Broadcasting Notice of Consultation CRTC 2020-374 - Call for comments – Commercial radio policy framework review

---

Reply comments of the Public Interest Advocacy Centre

27 April 2021

Table of Contents

1. Introduction & Summary

1. The Public Interest Advocacy Centre (**PIAC**) is pleased to provide the Commission with its reply comments on Broadcasting Notice of Consultation CRTC 2020-374 - *Call for comments – Commercial radio policy framework review*.

2. PIAC intervenes in broadcasting matters on behalf of Canadian consumers and the public interest at large, particularly where a proceeding concerns vulnerable or marginalized groups or communities. PIAC advocates for fair access to, choice and affordability of important services—and in this proceeding focuses on the interests of Canadian radio listeners, including diverse, relevant and quality programming that serves their needs and interests.

3. We have examined the submissions of the parties and intervenors thus far and we express below our concern with three broad themes which group together similar requests by similar actors and which we believe may negatively affect the public's use and enjoyment of commercial radio services:

   i) Major radio broadcasters' requests to limit or eliminate content expectations (termed as "restrictions") as expressed in various requirements for local news, French-language music, hits, etc. as opposed to the requirements of the broadcasting policy for Canada found in subs. 3(1) of the *Broadcasting Act* and in light of evidence of compliance thus far;
   ii) Major radio broadcasters' requests to increase or eliminate common ownership limits on the number and type of radio stations within various markets in Canada despite risks to diversity of views, expressions of democracy and concentration of market power in the commercial radio sector; and

iii) Competition from online digital competitors as an excuse for relaxation of the above two policy pillars, without consideration of radio as an equitable and affordable method for delivering radio content to Canadians who lack that digital access.

2. Content Requirements

4. Regarding the requests to vary various content requirements,[1] PIAC wishes to note that as a preliminary matter, there is no evidence regarding compliance by radio broadcasters with the present rules. This makes the effort to determine whether the content rules should be changed futile, as no one is aware of whether the present content rules are being followed strictly, somewhat, not at all, or unevenly:

> BNoC 2020-374 does not include any information about commercial radio stations' broadcast programming, either for the 2005/06 broadcast year when the CRTC last issued a general policy for commercial radio, for the 2012/13 broadcast when the CRTC conducted a targeted review of commercial radio or in the recently concluded 2019/20 broadcast year. The absence of this information makes it difficult to know whether these policies achieved Parliament's broadcasting policy for Canada and to therefore know whether changes are required."
>
> and
>
> "The CRTC does not publish annual statistics about the levels of Canadian content, local news or locally-relevant information made available to Canadians by the services licensed to provide that programming to them. It does not publish information about the amount of Canadian spoken word content broadcast by Canadian radio stations, including news, locally relevant information and syndicated programs.[2]

5. Several intervenors have in their comments offered their own statistics and evidence on current radio content and demographics. However, any regulatory change should be founded on a complete, unbiased record of the radio marketplace across Canada. Notably, major radio broadcasters and groups (CAB, Rogers, Bell Media, Corus) argue to relax Canadian content, French-language vocal music, and hit quotas but offer no data regarding whether their radio stations are meeting even existing requirements.

---

[1] See BNC CRTC 2020-374, "Rules for certain types of music and stations" at paras. 39-49 and questions Q6-Q14.
[2] Intervention of FRPC, at para. 50.

6. The Commission is in the best position to collect and analyze the necessary data. PIAC argues that gathering data and making such data universally accessible should be the priority in radio policy going forward. The Commission should re-implement and re-enforce reporting requirements for licensees, in the form of regular, public reports on the minutes and hours of aired content according to type (local news, French-language music, hits, etc.). It is our understanding that these reporting tasks have largely fallen by the wayside or have simply been shelved within the Commission.[3]

7. Without this information, the Commission cannot effectively monitor compliance, nor can the Commission implement evidence-based policy. Some interveners argue that reporting places undue administrative burden on radio stations; however, there is no other method for the Commission to monitor programming by these licensees to ensure the *Broadcasting Act* policy in s. 3 and the Commission's own policies are being followed.

8. With respect, the administrative burden of keeping programming logs, whether to report on what is played for quotas, or to ensure compliance with policies such as the hits list, is the price of obtaining a licence to broadcast on the public airwaves, at least while the *Broadcasting Act* continues to direct the Commission to measure the policy goals against actual programming.

