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April 28th, 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* – Reply Comments of Stingray Group Inc.

1. Stingray Group Inc. ("Stingray") is pleased to file the following reply comments in response to Broadcasting Notice of Consultation CRTC 2020-374[1] ("BNC 2020-374").

2. Stingray has reviewed the reply submission being filed by the Canadian Association of Broadcaster's ("CAB") in this proceeding and fully supports the CAB's position. Stingray is filing these additional comments to address issues not covered by the CAB or to supplement the CAB's arguments.

3. In this submission, Stingray has focused its comments on the following issues:

- The continued application of the "hits policy" in bilingual markets;
- The appropriateness of tangible benefits in ownership transactions; and

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

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- Proposed revisions to the Common Ownership Policy ("COP").

4. Each of these issues is addressed in detail below.

The Continued Application of the Hits Policy

5. In its March 29th intervention, Stingray recommended the elimination of the current policy requiring English-language FM stations in the bilingual markets of Montreal and Ottawa-Gatineau to ensure that less than 50% of all musical selections aired during each broadcast week are "hits" (the "Hits Policy"). We note that Corus Entertainment Inc. ("Corus") and Rogers Sports and Media ("Rogers") took the same position, as did the Torres Group of Companies, a smaller radio operator.

6. In contrast, representatives of French-language radio stations argued for the continued application of the Hits Policy. They argue that the policy remains relevant as the appeal of English-language radio stations to French listeners remains high in both the Montreal and Ottawa-Gatineau markets, especially among Francophones in the 25-34 age demographic. This conclusion is based on evidence concerning the relative amount of time listeners spent tuned to English and French radio stations between 2015 and 2020. They also highlight that in Fall 2020, Francophone adults between 18 and 34 in Montreal spent 30% of their time listening to commercial radio tuned to the three English-language stations over the course of the broadcast week and that number increased to 44.2% between 8 PM and Midnight, Monday to Friday, when the amount of French vocal music ("FVM") on French-language radio stations tends to be higher.

7. Unfortunately, the evidence the French-language radio stations have provided ignores how this outdated policy is impacting English-language radio stations in bilingual markets. By focusing their analysis on relative share of tuning to commercial radio, they don't acknowledge declines in absolute radio tuning, especially to English stations, or the elephant in the room – foreign streaming services.

8. The problem with the Hits Policy is not how it impacts competition between licensed English and French radio stations in bilingual markets, which has been cited as the rationale for its continued application. It is that it encourages listeners to look beyond commercial radio to find the music that appeals to them and, therefore, shrinks the amount of people tuning to radio overall.

9. As the Commission highlighted in BNC 2020-374, there was an overall audience decline to French and English-language radio stations in both Montreal and Ottawa-Gatineau between 2017 and 2019 among Francophone listeners. However, this decline was much more pronounced among Francophone listeners to English-language radio stations than it was for French-language radio stations. [2] This evidence suggests that the Hits Policy is simply forcing Francophones looking for English music to seek it from other sources.

10. Moreover, as Corus outlined in detail in its intervention, the Hits Policy forces English-language radio stations in bilingual markets to choose from a shrinking pool of music, which makes the stations less appealing to listeners. With the growth in tuning to Internet-based streaming services, it is clear that listeners who do not find what they want from commercial radio know where they need to go to find it.

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[2] *Ibid*., at paragraphs 59-60.

11. At the time the application of the Hits Policy was restricted to bilingual markets it was determined that it would help to ensure linguistic duality in those markets and was necessary due to the fact French-language FM stations are required to ensure a certain percentage of their musical selections are comprised of FVM while English stations are not. However, the interveners advocating to maintain the Hits Policy in bilingual markets have only proposed minor adjustments to FVM obligations such that they will continue to be required to broadcast a significant amount of French-language music going forward. From Stingray's perspective, arguing for almost no changes to FVM requirements while still advocating for the continued application of the Hits Policy is logically inconsistent. Their arguments suggest that current FVM requirements are not impairing the competitive position of French-language radio stations in the broader Canadian audio market (something that cannot be said for Canadian music obligations for English-language services). If this is the case, then clearly the Hits Policy, which limits the amount of popular English music on what is but one potential competitor to these stations, is no longer necessary. If, in fact, FVM requirements actually do make their stations less attractive, then these interveners seem to be arguing that English-language stations should also be made less appealing, even if the result is that listeners leave the system entirely.

