



7 February 2017

Danielle May-Cuconato  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: Notice of hearing, Broadcasting Notice of Consultation 2017-1 (Ottawa, 5 January 2017), [http://crtc.gc.ca/eng/archive/2017/2017-1.htm?\\_ga=1.203625109.481707473.1466337109](http://crtc.gc.ca/eng/archive/2017/2017-1.htm?_ga=1.203625109.481707473.1466337109)**

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.
- 2 This proceeding follows the CRTC's decision in August 2015<sup>1</sup> to call for radio applications to serve indigenous communities in five of Canada's largest communities: Vancouver, Calgary, Edmonton, Toronto and Ottawa. The call for applications followed the Commission's June 2015 revocation of the five Type B "Native" radio station licences then held by Aboriginal Voices Radio (AVR),<sup>2</sup> as well as the dismissal by the Federal Court of Appeal in November 2016<sup>3</sup> of AVR's appeal of the revocation decision.
- 3 The Forum's comments in this proceeding are limited to the overarching issue of timing – and specifically the fact that the applicants in the proceeding are being required to submit their applications under the rubric of a 27-year old CRTC policy that the Commission has never reviewed through a public hearing.<sup>4</sup>

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<sup>1</sup> *Call for radio applications to serve urban Aboriginal communities in Ottawa, Toronto, Calgary, Edmonton and Vancouver*, Broadcasting Notice of Consultation 2015-399 (Ottawa, 26 August 2015), <http://crtc.gc.ca/eng/archive/2015/2015-399.htm>.

<sup>2</sup> The AVR licences were revoked in *CKAV-FM Toronto, CKAV-FM-2 Vancouver, CKAV-FM-3 Calgary, CKAV-FM-4 Edmonton and CKAV-FM-9 Ottawa - Revocation of licences*, Broadcasting Decision CRTC 2015-282 (Ottawa, 25 June 2015), <http://crtc.gc.ca/eng/archive/2015/2015-282.htm>.

<sup>3</sup> *Aboriginal Voices Radio Inc. v. Canada (Attorney General)*, 2016 FCA 275 (File A-457-15) <http://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/182273/index.do>.

<sup>4</sup> A paper proceeding in 2001 changed Indigenous radio broadcasters' conditions of licence for Canadian content and advertising, but that proceeding involved neither a public hearing nor a substantive review of the Policy's implementation. See *Changes to conditions of licence for certain native radio undertakings*, Public Notice CRTC 2001-70 (Ottawa, 15 June 2001),

- 4 By way of context, we note that over this period the CRTC *has* managed to consult with the public about its policies for commercial and non-commercial ‘non-Indigenous’ radio on at least 17 occasions, resulting in least 27 policy revisions:

<b>Commercial radio</b>	<b>Non-commercial radio: Community, campus, and low-power radio</b>
1990: FM Consultation [1990-20]	1991: Consultation [1991-56]
1990: FM policy [1990-111] – PH June 1990	1991: Consultation [1991-118]
1992: 90-day Radio Review Task Force	1992: Consultation [1992-21]
1992: Regulatory and policy review [1992-72]	1992: Regulatory policies [1992-38]
1992: Programming flexibility - policy [1992-3]	1992: Regulatory policy [1992-72]
1993: Local programming policy [1993-38]	1993: Policy [1993-38]
1995: Review of certain matters in radio [1995-60]	1993: Policy [1993-95]
1995: Digital radio policy [1995-184]	1997: Consultation [1997-10]
1997: Commercial radio policy review [1997-104]	1999: Proposed policy [1999-30]
1998: Commercial radio regulatory policy [1998-41]	1999: Proposed policy [1999-75]
2005: Regulatory policy [2005-10]	2000: Consultation [2000-44]
2006: Public hearing [15 May]	2000: Policy [2000-12]
2006: Regulatory policy [2006-158]	2000: Policy [2000-13]
2006: Regulatory policy [2006-159]	2000: Consultation [2000-44]
2006: Digital radio policy [2006-160]	2000: Regulatory policy [2000-93]
2007: Consultation [2007-79]	2001: Consultation [2001-19]
2008: Regulatory policy [2008-67]	2001: Proposed policy [2001-129]
2008: Consultation [2008-1]	2002: Regulatory policy [2002-61]
2008: Regulatory policy [2008-67]	2009: Consultation [2009-418]
2009: Regulatory policy [2009-62]	2009: Regulatory policy [2009-62]
2011: CCD Consultation [2011-796]	2010: Public hearing [26 Apr-4 May]
2013: Consultation [2013-297]	2010: Campus and community radio regulatory policy [2010-499]
2013: Consultation [2013-572, -298]	2011: regulations [2011-173]
2013: Regulatory policy [2013-476]	2011: Consultation [2011-174]
2013: Regulatory policy [2013-297]	2011: Consultation [2011-797]
2014: Regulatory policy [2014-554]	2011: Policy [2011-431]
2015: Consultation [2015-318]	2012: Policy [2012-304]
	2013: Policy [2013-476]
<b>Total Consultations:</b>	<b>17</b>
<b>Total policies:</b>	<b>27</b>

