

**Accountability and the CRTC: an evaluation of the
Canadian commercial radio licence renewal process
(1997- 2007)**

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Abstract

In most areas of public policy, where regulation is expected to exhibit transparency and accountability, evaluation is recognized as necessary. Broadcasting is no different. Nevertheless, recently published reports repeatedly argue that a new evaluative approach for broadcasting processes and policies is required not only because current Canadian Radio-television and Telecommunications Commission (CRTC) policies and programs are inadequate, but also because past assessments are outdated and new methodologies should be adopted. Evidence is provided by numerous scholarly articles and public forum testimonies in recent years. In this context, the objective of this dissertation is to determine how and to what extent the CRTC holds radio station owners accountable to the objectives of the *Broadcasting Act, 1991* through the application of the *Radio regulations, 1986*, the *Commercial Radio Policy, 1998* and the *Commercial Radio Policy, 2006*, as well as broadcasters' conditions of licence.

Using a normative evaluation approach, the methodology for this research involved documentary analysis of 141 radio station licence renewal decisions from the perspective of the law, policies, regulations and CRTC annual reports, to determine the extent to which the objectives of the *Broadcasting Act, 1991* are met. Measurements and criteria for this study were based on an extensive literature review and an understanding of the process itself. This analysis was complemented by information obtained through interviews with relevant stakeholders. Findings yield compelling distinctions between the formal licence renewal process and what actually takes place. Although the CRTC seems to have criteria to evaluate stations and has been moving toward streamlining in recent years, it is apparent that case by case approaches are still employed. Information concerning the types of 'mistakes' the CRTC considers when evaluating a file and their consequences are also relevant results of the study. Analysis of the data also

serves to determine the extent to which the process lacks monitoring to uphold legal objectives and current policies, and provides information on the undocumented “closed door” politics behind the process.

Résumé

Dans la plupart des secteurs de politiques publiques, où la réglementation est censée assurer transparence et responsabilisation, il est reconnu que l'évaluation est nécessaire. Le secteur de la radiodiffusion n'est pas différent. Toutefois, de récents rapports plaident sans cesse en faveur d'une nouvelle approche pour évaluer le système de radiodiffusion et ses politiques non seulement parce que les politiques et programmes du Conseil de la radiodiffusion et des télécommunications canadiennes (CRTC) sont inadéquats, mais aussi, car les systèmes d'évaluations antérieurs sont périmés et de nouvelles méthodologies devraient être adoptées. La preuve est fournie par les multiples articles et témoignages dans les forums publics mis à notre disposition dans les dernières années. Dans ce contexte, l'objectif de cette recherche est de déterminer comment et à quel point le CRTC assure l'imputabilité des propriétaires de stations vis-à-vis les objectifs de la *Loi sur la radiodiffusion, 1991*, et son application dans le règlement de 1986 sur la radio, la politique de 1998 sur la radio commerciale et celle de 2006, en plus des conditions de licence des radiodiffuseurs.

En utilisant une approche normative d'évaluation, cette recherche comprend une analyse de la loi et des politiques, des rapports annuels du CRTC et des décisions de renouvellements de 141 stations de radio pour déterminer jusqu'à quel point les objectifs de la *Loi sur la radiodiffusion, 1991* sont atteints. Les mesures et les critères pour cette partie de l'étude ont été établis en fonction d'une analyse documentaire exhaustive et une compréhension du processus lui-même. Cette analyse est soutenue par les informations obtenues durant des entrevues avec des parties prenantes pertinentes. Les résultats ont fourni des informations intéressantes au sujet des différences entre les politiques écrites du renouvellement de licences et les procédures réelles. Même si le CRTC semble avoir des critères d'évaluation pour les stations et qu'il se dirige de plus en plus vers une approche rationalisée ces derniers temps, il est apparent que des méthodes de cas par cas sont encore employées. Les types d'« erreurs »

considérés par le CRTC lors des évaluations de dossiers et leurs conséquences sont aussi des résultats pertinents de l'étude. L'analyse des données a aussi servi à déterminer l'étendu du manque de surveillance au sein du processus servant à assurer l'atteinte des objectifs de la loi et des politiques en question, ainsi que de fournir de l'information au sujet de la politique « à huis clos » faisant partie du processus, mais qui n'est pas documentée.

For Étienne

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1. Introduction

1.1 *Background and statement of the problem*

On May 10, 2001, the Standing Committee on Canadian Heritage set out to determine if the ideals and objectives of the *Broadcasting Act, 1991* still held true or if the Act was in need of reform. Almost two years of research and discussions with key stakeholders yielded close to one hundred recommendations in a voluminous report entitled *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting* (Canada, 2003). Although the document did not attract the intended attention of government officials and regulatory professionals, for many researchers and advocates it still remains a key reference document addressing issues of broadcasting system reform. Among its recommendations, it argued that renewed evaluation of the broadcasting system and its policies is essential, not only because current policies and programs are inadequate, but because past assessments are out of date and new methodologies should be adopted.

This recommendation is echoed in numerous studies, reports and public hearings demanding not only evaluation and new methods, but also new forms of accountability and, most of all, empirical data to support decision-making. Murray (2001), for example, calls for a complete overhaul of the accountability system for the Canadian Broadcasting Corporation (CBC)¹ relative to controversies associated with its public interest mission; the review process of alleged unethical practices (example: editorial decisions made for political reasons during the Quebec referendum), which is performed in-house rather than by an independent body; and decisions made by the Canadian Radio-television and Telecommunications Commission (CRTC) concerning CBC licence renewals.

¹ A complete list of acronyms can be found in appendix A. Appendix B provides definitions for some of the terminology particular to this research.

Another example is that provided by Laurence Dunbar and Christian Leblanc (2007). They conducted a review of the regulatory framework of broadcast policy in Canada, at the request of the CRTC, using so-called “Smart Regulation” principles. These were introduced by the Canadian government in 2002, requiring a clear identification of policy objectives and an assessment of whether the objectives can be achieved without regulatory intervention. This approach underlines a new interest in evaluation and the need for a thorough systematic framework. Furthermore, many groups appearing before the CRTC at its “Diversity of Voices” hearings held in Gatineau, Quebec, in September 2007 made reference to the lack of empirical data used in the decision-making process, especially surrounding questions of funding and its impact on specific elements of the industry, such as the production of local news and Canadian drama (see CRTC, 2007b).

A European study conducted by Shultz and Held (2004) describes how experts believe evaluation to be essential to the effective performance of the regulatory process, but that current processes are inadequate because there are no mandatory provisions for enforcement in Acts and industry codes to guarantee that evaluations will be carried out. Reinard and Oritz (2005) point out that the literature in this area of policy studies is weak because there are few examples of empirical research.

These examples demonstrate the call for accountability in the broadcasting industry. More importantly, they also underscore the need to continue working toward policy objectives that will protect Canadian values, identity and democracy which have shaped media over time and defined their role. Critical changes in the industry, from consolidation to technological convergence, further emphasize the need for transparency. Nonetheless, such evaluation seems to remain an ad hoc monitoring process and a reaction to poor judgment calls and spontaneous decision-making that succumbs to various pressures rather than being guided by informed research and thorough analysis. The result is a haphazard

series of regulatory decisions. To provide an example: on January 15, 2008, the CRTC initiated a controversial limitation to media ownership intended to counter the growing consolidation trend that had swept the country in the last few years, creating some of the largest media conglomerates, including Astral Media's takeover of Standard Radio (CRTC, 2007e), CanWest Global Communications' purchase of Alliance Atlantis (CRTC, 2007f), and Quebecor's acquisition of Videotron (CRTC, 2008b). At face value, this decision may have seemed like a good move, but in reality, it came much too late given that most of the likely consolidation had already taken place.

On May 17, 1999, the CRTC issued a press release stating it would not regulate any new media services on the Internet. It felt that Internet content was primarily alphanumeric text and not considered broadcasting, while audiovisual Internet content fell within the definitions provided in the *Broadcasting Act, 1991* and was thus already covered by existing regulation. Almost ten years later, on May 15, 2008, the CRTC announced that it would hold a hearing in early 2009 on the topic of broadcasting in new media. Part of the statement reads: “[o]ur intention is not to regulate new media, but rather to gain a better understanding of this environment, and if necessary to propose measures that would support the continued achievement of the *Broadcasting Act's* objectives” (CRTC, 2008c). Many feel that the CRTC is already regulating, however, by allowing telecommunications enterprises to experiment with techniques such as “traffic shaping” to prioritize certain Internet activities in favour of others, for example, slowing down the speed of Internet for consumers who perform peer-to-peer exchanges (see Nowak, 2008).

Although this practice may be troublesome to many, researchers and critics should not find this situation novel, given that the CRTC has never undergone a systematic evaluation of its decision-making effectiveness and mechanisms for guaranteeing accountability for decisions related to traditional media. In other words, the CRTC has never stopped to examine its evaluation

processes, in general, to ensure they are adequate for its purposes. And, the broadcasting sector, specifically, has never been properly evaluated.

1.2 Purpose of the study

In light of these examples, and the call for applied evaluation, this study seeks to gain insight into the CRTC decision-making process and understand any importance given to accountability. Though the Internet and ownership regulation might make interesting topics, an examination of well established regulations provide a more suitable subject of study to understand exactly how the CRTC operates. Though we have often heard that “radio is dead” because of the arrival of competing technologies, the most recent additions to the list being iPods and podcasting, radio still has a hold in the broadcasting industry, and in society as a whole. According to the current CRTC Communication and Monitoring Report (2009b), 11% of the broadcasting industry revenue was derived through radio. Private commercial radio broadcasters generated \$1.6 billion in 2008, which is up 5% from the previous year, and per capita national listening habits remained unchanged at 18.3 hours per week (p. iii). Although radio has been surpassed by subscription-based services and the Internet as a contributor to revenue for the industry, radio still has a lot to teach us as far as regulation is concerned. More importantly, it offers lessons in communication and the continuing need for the medium to serve as a vehicle for the promotion of Canadian values. Radio is not only an important medium as a means to an end; it has also been on a quest for its own identity. This process has given way to a “give and take” relationship with other media industries on which it has relied to survive while at the same time contributing to the promotion of those media, their content, and their success. The next section describes the long-standing legacy of radio which justifies its importance as a subject of study.

1.2.1 The radio legacy for different cultural sectors

Guglielmo Marconi made “radio history by transmitting the letter “s” in Morse code from Poldhu, Cornwall, England to a receiving station on Signal Hill, overlooking St. John’s Harbour in Newfoundland, on December 12, 1901” (Stewart, 1975), but it is Reginald Fessenden’s first radio broadcast on Christmas Eve 1906 that spurred the beginning of an innovative legacy. It entered society at a time when cinema and the press were the most important means of entertainment and information. Although radio was beneficial to both existing media through its capability to provide advertising, radio had its own cultural uniqueness that made it a success. It came directly into the home, thereby avoiding group assemblies required for cinema. Radio also did not require literacy, as in the case of the press or to read early cinema captions. And, it was ‘free’ to the user. Though radio initially frightened people because of its intimate nature (Fortner, 2005; Scannell, 1996; Vipond, 1992), it evolved into the main public source of entertainment and information before the arrival of television. The advent of television not only influenced the way radio was employed, but also encouraged cultural outputs that were, and still are, supported through radio such as the newspaper / press, drama and music. It was a democratic force that offered “the potential both for cultural enlightenment and political participation” (Fortner, 2005, p. 2), values that still hold true today.

As was documented by the Royal Commission on Radio Broadcasting (commonly known as the Aird Commission, 1928-1929), however, the influence of radio in Canada was not without debate. The Aird report determined that the worthy values of radio would be best served by a public system, even if, the system continued to legally support private commercial broadcasting. Democratic ideals, such as national identity and Canadian culture, were to be perpetuated by the CBC in Canada, similarly to what the United Kingdom had achieved with the British Broadcasting Corporation (BBC). Through licensing processes, the regulatory system would ensure that private commercial broadcasters also maintained the social and cultural objectives reflected in the values attributed to

broadcasting. In the early years following its invention, when the mission of radio was still evolving, its public vocation did not prevent a commercial relationship with the press through advertising. As Vipond (1992) explains, “[b]y the late spring of 1922 no regular newspaper reader could fail to be aware of the new scientific wonder” (p. 18). Advertisements promoting radio were an integral part of newspaper content, and the reverse was also true, since many radio stations were owned by interests which also owned the press (Weir, 1965). In Western Canada, for example, the newspaper *La Liberté* sponsored its own show, which was popular both with French and English audiences; and in Eastern Canada, *La Presse* owned its own station, CKAC-AM (Delaunière, 1977; Raboy, 1990). Another relationship between newspapers and the radio industry included the sharing of resources. *Globe & Mail* columnist Frank Chamberlain, for instance, had regular radio broadcasts paid through advertising provided by the Simpson’s department store (McNeil, 1982).

In contrast, certain Canadian radio stations were acquired by newspapers with the sole purpose of eliminating potential competition, and no substantial investments were made in their interest (McNeil, 1982). The Aird Commission had recommended that broadcasting in Canada be organized on the basis of public ownership. If this policy had been put into effect fully, it would have eliminated private broadcasting altogether and, *ipso facto*, excluded many newspapers from broadcasting (Canada, 1929). This debate did not die with the Aird Commission; a few decades later, the Royal Commission on National Development in the Arts, Letters and Sciences, commonly known as the Massey Commission, (1949-1951) suggested that the CBC carry paid space in the national press to promote its best programs, policies and personalities (Weir, 1965). This approach remains a practice today.

The press was also instrumental in the evolution of radio under the aegis of the Canadian Radio Broadcasting Commission (CRBC) (1932-1936), which facilitated access to news for the Canadian population (Raboy, 1990). The

Canadian Press organized two five-minute newscasts aired daily through the network at no charge. In exchange, the press retained complete control of the content (Weir, 1965). Although this service could have been used before the Second World War, the “radio industry had generally preferred highly coloured and dramatic news stories which were more entertainment than news and neither fair nor accurate according to qualified newsmen” (Stewart, 1975, p. 68). The war made it evident that it was essential for Canadians to receive real information. Until 1939, Canada had relied on American news services to obtain information, a practice which did not promote Canadian nationalist ideals. CBC, which replaced the CRBC in 1936, therefore created its own news service in 1941 to provide regional programming. The information was primarily war related, but there were a few exceptions. The new venture permitted the CBC to win its first international programming awards (CBC, 2010; Funding Universe, 2010). The Canadian press also provided newscasts for the CBC at no cost, a practice which Stewart (1975) maintains delayed the advent of commercial radio news for years. National newscasts were, in turn, widely rebroadcast during the war because of complicated censorship regulations. The average station manager preferred to play it safe, using CBC national news, while reporting only local news with local resources (Stewart, 1975).

In the United States, as Barnouw (2001) explains, “[m]ost stations used items from newspapers, wire services, [and] magazines as freely as they had used songs. Because credit was usually given, the practice was condoned, even encouraged, until the sale of time became general” (p. 138). Inexperienced broadcasters, he maintains, were the only ones who seemed to cause problems with this arrangement by releasing information, for example, before the end of an embargo. For Pagé (2007), it was the arrival of the tabloid newspaper, such as the *Journal de Montréal* in 1965, which changed radio from an information to an entertainment medium. Shocking colour photographs proved quite conducive to discussing news items in a lighter and more entertaining fashion. Even in the industry today, use of the press in this way is widespread.

Using the press to fuel broadcast newscasts has only recently been raised as a problem, given the increased consolidation of media corporations, as well as technological convergence. As long as newspapers do not become obsolete, we can expect to continue hearing about newspaper headlines on our radios in our cars or while taking a shower.

Apart from informing the public, as mentioned earlier, radio was also conceived as a tool to entertain. In addition to music, drama contributed to radio enjoyment, in its early years, by the proliferation of dramatic series. The “high-class” expectations of radio that were instilled by the elite helped foster the emergence of airtime devoted to drama and classical music. Support for professionalism in radio by the leaders of the Canadian National Railroad (CNR), for example, nurtured the idea for a major dramatic series, which saw British actor and BBC playwright Tyrone Guthrie pioneer radio drama in Canada. A growing nationalist sentiment was also a factor that contributed to success, and “The Romance of Canada” series became a school for radio actors in Canada (Weir, 1965). Notwithstanding the popularity of these early productions, CNR sponsorship ended in 1932 for two reasons. The first was the Aird Commission recommendation for the creation of a national public broadcasting system that would replace the CNR. It came only two weeks before the Wall Street market crash. Although businesses and Government halted their spending, at the time, it was expected to be temporary. The second reason had to do with a scandal involving one of Prime Minister Mackenzie King’s Cabinet Ministers’ (Gormick & Potts, 1998; Stewart, 1975). Subsequently, newly elected Prime Minister Bennett took advantage of his position to attack ex-Minister Sir Henry Thornton for mismanaging public funds involving radio and spending which was characterized as excessive. However, as Gormick and Potts (1998) explain, the Conservative Government “failed to admit [...] that the CPR had matched and exceeded every expenditure undertaken by the CNR, even to the extent of pledging to belatedly duplicate CNR Radio.”

Nevertheless, radio in Canada gained momentum because of the Second World War (Stewart, 1975). As nationalism developed in the country, drama was seen as a way to encourage patriotism and win the war. Although this sentiment helped create some very successful dramatic series in the early 1940s, it would not have happened without the CBC. Not only did it control newscasts during the war, but it also chose a balance in its programming between information and entertainment. CBC drama also served as a propaganda platform for farmers in the 1940s (Stewart, 1975). The CBC broadcasts, which included, among other things, stock market news, were used to convince farmers that good living ensued from proper farming. This practice was quite lucrative for farmers, but also for a number of farm drama actors who would later achieve senior positions in the radio business. In Quebec, radio drama served to celebrate Canadian cultural reality and reinforce linguistic duality (Filion, 1994). Without the encouragement and investment in the public broadcaster through regulation, the country may not have been able to realize these successes, some of which lasted more than twenty-five years (Weir, 1965). “More than 80 per cent of the plays broadcast in 1944 were by Canadian authors, and this percentage grew until in 1947 it reached 97 percent” (Weir, 1965, p. 273).

The arrival of television as a more effective means to broadcast dramatic content to the public was thought to foreshadow radio’s demise. Although the Golden Age of 1944-1954 was over, radio did not disappear instantly. As Stewart (1975) explains, it “was abandoned piece by piece in Canada as listeners switched their loyalty to the picture box and the CBC was forced to spend money and effort in enormous quantities on the family’s baby” (p. 147). He identifies 1958 as the year radio died as most private sector radio personnel transferred to television or adopted the “disc-jockey concept.” It was much more lucrative to be in television than radio.

In lieu of drama, music emerged as the primary cultural form which ensured the success of radio for years, although not without debate. Early regulations of the CRBC regarding the use of on-air musicians were controversial. Unions representing musicians and independent musicians tried to force the CRBC into using only unionized workers, but after much discussion the Commission managed to retain an open labour market (Weir, 1965). This constituted a relatively minor dispute, however, compared to other debates that followed.

In the early 1930s, in the interest of musicians, the Commission established a rule forbidding the use of “electrical transcriptions” (records made for broadcasting purposes only) after 7:30 p.m. local time (Allard, 1979; Filion, 1996). While it would have been profitable for musicians if their recordings could be broadcast at all hours, since they received extra money for the retransmission of their products, it was reported that the CRBC was, itself, taking advantage of music played in public places by broadcasting on location, without paying musicians or hotel owners (Allard, 1979). This infuriated not only musicians and owners, but also private broadcasters, who paid for their use of material produced during public events.

According to Weir (1965), in the beginning musicians were happy just to be recognized for their work on air, but eventually confusion over rights and responsibilities brought on organization. The American Society of Composers and Publishers (ASCAP) in the United States and the Canadian Performing Rights Society (CPRS) in Canada were created to defend and advocate for the rights of composers and publishers. To deal with the demands of the CPRS, Canadian broadcasters formed the Canadian Association of Broadcasters (CAB). Weir (1965) further explains, however, that recognition and payment of royalties were generally accepted, nonetheless, and that the creation of the CRBC and the CBC actually helped ensure that CPRS rights were respected. Since it would have been tedious to calculate exactly who and how much each station played, an overall

licensing system was adopted. While this improved the situation slightly, musicians were still frustrated with the CRBC for relaxing regulations governing the importation of electronic transcriptions. As is still the case today, imported music took a toll on the industry as early as the 1930s (Allard, 1979).

Fortunately, relationships with radio have not always proved detrimental to the music industry. In the United States, for example, jazz was brought into the limelight by radio (Barnouw, 2001). And in Canada, the early 1930s broadcasts by the CNR encouraged Canadian talent by hiring at least one outstanding Canadian vocalist or instrumentalist per production at a standard fee of one hundred dollars (Weir, 1965, p. 45). The creation of the CBC, which “maintained the CBC symphony and a CBC Opera Company which produced outstanding concerts and provided a platform for the development of Canadian musicians and composers,” (Stewart, 1975, p. 142) was another initiative with positive impacts on the music industry. As Stewart (1975) explains, in the late 1940s and early 1950s, the CBC was instrumental in providing financial support to orchestras in cities such as Winnipeg, Edmonton, Halifax and Vancouver. Since at least the mid-1960s, nor should we underestimate the influence of radio hosts, regularly promoting artists on air by giving away free copies of their recordings or tickets to their shows, and by providing them with airtime through interviews to discuss their most recent endeavours.

Allard (1979) maintains that the music industry was better served before the creation of the CRTC and has not been the same since. Some would consider this debatable, recognizing the success of Canadian content requirements which have assisted the growth of the recording industry in Canada. As Globerman (1983) demonstrates, “the net value of sales of domestic phonograph records in Canada approximately doubled over the period of 1973-1977,” which is directly related to the CRTC’s 1971 Canadian content regulations for radio broadcasters (p. 71). On the other hand, according to Stanbury (1998), only 10% of record sale

dollars are returned to Canadian artists, and Canadian releases represent only 12% of retail sales.

Despite the ‘success’ of this endeavour to assist the ill-fated Canadian music industry of the 1960s, certain tensions between radio and other elements in the broadcasting industry remained. For one thing, record companies were not providing enough titles for radio stations to comply with the regulations, and those provided did not always meet international requirements for sound and aesthetics (Straw, 1996). It took almost a decade to come up with other solutions to assist the Canadian music industry. Programmes such as FACTOR and Musicaction were, and still are, seen as the remedies: radio broadcasters are required as part of their licence conditions to contribute to the development of musical talent in their localities. These two funds provide radio stations with a concrete way of contributing to musical growth in Canada and have proved to be highly effective (Straw, 1996). Since 2000, the Radio Starmaker Fund and its French equivalent, Fonds RadioStar, both initiatives of the Canadian Association of Broadcasters (CAB), have been added to this list in the hopes of also aiding established artists whose label has already invested significantly in their careers.

This section has focused essentially on historical examples of radio. Although it may be difficult to believe, there are very few documented examples of radio’s continued success, longevity and sustained existence from the 1950s to the 2000s. There is a large gap in the literature discussing these decades, mostly eclipsed by television. Television arrived as a well-oiled machine, since it “inherited the practices of radio listening,” “appeared within the pre-existing, fully established context of advertising-supported network broadcasting,” and did not require a “period of amateur experimentation and no crystal-set phase” (Butsch, 2000, p. 235). Television not only captured most of the radio audience, but it also captured the eyes of many researchers. Not only was radio seldom written about within these years, but little is available in retrospect, as well.

The lack of radio-related documentation during these years, however, does not mean that radio did not change, to include new formats such as news and talk radio, as well as different styles of music (McCreath, 2006). Radio solidified the presence of the Top 40 format first introduced in the early 1950s, promoted album oriented rock throughout the 1960s and 1970s, and alternative / postmodern music in the 1980s (Negus, 1993). And, despite what we may say about the loss of drama to television, radio enthusiasts still find some notable contributions when tuning to community radio shows. The CBC also has its occasional special broadcasts, like the adaptation of Mordecai Richler's novel, *Barney's Version*, which aired as a radio drama in 2003. Satellite radio has provided the industry with a “second life,” but even that story has its share of disappointments for Canada (see O’Neil, 2007 and 2008), and would warrant an entire chapter of its own.

1.2.2 Radio: promoter of Canadian values

Throughout its struggles and challenges, radio has nonetheless, been successful in aiding other cultural sectors to flourish. It is also important to continue studying radio for its contribution in promoting and upholding Canadian values such as democracy and Canadian identity. As Fortner (2005) explains, radio historically inspired two major schools of thought. One group saw it as a tool of commerce, increasing exposure to publicity for radio manufacturers, station owners and other advertisers by providing programming people wanted to hear. This group also saw the potential for radio to be used as a competitive tool on the international stage. The proponents of the opposing perspective viewed radio as a uniting force that could be used to disseminate a national culture to everyone, regardless of location or level of education. Radio was seen as a tool for promoting democracy, and ultimately for shaping society.

The importance to be recognized in the development of radio was, therefore, not so much in determining what to broadcast, but rather what message

to convey. In terms of entertainment, for example, the social elite favoured “what it considered ‘high class’ – the opera, the ballet, the symphony, the lecture” (Allard, 1979, p. 273). The economically privileged also believed that if members of the general population were exposed to these sophisticated forms of culture, they would ‘see the light.’ In Canada, according to Vipond (1992), there was very little explicit discussion of radio as a means of disseminating Canadian culture prior to 1928. Nevertheless, it did not take very long for radio to be used to bring culture to the masses.

Drama and music, such as “Henry Hudson,” the first major drama of the CNR series the “Romance of Canada,” or live music broadcast from the Fort Garry Hotel in Winnipeg, were used extensively to encourage a united Canada. A broader mission related to so-called ‘enlightenment’ was also widespread (Stewart, 1975). It involved the need to inform, educate and entertain. These objectives are still embodied in radio today because of the obligations set out in the *Broadcasting Act, 1991* (section 3.1 i, Broadcasting Policy for Canada), and they are directly related to the formal and informal relationships between radio and other media such as newspapers, drama and music. A current example can be found in the CBC’s annual contest called “Canada Reads,” which promotes literacy among Canadians and encourages familiarity with books written by Canadians.

Examples of the role of radio in disseminating Canadian values, however, illustrate more than regulatory obligations. There are strong beliefs among Canadians and analysts that cultural and political sovereignty are mutually dependent in the development of radio, and that this relationship is the basis of broadcasting policy in Canada. Some authors, such as Collins (1990), tend to disagree, and believe that Canada does not form a congruent whole where polity and culture are concerned, the acceptable framework for nationalism (p. 13). Nevertheless, it might be this exact element that explains how radio is true to Canadians and their values. This is particularly apparent when examining how

different types of radio co-exist in a larger framework. We can claim to have a national radio network, where French and English stations are housed under one umbrella, yet each has its own audiences and particularities related to organization and products. As Collins (1990) explains, we have at least three nationalisms within one country: “those voiced in the name of Canada’s two founding nations, the British and the French, and that seeking to synthesize the, respectively, insecure and confident nationalisms of anglophones and francophones into a bilingual and bicultural federal identity uniting the two solitudes” (p. 112). These considerations are not unique to Canada: questions related to internal and external identity on economic, political and cultural levels are common and apply to many countries, including the United States (Dorland, 1996; Goldfarb, 1997). Nevertheless, continuing identity crisis and debate have permitted radio to fulfill objectives of promoting Canadian values as it has been shaped by these very contradictory events.

Cultural beliefs are the basis of most decisions that created Canadian radio as we know it. “Indeed, it may be argued that the idea of communication – and the celebration of the technology of communication – has always been central to both the material and the mythological definition of Canada” (Vipond, 1992, p. 23). Since the Royal Commission on Radio Broadcasting Report in 1929, which identified media as a uniting force for Canada, media are supposed to serve as building blocks of our national society and promote a sense of national community, but not at the expense of the linguistic, cultural and regional dimensions that comprise the definition of Canada (Peers, 1969; Siegel, 1991). It is this same balancing act that permitted the Canadian *Broadcasting Act, 1936* to create a public corporation that combined elements of the BBC, a public corporation model with no private broadcasters to regulate, and the Australian model, “an operative agency financed by licences and a system of private stations regulated by a department of government” (Peers, 1969, p. 187).

As early as 1934, when the CRBC split in two and began programming in French for Quebec (Raboy, 1990), and later in 1937, when the first French language CBC station opened in Montreal as Radio-Canada (CBF station), two parallel public systems (the CBC and Radio-Canada) were allowed to co-exist in Canadian radio programming. This has perpetuated the illusion of a single system throughout its history. Listeners were “promised a sense of belonging to a listening ‘community’ in which ‘pleasure, information, power’ envelope us – but in which the community is in fact entirely illusory” (Hendy, 2000, p. 150). This image of a single community is still maintained publicly, and even within the institution, but the reality is otherwise (Morrison, 1991). Though the system is far from being perfect, the CBC did manage, as was noted by the Massey Commission, to provide uniquely Canadian offerings by broadcasting to the entire population; giving opportunities for Canadian talent to grow (CBC / Radio-Canada is still one of the leading broadcasters providing young people with a place to try out their new journalistic wings); and creating a form of resistance against the American influence (Collins, 1990).

Decisions made with regards to the cultural fabric of Canadian radio, including its primary broadcasting languages and the creation of a dual system under the guise of single unity, illustrate how radio reflects bilingualism and the unique values of the Canadian people in its architecture. This thinking has an impact on form, format and content which is particular to this country.

Having a dual broadcasting system, including public and private entities regulated by the CRTC, has impacted the nature of radio in Canada and the form it has been given by its Canadian owners. Because of the limited foreign ownership rules for broadcast undertakings – 20% of voting shares or a maximum of 33.3% in the case of a parent corporation (Canada, 2004) – the output of radio in Canada has been influenced not only by its producers, but also by the people who own it. Although no definitive research has yet documented a distinctly Canadian news broadcasting tradition, for example, it is realistic to assume that

the goals and dreams pursued by the owners and managers promote ideals that are unique to Canada (Eaman, 1991).

Canadian radio has also had its share of on-air personalities, some of whom have influenced other countries, such as the United States (Tyrone Guthrie's plays, for instance). Some of these include "broadcast news personalities, who have spoken in a uniquely Canadian way" (Eaman, 1991, p. 48). We need only think of Peter Gzowski, who was considered "one of the pillars of public broadcasting," Barbara Frum, one of Canada's most respected broadcasters, or Lorne Greene known as the "Voice of Doom" informing Canada of the many fatalities of the war (CBC, 2002; CBC, 2006; Nash, 1994). Other radio personalities such as Jeff Fillion, the ex-CHOI-FM radio announcer made famous for his defamatory comments about women and handicapped people, and who was officially banned from the public airwaves in 2004 when CHOI-FM's licence was not renewed, have shown what Canadian radio is not, and what values are not part of our cultural spectrum. The origin of the Aird Commission, constituted in response to a similar case of defamation regarding a religious group in the 1920s, provides yet another example (Peers, 1969). Radio in Canada is supposed to address the interests of all Canadians and should serve to protect the vulnerable values of the country, whether supporting the maintenance of high-quality programming, personal integrity, or the protection of certain social groups such as women and minorities (Canada, 2004). This is in marked distinction from American values, which privilege freedom of expression above all else. The presence of Howard Stern, the U.S. equivalent of Jeff Fillion on American airwaves, provides ample evidence. He has preserved his radio host position for years without being sanctioned for his reproachable comments.

Aside from its dissemination of values held by the people of this country, another facet which captures Canada's distinct attributes is its on-air content. As early as 1931, the CNR thought that Canadian radio should include more than just music, and decided to invest in drama. This investment in culture, as previously

discussed, resulted in sixteen historical episodes of the “Romance of Canada,” the training of at least a hundred new players at the CNR School, and ideas which provided inspiration and material for a similar series in the United States (Weir, 1965). This series broke new ground not only because the actors were Canadian, but because the stories told were also about this country. Such shows remained popular, especially during the Second World War (Stewart, 1975), as they were both entertaining and informative. But radio content changed dramatically in the 1950s, with the arrival of television. “Top 40s” and popular music took the place of dramatic series on the radio (Tremblay, 1990). Radio, once considered part of ‘family time,’ still remains an intimate medium, but it has become something to which you listen while doing other daily activities (Crissell, 1994). Not only did the shows change in their type of content, but productions were no longer necessarily live, and could be produced outside principal stations. Transmitting stations were also introduced (Hendy, 2000; Tremblay, 1990). Content was still produced by Canadians in terms of news items and documentaries, but the universal character of music made it difficult to prevent American music from infiltrating Canadian airwaves.

The Board of Broadcast Governors (BBG) established a form of Canadian content regulation as early as 1959, but it was largely ineffective because Canadian content was defined too broadly: including programs created by a Canadian broadcast licensee; news and commentary about news; shows created in Canada by a Canadian company; and shows dealing with events taking place outside Canada, but in which Canadians participate or which have a general interest for Canadians (Filion, 1994, p. 203).² In 1971, the MAPL (music, artist, production, lyrics) was created as a means to define Canadian content for radio. To qualify as Canadian content, a musical selection must have at least two

² Loose translation of « [...] on considèrerait comme canadiennes les émissions réalisées par un détenteur de licence de radiodiffusion canadienne dans ses studios, les actualités et les commentaires sur l’actualité, les émissions réalisées au Canada par une entreprise canadienne, et enfin, les émissions traitant d’événements se déroulant hors du Canada et auxquels participent des Canadiens ou qui intéressent d’une façon générale les Canadiens » (Filion, 1994, p. 203-204).

components of MAPL. All stations must ensure that 35% of all their weekly musical selections are Canadian (CRTC, 2004c). The MAPL system also assists in determining what music is eligible to meet this quota. Although these criteria are more specific, they only deal with music. Regardless of modifications made to the definition, for some, Canadian content regulations remain inadequate because they only apply to the quantity of broadcasting offered. In practice, government and industry are seen as the main stakeholders in broadcasting, but as Fillion (1994) notes, in Canadian programming in particular, it is the cultural characteristics of the audiences that are dominant. This reality suggests that we should rethink tenets that assume that the judicial framework of media determines its ‘Canadianness.’³ One thing is certain, regardless of what ‘creates’ a Canadian program; the values behind it are obvious. Canadians tend to reflect themselves and produce something that is unique. In radio this is reflected by the announcers who are Canadian; by content, which according to the MAPL system and other components, such as news, is distinctly Canadian; but also by the languages which are prevalent on air (French and English), which reflect the value placed on bilingualism in Canada.

Since its inception, the intent of radio broadcasting was “to introduce a new era of understanding between English and French-speaking Canadians as well as promoting bilingualism” in a country where a difficult language problem existed (Morrison, 1991, p. 243). In the early 1930s, when groups such as the Ku Klux Klan pressured Hector Charlesworth, the first chair of the CRBC, to end French radio in western Canada, national sentiment only increased in Quebec (Raboy, 1990). The outcome was the creation of Radio-Canada as an entity separate from English CBC. Though, as Raboy (1990) explains, this may have been the basis for a re-enforcement of the “two solitudes” in this country, the dual system is part of Canada, and imagining it any other way would simply be ‘un-

³ Loose translation of « [...] dans le cas précis de la programmation canadienne, ce sont davantage les caractéristiques culturelles des auditoires qui constituent les facteurs déterminants. Ce phénomène nous oblige à reconsidérer le processus de la radiodiffusion, et à repenser le postulat officiel selon lequel le cadre juridique des médias détermine leur canadianisation » (Fillion, 1994, p. 221-222)

Canadian.’ Fear of losing the bilingual nature of Canada on the air has also encouraged certain regulations. The CRTC requires all licensed francophone stations to play at least 65% of their popular vocal music selections in French each week. As well, at least 55% of popular vocal music selections broadcast on weekends between 6 a.m. and 6 p.m. must also be in French (CRTC, 2004c). One might assume that French radio would be broadcast 100% in that language, but Canadian French radio is different. Although all verbal discussions on air take place in French, stations broadcast English music as well. This is primarily due to the tastes of French speaking Canadians who enjoy English music, particularly American music, as well as music in their native French (Filion, 1994).

The many ways in which radio promotes the distinct values of Canada would not have been possible without appropriate regulation during the various periods following its inception. The environment in which radio operates has evolved, but regulation is still required. This is particularly true in the case of commercial radio, the focus of this dissertation. The values previously described as being associated with radio clearly originate from a public service and public interest tradition that remains from the early years of radio and was perpetuated by the CBC. Although the original intent was to have a publicly run broadcasting system, commercial broadcasting was never banned outright and this sector was allowed to grow alongside the CBC. Nonetheless, it was expected to continue to follow certain regulations that were the same for all broadcasting institutions. Over the years, many researchers have studied the relationship between the CBC and its objectives, but commercial broadcasting has seldom been examined in the same way. Perhaps this reflects the difficulty in reconciling the relationship between public interest values and business objectives, but this is also what makes it an interesting topic of study, essential to determine accountability regarding CRTC regulations.

1.2.3 Canadian radio and the need for regulation

Responding to an intervener during the “Diversity of Voices” proceedings held in Ottawa from September 17-21, 2007, CRTC Chairman Konrad von Finckenstein noted that the goal of CRTC regulation is to strike a balance between market forces that create value and innovation, without sacrificing Canadian content or access to the system (CRTC, 2007d), both important Canadian values. This reasoning is at the heart of the policy challenges facing Canadian radio today, and explains why maintaining regulations for traditional media such as radio is still warranted. These challenges include the effects of media consolidation, the preservation of Canadian identity, the rapidity of technological change, as well as the regulation / deregulation dilemma itself. By exploring each of these challenges as well as their broader underlying political, economic and social dimensions, it is possible to understand the importance of regulation, the CRTC, and the need for balance in developing relevant policies.

