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Broadcasting and Telecommunications Legislative Review Panel

Call for Comments

Submission of the
Canadian Association of Broadcasters
CEO Radio Council

January 11, 2019

CAB CEO Radio Council Submission to the Legislative Review Panel

Introduction

The Canadian Association of Broadcasters (CAB) CEO Radio Council (CAB Radio Council) is pleased to provide this submission in respect of the Legislative Review Panel's call for comments. We will respond only to the *Broadcasting Act* questions, and those questions of direct relevance to our members.

The CAB Radio Council was formed in June of 2012 to represent the interests of private terrestrial radio broadcasters across Canada. The Radio Council represents more than 500 AM and FM radio stations across Canada, offering French, English and ethnic programming. CAB Radio Council members include CEOs (or equivalent radio heads) of Canada's largest terrestrial radio broadcast groups, as well as the majority of small and medium-sized private operators in Canada.

Context - Challenges to Radio's Value Proposition

Private radio in Canada is a huge success story – we are a major contributor to Canadian culture through our support of Canadian music, and of vital importance to life in communities across Canada through the provision of local news, day-to-day traffic and weather information, community engagement and public alerting.

Private radio plays a significant role in the provision of local content in communities across Canada and in some markets is the sole source of local news and information programming. Private radio serves approximately 300 local Canadian markets with relevant, reflective local content – both over-the-air and online.[1]

Unfortunately, we are witnessing disturbing trends. While digital platforms have been undermining the economic model of print media for over a decade and since 2011 have reduced conventional TV revenues by 25%[2], the impacts on radio have become evident only recently.

Private radio has experienced four successive years of systemic (not cyclical) revenue declines totalling $103 million or 6.5% since 2013:

- From 2013 to 2015, radio recorded an unprecedented two years of successive revenue declines, for a total reduction of $20 million or 1.3% on annual revenues of $1.6 billion;
- From 2015 to 2016, revenues declined by $53 million or 3.2% to $1.55 billion; and
- From 2016 to 2017, revenues declined a further $30 million or 2% to $1.52 billion.[3]

The industry expects continuing and, potentially, greater declines through 2020.[4] Beyond that, the picture appears even more alarming.

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[1] 2017 CRTC Communication Monitoring Report and public sources. As at 2016, there were 711 private radio stations in Canada.
[2] Private local TV revenues in Canada declined from a peak of $2.144 billion in 2011 to $1.608 billion in 2017. CRTC Statistical Summaries.
[3] This is the converse of the CRTC December 2017 Reference Document forecast of a 0.5% increase of revenues.
[4] Preliminary estimates suggest a less than 1% revenue decline in 2018, but accelerating declines to in the order of 5% into 2019. Source: CAB Trans-Canada Radio Advertising by Market (TRAM) monthly analysis for 21 larger Canadian markets.

These trends are being driven by an exodus of advertising revenue to digital platforms. Notwithstanding radio's continuing relevance and popularity with Canadians, advertisers are opting to spread their marketing budgets across the vast array of digital advertising platforms available to them. The perception of many advertisers is that they must be on global platforms regardless of whether the metrics demonstrate effectiveness. The largest of these digital advertising platforms are owned by Google and Facebook, which were estimated to be responsible for nearly three-quarters of the Canadian on-line advertising market (or over $5 billion) in 2017.[5]

As pointed out in the CRTC's Harnessing Change report, AM/FM radio:

- remains an important platform for Canadian artists;
- support[s] linguistic duality in Canada;
- is an important financial contributor to Canadian content[6];
- is ubiquitous[7]; and
- is getting by with a smaller slice of the advertising pie. Radio's main revenue source is advertising, and revenues have been in slight decline since 2014. To make up for this decline, English-language radio stations have been cutting costs to maintain profitability; however, this strategy has its limits. Comparatively, the French-language market has been more resilient, albeit with lower overall profitability.

In a reference document released in December 2017, the CRTC also issued projections for audio services based on an extrapolation of current trends. The Commission projected that:

- Private radio revenues would decline 3.3% from 2017 to 2021. However, these projections included an incorrectly estimated increase in radio revenues from 2016 to 2017 of 0.5%, rather than the actual 2% decrease that was subsequently revealed, distorting the extrapolation[8]; and
- Radio audiences would decline 16% from 2017 to 2021, from an average of 14.2 hours to 11.9 hours per week, excluding radio streaming.[9] Moreover, the Commission stated, "If listening to traditional radio continues to decline at the current rate, we could see it drop by over 33% in the next 10 years. This decline is driven by music listening shifting to digital platforms."

These projections would appear to underestimate private radio revenue declines and overestimate radio tuning declines. In fact:

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[5] In 2017, Canadian internet advertising revenue reached $6.8 billion (exceeding that of all three traditional Canadian media combined). It is projected to rise to $7.7 billion in 2018. https://www.iabcanada.com/2018-canadian-internet-ad-revenue-is-projected-to-rise-by-over-945-million-to-7-7-billion/

[6] As noted by the Commission, AM/FM radio contributed $33.6 million in 2016 to Canadian content through Canadian content development contributions.