[Square brackets: CRTC policy numbers]

- 5 Reviewing many of the CRTC’s three-year work plans since 2000 shows that it has often planned to review its Indigenous broadcasting policies – but for undisclosed reasons, these plans have never come to pass:

CRTC Action Plans	CRTC commentary regarding 'native radio' or Indigenous broadcasting
2000-2003 Plan	In 2001-2002, "Native Type B policy review – Spring-Summer"
2005-2008 Plan	No discussion
2006-2009 Plan	No discussion
2007-2010 Plan	No discussion
2008-2011 Plan	In 2009-2010, "Complete studies on native policies" In 2010-2011, "Initiate and complete review of native ... broadcasting policies"
2012-2015 Plan	In 2014-2015: "Review Native Radio Policy"
2013-2016 Plan	In 2015-2016: "Review of the existing policy, which covers radio and television. The review will focus primarily on the specific aspects of a regulatory framework that is effective, appropriate and adapted to the realities of radio stations serving Aboriginal peoples. As the policy applies to both radio and television and takes into account the fact that there is only one Aboriginal television service, the review will also focus on the necessity for the framework to apply to radio as well as television."
2014-2017 Plan	In 2016-2017, "Review Native Radio Policy"
2015-2018 Plan	In 2015-16: Native Radio Policy The CRTC will conduct an internal review of its Native Radio Policy to ensure that the regulatory framework is effective and reflects the realities of radio stations serving Aboriginal peoples. In 2016-17: Native Radio Policy The CRTC will issue a notice of consultation to conduct a review of the existing policy based on the issues identified in its internal review. Following the review, the CRTC will determine the appropriate public process to be undertaken. In 2017-18: Native Radio Policy The CRTC will implement and monitor the new policy.

- 6 The absence of a review of the CRTC's 1990 *Native Radio Policy* makes it difficult to know whether the principles it adopted 27 years ago to guide its decisions to achieve specific outcomes, have had their intended effect. Have they – or have they not – served Indigenous broadcasters and Indigenous communities well?
- 7 The question of the *Policy's* effectiveness is all the more germane because of the publication, since its establishment, of the report by the Truth and Reconciliation Commission of Canada in December 2015.<sup>5</sup> Reviewing the *Policy* in light of important developments such as these would bring it, and the CRTC's licensing and other practices,

<sup>5</sup> *Honouring the Truth, Reconciling for the Future*, (Canada, 2015), <http://www.trc.ca/websites/trcinstitution/index.php?p=890>; see e.g. pages 292-297.

- in line with contemporary approaches to policies affecting Indigenous peoples in Canada.
- 8 As importantly, however, the absence of a review makes it impossible to know whether and how the concerns, needs and interests of Indigenous communities with respect to broadcasting have changed in the past quarter century – or, indeed, how the *Policy* itself could be changed to strengthen Indigenous broadcast service. In the absence of an up-to-date *Indigenous Broadcasting Policy* (or *Indigenous Communications Policy*, should broadcasting and telecommunications legislation converge), on what basis will the CRTC be evaluating new applications for Indigenous licences?
- 9 The absence of a policy review before this important licensing hearing therefore leaves our organization concerned that requirements that the CRTC may decide to impose on new Indigenous radio licences may have unintended, negative effects on the Indigenous licensees.
- 10 While the Forum is not asking to appear before the CRTC at the hearing in this proceeding, we look forward to reviewing the Commission’s determinations in this proceeding. Should you have any questions, please contact the undersigned.

Sincerely yours,



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