Canadians and could permanently impact tuning to radio. While revenues may bounce back to a degree at some point in the future, they are highly unlikely to return to pre-pandemic levels. Meanwhile tuning habits will continue to evolve and competition from online services – both for listeners and revenues – can be expected to intensify. In short, the industry is in uncharted waters.

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[2] Thinktv; IAB Canada; Communications Management Inc.

[3] *Supra*, Note 1, at 12.

The Commission's Objectives for This Proceeding

8. BNC 2020-374 outlines the objectives for this proceeding as follows:

- For Canadian listeners: provide diverse, relevant and quality programming that serves their needs and interests;
- For Canadian artists: ensure that artists (music and spoken work) are best supported by broadcasters in a balanced manner for the creation, presentation and discoverability of Canadian content; and
- For broadcasters: establish a flexible regulatory framework that enables both English and French-language radio to remain competitive in the digital age.[4]

9. Stingray submits that, in order to achieve these objectives, it must first be acknowledged that, as noted above, the environment in which radio operates (against which the current regulatory framework was established) has changed fundamentally. At the time of the Commission's last review of the regulatory framework that applies to commercial radio, the Canadian market for audio services essentially consisted of private radio and CBC-SRC. Satellite radio had just launched. Streaming music services did not exist. It was a "closed" system where the Commission could limit the number of participants. And in exchange for the privilege of holding a licence, certain obligations were imposed relating to the types of music that needed to be broadcast and supported or other types of programming a station could or not offer.

10. While such an approach may be sustainable in a market where competition is restricted, it is not in one where certain players have no barriers to entry and are not regulated. This is the situation Canadian radio stations find themselves in today. Private commercial radio now only comprises just over half of the nearly $2.7 billion Canadian audio market (based on 2019 data)[5], with an ever increasing share going to streaming services. These services are not licensed, can be wholly foreign owned and controlled and are subject to none of the rules or obligations imposed on Canadian radio stations. Services like Spotify and Apple Music can offer listeners whatever music they think will be most appealing, have no requirements to support Canadian artists – either financially or through airplay – and can operate in any Canadian market they choose. In 2019, the revenues for these services represented nearly 18% of the domestic market for audio services and has likely grown significantly in the last year.[6]

11. What this means is that if Canadian radio stations are not offering programming listeners want, those listeners are now fully aware of where they need to go to get it. This fact is incredibly important as it is unrealistic to continue to assume that public policymakers can tell Canadians what they should listen to. In the past, if listeners couldn't find the music they wanted on radio, their only option was to go to the record store to buy it. Now they can stream it from anywhere instantly on their smartphone, including seamlessly in their cars due to integration like Apple CarPlay and Android Auto, resulting in listeners leaving the system.

12. This doesn't mean that radio can't play an important role in introducing listeners to music from new Canadian artists or to help give artists broader exposure. However, expecting to distort a market by mandating radio stations to radically overplay Canadian music or to otherwise dictate what types of content they can or should broadcast while imposing no such requirements on

[4] *Ibid*., at 11.
[5] Communications Management Inc., *Listening to the Future: Planning for the First Decade of the Second Century of Radio in Canada* (March 2021), prepared for the Canadian Association of Broadcasters.
[6] *Ibid*.

streaming services will simply result in people tuning out. As noted above, one of the stated objectives for this proceeding is to ensure Canadians have access to content that “serves their needs and interests”. Canadians will make the decision as to what that is and they have access to more resources than ever before to enable them to do so.

13. As the CAB notes in its intervention, in order for commercial radio to remain competitive going forward, the industry needs streamlined regulation that relies on market forces to meet objectives like diversity and local programming; a more targeted and balanced approach to supporting Canadian music and Canadian artists; a more flexible policy on common ownership; and greater fairness and equity concerning expenditure obligations. Stingray strongly agrees with this perspective. However, we do have certain additional comments concerning the following issues:

- The continued application of the “hits policy” in bilingual markets;
- The appropriateness of tangible benefits in ownership transactions; and
- News requirements for music stations.

14. Each of these issues is discussed in detail below.

<u>The Hits Policy Should be Eliminated</u>

15. At present, English-language FM stations in the bilingual markets of Montreal and Ottawa-Gatineau, must ensure that less than 50% of all musical selections aired during each broadcast week are “hits”. A hit is defined as any musical selection that, at any time, has reached one of the Top 40 positions on certain music charts identified by the Commission.