[7] The Commission reports that 86% of the national population listens to AM/FM radio regularly and the level is similar in both English- and French-language markets. On a weekly basis, listeners spend an average of 16.6 hours per week listening to radio, and at a slightly lower level in the English-language market than in the French-language market. The time Canadians spend listening to radio has been declining slowly, but that measure doesn't fully account for online listening.

[8] Chart 17. The CRTC 2017 Broadcasting Financial Summaries were published in July 2018. The December 2017 projection for 2017 would have been based on a partial data-set, which simply turned out to not be representative.

[9] Chart 9. 12+. Based on five-year projections, the CRTC notes a Numeris methodological change in 2016 to online diaries as the reason that three-year projections were not provided.

- A corrected extrapolation of revenue trends would lead to an expectation of a further 6.5% decline in private radio revenues from 2017 to 2021; and
- The four-year radio audience decline from 2012 to 2016 was 7.6%. Consistency with revenue declines would suggest this is a better indicator of expected declines from 2017 to 2021.[10]

While ten-year private radio revenue declines of 13%, and potential audience declines of 15%, are not as dramatic as those experienced by other media segments, they cannot be considered "slight" as characterized by the Commission.[11] Moreover, there are signs that this could be a best-case scenario, not a worst case.

We therefore believe it essential that policy makers plan for these or potentially far greater radio declines, and be proactive in implementing policy that can help position private radio broadcasters for competitive growth and success. Taking a "wait and see" attitude risks undermining the sector's competitive position beyond recovery.

Underlying tuning and associated revenue declines are two primary factors.[12] First, competition from global digital platforms (e.g. Apple Radio, Spotify, YouTube), which unlike radio, do not have any regulatory restrictions and obligations. Second, replacement of the radio "tuner" by the tablet, smartphone, smart speaker and other connected devices, which employ a different distribution model than AM/ FM radio, and distribute a far greater array of audio options.

The doomsday scenario for radio is that these trends coalesce in a way that effectively eliminates radio's historic ownership of in-car listening. In particular:

- The "connected car", enabled by low cost wireless data plans and dashboards that reduce radio's prominence, will massively increase access to online audio streaming over the next five years; and
- Truly autonomous vehicles, which could be available in as little as ten years, will open up car-based electronic entertainment and information from audio-based media to text and video.

While this might be considered normal and unavoidable technological change, it is crucial to recognize that foreign online media – which has become a significant part of our Canadian broadcasting system – offer virtually none of the cultural, social and economic benefits provided by Canadian radio and other media across Canada.

More specifically, foreign-based music/audio services benefit from guaranteed access to the Canadian market as a result of net neutrality rules but have:

- minimal Canadian, particularly local market infrastructure;
- no obligations to support Canadian talent;

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[10] Revenue and audience trends do not necessarily match, but they do correlate. Thus, it is reasonable to assume that, over the longer term, audience and revenue declines can be expected to be more consistent with each other.
[11] Presumably based on the incorrect data set, the CRTC's Harnessing Change report states, "Radio's main revenue source is advertising, and revenues have been in slight decline since 2014" and "Audiences and advertising revenues have been declining slightly, but both remain significant".
[12] As noted above, to date, the Internet's impact on radio has been more indirect than direct – i.e. new means by which advertisers can reach customers. This will change going forward as more direct competitors to radio take hold, particularly in-car.

- no content quotas or standards;
- no local programming and/or news requirements;
- no licence fees or renewals;
- no tangible benefits on acquisitions;
- no format restrictions;
- no emergency alerting requirements;
- no political, medical, and other advertising restrictions;
- no restrictions on market dominance;
- full tax deductibility for advertisers' advertising; and
- proportionately less royalty payments to Canadian artists as a result of playing lower levels of Canadian content.

If local radio is to survive and thrive, the balance of benefits and obligations has to be recalibrated in the short to medium term.

First, private radio must be allowed to increase its operational efficiencies and competitiveness through the elimination of outdated regulations and restrictions that applied in a pre-Internet era. This is something the CRTC has acknowledged it can do in the short term without legislative change.[13] In particular, among the changes to the regulatory framework that the CAB Radio Council would like to see is a relaxation of rules that prevent radio operators from owning more than two FM stations in any market. This would allow greater operating efficiencies in a declining revenue environment, allowing a greater proportion of radio's limited resources to be directed to programming, including local news and information. It will also allow migration to the FM band for those radio stations still operating on the declining quality AM band.

Second, the pronounced difference between the regulatory treatment of Canadian broadcasters and foreign-based content providers must be dealt with. This requires a more appropriate and equitable regulatory framework as between traditional radio and digital foreign-based audio providers, that will allow each to compete on a more level playing field. The CAB Radio Council believes this is something the CRTC can do under the existing *Broadcasting Act*, but which might benefit from modernized legislation.