Of all the policy challenges facing radio in Canada, media consolidation is probably the most significant, because it affects the economy, powerful interests, and directly impacts the way the industry operates. As previously mentioned, in the past few years, the CRTC has approved important mergers such as Quebecor’s purchase of cable distributor Videotron and the TVA television network. They also accepted Bell Canada Enterprises’ purchase of the Canadian Television Network and Thomson Newspapers’ *Globe and Mail* to create the Bell Globemedia conglomerate (Skinner, Compton, & Gasher, 2005), as well as Astral Media’s purchase of Standard radio in 2007. Other large conglomerates which include radio stations among their assets are Rogers Communications, CHUM Limited and Corus Entertainment (CRTC, 2007c). At first glance, it may seem economically logical to let markets prevail, but the reality is that such conglomerates may not have existed in Canada, at least not solely formed by Canadian companies, if foreign ownership regulations had been looser (Skinner,

Compton, & Gasher, 2005). In other words, Canada may otherwise have had more diversity of ownership and less concentration.

Shareholders can appreciate the obvious economic gains made from consolidation, such as vertical integration and economies of scale and scope (Doern, 1999; Fairchild, 2001; Lorimer & Gasher, 2004), but there are some potential negative consequences if companies overextend themselves. There are also negative effects for society which may far outweigh problems in the industry. One of the most significant is the lack of diversity, and more precisely, editorial diversity, which implies a plurality of people or groups deciding on the editorial content for media outlets. Very few precautions have been taken to ensure that large conglomerates are not tempted to use the same editorial perspective, staff and other resources, in all their outlets in an attempt to reduce costs and pursue a particular political agenda. This, in part, is because the non-economic nature of editorial diversity does not fall within the purview of the Competition Bureau, but rather in that of the CRTC (Grant & Wood, 2004). Furthermore, competition regulators have different definitions of what constitutes a market. Radio and television are two separate markets in their perspective, making it possible for one company to own different types of media outlets in one city or town, thereby reducing the number of editorial voices available to the local population.

Although decisions have been made to separate newsrooms in some conglomerates, this has not been done in a uniform fashion; part of the challenge for policy makers is, therefore, to be consistent in their approach, to better define ways of identifying markets, and to ask the right questions: “Should radio be segregated from television? Should FM radio be considered a market distinct from AM radio?” (Grant & Wood, 2004, p. 269). Until the CRTC and the Competition Bureau come to some understanding of what constitute distinct markets, this problem will persist. “[I]ncreasing the scope of antitrust law in the United States and competition law in Canada” to “provide a second avenue for maintaining corporate diversity” would be one possible solution (Skinner, Compton, &

Gasher, 2005, p. 296). In *The problem of the media*, McChesney develops this concept in more precise terms. He believes Canadian and American regulators must get past the fact that media companies fix prices for advertising; that concentration in media should not be measured in the same way as other industries because it does not have the same associated production costs as the manufacturing industry, for example; and that media policy defined by the government should include the entire industry – radio, television and the Internet (as cited in Skinner, Compton & Gasher, 2005). Raboy (2003), on the other hand, suggests that policy makers should determine an appropriate threshold for concentration in each sector by taking into account cross-ownership and conditions necessary to guarantee autonomy for media belonging to the same family of companies.

Not only does media consolidation limit the potential diversity of voices, it also reduces access to the system. In other words, a limited number of editorial approaches and fewer companies may make it difficult for some people to have a voice different from those of the companies ‘in power,’ so-to-speak. As Fairchild (2001) explains, “[t]he dominant media institutions in North America exist to protect elite privilege and power over social and political institutions, and do so by necessarily marginalizing the public, reducing citizens to the role of spectators, while nevertheless claiming to be the very soul of democratic discourse” (p. 13). In order for the system to work in the public interest, Fairchild (2001) argues that policy makers need to ensure that people consistently have access not only to information, but also to the technology to produce their own messages, and that access to such tools must be as equitable as possible for society as a whole. It was also a recommendation of the Gore Commission⁴ that any new audio service in the United States should provide programs targeting audiences that lie outside the socioeconomic mainstream (McCauley, 2002). Although the CRTC’s current

⁴ Under the American Telecommunications Act of 1996, digital television must obey public interest obligations determined by the FCC. President Clinton created the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (the Gore Commission) to examine the existing obligations and determine how they could better reflect the needs of society (Media Institute, 2002).

mandate is to supervise the system; the government would prefer that regulation not be the norm, but that it regulate only when necessary. Consideration must be given to social and cultural implications for any regulatory system. The current state of affairs may make us doubt that such reflection ever occurs, but recent hearings exploring these issues still give reason to have faith in the current system (CRTC, 2007d).

The question of access is one of the difficulties of the regulation / deregulation dilemma that has a social dimension. As Fairchild (2001) attests, deregulation has had a detrimental effect on “principles that guarantee universal access to information and communication infrastructures” (p. 78). This is particularly troubling in the case of radio, where there was a conscious decision to make radio available to all Canadians, as early as in the *Report of the Royal Commission on Radio Broadcasting* in 1929. With multibillion dollar companies invading the Web and pressure for the public broadcaster to compete with the private sector, it is important for the CRTC to take initiatives to ensure that opportunities that increase accessibility to certain elements of programming in the public sector are available to the most users possible (Bélanger, 2001).

The decision to deregulate also comes with increases in the levels of commercialization, corporate control, and private power (Fairchild, 2001), which not only involve issues related to access, but also raises questions of ownership, especially if provisions are made to permit increased foreign ownership. As a result, while there might be less consolidation by Canadians, non-Canadian conglomerates with minority shares in Canadian broadcasting corporations could make bids for control or even full ownership of Canadian companies (Grant & Wood, 2004). This could reduce access not only to Canadian-owned facilities, but also to Canadian programming, regardless of the licensing conditions to which they would still be bound (Fairchild, 2001; Grant & Wood, 2004). Deregulation, where ownership is concerned, even ignoring potential impacts on cultural

identity would have a direct impact on the economy, minimizing jobs for Canadians and creating indirect or direct employment for foreigners.

The protection of Canadian identity has been an important mission for Canadian leaders since the early days of radio. New technology and improved means of communication have sustained this role and increased its necessity as Canada now competes not only with one neighbouring country, but with the entire world. However, not all people agree as to what constitutes Canadian identity, what improves it, and what impact cultural products, such as radio, have on it. Nonetheless, Canadians tend to believe in the importance of ensuring that all Canadians have access to Canadian products, made by Canadians, in Canadian-owned organizations.

One of the current challenges, with respect to identity, relates to providing Canadians with Canadian radio programming in a system where they also have access to programming from around the world. There are two perspectives on this issue. The first is that when offered products from anywhere in the world, Canadians will actually choose Canadian products if this is what they really desire. The second is that it is up to the government to ensure that all Canadians have access to these products, to promote them, and to finance them, because they tie in to what being Canadian is all about. From this perspective, whether Canadians prefer Canadian radio content or not, they should be exposed to it because it is part of Canadian culture; it is what ties the nation together (Globerman, 1983; Grant & Wood, 2004). As Globerman (1983) points out, there are a variety of strategies to choose from in this regard, including letting the market prevail and only intervening when the market fails in meeting Canada's cultural objectives. Another argument is that Canada should be mindful about efficiency. The best solution may not be to produce a full range of cultural products, in this instance, a full range of radio programs, but rather, Canada should specialize to be efficient.

Before any of this can be considered, however, Globerman (1983) believes that policy makers must first determine exactly what constitutes Canadian culture. Looking beyond economic definitions, in his perspective, such things as Canadian content may be promoting Canadian products (in this case music and its creators), but there is no evidence that this has improved the general wellbeing of Canadians. Although, these questions really have yet to be addressed in a formal sense, there seems to be some underlying consensus around the desire to keep the public, private and community spheres of radio alive, and to use them for nation building and the creation of a national community, which “is not to be at the expense of the linguistic, cultural and regional identities which are creative dimensions in the very definition of Canada” (Siegel, 1991, p. 259).

Immigration has also increased the desire to preserve Canadian identity because, as some believe, “newly arriving multicultural masses will not properly assimilate as hyphenated Canadians, but rather will help to speed the death of Canadian programming on the airwaves by assimilating to the wrong culture” (Beaty & Sullivan, 2006, p. 19) or by failing to detect the subtle differences between Canadian and American programming. Not only may new Canadians not detect certain cues within programming which represent Canada, but they can also continue to cultivate the attachment they have with their country of origin by listening to radio on the Internet, thereby reducing the demand for Canadian programming beyond local information, such as the weather and news.

If policy makers decide to pursue culture as a way of preserving Canadian identity, they will need to determine the best ways to achieve the goal. Aside from limiting foreign ownership which, according to Lorimer and Gasher (2004), is a politically good move to ensure that media owners understand the country’s distinctiveness, another option is to promote better use of funding for public broadcasting, such as reinvesting advertising dollars into programming, rather than using money to sell programs for the sole benefit of shareholders, a solution proposed by the Deputy Director General of the BBC in the early 1990s (Phillis,

1995). When Françoise Bertrand was Chairman of the CRTC (1996-2001), she recognized the importance of public broadcasting as a non commercial player in the radio industry and the need to reinvest in the medium. She encouraged Radio-Canada to invest resources in original radio programming to reach new audiences rather than encourage cutbacks (Bertrand, 2001). In the private sector, station owners seek to capitalize on cheap resources and programming by using “Top 40” music programs from the United States; running for three hours, for example, these only require Canadians to substitute radio call letter identification and advertising between blocks. With the arrival of satellite radio in homes and automobiles, such policy matters concerning radio are returning to the forefront, especially in relation to identity and the need to protect the economy of particular Canadian cultural industries, such as the music industry, which continues to claim a dependence on Canadian-content rules for its survival (Lorimer & Gasher, 2004).

Support for other cultural industries that stem from radio, however, cannot exist without subsidies to the radio industry itself. Private broadcasters do not demand outright subsidies. They would prefer to capitalize on increased consolidation and maximize profits by using less material resources, more advertising, and so-called “canned” material which limits production costs. Public radio and, more importantly, community radio, survive on subsidies. Traditional radio may require even more subsidies or other forms of economic assistance in the near future if it is to remain competitive with the new technological innovations in broadcasting, and it will be up to policy makers to facilitate the distribution of such funding.

Finally, if we consider the programming available over the Internet and on satellite radio, radio as we know it has not changed much in terms of form. After three decades of existence and two decades of presence in civil society, the Internet has not lived up to its hope or hype. It has become more of an extension of the dominant, twentieth-century communications media than a revolutionary twenty-first-century technology, as huge corporate media giants harness its ability to “push” their commercial messages on the public (Cooper, 2003, p. 130).

In other words, radio has become a rebroadcast service on the Internet and satellite, which merely increase the possibility of accessibility without making use of the new media for new creative Canadian output. They have created niche markets, but that is not the norm, and niche markets are normally “skewed towards the interests and needs of the affluent” (Curran, 2002, p. 149). Policy makers should find ways to promote innovation on this front for all classes of society, rather than simply taking a reactive stance that lets the market prevail.

In theory, people have more access to Canadian products through emerging technologies such as satellite and the Internet. In practice, however, it is a different story. Policy must maintain radio’s universal access (Twisk, Redley, & Vizard, 1995) and ensure the success of Canadian creations for both satellite and the Internet. Satellite radio illustrates the case in point. Grey market satellite is so prevalent because the CRTC prevents Canadians from obtaining foreign television channels, and CRTC restrictions could eventually extend to radio as well. Furthermore, while the Commission approves television channels for distribution, it does not oblige companies to carry them; this does nothing to reduce the risks for Canadian producers hoping to sustain their enterprise in Canada (Beaty & Sullivan, 2006).

If Canadian radio is to survive in the satellite business, policy makers must strengthen this market by forcing broadcast distribution undertakings to carry Canadian produced content (not limited to the CBC) and further regulate the appropriate satellite services in Canada, or deregulate and introduce policies that will offer subsidies and incentives to promote Canadian radio content on the global stage and improve the system (Raboy, 2003). This would assist the Canadian economy. The risk is that if Canadians fail on the global stage, their content may never gain popularity within Canada; but success abroad may generate national interest and pride. Given recent international popular entertainment successes such as Nelly Furtado and Alanis Morissette, the second

option may not be as risky for Canadian identity as one would imagine. Canadian radio also requires both national and international policy intervention to ensure room for Canadian channels on “the radio spectrum [which by its nature] knows no national boundaries,” but permits “inevitable spill over of programs and signals” among nations (in this case, the United States) (Lorimer & Gasher, 2004, p. 59).

Improving access to radio on the Internet also involves finding ways to assist the less fortunate to acquire the enabling technology. The most important obstruction to radio broadcasting through the Internet is the required equipment: computers, Internet service providers, and cable or telephone connections which cost hundreds of dollars each year, whereas access to conventional radio can be obtained through a single device for only a few dollars. The cheap radio receiver was “especially welcomed by all those who had least social opportunities of other kinds; who lacked independent mobility or access to the previously diverse places of entertainment and information” (Williams, 2005, p. 21). Now, new forms of radio are limiting this access to the wealthier in the population.

One must not forget that these new technologies, while being useful to promote voices not normally heard in traditional media, also have their share of problems. It is difficult in the new radio environment to protect individuals, especially children, from harmful material, and it is equally difficult to limit voices expressing themselves outside established national regulations, such as the *Canadian Charter of Rights and Freedoms* (Canada, 1982). Without appropriate guidelines, little stands in the way of radio hosts like Jeff Fillion, as discussed earlier, monopolizing the space available using new technology (Harvey, 2003). It should, therefore, be one of the main objectives for radio in the 21st Century to weigh the advantages of access against the potential detrimental effects of ‘unregulated speech’ which ignores norms previously established through traditional forms of radio broadcasting.

In many ways, the challenges facing radio broadcasting today are not much different than those addressed by John Aird and Vincent Massey in the earliest years of the industry. American domination of the airwaves is only one aspect of past concerns that is still very much part of today's policy dilemmas. Permitting deregulation would inevitably be at the expense of Canadian ownership, identity and editorial diversity. Striking a balance between regulation and deregulation will ultimately be the best solution, but it will still require elements of control to govern the carriage of particular programming to ensure the success of Canadian enterprise in Canada and abroad. Access is another issue that underlies media consolidation, technological convergence, deregulation and issues of identity. Although media regulation is far from outmoded (Twisk et al., 1995), it needs to be revisited because the status quo is failing Canada, and current policy has to be redesigned with the relationships between local, national and global spheres in mind (Beaty & Sullivan, 2006).

1.2.4 The Canadian commercial radio sector

Commercial radio in Canada is a highly concentrated sector comprised of very few players with networks of radio stations run out of hubs. This is in clear opposition to the more eclectic landscape of radio comprised of multiple owners that would have been the norm a few decades earlier. However, this consolidation and concentration of media is not unique to radio, as the same can be said for other media like newspapers and television. Already in 1981, the Royal Commission on Newspapers (Kent Commission) made recommendations to adopt a law that would prevent new concentration in the newspaper industry and safeguards about mixed or multiple ownership of media in a given market (Canada, 1981). Other industries such as banks and clothing stores, which were once comprised of unique 'mom and pop' operations, have also been replaced in recent years by multimillion or multibillion dollar conglomerates recognized from one country to another.

As of March 31, 1998, the radio landscape in Canada included three main sectors: the public sector, represented by 71 stations belonging or affiliated to SRC/CBC; the community sector, which includes 87 campus and community stations; and the commercial sector boasting a total of 575 licensed radio stations (273 AM stations and 302 FM stations) (Raboy, 2000, p. 28; CRTC, 1998, p. 23). In addition, there are licenses for religious and aboriginal communities, as well as other special events, educational purposes, developmental radio and tourist/traffic needs.

Ten years later, in 2008, all sectors were still represented. Public radio included 84 stations along with 18 digital services; the community sector included 150 campus and community stations; and the commercial sector included 681 licensed stations (158 AM stations and 523 FM stations) (CRTC, 2009, p. 95). Though most sectors had increased in number slightly, with the commercial sector increasing by 18 %, the main changes have to do with listening habits, revenue and ownership.

Since the mid 2000s, there has been a noticeable decrease in the number of hours tuned to radio averaging out to about 19.5 hours per week in 2009 compared to 20.7 in 2005 (CRTC, 2010, p. 35). Though this can be attributed to many things, most observers relate the decrease to new technologies like the iPod which permit listening on demand. Listeners can download podcasts, which can include full episodes of their favourite radio shows or modified versions, to which they can tune in when they please. This device can also be used to listen to music without commercials and is more versatile than previous portable listening equipment such as the CD player and the Sony Walkman, which were limited to the content of a CD or tape. The iPod stores much more music in a tiny space and does not require additional equipment for use.

The radio sector's financial situation has been less than optimistic in recent years with financial specialists noting negative growth. In 2009, English

commercial radio lost 5% of its annual growth for total revenues of \$ 1,214.8 million on all bands (AM and FM) for English and French stations combined (CRTC, 2010, p. 40). Compared to 1997, this still represents an increase as the CRTC then reported total commercial radio profits of \$ 862 million (CRTC, 1998). Overall, there has been a trend in increased revenue, but with lower growth rates, which leads us to describe an industry in decline rather than an industry working toward further expansion with the possibilities provided by new technology, such as digital radio and the Internet. Part of this can be attributed to the recent economic downturn and lost advertising revenue base for radio stations as choice of advertising venues has increased with the Internet and other specialty and on-demand services. Compared to other cultural industries such as conventional television, however, radio did better. Television had a 7.4 % revenue decline compared to 5.2% for radio in 2009 (CRTC, 2010, p. i). However, television, if considered as part of a larger industry that includes distribution, has done very well with revenues increasing from \$ 14 billion in 2008 to \$ 14.4 billion in 2009 (CRTC, 2010, p. i).

The most significant change for the sector relates to ownership. In the mid 1990s, the commercial sector appeared “to be fragmented and composed of small businesses which often operate in small communities: among 155 companies which operated radio stations in 1992, 66 per cent operated a single or two stations, only ten companies owned 10 or more stations, and no one broadcast group owned more than five per cent of all radio stations in the country” (Fillion, 1996, p. 126).⁵ Over the years, the small companies were bought out and Canada’s commercial radio sector is now divided among few power houses which represent 68% of total national revenue (CRTC, 2010). Astral Media Inc. is the largest with 21% of national revenue, followed by Corus Entertainment Inc. (16%), Rogers Broadcasting Limited (14%), CTV Globemedia Inc. (11%) and Newcap Inc. (6%) respectively. Astral Media alone operated 81 radio stations in 2009 (CRTC, 2010, p. 47). Astral Media’s success was primarily due to a savvy

⁵ Unfortunately, as noted by Fillion (1996), specific ownership data are unavailable for that time.

buy-out of Standard Broadcasting Corp Ltd. in late 2007 to make it Canada's largest radio network.

Looking ahead, there does not seem to be much more room for radio consolidation unless foreign ownership rules are relaxed. There is still room for niches and improvement as far as genres and styles of music being offered. Some smaller companies such as RNC Inc. have been capitalizing on that in recent years. If someone could find a way to revive satellite radio, there might be another area in which to expand, but as it was explained earlier, Canada did not fare very well in that sector. Though little has been documented here to compare sectors because they are very different in regulatory terms, in practice and in financial structure, it is fair to point out that in reality there may very well be more interesting progress and expansion in the community sector. Though it is struggling financially, the Astral Media Inc. purchase of Standard Broadcasting Corp. resulted in a several million dollar fund being used to ameliorate the community radio sector. This sector is without a doubt the most eclectic and innovative in terms of its programming and with proper funding could result in a very interesting alternative to commercial radio. Though one of the oldest sectors of radio, in many cases it has been treated as marginalized, still it is being used worldwide as a strategy for democracy, uniting communities and providing a voice to the voiceless (Raboy & Shtern, 2010).

Though ideally it would be interesting to assess performance for all sectors and with regards to their public interest involvement, it is not the object of the research at hand. In the current context, more realistically, it might be possible to assess general performance at the time of renewal based on ownership; however, the work involved in associating stations and call letters to their rightful owners and tracking ownership over time would be onerous to say the least. The CRTC does not keep track of these data in a linear form. An alternative might be the *Broadcast Dialogue* magazine's annual list of stations, but since it is an outside industry source, it would be difficult to assess for accuracy and would not provide

exact dates for change in ownership, resulting in a less than satisfactory exercise. Consequently, the research at hand will not take into account ownership performance based on ownership which is in line with the CRTC's practice for the period studied. In the future, it would, nonetheless, make sense to assess it as the CRTC will be moving towards a similar approach in its own practice.

1.3 Research questions

As explained, the medium of radio is important as a vehicle to propagate Canadian values through the creation of Canadian content and the development of other industries. It is also an integral part of the broadcasting system on its own and warrants regulatory measures to protect the culture we value because it is a source of democratic power that encourages actions and choices (Stanley, 2005). This is the claim, but how is it possible to ensure that individual radio stations uphold this image and live up to the role they have been given? One way to assess this is to step back and examine one of the activities at the root of the CRTC's existence and the basis on which the public and the industry evaluate performance, the process of renewing radio licences. It is hoped that the study of radio licence renewals over time will fill a gap in the research involving traditional media and provide applied evidence to determine the extent to which the CRTC holds licence holders accountable for the promises they make at the time of licence renewals. Those are promises to uphold standards and values described in our laws and regulations. Studying radio in this perspective may also allow certain generalizations about how the CRTC handles broadcasters, and by extension, radio listeners. It is proposed that this analysis be performed using a framework inspired by the rapidly growing field of evaluation that has proven to be useful in assessing a variety of topics from education and management to the health sector, as will be further discussed in the next chapter. Furthermore, the study seeks to understand the factors that influence the decision-making process. Overall, this type of research is of particular importance because very few empirical studies have been conducted in Canada regarding radio, and even fewer

combine both radio and the CRTC. It will be useful to both practitioners and academics and regulators because of a framework which combines theory and empirical references from communication studies with the applied field of evaluation.

There are two main research questions pertinent to this study. The first, and the most important, has to do with the CRTC's ability to uphold the laws and regulations under its jurisdiction with regard to commercial radio licence renewals. In other words, to what extent does the CRTC hold commercial radio owners accountable to the objectives of the *Broadcasting Act, 1991*, the *Radio Regulations, 1986*, their conditions of licence, and any promises they made at the time of licence renewals? The second research question concerns what is discussed at the time of renewal. What are the types of promises, if any, made by radio licence holders at the time of licence renewal? Supporting questions have to do with decision-making and how it is performed in the context of licence renewals. What are the common practices involving decision-making with regard to commercial radio licence renewals? What factors influence decision-making at the CRTC? Though these questions may result in findings that have general implications for broadcasting, there are limitations to the possibility of generalizing results based on the scope and scale of a single study.

1.4 Scope and scale of the study

The scope of the study limits itself to Canadian radio licence renewals that took place from 1997 to 2007. It only examines commercial radio stations, therefore not examining cases that involve public or community radio. These sectors were left out because they warrant studies of their own, considering differences in policy and regulations that apply in those cases. Commercial radio is also the radio sector where the licensing and regulatory role of the CRTC is most critical, as public radio (CBC) is governed by its own statute and the CRTC has a very light role with respect to community radio. The 1997-2007 timeframe

is proposed because information for these years is readily available on-line and through the CRTC archival system. It is, furthermore, a recent period, shedding light on the CRTC's current practices.

1.5 Contributions to knowledge

Outlining the importance of radio and its study both as a medium, but also as an illustration of the effectiveness of the regulatory system that is supposed to oversee its performance, is relevant in itself; but what make it original are the added theoretical, applied research, and academic contributions to knowledge which provide for an overall understanding of communication and its various dimensions. Before outlining how the evaluation of radio licence renewals actually takes place, an explanation of these three essential contributions to the study of radio within the communication research paradigm is required.

1.5.1 Theoretical contributions

This section highlights the contribution this dissertation makes to theoretical knowledge in communication. In particular, a discussion of the case at hand provides evidence to support democratic theory, provides an alternative to current means of assessing national identity and challenges existing assumptions about the difficulty of balancing culture and market interests in a political economy framework. The dissertation also describes existing power structures and explains how practice may be improved to ensure a balance between different ideals – Canadian culture and identity versus business interests.

Radio has often been defined as a democratic medium because it can promote democratic values and goals, such as the preservation of culture (Filion, 1996) and identity, as well as foster access to means of communication, providing a voice to the voiceless and creating a public sphere (Buckley et al., 2008). For some authors, media have become the symbol of freedom of expression (Buckley

et al., 2008; Gingras, 1999). Others, on the other hand, find this to be a romanticized image of the role of media; the fact that we, as a society, assume media to be responsible for promoting values such as a national identity, access and a national culture does not necessarily make them democratic by any means. As described by Gingras (1999), these assumptions reflect values of an ideal model of the public sphere as outlined by German philosopher, Jürgen Habermas. It is a space where discussion would bring people together, allowing for a healthy confrontation of ideas that would ultimately reduce conflicts and permit people to engage in self-governance (Gingras, 1999; Mattelart & Mattelart, 1998). Habermas (1989) argued that this space no longer existed, or at least was eroded because the capitalist mode of cultural production had replaced reason – arguments also made by members of the Frankfurt School. Theodor Adorno and Max Horkheimer believed that “the citizen tends to become a consumer characterised by emotional and acclamatory behaviour while public communication dissolves into ‘attitudes of, stereotyped as always, isolated reception’” (Mattelart & Mattelart, 1998, p. 65). Media were seen only to reproduce and emulate what society had to offer, that is the status quo and a rehashing of its existing values, whether this was done consciously or not.

Regardless of its demise, as Gingras (1999) has suggested, many characteristics of Habermas’ public sphere are still perceived as essential in the space given to public media. These include rationality, accessibility and transparency. While they may be at the heart of political systems and ideologies that create the romanticized image of free media, they are not the only aspects to consider when discussing the democratic status of media. Gingras’ (1999) criticism follows the lines of Marxist theorists like Theodor Adorno, Herbert Marcuse and Noam Chomsky, who according to Nesbitt-Larking (2001), interpret mass media “as agents of distortion and trivialization, which kept the masses in a state of semi-comfortable passivity and discourage[d] them from political protest” (Gingras, 1999, p. 86).

For radio to legitimately promote democratic ideals, it is argued that society must reinforce mechanisms of accountability, a value that goes hand in hand with transparency. In other words, more attention should be given to how we hold people accountable for activities conducted in the interest of the public, including work done on behalf of Government, which is generally considered to be democratic. This applies to radio, which uses public resources, notably the radio airwaves. This dissertation also provides evidence to critique the assumption of Gingras (1999) that commercial sector radio is incapable of being democratic because of the economic logic on which the sector is based. This implies a very strict definition of democracy, assuming that it is impossible to reconcile economic and democratic ideals in a liberal society. The substantial examples of consolidation in media industries and their negative effect on journalism, have led many in society to believe that commercial broadcasters cannot be accountable to the public interest in any respect. This dissertation, however, shows how, and to what extent, we can continue to believe in such accountability from commercial broadcasters through long term evaluation of their performance with respect to the democratic ideals discussed in the *Broadcasting Act, 1991*. The study of CRTC practices is also relevant in this respect, since it is supposed to be an organization that upholds the democratic values professed in the laws and policies which govern its existence.

Accountability is also brought into direct relation with national identity in this study because it provides evidence of the extent to which the CRTC upholds practices which promote national identity. Canadian content has probably been the element of Canadian cultural policy that has been most studied as we have given it importance in laws and regulations to foster Canadian ideals. Such studies, however, have been more concerned with the amount of Canadian content being broadcast, as opposed to established quotas. These studies are not relevant in establishing accountability with regard to the ability of broadcasters to achieve national objectives. These objectives go beyond providing content and consider elements such as overall performance in the public interest. This dissertation

provides an alternative to strict quota-based performance analyses by examining not only the criteria used by the CRTC, but its overall decision-making process, which has an impact on how it determines accountability.

This study of CRTC practices involving radio licence renewals is also a contribution to the political economy of communication, as the Commission tries to balance the principles of culture and public interest at the heart of our laws and regulations, with market interests held by broadcasters. As Inglis (1990) has mentioned, the political economy of communication can be explained by a series of contradictions that are resolved by the State. There are many examples of how these contradictions are expressed in Canada. This study provides a few examples, notably government use of co-regulation as a governance tool and its endorsement of the Canadian Broadcast Standards Council (CBSC), an industry organization at arm's length from the CRTC, which deals with complaints about broadcasters, but which is at the same time funded by them. In trying to explain the extent to which the CRTC holds stations accountable to Canadian ideals, this dissertation also provides insight into the power structures in which broadcasters operate and describes the control which the Commission exercises in various decision-making situations. It also offers reflection on how things might be different if they were done another way.

This study contributes to the field of communication by showing the extent to which CRTC practice with respect to accountability reinforces the democratic ideals of radio. Examples of radio licence renewals explain how cultural values in legislation can be reconciled with market objectives. Reinforcing the need for research in the political economy of communication, the study is also an exercise in empirical evaluation of CRTC practices. Recent literature on regulation and public policy in Canada has been essentially descriptive in nature, rather than openly critical of certain practices, notwithstanding ample examples of situations where accountability has been jeopardized or where there is doubt about regulations being upheld. Two recent

publications, Armstrong (2010), and Salter and Odartey-Wellington (2009) are cases in point. With this in mind, the dissertation hopes to offer a concrete contribution that compiles data beyond the obvious cases brought to light because of CRTC decisions that have been out of the ordinary, such as the non-renewal of the CHOI-FM licence, or the recent allowance of critical consolidation projects, such as those involving CanWest Globemedia (CRTC, 2007f; Shade, 2005) and Astral Media (CRTC, 2007).

1.5.2 Applied research contributions

In addition to enhancing existing theory and challenging assumptions in communication knowledge, this dissertation also provides a number of applied research contributions. Analysis of the radio licence renewal process uncovers new facts and principles through data provided. It also increases our understanding of relationships within the broadcasting system. Furthermore, it provides insight into a process that practitioners, researchers and society claim to understand, but which in reality is much more complex than most appreciate. The study also proposes a new framework to evaluate practice in broadcasting and informs practitioners of the benefits of its use.

Through applied research, it was possible to provide statistics about the radio industry that are not regularly kept by the CRTC. These include compiled data on the number of licence renewals and their content over a ten year period. In recent hearings and in reports, as previously discussed, empirical data have been revealed to be particularly valuable. Not only do few organizations have the resources to perform such studies, but empirical data provide much needed evidence to substantiate whether or not current policies and regulations are actually performing in the way they were intended. The legitimacy of the rules used in decision-making are “embedded in the structures of authority” and the perception of stakeholders (Lull, 2000, p. 89). In such a context, this study offers

an examination of these perceptions and possible contradictions between what the rules are supposed to do and their actual results.

An obvious discrepancy is the pertinence of radio formats in licence renewals. Though formats are essential in obtaining an initial licence in radio, formats are not even considered in the context of renewals. This is one situation where legitimacy may be in question, since it is a perceived requirement by stakeholders. Also, since the CRTC publishes data on Canadian content development (CCD) in its annual report, it would seem logical to assume that providing this information is important when reporting performance. As the study will show, however, what at first glance may seem relevant is not always the most important in the end.

The data further help determine where power lies. Who really controls the system? This is information that cannot be inferred by simply looking at decisions. Interviews and qualitative data are necessary to confirm potential assumptions in this respect. For example, the assumption that the CRTC controls the industry because its members are working for Government does not necessarily justify the decisions made or proves that they are in the public interest. Data provide evidence of how decisions come to be, who makes them and what is used to sway decision-makers. As Buckley et al. suggest, “[accountability] of those in power relies heavily on being able to source and retrieve information concerning decision-making processes; but efficiency of public decision-making is enhanced when the basis of such decisions is open to public scrutiny and debate” (p. 21).

The data also reveal information that is normally hidden from the public. It is not necessarily because it is unavailable, but without extracting and analyzing data from the physical reports, the information they contain would be less than readily apparent. There are several examples of this nature in this study. Determining the number of stations which obtained short-term renewals is not evident unless a case in particular gets out of hand or is reported in the press. The

average duration of licence renewals is also a fact that is generally unknown. The types of licence conditions and the frequency of non-compliance with particular conditions are other aspects that are revealed in this study. Furnishing such information is in line with recommendations made by Auer (2006) in her study on CRTC broadcasting legislation enforcement. Aside from the actual data, what is of particular interest is the process that is used in licence renewals. Without a study of this nature, the general public and practitioners are under the impression that the CRTC conducts itself in the way it claims or how others perceive it does.

The study also brings to light a new framework for studies in communication. Though evaluation, in general, has been conducted in the field for such exercises as communication audits, which evaluate an organization's overall ability to communicate with its stakeholders, little evaluation along the lines of what is being done in business, health and education has been conducted in the broadcasting sector. As will be further explained, other studies have concurred that evaluation is necessary in the broadcasting arena, and some countries and institutions have started to integrate elements of evaluation in their policy frameworks. No one, yet, however, has tried to evaluate a particular process or policy in Canadian broadcasting regulation using the framework that is employed in this study.

1.5.3 Academic contributions

Informed by theory and conducted using a rigorous methodological framework, this dissertation also contributes to scholarly activity in its triple academic applications to teaching, research and service to the community. The following section explains how the study has provided added knowledge in these three areas.

Teaching in communication studies has always included the analysis of a variety of areas including media theory, business models and regulation. Though

different communication models and institutional frameworks have been proposed over time as a way to explain the systems in which media function, some which include the notion of feedback (for example the Shannon and Weaver model), none have formally embraced evaluation as an integral part of the system. This dissertation provides evidence demonstrating the benefits of including evaluation as a methodological tool and as a valuable component of communication models. This expands the way communication, particularly in areas related to institutional practices, such as regulation should be taught. This applied methodology resolves some of the contradictions in political economy by explaining how it is possible to reconcile market values and public interest, particularly for those interested in communication studies, but also for professional regulators and those who will be applying this knowledge in practice.

Academic pursuits also include research. This study promotes inquiry of theory from evidence-based applied research. Some academics develop theories to explain society, whereas others go a step further and test how theory can be applied or how it can inform reality. The result of this dissertation is an iterative process that has used empirical work as an opportunity to test existing assumptions surrounding regulation and accountability, but in the process it has also provided an opening for other researchers to redefine theory based on the new conclusions that have been drawn. The research pursued in this study follows traditional procedures, but the content studied and the results obtained following this academic exercise are novel and should serve to promote further research into the relationships between accountability, democracy, national identity and overall ‘Canadian’ values and ideals that regulatory systems claim to uphold. These have never been tested in the way the current study has done. In other words, on an academic level, this research has provided communication studies with an additional framework in which to test familiar variables in a real life context that has, until now, been overlooked. The study encourages further inquiry into the work of the CRTC using a multidisciplinary approach, combining the fields of evaluation and communication.

Finally, this work not only contributes to theory, research and the advancement of knowledge in the field of communication, but renders a service to the community by informing practitioners (policy makers and broadcasters) of the importance of conducting evaluations, not only to find areas of improvement in their organizations and laws, but to provide legitimacy for their practices through transparency. It is hoped that the study will also encourage activism within the public to force regulators to question prevailing ideologies and images of society to provide a true sense of accountability for the systems and processes we take for granted. This research also fosters public awareness of CRTC licence renewal practices and identifies some of the ethical considerations for decision-making. It also provides much needed empirical data to substantiate the need for regulatory reform and sheds light on the licence renewal process which seems straightforward on paper, but, in reality, has several unique facets that can only be understood with the aid of examples from applied research.

1.6 Layout of the dissertation

To best respond to the questions outlined in this chapter, the dissertation is divided as follows. Chapter 2 is dedicated to a review of the literature which this study proposes to use. Limitations of the suggested research methods and of search engine results are discussed in Chapter 3, which deals with methodology. Chapter 4 presents research findings, and Chapter 5 focuses on a discussion of these results and provides recommendations for improving the licence renewal process. Finally, Chapter 6 provides concluding observations confirming the value of this study as a contribution to the field of communication studies.

2. Review of the literature

2.1 Evaluation Theory

The term evaluation, like accountability, is often employed in relation to industry performance, including media performance. However, the meaning of evaluation in fields such as health, management and education goes well beyond assessment questionnaires or general reviews. This section aims to define the concept of evaluation, describe its history, provide a classification of its different forms and explain how evaluation in media is being conducted in Canada and abroad. The section ends with an analysis of the literature on accountability and guiding principles in media evaluation. Throughout, the aim is to establish the relevance of evaluation as a tool for ensuring accountability in the broadcasting industry, but particularly in relation to radio licence renewals or similar processes.

2.1.1 Definitions

Definitions of the word evaluation vary depending on the discipline and the evaluator. For example, Contandriopoulos, Champagne, Denis and Avargue (2000), who conduct evaluation in the health sector, believe “the fundamental nature of evaluation consists of making a judgment about the value of an intervention by putting into place an instrument which provides valid and socially legitimate scientific information about an activity, or any one of its components, so that any of those concerned, who may not share the same value system may make a decision on the activity and formulate a judgment that can translate into actions” (p. 521).⁶ Although value judgment is important, basing evaluation solely on this aspect, limits its scope.

⁶ Loose translation of « ...évaluer consiste fondamentalement à porter un jugement de valeur sur une intervention en mettant en œuvre un dispositif permettant de fournir des informations scientifiquement valides et socialement légitimes sur une intervention ou sur n’importe laquelle de ses composantes de façon à ce que les différents acteurs concernés, qui peuvent avoir des champs de jugement différents, soient en mesure de prendre position sur l’intervention et de construire un jugement qui puisse se traduire en actions. »

For Wollman (2007), evaluation in public policy is an analytical tool and procedure that: “involves investigating a policy program to obtain all information pertinent to the assessment of its performance, both process and result [...] [and] a phase of the policy cycle [that] refers [...] the reporting of such information back to the policy-making process” (p. 393). This definition is much closer to the project at hand. Weiss’ (1998) definition is preferred, however, because it not only includes the analytical process, the policy process and policy makers, but also an element of comparison necessary to benchmark current practices with ideal outcomes. More precisely, since the goal is to examine the procedures and outcomes of a particular exercise, the licence renewal process, and compare it to ideal outcomes which are the guidelines set out formally or informally in the policies and legislation surrounding radio broadcasting, the following definition better suits this study. Weiss (1998) views evaluation as the “systematic assessment of the operation and / or outcomes of a program or policy, compared to a set of explicit or implicit standards, as a means of contributing to the improvement of the program or policy” (p. 4).