16. The “hits policy” was first introduced in 1975. At that time, it was much broader and was intended primarily to ensure that music programming on FM radio complemented rather than imitated that presented by AM stations.[7] Through a series of Commission decisions, the policy has been revised, such that it now only applies in Montreal and Ottawa-Gatineau as a means of helping the French-language FM stations in those markets as they are required to ensure a certain percentage of their musical selections are comprised of French vocal music (“FVM”) while English stations are not. In theory, had English stations been allowed to broadcast an unlimited number of hits, it could have resulted in the migration of Francophone audiences to English-language popular music stations.[8]

17. While this policy may have been effective in sheltering French-language FM radio stations from competition in 2009 (the last time it was reviewed), it is clear that is not the case today. The issue is no longer about whether audiences will migrate from licensed French-language stations to licensed English-language stations. It is whether they will leave the system entirely, something the Commission notes in BNC 2020-374 is already happening[9]. As highlighted in the CAB’s submission, only 0.2% of the Top 5000 titles consumed on music streaming services in Canada are French Vocal Music selections.

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[7] Public Notice CRTC 1997-42, *Revised Policy on the Use of Hits by English-Language FM Radio Stations* (April 23rd, 1997) at 2.
[8] Broadcasting Regulatory Policy CRTC 2009-61, *Policy regarding the broadcast of hits by English-language FM radio stations* (February 11th, 2009) at 7.
[9] *Supra*, Note 1, at 58.

18. What this shows is that Canadians will seek out the content they want – if it isn't available from one provider, they will find it from another, especially if that provider is easily accessible. Spotify has millions of subscribers in Canada and over 345 million active users worldwide. Canadians spent approximately eight hours each week tuning to streaming audio compared to 14.7 hours for radio[10] and those numbers reflect pre-pandemic levels. And these streaming audio services are language agnostic – they attempt to offer something that appeals to all tastes. The Commission needs to recognize that continuing to impair commercial radio stations by continuing to restrict the type of music they can broadcast simply makes these foreign streaming services more attractive, further contributing to radio's challenges.

19. Consequently, Stingray submits that the Commission should eliminate the "hits policy". Furthermore, we note that if the primary reason why the "hits policy" is still in force is due to FVM requirements, a reassessment of those obligations in order to establish a level where all stations are in a better position to compete may be a more appropriate approach going forward.

20. Finally, we note that the two markets in which the "hits policy" currently applies are very different, especially as it pertains to their bilingual nature and their role in promoting FVM. Montreal is Canada's second largest city. It has 13 French-language private stations available and only six English stations. Ottawa is the opposite – it has 13 English-language private stations and six French stations. Ottawa's bilingualism is also driven by the fact that it is in the National Capital Region and the Federal Government is one of the major employers. This contrasts to Montreal, which is the cultural centre of Canada's only French speaking province. While Stingray continues to believe that the "hits policy" should be eliminated in its entirety, in the event the Commission has concerns about how that could impact tuning to French music, a middle ground could be to only retain the policy for the Montreal radio market. Moreover, we note that in past decisions, the Commission has recognized the fact that the Quebec/Montreal radio ecosystem operates under different conditions and may have different requirements.[11]

Requiring Tangible Benefits for Ownership Transactions is no Longer Appropriate

21. The Commission has described the rationale behind its tangible benefits policy as follows:

> Since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the burden is on the applicant to show that the application is the best possible proposal and that approval is in the public interest, consistent with the overall objectives of the *Broadcasting Act*. As one way of ensuring that the public interest is served, the Commission expects applicants to propose financial contributions (known as "tangible benefits") that are proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole. These overall requirements are referred to as the "benefits test."[12]

22. For transfers of ownership and control involving radio licensees, the Commission generally requires the purchaser to commit to tangible benefits amounting to 6% of the value of the

[10] CRTC, *Communications Monitoring Report*, 2020.
[11] See, for example: Broadcasting Decision CRTC 2010-942, *Transfer of effective control of various commercial radio programming undertakings from Corus Entertainment Inc. to Cogeco inc.* (December 17th, 2010).
[12] Broadcasting Regulatory Policy CRTC 2014-459, *Simplified approach to tangible benefits and determining the value of the transaction* (September 5th, 2014).

transaction. Those funds are to be directed to Radio Starmaker Fund/Fonds Radiostar ("Starmaker") (3%), FACTOR/Musicaction (1.5%), the Community Radio Fund of Canada (0.5%) and the remaining 1% to any eligible Canadian content development ("CCD") initiative at the discretion of the purchaser.

23. Until 1996, the Commission generally required the purchaser to pay tangible benefits for all transfers of broadcasting licences, regardless of type (i.e., television, discretionary service, radio or broadcasting distribution undertaking). However, in Public Notice CRTC 1996-69, the Commission announced its intention to no longer require benefits for BDU transactions:

> . . . with adoption by the Commission of a policy that removes all or most of the existing licensing restrictions on market entry and which, in fact, encourages the imminent entry of new competitors using a variety of distribution technologies, the underlying rationale for applying the benefits test in considering future applications for authority to transfer the ownership or control of distribution undertakings has essentially disappeared.[13]
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> [Emphasis added.]