Third, Government must act to support and preserve a vibrant Canadian media space, including Canadian radio that can in turn support Canadian programming and Canadian democracy through key priorities such as local news. This will require an evolution of existing Canadian content support mechanisms that recognizes:

- the multi-platform nature of Canadians' media consumption habits;
- the declines in the capacity of internal broadcaster cross-subsidy to indirectly support Canadian content; and
- the broader range of Canadian content now requiring direct support.

This flows from questions asked of the Review Panel, but goes beyond legislative change.[14]

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[13] In its Harnessing Change report, the CRTC proposed in that as a "short to medium step" it would "re-examine the regulatory approach to radio". The CAB Radio Council is hopeful that the CRTC will undertake such an examination in 2019. The last full review of the radio regulatory framework was conducted in 2006.

[14] The CAB Radio Council recognizes that it is up to the Review Panel to interpret its own mandate – whether narrowly only in respect of specific recommended changes to Communications legislation, or more broadly in respect of commenting on other potential measures (funds, tax credits etc.) that respond to the questions asked.

Broadcasting Act Questions

8. Broadcasting Definitions

8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?

The Commission's analysis of the definition of programming and broadcasting as applied to the Internet was first defined in the 1999 New Media Exemption Order, now referred to as the Digital Media Exemption Order (DMEO).[15]

In that exemption order, the Commission clearly and concisely pointed out that broadcasting-like activity on the Internet was indeed broadcasting under the *Broadcasting Act* – regardless of the different transmission medium, the use of computers (or smartphones) as receivers and whether the activity was on-demand.

The only major difference between 1999 and now is that back then, the Commission concluded that "the majority of services now available on the Internet consist predominantly of alphanumeric text, and, therefore, do not fall within the scope of the *Broadcasting Act* and are thus outside the Commission's jurisdiction".

Today, this is no longer the case as a huge number of Internet services "for reception by the public"[16] no longer consist predominantly of alphanumeric text, and, therefore, are clearly within the scope of the *Broadcasting Act.*

Many of these online services are direct substitutes for (at least part of) traditional broadcasting services, and effective analogues for them. For radio, this would include:

- Internet radio, including Canadian stations via Radioplayer and iHeart Radio;
- Music streaming services, like Apple Music, Spotify, and Google Play Music;
- Podcasts, from a plethora of media and non-media sources; and
- Music video services, such as Vevo and YouTube.

A March 2018 online survey revealed that 66% of Canadians spent at least one hour a day watching TV, video or movies and 43% listened to music online, including radio. The top five paid online content sites in Canada are Netflix, Spotify, Apple, Amazon Prime and Crave TV[17] – all broadcasting, as defined under the *Broadcasting Act.*[18]

Finally, there are some applications and activities that can be said to have a mix of broadcasting-and non-broadcasting content as defined under the *Act*. Social media sites and news sites typically combine video and text elements. The Commission has, in the past, addressed the issue of whether services with such mixed elements are broadcasting, and is therefore equipped to do so going forward.[19]

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[15] Public Notices CRTC 1999-84 & 1999-197. See Broadcasting Order CRTC 2012-409 for current version.
[16] This is a key part of the definition of "broadcasting" under the Act, which takes private communications outside its purview.
[17] https://cira.ca/factbook/canada%E2%80%99s-internet-factbook-2018.
[18] In our view, these would all clearly be "programming undertakings" as defined under the Act.
[19] For example, the Commission has concluded that the transmission of still images, whether or not accompanied by audio and including graphic images, constitutes a broadcasting undertaking. See

The foregoing suggests that not only does the concept of broadcasting remain relevant today and going forward, the Commission's ability to define broadcasting under the *Broadcasting Act*, also remains both appropriate and necessary. We strongly oppose the notion of limiting the Commission's jurisdiction or excluding Internet-based services from the *Act*.

In particular, we believe that the definition of "broadcasting undertaking" would encompass known and future online audio and music-based services, as well as a significant portion of activity on social media and news sites.[20]

That said, the strict delineation in the Act as between "distribution undertakings" and "programming undertakings" may not be ideal for online services, going forward. For example, YouTube in Canada, which today is clearly a programming undertaking, may operate in the future as a distribution undertaking.[21] While the Commission should be able to draw appropriate distinctions[22], in order to enable a more holistic approach, there may be value in introducing a new type of "online undertaking", defined as follows:

> "online undertaking" means a distribution or programming undertaking, or some combination thereof, delivered and accessed over the Internet.

As is the current case, however, we would not see any particular benefit in further subdividing definitions in the Act into "audio" or "video" or "music" or such other classes of undertakings. Such classes can be defined in licensing, regulation or exemption, as necessary, giving the CRTC more flexibility to capture their evolving make-up over time without requiring further legislative change.

8.2 How can legislation promote access to Canadian voices on the Internet, in both official languages, and on all platforms?