2.1.2 History of evaluation

One of the first published evaluations can be traced back to a French man by the name of Guerry, who, in 1833, attempted to demonstrate that education did not reduce crime (Weiss, 1998). This is one of many examples from education that set the stage for the field of evaluation. According to Guba and Lincoln (1988), there are a number of distinct periods in the history of evaluation. The first, which they call the “measurement generation,” originated in education, where the goal was to measure characteristics of school children by administering various tests. One such example was a study published in 1897 that focused on the use of spelling tests. This period also saw the development of the intelligence quotient. A further stage within this period encompassed the scientific management movement in the areas of business and industry, and the move from

strict description to judgment formation. The primary purpose of evaluation was to find ways to make workers more efficient while paying them less. The same premise was used in schools where students were seen as “raw material” to be “processed” in “the plant” to determine if they met “specifications.”

Guba and Lincoln’s (1988) second generation of evaluation was:

characterized by a description of patterns of strengths and weaknesses with respect to certain stated objectives. The role of the evaluator was that of describer, although the earlier technical aspects of that role were also retained. Measurement was no longer treated as the equivalent of evaluation but was redefined as one of several tools that might be used in its service (p. 28).

At this point in time, evaluation in education was conducted to determine if students had learned what they intended them to learn – desired learning outcomes or objectives. However, as Guba and Lincoln (1988) describe, flaws with this approach introduced alternatives. For one thing, waiting to see the final results did not permit people to fix any problems that could have been resolved before the end of a task, and certain people refused to begin projects without having mapped out objectives, which is not always practical in times of crisis. The improvement was “responsive constructivist evaluation” which involves the participation of stakeholders in the definition of the problems and its ultimate resolution (Guba & Lincoln, 1988, p. 38-45).

This proposed improved alternative, however, still has not reached a consensus among all evaluation practitioners. As it is possible to trace the history of evaluation through the various disciplines and institutions from education, to business and medicine, to major research and evaluation bureaucracies within government, etc., it is also possible to trace evaluation through its methodological developments. Although more evaluators prefer a mixed methods approach which yields both qualitative and quantitative data, there is still some disagreement on which methods can be combined within one evaluation. Some evaluators argue

about the validity of client participation, from the conception of questionnaires and the establishment of criteria, to the creation of an implementation plan that resolves the issues at hand. Further controversy surrounds whether the objective of evaluation is to ensure accountability of stakeholders involved in the evaluation, or simply to inform them of potential problems and issues (House, 1993). Nevertheless, in a capitalist society where traditional institutions and customs have lost their former influence (example the Church and the elders), people have turned “to alternative forms of authority, such as science” and evaluation (House, 1993).

Evaluation has evolved into a still debated profession with its own professional associations which uphold particular standards, its own series of peer-reviewed journals, and reputable university programs where students graduate to become professional evaluators. The mission of evaluation, according to House (1993), is “to be an institution for democratizing public decisions by making programs and policies more open to public scrutiny and deliberation. As such evaluation should serve the interests not only of the sponsor but also of the larger society and of diverse groups within society” (House, 1993, p. 1). This definition gives a sense to what the CRTC aspires to do through such public processes as public hearings and calls for comments which are formalized in law through the *Broadcasting Act, 1991* (see for example appendix C, article 10, section 3). Should the CRTC decide to regularly apply principles and use tools derived from this field, it could better achieve its goals, both in theory and in practice.

2.1.3 Two main types of evaluation

According to Contandriopoulos, Champagne, Denis and Avargue (2000), evaluation is either normative or research-based. The former is three-fold. The first part, the structural appraisal, serves to determine how well resources are used

to achieve desired results. The second part is the process appraisal which determines the adequacy of the services provided to achieve results. The process appraisal includes a technical dimension (quality assurance), an interpersonal relations dimension (relationship between provider and client), and an organizational dimension (access to services, scope of services, continuity in time and space). The third part is the results appraisal which seeks to determine if the results obtained are comparable to the results desired (Contandriopoulos et al., 2000). Some authors simply refer to this entire type of evaluation as “process evaluation” or monitoring. Research-based evaluation, on the other hand, consists in giving an ex-post facto appraisal of an intervention using scientific methods, generally employing experimental designs. Contandriopoulos et al. (2000) describe six possible analyses in this type of evaluation: strategic analysis, analysis of the intervention, productivity analysis, effect analysis, outcome analysis and implementation analysis.

Although research evaluation is prevalent in sciences such as medicine, it can be observed in other fields as well, including human resources (Saks, 2000). In media, research involving evaluation rarely goes beyond the realm of the normative, and even in this instance, evaluation does not include the processes just defined. The following section provides an overview of studies involving evaluation of media in Canada, the United Kingdom and the Netherlands. A discussion of progress made in Europe to move to more objective forms of evaluation is also provided.

2.1.4 Evaluation in media: a look at Canada and abroad

Eve Salomon, an international expert in broadcasting regulation and law, has explained that evaluation in the field of media regulation, or reviews, as they are called, is not evaluation as defined by professional evaluators because feedback is rarely provided once the analyses are complete (Salomon, 2008). As the following examples of evaluation exercises in Canada and abroad attest, they

also lack measurable or well-defined criteria. The choice of criteria is rarely explained and does not take into account input from stakeholders, or previous studies, leaving the criteria to the regulators themselves, or to the brainstorming ideas of those conducting the evaluation. The studies are rarely done systematically at given intervals. They are rarely repeatable because their methodologies are so different or simply not documented. This does not mean that those reviews are not useful in identifying shortcomings in the industry, but they are often performed without any consequences for improvement or change.

Since the inception of radio, Canada has witnessed many broadcasting reviews. Among the most important are Royal Commissions, Parliamentary Committees, Task Forces and CRTC commissioned review studies and monitoring exercises (see appendix B for definitions). The first major review was the Royal Commission on Radio Broadcasting which was established “to examine into the broadcasting situation in the Dominion of Canada and to make recommendations to Government as to the future administration, management, control and financing thereof” (Canada, 1929). Although the three-member Commission provided a very succinct report (only 13 pages in length), the results led to Canada’s first federal broadcasting legislation and the creation of the CBC’s predecessor, the Canadian Radio Broadcasting Commission (CRBC), in 1932. This exercise was one of the earliest reviews in the history of the industry and still resonates today through some aspects of current regulation.

Many other such reviews followed including the Royal Commission on National Development in the Arts, Letters and Sciences (1949-1951), otherwise known as the Massey-Lévesque Commission; the Royal Commission on Broadcasting (1955-1960), and the 1964-1965 advisory committee, both led by Robert Fowler; the Federal Cultural Policy Review Committee, chaired by Louis Applebaum and Jacques Hébert (1980-1982); the Caplan-Sauvageau task force, established by the Conservative government in 1985; and the Standing Committee on Canadian Heritage study on broadcasting, led by Clifford Lincoln in 2001.

Most of these committees or commissions included participation from industry stakeholders – members of federal and provincial parliaments, lobby groups, industry representatives and members of the public. The reports that were filed sometimes led to changes in legislation (the Fowler committee report, for example, eventually led to the creation of the CRTC), but many suggestions fell on deaf ears.

Although these types of reviews have been at times crucial in the evolution of regulation in the media environment, as Raboy and Taras (2004) mention, there are significant drawbacks to reviews such as those conducted by parliamentary committees, the main cases being limited staff and resources. Although Royal Commissions and government task forces are independent regarding their work schedules and can get interveners quite easily upon request, parliamentary committees are at the mercy of parliamentary schedules, and rely on the experts and staff provided within government purview (Raboy & Taras, 2004). Furthermore, commissions, task forces and committees of this nature have a variety of chairs, each of whom establishes the process through which to conduct research or review, which unlike systematic evaluation, may be quite arbitrary, and which discourages any continuity.

The CRTC also commissions reviews. One of the latest, and perhaps one of the most controversial in recent times, was the Dunbar-Leblanc report. In 2007, the CRTC mandated two lawyers, Laurence Dunbar and Christian Leblanc, “to conduct a comprehensive review of the existing regulatory framework for broadcasting services in Canada and to submit a report containing recommendations for reform” (Dunbar & Leblanc, 2007, p. v). This report was considered to be part of the review of CRTC policies for specialty and pay services, and for broadcasting distribution such as cable and satellite services. The CRTC also anticipated that this report could be used to examine certain other aspects of radio and over-the-air television policies. As opposed to previous reviews, this particular evaluation was distanced from the proposed definition of

evaluation for many reasons. Primarily, it did not encourage participation from any stakeholders given its timeframe (only a few months). Its methodology was also particularly vague, only mentioning the objectives set out by the Chair when the review was commissioned. The authors set out what they call a “framework for evaluating regulation,” which again quite vague, refers to objectives, but there is no indication of how these could be measured or even assigned to particular criteria. They also mention “smart regulation” principles which have been used in other government reviews, but these are no more than principles which are few and far between from actual steps toward a comprehensive framework for evaluation.

Smart regulation requires the regulator to engage in a disciplined approach to regulation. It requires the regulator to clearly identify the policy objective being pursued, and it requires an assessment of whether the policy objective in question can be adequately addressed in the absence of regulatory intervention (whether by market forces or by the regulated entity’s own self-interest). This analysis requires a detailed understanding of the industry and market conditions (Dunbar & Leblanc, 2007, p. vii).

In this case, it is not clear if the CRTC was aware that this process would not encompass an evaluation that would be considered valid in the eyes of professionals in the field. Weak methodology and a lack of explanation of the process, as well as the fact the study was conducted without any public participation not only poses problems for evaluation, but for accountability and legitimacy as well.

A further form of review used for broadcasting regulatory purposes in Canada is monitoring reviews. These are disseminated to the public in a yearly CRTC report called the *Broadcasting Policy Monitoring Report* and contain information about radio, television, broadcasting distribution, diversity, social issues and new media. The report “provides an on-going assessment of the impact of CRTC regulations, policies and decisions on the achievement of the objectives of the *Broadcasting Act*” (CRTC, 2007c), and serves as a tool to continue measuring the performance of the Canadian broadcasting system. The indicators used in previous versions are updated yearly and serve to monitor the trends in

each sector of the industry. It is based on information provided by participants in public hearings, Statistics Canada data, broadcast measurement statistics from the Bureau of Broadcast Measurement (BBM) Canada and BBM / Nielsen Media Research, annual financial reports provided to the CRTC by licensees, ownership records and radio compliance monitoring results, public information such as annual reports, CRTC decisions and notices, as well as research conducted by the CRTC. Though this may constitute the most comprehensive set of data provided by the CRTC to the public, it is limited because each component is provided from outside sources with their own sets of methodologies, criteria and frames of reference. Likewise, the main purpose of the document is to provide a snapshot of the industry, not to serve as a tool to improve it. BBM surveys, for example, are conducted at particular times of the year, of which all licensees are aware, making it convenient for them to improve programming and performance during the time period. Monitoring is also used to verify if radio and television stations are maintaining their conditions of licence with regard to content and programming. This form of monitoring generally occurs only once every seven years, which again provides loopholes in analyzing performance. These examples suggest that perhaps a new way of evaluating certain aspects of media regulation, and radio regulation in particular, should be considered.

In Europe, and in particular in the United Kingdom, some progress has been made to streamline monitoring and review processes. Since 1998, the United Kingdom has made regulatory impact assessments (RIAs) mandatory when proposing new regulations (Parker, 2006). RIAs consist of a cost-benefit analysis which determines market effects on media industry stakeholders. By 2001, 20 of the 28 Organization for Economic Co-operation and Development member states claimed to use RIAs in some form (Parker, 2006). Since 2006, RIAs are overseen by the Better Regulation Commission (BRC), which provides the government with advice on ways to improve overall regulatory performance. The Better Regulation Executive (BRE), established in 2005, works with the BRC to promote the Government's better regulation agenda. A recent example of such an RIA is

what the British Broadcasting Corporation (BBC) calls the “Public Value Test.” Amongst its uses, it claims to weigh public value against market impact. For example, it assesses the public value of a new service to be introduced and calculates its impact on the wider market including suppliers and other people who could be affected by the new service. This assessment includes the value to licence fee payers (clients), the value to society as a whole and financial value in terms of cost and benefit. It is part of what Moore (1995) describes as “strategic public value management” which encourages the public sector to learn from private sector best practices and make the outcomes known in the public arena. The BBC’s assessment is part of a larger formal process that has been established with formal guidelines, timetable and protocol to increase clarity and transparency for all stakeholders (BBC, 2006). This example is relevant in that it establishes the possibility of conducting assessments with formal criteria and processes that result in well-documented decisions that assist in public accountability through transparency and legitimacy.

These previous examples stem from a shift in regulatory culture in the United Kingdom (U.K.) that started with the creation of the Office of Communications (OfCOM). Established by the 2003 Communications Act as “an independent organization which regulates the UK’s broadcasting, telecommunications and wireless communications sectors,” it “set[s] and enforce[s] rules on fair competition between companies in these industries” (OfCOM, 2008c). It was not only designed to deal with industrial objectives, but also to handle social objectives, such as providing “citizens and consumers with universal access to a diverse range high-quality services” (Wheeler, 2001). It also aims to protect the interests of citizens “in terms of choice, price, quality of service and value for money, [...] maintaining high quality content, a wide range of programming and plurality of public expression, [...]” and protecting them from potentially offensive and harmful material (Wheeler, 2001, p. 31). Part of this desire to satisfy both the industry and citizens can be linked to accountability.

OFCOM has set deadlines for its reviews. For example, it must conduct a review of public service broadcasting once every five years (OFCOM, 2008b).

Since 2003, the Netherlands has also added a new evaluation component to its regulatory framework. As Bardoel (2003) explains, an external assessment commission is created every five years to evaluate public broadcasting programming and recommend changes to be implemented regarding the future and mission of the national public broadcaster. The results of the assessment are also used as part of the licence renewal process. The first step in this evaluation includes self-assessments by the broadcast organizations, based on questions related to specific cultural, normative and financial criteria (Bardoel, 2003). The assessments are reviewed individually for performance, then as a whole to assess pluralism within the system. Because this process is systematic, includes pre-established tools and criteria, it is a positive example of evaluation for other countries to imitate, notwithstanding issues of becoming over politicized, too bureaucratic or ritualized (Bardoel, 2003).

These examples present a variety of perspectives, tools and criteria for evaluating the media environment, but it is difficult to determine which ones are most effective in upholding accountability. Fortunately, literature in this area provides guidance in developing principles for media evaluation and the means to assess existing tools and to determine the composition of media evaluation.

2.1.5 Accountability and principles of media evaluation

Accountability is a word not always used in its proper context, since it is often confused with responsibility. In the field of communications, accountability is seen as “a static entity and measured by the presence or absence of what could be called indicators of fallibility corrections, feedback outlets, ombudsmen, and so forth” (Plaisance, 2000). This definition is rather general, however, and encompasses elements which belong to the definition of responsibility as

proposed by McQuail (1977). Responsibility, he says, “has to do with defining proper conduct,” obligations which must be fulfilled, whereas accountability has to do with compelling proper conduct and the processes by which a person, group or organization is called to account (McQuail, 1977, p. 515). He further defines four types of obligations or responsibilities related to media – assigned responsibilities (usually expressed in law and regulation), contracted obligations (agreement about quality of service between media and society), self-imposed obligations (for example professional codes), and denied responsibility (which is the decision to avoid a particular duty) (McQuail, 1977). He believes that for full media accountability to take place, one must consider all four facets.

In the case of the CRTC, the elements which correspond to these types of responsibilities, and which must be taken into consideration, are the applicable laws and regulations (*Broadcasting Act, 1991; Radio Regulations, 1986*), the conditions of licence; self-imposed obligations, such as professional codes defined by the industry; and the promises made at the time of licence renewal which are sometimes modified to deny certain responsibilities (for example the reduction of certain content or advertising quotas that a company finds too stringent). These elements operate within three frameworks – the legal-regulatory framework (principles and ground rules for operating in the industry), the financial / market framework (normal market functions), and the public service / fiduciary (or public trust) framework (goals regarding the public good) (McQuail, 1977, p. 522). General evaluation principles for the industry, therefore should consider these frames.

Accountability is not a new term for communications, as various authors frequently discuss it in relation to media. Most of them, however, tend to reflect on accountability in terms of freedom of the press or relate it to the role of broadcasters in the industry (Brants, 2003; Christians, 1989; McQuail, 1977; Plaisance, 2000; Raboy & Taras, 2004). Other actors are equally important to accountability in the public interest. A comment from Christians (1989) regarding

the problem of letting the press run completely free holds true when discussing one of these other actors – the CRTC. If the CRTC was put in place to serve the public interest, “who guards the guardian?” (Christians, 1989). This is especially important, because the regulations and policies often stem from regulatory bodies, such as the CRTC. In achieving accountability in a so-called ‘flawed market,’ one must, therefore, consider mechanisms to ensure the independence and credibility of the agency responsible for evaluation.

One such mechanism is the audience. As Merrill (1989) explains, however, the market model assumes a particular type of audience. It is one that can control media and hold them accountable; it is a knowledgeable, large, strong body, concerned about issues relevant to the industry. The audience is supposed to see what is ‘good’ and make sure that others, such as media managers, also know what is ‘good’ (Merrill, 1989). On the other hand, media are accountable to the public because this is how they will obtain their rewards (profits). If media obtain a larger following, it means they provide what the audience wants. This also assumes that media cannot be of service only to large groups, but must address individuals too. There is an underlying assumption that:

there is a symbiotic relationship between audiences and media: what the people want, the media will provide. If the people demand higher quality, the media will give it to them. As to a possible demand by the public for “lower quality,” the model has little to say, for the assumption is that people will become ever more demanding of better information as they themselves develop higher levels of education and moral consciousness (Merrill, 1989, p. 15).

Market forces may not be perfect in ensuring accountability, but there is something to say about how the market projects particular values and preferences on the decisions of media moguls (Merrill, 1989). Techniques employed to deal with market failure issues in the media environment also have their fair share of problems. Lee Plaisance (2000) identifies the reliance on professional codes as a way of putting “an ethics veneer over questionable behavio[u]r,” and the use of ombudsmen to serve a public relations role that goes beyond the responsibilities

related to accountability and news councils or “watchdog” groups as less than effective means of upholding accountability (p. 262). Perhaps more effective means lie in establishing mechanisms of evaluation which articulate the goals of media policy concerned with “freedom, diversity, quality of content and public accountability” (van Cuilenburg & McQuail, 2003, p.186), and address accountability in its different forms: “political accountability, market accountability, public accountability and professional accountability” (Bardoel & d’Haenens, 2004, p. 173).

Although there is no consensus on how to achieve accountability, most academics and professionals in the field of media agree on the need to protect core values when considering regulation in the public interest (Babe, 1990; Napoli, 2001). Six values stand out in the literature: freedom of expression, democracy, protection and promotion of culture, diversity, universal service or access, and protection of individuals and groups. Since these core values are the basis for most media policies, they should serve as the basis for evaluation. The next few paragraphs will discuss these values and how they relate to the promotion and defence of public interest in the creation of proper media evaluation (Raboy, 2003).

According to van Cuilenburg and McQuail (2003), freedom of expression is the main objective of any communications policy which is based on achieving goals of political welfare more than economic and social objectives. Although this may be true in the United States, where countless articles on freedom of expression are written yearly, in Canada, freedom of expression has more limits. It is supported as long as it does not override another primary right. When *Genex Communications Inc.*, for example, claimed that its freedom of expression was breached when the CRTC decided to pull the licence of one of its radio stations, the court upheld the decision of the regulatory body because another right in the Charter of rights and freedoms was being infringed by the remarks of one of the broadcaster’s announcers. Although, he had a right to his opinion, this right

stopped when it started to breach the rights of others. As Justice Létourneau stated: “I do not think I am mistaken in saying that freedom of expression, freedom of opinion and freedom of speech do not mean freedom of defamation, freedom of oppression and freedom of opprobrium” (CRTC, 2005c).

Democracy is a word with many meanings and often synonymous with the right to vote, but in the context of media, Barney’s (2000) broader definition is more appropriate. He defines democracy as a “form of government in which citizens enjoy an equal ability to participate meaningfully in the decisions that closely affect their common lives as individuals in communities” (p. 22). In Canada, this is indicated by public hearings, consultations and debates surrounding communications issues (Barney, 2005). These sessions, however, follow a particular format, which may not be suitable to all Canadians. For example, an illiterate citizen may not be able to understand the necessary paperwork needed to be filled out and submitted in order to be part of a hearing. Language may be another barrier for some Canadians who would like to participate. If they recently immigrated, they may not master one of the two official languages well enough to participate. There may be improvements to be made to achieve the democracy to which Barney (2005) refers in questioning the processes in which the forums of debate take place and the people chosen to be heard. However, Barney (2005) maintains that “we should not underestimate the significance of the democratic particularity of communication policy making in Canada” since it is one of the rare areas of Canadian policy where the public is asked to participate on a regular basis (p. 37). This opportunity is necessary to redefine “public interest in the information society, [and...] return to the essential functions of information and communication [...], to provide opportunities for citizens to be informed and to be heard” (Melody, 1990, p. 29).

As well as to protect democracy, nations have created cultural policies in order to protect cultural heritage and values. Although quite significant internationally, values are difficult to reconcile because they have a variety of

connotations. According to Machet and Robillard (1998), in Canada, France and Belgium, culture reflects a cultural identity, whereas in Germany and the United Kingdom, culture is a public service or a question of general interest. These policies, nonetheless, have three common threads: accessibility to culture, unique cultural values that characterize each society, and the realization that there exists a hierarchy of cultural forms that warrant their protection (Machet & Robillard, 1998, p. 14).

Content regulations made by the CRTC aspire to provide all Canadians with the broadcasting of Canadian content. “It is undeniable that content and ownership regulations in the broadcasting sphere have resulted in far higher exposure to Canadian content than would have been likely in their absence” (Barney, 2000, p. 256). The goal of Canadian content policy, however, is not absolutely clear and has limitations. Is content regulation meant to expose Canadians to Canadian content or is it meant to expose them to it more than to foreign products? If the answer is the latter, Barney (2000) believes it has failed, and most people would probably tend to agree. Regardless of the social impact of regulation, regulators assume that Canadian content is important to citizens of this country for historical, political and social reasons, justifying the importance of its protection and including it as an intrinsic part of our laws and regulations (see below, for example, appendix C, section 3 d) and appendix D, part I, section 2.2).

Diversity represents another value espoused by a variety of countries, including Canada. For Napoli (2001) it constitutes a fundamental principle in communications policy, although an adequate definition and a measure for this value have not yet been agreed upon in most circles. He believes the problem lies in the fact that there are many types of diversity, making sub-definitions almost inevitable. These include diversity of sources (ownership, workforce within media outlets and ownership of content / programming), format-program diversity, demographic diversity, idea diversity and exposure diversity. Diversity is also confronted with “the increased monopolization of broadcasters” (Melody, 1990,

p. 21). The fact that there are fewer players reduces both the diversity of regional ownership and the diversity of ideas. This also limits access, as citizens wanting to express their opinions are given fewer venues to do so. Although large conglomerates may be able to provide a wide range of programming due, in part, to their increased purchasing power and substantial technological investments, the Report from the High Level Group on Audiovisual Policy (Oreja Report) of the European Commission (1998) warns that greater choices are not necessarily synonymous with better quality, variety or originality.

In Canada, although diversity is implicit in the *Broadcasting Act, 1991*, through statements such as “encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity [...],” nowhere is diversity explicitly described (see appendix C, section 3.1 d). The *Radio Regulations, 1986*, mentions it only once, in describing the types of programming that exist. Type E programming refers to a spoken word program that is “directed toward ethnic groups or the general public and that depicts Canada’s cultural diversity through services that are multicultural, cross-cultural or inter-cultural” (see appendix D). The *Commercial Radio Policy*, in the 1998 version or the 2006 version, includes a more explicit discussion of diversity particularly with regard to the diversity of news voices and the diversity of formats (see appendix E, section 5). Consequently, it is this latter document that serves as the most concrete reference to what diversity should mean during licence renewals.

Regarding minority and marginalized groups in Canada, universal service is a value that has been upheld and that can be readily perceived in our society, especially concerning access to technologies. As early as 1986, Statistics Canada reported that 98.6% of Canadian homes had one tv set or more. In 1997 it was 98.7% (Raboy & Grimard, 2000, p. 240). Similarly, access to the Internet progresses steadfastly. According to Internet World Stats (2008), Canada had 28,000,000 Internet users as of March 2008, representing 84.3% of the

population. This figure is up by 16.4 % from 2005, based on data from the same site. These statistics are important considering that future broadcasting will most likely be mainly online. Where radio is concerned, universal service or access does not refer to accessing technology for its enjoyment, information or educational purposes, like television or the Internet, but rather for the ability to access airwaves to produce programming that is relevant to Canadians through employment and volunteer opportunities. This is implied through sections such as 3.1 d, and 3.1, i, iv of the *Broadcasting Act, 1991*. However, no straightforward regulations exist in the *Radio Regulations, 1986*, aside from encouraging Canadian content in the recording industry. There are no provisions to insist on sharing the air with the public in the *Commercial Radio Policy, 1998* or *Commercial Radio Policy, 2006*. This lack of formal provisions in regulation is counter to the belief that for true universality to exist, regulation should promote access for different individuals and groups who may not be able to access the technology, since not all of them have the same space attributed to them. According to Barney (2005) this is particularly true on the Internet. This suggests that traditional media must not be any different, given that regulations are more rigorous.

In the same vein, policy should also serve to protect minorities and vulnerable people. This is particularly important given that free trade threatens not only the protectionism of media content, but it also opens borders to leaks of all kinds reducing regulatory power (Hazlett, 2003, p. 39). In the case of *Genex Communications Inc. v. Canada (A.G.) and the CRTC* [2005] Federal Court judgement No. 1440 as a case in point, the CRTC particularly emphasized certain clauses in the *Broadcasting Act, 1991*. These included article 3.1., sections g and h (see appendix C) which stipulate that programming should be of high standard and that all licensees have the responsibility for the programs they broadcast. These provisions protect Canadians from inappropriate programming such as racist comments or subliminal messages addressed to children or vulnerable persons. Additionally, the majority of commercial stations are bound by an

industry code of ethics which also encourages high standard broadcasting. The CRTC also ensures equity in employment by including a condition of licence in this regard in all renewals, even though the actual law is under the jurisdiction of Human Resources and Skills Development Canada.

These values make up the backbone of the regulatory systems in Canadian media, but as Babe (1990) notes, approaches to policy that are useful one day may not necessarily be the ideal approach next month or maybe a year down the road, considering the forever changing environment in which we live. Government and regulators can only see so far into the future, making their decisions with the information currently available, while taking into account the degree of social acceptance. In this context, it is important to look elsewhere for ideas and best practices to stay ahead of the game. One way of doing this is by looking at other countries or other industries for suggestions.

2.1.6 Principles of evaluation in the radio sector

Leaving the generalities of media evaluation aside for a moment, it is important to discuss what is specifically relevant to the radio sector. Certain guidelines may be applied from the European model where many countries have opted for particular principles or regulations to supplement their equivalents of the *Broadcasting Act, 1991*, which, like ours, are quite general. For instance, the United Kingdom, has added directives for powers of the regulator (i.e. OFCOM):

- A regulator should not ask more than is necessary
- The regulator should not require evaluations unnecessarily
- Sanctions should be proportionate, but meaningful
- The regulator should be accountable, but also independent (Salomon, 2008).

Although this may seem quite generic, these principles are relevant to the radio sector which requires a balance between too much detail and not enough.

This is particularly true in the case of compliance, where a lack of compliance or “bare minimum” standards have been noted in CRTC interventions (Raboy & Taras, 2004). Furthermore, it is important that evaluation in this area determine what is necessary for proper radio broadcasting in Canada. These elements can be found in the analysis of the four pillars of compliance for radio broadcasting in Canada which include broadcasting regulation (*Broadcasting Act, 1991*), radio broadcasting regulations (*Radio Regulations, 1986*), conditions of licence, and promises made at the time of application for each individual case.

There is also a tendency in media policy, as Napoli (2001) noted in examining the U.S. Federal Communications Commission (FCC), to look at policies in isolation rather than as a whole when making decisions. The media regulated by the CRTC are subject to many policies that impact on each other. Defining policies too narrowly, or looking at them only far-sightedly, and not being able to see them for what they are, overly simplifies complexities and the diversity of views. In other words, policies need to be seen as more than individual documents or sentences, but as part of a much larger picture. That said, evaluation, must take into account documents, such as the *Broadcasting Act, 1991*, affect other media, as well as radio.

Good policy evaluation in this area must ensure that policies represent what they state. Changes in how policies are written have an impact on the policies themselves. As an example, following the advice of the Information Highway Advisory Council, the Canadian policy statement used by Industry Canada was changed from “information highway” to “information society.” Simple shifts in vocabulary used to make policy often have an impact on the way policy is applied in practical terms. Why changes were made is also important to note; details are often lacking.

Furthermore, as Moore (1995) suggests, developing an evaluation tool which includes “accurate information about performance in the past rather than

concentrate[ing] all one's efforts on guessing about the future" (p. 35) is a recommendation of particular interest to the radio sector where much emphasis in the licence renewal process is based on promises of performance and the potential for future success based on past performance. And as noted by McQuail (2003), promises in particular, are directly related to the accounting process necessary to assess the success of various value based issues, such as content, quality and social harm.

In addition to the literature which discusses elements to create frameworks, – principles and guidelines to ensure accountability in the broadcasting system and particularly in the radio industry – it is important to consider how regulation itself serves to uphold standards of practice in the field. The following section discusses current issues in the debate on regulation and provides insight into world trends in this regard by comparing approaches in Canada, the United States, the United Kingdom, Mexico and Japan.

2.2 Regulation

2.2.1 The regulatory debate

The debate around regulation can be explained, as Prosser (2008) suggests, using a continuum. At one extreme there is the decision to regulate in the strictest sense of the word, and at the other end is the decision not to regulate at all, which for some is inherently a form of regulation. In between is a mix of many regulatory techniques including self-regulation, co-regulation, and deregulation.

Self-regulation can be defined as the environment where "an industry administers and enforces its own solution to address a particular issue without formal oversight or participation of the regulator or government" (OFCOM, 2008a), in more direct terms, "it is the industry or profession, rather than the

government doing the regulation” (Campbell, 1999, p. 715). There are many reasons why an industry or government encourages self-regulation.

The first reason is because self-regulation is efficient. As Campbell (1999) describes it, people working in the industry know more about their own field than a government agency, making it more productive to tap into existing knowledge rather than to try to replicate it in a new agency. This regulatory model also provides far more flexibility in terms of rule modifications than government (OFCOM, 2008a). In addition, if an industry makes its own rules, there may be more of an incentive to uphold them (Campbell, 1999). Self-regulation may also be a useful choice in a context where the current rules are inapplicable or procedures differ (Campbell, 1999). Finally, a reduction in costs to develop and enforce rules, and the possibility of avoiding constitutional issues, are two other arguments in favour of this alternative to statutory regulation (Campbell, 1999; OFCOM, 2008a).

Notwithstanding these positive reasons to choose self-regulation, there are just as many reasons to avoid it. Most are the opposites of the advantages. For example, “leaving regulation to the industry creates the possibility that industry may subvert [a] regulatory goal [for] its own business goals” (Campbell, 1999, p. 717). Other arguments against self-regulation include the possibility that this form of regulation may encourage non-compliance.

For this approach to be successful, there must be monitoring through an independent body with the expertise and motivation to deal with the task, with the independent authority to ensure compliance and review decisions, as well as with the ability to ensure decisions follow the procedural rules (Campbell, 1999). Although, some organizations claim to adhere to this model, such as the Canadian Broadcast Standards Council (CBSC) or the Association for television on-demand (ATVOD) in the United Kingdom, as the President of the CBSC, Ronald Cohen, (2009) explains, not many of them spend time reflecting about the type of

regulation governing their work. The important thing, he believes, is the work being done, not the categories of regulation in which the organizations are placed for theoretical discussion. As an important element of analysis, and in analyzing the criteria for co-regulation, it seems that the CBSC is more in line with this model.

Private broadcast licensees in Canada voluntarily choose to become part of the CBSC, an arms-length organization, which, since 1991, assists the CRTC in upholding the regulations of the commercial radio sector. More specifically, the CBSC administers a series of industry codes including the Canadian Association of Broadcasters (CAB) code of ethics, violence code, equitable portrayal code, the Radio Television News Directors Association of Canada Code of Ethics and the journalistic independence code, and also responds to complaints filed against members of the CAB who contravene the laws and regulations of the CRTC and the aforementioned codes. Licensees prefer to adhere to the CBSC rather than having to create their own set of codes and having to manage them which would otherwise be required by the CRTC. The CBSC's association with the CRTC is particularly relevant to this research because the registered complaints filed against a private broadcaster are dealt with by the CBSC, even if the codes it administers are, for the most part, conditions of licence. As long as licensees pay their membership fees, they are considered to be in "good standing" with the organization.

As Prosser (2008) explains, co-regulation may simply refer to the involvement of the regulator to "ensure that an acceptable and effective solution was achieved" while others prefer to identify co-regulation on the basis of specific criteria. From the latter perspective, co-regulation exists when a "system is established to serve public policy goals [...when], there is some sort of connection between the non-state regulatory system and the state [and] some discretionary power is left to the non-state system, but that the state uses regulatory resources to guarantee the fulfilment of the regulatory goals" (Prosser, 2008, p. 101).

Finally, deregulation may be a loosening of rules because reasons for initiating them no longer exist, or simply because the political environment is such that there is perceived an excess of regulation (Bertrand, 1989). Much of the deregulatory process began in the 1970s in the United States and was essentially completed there in the 1980s. Canada followed suit. There are continuing examples of deregulatory behaviour, when the state decides to let market forces regulate an industry rather than proposing particular guidelines or a specific framework in which to operate. This is true in the case of the transition from analog to digital television in Canada, where the government has failed to provide any instructions other than letting the market fend for itself (McEwen, 2009).

A scale to be considered parallel to the regulatory continuum is the variations between private and public interests. The former is based on the ‘marketplace’ approach to communications regulation, which considers broadcasting or any other media as a commodity. Promoting competition and aiming for a maximization of wealth for the consumer define this approach (Napoli, 2001). In Canada, there is a current push for media policy to favour this line of thought, but existing regulations to protect the public interest, such as the *Broadcasting Act, 1991*, makes balancing commercial practice and public ideals difficult.

Private interest is particularly apparent in deregulation, “an essential enabling condition of trade and finance liberalization” (Barney, 2000, p. 123) and through co-regulation. Generalized deregulation in the radio industry is unlikely, considering the desire for stability and security on the part of the public. Co-regulation is a more realistic option. Though, in order for it to be beneficial, however, the parties involved have to share in “creating structural safeguards, setting out a framework, stimulating processes, creating and subsequently supporting players (advisory bodies, etc.), taking measures, applying to the self-

regulatory bodies, making the granting of a licence conditional on the enacting of a code, moderating and supervising” (Shultz & Held, 2004, p. 15).

Particularly in media, the reasons for or against regulation and variations in the continuum can be traced back to political economy debates on the concept of market failure. The next section examines this concept and its contribution to the study at hand.

2.2.2 Political economy and the market failure approach to regulation

While the historical literature about radio as well as more recent texts on regulation point to reasons for evaluation and confirm the relevance of the study at hand, much of the concern fuelling arguments for greater accountability in regulatory processes can be founded in key models, theory and applications derived from political economy and, more precisely, from the political economy of communications. Babe (1995) has identified three streams of political economic thought that can be recognized in the various disciplines related to the field, such as economics, politics and communication. They are the liberal, Marxist and institutionalist approaches.

Liberal political economists recommend competitive markets sustained by vigorous antitrust policy. Marxist political economists, maintaining that class relations devolve from property relations, recommend greater common as opposed to private property. Institutionalists probe beyond property rights to explore religious belief, educational systems, tradition, cultural systems, and so forth as conditioning markets, and tend to make policy recommendations on a case-by-case basis (Babe, 1995, p. 81)

Considering the types of regulation the CRTC has proposed in recent time, such as the new policy on media concentration (CRTC, 2008b) or its position on the regulation of new media (CRTC, 2009a), the Canadian broadcasting system

functions essentially within the liberal framework. On the other hand, Marxist ideals (even if not identified as such) with respect to public interest are still quite significant in the Canadian broadcasting model. One could analyze the radio licence renewal process from either of these perspectives, but the most realistic approach is the institutionalist perspective which explores such elements as values, cultural systems, economic forces and legal contexts which pertain not only to the CRTC, but to the Canadian broadcasting system as a whole.

As Babe (1995) suggests, however, political economy on its own, regardless of its perspective, does not suffice to entertain notions of justice, peace and sustainability which remain objectives of the field in aligning itself with the underprivileged, or in this particular case, with the general public who seek to trust in the CRTC to protect its interests when evaluating the performance of radio licence holders. For this reason, alternative theories and policies are needed.

Unfortunately, many communications and media researchers who contribute to this body of knowledge adhere to a particular approach to the field. Since the capitalist nature of our society tends to dictate most decisions made in the media industry, and the radio industry in particular, media industry deficiencies are most often described in terms of market failure and the proposed alternatives to the market model almost always relate to regulation. People such as Newton Minow, past Chairman of the FCC, explain policy issues in terms of media monopolies or the inability of viewers to pay for programming (Brennan, 1992).