9. PIAC therefore submits that prior to reducing or revising any of the content policies in issue in this prrocceedinf that parties wishing to reduce them bear the burden of persuasion and evidence that present requirements are being met and that meeting such policy requirements is the proximate cause of the ills attributed by them to these requirements. We do not see such evidence on the record or, where evidence is offered, convincing evidence in the light of the lack of primary compliance data.

3. Less competition is not better

10. CAB, and other large radio groups propose to reduce competition by permitting more common ownership of radio stations within a language market (common ownership policy, or "COP"). PIAC opposes in particular the CAB proposal, which is:

[3] Intervention, FRPC, at paras. 47, 49.

> 1. 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.
> 2. 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.
> 3. 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.[4]

11. Granting all or part of this COP relaxation will increase the chance of, if not outright create, market dominance in many local radio markets. Such market dominance can be leveraged to squeeze the existing unaffiliated competitors and to price-make or to squeeze the local advertising market. Perhaps most insidiously, this level of concentration runs a very high risk of allowing major radio broadcasters to become information gatekeepers within a market.

12. PIAC underlines that the gatekeeper role is exacerbated in Canada in particular as at least two major radio broadcast groups are part of vertically-, horizontally- and diagonally-integrated broadcasting and telecommunications behemoths, namely BCE Inc. and Rogers Communications.

13. The potential for homogeneity of viewpoints in local news of such a concentrated market is real. The opportunity to develop editorial viewpoints favouring the business interests of these radio groups across stations is not academic.

14. This has been demonstrated in the U.S. radio market, where the FCC has relaxed cross-ownership requirements to effectively the same level as the CAB proposal for quite some time.

15. PIAC notes that Canada has always had more restrictive broadcasting policies compared to the U.S. because of bilingualism and cultural requirements, and arguably because democratic integrity is more strongly protected in Canada. Certainly in the last decade, Canada has experienced a much lesser degree of political upheaval and controversy compared to the U.S. For the time being, the Canadian media appears to be relatively less susceptible to political influence.

16. The CAB references the 2018 FCC Notice of Proposed Rulemaking, under which the U.S. National Association of Broadcasters (NAB) proposed a relaxation of radio

[4] CAB Intervention, at para. 150.

ownership limits.[5] CAB claims its present relaxed proposal is more restrictive than the present U.S. rules and notes that the FCC presently is considering even more relaxation of ownership.[6] PIAC points out that this latter review is still under scrutiny at the FCC, and that many stakeholders oppose this proposal. PIAC would also venture to predict that the likelihood of this proposal being approved has somewhat lessened due to the new political and regulatory leadership in the US.

17. PIAC urges the Commission to reject the narrative that radio consolidation is the answer to streaming platforms. Consolidation will only harm diversity and localism, and puts too much power in the hands of too few to control the content of radio programming. Studies and past experiences of radio consolidation in the U.S. warn that consolidation leads to job losses, censorship, less diversity and decreased localism. A study conducted by Emory University found that local stations acquired by Sinclair Broadcast Group in the US increased national politics coverage by 25% in the first year, and decreased local political coverage by 10%.[7] The study concludes: "A conglomerate owner can reduce production costs, perhaps dramatically, by substituting nationally-focused and ideologically unified content produced in a single studio for locally-focused and ideologically diverse content produced by many local journalists."[8]

18. CAB worsens this risk to democracy and diversity by asking the Commission to exclude other local radio licence applicants by making consolidation not trigger a general call for licence applications, or at the least, to ensure that any new entrant would have to overcome a presumption that the licence should go to a consolidating incumbent (CAB Intervention, at para. 158).

19. CAB further asks for anti-competitive relief in the form of modifications to the local sales agreements (LSA) and local management agreements (LMA) rules such that local broadcasters, even those from rival major radio groups, may cooperate on sales and operations (see para. 164). Such agreements are by their nature a form of cartelization. Such extreme remedies are unnecessary simply to keep the industry alive.

20. We note CAB in para. 163 attempting to argue both that the LSAs and LMAs will allow them "flexibility" to avoid "cuts, sales or closures." Yet, the final sentence proclaims: "A more flexible LMA/LSA policy would provide additional opportunities

[5] CAB Intervention, at para. 148.
[6] FCC, NPRM FCC 18-179, 2018 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.
[7] https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/10/yes-sinclair-broadcast-group-does-cut-local-news-increase-national-news-and-tilt-its-stations-rightward/
[8] http://joshuamccrain.com/localnews.pdf, at page 4.

to achieve local operational efficiencies." PIAC submits that such "operational efficiencies" can only come from "cuts, sales or closures."