The CAB Radio Council understands that the purpose of this review is to modernize the *Broadcasting Act*, where necessary, so that the Commission is better equipped to address new and future communications platforms and technologies.

In respect of the Commission's jurisdiction, as discussed in response to Q 8.2, we are confident that the *Broadcasting Act* does confer the necessary jurisdiction over foreign-based digital audio and music services, such as like Spotify and YouTube.

Moreover, we believe that the best way that communications legislation can promote access to Canadian voices on all platforms, in both official languages, is to make it explicitly clear that digital platforms are captured by Commission regulation. We submit that legislative change is not necessary to give the Commission authority to impose contribution requirements on digital foreign-based platforms.

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http://www.crtc.gc.ca/eng/archive/1993/PB93-51.htm The Commission has applied a "focus of attention" test to determine whether a service consists "predominantly of alphanumeric text." Broadcasting Decision CRTC 2005-120.

[20] The "focus of attention" of such sites being increasingly video and still images.

[21] As is the case in the U.S. where YouTube TV streams more than 60 live TV networks.

[22] Many corporate entities in Canada operate as both distribution and programming undertakings, but usually through different subsidiaries.

In particular, the Commission could choose to amend either the DMEO or the Government could choose to amend the *Direction to the CRTC (Ineligibility of Non-Canadians)* in order to provide specific and appropriate regulatory obligations on foreign online services.

How the Commission ultimately achieves an appropriate and equitable regulatory framework is a decision it will have to make another day. We nevertheless address key elements of such an approach in response to Q. 9 and Q. 10.

9. Broadcasting Policy Objectives

9.1 How can the objectives of the *Broadcasting Act* be adapted to ensure that they are relevant in today's more open, global, and competitive environment?

The objectives of the *Broadcasting Act* contain a number of potentially competing social, cultural and economic objectives that the Commission must balance in any decision. The objectives reflect the values, reality and aspiration of Canadian broadcasting.

We believe that the objectives remain appropriate. While an argument might be made for modernization of certain wording, it cannot be said that the current objectives prevent the Commission from making determinations that it believes are in the public interest.

9.2 Should certain objectives be prioritized? If so, which ones? What should be added?

The possibility of introducing priorities as between objectives was one the Commission raised in its 2006 “Future of Broadcasting” Report.[23]

The Commission’s observations at that time appear relevant today:

> Parties did have significant differences of opinion as to the weight, priority and effect given to implementing the broadcasting policy objectives, as reflected in the crafting or interpretation of section 5 regulatory policy objectives. For example, on the one hand, cultural groups took the position that cultural objectives, such as appropriate “contribution” and the “predominant use” of Canadian creative resources (subparagraph 3(1)(e) and 3(1)(f)) should be paramount. On the other hand, distributors largely argued for a greater emphasis on economic objectives and the need for innovation as (subparagraph 3(1)(d)(iv), paragraph 5(2)(c) and paragraph 5(2)(f)).
>
> A clear question for the Government is, therefore, whether the section 5 regulatory policy objectives, introduced in the 1991 Act, remain useful and appropriate, or should be amended or prioritized.

In the CAB Radio Council’s view, leaving the Commission with the discretion to balance competing policy objectives – particularly as between the economic and the cultural – remains the correct approach. The primary purpose of the *Broadcasting Act* is clearly cultural in nature. However, cultural objectives cannot be met in an economic vacuum. The whole reason that the Commission exists as an expert tribunal is to navigate that reality.

9.3 What might a new approach to achieving the Act's policy objectives in a modern legislative context look like?

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[23] http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf at paras 413-416.

As earlier discussed, regardless of approach, achieving an appropriate and equitable regulatory framework as between traditional broadcasting and foreign on-line services must be a central goal of public policy going forward.

10. Support for Canadian Content and Creative Industries

10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?

As already noted, the CAB Radio Council takes the view that the Commission already has jurisdiction over both Canadian and non-Canadian online players in their broadcasting capacity. We do not however expect that online audio players will necessarily be regulated in the same way as radio, in order to achieve an appropriate and equitable regulatory framework.

In particular, the CAB Radio Council accepts that it is impractical for foreign audio services to be required to program the same levels of Canadian music and local programming as radio does today. The notion of 'appropriate and equitable' contribution addresses this reality by specifically encompassing contributions that are different but of comparable value, recognizing the full context.

The Commission took this approach a decade ago when it licensed foreign audio service entry at significantly lower levels of Canadian content obligations than radio. In particular, in 2005 satellite radio was licensed in Canada with a then Canadian Talent Development (CTD) contribution of 5% of revenues, and a requirement to distribute one original Canadian-produced audio channel for each non-Canadian produced channel.[24]

The CEO Radio Council does not expect foreign on-line services to be regulated in the exact same manner as terrestrial radio (e.g. Canadian content exhibition and local programming requirements (including local news) as well as infrastructure.[25]) The Commission may determine that other measures are more appropriate as part of their regulatory oversight, such as a more substantial financial commitment to Canadian content development (CCD) [26] as it did with satellite radio and/or financial support for local news and journalism.[27]

Establishing the precise nature of appropriate and equitable contributions would be the subject of a future CRTC proceeding, and subject to two key considerations.