According to Merrill (1989), the market model or marketplace model of communication is derived from philosophers such as John Locke, François-Marie Voltaire, Jean-Jacques Rousseau, John Milton, J. Stuart Mill, Thomas Jefferson, Adam Smith and Oliver Wendell Holmes. It assumes:

- the audience for media can control the media and hold them accountable in some way
- the audience is knowledgeable and generally monolithic
- media are rewarded or punished according to audience satisfaction with their services
- media will provide what audiences want
- the audience determines media content
- the audience will demand responsibility and ethical practices from the media

Much of this is problematic, given that individual audience members do not have the authority or power to pressure the media. Audiences are very eclectic, so they want plurality which is not readily available in most cities given media concentration. Research has shown that audiences are generally passive or unconcerned about day-to-day media affairs. Canadian evidence includes the lack of interest in Canadian football no longer being offered over-the-air and the few members of the public who attend public hearings at the CRTC (Merrill, 1989).

These realities are particularly significant in a country such as Canada, where values associated with the broadcast environment has always taken an interest in cultural differences and cultural sovereignty. Consequently, the market model requires that other forms of intervention ensure that the public interest is being taken into consideration. Regulation is only part of the equation as it does not, alone, suffice to achieve public accountability and sustainability. As Blumler and Hoffman-Riem (1992) point out, “[a] renewed public accountability system should include a set of interconnecting elements, however, no single one of which can do the whole job, with channels of overspill from one to the other and possibly some way of periodically bringing issues and trends together into an overall perspective” (p. 222). Using a theory of market failure is not sufficient and a more all encompassing approach such as that proposed by institutionalists is

more appropriate for this study and permits an exploration of other alternatives, including evaluation tools and theories derived from other fields such as business, education and health. The “political economy approach to communication is one starting point or gateway among a range of others, such as cultural studies and policy studies, major approaches that reside on the borders of political economy” (Mosco, 1996, p. 3). An institutionalist approach applied in a political economy of communication context, and coupled with theories from other disciplines, may be a gateway to a more sustainable model than regulation on its own. In short, it seems appropriate to take a “broader political economy view [which] takes the entire social field, including the pattern of industry activity, as a form of regulation” rather than the “consistent view that communication policy is [primarily] driven by government reaction to market behavior[s]” (Mosco & Reddick, 1997, p. 23). This would provide for a more well-rounded form of regulation that would help find equilibrium between both private and public interests and the need to regulate.

2.2.3 Current world trends in regard to regulation

As previously mentioned, as far as the broadcasting industry is concerned, Canada tends to gravitate toward a private interest model regulated by public interest ideals, such as those stated in the *Broadcasting Act, 1991*. Although spectrum limitations are no longer the main reason for regulation in Canada, regulation has always been required to ensure the protection of our cultural ideals, particularly the importance given to the bilingual state of the country (Raboy, 1990). The major regulatory changes concerning radio have occurred in the past decade, as with all other media forms, due to increased consolidation and the recognition of the place community media has in our public / private system. The neo-liberal market approach is still in vogue, but public interest is always said to be at the heart of the decisions made by the CRTC, and the continuing trend is to maintain a diversity of voices to ensure that all Canadians are represented and served by their media. Although the current Conservative government favours a

light-touch approach to regulation, it is still needed, especially in times of convergence, to ensure that public interest is served by the best technology possible, that access is maintained, and that acceptable content is broadcast.

Much like Canada, the United States has found regulations to suit the various types of media, and has avoided an all-encompassing approach to regulation. For some, in the United States, however, regulation is *passé*. Owen (2008) believes that unlike market failure, which can be corrected, regulation is permanent and rarely modified, making it a less favourable choice when dealing with media. “U.S. economic policy has a longstanding presumption in favour of competitive market solutions, where feasible,” (Owen, 2008, p. 8). Regardless, in his opinion, deregulation of the media has not amounted to anything following political intervention. Bar and Sandvig (2008) on the other hand, do not necessarily believe that regulation is obsolete. Instead, they suggest creating regulations based on different platforms rather than thinking of regulation in a more universal form. Leaving regulation solely to the market, they believe requires more regulation, not less, and deregulation disadvantages groups who have grown accustomed to certain advantages, such as universal service subsidies (Bar & Sandvig, 2008). With or without regulation, as a country that champions freedom of expression and respect of the first amendment, the United States, more often than not, favours private interests. In 2000, William Kennard, FCC Chairman at the time, encouraged the creation of over a thousand low-power FM stations to counter the effect of lifting radio ownership caps in the mid 1990s. Pressure from the National Association of Broadcasters managed to get the project overturned on the basis of potential “interference” with signals. This was a convenient cover for not wanting additional competition on the advertising front. Commercial broadcasters won, leaving only a few hundred low-power stations in small cities and isolated areas (McChesney, 2004, p. 224-225). Understandably, the United States is hardly a beacon in promoting groundbreaking approaches to media regulation, particularly in the radio industry.

In contrast, the United Kingdom has come a long way from initial radio (1926) and television (1955) broadcasting provided solely by the BBC, a monopoly seeking to avoid commercialism and state control (Kostic, 2008). The current regulatory framework provides flexibility and facilitates convergence. The 2003 Communications Act provided for OFCOM to become the new regulatory body, thereby replacing five institutions that used to regulate broadcasting and telecommunications. Public interest in this new context is defined with regard to convergence, and the use of a “plurality test” when assessing competition ensures that decisions are made in the public interest (Shin, 2006). This approach is also more horizontal and provides a technology neutral way of dealing with “all types of networks and services” (Shin, 2006, p. 48). It further ensures plurality in the market through a variety of providers, unlike countries such as Korea, where there is a limited number of regulated providers (Shin, 2006). The interest in the United Kingdom which maintains public values across media operations is an example for many countries, and so is its consolidation of regulatory operations. In comparison, while Canada has been avant-garde for many years in this respect, critics feel it has not maximized the benefits of its position (Sauvageau, 2006).

Unlike the United Kingdom, Mexico has not yet been able to consolidate its regulatory bodies, although provisions for this process have been in place for over forty years (Leree, 2005). At the moment, two bodies, the Government Secretariat and the Communications and Transportation Secretariat, share responsibilities for monitoring and promoting broadcasting activities. According to Leree (2005), Mexico also differs from other Latin American countries by allocating time for radio and television stations to broadcast social, educational and general-interest content. Unfortunately, studies have shown that the maximum is never attained. This, according to Leree (2005), proves that the “Mexican model is based on a law that is not in practice” (p. 266). There was a move towards reform in the early 2000s, when a special committee was mandated to review electronic media legislation. As Breyton (2007) explains, the revised law known as the *Ley Federal de Radio y Televisión* (LFRTV), which was approved

in March 2006, is quite controversial. Ideals put forth by the Reform committee, such as the preservation of “rights and freedoms of persons, institutions and companies that operate radio and TV broadcasting stations,” as well as citizen rights and social participation (Leree, 2005), were put aside to favour private interests. “The law consecrates the deregulation of [the] digital spectrum in favour of the Mexican media duopoly comprising the Grupo Televisa and TV Axteca” (Breyton, 2007, online).

In contrast, the Japanese broadcasting system shares many similarities with Canada. It has a two-tier system, with a public broadcaster (Nippon Hoso Kyokai or NHK) funded through fees paid by the Japanese population, and a series of private broadcasters located in regions. The Broadcast Law that governs this system also promotes values that are espoused by Canada. As explained by Murase (2009), the purpose of the law is to satisfy the public interest and “to promote sound development of broadcasting,” and the objectives to achieve this goal include universality, contribution to freedom of expression, and responsibilities to democratic society (p. 2-3). It is also a system meant to be independent of government, and that provides a variety of programs of high quality and standards that should “enable the TV / radio audiences to gain information on society and [help them make...] their own decisions and [...] exercise freedom of expression and, as a result, contribute to [the] healthy development of democratic society and to [the] advancement in culture and quality of life” (Murase, 2009, p. 3). As in Canada, there are quotas to achieve. In Japan, these quotas concern the amount of cultural and educational programming to be broadcast. These regulatory measures were put in place to protect freedom of the media, but some observers have noted that the systems have on some occasions, been faulty, particularly with regard to censorship relating to royal family (Hadl & Hamada, 2009; Kostic, 2008). Public sector decisions are managed through a board of governors which includes “specialist knowledge and experience selected from the private sector.” This group is held accountable through an audit committee and executive council (Murase, 2009). Cross-

ownership in the private sector is the norm (Hadl & Hamada, 2009), and the entire system lacks an independent regulatory agency like the CRTC. Private broadcasters are regulated by the Ministry of Internal Affairs and Communication (Hadl & Hamada, 2009) and self-regulatory bodies that were mandated following some human rights violations observed since the 1980s. As Hadl and Hamada (2009) describe, some scandals revealed how editorial freedom was compromised by government authorities who forced journalists to over-report on issues such as the abduction of Japanese citizens by North Korea (p. 71). Although the latter organizations are said to be working in the private interest and preferable to government intervention, Hadl & Hamada (2009) wrote that they lack transparency and accountability, and are sometimes indirectly influenced by government. This type of regulatory regime is not significantly different from ours, but emerging technology is putting a new spin on things. Japan may find itself with a deregulated media industry, governed by new content regulations that are said to be “non-transparent and undemocratic,” particularly since civil society does not participate in the decision-making process (Hadl & Hamada, 2009, p. 82). This, in itself, would set Canada apart from Japan.

Whatever the outcome of the regulatory debate, the reality remains that Canada has a supposed independent agency responsible for regulation that provides a framework in which regulatory decisions are made. The following sections describe the role and responsibilities of the CRTC, the legal framework to which it is bound, the radio licensing process it manages, and provides insight into research having the CRTC as its subject.

2.3 *The CRTC*

2.3.1 The history of the CRTC and its role today

The CRTC was created by an act of parliament in 1968 as the Canadian Radio-television Commission. This organization officially became the CRTC, as

we know it today, an independent agency regulating both broadcasting and telecommunications, in 1976. Several bodies had previously assumed the role of regulator of the broadcasting industry, including the Department of Naval Service (1918-1932), the Canadian Radio Broadcasting Commission (1932-1936), the Canadian Broadcasting Corporation (1936-1958) and the Board of Broadcast Governors (1958-1968) (CRTC, 2008d). In the early days of radio, the main concerns were to manage the radio spectrum and to prevent a cultural invasion by the United States.

Although the CRTC still monitors spectrum availability, its role is much more diverse today. Its mandate is “to ensure that both the broadcasting and telecommunications systems serve the Canadian public” using “the objectives in the *Broadcasting Act* and the *Telecommunications Act* to guide its policy decisions” (CRTC, 2008a). Although the CRTC regulates telecommunications, in general, it is its activities supervising and regulating more than 2000 broadcasters from the television and radio industries that are of interest here. Upholding Canadian values and reflecting Canadians to Canadians as discussed in section three of the *Broadcasting Act, 1991* are the two aspects of the CRTC mandate that have resonated over time despite cultural and social changes. From ensuring linguistic duality and a place for aboriginal people, the more up-to-date role of the Commission also ensures a place for all ethnic communities to reflect our diverse heritage, and encourages policy development that protects a diversity of voices among consolidated industries, and the development of other industries, such as music and film, which are an integral part of broadcasting. The 13 full-time Commissioners and 6 part-time regional members appointed by government (Odartey-Wellington, 2009) are responsible for issuing, renewing and amending broadcasting licences and for making decisions regarding mergers, acquisitions and changes in ownership. These activities sometimes involve holding public hearings and other forms of discussion to obtain information and public input on matters of broadcasting concern (CRTC, 2008a). Recent discussions in these forums have involved the regulation of new media and ways to rethink the current

conventional television industry business models given the 2008-2009 economic crisis.

2.3.2 Laws and regulations governing its practice

The CRTC is governed by three main laws, the Canadian Radio-television and Telecommunications Commission Act (R.S., 1985, c. C-22), the Broadcasting Act (1991, c. 11) and the Telecommunications Act (1993, c. 38). These Acts are supplemented by a number of regulations. Regarding broadcasting, they include the Broadcasting Information Regulations, the Licence Fee Regulations, the Broadcasting Distribution Regulations, the CRTC Rules of Procedure, the Pay Television Regulations, the Radio Regulations, the Specialty Services Regulations and the Television Broadcasting Regulations. Four other regulations govern telecommunications. The CRTC also provides a number of directives which mainly apply to the cable industry, telecommunications and direct-to-home services. For the purposes of this research, the primary documents are the *Broadcasting Act, 1991*, along with the *Radio Regulations, 1986*, the *Commercial Radio Policy, 1998* and the *Commercial Radio Policy, 2006*. These are directly linked to the objectives of the research at hand. For ease of reference, these documents can be found in appendices C, D, E and F.

The *Broadcasting Act, 1991*, has two sets of goals, those related to the broadcasting system as a whole and those pertaining to the CRTC as a regulator (Salter & Odartey-Wellington, 2008). According to Salter and Odartey-Wellington (2008), these goals subdivide into a series of prescriptions. These, they maintain, are “so broadly worded that it would be impossible to judge whether a willing and cooperative licensee was really compliant” (p. 126). It is nonetheless important to note these goals, since they impact on the role of radio broadcasters and determine the powers in the CRTC purview that hold them accountable.

The principle elements of the *Broadcasting Act, 1991*, which concern the role of broadcasters, have to do with programming, and specifically, with programming for a Canadian audience. Since broadcasters are using frequencies that are public property, programming provided is deemed “a public service essential to the maintenance and enhancement of national identity and cultural sovereignty” (See appendix C, section 3, article 1 b). Furthermore, of the four objectives for the system as a whole, two focus on programming, including the development of Canadian content and the creation of jobs through program production (see appendix C section 3, article 1 d), ii and iii). And, as much as programming is part of system goals as a whole, the complement is also true. The system must contribute to the creation of Canadian programming which in turn should be of high standard (see appendix C, section 3, article 1 g). As Salter and Odartey-Wellington (2008) point out, however, those prescriptions are vague and it is difficult to pinpoint how one could evaluate if these goals and objectives are being met. Depending on the reader, they could be interpreted differently. The notion of “fabric of Canada” included in the goals of the system as a whole is one such example (see appendix C, section 3, article 1 d) (i)).

As previously mentioned, the *Broadcasting Act, 1991* also highlights CRTC responsibilities. It states that the Agency exists to “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy” (see appendix C, section 5). The CRTC must also abide by certain general guidelines in dealing with conflict, issuing policy guidelines and statements, following policy directives, circulating publications and holding consultations. The CRTC also has powers directly related to licensing. These powers include establishing classes of licences, issuing licences for terms not exceeding seven years and subject to conditions related to particular circumstances, amending conditions of licence, renewing licences, revoking licences, requiring approval for distribution of programming through telecommunications, requiring priority carriage for particular broadcasting and requiring broadcasters to carry certain types of programming (see appendix C,

section 9). The *Broadcasting Act, 1991* also describes the types of regulations which the CRTC is allowed to make, and the fees which the CRTC can levy from licensees. These are set out in sections 10 and 11 (see appendix C). The former is of particular interest as it includes aspects related to the amount of advertising, the proportion of Canadian programming to be broadcast, and the disclosure of particular documents (for example, financial disclosure).

As for respect of regulations, the CRTC has formal and informal means of ensuring compliance (Auer, 2006). Most of the mechanisms, however, are reactive rather than proactive. Once an offence has occurred, the CRTC has several choices. Using a formal route, the CRTC follows what is described in sections 32 to 34 of the *Broadcasting Act, 1991* (see Appendix C). Basically, it can take a person or company to court for a summary conviction, which is the most minor offence in the Criminal code. Cases that would warrant such action are:

- Broadcasting without or contrary to licence
 - If found guilty the party is liable to a fine not exceeding \$20,000 for an individual and \$200,000 for a corporation for each day the offence continues;
- Contravention of regulation or order
 - If found guilty the party is liable to a fine not exceeding \$25,000 for an individual's first offence and \$50,000 for any subsequent offences, \$250,000 for a corporation's first offence and \$500,000 for each subsequent offence;
- Contravention or failure to comply with any condition of a licence
 - If found guilty the party is punishable on summary conviction (Canada, 1991).

The CRTC must prosecute no later than two years after the time that the subject-matter arose during proceedings. Prior to an offence, or to avoid further offences, the Commission can include conditions of licence in the licence renewal decision

to force a party to comply with specific regulation. It can also issue mandatory orders if a condition of licence had previously been breached, to ensure future compliance. These orders can be enforced through Federal court or any provincial superior court. These orders are dealt with in the same manner as any court order (see appendix C, section 12, article 2). The CRTC can also revoke or suspend licences, should broadcasters not comply with their conditions of licence. This practice is quite rare, however, and the CRTC prefers to explore other avenues before resorting to these measures (Salter & Odarthey-Wellington, 2008). *Genex Communications Inc. v. Canada (A.G.) and the CRTC* [2005] F.C.J. No. 1440 is a case in point; the CRTC had explored other options first before opting for a non renewal of the station's licence. The most common form of sanction to ensure compliance is more informal.

The CRTC has a history of forcing station owners to 'show cause' at a public hearing which is, generally, a costly exercise of providing explanations and submitting evidence. Since May 2001, the CRTC has relied on CRTC Circular No. 444 (see appendix G) to explain its practices in the face of non-compliance. In the case of a first infraction, the station will be asked to comment in writing about the situation at hand and explain its plan to ensure compliance. If the CRTC is happy with this situation, the station will not need to appear at a public hearing. However, when a station is caught for a second time or if the licensee is already operating under a short license term based on past non-compliance, station representatives must attend a public CRTC hearing where they must orally justify their actions and provide sufficient evidence to demonstrate that a non-compliant situation will not reoccur. Sometimes the CRTC will issue a mandatory order following such a hearing to ensure compliance. This usually occurs in situations where it may have doubts about the station's ability to follow regulations. Regardless of this hearing, even if the CRTC is fully satisfied with the station's actions to avoid repeat non-compliance, the station gets a short licence renewal that will not exceed two years (CRTC, 2001b). This is a precaution when a station has been caught in violation twice before.

The CRTC may also issue short-term licence renewals as a general disciplinary measure, which forces licensees to refile paperwork and represents a burden for stations (Auer, 2006). The CRTC, also, often uses harsh language in some of its decisions as a further deterrent. It is important to note, that prior to 2001, the CRTC had not formally linked non-compliance to a particular short-term licence renewal policy (2006), so CRTC decisions with regard to the stations reviewed here from 1996 to the implementation of Circular No. 444 in 2001 did not follow any particular policy. Table 1 summarizes the process as explained.

Table 1 – Summary of radio licence renewal decisions for non-compliant stations and reasons for decisions⁷

Decision	Reasons for decision
7 year renewal	Station operates in compliance
4 year renewal	Licensee has opportunity to comment on non-compliance
Public hearing	-When licensee is already operating under a short-term renewal and is still found to be non-compliant -Licensee is found non-compliant twice during a full licence term
Issuance of a mandatory order	Based on evidence filed or heard, Commission may order a mandatory order to ensure compliance
Max. 2 year renewal (no mandatory order)	Commission satisfied with measures taken, and convinced future non-compliance unlikely

Since 2001, the CRTC may shorten a seven year licence renewal to coordinate renewals with regional licensing renewal plans and subject to CRTC workload (CRTC, 2001b).

Although the *Broadcasting Act, 1991* provides detail on some prescriptive aspects of regulation, the directives are generally applicable to all types of broadcast undertakings. Therefore, more detailed documents such as the *Radio Regulations, 1986* are relevant to a comprehensive understanding.

⁷ Adapted from CRTC. 2001. *Circular No. 444*. Retrieved from <http://www.crtc.gc.ca/eng/archive/2001/C2001-444.htm>

The *Radio Regulations, 1986* are much more explicit about the type of content and programming appropriate for broadcast based on the category of licence held by the broadcaster. The first part of the regulations deals with content. First of all, there are specifications about the musical and Canadian content to be broadcast, both in terms of when it should be broadcast and in what quantity, based on the category of licence at hand (see appendix D, Part 1). Subsequent sections cover inappropriate content, political broadcasts and ethnic programs respectively (see appendix D, Part 1.1). The second part of the regulations deals with the duties of a radio station in terms of responsibilities towards the CRTC. Sections describe what types of logs and records should be kept and for what length of time, what types of information may be requested, the types of affiliations that a station may hold, information about transfer of ownership and control, as well as the provisions for simulcasting in the case of a licensee who owns an FM station (see appendix D, Part 1.1 and 2 sections 8-14). These regulations were officially amended in 2008, which makes them a valid tool to evaluate radio licence renewals given the extent of their use over the past two decades.

In 1997, because existing radio policies no longer reflected the technological and cultural environments of the industry, the CRTC launched a public hearing to review these. The arrival of the Internet and digital radio, for example, offered much more access to content than conventional radio, and access to content that was not only Canadian. The public hearing discussed how policies could better reflect the new realities of the industry and maintain the essence of the *Broadcasting Act, 1991*. The outcome was a series of radio policies for the different categories of stations. Although the general *Radio Regulations, 1986* still exist, the *Commercial Radio Policy, 1998* has become the most comprehensive document covering the obligations of commercial radio stations in Canada. It was recently revised (*Commercial Radio Policy, 2006*). The *Commercial Radio Policy, 1998* (see appendix E), which covers the period discussed in this research, excepting one year, addresses the following topics: ownership, Canadian music,

programming that reflects linguistic duality, foreign-produced programming, local programming, weather, broadcast standards, the role of CBC Radio, cultural diversity and the Internet. As far as this research is concerned, the document is of particular interest because it assists in determining the extent to which licence renewals are based on policies versus regulations and to what extent licensees are held accountable to policies as opposed to regulations. Before discussing the process used to answer these questions, based on the available literature, the following description outlines how the radio licence renewal process is conducted.

2.3.3 Radio licence renewal process

The radio licence renewal process per se is not clearly stated in CRTC regulations. Through different public notices and Salter and Odarthey-Wellington's (2008) book on the CRTC, however, it is possible to get a sense of how it works. First of all, unlike applications for licences, renewals do not require public hearings. Instead, they follow a written public notice process where "interested parties must submit written comments by the announced deadline" (CRTC, 2008e). In other words, the process is based on written communication between the licensee and the CRTC and is heavily dependent on formal documents such as the licence itself, public notices and any other written communication, such as complaints or written statements received during the commenting period. Radio licences are normally issued for a period of seven years, but based on performance or other outstanding issues, such as a financial crisis or administrative backlog, the CRTC may decide to limit the duration of a renewal to a few months or a couple of years. Sometimes, the CRTC also uses administrative renewals which are "automatic" renewals without an actual evaluation of compliance⁸. According to a CRTC employee it "usually involve[s] situations where, for lack of time before the date that the licence will expire or for other administrative reasons, the Commission cannot examine the substantive issues

⁸ See for example (CRTC, 2000a).

that may exist with respect to the renewal of the licence in question” (request for information, September 15, 2008).

The criteria used to evaluate a licence renewal are discussed in the *Regulatory Guide to Canadian Radio* (Grant & Buchanan, 2008). They include program logs and retention of tapes, radio content, Canadian content in music, Canadian content development, French language music, hits policy, programming and advertising restrictions and elements included in the *Commercial Radio Policy*. It is important to note that some of these criteria have changed over the years. For example, percentages of Canadian content may vary from one category of station to another, or from one year to another, and a criterion may be assigned a different name. For example, Canadian content development used to be referred to as Canadian talent development. These are the main criteria on which the CRTC bases its decisions.

These elements are disclosed in the licence itself or in the CRTC decision following the licence renewal. They take the shape of promises of performance or conditions of licence. In order to obtain an initial licence, owners make promises about how they plan on operating their stations, managing their finances and providing their services (Salter & Odartey-Wellington, 2008). These promises are known as promises of performance. Unfortunately, as is often mentioned, the application for a licence is no more than a “show and tell” exercise; many promises are made for the application to look good, but they are not fully implemented in the end (Killingsworth, 2005; Salter & Odartey-Wellington, 2008). Although promises of performance have been used as the basis for issuing licences and to hold stations accountable during licence renewals, in recent years more emphasis has been given to conditions of licence. Conditions of licence are another way for the CRTC to indicate either “that some things need to be done before the licence or renewal can take effect” (Salter & Odartey-Wellington, 2008, p. 164-165). Promises have sometimes been included in conditions of licence. Using conditions of licence has its own set of drawbacks, however, as

they are often customized to the licensee and any modifications must be approved by the CRTC in a time consuming exercise. As far as compliance is concerned, conditions of licence may seem more reliable, since they are part of the licence, but some licensees ask for more lenient conditions of licence before renewal time. They are rules, nonetheless, and a “broken condition of licence can be a cause for calling the licensee to an informal meeting, for scheduling a new hearing, for a short-term renewal or for scheduling a ‘show cause’ hearing in preparation for issuing a mandatory order [...] which permit the CRTC to seek redress through the courts. In rare instances, the CRTC might suspend or revoke a licence” (Salter & Odartey-Wellington, 2008, p. 168). In an effort to streamline processes, however, the CRTC has moved towards conditions of licence that are identical for all licensees, such as obeying industry created codes. These codes, as previously explained, are managed by the CBSC.

Should licensees be unhappy with a CRTC decision, they may seek to appeal. There are two ways in which this can be launched. The first uses the Courts. This is explained in section 31 (2) of the *Broadcasting Act, 1991*:

An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows (Canada, 1991, sec. 31(2)).

Further to the basis of the appeal described above, the Federal Court of Appeal (FCA) has its own set of rules which are set out in the *Federal Court Rules*, which are regulations of the *Federal Courts Act*, Supreme Court, 2002, Chapter 8. According to Auer (2010a), there are over 500 rules that explain the process governing appeals. In brief, the rules “a) require an applicant to file documents with the FCA, with the CRTC and with the Attorney General / Department of Justice, b) permit the respondents to reply, c) permit the applicant to respond to the reply” (Auer, 2010a). The Department of Justice defends the case on behalf of the CRTC. There may be other steps within the process that

require further back and forth between the parties, such as motions to dismiss or amend information, allowing each time for parties to respond. Other parties may also apply to participate, which lengthens the process by several weeks. If the matter does go to Court, it would take two to six months to reach a decision. The FCA decision “can then be appealed to the Supreme Court, if at least one of the three judges disagrees” with the decision (Auer, 2010a). If the Supreme Court of Canada agrees to hear the appeal, it would take another year or two to get a decision.⁹ The process described, only deals with CRTC decisions; there currently are no provisions in the *Act* to contest policy.

There is a further court related provision in sections 18 and 28 of the *Federal Courts Act* which, according to Auer (2010a) allows the FCA to handle specific situations involving the CRTC, such as issuing an injunction or questioning the CRTC actions. In such a case, an applicant would file for judicial review to determine if the CRTC acted judicially or not.

Otherwise, sections 28 and 29 of the *Broadcasting Act, 1991* explain how the Governor in Council may be involved. Section 28 explains that the Governor in Council, on its own initiative, may send a decision back to the Commission for reconsideration and hearing should it feel that a decision does not attain the objectives of Broadcasting Policy (section 3.(1)). Once the CRTC has reconsidered the matter and after a hearing it has three options:

- (a) Rescind the decision or the issue, amendment or renewals of the licence;
- (b) Rescind the issue of the licence and issue a licence on the same or different conditions to another person; or
- (c) Confirm, either with or without change, variation or alteration, the decision or the issue, amendment or renewal of the licence (Canada, 1991, section 28 (3)).

A third party may also petition the Governor in Council to appeal a CRTC decision. After the petition is filed with the CRTC and the Governor in Council,

⁹ To see examples of the steps involved, consult the FCA website. <http://decisions.fca-caf.gc.ca/en/index.html>

different parties can intervene and once Cabinet receives the petition, it issues its decision (Auer, 2010a). Once again, this is a lengthy process that may take several months and once again, does not involve a process designed to address policies.

2.3.4 Previous studies on the CRTC

Although the radio licence renewal process has not been the subject of research before, some doctoral studies, though not numerous,¹⁰ have highlighted interesting aspects of the CRTC. A number of studies have focused on the role of the CRTC in the regulation of telecommunications (Coulter, 1992; Gentzogianis, 1989) and cable industries (Good, 1974; Law, 1997). Other topics of study include the regulation of free speech (Odartey-Wellington, 2009), the impact of CRTC involvement in sex-role stereotyping policies in broadcast media (Trimble, 1990), the public interest in CRTC policies (Ortiz Valladares, 1998; Reddick, 2001), and determining essential services on the Internet (Dorner, 2000) and ensuring universal access to this medium (Andrukow, 2000).

Of particular interest to this study, however, is Hall's (1990) PhD dissertation entitled *The CRTC as policy-maker: 1968-1982* which examines the CRTC as policy maker by examining four distinct events in broadcasting history. The first involves the importation of American television via microwave relay; the second, the issuance of cable licences for Saskatchewan and Manitoba; the third, telecommunications; and the fourth, the introduction of pay-tv in Canada. Through these four events, which span fourteen years, Hall (1990) set out to determine if the CRTC had acted independently in making its decisions during these years. He discovered that quite the opposite was true. Instead of demonstrating that the CRTC was "a policy-maker with a high degree of independence in its actions, [it was] shown to be a severely fettered actor in its

¹⁰ When searching the Library and Archives Canada database, only thirteen theses and dissertations include a title with the mention of CRTC, of these only three are PhD dissertations. On the other hand, the ProQuest Thesis & Dissertation database yields 11 PhD dissertations on the CRTC of which 3 are duplicates of those in the Library and Archives Canada database.

ability to independently make policy and to maintain a position of authority in the face of opposition” (Hall, 1990, p. 3). Although this claim is supported by only four case studies, it is important to keep it in mind when trying to understand the way in which the CRTC upholds *Broadcasting Act, 1991* objectives, policies and decisions when it reviews radio licence renewals.

Aside from dissertations, scholarly articles about the CRTC have appeared in a variety of journals. An in-depth look at 11 different databases (national and international) in communication studies, political science, management and social sciences reveals, that since their inception in the early 1990s, approximately 120 articles, including many cross-postings, have had the CRTC as primary subject, the majority dealing with telecommunications and not broadcasting. In the last five years, non-broadcasting-related issues may also be observed in the subjects discussed. Telecommunications is still one of the primary topics (see for example (Gow, 2005; Iacobucci & Trebilcock, 2007; Lawson, Gauvin, & Krause, 2008), but there are also a few articles on the Internet, and specifically issues about access (see for example, Xavier & Ypsilanti, 2007).

Only four identified scholarly articles touch on the CRTC and the object of this research. The first is about the licensing of specialty television channels in Canada. Killingsworth (2005) studied the case of five specialty channels applying to the CRTC for changes to their conditions of licence. It showcases how the different stations went about making their requests and offers explanations about why certain channels were more successful than others in obtaining what they sought. According to this study, specialty channels that applied for changes to their licences at the time of renewal were not as successful as those who requested changes along the way (particularly mid-way through their term), unless they had discussed the issues at hand with the CRTC prior to the licence renewal. The least likely time to be released of certain obligations would be at the time of renewal. Furthermore, this study charges that the CRTC lacks consistency in its decision-making and that this results in licensees not disclosing the real reasons for their

desire to obtain a licence. Although this study pertains to television and does not seek to evaluate compliance, it does highlight important facts about the CRTC's decision-making track record and how conditions of licence modifications, an important part of licence renewals, are treated by the CRTC.

A second relevant article was written by Brian O'Neill (2007) and is entitled "Digital audio broadcasting in Canada: Technology and policy in the transition to digital radio." It discusses Canada's transition from analog to digital radio by explaining many of the pitfalls that have led to a multiplatform system rather than a complete digital radio environment using Eureka-147 Digital Audio Broadcasting (DAB) as was first envisioned. Though the transition to digital radio is not relevant here, the CRTC's approach to regulation is of interest. As expressed by O'Neill (2007) the less than successful transition rests on the "weakness of a laissez-faire or market-driven approach," (p. 87), which concerns underlying this study, and its timeframe. The digital radio case covers 1995-2005, whereas the current study focuses on the period from 1997-2007. It is further mentioned that conflicting CRTC responsibilities to both uphold the public interest and assist the industry in its development (while the latter tries to focus on long-term policy) is another significant factor not only to digital radio policy, but to radio policy in general.

A third article, published by Romanow and Romanow in 1982, in the *Canadian Journal of Communication*, concerned with the CRTC's practices in broadcast licence non-renewals. After reviewing licence renewal applications from 1968 to 1981, the study revealed that there were only "twenty-eight denials [...] from a total of several thousand applications" (p. 70), thereby concluding that the CRTC uses restraint in exercising its punitive powers and prefers to use short-term renewals and conditions of licence to ensure compliance. The study also briefly discussed the use of public hearings with regard to revocation and suspension practices, but only to mention that hearings had increased public attention to the work of the CRTC and to the broadcasting and

telecommunications industries. Although the conclusion of this study is particularly relevant to the study at hand, it does not offer much in terms of methodological considerations or insight into the process that resulted in the CRTC decisions.

The fourth article is the most relevant to the work being conducted as part of this research. Auer's (2006) article entitled "The CRTC's enforcement of Canada's broadcasting legislation: concern, serious concern, and grave concern" is the result of a quantitative study of enforcement of CRTC broadcasting legislation and regulations from 1968-2005. Instead of adopting a selective case by case approach, as previous researchers had done, she chose to look at all cases of non-compliance involving commercial, education and community radio stations from 1968 to 2005. She examined CRTC decisions, CRTC public announcements, correspondence between the CRTC and licensees, as well as case law reports and documented the issues of non-compliance. She also examined the different sanctions used in the various cases and also focused on cases of prosecution. Although some of the research is similar to this dissertation, particularly the aspects that deal with non-compliance, it is different in that it did not take into consideration compliant stations as part of the sample; it did not focus on the process that has led to the decisions; nor did it intend to evaluate the licence renewal process as a whole, nor not refer to any communication theory, since it was a paper produced in the discipline of law. This is unfortunate because communication theory undoubtedly helps explain many aspects of the *Broadcasting Act, 1991* and its application. Employing an exclusively quantitative approach, the study leaves out questions about how and why. The study also focuses on documentation, and does not take into account the people within the process, as the current study does.

The availability of monograph literature about the CRTC has also been quite scarce in recent years. Armstrong (2010), however, provides a general

overview of broadcasting policy in Canada, covering topics including the history of broadcasting, the role of the CRTC, public broadcasting, financing Canadian content, issues of distribution, copyright, ownership and international trade. Though Armstrong (2010) provides a good tool covering for ‘the basics’ in the industry, Salter and Odartey-Wellington’s (2008) most recent book on the CRTC is probably a more essential reference in this regard, as it is not only up-to-date, but complete and thorough in explaining broadcasting regulation in Canada. It also gets to the heart of political issues by discussing questions such as freedom of expression, marginalized voices and diversity, while still including important descriptive information surrounding the regulations governing issues like ownership and compliance. Other references to the CRTC may be found piecemeal, in a variety of books on other topics related to communication, but do not necessarily relate to policy per se.

2.4 Conclusion

In conclusion, this chapter has provided a review of the literature in evaluation theory both in general terms, but also as it relates to the creation of evaluation tools for radio regulation. It has also presented the foundations of the regulatory debate, demonstrating the logic behind the need for regulating certain aspects of the broadcasting system and in particular, radio regulation. Finally, this chapter included an overview of practical and theoretical information about the CRTC which is pertinent to the research at hand. The following chapter describes how this research was conducted, considering the literature previously discussed.

3. Methodology

How and to what extent does the CRTC hold radio stations owners accountable to the objectives of the *Broadcasting Act, 1991*, the *Radio Regulations, 1986*, their conditions of licence, and any promises they made at the time of licence renewal? This question is at the heart of this dissertation. Considering the lack of published information on licence renewals, it is also of interest to determine what type of promises are made to the CRTC; to determine if there are any trends in CRTC decisions and to identify what factors influence the decision-making process.

Previous chapters discussed the primary concepts of this study, the chosen theoretical approach, as well as the pertinent literature on the subject. This chapter will focus on describing the various elements of the proposed methodological tools and the framework chosen to undertake the exploratory research at hand. The research design will be explained first, including the proposed methods, measurements and criteria to be used. Secondly, an explanation of the population and sample will be presented. This will be followed by a third section on data collection and ethical considerations. The final section includes a summary of the analysis process chosen to study the data.

3.1 Research design

The implemented research design was inspired by recognized policy evaluation protocols (Contandriopoulos et al., 2000; Stufflebeam & Shinkfield, 2007; Weiss, 1998). The first step in an evaluation is to determine the evaluation questions. In this case, they correspond to the research questions. On the basis of initial questions, it is up to the researcher to determine the type of evaluation to be conducted. As per the explanation given in the literature review, there are two principal types of evaluation: normative or process evaluation and research

evaluation. Considering the questions at hand, this project lends itself primarily to process evaluation. As previously mentioned, process evaluation, according to Contandriopoulos et al. (2000), requires three appraisals: one for the structure, another for the process (technical, interpersonal relations and organisation) and one for the results. To evaluate these different dimensions, one must establish the criteria and measurements to be used. In the field of evaluation this can be done by including the help of stakeholders or not. Readings on the subject and informal discussions with a professor in the field of evaluation, suggested that an ideal evaluation for the case at hand should include all the main stakeholders in the commercial radio sector. Criteria and measurements would be determined through their active participation in a focus group or similar forum that could be used to flesh out a framework for evaluation. However, given the financial and time constraints related to this dissertation, as well as the location of the individuals (throughout Canada) and their heavy workloads (most are executives), it was not feasible to expect them to be available at the same time to participate, let alone establish some form of consensus about criteria and measurements in a single session. This therefore required a different approach.

Criteria for evaluation were based on information provided through the literature review and elements in the *Broadcasting Act, 1991* and the intermediary of the *Radio Regulations, 1986* and its amendments; the commercial radio regulations from 1998 and 2006; annual reports of the CRTC; and conditions stated in the radio licence renewals of the chosen sample of stations from 1997-2007.