24. As noted earlier, this is the exact situation the Canadian radio industry is in today. There are no barriers to enter the market and tuning to digital streaming services now represents more than half of the time Canadians listen to radio. As the CAB outlines in its intervention, part of the solution to making radio more competitive is to allow for greater consolidation. However, such flexibility cannot be coupled with further obligations, such as to pay tangible benefits. Again, such an approach may have been fair in a closed market system, but radio now competes with services who are global in nature and have significantly greater access to capital. Moreover, acquisitions involving those groups occur regularly without any sort of transaction "tax". Furthermore, it does seem somewhat perverse that, under existing Commission policies, Rogers can potentially acquire Shaw for $26 billion in a deal that would transform the telecommunications and broadcasting distribution landscape in Canada and no benefits would be payable, while a radio transaction involving one station for $500,000 would require a $30,000 payment to a variety of funds.

25. Therefore, for all of the above-noted reasons, Stingray recommends the elimination of tangible benefits for radio transactions.

26. In addition, we firmly believe that any existing benefits obligations should be waived. As noted earlier, the commercial radio sector has been decimated by the pandemic, it will take many years to recover financially and a return to anywhere close to historical performance levels is highly unlikely. Benefits payments act to weigh down licensees and limit their ability to grow and compete in the digital age. In the event the Commission considers it necessary to continue to support organizations like Starmaker or FACTOR/Musicaction, Stingray submits that any reduction in funding caused by waiving benefits obligations could be more than offset by requiring streaming services like Spotify to devote a portion of their Canadian revenues to these funds as part of their contribution to the system, something we note the Government has indicated it

[13] Public Notice CRTC 1996-69, *Call for Comments on a Proposed Approach for the Regulation of Broadcasting Distribution Undertakings* (May 17th, 1996).

supports with the introduction of Bill C-10.[14] Such an approach would ensure a permanent, predictable and growing revenue source for these organizations.

Local News Requirements for Radio

27. At present, radio stations are required to incorporate spoken word material of direct and particular relevance to the community served in their local programming, including local news, weather, sports coverage and the promotion of local events and activities. However, they are not required to devote a specific number of minutes to local newscasts.

28. In BNC 2020-374, the Commission has asked whether or not regulations should be introduced requiring a specific amount of local news each week (similar to obligations that have been imposed on conventional television stations). Stingray submits that such a requirement is not only unnecessary, but also ignores how listeners use radio and what they expect from it.

29. While radio and conventional television are both local media, their programming is vastly different. Conventional television stations are general interest television services that offer a wide range of programming, including dramas, reality television, talk shows and local, regional, national and international news. Radio, in contrast, is more niche. There are stations specifically focused on a type of music or all talk stations that offer news or sports programming. In this respect, radio has much more in common with a discretionary service. Viewers who want traditional news will tune to CTV News Channel, not a music video service. While a news/talk station may provide detailed local news coverage, putting a lengthy traditional newscast on a Top 40 music station will simply cause the listener to turn the dial or, worse, look for a more appealing alternative outside the system.

30. In addition, not all radio operators are in a position to offer in depth news programming. Other than two AM talk stations – one in Kamloops and the other in Newfoundland – Stingray operates principally in music formats. We also can't share resources with a network of local television stations under common ownership in order to deliver extensive amounts of news to our listeners.

31. This doesn't mean that our radio stations don't deliver locally relevant information to our listeners. To the contrary, our personalities do that daily, but it often doesn't take the form of a traditional newscast. Instead, it is seamlessly integrated into the programming on the station and designed to both inform and entertain – whether it is a focus on one major story in the news including listener reactions or a Top 5 list of what is happening in the community. This is what listeners expects from music-focused radio stations and from radio generally.

32. The Commission needs to recognize how Canadians consume news. While they continue to rely on television news and talk radio stations for information, they are supplementing this with apps and social media. News is a 24/7, on demand business – it is highly time sensitive. Notifications from smartphone apps now drive the news cycle. Even local television stations post stories online before they are aired in a traditional broadcast. Listeners are not necessarily looking for a 90-second traditional newscast a few times a day.

[14] *Bill C-10: An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts.* [2020]. 1st Reading November 3rd, 2020. 43rd Parliament, 2nd session. Available at: https://parl.ca/DocumentViewer/en/43-2/bill/C-10/first-reading.

Conclusion

33. The Canadian radio industry is facing unprecedented competition and is under immense financial pressure. This proceeding is an opportunity for the Commission to establish a forward-looking regulatory framework that will put the commercial radio sector in a better position to compete going forward. Stingray submits that this involves not just less, but more streamlined and equitable regulation (especially as it pertains to foreign steaming services), including greater programming flexibility and the ability to realize scale through consolidation.

34. Stingray would like to thank the Commission for the opportunity to submit these comments. While we note the Commission has indicated that it does not intend to hold an oral public hearing in connection with this proceeding, in the event such a hearing is deemed necessary, Stingray respectfully requests to appear.

Sincerely,

Ian Lurie
President
Stingray Radio