First, assuming passage of the United States-Mexico-Canada Agreement (USMCA), Canada will be subject to Digital Trade provisions that require "non-discriminatory" treatment, except in

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[24] https://crtc.gc.ca/eng/archive/2005/db2005-247.htm. A minimum of 85% of the musical selections broadcast on all Canadian-produced channel, considered together, must be Canadian selections. A licensee must also distribute a minimum of three French-language original Canadian-produced channels.
[25] It is worth noting that 3(1)(d)(iii) specifically refers to the "employment opportunities arising out of its operations" as a broadcasting system objective.
[26] Radio stations pay CCD at a base level of 0.5% on revenues over $1.25 million, as well as 6% of the purchase price on ownership transfers and "over and above" CCD contributions on new license applications. The Commission reports that combined these amounted to 3% of revenues in 2016. CRTC 2017 Communications Monitoring Report.
[27] This could include funding of news aired by broadcasters, wire services, civic news etc.

respect of areas subject to the cultural exemption.[28] The Commission will want to craft contributions in a manner that does not inadvertently breach this requirement.[29]

Second, given the then state and future outlook of the Canadian radio sector, determinations would include consideration of a reduction in private radio's contributions. Relaxation of the regulatory obligations imposed on private radio may ultimately be necessary in order to remain competitive with online players.

10.2 How can the CRTC be empowered to implement and regulate according to a modernized Broadcasting Act in order to protect, support, and promote our culture in both official languages?

The CAB Radio Council is satisfied that the *Broadcasting Act* confers jurisdiction over online audio and audio-visual services, and that the Commission has sufficient powers over online players.

We note that in the Harnessing Change report, the Commission rejected the current licence based framework in favour of a "service agreement" model. Regardless of what approach is adopted over the longer term, we submit that the current exemption order framework is adequate to achieve desired outcomes, as long as the Commission attaches the necessary conditions to exemption. Thus, we do not believe that legislative change is required for the Commission to start to move to a more equitable regulatory framework.

As we noted above, the Commission could choose to amend either the DMEO or the Government could choose to amend the *Direction to the CRTC (Ineligibility of Non-Canadians)* in order to provide specific and appropriate regulatory obligations on foreign online services.

10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?

As noted in response to Q.10.1, only limited options would appear to be available to ensure the exhibition of Canadian content on foreign audio streaming and music services.

Shelf space requirements have value in that they at least ensure Canadian music (including French-language music) is available. However, as noted above, a standard requirement across the board seems unrealistic for all music services. Moreover, imposing this on foreign audio services may serve to draw audiences away from Canadian sources of Canadian music.

Promotional requirements would involve use of displays and algorithms. Although these provide ways to make Canadian music more discoverable, they are hard things to regulate.

11. Democracy, News and Citizenship

11.1 Are current legislative provisions sufficient to ensure the provision of trusted, accurate, and quality news and information?

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[28] Article 19.4, USMCA. The USMCA defines cultural industries as those engaged in the publication, distribution or sale of books, magazines, film, video and music, as well as broadcasting.

[29] While the USMCA preserves the cultural exemption, as its application can trigger countervailing measures of "equivalent commercial effect", the Government's preference would presumably be to avoid invoking it. "Non-discriminatory" treatment doesn't not necessarily require "equal treatment".

It is our view that “trusted, accurate, and quality news and information” can be achieved by ensuring a diverse Canadian media landscape that includes local traditional and online radio broadcasting with “programming of high standard”, “that reflects Canadian attitudes, opinions, ideas, values”, is “drawn from local, regional, national and international sources” and provides “a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern”.[30]

Foreign media are highly unlikely to do this. Indeed, the notion of foreign media dominating the Canadian news landscape should be considered an affront to Canadian values and democracy. While foreign media and platforms like Facebook and Google should be held to legal or regulatory requirements against hate, libel and the dissemination of fake news, the best means of ensuring the provision of trusted, accurate, and quality news and information is to maintain a diverse and vibrant Canadian media landscape.

It is a matter of public record that local news is suffering in Canada – particularly local TV and local newspapers.

There is no evidence that radio has suffered material declines in local news to date. Despite revenue declines, operators have been able maintain spending on programming, including news.[31] This means radio is only growing in its relative importance as a source of local news and information.

Future trends for radio suggest, however, that with the systemic decline in advertising revenues, declines in programming, including news, are inevitable unless action is taken.

In response, as a key first step, the radio industry has asked the CRTC to initiate an immediate review of the radio regulatory framework. This is an initiative that the CRTC indicated in its Harnessing Change report it *could* undertake, given that any “changes to legislation and regulation will take time” and “[w]hether or not such changes occur”. We are cautiously optimistic that such a review will take place in 2019.