The first criterion that any evaluation of the licence renewal process must examine is how stations achieve the objectives of the *Broadcasting Act, 1991*. As discussed in the literature review, this depends on the policy guidelines stated in section 3 of the *Broadcasting Act, 1991*. Most of the elements, such as ownership, the bilingual nature of the system, and public, private and community aspects should have been dealt with when the CRTC originally issued the licence or

approved a transfer of licence in the case of a purchase. The main remaining element therefore relates to programming. These objectives of the *Broadcasting Act, 1991* have been translated into prescriptive form in the *Radio Regulations, 1986* and its amendments. Since the purpose of this research is not to determine if the *Broadcasting Act, 1991* is best served through the *Radio Regulations, 1986* and *Commercial Radio Policies*, we are assuming that they do reflect its main objectives. As such, the evaluation should determine if the licence renewals take the *Radio Regulations, 1986* into account. This is done by examining if the licence renewal process:

- ensures that the required amount of Canadian content and Canadian music required to broadcast according to the Radio regulations (Part 1, section 2.2, 1-14) and that conditions of licence are being met
- examines the content being broadcast (Part 1.1., sections 3-7)
- ensures that licensees retain programming logs and records (Part 1.1, section 8) and provide requested information pertaining to programming (Part 1.1, section 9)

Proper affiliation (Part 1.1, section 10) and any transfer of ownership or control (Part 1.1, section 11) are generally considered at the time of purchase. That said, evaluation must also take into account the elements of the *Commercial Radio Policy, 1998 and 2006*. Issues related to Canadian music such as the promotion of Canadian music, the levels of particular categories of music (depending on conditions of licence) and Canadian content development are elements that must be considered when examining the CRTC's performance with regard to licence renewals. Furthermore, for stations broadcasting in French, the levels of French-language music broadcast according to the *Commercial Radio Policy* as well as the length of the proposed French musical selections should be observed. Attention to compliance with the amount of local programming broadcast must also be examined when assessing the regulator's performance.

These criteria serve as the basis for evaluation. Cross-referenced with these criteria, case sample and interview data determine if the objectives of the *Broadcasting Act, 1991* via the *Radio Regulations, 1986* and the *Commercial Radio Regulations, 1998 and 2006* were upheld by the CRTC when they undertook the process of renewing radio licences between 1997- and 2007. In other words, evaluation can be conducted by examining the licence renewal process itself to determine if there is a gap between the objectives of the process and the results observed once the process is completed.

In summary, the adopted research design is comprised of a mixed methods approach following a triangulation design using the documentation analyzed (*Broadcasting Act, 1991, Radio Regulations, 1986, Commercial Radio Regulations 1998 and 2006* and CRTC annual reports), analysis of interview data (coding of transcripts from the interviews with stakeholders) and sample information (licences and licence renewal data relevant to the sample). These analyses yield qualitative and quantitative data about the selected sample of radio stations. This design was chosen because the data are collected simultaneously and then merged to obtain an interpretation. Its strength, as suggested by Creswell (2008), is that the “design combine[s] the advantages of each form of data, quantitative data provide for generalizability, whereas qualitative data offer information about the context or setting” (p. 558). The following section explains the population of radio stations and the selected sample.

3.2 Population and sample

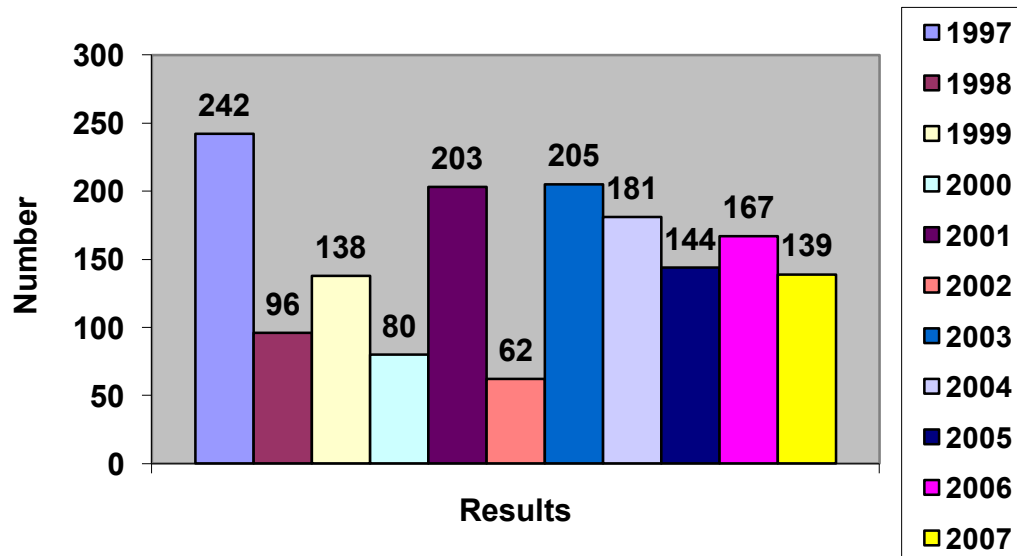
Since the CRTC does not keep a record of the number of licence renewals it accords, a preliminary search was required to select a sample from the total list of licence renewals for the chosen time period (1997-2007). This timeframe was chosen primarily for ease of access to information. According to CRTC documentation officials, electronic data on CRTC licence renewals have only

been available since the mid 1990s and are sometimes incomplete. They recommended using electronic data rather than paper documentation because paper records are not always filed after office usage or public hearings. In some circumstances, officials admit, the documentation even ‘disappears’ (in person request for information, September 18, 2007). It was also decided to select a time span long enough for some stations to have had at least two licence renewals for comparison purposes. Since most renewals run from three to seven years, a ten year time period was chosen.

Following the instructions of the Senior Officer, Information Holdings at the CRTC, a customized online search of the CRTC website was conducted to determine the number of licence renewals conducted per year. The first step in this search involved selecting the “search” function on the main menu. Then, the “Decisions, Notices and Orders (DNOs)” option was selected from the list of customized searches. Once the search fields appeared, the keywords “licence”, “renewal” and “radio” were entered and the “sort by date” option was chosen. This was repeated for each year from 1997 to 2007.¹¹ Although the results were mostly on target, some documents proved irrelevant and were removed. These included repeat results, licence amendments, documents pertaining to digital radio, licence renewals for special events (example: sporting or religious events), cable licence renewals, satellite renewals, television licence renewals, applications for new stations and documents pertaining to acquisitions or licence amendments (for example changing from the AM band to the FM band). The resulting entries totalled 1, 657 and are shown per year in Figure 1.

¹¹ The CRTC website has been modified since the initial search; therefore, in order to replicate the study, one would have to familiarize him / herself with the new search tools.

Figure 1 – Number of results (raw) in preliminary search for licence renewals at the CRTC by year.



These results were then entered into an electronic spreadsheet program (Microsoft Excel) which included a separate worksheet for each year. Each entry included the radio station call letters, an indication of the type of licence renewal (station licence, transmitter, network, administrative renewal),¹² duration of renewals, the CRTC decision number, the city and province in which the station operates, the type of station (community type A or B, low-power, commercial, public, native, etc.) and the language of operation (when available).

Subsequently, renewals pertaining solely to networks, transmitters or to the CBC, as well as community and campus stations were removed from the total number of results. Removing network and transmitter renewals reduced results to reflect only true radio stations. Stations that showed two renewals, but one of which was an administrative renewal (see definition in appendix B), were also removed because there would be no data with which to compare the official renewal. The CBC was excluded for four reasons. First, as the national public

¹² A station licence renewal is the standard renewal for a radio station. The transmitter renewal only involves the station's transmitter (often the transmitter and station are renewed at the same time). The network renewal is a licence renewal to operate a network of stations. Administrative renewals are automatic renewals given by the CRTC when it is not yet ready to revise a file (see appendix B).

broadcaster, the CBC is subject to a different set of criteria and expectations as part of its mandate, making it difficult to compare and contrast with corporations in the private sector. Secondly, the majority of CBC station renewals are completed in bulk and would not offer an accurate illustration of the state of the radio stations in question. Thirdly, CBC is probably one of the most studied entities in Canadian broadcasting.¹³ Fourthly, the CBC is a very complex organization whose licensing would warrant a research project of its own. Community and campus stations were also removed because the rules and regulations governing them, as well as their budgetary concerns and operating objectives are quite different from those of commercial stations. The focus of the study is on the private sector. One of the benefits of this choice will be an ability to test the hypothesis that the private sector has the greatest influence on regulation in the broadcasting industry, as affirmed by authors such as Skinner, Compton and Gasher (2005). This ‘weeding’ process still yielded a total of 298 entries, representing a total of 141 stations over the ten year period. These remaining stations constitute the basis for analysis. They represent the entire population of formal licence renewals for commercial stations from 1997-2007.

The interview dimension of this research consisted of a group of 14 “experts” in the field of broadcasting, particularly radio, including:

- Representatives from the CRTC: the CRTC Vice-Chair of broadcasting, Michel Arpin; previous CRTC Chair, Françoise Bertrand; and a past member of the Commission who wished to remain anonymous (Lawyer 1)
- Representatives of five radio stations from the sample: Chris Brooke, program manager at Bob FM (CFWM) and CFRW Winnipeg, Manitoba; a representative from a conglomerate also wishing to remain anonymous (Station 1); Tanya Neveu, General Manager of CKVM-FM, Ville Marie, Quebec; Andrée Noël, Legal and Regulatory

¹³ The Canadian National Library collection database yields 51 theses with “Canadian Broadcasting Corporation” in the title, whereas only 10 of these theses include the “Canadian Radio-television and Telecommunications Commission,” for example.

Counsellor for Astral Media; and Denise Martin, Coordinator, Regulatory Affairs with Astral Media

- A consultant in the area of broadcasting (Lawyer 2) commissioned by the CRTC
- A lawyer who represents various radio station owners' interests; this person also requested anonymity (Lawyer 3)
- A past industry representative, who wished to remain anonymous (Industry 1)
- A representative of the Canadian Broadcast Standards Council: Ronald Cohen, National Chair
- Representatives from two special interest groups: Alain Pineau, National Director of the Canadian Conference for the Arts; and Annie Provencher, Director of Broadcasting and Research, Public Affairs, with the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)

This sample includes stakeholders from the groups involved in the licence renewal process as well as people who could offer insight into the way the system functions from an insider's point of view. The number of participants was chosen for feasibility purposes.

Now that the samples and interview subjects have been discussed, the following section describes the data collection process of this research.

3.3 Data collection and ethical considerations

Data collection began in Spring 2008 and was a lengthy process given that some of the information had to be forwarded from the CRTC documentation centre and archives in Gatineau, Quebec to Montreal, Quebec for consultation. All historical documents involving stations prior to 1996 are still in paper form and are not always readily available. Licences and all correspondence, such as applications for licence renewal and administrative correspondence are also in

paper form. Although it was necessary to obtain access to certain examples through the CRTC's documentation centre, documents would arrive in boxes at the Montreal office for examination, most of the information collected for analysis comes from the CRTC website www.crtc.gc.ca. Information on the site includes decision notices for each licence renewal, CRTC annual reports and regulatory documentation. The online information was printed and sorted by station call letter for ease of reference.

The individuals mentioned in the interview sample were contacted first by telephone to obtain their consent for this exercise and to schedule appointments for formal interviews, which were conducted in person or by telephone depending on availability and location. The means of communication with each individual can be found in Table 2. The semi-structured interviews conducted served to obtain clarification of information recovered in the documentary research. A copy of the general interview questions can be found in appendix H. Face-to-face interviews were recorded using a digital voice recorder to ensure the validity of the information obtained. This was also useful for transcribing the interviews to facilitate analysis. Interviews conducted by telephone were not recorded, but notes were taken throughout the conversations and summaries were written shortly thereafter for subsequent analysis. The interviews were approximately an hour in length and took place in quiet, private locations, such as a conference rooms or private offices. Confidentiality of the information obtained was ensured through a contract between interviewer and interviewee. To conform to research standards for work with human subjects, this contract, as well as the interview questions and an information letter were filed with the McGill Research Ethics Board for approval prior to the commencement of this part of the research. A copy of the issued ethics certificate can be found in appendix I. It certifies that proper measures were followed to ensure confidentiality and that data collection and use of the information obtained were appropriate.

Table 2 – Means of communication employed for interviews with the various stakeholders

Stakeholders	Means of communication
Lawyers (including CRTC consultant)	2 face to face interview
CRTC representatives	2 individual face to face interviews, 1 telephone interview
Radio station managers	2 face to face interviews, 3 telephone interviews
Industry representative	1 face to face interview
CBSC representative	1 face to face interview
Special interest groups	2 face to face interviews

Note: One CRTC representative is a lawyer, but was not counted in the lawyer category.

Notes were taken during the interviews and coding began to highlight potential themes or patterns that emerged from the data. The note-taking process followed the framework laid out by Glaser & Strauss' (1967) grounded theory which inspired this research. This theory represents “a set of techniques for (1) identifying categories and concepts that emerge from text, and (2) linking the concepts into substantive and formal theories” (Bernard, 2000, p. 443). The substantive concepts correspond to empirical results, whereas more formal concepts correspond to conceptual findings. At this stage, the main goal was to anchor the researcher in the data to develop concepts and models based on emerging codes (as described in section 3.4 below).

Following data collection, the documentation and transcribed interviews were analyzed. The following describes the chosen analysis process.

3.4 Analysis

As Weiss (1998) suggests, “the aim of analysis is to convert a mass of raw data into a coherent account. Whether the data are quantitative or qualitative, the task is to sort, arrange, and process them and make sense of their configuration”

(p. 271). The goal in the following process is no different. The first step in the analysis was to compile the data obtained from documentation relevant to the licence renewals for the selected radio stations and the CRTC monitoring reports to identify themes and categories of information pertinent to the research questions and that correspond to the chosen criteria. A checklist approach was used to determine if the CRTC discussed the relevant criteria in the cases as described on paper, then the material was analyzed for similar / dissimilar wording. The themes that emerged were used as illustrative examples during the interviews to obtain more information on licence renewals, and to gain insight as to why the process sometimes breaks down and how it could be improved.

Analysis of the interview data was performed using emerging codes from the Glaser and Strauss (1967) approach. Emerging codes are labels that the researcher gives to a sentence, phrase or paragraph of data to categorize its contents. Once codes are assigned, the researcher works through the material creating a list. Once information is coded, a second step classifies the codes into categories that 'emerge,' noting the similar and dissimilar themes in addition to particular characteristics of each interview. This two-step process was also used to work through the licence decision notices for the 141 radio stations in the sample. In this case, words describing a particular thematic pattern in the licence renewal process emerged. The codes obtained represent parts of the documentation that are similar or dissimilar in the various cases and provide insight on decision-making trends over the past 10 years.

Each document and transcribed interview was given its own series of codes; only after coding was completed did comparisons and categorization take place. The categories were scrutinized multiple times to validate the reoccurring patterns (if any) and the series of observations which emerged from this process to provide the basis for a theory on licence renewals. At this point, coding based on Glaser and Strauss' (1967) model ended. It was subsequently possible to make links between the categories and criteria of evaluation using observations, and the

categories were reduced to include only those relevant to the newly established theory.

Though this methodology serves as an important tool to explain the internal “mental and social process in the context of participation in an activity” (Weingand, 1993, p. 19), such as the licence renewal process, interviews have their limitations. The researcher may inadvertently manipulate the data in the formulation of questions for the information he / she seeks to pursue. In the grounded approach, in particular, the qualitative nature of the method informs the experimental design. The theory or hypotheses are not determined ahead of time, but rather as the data are being collected and analyzed. Those who believe that quantitative data are more rigorous may see this as disturbing. However, grounded theory, “the discovery of theory from data systematically obtained from social research” where “theory formation is allowed to evolve” provides the opportunity for ideas to emerge that would not necessarily come from pre-selecting hypotheses (Weingand, 1993, p. 21). Nonetheless, to justify the end results, a researcher requires a rigorous documentation of the steps used. This includes rigorous coding and multiple verifications to ensure consistency throughout the analysis. Using a more holistic design, which includes both qualitative and quantitative data, provides for enriched results in anticipation of potential subjectivity originating in the researcher’s choice of codes or potential ‘leading questions in an interview.’

Results from the analysis of the interviews and the licence renewal data were complemented by the existing research on broadcasting policy as described in the following discussion (Chapter 5), as well by the relevant policy documents explained in Chapter 3. The results have also provided further insight into the gap which exists between, on the one hand, the written radio licence process as described in the literature and in CRTC policy, and on the other hand, current practices in the industry as expressed by the experts interviewed and reflected in licence renewal documents.

4. Research findings

The previous chapter outlines the research methodology, while the goal of the current chapter is to present its results. Because some stations had more than two renewals within the selected timeframe, the 141 radio station cases analyzed actually represent 298 licence renewals. The results are described following the order in which they were obtained. First, a general description of each case is presented. These results are probably the most important, since they set the stage for the questions that were asked in the interviews, and represent the main form of evidence for how the CRTC has handled licence renewals over time. This includes a description of the conditions of licence, the duration of licences and issues of non-compliance. The conditions of licence highlight station requirements, whereas results pertaining to the duration of licence explain if radio stations fulfilled requirements or not. Analysis of non-compliance explains situations of shorter licence terms.

The second part of this chapter provides details about the information in CRTC annual reports. These results are not particularly revealing, but they provide evidence as to what the CRTC sees as important and demonstrate discrepancies in year over year reporting. This section includes a description of the type of content included in the reports and presents data in the order in which it normally appears in the reports.

The final section of the chapter highlights the qualitative data obtained in interviews with stakeholders. These results are categorized from the most general to the more specific, but also with respect to the way in which the researcher first dealt with the data: exploring the process, and then comparing it to larger principles, before making a judgment about overall success.

The section begins with perspectives on the relationships among stakeholders, which provides a basis for understanding the working relationships.

To start with the most general aspects of the research, the licence renewal process as a whole is discussed, first, followed by more particular information on monitoring, dealing with complaints, and decision-making. This is followed by observations relevant to the process in relation to the *Broadcasting Act, 1991*. The chapter ends with a discussion of reported problems with the process and ways in which it could be improved.

4.1 Description of case results

4.1.2 Conditions of licence

Examining licence renewal documents identified a number of apparent commonalities between most licence renewals, particularly in the types of conditions of licence issued. The conditions of licence are obligations that a radio station must fulfill and are complementary to what is stated in the *Broadcasting Act, 1991* and *Radio Regulations, 1986*. They are included in licence renewals and sometimes appear as reminders, either because of past non-compliance, or because they are particular to a type of station. In other cases, conditions of licence are the same for all stations as they represent general CRTC objectives. These are not stated as such in other legal documents. Examples include requirements to comply with regulations from another ministry or department, as in the case of hiring equity, for instance.

The wording of conditions of licence differentiates what constitutes a reminder, a suggestion or a legal obligation. Observations in this regard follow. In 129 cases, the CRTC issued, in general terms, conditions of licence which radio stations were to follow. In 69 cases, the licence renewal document noted that licensees were “subject to the conditions of their current licence, the decision at hand and the licence to be issued.” A similar sentence was used in 22 cases where the licensees were said to be “subject to the conditions in the decision and the licence to be issued.” In 36 other cases, the licensees were said to be “subject to the licence to be issued.” Finally, in 2 cases, the licensees were said to be “subject

to the current licence.” Although few cases had different wording that seemed to refer to a similar idea, there was no notable consistency with the other 169 renewals, and the majority did not include any such phrase.

Certain conditions of licence are common to many stations. One such condition prohibits licensees from operating within specialty formats defined in Public notice 1995-60:

a private commercial FM station [would be] operating in the specialty format if it [met] one or more of the following criteria:

- language of broadcast is neither English nor French;
- more than 50% of the broadcast week is devoted to Spoken Word;
- less than 70% of the music broadcast is from subcategory 21 (pop, rock and dance) and/or subcategory 22 (country and country-oriented) (CRTC, 1995).

This was noted in 48 renewals. In 133 renewals, the CRTC made note of contributions to be made to Canadian talent development (CTD) and Canadian content development (CCD). Only in one case was there specific mention of an exemption from this condition of licence. CTD is a financial program that was put in place by the CRTC in the late 1990s to inject funds in the Canadian music industry to assist in building Canadian artists’ careers and provide Canadian content for radio. In 2006, this program was renamed CCD as the mandate was expanded not only to develop Canadian talent, but overall Canadian content. CCD contributions came into effect on 1 September 2007. Also, in 62 renewals there was a note of the need to respect the CAB’s sex-role portrayal code. And, in 287 renewals, the CRTC encouraged the licensees to comply with the Employment Equity Act or mentioned that they were subject to it.

In addition to these conditions of licence, in a few cases, the CRTC highlighted particular conditions of licence that only affect a particular station. These cases relate to stations that have exceptions to current regulations or

stations with previous issues of compliance that are being addressed. These are presented in Table 3 with the frequency in which they were noted in renewals.

Table 3 – Frequency table of conditions of licence in the 298 licence renewals

Specific conditions of licence	Frequency	Percentage (%)
<i>Radio Regulations, 1986</i>	4	1.3
Hours of local programming	5	1.7
Contours	2	0.7
Programming for cultural groups	7	2.3
Special CANCON requirements	10	3.4
Broadcast less than 50% hits material	4	1.3
Exceptions to Broadcasting regulations, 1986	12	4.0
Code of ethics	1	0.3
Spoken word programming	1	0.3
News content	2	0.7
Station-produced programming	2	0.7
Category 2 quotas	3	1.0
Provide self-assessment	3	1.0
Maximum of English language programming and advertising	2	0.7
Maximum advertising time	1	0.3
Category 3 quotas	1	0.3
Simulcasting requirements	1	0.3

Specific conditions of licence are attributed to some stations to override the existing regulations because of the type of station or to add conditions based on previous performance issues. The following provides definitions for the various conditions of licence directed to particular stations as highlighted in Table 3 above.

- “*Radio Regulations, 1986*” is a specific mention in the renewal that a station must comply with the specified radio regulations.
- “Hours of local programming” refers to the required amount of time a station needs to dedicate to local content.
- “Contours” have to do with the way in which the CRTC determines the reach of a particular station. The condition of licence explains the boundaries in which a station must operate.

- The condition of licence regarding the “programming for cultural groups” requires production of such content for a particular ethnic group.
- “Special CANCON” requirements refer to exceptions to current CANCON requirements. In most cases, the CRTC requires a higher level of Canadian content than what is indicated in the regulations.
- “Exceptions to *Radio Regulations, 1986*” vary, but most often deal with variations in the type of programming that must be broadcast at certain times or its quantity.
- “Code of ethics” refers to a particular station to abide by its code of ethics.
- “Spoken word,” “station produced programming”, and “news content” refer to the type and quantity of such content that must be broadcast.
- “Category 2 quotas” refer to the quantity of popular music that needs to be broadcast, whereas category 3 quotas refer to special interest content.
- The “provide self-assessment” category identifies stations that must send a self-assessment to the CRTC following prior non-compliance.
- “Maximum of English language programming and advertising” and “maximum advertising time” are two quite self-explanatory conditions of licence that refer to the maximum amount of advertising time a station is allowed to broadcast.
- And, finally, “simulcasting requirements” refer to a station’s obligation to simulcast specific content because it is part of a network or group or has some contractual obligation to another station. Of note are situations where the CBC provides content to private broadcasters. This is often in remote areas. The private station becomes an affiliate of the CBC. Unfortunately, in the documents collected, there is no way to determine how many stations were affiliates of the CBC within the studied timeframe. The only evidence of the arrangements is in cases of non-compliance where the content provided by the CBC did

not meet a station's specific CANCON quotas and this was noted by the CRTC. There are no significant differences to these hybrid stations when it comes to licence renewals as far as the evidence collected indicates.

An overall assessment of these observations and their implications are discussed in the next chapter. Another interesting aspect of renewals is the duration of the licences issued by the CRTC.

4.1.3 Duration of licences

A total of 101 renewals resulted in licences with shorter durations than maximum. This represents 34 % of total cases, involving 86 stations. Among these stations, only eight were given at least two short-term licence renewals in a row. It is important to note, however, that 41 cases resulting in 6-year renewals were not for non-compliance. The CRTC required the stations to renew at an earlier time in order to meet the objectives of its regional plan – a strategy undertaken by the CRTC to renew licences from the same region during the same timeframe – or for workload reasons (in other words depending on how many cases the CRTC had to evaluate in a given time period). Seventeen cases resulted in shorter renewals, but no specific reason was provided in the CRTC decisions. The following tables illustrate the duration of licences from 1997-2007 (Table 4) and the stations which obtained more than one short licence renewal (Table 5).

Table 4 – Frequency table of duration of licence renewals

Duration of licence	Frequency	Percentage (%)
7 years	197	66.1
6 years	61	20.5
4 years	17	5.7
3 years	12	4.0
2 years	5	1.7
17 months	1	0.3
15 months	1	0.3
8 months	1	0.3
3 months	2	0.7
Non renewal	1	0.3

No links were made between the reasons for non-compliance and the length of short-term licence renewals except in the case of 3-year renewals. Of the 12 stations renewed for 3 years, 8 had issues with CANCON requirements. However, these were not always exclusively CANCON related. The following table illustrates stations with more than one short licence renewal during the timeframe of the study.

Table 5 – List of stations with more than one short licence renewal, their location, the number of consecutive short renewals and their duration

Station	Location	Number of consecutive short renewals	Duration of licences
CKVM-FM	Ville-Marie	5	4 years, 3 months, 2 years, 4 years, 2 years
CKPC-FM	Brantford	2	3 years, 3 years
CKOD-FM	Salaberry-de-Valleyfield	2	17 months, 8 months, 2 years
CKKW-FM	Kitchener	2	3 years, 3 years
CHOI-FM	Quebec	2	2 years, non renewal
CIMX-FM	Windsor	2	6 years, 4 years
CJBQ-AM	Belleville	2	6 years, 3 years
CKBY-FM	Ottawa	4	4 years, 3 months, 15 months, 6 years

A few cases in Table 5 are of note because they underwent public hearings: CKVM-FM, CKBY-FM, CKOD-FM and CHOI-FM.¹⁴ Very few stations were required to have public hearings because the licence renewal process during the period under study was generally a strictly written-on-paper process. However, in some circumstances, the CRTC required stations to ‘show cause’ particularly in situations of non-compliance.

CKVM-FM is an adult contemporary station operating out of Abitibi-Témiscamingue, Quebec, but its audience extends to North-eastern Ontario. It

¹⁴ CFRB (not shown here) also had a public hearing, but received a full-term licence renewal the following time.

has virtually no competition as it is in a very isolated market. It received its first short-term licence for non-compliance with the levels of French-language vocal music and Canadian content being broadcast. Station representatives explained that the former was due to programming changes within the station, while the latter was beyond its control since the content was provided by a third party, the CBC (CRTC, 1997a). The next licence renewal resulted in a public hearing. According to the decision, this was the fourth short-term licence renewal in a row, which means the station had been struggling prior to the decisions stated in this sample. The other short-term renewals dealt with non-compliance concerning logger tapes (1989 and 1992), and with the CRTC wanting to review the file with other stations (1994) (CRTC, 2001a). Once again, in 2001, the station was non-compliant in maintaining logger tapes. The reason for non-compliance this time had to do with technology breakdown. The public hearing discussed measures to avoid this happening again (CRTC, 2001a). The CRTC felt that the licensee did not provide enough evidence to avoid a similar situation again, therefore issued a mandatory order and a two-year licence renewal. In 2003, the station applied to convert to the FM band. Considering the station's history, the CRTC approved the conversion, but gave it a four-year term and three conditions of licence including one which required the licensee to supply the CRTC with self-assessments of its programming (CRTC, 2003). In 2007, the station was once again found in breach of regulations for not having broadcast adequate amounts of French-language vocal music. The CRTC once again mandated a short renewal of two years and maintained the self-assessment condition of licence. This time, no mandatory order was issued (CRTC, 2007a).

CKBY-FM is a private commercial country station in the Ottawa region, owned and operated by Rogers Communications Inc. According to logger tapes, logs and music lists for the week of March 24 to March 30 1996 requested by the CRTC, CKBY-FM had broadcast 52.7% of musical selections that were considered hits. A condition of licence required the station to air no more than

50%. Consequently, in CRTC decision 1997-486, only a four-year licence renewal was issued (CRTC, 1997b).

Following notice of a public hearing, CKBY-FM appeared before the CRTC in June 2001 (CRTC, 2001c). The CRTC noted an “apparent failure of the licensee to comply with its condition of licence requiring that the station maintain the level of hits below 50% each broadcast week” (CRTC, 2001c). At the hearing, the licensee was required to explain why a mandatory order should not be issued to ensure compliance. According to the transcripts of the public hearing, the station acknowledged its error and explained that, although serious, it was not intentional. Station representatives assured the CRTC that this would not happen again and explained how it would resolve the problem. Among other things, the station’s owner, Rogers Communication Inc., hired a regulatory affairs officer to oversee policy and compliance (CRTC, 2001d).

On August 10, 2001, CKBY-FM was granted a three-month renewal because the CRTC had not made a final decision. On November 7, 2001, CKBY-FM was once again issued a shorter licence renewal period, 15 months, and was issued a mandatory order. The CRTC believed that the station had failed to provide an acceptable explanation for its behaviour during the hearing, and that this was not the first time it had assured the CRTC that changes would be made to avoid a repeat offense. In its 2003 decision, the CRTC granted CKBY-FM a full licence term since it had remained in compliance for the period of the previous renewal, and it also dropped the mandatory order.

After a series of administrative renewals, CKOD-FM, an independently owned French-language radio station operating in Salaberry-de-Valleyfield, Quebec, was invited to a public hearing in the Fall of 2005 to ‘show cause’ why a mandatory order should not be issued given the station’s non-compliance with logger tapes and annual reports. The initial explanation for failing to provide

logger tapes in 2004 was attributed to an equipment malfunction. The CRTC further noted that four annual reports for the station were missing and during the hearing it was confirmed that payments to Canadian talent development (CTD) initiatives were not complete (CRTC, 2005b). Although station representatives assured the CRTC that changes were being made to comply with regulations, the CRTC decided to issue a mandatory order to ensure compliance with annual report submissions and CTD contributions (CRTC, 2005b). A 17-month licence renewal was issued.

In 2006, CKOD-FM was subject to another public hearing. The CRTC required the licensee to explain why mandatory orders should not be issued for the failings concerning logger tapes and CTD contributions. According to the CRTC decision, “the licensee ha[d] taken [a] completely opposite course, committing one act of non-compliance after another” (CRTC, 2006). The licensee once again failed to provide annual reports and logger tapes, and did not broadcast the required amount of French-language vocal music. Nor had the licensee honoured its commitment regarding CTD contributions. There were also technological deficiencies noted by Industry Canada in 2005 (any problems involving equipment, and the renewal of spectrum licences are handled through Industry Canada, but communicated to the CRTC in preparation for licence renewals). A change in control that had not been previously approved by the CRTC was also noted in 2004 and was only resolved in 2006. Consequently, the CRTC opted for an eight-month licence renewal from September 2006 to May 2007, and mandatory orders were issued for logger tapes, annual reports, missing CTD contributions and to ensure that French vocal music broadcasting met required quotas.

CHOI-FM is a French language station operating in Quebec City, Quebec. Until Radio Nord Communication took over the station in 2004, it was owned by

Genex Communications Inc. and primarily aired active rock music.¹⁵ The case of CHOI-FM, began in a similar fashion as CKOD, with a shorter licence period, but the outcome was different. On July 16, 2002, in Broadcasting Decision CRTC 2002-189, the CRTC renewed CHOI-FM's licence for a two-year term and provided the station with eight conditions of licence it had to follow including compliance with the CAB's sex-role portrayal code; compliance with the CHOI-FM Code of ethics that was set out in the decision; the creation of an arm's-length advisory committee to deal with the potential complaints arising from non-compliance with the code of ethics; compliance with French-language vocal music identification; compliance with the number of English-language montages to be played in a day; compliance with the classification of what constitutes a montage;¹⁶ maintenance of logger tapes for 90 days following broadcasts; and an allocation of \$8,000 annually for the promotion in Quebec of new Canadian talent in the alternative rock format. These conditions were necessary because four analyses conducted by the CRTC confirmed continuous non-compliance with logger tape requirements and French-language music quotas. CHOI-FM employees were also shortening certain songs and counting them as though they had played in their entirety to fulfill French-language and Canadian selection quotas. They also promoted the consumption of alcohol and spoke English on air. The CRTC received 47 complaints from 1999 to 2001 concerning offensive remarks or language broadcast on CHOI-FM, offensive on-air contests, and personal attacks and harassment. The CRTC also questioned the standards of spoken word programming, all of which did not comply with the *Radio Regulations, 1986* or existing licence agreements. The station's owner, Genex Communications inc. (Genex) responded to the public's complaints using a form letter and informed the CRTC of corrective measures. It would adopt a code of ethics, create an advisory committee to review complaints, would join the CAB

¹⁵ An active rock station airs both modern rock and classic rock music.

¹⁶ A montage is the result of a number of previously recorded song excerpts put together to create a new musical composition. The CRTC has requirements surrounding the use of montages. These can be found in section 12 of the *Radio regulations, 1986* (appendix D).

and the CBSC and it would “broadcast messages informing listeners that they have a right of reply if they [felt] offended by any observation or remark broadcast by the station” (CRTC, 2002).

In December 2003, the CRTC announced a public hearing commencing February 16, 2004 at which Genex would need to appear regarding its licence renewal and its requested amendments. The amendments proposed by Genex in October 2003 included the removal of some of its conditions of licence including the code of ethics, advisory committee and preservation of logger tapes for 90 days. Genex believed it had satisfied the requirements of the previous decision and argued that CRTC should not be concerned with new complaints filed during its licence term (CRTC, 2004b). More importantly, it was required to ‘show cause’ as to why the CRTC should not issue a mandatory order and why it should not suspend the licence or refuse renewal. In its decision, the Commission conducted three new analyses into the station’s programming and found only one instance of non-compliance related to French-language vocal music requirements during one of the weeks of observation in November 2002, May and August 2003 (CRTC, 2004b). The station did become a member of the CBSC in September 2002 as agreed, but 45 new complaints were lodged with the Commission regarding spoken word content. Throughout the process, Genex had been struggling with a half hour segment in the station’s morning show that raised serious issues regarding the abusive spoken word content. Comments generally targeted people with mental illness, women and minorities, exposing them to hate or contempt. Twelve cases were referred to the CBSC, five were grouped into one complaint and 29 were reviewed during the public hearing. In advance of the hearing, Genex requested that the CRTC remove a specific series of complaints from its file otherwise it would be unprepared to attend the hearing (CRTC, 2004b).

The public hearing was conducted as planned and initial concerns over the CRTC's jurisdiction in handling complaints were quickly dismissed. In response to a campaign organised by CHOI-FM asking its supporters to write to the CRTC in the hope of saving the station, the CRTC "received 9,468 interventions concerning CHOI-FM's licence renewal application: 9,417 were in favour of the application; 38 were opposed; and 13 were comments" (CRTC, 2004b). The campaign was focused on CHOI-FM's right to freedom of expression, but as Charles Dalfen, the CRTC Chair at the time, explained in an interview with journalists from the *Globe and Mail*, it is "not about controversial comments. It is about abusive comments. Although debate about what constitutes censorship may be legitimate [...] in this case there is no question that the station breached the rules. Wherever the line is, this licensee is way over it" (Blackwell, Ha, & Tuck, 2004). The comments received encouraging the renewal were proponents of freedom of expression and appreciated some of the efforts the station was making to address often marginal social topics and to promote French alternative rock music. On the flip side, those against the renewal were concerned with the way the station was using public airwaves and suggested the CRTC should take appropriate corrective measures for the station to comply or simply revoke its licence (CRTC, 2004b). In the end, the decision was based on the fact that CHOI-FM station managers did not control their hosts; comments made during the morning show were repeatedly in breach of the *Broadcasting Act, 1991* and the station's own code of ethics. Furthermore, the station proposed modifications to its code of ethics which made it difficult for the CRTC to ensure accountability. The CRTC also noted refusal to acknowledge the severity of the problems in question and the difficulties in handling the numerous complaints brought to the Commission's attention. For the CRTC, all these issues proved that Genex was not ready to meet its "regulatory obligations" (CRTC, 2004b). The CRTC therefore felt it had no choice but to deny the station's licence renewal application. The battle did not, however, end that day. Genex contested the case

before the Federal Court of Appeal, but in the end the CRTC decision was upheld.¹⁷

CHOI-FM provides multiple examples of non-compliance in a single case, but is not the norm. Sample results confirm that most cases of shorter licence renewals involve one or two reasons for non-compliance.

4.1.4 Licence renewal non-compliance results

The following table provides a list of reasons for non-compliance which have resulted in shorter licence durations. These results were tabulated using the data provided by the CRTC in licence renewal documentation.

Table 6 – Frequency table of reasons stated for non-compliance in the 298 licence renewals

Reasons for non-compliance	Frequency	Percentage (%)
CANCON regulations	15	5.0
French language quotas	5	1.7
Logger tapes (failure to produce or invalid)	4	1.3
Number of complaints	1	0.3
CTD contributions	2	0.7
<i>Radio Regulations, 1986</i>	6	2.0
Level of hits to be broadcast	3	1.0
Annual reports	1	0.3
Total	37	12.3

CANCON regulations, the main reason for non-compliance illustrated in Table 6, are particularly interesting; although non-compliant situations are sometimes very close to being compliant, the CRTC still notes the situations. Table 7 compared the difference between the content required and the content broadcast.