21. PIAC is uncertain as to how CAB's proposals for increased ownership concentration, market barrier raising and cartelization could constitute an improvement to the competitive dynamic of local radio. To the extent it may increase returns, it appears to be premised on a reduction of competition to do so. We are unable to find a policy objective in s. 3(1) of the *Broadcasting Act* that gives the CRTC jurisdiction to reduce competition to achieve profitability of particular broadcasters, whatever the challenge to the traditional broadcasting market. We submit that all of CAB's proposals discussed under this heading could not, in any way, benefit the public interest.

4. Tangible Benefits

22. Lastly, we note CAB's proposal to halve the 6% tangible benefits policy for acquisitions of radio broadcasters to 3%. PIAC opposes this position.

23. Tangible benefits are intended to compensate the public indirectly for an approval of a broadcasting merger that otherwise would have presented a chance for the licence of the broadcaster being acquired returned to the CRTC for public bidding.

24. In Broadcasting Regulatory Policy 2014-459, the Commission explained the purpose of requiring tangible benefits:

> 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 <u>to show that the application is the best possible proposal and that approval is in the public interest</u>, 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 <u>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</u>.[9]

25. CAB' argument for a reduction in tangible benefits does not address this underlying reasoning for their payment. Instead, CAB's arguments are for an expanded tangible benefits regime that presumably would "offset" the reduced contribution of broadcasters – a future that is not at all certain and certainly does not yet exist.

[9] At para 1. (Emphasis added)

26. CAB's argument is that BDUs do not pay such tangible benefits at all. PIAC actually agrees that BDUs should also pay tangible benefits to compensate the public for the harms consolidation in that related industry will visit on the public.

27. CAB also argues that there are no tangible benefits payable by foreign streaming services. First, CRTC presently exempts such foreign streamers under the DMEO. To the extent C-10 may address this issue, presumably it will form part of the CRTC's calculus in determining appropriate supports for the Canadian system demanded of foreign registrants, which will presumably be based at least partly on size and market share.

28. CAB thus has presented no argument for such a major reduction in a level of support to groups (largely creator groups, but also the BPF and BAF[10]) standing in place of the public, that is, related to "improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole".

29. Instead, the harm visited upon the public by future mergers and the attendant reduction of voices and competitors will be the public's recompense and the public should be pleased with an ever more concentrated market. CAB's argument is, in effect, that reducing tangible benefits will make acquisitions cheaper for the acquirers in a buyers' market (caused by reduced revenues and the effect of the pandemic). This is not in the public interest and it will not, we submit, materially improve the broadcasting system nor local markets. We therefore support maintaining the present 6% tangible benefits policy.

5. A Caution about Online Competition and Online Consumers

30. Many of the parties requesting changes to the Commission's Commercial Radio Policy rely upon arguments about competition from online services and about the online habits of consumers. In effect, they attribute all revenue losses to this competition, ascribe no new revenues from these platforms and ignore the functions that only local radio can perform that are not available on online platforms.

31. PIAC submits that the arguments made about the effect of online competition and consumer habits are not taking into consideration the whole reality of the situation

[10] As the Commission is aware, the BPF in particular faces serious financial pressures due to inadequate "refilling" to date and is at risk of disappearing despite its extreme usefulness to public interest participation in CRTC broadcasting proceedings. See FRPC-PIAC Application to Stabilize Funding of the Broadcasting Participation Fund (filed 21 April 2021; not yet posted).

and therefore risk underplaying the importance of local radio to Canadian consumers and citizens.

32. For example, Rogers' Intervention stated: "In particular, Commission policies relating to content restrictions and ownership limitations need to be modernized in order to bolster our ability to effectively compete and survive. Current policies, designed to inhibit consolidation in markets and promote diversity of voices, are now outdated with the arrival of Spotify, Apple Music and other foreign streamers in Canada offering global audio content." (at para 4)

33. The CAB also emphasized that "the reality is that unregulated foreign-owned digital platforms are now having a major impact on commercial radio - from an audience and, even more, revenue perspective." (para vi of the intervention summary)

34. First, PIAC wishes to sound a note of caution regarding the overlap of online and broadcast radio markets.

35. Foreign (music) streaming services do not offer the same content as local radio does and indeed, cannot. They do not offer local news, or local interest stories; local culture is not reflected on streaming platforms. For the most part, all they offer is a database of music. Even if the radio industry in Canada did consolidate, it is highly unlikely that Canadians will stop listening to Spotify, Apple Music, and other foreign streamers.