Among the changes to the regulatory framework that the CAB would like to see occur is a relaxation of rules that prevent radio operators from owning more than two FM stations in any market. This would allow greater operating efficiencies in a declining revenue environment, allowing a greater proportion of radio’s limited resources to be directed to programming, including local news and information. It will also allow migration to the FM band for those radio stations still operating on the declining quality AM band.

11.2 Are there specific changes that should be made to legislation to ensure the continuing viability of local news?

Barriers to local news are largely economic. The simple reality is that while local news used to be viable on the basis of advertising revenues and internal cross subsidy alone[32]; this is no longer the case.

[30] *Broadcasting Act*, s.3(1)(g), (d)(i), and (i)(ii)&(iv).
[31] Programming costs for radio as a whole were $499.4 million in 2017, slightly up from 2013 programming expenses of $498.8 million (although down from a high of $510 million in 2015), despite revenue declines of $103 million over this period.
[32] Local news on radio is not economic in anything but the largest radio markets *per se.* That is, the revenue generated for a given local radio newscast does not generally cover its costs. But it has historically been viable as an

Private radio is a valued source of local news and other local programming. It is part of our value proposition; our competitive edge; our brand.

Our listeners' level of interest in local news and information depends on a number of factors, including the format of the station, demographic of the audience, number of alternate news sources in the market, time of day, and whether or not a situation is breaking, or if there is an emergency. We respond to listener and situation demand to the extent that resources are available. All-News/News-talk radio stations in metropolitan and regional markets offer Canadians a distinctive alternative from music-based stations, which might only feature brief news highlights in morning drive. On the other hand, in smaller markets (without news-talk radio), many radio stations offer local news throughout the day as part of their music-based format. Across Canada, radio websites and community portals also feature local, regional and national news – often part of broader multiplatform strategies.

Given the foregoing, and the impracticality of imposing news obligations on foreign online services, any legislation designed to ensure the continuing viability of local news and local programming must be incentive and funding-based, not obligation or exhibition-based. In particular, the notion that local news can be ensured through simply imposing new obligations on local radio stations is unrealistic and must be rejected.[33]

Moreover, we believe that support for local news is inextricably linked to support for Canadian media. We do not believe that Canadians would accept an outcome where the majority of local news comes from foreign-based platforms, nor (as a practical matter) do we believe that these platforms will invest in truly local news.[34] To that end, new funding for news should be platform agnostic, including being available to radio (whether over-the-air or via radio online platforms and community portals).

We oppose, however, the Commission's apparent suggestion that radio should be required to raise its contribution to any new integrated Canadian content fund beyond that of current basic annual contribution levels to CCD.[35] Contributions in support of Canadian content must come from all players participating in the system. As such, there is no reason to increase private radio's contributions as declines in revenue (and therefore funding) will be offset by financial contributions from foreign online players.[36] Regulations should also be streamlined to put less emphasis on contributions to third party funds and allow more opportunities for radio stations to invest their regulated contributions in news and other Canadian programming that they themselves use (on radio or on an enterprise basis) and exploit.[37]

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important and valued part of the overall radio package; engaging audiences and delivering a valued community service.

[33] Vital to the viability of local news is the ability to place local news on the platforms that work for Canadians. Placing news on contemporary music-based stations can simply encourage audiences to switch stations or, worse still, platforms. But ensuring it is online or on news-talk stations places it where Canadians want it.

[34] We draw a distinction here between platforms that are a source of news and those that originate it. Facebook and other social media sites are a parasitic source of news – they disseminate rather than produce it. Their business model rests on redistributing the content of others; producing original local news content would be well outside of the scope of that business model.

[35] In its Harnessing Change report, the Commission postulated a uniform 1% of revenue contribution requirement to a new integrated fund "more broadly supported through existing contributions by all broadcasting and broadband connectivity services"; double the current basic 0.5% CCD requirement, and ignoring other radio contributions, including CCD from ownership transfers and new licences.

[36] See answer to Q.10.2.

[37] In the alternative, if third party funds continue to be used, criteria would need to be established to ensure that Canadian radio companies and affiliated media platforms can also access funds for their content.

Nevertheless, we are not of the view that any single solution is necessarily the answer to the plight of local news in Canada; nor do we believe that communications legislation is necessarily the sole legislative vehicle that government should consider.

To that end, we note with approval the Government's November 21 Economic Statement announcement of its intention to propose a new refundable tax credit to support labour costs of news organizations that produce "a wide variety of news and information of interest to Canadians", and specifically, original news content.[38] We are already on record as recognizing that tax credits, a measure that has been successful in supporting historically uneconomic genres of Canadian television and film programming, should be considered for now uneconomic news content, and applied on a platform agnostic manner.[39]

The new refundable tax credit for news labour costs would be available to qualifying media effective January 1, 2019 with issues of eligibility to be defined by an independent panel that has yet to be announced. We are currently seeking confirmation from government that:

1. Commercial radio stations that produce original news content will be eligible for this tax credit; and
2. The tax credit rate will be introduced at a level that is sufficient to make a material difference to the viability of local news.[40]

Whatever rate is adopted for the tax credit, it is highly unlikely that a tax credit alone will be sufficient to maintain the viability of local news operations – even with the regulatory reform measures discussed above. Additional measures must be considered.