¹⁷ More information on the Federal Court decision can be found on the Office of the Commissioner for Federal Judicial Affairs website:
<http://reports.fja.gc.ca/eng/2005/2005fca283/2005fca283.html>

Table 7 – Table of Canadian content non-compliance for 16 of the 298 licence renewals

Stations	Percentage of CANCON broadcast (%)	Percentage of CANCON required (%)	Difference
CHOI-FM	Not stated	Not stated	Not stated
CHNS-FM	29.35	30	0.65
CIMX-FM	18.6	20	1.40
CJQQ-FM	2.4	10	7.60
CFNY-FM	33.8	35	1.20
CFNO-FM	27	30	3.00
CFFM-FM	0	30	30.00
CKDX-FM	27.4	30	2.60
CKKW-FM	28.01	30	1.99
CKOD-FM	Not stated	Not stated	Not stated
CKPC-FM	29.1	30	0.90
CKRW-FM	23	30	7.00
CKSL-AM	28.8	30	1.20
CKTB-AM	28.5	30	1.50
CKVM-FM	8.6	10	1.40
CJQQ-FM	2.4	10	7.60

The reasons for non-compliance presented in Table 6 resulted in shorter licence durations for the licensees. Mandatory orders were issued in four cases because the stations failed to demonstrate how they would comply with particular requirements. The CHOI-FM licence was the only one in the sample that was not renewed during the 10 years studied. The next most recent last commercial radio non-renewal dates back to 1987. Coaticook FM Inc., known as CFIN-FM, was not renewed in the face of numerous failures with regard to commitments and promises of performance, issues in respecting CANCON and French-language music quotas.¹⁸

In general, there have been very few non renewals, and most of these have dealt with community, rather than commercial, radio stations. The following table includes a short list of radio non renewals, all sectors combined, provided by two lawyers, Auer (2010) and McCallum (2010).

¹⁸ For more information on this case see (CRTC, 1987).

Table 8 – List of radio station non-renewals

Year	Station	Location	Company if relevant	Additional information
1968	CJLS AM	Yarmouth, NS	Gateway Broadcasting Company Ltd.	Did not maintain minimum standards (news and current affairs)
1973	CJLX AM	Thunder Bay, ON	Lakehead Broadcasting Company Ltd.	Campus station
1977	CFBC-FM	Saint-John, NB	Fundy Broadcasting Co. Ltd.	Did not provide minimum standard in the public interest
1981	CFMX-FM	Cobourg, ON	Radio CHUC Ltd.	Difficulties remaining on air and issues with promises of performance
1981	CHNL-FM	Kamloops, BC	NL Broadcasting Ltd.	Difficulties in ability to put the station on air
1984	CJMF-FM	Quebec, QC	CJMF-FM Ltee	Not in compliance with its promise of performance
1987	CFCQ-FM	Trois-Rivières, QC	Teleduc Inc.	Community station, non-compliant and out of funds
1987	CFIN-FM	Coaticook, QC	Coaticook FM Inc.	Failure with regard to commitments and promises of performance, issues with CANCON, French-language music quotas
1987	CFOU-FM	Sainte-Thérèse, QC	Radio Communautaire des Basses Laurentides	Community station, reasons unspecified
1987	CKLE-FM	Rimouski, QC	Radio communautaire du Bas St-Laurent	Community station, issues with compliance in advertising and French-language quotas
1987	CION-FM	Rivière-du-loup, QC	Communications communautaires des Portages	Community station, reasons unspecified
2004	CHOI-FM	Quebec, QC	Genex Communications Inc.	Case explained above

After CHOI-FM, the CRTC refused to renew the licence of Harmony Broadcasting in Winnipeg (2008). The CRTC also suspended permission for CKFM-FM Standard Radio, Toronto to air commercials for three days in 1988.

4.1.5 Comments provided

In all instances of licence renewals, once an application has been filed and the CRTC issues a notice, the public is entitled to provide comments on the file under consideration. Even if comments are quite rare, their examination by the CRTC is considered an integral part of the Commission's decision-making process. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) is an exception. It almost systematically submits comments on every radio station licence renewal from Quebec. In this study, their interventions were noted 28 times. Overall, there were 88 renewals which involved at least one intervention. The majority of cases included only one. In six cases there were two interventions, usually one in support and one against the renewal. Otherwise, only three stations obtained several interventions. Only in 25 renewals did the licensee respond to the interventions. In the majority of cases, the CRTC did not acknowledge interventions in its final decision.

4.1.6 Reminders

In a number of cases, the CRTC provides the stations with reminders. Table 9 presents the type of reminders issued and their frequency.

Table 9 – Frequency table of reminders issued to radio stations by the CRTC in radio licence renewals

Reminders	Frequency	Percentage (%)
Provide year of release of musical selections	8	2.7
Expectations about funding	1	0.3
PN 1990-111(AM FM policy for the nineties)	2	0.7
Changes to <i>Radio Regulations, 1986</i>	1	0.3
Hit music requirements	1	0.3
PN 1993-78 (religious broadcasting policy)	2	0.7
CANCON and spoken word quotas	2	0.7
Licencee's responsibility for what is broadcast	1	0.3
News content requirements	1	0.3
Provide report on benefits	4	1.3
Benefits commitments	22	7.4
Responsibility to serve the English-speaking audience	1	0.3
Increase in CTD requirements	1	0.3
Must wait for broadcasting certificate (Issued by Industry Canada)	1	0.3
Total	48	15.9

The most frequent reminder is to fulfill benefits requirements, which are amounts to be expended on public interest activities¹⁹ following a change in ownership. According to the *Broadcasting Monitoring Report 2007*, from 1 May 1998 to 31 December 2006, 77.5 million dollars have been spent in benefits from transactions involving English-language stations and 99.3 million dollars were spent for transactions involving French-language stations (CRTC, 2007c).

4.1.7 Additional licence renewal information

In a few cases, the CRTC felt it was important to provide additional comments. In three cases (CFMB-AM, CIAO-FM, CIRV-FM), the Commission explained that it was satisfied with the station initiatives to broadcast content reflecting local issues. In three cases (CFNY-FM, CHBW-FM, CJBQ-AM), it commented that the infractions had occurred for the first time. In three case (CHLM-FM, CJAT-FM, CKVM-FM), it mentioned that it could not renew the

¹⁹ These include FACTOR, MUSICACTION and other eligible initiatives as outlined in the commercial radio policies.

licence without having the broadcasting certificate.²⁰ And in one case (CIOK-FM), it warned the station not to advertise in particular markets.

Now that initial results have been presented, the following section provides results of information compiled from the broadcast monitoring reports.

4.2 Results of CRTC radio broadcasting policy monitoring reports (CRTC annual reports) and additional relevant documents

Following the procedures set out in the methodology, the annual broadcasting policy monitoring reports published by the CRTC since 2000 were analyzed. As a reminder, the goal of this analysis was to see if there was any information pertaining to licence renewals that could be comparable year over year for the stations under study. Another purpose was to determine which criteria the CRTC used to describe yearly radio performance, and to see if these criteria were aligned with the *Broadcasting Act, 1991*, *Radio Regulations, 1986* and the radio licence renewal process.

4.2.1 Document content

The themes in the reports pertaining to radio are first described; any significant changes made to information relevant to this study for the years observed are highlighted.²¹ Tables illustrating the number of commercial stations in operation by year and province, Canadian content and French vocal music quotas, as well as the amounts of CTD contributions are included as these present the most relevant supporting data available in the reports. A table describing the CRTC's service standards has also been included (see Table 14).

²⁰ This is a document issued by Industry Canada required to fulfill broadcasting requirements.

²¹ If information was simply repositioned to a different section in a report, it did not count as a significant change.

Among the relevant data to consider in annual reports were the number of commercial radio licences in effect, since these provide a statistical indicator for the current research. Canadian content and French vocal music requirement statistics are also relevant because they can be cross-referenced with observations mentioned by the CRTC as criteria for evaluation; CTD contributions at the time of licence renewal also reflect relevant criteria. Before presenting these data, however, a summary of the general themes included in the CRTC annual reports provides a sense of what the CRTC finds important and indicates the level of consistency in CRTC reporting.

The *Broadcasting Policy Monitoring Report 2000* included data about:

- Radio tuning and relationships with other media
This section included data on listening habits (total number of hours tuned in) for the system as a whole. It also includes data on advertising revenue by type of medium and shares per medium. Finally, this section included an update on the status of digital radio.
- Ownership
This section provides data on the top ten ownership groups, their advertising revenue, market shares and number of listening hours. Transfers of control and competitive licensing information are also detailed providing general information on how much money went into benefits resulting from the transactions reported, and on the value of the transactions themselves. A grid also presents information on which factors (Canadian content, CTDs, business plan, competitive balance, diversity of voices) influenced the successful applications.
- Diversity of formats
This section provides tables describing the different formats in various markets.
- Popularity of formats
This section provides ratings on the number of hours tuned to radio for all formats and provides a chart of the most popular formats.

- Promotion of a financially sound sector
This section highlights the revenues for the AM and FM band since 1996 and profits before taxes.
- Promoting the airplay of Canadian and French vocal music
This section provides information on the percentage of stations that have met their CANCON and French vocal music requirements.
- The report also highlights data from other radio sectors that are not relevant to this study.

In the *Broadcasting Policy Monitoring Report 2001*, a number of new additions were made to the radio section of the report. These included:

- Canadian talent development
This section provides information about the amounts of CTD contributions made by new radio licences, benefits obtained through transfers in ownership, as well as data on the amounts of CTD contributions (in total) provided through licence renewals, including funds directed to the various beneficiaries (Musicaction, Factor, other music organizations, performing arts groups, schools and scholarships).
- Number of commercial radio stations in Canada
This section provides a breakdown of the number of stations in Canada.
- Low power radio
This section provides information on the number of low power stations in Canada.

In *Broadcasting Policy Monitoring Report 2002*, the number of commercial radio stations in Canada was moved to the beginning of the report; details were added on revenues, broken down by language of operation; on native radio; and on religious radio; including their respective revenues were added.

There were no major modifications from 2002 in information provided in *Broadcasting Policy Monitoring Report 2003*.

In *Broadcasting Policy Monitoring Report 2004*, a variety of sections were added to keep up with the ever changing broadcasting system, including sections on services delivered by cable, satellite and other forms of subscription radio, as well as a complete section on the public broadcaster.

With *Broadcasting Policy Monitoring Report 2005*, the CRTC stopped publishing the number of stations per province. Instead, it provided a total sum of stations by category. Also, of note, CTD contributions are rounded off rather than providing the amounts in their exact value.

A new section about the *Commercial Radio Policy Review* was included in *Broadcasting Policy Monitoring Report 2006*, with its results appearing in *Broadcasting Policy Monitoring Report 2007*. CTD contributions in 2006 were modified, and no longer include subtotals representing total third party contributions and contributions made to local initiatives. Modifications were also made to statistics on the promotion of Canadian content and French vocal music. The CRTC stopped presenting the number of stations meeting standards as a percentage, reporting the number of stations instead. In 2006, the CRTC began to provide a separate report for radio monitoring. It lists the names of the stations monitored in a given year by province. This year also marked the end of the report on Canadian content and French vocal music requirements. Since 2006, the CRTC provides a quarterly service standards report for processing broadcasting amendments and licence renewal applications. There are only two such reports in the timeframe of this research, the results are provided in the tables in the next section.

Broadcasting Policy Monitoring Report 2007 did not present any notable changes.

As discussed, the following section presents the data relevant to this study.

4.2.2 Relevant data

The following tables present the data compiled from the annual reports which highlight the results of CRTC observations during the time period considered in this study. They include the number of commercial radio licences in Canada by province per year, Canadian content and French vocal music requirement statistics, and the CTD contributions made at the time of licence renewal. A table representing the service standard results pertaining to licence renewals is also included (Table 14).

Table 10 – Number of commercial stations in Canada (AM & FM) from 1999-2007

	Years									
Provinces	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Nfld. & Lab.	16	16	17	15	15	18				
PEI	4	4	4	4	4	4				
NS	23	22	22	22	22	22				
NB	19	18	19	24	25	24				
QC	85	84	82	84	84	100				
ON	136	137	143	149	156	171				
MB	23	23	24	25	25	29				
SK	25	25	25	29	34	39				
AB	54	56	57	58	59	74				
BC and terr.	88	89	90	90	91	104				
Total	473	474	483	500	515	585	585	602	627	649

Note: Data for this table adapted from CRTC Broadcasting Policy Monitoring Reports 2003, 2004, 2005, 2006 and 2007.

As previously mentioned, the table above (Table 10) is relevant because it provides the basis on which to assess for example, compliance and non-

compliance and the percentage of stations monitored in a given year. The tables below (Table 11 and Table 12) are interesting in that they help assess compliance with specific criteria on Canadian content and French vocal music requirements.

Table 11 – Number of stations observed by the CRTC for Canadian content requirements and French vocal music from 2000-2007

Number of stations observed	Years							
	2000	2001	2002	2003	2004	2005	2006	2007
35% weekly CANCON requirement	33	35	37	30	25	101	34	
55% French vocal music requirement	20	8	6	16	6	17	8	
65% French vocal music requirement	20	8	6	16	6	17	8	

Note: Data for this table were adapted from CRTC Broadcasting Policy Monitoring Reports 2000 to 2007. In 2007, the CRTC changed the above table to divide the stations by categories including popular (category 2) and special interest (category 3). These categories were also subdivided to distinguish private commercial stations from not-for-profit stations. For this study and for consistency, the total number of stations was used. The 2008 report does not contain information on Canadian content monitoring for 2007.

Table 12 – Percentage of stations observed by the CRTC that met Canadian content and French vocal music requirements from 2000-2007

Requirements	Years							
	2000	2001	2002	2003	2004	2005	2006	2007
35% weekly CANCON all day requirement	100	100	95	90	92	99	91	
35% weekly CANCON requirement 6 a.m. to 6 p.m.	97	100	92	93	96	100	95	
55% 6 a.m. to 6 p.m. French vocal music requirement	90	75	67	100	83	100	100	
65% all day French vocal music requirement	85	75	67	88	100	100	75	

Note: Data from this table were obtained from CRTC Broadcasting Policy Monitoring Reports 2000 to 2007. In 2007, the CRTC changed the above table to divide the stations by categories, including popular (category 2) and special interest (category 3). These categories were also subdivided to distinguish private commercial stations from not-for-profit stations. For this study and to ensure consistency, the total number of stations was used and numbers presented were converted to percentages for each comparison. The 2008 report does not contain information on Canadian content monitoring for 2007.

Table 13 is the aggregated result of data available in reports on CTD contributions. It is useful to determine where the money is allocated. The CRTC did not provide previous year contributions in its 2002 report. The 2002 report

therefore, only includes data until 2001. It is only in the following year, that statistics for 2002 were provided.

Table 13 – CTD contributions (\$) made in the context of licence renewals (1998-2007)

	Category of CTD contributions									
Year	Factor	Musicaction	Music orgs.	Performing Arts	Schools or Scholarships	Other	Radio Star Maker Fund	Total 3rd party contributions	Local initiative Contributions	Total CTD
1998	981,457	358,530				598,714				
1999	965,043	287,800	406,588	408,672	137,837			2,820,008	614,068	2,820,008
2000	835,074	269,599	505,888	109,836	124,590			1,844,987	657,487	2,502,474
2001	894,640	258,000	385,373	689,336	122,563			2,349,912	570,300	2,920,211
2002	891,266	307,900	542,954	516,523	105,638			2,364,281	718,247	3,082,528
2003	746,770	365,450	753,376	181,551	129,010		2,000	2,340,557	745,375	3,085,932
2004	775,000	332,000	459,000	605,000	91,000			2,262,000	625,000	2,887,000
2005	859,000	334,000	555,000	562,000	226,000	294,000				2,830,000
2006	805,000	341,000	567,000	777,000	147,000	64,000	2,000			2,702,000
2007	946,000	343,000	588,000	1,068,000	279,000	141,000	23,000			3,387,000

Note: Data from this table are adapted from data obtained in CRTC Broadcasting Policy Monitoring Reports 2000 to 2007 and CRTC Communications Monitoring Report 2008.

The following table provides an indication of how the CRTC has recently been monitoring its performance with regard to licence renewal applications. In other words, it illustrates how fast the CRTC has been able to process applications based on the type of renewal.

Table 14 – Results of quarterly reports on service standards for processing broadcasting licence renewal applications (April 2006 to March 2008)

Goals per type of licence renewal	Timeframe	
	1 April 2006-31 March 2007	1 April 2007 – 31 March 2008
Administrative renewal		
Goal 1: 80% in 2 months	94%	85%
Goal 2: 90% in 3 months	100%	94%
Regular renewal		
Goal 1: 80% in 8 months	N/A	80%
Goal 2: 90% in 10 months	N/A	95%

Note: Adapted from CRTC (2007d; 2008f).

Although much more information is available in the reports, much relates not to licence renewals, but rather to the general state of the industry, and is therefore less relevant to this study. The following section presents the results of conducted interviews.

4.3 Qualitative data obtained through interviews

As previously mentioned, 14 people were interviewed about their knowledge of the commercial radio licence renewal process. The general questions they were asked can be found in appendix H. This section highlights major observations from this stage of the research.

4.3.1 Relationships

Questions regarding interviewees' relationships with the CRTC, and the CRTC's relationship with the stakeholder group each interview represents, yield information summarized in the following table.

Table 15 – Summary of information about stakeholders’ relationships with the CRTC

Stakeholders	Description of relationship with CRTC
Arpin	Did not provide response
Bertrand	Did not provide response
Brooke	“Good. [...] CHUM was one of the first to devote a department to liaison with the CRTC in the late 1960s.”
Cohen	“I think it is and has pretty much always been excellent.”[...] I think that the CRTC has, if anything, become more and more comfortable with what it is that we do and with the fact that the broadcasters will back what we do and they could therefore afford to stand back a bit from what was going on ...”
Station 1	“Very good because I worked there...I have a personal working relationship with the people. I also have a better understanding and insight of the organization and its processes and procedures.”
Lawyer 2	“I sort of have two different relationships with them. One is on behalf of my clients. [...] So, when I am doing that work [...] it is an arm’s length relationship with the CRTC. [...] I have also worked closely with people inside the commission to get really fact finding information and to understand their views on what they think works and doesn’t work.”
Lawyer 3	It is a good relationship, primarily at arm’s length.
Noël	“Love/Hate”. “We have pretty good relationships on a personal level with certain individuals, but I think that in certain respects we do not have the same point of view [...] So, some days we would take their heads off. It is a love hate relationship.” ²²
Martin	Did not provide response
Industry 1	Relationship involves being the voice of the private broadcast industry for policy issues and to intervene when possible in debates about process and policy.
Neveu	“Good, when I make calls, they answer pretty quickly.” ²³
Pineau	“Them, we hold them accountable. We are an organization of civil society [...] and we watch this tribunal and its responsibilities and how it is supposed to operate and we intervene as politely as possible to remind them what they are there for.” ²⁴
Provencher	“It is good. I believe they appreciate the type of intervention we can offer.[...] We meet members, commissioners of the CRTC, the President of the CRTC, we have informal meetings with him...ah....to keep him up-to-date on the development of our industry, of our preoccupations. They are always very open ...” ²⁵
Lawyer 1	Finds it difficult because the CRTC needs to balance the objectives of the Act and it is difficult to reach the right decision. There are many objectives of the Act and they often overlap.

²² Loose translation of: « Love Hate. Nous avons d’assez bonnes relations sur le plan personnel avec certains individus, mais je pense qu’à certains égards, on n’a pas le même point de vue [...] Alors, il y a des jours où on leur arracherait la tête. C’est un love hate relationship. »

²³ Loose translation of: « Bonne, quand je fais des appels, ils répondent assez rapidement. »

²⁴ Loose translation of « Eux, on les tient responsables. Nous on est un organisme de la société civile [...] et on regarde ce tribunal là puis ses responsabilités puis comment il est censé fonctionné et puis euh... on intervient aussi poliment que possible pour leur rappeler ce qu’ils font là. »

²⁵ Loose translation of : « Ça se passe bien. Je crois qu’ils apprécient le type d’intervention qu’on peut leur fournir. [...] On rencontre des membres, des conseillers du CRTC, le Président du CRTC, on a des rencontres informelles avec lui euh...pour le tenir au courant du développement de notre industrie, de nos préoccupations. Sont toujours bien ouverts... »

Table 16 – Summary of information provided by stakeholders about their relationships with broadcasters

Stakeholders	Description of relationship with broadcasters
Arpin	“It must vary from one individual to another. I know them all. I was the president of their association. [...] I can’t say I have a very tense relationship with the broadcasters.” ²⁶
Bertrand	“It is to say that I found it important. Not to have a personal relationship, have a relationship that was a dialogue outside the hearings that made for a rapport that was extremely specific and that took away from the comprehension of the challenges at hand.” ²⁷
Brooke	Did not provide response
Cohen	“Obviously, that is a better question to ask them in a way because their position vis-à-vis what we do [...] I would say that by and large our relationship, my relationship in particular is very good.[...] One of the things that we strive to do I think is helpful in this regard is always to be eminently fair.”
Station 1	Did not provide response
Lawyer 2	Did not provide response
Lawyer 3	It depends on the client. When decisions are made in-house, lawyer 3 feels as part of a team and takes on a larger role in terms of the overall strategy, but when regulatory counsel already inside a company, the relationship is less sophisticated.
Noël	Did not provide response
Martin	Did not provide response
Industry 1	Includes some day to day contact on occasion with station managers, but most of the relationship involves radio owners or senior management people dealing with the organization for policy and regulatory matters.
Neveu	“I am not sure to be a priority for the CRTC, I am not sure there is a priority for independent radios.” ²⁸
Pineau	“We do not have relationships with them” ²⁹
Provencher	“We have had preliminary meetings, but it is primarily through the [...] CAB.” ³⁰
Lawyer 1	Did not provide response

²⁶ Loose translation of : « Ça doit varier d’un individu à un autre. Moi, je les connais tous. J’ai été président de leur association. [...] moi je ne peux pas dire que j’ai une relation tendue avec les radiodiffuseurs ».

²⁷ Loose translation of : « Alors, c’est donc dire que je trouvais ça important. Pas avoir une relation personnelle, avoir une relation qui soit un dialogue en dehors strictement des [...] audiences] qui faisait un rapport qui soit extrêmement pointu et qui enlevait beaucoup la compréhension les enjeux de l’heure. »

²⁸ Loose translation of: « Je ne suis pas sûre d’être une priorité du CRTCm je ne suis pas sûr qu’il y a une priorité pour les radios indépendantes. »

²⁹ Loose translation of: « On n’a pas de relations avec eux. »

³⁰ Loose translation of : « On a eu des rencontres préliminaires, mais c’est surtout via le [...] CAB. »

4.3.2 The licence renewal process

A general question about each stakeholder's understanding of the licence renewal process was asked. The following explains what the stakeholders generally had to say.

Six to eight months before a licence expires, a letter from the Commission directs the station owner to file a licence renewal application. In the application, the station must mention if it is applying for a renewal with the same conditions or under new terms (Bonin, 6 August 2009c). Once the file is forwarded to the CRTC, a very long waiting period ensues. In the application, as Lawyer 3 explains, the station may outline how it has fulfilled the conditions of licence, such as CCD initiatives and contributions (Bonin, 22 April 2009b). During the seven year licence period, the station must also provide logger tapes and a week of broadcasting programming sheets to the CRTC for analysis. The results of this monitoring process (discussed further in the next section) will be used to determine if a licence should be renewed or not.

In the early 90s, according to Martin (Bonin, 6 August 2009c), there used to be two types of application forms to complete. There was a three-page form, the abridged version, where one could check off a box to renew according to existing conditions of licence. Sometimes, a letter was sent to fill out a long form, but the reason for providing the station with one form or another was not clear (Bonin, 6 August 2009c). Noël says it was random (Bonin, 6 August 2009a). Martin and Noël are now grappling with the new process, which involves public hearings (described further in this section) (Bonin, 6 August 2009a; Bonin, 6 August 2009c).

According to Bertrand (Bonin, 20 July 2009), the licence renewal process is an opportunity to indicate how a station owner has responded to obligations. It also permits the company to highlight its strategic plan, both to show what has been done, but also where the company is headed. It is also an opportunity to

mention which obligations the station is prepared to accept and those with which they anticipate problems. For Station 1, “a licensee who has respected all regulations and conditions of licence has a legitimate expectation to be renewed for the full licence period, unless there is a change in policy” (Bonin, 6 August 2009b). In Station 1’s opinion, more conditions of licence make a station less competitive.

Until recently, public hearings for licence renewals were held primarily when a station was found, more than once, to be in a state of non-compliance with a condition of licence, the law or regulations. In more recent renewals, however, owners of multiple stations and large conglomerates are asked to participate in public hearings, regardless of their track record. These hearings are part of the CRTC’s attempt at being more efficient, more transparent and accountable by looking at an entire group of company assets, rather than individual stations. This may eventually lead to licence renewals for all assets, independent of their platforms, to take into account increased technological convergence. It was during Bertrand’s time as CRTC Chair that group licensing began (Bonin, 20 July 2009), a precursor to the recent trend of group licence renewals. As revealed through the interviews, the majority of licensees are not only involved in group renewals, but their entire licence renewal process is managed from corporate head office. As a result, very few local station managers or employees are familiar with the actual process or involved in preparing for the renewal (Bonin, 11 August 2009; Bonin, 6 August 2009b). Lawyer 3 believes that streamlined licensing is more efficient and less costly. It does not mean that the CRTC is ignoring what individual stations are doing, but it makes for a better administrative process (Bonin, 22 April 2009b). As Brooke (Bonin, 11 August 2009) mentioned, his only responsibility is to remind the legal staff, based in Toronto, of the time for renewal.

Although public hearings are an attempt to further streamline CRTC policies, they are opposed by many participants, primarily because of the cost

(Bonin, 6 August 2009a; Bonin, 6 August 2009b; Bonin, 6 August 2009c). In effect, the CRTC could provide group licensing without hearings. According to Industry 1, the general industry sentiment concerning the public hearings has been negative (Bonin, 7 August 2009a). “For a licence application, I can understand, especially a competing bid, that we would have public hearings to appreciate the fundamental qualities of the application, it is normal. But, when we are talking about renewals and we are not asking for modifications to the conditions of licence, truthfully, I fail to understand because it is a waste of time, it is an unconscionable cost,” according to Noël (Bonin, 6 August 2009a).³¹ According to her experience as past CRTC commissioner, Noël feels little positive dialogue comes out of public hearings for renewals that did not come out in the paper process. She maintains public hearings are more for show than anything else. Provencher (Bonin, 30 June 2009) says that the CRTC already has a lot of public hearings in its agenda and believes it does not have the resources for such additional activities. However, as do Noël and Martin, she maintains that they are justified in cases of non-compliance (Bonin, 30 June 2009).

Station 1 also indicated that convening public hearings is unnecessary and disruptive for renewals. Interventions in the process were said to be useful, however, since intervention might represent 10 or 100 people (Bonin, 6 August 2009b). And, as Station 1 (Bonin, 6 August 2009b) and Noël (Bonin, 6 August 2009a) mentioned, the process primarily attracts people with direct links to the industry such as union members and competitors rather than members of the general public.

Other people favour them. Brooke (Bonin, 11 August 2009) states that public hearings are great and should be used both for cases of compliance and non-compliance. “The company may disagree”, he says, “but to me it is part of a

³¹ Loose translation of : « Pour une demande de licences, je peux concevoir, surtout concurrentiel que nous ayons des audiences publiques pour apprécier les qualités fondamentales de d’une demande, ça c’est normale. Mais, quand on parle de renouvellements et on demande pas de modifications aux conditions de licences, franchement, I fail to understand parce que c’est une perte de temps, c’est un coût exorbitant. »

democratic process, public record. We don't want things to be like the FCC where much of the decisions are made behind closed doors. It might be costly, but I support it" (Bonin, 11 August 2009). Given that the radio business is regulated, and should be conducted in a public space for the sake of upholding public interest, Industry 1 also supports this initiative. More precisely, Industry 1 believes that if the CRTC feels that a public hearing should be conducted once every seven years, broadcasters should not be too upset. The CRTC should have the opportunity to entertain a dynamic discussion when it chooses, as that is not an unhealthy process (Bonin, 7 August 2009a).

Another issue discussed was CRTC use of administrative renewals. Most participants agree that administrative renewals seem to occur frequently; however, most maintain that the CRTC has valid reasons for this, primarily workload issues or strategic changes at times of renewal (Bonin, 15 July 2009; Bonin, 20 July 2009; Bonin, 23 July 2009). There are, however, a few cases where some participants, such as Provencher and Bertrand, believe the CRTC has gone too far by allowing more than one administrative renewal in a row (Bonin, 20 July 2009; Bonin, 30 June 2009). One significant case, they point out, is in the public sector renewal of CBC licences. So far, no such cases have been detected in the commercial sector.

Also brought to light regarding licence renewals is the particular language employed in the formulation of licence renewal decisions. According to Bertrand (Bonin, 20 July 2009), there is a gradation in the language used. As Arpin mentions, the vocabulary or lack of variety in the expression of licence renewal decisions is due to the fact that the Commission has always maintained that unless specified, otherwise, the previous conditions of licence hold true (Bonin, 23 July 2009).

Generally speaking, most interviewees are happy with the process and prefer the "if it ain't broke, don't fix it approach" (Bertrand, Station 1). Some

find it quite transparent (Pineau), but with two major caveats: the heavy administrative process that calls for lots of paperwork (Pineau, Noël, Martin, Provencher), time delays (Lawyer 3, Provencher) and public hearings (Station 1, Noël, Martin). The following section, describes the part of the licence renewal process that is conducted prior to the expiry of a licence.

4.3.2 Monitoring

Most participants interviewed were familiar with the CRTC monitoring practices, and the fact that the CRTC only monitors one week of broadcasting during a regular seven year licence renewal period. The details of monitoring were not always known, however, especially to those who had not had experience with the process recently or who were not conducting renewals, such as those from special interest groups. According to Vice-Chairman Arpin, one day of a particular week is chosen, and it is the only one that is thoroughly analyzed and timed to determine the length of chosen musical pieces, news bulletins and advertisements. The rest of the week is overviewed quickly and may be subject to a random listening exercise to verify that log sheets (or run sheets)³² correspond to the actual broadcasts. French vocal music is also checked during the chosen day to ensure that requirements are met (Bonin, 23 July 2009). Although the process may only include one real day of listening, broadcasters (Station 1, Brooke, Martin and Neveu) feel the CRTC is still vigilant because they witness issues of non-compliance found in other provided documents or in timetables other than the day that was fully analyzed (Bonin, 11 August 2009; Bonin, 22 July 2009; Bonin, 6 August 2009b; Bonin, 6 August 2009c).

Importance, according to Arpin (Bonin, 23 July 2009), is also placed on logger tapes to ensure proper taping of broadcasts. In his view, there should be no longer any an issue with logger tapes, other than electrical failures because

³² Log sheets or run sheets are the documents used by radio stations programmers to register the content played on air. These are sometimes modified by announcers to include special requests or other last minute changes.

technology has become quite sophisticated in recent years. Those found in breach of logger tape requirements must provide the CRTC with confirmation from the hydro company that there was, indeed, an electrical outage at the time of monitoring (Bonin, 23 July 2009). When Bertrand was president of the Commission, she recalls taking offense with stations found in breach of logger tape requirements because the number of conditions of licence had been reduced considerably over time. As she says: “The staff also worked hard and so, when we made a point of putting a condition, there, we were not joking, we meant it. So, [...] when there was deviance, finally, that was like a slap in the face because in that respect, it was almost personal, it was because they [the broadcasters] did not take it seriously”³³ (Bonin, 20 July 2009).

One reason for the lack of in depth monitoring has been attributed to the lack of personnel. According to Arpin (Bonin, 23 July 2009), only three people are in charge of analyzing broadcasts. Lawyer 1 also believes that using up all staff resources for monitoring would not be efficient (Bonin, 12 August 2009). Reliance, says Lawyer 1, should be on technological means, such as directly accessing station systems (Bonin, 12 August 2009). According to Provencher (Bonin, 30 June 2009) and Arpin (Bonin, 23 July 2009), this is something the CRTC has already been considering.

All participants agree that licensees are not aware of when they are being monitored and believe that it would be difficult to find out.

Aside from logger tapes, the CRTC also analyzes reports about financial contributions made by stations including CTDs. With regard to failure to comply with these contribution requirements, Arpin (Bonin, 23 July 2009) maintains that

³³ Loose translation of « Le staff aussi travaillait très fort et donc quand on prenait la peine de mettre une condition là we were not joking, we meant it. Et, [...] quand les écarts étaient constants, qu’il y avait de la deviance, finalement, ça là, c’était comme une gifle parce que dans ce sens là, c’était presque personnel, c’était parce qu’ils [les radiodiffuseurs] prennent pas ça au sérieux. »

the infractions are infrequent. When someone is caught, however, it is impossible to go back, so the station owner is allowed a year to pay the amounts missing as well as the current amounts that need to be paid. He agrees that the CRTC is lax in its approach to these infractions, but this may be due to a flaw in the regulation. “The regulation could have a condition, [suggests Arpin], that says in the case of breach, you have three months to pay or something, but it is by the general application of the regulation [...] that they [the owners] find themselves with a year to pay” (Bonin, 23 July 2009).³⁴

When asked how they felt about stations having more than two short duration licence renewals when found in a situation of non-compliance following monitoring, most participants agreed that it was inappropriate. Participants do appreciate the CRTC’s patience as shown in the case of CHOI-FM and even in the case of CKOD-FM Valleyfield (refer to Table 5 for further details). They agree that stations should be given a second chance, but that the CRTC should take more drastic measures after the second or a maximum of three situations of non-compliance (Bonin, 11 August 2009; Bonin, 7 August 2009b).

Another aspect of licence renewals that affects the outcome of the process in some cases is the number of complaints lodged against a station. The understanding of the way complaints are handled was not clear to all participants, and this was demonstrated in the interviews.

4.3.3 Complaints

The special interest groups participating in this research believed, at the time of the interviews, that the CRTC had all complaints at its disposal at the time of licence renewal. The reality, as explained by Bertrand, Arpin, Industry 1 and Cohen, is that the CRTC only has complaints brought forth through appeal from

³⁴ Loose translation of « Le règlement pourrait avoir des subjections qui dit en cas de défaut euh...vous avez trois mois pour payer ou quoique ce soit, mais...c’est par le biais de l’application général du règlement qu’ils se retrouvent à avoir un an pour payer. »

the CBSC and those pertaining to any transgressions of the law or the *Radio Regulations, 1986* (Bonin, 20 July 2009; Bonin, 23 July 2009; Bonin, 7 August 2009a; Bonin, 7 August 2009b). Nonetheless, when there have been cases of multiple complaints, all participants agree that the CRTC has been involved in some way. It seems that those who are well informed about the process do not have any real issues with it; rather it is those who do not understand it who seem to have complaints.

One reason provided by Cohen that explains why people are unaware of the complaint process is the lack of publicity surrounding the CBSC. Though public service announcements are broadcast by schedule at various times of the day, Cohen agrees that a better job of advertising the CBSC could be done (Bonin, 7 August 2009b). In situations where there are numerous complaints, the CBSC does get a lot of media coverage, and every person who sends a complaint to the CRTC instead of to the CBSC receives a letter explaining the role of the CBSC and that it will be handling the complaint as per its mandate (Bonin, 23 July 2009).

The interview with Cohen also revealed that there are often misconceptions about the CBSC. A member of parliament recently proposed a private member's bill dealing with television violence because he understood the voluntary violence code managed by the CBSC not to be mandatory. Contrary to the MP's belief, the voluntary violence code is a condition of licence for all member stations of the CBSC. The word "voluntary" refers to the voluntary adoption of the code by broadcasters in the industry (Bonin, 7 August 2009b). In light of this confusion, the CBSC asked the CRTC to agree to change the name of the code, removing the word "voluntary."

Reoccurring examples of non-compliance provided during the interviews involved performers: Howard Stern, Dr. Laura, André Arthur, Louis Champagne, Doc Mailloux, as well as Patrice Demers and Jeff Fillion from CHOI-FM. All

these people except Howard Stern and Dr. Laura were from stations in the city of Quebec. Lawyer 1 attributes this to a “Quebec issue or a Quebec City issue” as she finds that the city’s *basse ville* (lower town) gets more listeners if it beats up on the *haute ville* (upper town), the beautiful people like Sylvie Chiasson [CHOI-FM case] on the weather station, academics and politicians, a situation she attributes to the city’s class system. Lawyer 1 says that most people in Quebec City’s *basse ville* still believe that even if you are poor and less educated, you are superior because people from the *haute ville* are immoral. (Bonin, 12 August 2009). This, Lawyer 1 believes, is less of a problem in a cosmopolitan city such as Montreal.

Arpin (Bonin, 23 July 2009) and Cohen (Bonin, 23 July 2009; Bonin, 7 August 2009b) concur that very few complaints adjudicated by the CBSC are appealed to the CRTC. Cohen confirmed that there have been a total of only 22 appeals since 1993. The CRTC has supported the CBSC in all its decisions (Bonin, 7 August 2009b). According to Arpin: “in my opinion, that is to Ron’s credit because he does a really good job”³⁵ (Bonin, 23 July 2009). Others agree, and as Industry 1 explains, the CBSC is such a good model that people from around the world have come to see how it works and have adopted it in whole or in part (Bonin, 6 August 2009a; Bonin, 6 August 2009b; Bonin, 7 August 2009a). Furthermore, Industry 1 believes in the soundness of CBSC decisions. Anyone who is not convinced, he says, should read the decisions to realize how seriously the CBSC takes complaints and the time it takes to provide thoughtful decisions, whether one agrees with them or not (Bonin, 7 August 2009a).