36. In addition, we note that while CAB acknowledges the presence of Canadian streaming services, in which the major Canadian broadcasting groups hold major stakes, they are careful not to attribute any lost revenue of conventional radio broadcasters to their own cannibalizing Canadian streaming services, such as iHeartRadio and RadioPlayer.

37. Third, online services cannot replace the essential function of local radio services in an emergency. Radio is also often the essential information source in times of emergency, particularly when service outages or weather conditions disrupt Internet services. The recent Rogers service outage on April 19, 2021 acutely demonstrated that consumers cannot fully rely on their Internet connections. In Canada, where heavy winter storms are commonplace, radio is often a lifeline for both information and local solidarity.[11] Recently, summer tornadoes in Ottawa that took out Internet access over several days in some parts of the city showed residents the importance of broadcast local radio even in summer.

[11] https://ca.news.yahoo.com/radio-lifeline-during-n-l-033043374.html

38. Though the CAB points out that social media has become an on-demand source of local/community news, this argument still fails to acknowledge that social media requires a computer or mobile device, as well as an Internet connection. Some individuals also simply prefer not to engage with social media or wish to consume news aurally without having to consult a screen.

39. The CAB also fails to question how social media outlets actually source local news. Social media does not exist in a vacuum; it sources content from local news outlets, and from individuals who have access to local news, including community radio and newspapers. Therefore if consolidation leads to less local reporting, social media may no longer be a reliable alternative to local radio.

40. Lastly, streaming platforms require a computer or mobile device, which are much more expensive than a radio. Additionally, streaming services require an internet connection that provides sufficient bandwidth and/or a higher data plan to support streaming. All of the ways in which intervenors like the CAB argue that radio must adapt to compete with digital services (online radio streaming, new radio apps, etc.) require Internet access. (See, for example, CAB IOntervention at para. 18) Yet, for many lower-income and rural/remote Canadians, reliable, high-quality Internet access is still out of reach, let alone monthly subscription fees.

41. The digital divide in Canada still persists. As of 2019, 34.6% of rural households still did not have access to broadband speeds of 50 Mbps or higher.[12] 53.5% of First Nations reserves did not have broadband at all. Overall, according to StatsCan data from 2018, 6% of Canadians did not have home Internet access, with reasons cited like the cost of Internet services (28%) and equipment (19%), and the lack of service availability (8%).[13]

42. In terms of mobile and home computer ownership in 2017, only 73.1% of families in the lowest income quintile owned a mobile device, and only 63.4% owned home computers.[14]

43. Finally, older demographics are also less likely to use the Internet. In 2017, only 70% and 74% of Canadians aged 65 years and older used mobile communications services and Internet services, respectively. In contrast, 97% and 98% of the 18-34 year age group used the respective services.[15] A more

[12] Communications Monitoring Report 2020, at page 104.
[13] https://www150.statcan.gc.ca/n1/daily-quotidien/191029/dq191029a-eng.htm
[14] Communications Monitoring Report 2019, at page 28.
[15] Communications Monitoring Report 2019, at page 39.

recent survey conducted by Ryerson University found that as many as 20% of individuals aged 60 or more did not own a smartphone.[16]

44. All of these advantages, differences and (in)conveniences of online versus over the air radio to consumers and the public should be borne in mind by the Commission when considering the major proposals by broadcasters, which are naturally only focused on private return on investment.

6. Conclusion

45. In sum, the proposed changes to the Commercial Radio Policy, in particular to the content requirements, Common Ownership Policy and tangible benefits policy risk consolidation of competitors which will reduce consumer choice, cultural diversity, local ownership and local reflection. Online "competition" should be carefully examined for its true effect on radio broadcasters and the value of radio to consumers for value, safety and convenience should inform the debate.

46. In PIAC's submission, the Commission could do far worse than to simply leave the present regime as is while it awaits any effect of, or clarity from, the reorganization of the broadcasting regulatory regime stemming from Bill C-10.

*****End of document*****

[16] Masoodi, M.J., Andrey, S., Bardeesy, K. & Choudhry, Z. (2020, June 8), Race to Trace: Security and Privacy of COVID-19 Contact Tracing Apps, at page 15, Retrieved from: https://static1.squarespace.com/static/5e9ce713321491043ea045ef/t/5edbca7474da2f6b548a6ca6/1591462523019/The+Race+to+Trace.pdf