In this regard, we also support proposals to amend the advertising deductibility provisions of the *Income Tax Act* (section 19) to make foreign internet advertising ineligible as a deductible tax expense.

In addition, we submit that broadcast legislation must clearly reference the need to balance requirements under the *Broadcasting Act* against other legislative requirements that divert resources away from local news and programming (e.g. *Copyright Act, Accessibility Act, Health Canada Act etc.*).

Finally, the *Broadcasting Act* principle of "priority" for Canadian programming and Canadian services that offer local, including news, programming should find direct application in reasonable measures to maintain consumer access to radio. This could include:

- Requiring manufacturers to insert and activate FM chips in smartphones; and
- Collaboration with automotive industry to ensure radio's prominence on the dashboard continues.

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[38] The Economic Statement also announced charitable incentives and a non-refundable tax credit for subscriptions. Commercial radio would appear to be ineligible for such measures.

[39] CAB Radio Council December 1, 2017 Intervention in response to Broadcasting Notice of Consultation CRTC 2017-359, at para 99. (Commission's call for comments on the Governor in Council's request for a report on future programming distribution models.)

[40] We note that a 15% rate is proposed for the non-refundable tax credit for subscriptions, but a specific rate has not been proposed for the refundable tax credit for labour costs. By contrast, the federal labour tax credit for Canadian film and TV is 25% on labour. Film and TV also benefit from provincial tax credits averaging 35%. https://www.pwc.com/ca/en/entertainment-media/publications/pwc-big-table-film-video-2018-10-en.pdf

12. Cultural Diversity

12.1 How can the principle of cultural diversity be addressed in a modern legislative context?

Canada is a very diverse country, and broadcast media has made great strides to reflect that. Certainly, for its part, private radio is more culturally diverse than ever.

The Commission's approach to advancing cultural diversity in radio has sensibly combined general requirements on mainstream stations, and the licensing of targeted ethnic and aboriginal stations.

As a result, Canada has a record number of ethnic radio stations (25) and multiple sideband stations (SCMOs). We have also dozens of remote/regional aboriginal radio stations, and new stations serving urban indigenous communities in Vancouver, Calgary, Edmonton, Toronto and Ottawa.[41] HD Radio, should it succeed in Canada, also offers the prospect of new channels available to underserved communities.

Meanwhile, mainstream radio stations are required to reflect the cultural diversity of Canada in their programming and employment practices. Each does so appropriate to the markets and communities they serve, and is accountable to the Commission in this regard.[42]

That said, it is true that, given inherent limitations on radio frequencies, and the economics of radio advertising markets, not all communities receive as much radio service as they would like.

Fortunately, the Internet has expanded options available for all communities; particularly with international programming. For example, it is now far easier for new immigrants and second and third generation Canadians to receive programming in their native tongue and about their home country, than ever before.

However, due to their niche audience size, ethnic and indigenous media can be even more impacted than mainstream media by Internet giants like Google and Facebook as they are less likely to form part of a large media buy.

Thus, as in the case of areas like local news, it would be an unnecessary and ineffective burden to impose new obligations on mainstream commercial, ethnic or indigenous radio stations in order to achieve greater cultural diversity in radio. That said, should the government deem it appropriate, the CBC could be tasked with playing a greater role and/or specific government funding could be made available to incentivise and support it.[43]

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[41] https://crtc.gc.ca/eng/archive/2017/2017-198.htm

[42] This is a standard provision in license renewals. For example, see https://crtc.gc.ca/eng/archive/2018/2018-210.htm

[43] We note, by way of example, the recently announced *Media Strategic Support Fund*, with its funding envelope of $10 million over five years for projects that contribute to the maintenance of official-language minority radio and newspapers. http://broadcastdialogue.com/ottawa-announces-14-5m-in-support-for-official-language-minority-media/

13. National Public Broadcaster

13.6 How can CBC/Radio-Canada support and protect the vitality of Canada's official languages and official language minority communities?

The CAB Radio Council's comments on CBC/Radio-Canada address policy matters more than issues requiring legislative review. The CBC/Radio-Canada's mandate, as set out in the *Broadcasting Act*, and refined through conditions of licence established by the CRTC, already provides for journalistic independence and permits the Corporation to do a variety of things, including playing a role on the Internet and internationally. The issue is not what it can do, but what it should.

That said, in respect of how the Corporation's activities affect private radio, we have a few observations.