“If interest in the CBSC disappears,” according to Noël, “you [broadcasters] will lose self-regulation, and if you lose self-regulation, the Commission will be flooded with files. It won’t make any sense. I will tell you, there are people who complain because they don’t like someone’s voice. We need

³⁵ Loose translation of « parce qu’à mon avis, ça c’est au crédit de Ron, il fait une sacré bonne job. »

to realize that there are many complaints that are completely futile” (Bonin, 6 August 2009a).³⁶

Special interest group representatives interviewed felt that the CRTC should have all complaints with them at the time of renewal to evaluate a station’s performance. Not everyone agrees. Bertrand believes “self-regulation is self-regulation.” You put forth a complaint [...] the broadcaster takes action and modifies his behaviour. [...] if he does not correct the situation, the complaint will be brought up again [...] so this I imagine is sufficient” (Bonin, 20 July 2009). Cohen is of the same opinion. During the interview, he proposed many examples ranging from Howard Stern, and Doc Mailloux to Dr. Laura, where stations corrected their problems and issues did not have to be taken further than the CBSC. As an example, this is what he said about Howard Stern and his on-air use of profanity, prejudicial and demeaning commentary:

Howard Stern came to Canada in September of 1997, September 2nd 1997. November 11th 1997 we rendered our decision, 2 months and 9 days later³⁷, the program never went to another city in Canada outside Toronto and Montreal. We knew that it was slated to go to a number of different cities in Canada. It was never picked up because broadcasters I think, ah...intelligently, waited to see what the result of the decision would be. In other words, why not wait. [...] He arrived on September the 2nd; it was clear within a couple of days, after that the complaints were flooding in, and I think that they wisely decided, well let’s just see what the outcome of this is before we plunge in, because Stern was looking for a multiyear agreement I believe. No one ever showed me the contracts, but I believe that the contracts were all multi-year agreements, no cut, no change, no touch, no nothing, and they decided to wait. Our decision came out quickly, and it never went to another city. And, by August of 1998, it was off the air on the CHUM broadcaster in Montreal, CHOM-FM. It lasted the full, what was the full three years of the agreement, on first WIC and then its successor entitled Corus Entertainment. It lasted there a full

³⁶ Loose translation of « À partir du moment où y’a pas cet intérêt là, je vais vous dire que vous allez perdre l’autoréglementation, puis si vous perdez l’autoréglementation, le Conseil va être inondé de dossiers. Ça n’aura pas de bon sens. J’va vous dire qu’il y a des gens là, qui portent plaintes là parce qu’ils n’aiment pas le son de la voix de quelqu’un. Faut réaliser là qu’il y a beaucoup de plaintes qui sont absolument futiles. »

³⁷ The CBSC decided that the stations airing Howard Stern were in fact in breach of the industry’s Code of ethics and Sex-Role Portrayal Code.

term of the first two...but the program was edited on a daily basis as a result of what we said needed to be done in our decision. So, the Howard Stern show as powerful as it undoubtedly was, nonetheless, was dealt in a way that was peculiarly Canadian as a result of our decisions (Bonin, 7 August 2009b).

In the case of Doc Mailloux³⁸ at CKAC-AM, the owners ultimately decided to repurpose the station before the CBSC's decision was even rendered. And, in the Dr. Laura case,³⁹ she was taken off the air. The CBSC deemed it unacceptable to discuss homosexuality the way she did. More precisely, the CBSC said her comments were abusive and unduly discriminatory.

Cohen believes the industry has managed to solve most problems itself by self-correcting. Due to a recent case (which he did not identify), he is considering how to handle repeat offenses and how to determine with what frequency a repeat offense must occur to be seen as an issue. For instance, if a station repeats the same offence twice in seven years, is that a problem, or does it become a problem if raised three times in seven years? Lawyer 2 agrees that this is the main issue "if you've got a long licence period and you are offside a number of times, and people have complained about it and it comes out at the renewal hearing, on the grand scheme of things it is very tough to rank the importance of...are they one off infractions or is there a consistent pattern of infractions" (Bonin, 22 April 2009a). In Lawyer 2's mind, you need to "be pushed pretty far to actually revoke the licence and it is a judgment call for them [the CRTC commissioners]" (Bonin, 22 April 2009a).

³⁸ Doc Mailloux is a psychiatrist who was made famous for his French-language talk show where he often made controversial on-air comments that were reprimanded in 2002 by the Quebec medical association (Le Collège des médecins) and in 2005 by the CBSC. In this latter case, he was said to have made "specifically-focused abusive and unduly discriminatory remarks" toward ethnic groups when discussing immigration. His show ran from 1995 to 2007 on CKAC Montreal. For further details, enter "Doc Mailloux" as a keyword in the www.cbsc.ca search engine.

³⁹ Dr. Laura Schlessinger is an American radio talk-show host. Her famous call in show was aired on several channels in Canada. Complaints arose in 1999 because of her treatment of gays and lesbians. She often referred to their sexual behaviour as deviant. Among other things, The CBSC found the host to be abusively discriminatory and in violation of the human rights provision of the CAB code of ethics. To view the decision, consult the CBSC website via the following link: <http://www.cbsc.ca/english/decisions/2001/010314.php>

Similarly, Cohen questions how much time it should take for a station to regain its legitimacy (Bonin, 7 August 2009b). How much time is required for a station to redeem itself once a situation of non-compliance has occurred? He compares the situation to demerit points for driving. Following an offense, eventually, the driver regains his / her points (Bonin, 7 August 2009b), even if it does take a certain period of time for someone's dossier to be cleared from a previous incident. Currently, there is no rule determining the boundaries for so-called redemption, neither at the CBSC nor at the CRTC.

The next section discusses results pertaining to the CRTC tools and practices in decision-making.

4.3.4 Decision-making

A reference document the CRTC often uses in its decision-making is Circular No. 444 (see Appendix G for further details). This document outlines how the CRTC proceeds in cases of non-compliance and explains the main pitfalls of non-compliance. It was only created in 2001. According to Arpin (Bonin, 23 July 2009), the elements of non-compliance highlighted by the CRTC were based on previous experience. The CRTC mainly uses Canadian content and French vocal music requirements, logger tapes, programming lists, CTD contributions, interventions (if any) and conditions of licence as their criteria to renew or not to renew a licence (Bonin, 23 July 2009). Interventions (regardless of the stakeholder), according to Arpin (Bonin, 23 July 2009), are often not addressed directly in the decisions because the CRTC often takes a point of view which encompasses what the person intervening was trying to say. "We take it into account and we jot it down, but without really attributing it to anyone. It

becomes the Commission's opinion. It is the Commission's vision,"⁴⁰ he concluded (Bonin, 23 July 2009).

The interview with Bertrand highlighted the decision-making process while she was leading the Commission. Meetings were held once a month with the broadcasting committee and it was during these meetings that licence renewals were discussed. There was a presentation of the various files by a staff member, who then recommended a decision. A discussion period followed. There was usually a consensus from staff members prior to the presentation, but it often took time before the committee reached a consensus. Bertrand also mentioned that when an issue concerned a particular region, the commissioner representing that area would often have a fuller understanding of the area and would bring that to the table for discussion (Bonin, 20 July 2009).

Many participants felt decision-making at the CRTC to be a long process. But according to Lawyer 2 and Noël, improvements have been made in decision-making wait times. Decisions seem to be rendered faster in the last couple of years (Bonin, 22 April 2009a; Bonin, 6 August 2009a).

4.3.6 Objectives of the Broadcasting Act

Criteria were also discussed in relation to objectives of the *Broadcasting Act, 1991*. Considering the current media landscape where a few conglomerates control most of the Canadian media, Bertrand (Bonin, 20 July 2009) and Neveu (Bonin, 22 July 2009) believe that more criteria and achievement goals may be necessary to cover diversity and local content. However, Bertrand (Bonin, 20 July 2009) believes this may already be addressed. That broadcasters face fewer obligations is a reflection of the loss of exclusivity in licences. Since other platforms, such as the Internet, also provide access, radio is no longer an

⁴⁰ Loose translation of « [O]n en tient compte et on le note, mais sans nécessairement l'attribuer à qui que ce soit. Ça devient l'opinion du conseil. C'est la vision du conseil. »

exclusive provider of content and the privilege attached to owning a station is no longer as important as it used to be. The question of diversity may very well be answered by new media, like the Internet, now part of the mix (Bonin, 20 July 2009). In the view of Industry 1, when unregulated media become more powerful than the regulated media, thereby reducing the asset value of regulated media, the question of CANCON will have to be addressed as regulated players compete with those who have no such obligations (Bonin, 7 August 2009a).

At the present time, however, there is still value in these assets, and as Arpin explains, CANCON has done good things for the industry: “In the radio industry, I believe that we achieved the objectives of the cultural policy by the different financial programs in place, be it Musicaction, FACTOR, le Fonds RadioStar, StarMaker Fund”⁴¹ says Arpin (Bonin, 23 July 2009). In his view, CTD contributions, which have bolstered the development of Canada’s music industry (Bonin, 23 July 2009), are one of the best things to come out of the licence renewal process. Station 1, Brooke and Provencher also demonstrated a strong attachment to CANCON as they feel it is the core of the effort to reflect Canada to its people (Bonin, 6 August 2009b). In terms of criteria, Provencher would even like to see more to ensure that new artists have a place on the airwaves. She is patiently waiting for the CRTC to render a decision on this very issue, which began with a public process in 2007 (Bonin, 30 June 2009).

Bertrand feels that the current criteria used by the CRTC to evaluate licence renewals generate the most relevant discussion with the Commission because they take into account social, economic and cultural aspects of broadcasting (Bonin, 20 July 2009). Nonetheless, others feel the criteria to be insufficient (Bonin, 12 August 2009; Bonin, 22 July 2009). Lawyer 1, in particular, believes that the CRTC should never have deregulated regulations related to format, or should at least include format in its evaluation of licence

⁴¹ Loose translation of « Dans le domaine de la radio, je pense qu’on a bien atteint les objectifs de la politique culturelle par les divers programmes de financement mis en place, que ce soit musicaction, factor, le fonds radiostar, starmaker fund. »

renewals. Arpin concurs that not having format as a criteria poses a problem, since it is considered in initial licence applications (Bonin, 12 August 2009; Bonin, 23 July 2009). Provencher is also in agreement. She believes stations that made promises at the time of initial licence application should be held to the format they agreed to broadcast until they request and obtain approval for a formal change (Bonin, 30 June 2009).

Lawyers 2 and 3 agree that the Commission makes sure stations satisfy certain objectives, such as Canadian content, but they find that much of the process relates to administrative aspects, such as logger tape requirements and record keeping (Bonin, 22 April 2009a; Bonin, 22 April 2009b).

In addition to missing criteria, other problems with the licence renewal process caught the attention of study participants.

4.3.5 Problems with(in) the process

Although all participants agree that the CRTC does its best to be fair and equitable to licensees, some still feel that smaller stations are often treated differently than those belonging to large corporations (Bonin, 11 August 2009; Bonin, 6 August 2009b). Station 1 described how the CRTC is more demanding of smaller players (Bonin, 6 August 2009b). This may be due to the fact that small stations are those most often found in breach of conditions of licence or regulations (Bonin, 23 July 2009), or it may be because some stations are not prepared to take on the responsibilities attached to their licences, including financial support they must provide for CTD or other financial requirements (Bonin, 11 August 2009). Licensees from small stations may also lack the know-how necessary to sustain their operations because they are more familiar with content than with operations management (Bonin, 6 August 2009a). Noël also maintains that larger corporations are more often in contact with the CRTC because they manage many files at once, which may provide them with more

knowledge of the system (Bonin, 6 August 2009a). Larger corporations may also have fewer problems because most are publicly traded and must meet high standards. The idea of being found in breach is embarrassing (Bonin, 12 August 2009; Bonin, 23 July 2009). In contrast, Lawyer 1, believes that small stations still get attention, claiming that the CRTC bends over backwards to help them (Bonin, 12 August 2009). Having witnessed it first hand in cases of non-compliance, Noël concurs (Bonin, 6 August 2009a). This idea of inequity is often brought up by participants in relation to licence acquisitions more than in the case of licence renewals. Industry 1 believes there may be some discrepancies when looking at one or two decisions, and maybe even in a series of decisions, but the real test of equity is over time. For Industry 1, the track record of the Commission should be considered over a period of time that includes hundreds of decisions and in this context, one should not find too many inequitable situations (Bonin, 7 August 2009a).

Resources were also a contentious issue among participants such as Station 1, Industry 1 and Brooke. They believe that the CRTC has sufficient human and financial resources to get its job done or at least, as Lawyer 1 suggested to do the best they can with what they have (Bonin, 11 August 2009; Bonin, 12 August 2009; Bonin, 6 August 2009b), but others like Arpin, Martin and Neveu (Bonin, 22 July 2009; Bonin, 23 July 2009; Bonin, 6 August 2009c), feel the CRTC could use increased resources to accomplish more and do tasks better. Regardless of the resources available, most participants agree that the process takes a lot of time (Bonin, 11 August 2009; Bonin, 22 April 2009b; Bonin, 6 August 2009a; Bonin, 6 August 2009c). Arpin attributes much of the administrative slow-down to the number of reports the CRTC must produce. The Commission is held accountable for the same reporting and administrative paperwork as much larger government departments. In his opinion, this involves too much of the workforce detracting its focus from the primary mission of the CRTC (Bonin, 23 July 2009). Paperwork is also an issue for broadcasters, who mentioned that the streamlined process for renewals does not yet include a

streamlined process for filing applications (Bonin, 22 July 2009; Bonin, 6 August 2009c). According to Martin, if you have 30 licence renewals, you need to fill out a questionnaire 30 times, much of which includes the same information (Bonin, 6 August 2009c).

Pineau, as an outside observer, is also frustrated with paperwork: “I admit that every time I search in there, I pull my hair out. I admit that sometimes I have to call them a few times to find out how come I can’t send something electronically in one [case], but I can in another. There is a certain transparency, but there is a certain administrative opacity that comes with it” (Bonin, 15 July 2009).⁴² Provencher has also had her share of problems with paperwork. She says that with the reduced resources, public files are not always complete (Bonin, 30 June 2009). She makes more phone calls, trying to locate documents, than before.

As Noël, Martin, Provencher and Pineau mentioned, many issues are also related to recent CRTC staff turnover, which they say has a direct impact on efficiency. Provencher has sometimes had to speak to three people to find the information for which she was looking. Considering her own familiarity with the system, and difficulties she has experienced, she is worried that members of the general public may not be able to find information they require (Bonin, 30 June 2009). According to Noël (Bonin, 6 August 2009a), Martin (Bonin, 6 August 2009c) and Pineau (Bonin, 15 July 2009), new employees need to reach the top of their learning curve to become informed about an industry with which they are not often familiar.

Another difficulty in the process, according to Arpin (Bonin, 23 July 2009), Bertrand (Bonin, 20 July 2009), Industry 1 (Bonin, 7 August 2009a), Lawyer 2 (Bonin, 22 April 2009a), Noël (Bonin, 6 August 2009a) and Pineau

⁴² Loose translation of: « J’avoue que chaque fois que je fouille là-dedans là, je m’arrache les cheveux. J’t’avoue que des fois, je suis obligé des appeler des fois pour savoir comment ça se fait que celui-là, je peux pas envoyer électroniquement dans celui-là, alors que celui-là, je peux. Enfin, il y a une transparence, mais il y a une certaine opacité administrative qui vient avec. »

(Bonin, 15 July 2009), is the lack of tools available to the CRTC to enforce the laws and regulations. They believe the CRTC should be able to levy fines, because the gap between a ‘slap on the wrist’ and the revocation of a licence is too large, and there does not seem to be a graduated scale. The act of revoking a licence is “draconian [...] someone loses their business, the station goes down, maybe it gets sold or whatever,” Lawyer 2 observed (Bonin, 22 April 2009a). Pineau calls the revocation a “nuclear weapon” (Bonin, 15 July 2009). In consequence, Neveu is not afraid of licence renewals; she feels stations like hers, which have been found in non-compliance, sometimes more than once in a licence term, will inevitably be renewed (Bonin, 22 July 2009). She does feel, however, that the CRTC’s evaluation criteria for renewals are not strict enough (Bonin, 22 July 2009).

Lawyer 1 has a problem with the fact that the Commission finds it difficult to provide a non renewal to a station that has received ample notice and an opportunity to fix its problems (Bonin, 12 August 2009). As Industry 1 contends, it is not possible to be a sheriff without a badge and gun (Bonin, 7 August 2009a). Not all participants feel this way, however. For one in particular, the possibility of appeals to Cabinet and the court is sufficient (Bonin, 6 August 2009b), but this is a dissenting opinion, as most find problems with these routes, particularly in an appeal to Cabinet where there are no precedents for decision-making (Bonin, 6 August 2009a; Bonin, 7 August 2009a).

All participants nonetheless agree that short renewals are a deterrent for most as they are costly and disruptive. Short renewals also make it difficult for stations to get banks to loan them money (Bonin, 12 August 2009; Bonin, 6 August 2009a; Bonin, 6 August 2009b).

Pineau also raised the fact that the CRTC has become a real centre for lobbying, a situation he does not approve:

“You know, there is more and more behind the door, [...] the CRTC is really a place where we do lobbying ah...intensive

lobbying, it is not a tribunal, it is a lobby. I do not know if the copyright tribunal is subject to as many direct representations from people who regulate, but at the CRTC, it is common, from all sides. We can all do it, and all do it by the way.”⁴³

Finally, Noël, Martin, Provencher and Station 1 mentioned their frustration with the current CRTC administration as they feel that deadlines for supplying information and comments has increased at a rate with which they cannot keep up (Bonin, 30 June 2009; Bonin, 6 August 2009a; Bonin, 6 August 2009b; Bonin, 6 August 2009c). There is also a sense that the CRTC, or rather its Chair, does not know where it is going, given on a few occasions he has changed his mind about the content of public hearings either the night before or the morning of the event (Bonin, 6 August 2009a; Bonin, 6 August 2009b).

Although there are problems, suggestions for improvement, were also noted.

4.3.6 Improvements to the process

According to Arpin (Bonin, 23 July 2009), the CRTC is in the process of making improvements that will further advance streamlining. The Commission has drafted a new procedural policy that will unify some telecommunications and broadcasting policies to help commissioners, staff and others avoid common confusions between the current rules of procedure for telecommunications and those used in broadcasting. Arpin also maintains that the CRTC is doing the strict minimum of monitoring. Since it only really looks at one day in seven years, so he hopes the CRTC will find ways of doing this better, considering there are only

⁴³ Loose translation of : « Tsé, il y a de plus en plus de behind the door, c’est devenu...le CRTC, c’est vraiment un endroit où on fait du lobby euh...du lobby intensif, c’est pas un tribunal, c’est du lobby. Je ne sais pas si le tribunal du droit d’auteur est soumis à autant de représentations directes de la part des gens qui réglementent, mais au CRTC, c’est commun là, de tous côtés. On peut tous le faire et tous le font d’ailleurs. »

four people involved (1 coordinator and 3 analysts) in system monitoring (Bonin, 23 July 2009).

According to Brooke, in order to retain the Canadian character of our media, the CRTC should continue to fight the possibility of majority foreign ownership (Bonin, 11 August 2009). Industry 1 believes licences should be reconsidered in a larger framework that includes all media. The CRTC should consider licences on a corporate or group market basis, for all media owned by a particular conglomerate or available in a particular market area. This process, Industry 1 maintains, would ensure standardization, reduce the industry burden, and avoid piece-meal or case by case renewals (Bonin, 7 August 2009a). Another improvement suggested by Industry 1 would be for the Commission to include copyright expenditures as part of the contributions made by the industry. At this time, these costs are not discussed in renewals, but they are an integral part of the broadcasting system, and of the actual cost of running a station. This money may, in some cases, be funding people who are getting help from other funds (Bonin, 7 August 2009a).

Neveu would appreciate CRTC telephone support or even face-to-face support to deal with paperwork which she finds complicated, particularly because she is new in her job (Bonin, 22 July 2009). As Noël and Martin mentioned, the CRTC is not known for good quality in its approach to service (Bonin, 6 August 2009a; Bonin, 6 August 2009c).

4.4 Conclusion

This chapter described the results obtained through a variety of data collection methods. It began by describing results obtained through analysis of case results. Topics covered included conditions of licence, duration of licences, non-compliant licence renewals, comments provided, reminders, and additional renewal information. The second section discussed the results of broadcasting

policy monitoring reports from 2000 to 2007, highlighting major reoccurring themes and differences in document content, and presenting data relevant to the study. Finally, the qualitative data from telephone and face to face interviews were presented, highlighting answers to questions about relationships between different stakeholders, the mechanics of the licence renewal process, the monitoring process, the way in which complaints are handled, decision-making processes, decision-making criteria and the objectives of the *Broadcasting Act, 1991*, problems with the process and suggestions for improvements. Although these results are interesting in themselves, their importance and the way they intersect with one another need to be further explained. This discussion follows in the next chapter.

5. Discussion

This chapter will explain and discuss observations presented in Chapter 4. These are examined using three overarching themes that were brought to light by analyzing data obtained through the examination of licence renewals and annual reports, as well as in interviews. The three themes include process, decision-making, and accountability. These highlight converged data and the relevant literature to explain what was uncovered in this study to achieve the research objectives as described in the introduction and methodology chapters.

5.1 The process

Following analysis of the case documentation, annual reports and interviews, as proposed in the adapted methodology, results were compared to determine if any aspects of the evaluation process aid or impede the CRTC's ability to hold radio licence holders accountable to their conditions of licence, the objectives of the *Broadcasting Act, 1991* and the commercial *Radio Regulations, 1986* and *2006*.

As mentioned in the literature review, the CRTC licence renewal process has never been formally documented, but Salter and Odartey-Wellington (2008) have provided a general understanding of the process and some CRTC documentation has referred to it. It was therefore possible to compare these prescriptive elements with research findings. The first difference observed relates to the written process. For most cases covered by the time period in this research, the renewals were conducted through a process communicated on paper; what has not been mentioned previously is the importance of public hearings in cases of non-compliance and, in the last couple of years, the possibility of having public hearings to assess the performance of a series of stations at once, regardless of their compliance status. Information pertaining to the use of public hearings in cases of compliance was only identified in interviews. Therefore, a comparison

between the two processes in terms of accountability is not possible. Consulting the *Broadcasting Act, 1991*, it is quite clear that the CRTC is not over-stepping its authority in subjecting stations to public hearings regardless of their state of compliance. As Part II, section 18.2 states, the CRTC “shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such a hearing is not required in the public interest” (Canada, 1991). Section 3 also provides that the “Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so” (Canada, 1991). In other words, the CRTC may hold a hearing at its discretion if it believes the topic is of public interest.

The difficulty, therefore, is not in determining if the CRTC has the right to hold hearings, or if the process itself is worthy of public interest as the *Broadcasting Act, 1991* prescribes, but rather to determine the definition of what topics constitute a matter of public interest. Secondly, is there evidence that a paper process would be more efficient and provide the same public interest value as a public hearing? As industry 1 has indicated, radio is a regulated business, so the topic is in and of itself of public interest; no evidence has yet proved that a discussion on paper would serve the public interest better than a dynamic dialogue in a public space (Bonin, 7 August 2009a). An article by Smith (1984) suggests that while public hearings may involve the public and representatives of different stakeholder groups, they are not necessarily the best way to gauge public interest. It is believed that the public participation aspect of hearings have become symbolic of predictable formality making them “severely deficient as information receivers and poor facilitators of dialogue, as viewpoints tend to polarize, leaving little opportunity for accommodation or compromise” (Smith, 1984, p. 256). Furthermore, it is felt that public hearings are perceived by the public as “quick, cheap and simply administered” and part of a procedure rather than as a real outlet for public participation. This observation is supported by this research, by the

reluctance of stations to participate in hearings, and by the frustration with the workload involved, and the associated financial obligations.

The alternative is not necessarily a paper process. According to research on the evaluation of public participation methods, perhaps a hybrid between traditional methods would be more effective. Rowe and Frewer (2000) suggest, for example, that surveys can be used prior to public hearings as a way of determining issues of contention. Another solution they mention is to use citizen panels comprised of individuals to balance the other positions during public hearings (p. 24-25). Both methods would be worth trying, as long as they were evaluated for efficiency and effectiveness by experts in the broadcasting context prior to implementation. Even before trying these tools, however, an evaluation of public participation in the current public hearing context would be warranted, if anything to confirm Smith's (1984) critique of public hearings in Canada which, he believes, ignore the "real" public interest. Chess and Purcell (1999) suggest that perhaps a starting point might be to set some process goals rather than relying solely on outcomes. In other words, the success of public participation in the process should not be measured by the outcomes alone, but rather by the quality of the participatory process used to achieve the results, regardless of who benefit.

As revealed through interviews, ultimately, and notwithstanding its flaws, the CRTC renewal process seems generally acceptable to stakeholders. An aspect that clearly hinders CRTC efficiency concerns the paperwork involved in the process. The workload seems to increase with public hearings, even though participants claim that adding this step to the process is part of the CRTC's interest in further streamlining. Multiple explanations for bureaucratic difficulties can be found in what Martin (Bonin, 6 August 2009c) said in regard to the replication of forms and in the fact that reduced paperwork does not seem to follow the suggested leaner processes being implemented. The *Broadcasting Act, 1991*, states that "the Canadian broadcasting system should be regulated and supervised in a flexible manner that is sensitive to the administrative burden that,

as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings” (Part II section 5.2 g). This suggests that perhaps the streamlining process is an area that has not been objectively assessed by the CRTC with regard to the *Act*.

Administrative renewals, as revealed in the interviews, are not generally a problematic part of the process. Some cases, which are not relevant to those discussed here, have been found to be renewed administratively, perhaps more times than acceptable, but since they are not in the purview of this study, we will not address them further.

Discrepancies that have been found in the cases studied appear to be the result of the CRTC’s preference for case by case treatment rather than its supposed desire to streamline processes and uphold values such as transparency and equity. Examples such as CKRW-FM, CKTB-AM and CHNS-FM, where the two first stations received three-year renewals and the last station received a four-year renewal, essentially for breaches in levels of CANCON are cases in point. The more blatant case of CKOD-FM in Valleyfield where multiple renewals were given, notwithstanding non-compliance, show exactly how the CRTC has individualized certain cases, rather than objectively evaluated them using a specific set of criteria and guidelines. Though these tools exist, they are still not used the same way by all participants in the process.⁴⁴ Case-by-case renewals are also impacted by the CRTC’s structure and appointment process. The appointment of the Chair of the commission and the commissioners is made by Cabinet, with the political views and influences of the party in power. Because of this, as Industry 1 mentions, when there are problems with internal motivation, cohesion and respect for leadership, there is nothing the Chair of the commission can do, as it is virtually impossible to fire commissioners who were appointed by the government. Some solutions could include the establishment of a more

⁴⁴ The evidence and criteria used for decision-making can be found in table 17 in section 5.2 of this chapter.

democratic process, to allow the public and other stakeholders to voice their concerns. Considering current public access to media in Canada, elections could be an option. Worldwide, the trend seems to be to find solutions that increase the public aspect of media and telecommunications rather than to let corporate-commercial activities expand and be directly influenced by state intervention (McChesney & Schiller, 2003).

Also noted was the lack of continuity within the Commission. It once seemed to rely on the permanence of full-time staff, but with recent retirements and a high turnover in the latter period of this study, the composition of the CRTC, is almost in as much flux as the industry it seeks to regulate.

Variations in personality and types of leadership have also influenced the decisions as observed by interviewees. This is consistent with much of the business administration literature that has found many links between leadership style, personality and decision-making.⁴⁵ The media industry is no different from other industries in this respect. As Streeter (1996) pointed out, commissioners or representatives of a regulating body are those who are:

“certified as specially qualified (by training or office) [and] are granted the right to have a direct influence upon the decision[s]” (p.126) made in the best interest of the people of our societies, but they are plagued with “imponderables” that are subject to interpretation such as “moral values, canons of aesthetic taste [and] religious matters” (p.115)

which influence decisions whether implicitly or explicitly. They function in “institutional structures, organized activities, and patterns of interaction” (p. 116) that make up the policy process, or in this case, the licence renewal process. As suggested by Blevins and Brown (2003), one possibility to address this would be to provide clear position descriptions for commissioners. This would define their specialties to avoid confusion in decision-making. As Arpin (Bonin, 23 July 2009)

⁴⁵ See for example: (Ahmad, O'Regan, & Ghobadian, 2005; Tatum, Eberlin, Kottraba, & Bradberry, 2003).

mentioned, commissioners sometimes get confused in their decisions because rules in broadcasting and telecommunications differ, and some people have more knowledge of one particular industry.

Finally, the vagueness of the *Broadcasting Act, 1991* as mentioned by Lawyer 1, further explains decisions. According to this interviewee, the ability to achieve the objectives of the *Act* is like driving through them with a truck because they are many and often overlap. Finding the right balance in the process to make sure everything is done in an equitable manner is influenced by how one interprets and enforces the *Act*.

In short, instead of employing a replicable frame of reference, the CRTC focuses more on politics than policies, be it politics with a “big P” or politics with a “small p.” Questions pertaining to stakeholders’ relationships with the CRTC and broadcasters (see appendix H) revealed that regardless of the CRTC’s political tendencies and the criticism expressed in this research, stakeholders still recognize that they generally have a “good relationship” with the CRTC (Bonin, 6 August 2009a; Bonin, 22 April 2009a). Noël and Lawyer 2, probably best describe the situation by explaining how, at times, various players in the system have different jobs to do, which alters how they view the CRTC and its role or even their own role, but by and large, they maintain a good relationship with the organization.

The same can be said about broadcasters, who some stakeholders do not deal with directly, but who are concerned with the role they play in the system. A general sense of well-being is an important foundation to achieving superior performance and instilling trust that will benefit all players in the system. As Kramer, Brewer and Hanna (1996) explain, “successful cooperation depends, at least in part, on the willingness of individuals to engage voluntarily in behaviours that further collective aims” (p. 358). This aspect of the process is essential, but it is not clear if research participants are aware of the benefits of having such a

positive relationship. For example, although Provencher (30 June 2009) made public comments that could negatively impact decisions related to broadcasters, who are essential partners in upholding her music operation, her real goal is to foster change in the system that would, in her opinion, benefit all parties involved in the broadcasting system and increase accountability.

Problems remain which are not necessarily within the control of the people in the process. That is the case for the conditions of licence listed in Table 3. In total, 17 types of individual conditions of licence were recovered from the case sample, but few are relevant to more than one station. Noted differences are more likely attributed to the fact that many stations were in a transitory state during the period examined. The CRTC was modifying most licences to only include a small number of conditions that represent a majority of stations rather than issuing specific conditions for each station. This process was supposed to ensure a minimum of standard conditions that would apply to most stations, thereby avoiding discrepancies and reducing the need to analyse different conditions at each renewal. Examining a period prior to 1997 would reveal a longer list of conditions because more emphasis was given to promises of performance in applications for licence. This emphasis was lost along the way. Stations being given conditions of licence on a case by case basis when they are owned by conglomerates rather than individuals make such an approach unrealistic as a way of ensuring equity and transparency. The CRTC's workload, also no longer permits an approach that would favour case by case renewals. This is supported by Bertrand's (Bonin, 20 July 2009) comment that conditions of licence were reduced substantially after her arrival at the CRTC. It is understandable that some differences must remain in this respect because station formats require particularities such as ethnic spoken word programming, musical content, and so forth.

What should be made of the attempt to streamline conditions of licence? How does this process affect the efficiency of the process and the CRTC's ability

to ensure accountability? Like all decisions, there are pros and cons. In this case, however, the positive seems to outweigh the negative. For one thing, fewer conditions of licence to monitor increases the chances of equity among the stations, as it is easier to compare them to ensure an overall degree of compliance. According to station owners, fewer conditions of licence also help reduce barriers to entry, and increase competition. Advertising regulations, for example, may reduce the possibilities of revenue for stations starting out, while regulations involving hit quotas may discourage local talent from being heard and limit ad revenue. Fewer conditions of licence may also significantly reduce the standards of operation. One such condition involves formats. As it was previously mentioned, formats are thoroughly examined when applications for new stations are made, but not considered as conditions of licence (Bonin, 23 July 2009). This gives stations *carte blanche* when it comes to defining their station brand, and has a significant impact on the demographic that was initially intended to be served. In short, if a station promised to provide grunge music for teenagers at its initial acquisition hearing, once the licence is awarded nothing prevents the owner from deciding to offer heavy metal music instead, as long as its Canadian content or French-language quotas are met.

Some of the commonalities in the cases relate to the language used, since decisions are expressed as standard documents, reminders and the wording used to explain conditions of licence are similar from one case to another. As Bertrand (Bonin, 20 July 2009) noted, there are only so many ways to say the same thing. Furthermore, they are based on legal terms specific to the industry, which cannot be significantly altered from one time to the next. The use of this language is beneficial to standardization, but may be difficult for an outsider, or a member of the public to grasp, given industry-specific vocabulary. An example is the voluntary violence code as described by Cohen (Bonin, 7 August 2009b). Nevertheless, the CRTC should continue to maintain consistency with regard to the language used in its decisions, but should consider the impact on actual policy.

The way things are written do have an impact on how policy is implemented (Abramson & Raboy, 1999).

One of the conditions of licence mentioned in almost every case is the employment equity clause, which, in most cases, encouraged stations to comply with the *Employment Equity Act* or mentioned that they were subject to it. Although it was stated as “encouragement,” it was still included in the section on conditions of licence; it is obvious, however, that the weight of the statement was less than if it were stated as “must comply” or “subject to.” According to a Human Resources and Skills Development Canada (HRSDC) workplace equity officer, however, the CRTC was never responsible for enforcing the employment equity program (Manigat, 21 May 2009). Since 1985, all organizations under federal jurisdiction have to comply. The first federal report on employment equity was published in June 1987. Since 1996, the Human Rights Commission is responsible for enforcing the law. The Human Resources official has been with his organization for ten years, he says he was not even aware the CRTC had such a clause in its licences. The changes in wording from “encouraging” to “subjecting” stations, in his opinion, was something the CRTC decided and was not imposed by HRSDC. The result, although not particularly relevant to the case of licence renewals, does establish consistency within the CRTC’s practices and provides an example of the types of clauses found in the renewals.

Before moving the discussion to the particular decision-making aspect of the process, it is important to assess the CRTC’s performance with regard to the technical aspects of the licence renewal process. To do so, attention was given to the quarterly reports on service standards for processing broadcasting amendments and licence renewal applications which the CRTC has published and made public since 2007. These documents include information on the number of renewal applications filed via an administrative route or a public notice route, with or without renewals. According to the lawyers interviewed, the renewal process had been very long and tedious, and the streamlined approach to renewals

was well accepted in the industry. The streamlined approach basically serves to expedite renewals that are not problematic (no situations of non-compliance) and that have standard conditions of licence. Table 14 shows the results available to date and although one would have expected an improvement from one year to the next, results show the contrary. This could be for many reasons, including new public hearings that are consuming more time, the fact that the CRTC has not yet modified its documentation to expedite the process, or that it simply had more cases in the past year. Regardless, with only two periods available, it is too early to consider the CRTC's performance in this regard. It will be interesting to monitor changes in further years, although the many variables affecting these numbers would need to be clearly identified and included for a complete assessment.

This section has concluded that the technical aspects of the licence renewal process are generally well-understood and that what is prescribed is generally what takes place, except in cases of public hearings. What the process means to each person, and how it is interpreted, however, varies depending on the stakeholder. This is problematic, given that a business process should be systematic, "logically related [...] and performed together to produce a defined set of results" (BusinessDictionary.com, 2009). The impact of variations in interpretation is significant, but more important is the impact on the actual process, which results in inconsistencies. Are these inconsistencies more attributable to a particular factor? Is concern warranted given that there are only a few inconsistencies? In other words, is this the most we should expect, given the changing workforce, varying leadership, and external political and social influences? The CRTC can do better to streamline processes. To do so would require a departure from the case by case analysis that the Commission has favoured. It would also move away from an approach preferred by industry, particularly when it suits its interests. Another question to be asked is to what extent the criteria and guidelines provided for this process are being used? Are they worded in such a way that allows for inconsistencies? This research makes it

clear that they are generally the same for all, but again, interpretations and especially time limits, are variable. As such, the CRTC should determine what it considers as acceptable and unacceptable limits for its different criteria. These limits are particularly relevant when assessing the ‘softer’ aspects of the process involving human intervention, mainly decision-making, which is the topic of the next section. These are based on values such as accountability and transparency, which will also be addressed.

5.2 Decision-making

As Streeter (1996) explains, the attempt to make policy into “a neutral, calm, reasoned, carefully moderated process” is in the realm of utopian desire or thought, as proper regulation is always impacted by those who create it (p. 125). Decision-makers have values and political tendencies that influence their decisions, not to mention the external pressures from various advocacy groups and political parties that advance their ideas on a daily basis. As Huisman (2001) explains, “talk-in-interactions” that take place during decision-making meetings have three primary characteristics including subjectivity, interactional situations – that is the way speakers formulate their issues related to the situation in which they find themselves – and interpretive leeway (p. 80-82). It is not necessary to eliminate the pressures in the dynamic process which is policy making, but rather to understand at what level the pressures intervene and to find ways to direct them to comply with stated aims and objectives.

The situation involving station CKOD-FM in Valleyfield is further illustrative. Many participants explained (on and off the record) how the commissioners based their decisions involving this station on sentiments they felt for the owner (primarily pity) and his promises, rather than on the physical evidence that demonstrated his incapability to respect the conditions of his licence. The five non-compliant renewals offer compelling evidence that something more was at play, since the repetitive non-compliance was not seen as

reason enough to revoke the licence. What exactly are the factors at play? Why does a station like CKOD-FM in Valleyfield continue to receive renewals when CHOI-FM's licence was not renewed? Some will see that the cases are quite different, even if both involved the station owners' inability to follow the rules. Valleyfield's non-compliance has been attributed solely to the station owner's personal financial problems and personality, whereas the CHOI-FM case began with comments made by announcers, but ended with the owner's unwillingness to obey the law. For others, such as Noël (Bonin, 6 August 2009a), the answer can be found in the commissioners' difficulty to make tough decisions. After analyzing the information obtained in the different analyses, there seem to be three main reasons for the Commission's reluctance to 'pull the plug' on non-compliant stations.