12. A policy like the Hits Policy may work in a closed environment where the Commission can limit market entry, but it doesn't where there is unregulated listening options that have no content restrictions. Tuning data suggests that the Hits Policy is not protecting French-language stations from audience bleed to English-language stations, nor is it resulting in Francophones coming back to French radio. Francophones are still seeking out the music they want – it's just from services like Spotify. As Stingray noted in its intervention, only 0.2% of the Top 5000 titles consumed on music streaming services in Canada are FVM selections. However, the Hits Policy is impairing the ability of English-language stations in bilingual markets to retain listeners – whether Francophone or Anglophone.

13. We can no longer look at tuning to radio in a vacuum. Radio revenues now only represent just over half of the Canadian audio market. The Hits Policy is clearly no longer effective and instead of helping French-language radio stations, it is driving listeners away from radio. As a result, it should be eliminated.

<u>The Requirement to Pay Tangible Benefits Should be Eliminated</u>

14. In its intervention, Stingray argued that the Commission should eliminate the requirement to pay tangible benefits in connection with transfers of ownership and control concerning radio licences and that any outstanding payment obligations should be removed. We note that a number of other interveners advocated the same approach, including Corus, Rogers, and Bell Media, while CAB proposed that benefits be reduced from 6% of the value of the transaction to 3%.

15. As Stingray and others noted in their interventions, the commercial radio sector is in structural decline – a decline that has been exacerbated by the COVID-19 pandemic. Part of the solution to making radio sustainable going forward given the changing competitive landscape is to allow for greater consolidation. However, such flexibility cannot be contingent on accepting a greater financial burden, <u>such as to pay tangible benefits</u>.

16. As Corus highlights in its intervention, even the existing benefits policy recognizes that approval of a transaction should not "create a financial burden which might impair the ability or willingness of the licensee to provide a quality service and to meet its obligations under the *Broadcasting Act*."[3] However, this is exactly what will happen if purchasers or existing payors continue to be required to pay benefits. Moreover, the Commission has concluded in the past that benefits are no longer appropriate where the sector is subject to significant competition and there are no barriers to entry. This is the exact description of the commercial radio sector today.

17. Therefore, for all of the above-noted reasons, Stingray continues to believe that the requirement to pay tangible benefits for radio transactions should be removed and any existing benefits obligations should be waived. As noted in our March 29th intervention, notwithstanding this policy change, any reduction in funding could be more than made up through levies on foreign digital streaming services, something envisioned by Bill C-10.

Revisions to the Common Ownership Policy

18. In its intervention, the CAB advocated significant changes to the current COP including:

- 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; and
- 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.

19. Essentially all broadcasters supported the CAB proposal. However, certain interveners proposed protections for operators in smaller markets. For example, the Ontario Association of Broadcasters put forward a very similar model to the CAB, but advocated for greater scrutiny in markets of eight or fewer stations where one player would have four stations and another operator one or two.

20. Stingray submits that the addition of rules such as those proposed by the OAB are unnecessary. The Commission will always retain the discretion to determine that a particular transaction is not in the public interest. Applications involving transfers of radio licences are generally subject to a public process. As a result, any existing licensee can raise concerns as to the post-transaction market dynamics at that time.

Conclusion

21. As Stingray noted in its intervention, the commercial radio sector is in structural decline and needs a regulatory framework that will put it in a better position to compete going forward. Notwithstanding this reality, some interveners have put forward self-serving proposals that ignore the changing competitive landscape and, if adopted, will hasten radio's demise. The Commission

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[3] Public Notice CRTC 1989-109, *Elements assessed by the Commission in considering applications for the transfer or ownership and control of broadcasting undertakings* (September 28th, 1989).

must recognize these proposals for what they are and instead should streamline its policies for commercial radio in a manner consistent with the objectives set out in BNC 2020-374.

22. Stingray would like to thank the Commission for the opportunity to submit these reply comments. We also note that an individual intervener raised certain specific issues with our radio stations in Moncton, New Brunswick. We have responded to that intervener directly and a copy of the letter is attached as Appendix “A” to this submission.

Sincerely,

Ian Lurie
President
Stingray Radio

Att.