With the privilege of a parliamentary appropriation of over $1 billion annually, and access to other support mechanisms[44], we believe that Canadians should expect CBC/Radio-Canada to use its funding to provide public broadcasting and related service that:

- Provides a distinct service that includes programming for underrepresented areas and communities;
- Would not otherwise be available; and
- Does not financially compete with private players.

CBC/Radio-Canada's radio services generally conform to all three aspects. In particular, we support the Commission's 2016 decision to deny licence amendments that would have extended advertising on Radio 2 and ICI Musique. The absence of advertising helps ensure CBC/Radio-Canada's distinctiveness and reduces the potential for harm. It should continue.

CBC/Radio-Canada's online activities, however, do not necessarily conform to these basic principles.

For example, while the news provided by CBC/Radio-Canada is highly valued by Canadians, digital advertising inadvertently discourages CBC from covering civic news online, the area of news most at risk as private news media lose ground. Similarly, CBC/Radio-Canada's decision to launch a new competing digital news presence in Hamilton, where there are already a number of challenged local private media outlets, begs the question as to whether such resources should have been directed to underserved markets instead.

In addition, is not clear what public interest is served by CBC/Radio-Canada's online music channels. It is hard to argue that the online space has a dearth of music channels. And there is no apparent evidence that Canadian content levels on the channels is substantially higher than other Canadian offerings.[45] While presumably these channels are not expensive to run, providing an advertising-free alternative to the curated music offered by terrestrial private radio does not appear to be the best use of limited public broadcaster resources.

[44] For example, like private broadcasters, CBC/Radio-Canada has access to the CMF.
[45] Certainly, CBC/Radio-Canada appears to do nothing to promote the channels this way.

Greater clarity on, and criteria for, CBC/Radio-Canada's digital initiatives, including digital advertising, is essential.[46] This is something we fully expect the CRTC to address in the Corporation's upcoming licence renewals.

In particular, the CAB Radio Council is supportive of CBC/Radio-Canada eliminating advertising on its online platforms, and/or government deducting all digital revenue earned by CBC/Radio-Canada from the Corporation's parliamentary appropriation. In this environment, tax payer money should not be used by CBC/Radio-Canada to fund competitive efforts against private Canadian media for market share.

Finally, CBC/Radio-Canada's role in local news should be better defined and more complementary to that of private sector players. In particular:

- In smaller markets, where private sector players exist, CBC/Radio-Canada should be more of a supporter rather than competitor, sharing with independent stations national and regional news feeds without specific attribution requirements; and
- Priority for any new local CBC/Radio-Canada services (be they digital or traditional) should be given to providing local news in markets where private broadcasters, newspapers and/or on-line news websites are not present.

Even with its significant government funding, CBC/Radio-Canada cannot be everything for all people. What it can do is make a difference in areas that matter the most. The Canadian public will not accept a future where the state-funded broadcaster is the primary source of local or national news. Diversity of editorial opinion between the private and public sectors is paramount.

14. Governance and Effective Administration

14.1 Does the Broadcasting Act strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

See answer to Q 14.2.

14.2 What is the appropriate level of government oversight of CRTC broadcasting licensing and policy decisions?

Private radio's experience suggests that the *Broadcasting Act* largely strikes the right balance between government direction/oversight and independence of CRTC decision-making.

As an expert tribunal, the CRTC sets radio policy cognizant of generally applicable government policies, while at the same time making the determinations it feels are in the public interest. This is as it should be.

Appeals to the Governor-in-Council provide an appropriate but rarely used outlet for Cabinet review of CRTC Decisions, which are even more rarely overturned. This is also as it should be.

[46] For example, in December 2018, CBC announced two new digital initiatives, the launch of CBC Gem streaming service with exclusive content, partnered with Wattpad, and the availability of CBC podcasts on Spotify. Issues of how such initiatives advance the Corporation's mandate and minimizing their competitive impact on private Canadian media warrant greater scrutiny.

14.3 How can a modernized Broadcasting Act improve the functioning and efficiency of the CRTC and the regulatory framework?

The *Broadcasting Act* provides tools necessary to improve the functioning and efficiency of the CRTC and the regulatory framework. The Commission has already made progress in this regard with a streamlined radio licence renewal process.

As radio competes more and more directly with online media, having fewer regulatory obligations, flexibility in meeting regulatory obligations and minimal administrative burden becomes essential.

Going forward, measures such as streamlined reporting requirements and an over-and-under margin for CCD compliance[47] will advance the above objectives.

14.4 Are there tools that the CRTC does not have in the Broadcasting Act that it should?

See answer to Q 10.2.

14.5 How can accountability and transparency in the availability and discovery of digital cultural content be enabled, notably with access to local content?

See answer to Q 10.3.

[47] Significant CRTC and industry resources are spent to ensure absolute compliance on CCD expenditures of relatively minor amounts of money. Television already has a 5% over-and-under margin of compliance on Canadian programming expenditure requirements. A similar model should be adapted for radio.