The first reason is related to the status of serving as a commissioner. Certain commissioners can be compared to university professors who become chairs of their departments. Becoming chair usually involves a term assignment like that of commissioners, approximately five years. The professor who is appointed chair becomes the director of his colleagues for the term of the assignment. This has its own set of issues, as Hecht (1999) reports, including complex relationships with colleagues, a loss of collegiality, and isolation (p. 2). That a professor returns to his faculty position once the administrative term is over raises some similar issues associated with the positions of commissioners. Chosen for their familiarity with media, once they complete their mandates, commissioners can return to positions in the broadcasting industry, which as revealed in the interviews, can be as consultants or in other functions where they will have direct contact with those they were responsible for regulating. Critically, this questions their ability to remain independent in their decision-making and may explain reluctance to make decisions that could negatively affect someone from a company for which they have worked in the past (or with which they might work in future), a colleague or even a friend.

A second reason for the difficulties in decision-making may be linked to the criteria being used to make decisions. This was widely discussed in the literature, documentation and interviews. Table 17 presents the selected nine evaluation criteria previously described in the research design section. It illustrates the criteria which are used by the CRTC, and indicate what evidence was used as the basis for evaluating licence renewals.

Table 17 – Cross-analysis of evaluation criteria and results obtained in data collection

Chosen Criteria	Basis for criteria	Analyzed by CRTC		Evidence used by CRTC for decision
		Yes	No	
Canadian content quotas	<i>Radio regulations, 1986</i> (Part 1, sections 2.2, 1-14) Conditions of licence	x		Logger tapes Playlists Forms
Type of content being broadcast	<i>Radio regulations, 1986</i> (Part 1.1 sections 3-7) Conditions of licence	x		Logger tapes Playlists
Maintenance of logs and records and provision of requested information	<i>Radio regulations, 1986</i> (Part 1.1 sections 8 and 9)	x		Logger tapes Playlists Forms
Length of songs played	<i>Broadcasting Act, 1991</i> <i>Radio regulations, 1986</i>	x		Logger tapes Playlists
Promotion of Canadian music	<i>Commercial radio policy</i>	x		Annual reports including CCD contributions Logger tapes Playlists
Levels of particular categories of music or programming (including French-language music)	<i>Commercial radio policy</i> Conditions of licence	x		Logger tapes Playlists
Canadian content development	<i>Commercial radio policy</i>	x		Annual reports including CCD contributions

These criteria have been noted by authors such as Salter and Odartey-Wellington (2008), Doern (1997), and Romanow and Soderland (1992), to name a few, but not much has been written about how the criteria are treated in the decision-

making process. As revealed in the results of the current research, the evidence obtained is analyzed by CRTC staff, who then report to CRTC commissioners with preliminary recommendations, before a formal decision is made. It is important to note a few important aspects of this decision-making process. The first is that the CRTC does use criteria to make its decisions. These criteria are supported by evidence that is analyzed in a systematic fashion. However, that is as far as the analysis of criteria is conducted. In other words, it is impossible to know which criteria hold more weight, since there are examples of short licence renewals of the same duration for different issues of non-compliance. For instance, CJBQ-AM received a three-year renewal for failure to comply with the *Radio Regulations, 1986*, in its percentage of Canadian content. The decision was said to have been made “based on past performance, review of the application and the fact that it was the licensee's first infraction” (CRTC, 2005a). However, station CHBW-FM was also granted a three-year renewal, but it had problems not only with Canadian content, but also issues in providing a clear and intelligible tape recording of its programming (CRTC, 2000b). Furthermore, there does not seem to be any hierarchy that would suggest that some criteria are assessed prior to others. At least as a principle, it would seem that there is more negative sentiment expressed against stations that do not supply evidence. For example, as Bertrand explained, she took particular offense with those who did not furnish their logger tapes. The material evidence, however, demonstrates that those who eventually provide requested information, even if they have defaulted on a condition of licence, are renewed. Those who fail to provide particular information or at least ‘show cause’ for their mistakes obtain a short renewal.

After examining the CRTC’s decision-making evaluation tools, one could assume that the CRTC is doing a good job in assessing stations on the basis that decisions are made using criteria and evidence. Much still needs to be said about the type of criteria used and the extent to which the evidence is analyzed.

Aside from the criteria in Table 17, complaints and comments are two other elements used by the CRTC to make its decisions. Although nothing in the *Broadcasting Act, 1991* requires that the CRTC must take into account interventions from the public, these have historically been included in decisions to some extent. As reported, the CRTC usually mentions if it has received an intervention. It may be the CRTC's version of transparency, but beyond actually obtaining related documentation for each renewal, in most cases, it is impossible to learn what the nature of the intervention was and what weight was given to a particular comment. In some cases, such as CHOI-FM, there were an overwhelming number of complaints, but in some cases, only one person or organization came forth with an intervention in favour or against the renewal. How exactly does the CRTC treat such an intervention? Is it, as Station 1 mentioned, that one person's comments represent 10 or 100 people? Other than sometimes stating who is responsible for the intervention or how many they received, the CRTC is not transparent with how these interventions are treated. Some interviewees, such as Arpin (Bonin, 23 July 2009) and Bertrand (Bonin, 20 July 2009), mentioned the importance of the interventions in the decision-making process, but no evidence in the decision-making process leads to any explanation in this regard. A large inventory of political literature exists concerning the strength of larger numbers relative to community coalitions, citizenship, voting and even broadcast regulation (Community Catalysts Inc., 2003; Hagemann, 2009; Holman, 2005; Rodden, 2002). As Bertrand (Bonin, 20 July 2009) mentioned, numbers never impressed her because she found that when she received multiple letters of concern or support they were copies of the same letter. Although this might be a personal reaction, there is something to be said about complaints and comments. Other than being counted there does not seem to be any indication of further possible analysis in a qualitative fashion comparable to the analysis of evidence provided for other criteria. The question of what strength in numbers would be valid and considered in decision-making is an important point and should be analyzed further to better understand how broadcasting policy

is made and what factors ultimately exercise influence in licence renewal decisions.

The third issue has to do with the means available to the CRTC to maintain order. This likely explains how some stations, particularly non-compliant ones, obtain renewals. Neither laws nor regulations provide the CRTC with the power to issue fines or, as industry prefers to call them, administrative monetary penalties (AMPs). Whether one is in agreement or not with the possibility of the CRTC issuing fines in situations of non-compliance, the current CRTC possible sanctions or means of deterring non-compliance are limited. It can revoke licences, not renew licences, suspend licences, take broadcasters who breach regulations or conditions of licence or operate without a licence to court, issue mandatory orders, issue short-term renewals and impose conditions of licence (Auer, 2009). Between short-term licence renewals and licence revocation, there are few options, which may explain the reluctance of commissioners to move toward the more severe sanctions. And, as Auer's (2006) research demonstrated, the CRTC is just as reluctant to use the prosecution option granted by law.

Although some participants have supported the utility for fines (Bonin, 12 August 2009; Bonin, 23 July 2009; Bonin, 7 August 2009a) or another 'mid-range' tool (Bonin, 20 July 2009) which they have not been able to specifically identify, it may generally speaking, be a socially acceptable change to the system, given the prevalence of fines in the United States. Some question the need for additional tools in the absence of proof that fines would work better than the existing system. However, according to a study by Hamdani and Alon (2008) on corporate crime and deterrence, a financial penalty "can enhance deterrence because it ensures that firms' liability costs will rise with the number of violations committed by their agents. In other words, a regime of purely financial penalties allows enforcement officials to create a gradual penalty schedule, thus preserving marginal incentives to monitor" (p. 292). With every violation that is prevented,

the company reduces its liability costs and ensures that some monitoring is conducted. As the authors suggest, this regime does not necessarily absolutely deter wrongdoing, but it “could discourage wrongdoing more effectively than the threat of going out of business” (Hamdani & Alon, 2008, p. 289). Would you invest as much in monitoring if there was a higher risk of losing your business? Regardless of the potential benefits of fines, another question must be asked. Is the need for fines warranted in the case of radio? In other words are there enough cases of non-compliance to warrant such a structure?

Looking at the now classic example of the 2004 Super Bowl ‘wardrobe malfunction’ example in the United States, O’Rourke (2008) wonders if Americans are making an issue out of nothing with their hefty fines for indecency. His argument is based on the significant number of related complaints. The complaints for the infamous event only amounted to 0.6 % of the audience and out of those complaints, the FCC estimated that 99% came from a conservative parent watchdog organization (O’Rourke, 2008, p. 60). In consequence, O’Rourke (2008) believes the media should be able to “police” themselves. If people are offended by a certain product, they do not have to watch or listen to it. To a certain extent this may be true, but to protect the more vulnerable members of the population and to uphold certain standards in the public interest, society needs regulation. To be the public’s watchdog, it is important that the CRTC have a variety of effective tools. Considering the results of this study, it is evident that complaints and comments dealt with through the CBSC (see section 5.3.2) are not frequently included in the decision-making process. The Commission only relies on non-compliance that it sees first hand. Most stations caught in a situation of non-compliance do not reoffend after their second renewal, but there is no evidence to determine how long their compliance will be maintained. Only a longer term analysis of non-compliance could attest to the current system being sufficient and effective. Besides, non-compliance, whether it occurs once or multiple times, is not a stranger to radio broadcasting.

Until recently, the CRTC had not discussed the situation of administrative monetary penalties very often. On October 27, 2009, using the Access to Information Act, Monica Auer, an Ottawa lawyer, obtained a copy of materials that the CRTC produced or commissioned from other parties about administrative monetary penalties. The documents were, for the most part, related to the telecommunications industry and not to broadcasting. There was one exception: a speech given by the current CRTC Chair, Konrad von Finckenstein. It was a presentation he prepared to lobby the Heritage Committee for monetary penalties. He argued that the broadcasting toolbox of regulation is weaker than that of telecommunications because the latter includes fines whereas the former does not.

It should be noted that some stations have been issued fines through the court system, when the CRTC or its predecessors decided to escalate certain issues to that point. However, the fines given to the stations were almost laughable. According to Auer (2006), “[t]he overall average fine imposed as a result of prosecution was \$1,032, well below the maximum fine possible under the broadcasting legislation of the period” (p. 127). A few examples serve as illustrations: “CRTC vs. Radio Futura Ltée CKVL-FM charged with failing to provide logger-tapes per the *Regulations*. Station pled guilty (explaining that labour dispute led to breach). Fined \$1000” (Auer, 2006, p. 136); and “CJTR[-FM] Radio Trois-Rivières Ltée charged in April [1974] with four counts of broadcasting advertising content in excess of the limits [...] pled guilty to the charges [...] and] was fined \$745 by the Court of the Sessions of the Peace in Trois-Rivières” (Auer, 2006, p. 135). As a reminder, the *Broadcasting Act, 1991*, stipulates that the maximum court imposed fines cannot exceed \$250,000 for a corporation’s first offence. These amounts even if sanctioned under the previous *Act*, which had lower thresholds, are still quite telling of the court’s opinion of these infractions.

According to Auer (2006), there have been 20 court convictions for non-compliance, of which six pleaded guilty. Two cases were dismissed, two were

dropped, and one was found not guilty, amounting to five unsuccessful prosecutions. This includes television operations; therefore does not provide a sense of how often the Courts are invoked in the radio industry. Court cases take time and money, whereas the use of penalties is automatic. As like in the cases of indecency raised in the United States, fines may be contested in court, dragging out the process even further. Six years later, fines ensuing from the 2004 Super Bowl incident in 2004 are still pending in American courts!

As we have discussed, there are three main reasons behind the decision to renew licences of repeat non-compliant stations. These decisions are complex and may involve relationships between commissioners and the offenders, lack of direction regarding the criteria used, and difficulties linked to the types of sanctions available to enforce the laws, regulations and policies within the CRTC's purview. Despite these issues, as Streeter (1996) has mentioned, leadership and issues of personalities and values must also be taken into account when trying to understand why decisional inconsistencies may exist in an organization that, by and large, seems to be quite consistent in its decisions over a ten-year period. This section has highlighted decision-making obstacles, but given the lack of information on actual decision discussions, and given that this is not the main objective of this research, it is not possible to say that these are significant. These are areas which have emerged from the analysis and would warrant further research. These issues also raise a larger issue which is accountability. If leaders cannot make "hard decisions" and there is no pressure from the industry or the public to enforce laws, who is going to fight to make the right decisions in the public interest? The following section may not answer this question, but it will provide some insight into how decision-making influences the CRTC's ability to maintain accountability.

5.3 Accountability

As discussed in the previous section, equity, consistency and transparency are important aspects of decision-making, regardless of the reasons why some decisions differ from others. Decisions are reached through daily practices for which the CRTC must maintain accountability. These include the CRTC's monitoring practices, its reliance on self or co-regulation and its application of licence durations. The following sections discuss these practices in an attempt to assess their actual capacity to hold stations accountable to their conditions of licence and overall commitments made to the CRTC and the public.

5.3.1 Monitoring

As far as CRTC broadcasting policy monitoring reports are concerned, it was difficult to triangulate the data provided with the results obtained using other methods (documentary analysis of the cases and interviews) because the information did not supplement what is used for the purposes of licence renewals. For example, results show that the CRTC keeps track of the number of stations in Canada, but it does not keep track of the number of renewals.

Furthermore, data are not consistent over the years. It is understandable that a report such as the CRTC's broadcasting monitoring report must remain flexible to reflect the changes in the broadcasting system, but there should be some thought given to the problems that arise by modifying data. For instance, there are difficulties in reconciling financial data as figures provided in earlier years were presented in a different format in subsequent years. An example from 2005 shows that the CRTC decided to round off CTD contributions, rather than record the contributions at their exact value. In 2006, the CRTC decided to stop presenting results for the number of stations meeting CANCON and French vocal music requirements in percentage form in favour of counting the number of compliant stations in each province making it more tedious to compare year to

year. Reporting the number of stations in each province is another statistic that was eventually dropped. It may not be the most revealing statistic, but it is relevant for a researcher. The CRTC should at least taken the time to explain the modifications and taken into account the potential impact this would have on people interested in analyzing the data.

The themes presented in the reports better reflect the criteria used for licence applications than for licence renewals. This is consistent with the tendency of many interviewees to discuss difficulties related to initial applications rather than those related to licence renewals. Much effort and discussion goes into the explanation of station format during licence applications, but station format is not discussed in licence renewals. This is a significant problem according to interview participants like Provencher (Bonin, 30 June 2009) and Arpin (Bonin, 23 July 2009). Again, not having criteria to ensure that format is respected at the time of licence renewal gives free reign to stations who have obtained a licence to broadcast the content of their choice to the audience of their choice. Decision-making inconsistencies are, as previously mentioned, sometimes related to the criteria. It is therefore not inconceivable, given this observation, to have inconsistencies in accountability.

Some information pertaining to renewals, especially in cases related to monitoring and providing a check and balance of certain criteria, was well documented in these reports. The first elements that were coded using data obtained from the analysis of licence renewals, annual reports and interviews were the Canadian content requirements and French vocal music quotas. Considering the information in Table 10 (number of commercial stations in Canada) and Table 11 (number of stations observed by the CRTC), it is evident that the CRTC never monitors more than a handful of stations each year. Since the number of stations observed by the CRTC is a mix of all three sectors (public, commercial and community) it is impossible to know exactly what percentage of

commercial stations is being monitored. However, the numbers do speak for themselves.

In terms of compliance, from 2000 to 2007, the CRTC has never observed less than 10 % of stations to be in breach of Canadian content requirements for the evaluation period, whereas up to 33% were noted for not complying with French vocal music. In the sample provided here, non-compliance with Canadian content involves only about 5 % of the stations. Without more information on the nature of the stations, it is not easy to make any correlations with regard to commercial radio compliance. For instance, without further research, it would be difficult to find patterns of non-compliance, especially if the chosen stations are different every time. With such limited statistics, it is also impossible to determine which province, city or owners are the least compliant. An overview of various databases did not prove fruitful in finding any evidence of past studies on compliance in each province. Further research into specific cases of non-compliance would be necessary to make assessments of performance over time by geographic area and to explain the reasons for non-compliance. Since 2006, however, the CRTC has publicly made available the names of the licensees being monitored in a given year, the type of station they own, and where they are located.⁴⁶ This new set of statistics will eventually permit a valuable assessment of compliance. Unfortunately, no such information was available for the period of this study.

The reports also provide information on the amounts of CTD contributions made, but no information is readily available on stations that defaulted on their payment or on how long it took them to reimburse the missing amounts. An indication can be found in the repeated ADISQ requests for documents about financial compliance from the CRTC or the stations themselves. Considering the evidence at hand, the only way to assess this closer for the purpose of this research is through CRTC decisions. According to the interviews and decisions,

⁴⁶ This information can be found at <http://crtc.gc.ca/eng/publications/reports/rpm2006.htm>

very few stations have defaulted on these amounts: four stations (two are repeat offenders) to be exact. A reason for the rather high levels of compliance with regard to the CTD requirement is that, as Arpin mentioned (Bonin, 23 July 2009), CTD contributions are part of a not-so-vicious circle that helps develop Canadian content. By investing in the music industry through various channels, radio station owners encourage new music and talent to broadcast on their airwaves and music that can also be exported. As Straw (1996) explains, Canadian content regulations should not be confused with CTD contributions. The former were contested and not as effective since they contributed to tensions between radio and record companies, but the latter were highly effective and lucrative (Straw, 1996). According to Arpin (Bonin, 23 July 2009), Canada has become the second country in importance for the export of its musicians on the international stage. CTDs not only comply with *Radio Regulations, 1986*, but also with the *Broadcasting Act, 1991*.

Although CTD compliance has been a success in terms of compliance and in terms of its financial outputs, a question remains. Why have data regarding airplay of Canadian content proved to be so different? As the data have underscored, Canadian content is the criterion that has resulted in the highest number of non-compliant stations compared to all other evaluation criteria. One must wonder what is causing non-compliance in this area and why is it ongoing? Furthermore, since the CRTC only analyzes a week of airplay in seven years, to what extent is there non-compliance the rest of the time? Is the sample significant? All these questions would require further analysis, research and access to CRTC resources.

The monitoring reports touch on other aspects of licence renewals that seem important such as the act of monitoring and the importance of CTD contributions. There is a disconnect with the actual process of licence renewals in that the interviewees place quite a bit of importance on the maintenance of proper logger tapes, but nothing in the reports reflects this requirement. The number of complaints reported, as well as the interventions received are also absent from the

reports. One explanation can be the use of co-regulation which is explained below. Nonetheless, while it is interesting to note that these elements are important in practice and in prescriptive form, when it comes to assessing the CRTC's performance for the public, they are not recorded. In other words, aspects relevant to one sector of activity do not seem to be relevant enough to document in order to evaluate the organization as a whole. In television, logs are also kept and analyzed by the CRTC. There are different criteria to determine what counts as Canadian content, for example, but the logs are just as relevant. Though logger tapes assist in determining Canadian content, providing the logs themselves is also a relevant activity as required by the *Radio Regulations, 1986*. Logger tapes are third in the rank of non-compliance, after French language quotas and next to Canadian content (with only 0.4 % separating the two). During his interview, Arpin (Bonin, 23 July 2009) mentioned how non-compliance regarding logger tapes is completely unacceptable, and the only plausible reason for non-compliance is a power outage with proof from the electrical provider in the relevant jurisdiction. Bertrand (Bonin, 20 July 2009) also expressed serious concern with this type of non-compliance. She saw it as "a slap in the face." So, if it is so easy to avoid, why is it so common? Perhaps an answer can be found in the measly fines given by the courts in this respect when the CRTC has had enough (Auer, 2006; Auer, 2010). Why are the sanctions not more severe? Would it not make sense to apply more stringent sanctions for issues of non-compliance where it is almost impossible to be non-compliant unless you actually choose to be? The same can be said for Canadian content in an environment where programming is logged days ahead by computer systems. Is the man or the machine to blame?

5.3.2 Co-regulation

One aspect that has not been directly addressed, but that has arisen a few times in the results, is the situation of the CBSC handling complaints and how this impacts on the CRTC's ability to hold stations accountable. Prior to the interview with Cohen (Bonin, 7 August 2009b), a request for information to the CBSC's

Director of Policy, Teisha Gaylard, revealed that complaints are not included in a station's permanent record, as was mentioned by CRTC officials and a few other stakeholders (Industry 1 for example). Therefore complaints are generally not factored into licence renewal decisions. After the interviews with CRTC officials and several lawyers, including Cohen (Bonin, 7 August 2009b), it is clear that further precision is needed.

The CRTC actually does have certain complaints on file. As stated in public notice CRTC 1982-36, dated 18 May 1982, a hearing panel ruled that the CRTC "had the authority to consider the complaints placed on the licensee's file and all related correspondence" (CRTC, 2004a). Any complaint that is not relevant to the CBSC (is not related to the codes that they interpret) would be filed with the CRTC. However, as Noël (Bonin, 6 August 2009a) explained, the CBSC also filters through complaints related to 'good taste' which do not fall under either organization's purview. CRTC officials, as mentioned, also review complaints that come through the CRTC rather than the CBSC. The CRTC will also examine complaints if they arise in great numbers. However, as Cohen (Bonin, 7 August 2009b) mentioned, even if the CRTC has the authority to check on the CBSC or even review any complaints the CBSC receives on its own, it has never done so. According to Gaylard (2008), the CRTC is primarily concerned with station status, in other words, being a member in good standing of the CBSC. The CBSC does not provide the CRTC with statistics on complaints other than its annual report which breaks down the number of complaints received and the types of complaints by geographic area. This information is available to the public on the CBSC website. On average, the CBSC receives 2,000 complaints a year (Gaylard, 2009).

Generally speaking, the co-regulatory process can be assumed to work well, since complaints are being addressed. Appeals to the CRTC have upheld the CBSC decisions which, for most lawyers interviewed here, are sound decisions, whether one agrees with them or not. Due process is observed. However, ethical

considerations which are brushed off by participants as part of the cost of co-regulation need to be addressed for the sake of public interest and accountability. First of all, should the CRTC and the public be made aware of repeat offenders? Statistics provided by the CBSC in their reports do not identify offenders or repeat offenders, although they can be manually looked up on their website.

At the time of licence renewal, any offenses committed by stations and resolved by the CBSC are not taken into account, nor even mentioned. When trying to assess conduct, regardless whether an incident is over and proper measures have been taken to ensure repeat offenses would not occur, should they not be taken into account in a public forum? As a society, do we avoid mentioning if someone has been to prison even if the guilty have served their time? As Cohen (Bonin, 7 August 2009b) attests, repeat offenders are not frequent because the process works, but for the sake of the public interest, should there not be some accountability to the organization which issues licences regarding conduct? Should there not be a note to file about an issue of non-compliance, even if it has been resolved? For example, the CBSC received a number of complaints about the station CFRA-AM; one, for instance, pertained to a lack of balance in news, but nothing is on file for the given renewal period. It seems contradictory to make an abstraction of complaints directed to the CBSC when the CRTC highlights non-compliance of Canadian content as minimal as 0.3% of the set objective. Even a case of racism on air, for example, addressed in some other forum, is not taken into account in CRTC assessments.

Notwithstanding these issues, credit must be given to the CBSC for doing a good job within current parameters. According to a document obtained from the CBSC, dated June 16, 2009, it had rendered 448 formal decisions. “Of those, 225 (50.2%) found the broadcaster in breach of one or more of the codes administered by the CBSC. Since 2000-2001 when the CBSC began rendering Summary decisions, the percentage of Panel decisions rendered against broadcasters is 72.9%” (CBSC, 2009, p. 1). The CBSC also renders these decisions in over 40

different languages and has been seen as a positive organization for its work worldwide.

The point is not that the CBSC renders proper decisions or the fact that it has rendered decisions in favour of complainants rather than broadcasters, but as a co-regulator, it does not share its information in a public forum as the CRTC does, even though the information is available on its website. Perhaps there is still some confusion about the co-regulatory identity of the CBSC and its relation to the CRTC. The National Chair believes he is operating a self-regulated agency, but as a co-regulatory partner, in a communication theory perspective, his organization answers to the CRTC. This is not the case of ATVOD in the United Kingdom, for example, which is accountable only to itself and its members and does not have any formal ties to the national regulator, OFCOM. The CBSC on the other hand has made strides in the face of the CRTC when it comes to determining limits for situations of non-compliance and determining timeframes for broadcasters to earn back their legitimacy after a situation of non-compliance (see section 4.3.3 about complaints), and it is a well-respected organization. As Bertrand (Bonin, 20 July 2009) mentioned, “if we don’t have the CBSC, what do we have?”

5.3.3 Duration of licence

It is clear that the CRTC does not seem to have a standard set of guidelines to determine what duration of licence renewal should be associated with specific issues of non-compliance. So, for example, two stations, CJTK-FM and CKDX-FM, with similar problems of non-compliance (CANCON requirements and logger tapes) do not necessarily receive the same length of short licence renewal period. It is clear, however, that the CRTC does not take non-compliance lightly, as only one station that was noted as having a case of non-compliance got away with a warning. CIAO-AM had a \$3,000 shortfall in CTD expenditures in 2001, because the initiative it was supposed to support was scheduled to receive funding until 2002. CIAO-AM did pay the outstanding the amount in 2002, but the CRTC,

which only reviewed the case in 2007, let the station off the hook and did not issue a short-term renewal. Though this may seem reasonable as the money eventually went to the place it should have gone, one must wonder why the station did not advise the CRTC of the situation ahead of time to avoid scrutiny at the time of renewal. Again, these discrepancies are due to the case by case approach taken by the CRTC and the lack of consistent monitoring practices. Although shorter licence renewals are seen as a deterrent by all stakeholders interviewed, it is clear that there is a difference between a renewal of a few months and a renewal of a couple of years, especially when it comes to financial considerations. The more frequently a station must present itself before the CRTC, the more it costs. Stations must gather information and put together a defence each time and, in some cases, must travel to the hearing unless CRTC events are taking place in their region.

As mentioned, the stakeholders interviewed also felt a sense of inequity with other stations without being able to pinpoint the reasons, except to say they felt that smaller stations were treated differently. Perhaps part of the explanation can be found in the CRTC's treatment of non-compliant stations. No particular links between the reasons for non-compliance and the duration of licence renewals provided were identified. The closest to a pattern were, as indicated, cases of three-year licence renewals, but the results are inconclusive. The only other indicator provided is the information in Circular No. 444 (CRTC, 2001b), which attests to the fact that the CRTC gives a seven-year renewal to stations found in compliance while those found in situations of non-compliance receive four-year renewals to give them a chance to address the situation of non-compliance.

In the case of stations with more than one consecutive short licence renewal, once again, there is no clear explanation for the different renewal terms.

5.4 Conclusion

The current chapter has served to discuss three main aspects of commercial radio licence renewals: the process, decision-making and accountability. Considering research findings and how they do or do not reflect literature in these areas or common practices, the following conclusions are proposed to improve current CRTC practices.

Regarding process, the CRTC should conduct research into the advantages and disadvantages of a paper process versus public hearings, particularly in a cost-analysis fashion, as this seems to be a contentious issue among stakeholders. Using the Internet, perhaps there is a way to get public input and address the public interest without extra expenditure. However, if research reveals that the benefits of hearings somehow outweigh the cost, work should be done on marketing and getting buy-in from stakeholders to make this a relevant process. The workload issue should also be addressed so that streamlining is conducted to its fullest. Continued dissemination of service standards statistics will serve the CRTC well in the long-term, and it would be beneficial to continue producing relevant reports.

Concerning decision-making, the main recommendation would be to re-evaluate the criteria used to renew licences. Since so much concern centres on applications, renewals should follow-up through on more of their promises, such as format. Otherwise, the criteria seem to be clear and utilized as described. The status of commissioners is another issue to review as no clear position descriptions exist nor is there any provision for the Chair to reign in other commissioners. This change would require political intervention, unlikely given that past and present governments do not seem to have any concerns with the status quo. Lobbying from the CRTC and the public may be the only way to do this, but it would not be surprising if current commissioners would avoid the subject since they probably enjoy their current status.

Finally, accountability is probably the area that would require the most work, even if the CRTC has been doing what it can with what it has. It obviously does not have the human and financial resources to monitor the system in an efficient way. More resources should be allocated to monitoring, even if resources are electronic. An investment in technology on this front would most likely be more cost-effective than hiring more people to monitor broadcasters. Furthermore, to ensure equity in accountability for all parties, the CRTC should seriously consider creating a chart of escalating sanctions and periods of short licence renewals based on the types of infractions. After so many years, this should not be difficult to do. This would eliminate case by case evaluations which have been productive of observed inconsistency. A definition of the public interest would also be beneficial, since it only seems to be implicit at the moment. Data storage in the public interest would also be beneficial. This would include accurate information on the number of renewal evaluations conducted each year and their outcomes, with statistics on issues of non-compliance, and information on standard positive actions performed by stations, such as their contributions to CTDs, in a comparable form from one year to the next.

In short, the CRTC should come up with its own evaluation system paired with accountability policies such as a Media Accountability System (MAS), an overarching accountability strategy for all media in Canada. A Canadian version would, as in other countries such as Sweden, include specific guidelines (for instance for decision-making) and codes of ethics. The CRTC could also adopt a streamlined monitoring and review process such as the one used in the United Kingdom (as outlined in the literature review). In any event, this system should include, as Bardoel and d'Haenens (2004) recommend, training, periodic evaluation, monitoring and feedback.

6. Conclusion

This dissertation set out to examine the ability of the CRTC to hold commercial radio stations accountable to the *Broadcasting Act, 1991*, the *Radio Regulations, 1986*, their conditions of licence and any promises they made at the time of renewal. This purpose originated in recognized need to conduct evaluations in the broadcasting industry to improve transparency and accountability of business practices as suggested by Braman (2004) and Melody (1990).

As argued by Auer (2007) and members of the Standing Committee on Canadian Heritage (2003), current CRTC regulations and policies are inadequate to ensure that the airwaves are used in the public interest. The role of the CRTC has not wavered over time even though its approach to policy may have shifted to some extent. The country is currently preoccupied with the long anticipated decision involving fee for carriage in the television sector. Notwithstanding some legal ramifications that will be sorted out by the Federal Court, the CRTC has paved the road for broadcasters to negotiate a fee with distributors for carrying their signals.⁴⁷ The topic is not directly related to the case at hand, but its significance strengthens the argument in favour of evaluation and policies, and the need for further research, to ensure that regulation fulfills its mandate in the public interest. In an article entitled “The CRTC justifies its existence,” one journalist, in this debate mentioned that “[r]egulating the airwaves is a necessary endeavour, like ensuring there’s safe food and safe drinking water” (Doyle, 2010). As in the case of food and drinking water, however, it is essential not only to have good policy, but also to have good evaluation methods to ensure that policies are implemented and continue to provide what citizens need most. It is from this perspective that this research was conducted. The following chapter serves to summarize what was learned from the research findings. It also looks at the

⁴⁷ For further information see CRTC. (2010). CRTC unveils a new group-based television regulatory policy. <http://crtc.gc.ca/eng/com100/2010/r100322.htm>

relevance of these issues for society, explains the limitations of the research and provides areas for future inquiries into the study of radio, the CRTC and evaluation. The chapter concludes by restating the contributions of the study and provides a reflection of its academic contribution.

6.1 Research Findings

The following section summarizes the most important conclusions of this research, beginning with an explanation of how the CRTC has dealt with compliance and the achievement of its objectives. This is followed by a review of the licence renewal process as a way of achieving the objectives of the *Broadcasting Act, 1991*. And, most importantly, the section concludes with a discussion of the role of regulation and governance in assuming compliance.

6.1.1 Compliance and the achievement of objectives

As the literature review chapter of this study attested, previous studies on Canadian radio have included reviews and government funded studies, but only two looked at the performance of stations through the lens of the CRTC, and these focused solely on cases of non-compliance. As it was mentioned by Moore (1995), evaluation should include information about past performance to get a better sense of what to expect in the future. Except for Circular No. 444 (appendix G), which was written based on a general sense of past experience and promises of performance (which are only used for media acquisitions and not licence renewals), the future of radio policy and the fate of the industry has mostly been a ‘guesstimate.’ If for no other reason, this research has provided improved data and information about the recent past in order to orient future practices, as in other fields. In medicine, for example, prior experiments on animal subjects help prepare for the use of medication in humans; and in finance, stock market trends help stockholders analyze future economic behaviour.

What does this study tell us about radio and its contribution to society over time? Its main contribution promotes content that reflects the values and objectives of the *Broadcasting Act, 1991*. As discussed, the description of the content required for broadcasting is expressed in the *Radio Regulations, 1986*. These include the quotas for French language content in cases of French stations and Canadian content regulations for all stations. Considering the results of this study, regardless whether the stations complied or not with the regulations at hand, it is evident that the CRTC is dedicated to achieving the objectives of the *Act*, and content is one of the main criteria to be evaluated at the time of licence renewal. The CRTC has found stations in situations of non-compliance of *Radio Regulations* and has exercised its powers by issuing short licence renewals. That said, over time, only 20% of all cases studied resulted in short renewals due to non-compliance. Is 20% a satisfaction number? That is difficult to assess, since only one other study documents a similar statistic (Auer, 2006). Auer (2006) found that “75% of commercial radio stations in (her) sample breached the regulations or the broadcasting legislation one or more times” (Auer, 2006, p. 123). Auer’s statistic, however, cannot be used as a true benchmark for comparative purposes, as it represents far more stations than the population considered in this case. It also included stations that may have received a different type of sanction, not only a short renewal. Therefore, it is difficult to judge if 20% is sufficient to tell whether the CRTC is doing its job. As Auer (2006) concluded, the CRTC has not done a good job in enforcing regulations because more than half of the non-compliant stations in her sample reoffended even after receiving a sanction (p. 130).

Notwithstanding the fact that this study also identified re-offenders, and a few cases of multiple repeat non-compliance, it seems too easy to look at the glass that is half empty. The CRTC’s control in managing the system has had a positive impact on results, regardless of problems noted in the way it investigates non-compliance. We can assume that there are probably more cases than those uncovered in the monitoring process undertaken for this study, but even with the

sample presented here, it would be difficult to assume that the reputation of the entire industry is much worse than what was indicated. Without dwelling on the 20% of cases of non-compliance resulting in short renewals, it is possible to conclude that this study has demonstrated a positive impact of regulation on some of the objectives of the *Broadcasting Act, 1991*. Regarding the promotion of Canadian content, for example, this claim may be made for three reasons: the first is that the low percentage of Canadian content non-compliance (5%) assumes that the other 95% of the time, stations are upholding the regulations. In 60% of the non-compliant cases, stations are only lagging by 3% or less of the required Canadian content. The second reason for believing in the system is the fact that the majority of stations that are found to be non-compliant are not repeat offenders, at least not during the timeframe observed. Finally, the third reason is that stations are collaborating effectively when it comes to providing their CTD (now CCD) contributions; in the period studied, only two cases were noted of stations not complying in that area, and in both cases, the stations eventually paid their contributions.

All in all, the radio medium, has been demonstrated through ten years of data, to be a generally effective means of promoting Canadian ideals and identity through the broadcast of a cultural good – music – using public airwaves. Even those, such as Auer (2006), who are quite harsh with the CRTC, in the end agree that 100% compliance is utopian. What is agreed, however, is that there are minimum requirements that should be met and tools for surveillance and enforcement that are not utilized to their fullest, or which could be improved, to deter radio stations from non-compliance beyond what existing processes accomplish.

6.1.2 Process

An objective to understand how the CRTC operates introduced an overview of its history and its current role to this research. Since the relevant

legislation and regulations in its jurisdiction are essential to the study of radio station renewals, they were explained quite extensively in Chapter 2 along with the radio licence renewal process as it is understood in the literature. Chapter 2 also included a discussion of the recent studies of the CRTC, which are few, but add important perspectives for understanding the organization.

As has been demonstrated, the CRTC licence renewal process, as described and analyzed, has produced rather decent results, regardless of the inconsistencies of isolated cases. Fortunately, these provide food for thought for any station thinking of breaching regulations and provide cases justifying that the CRTC improve certain areas of their regulation. This was made evident through interviews, when participants provided examples of inequities among stations or had a feeling that smaller stations were treated differently than larger ones. CHOI-FM and CKOD-FM are two examples of stations that were not part of large conglomerates, yet they both became classic examples of how the system works and does not work. The former has been highly publicized, whereas the latter has almost been kept quiet. People familiar with the industry are aware of both. When looking at these cases, is it possible that the CRTC has lost track of due process, which is one of the key elements of democracy (Spirit of Democracy, 2004)? If this is the case, it would not matter what decisions or results the CRTC rendered, because at the basis of a democratic system there must be a series of processes deemed to be democratic.

There are a series of elements in CRTC practice that can be analyzed to determine if due process is followed. One such element is the way in which licence renewal evaluation takes place. As discussed, formal public hearings have become part of the regular licence renewal process. At first glance, this is a step towards greater transparency. There is no proof, however, that this practice is more effective than a paper process. Public hearings do permit dialogue in the public space, and all parties have direct access to the CRTC, which is rare for a government-appointed agency. Members of the Canadian public can send comments or present a paper to the CRTC, without needing some form of

representation either from a lawyer or a social group of any kind. There are some drawbacks, such as meeting deadlines, knowing how to write coherently, being chosen to present in person and also financial constraints related to travelling to Gatineau, Quebec, where the hearings normally take place. In a way, this aspect of the process does align itself with some of Habermas' ideals of the public sphere both in its pre-institutionalized form, but more specifically, with his description of the post-institutionalization of democracy.

Other aspects of the renewal process that should be considered are the traditional case by case approach and streamlining. Results presented in the fourth chapter highlighted several inconsistencies. Conditions of licence that stations in the sample must fulfill are generally similar, due to earlier attempts at streamlining, but there are still quite a few examples of particularities related to licences that can only be identified on a case by case basis. The duration of station licences was also addressed, including those that have been non-compliant. As noted, there were 100 cases of short licence renewals, many due to a new objective of the CRTC to renew all licences from a particular region at the same time, requiring formal alignment. However, as was explained, eight stations were highlighted for having received at least two sequential short renewals for situations of non-compliance. The results also demonstrate the reasons stated for non-compliance, types of complaints, interventions and reminders given by the CRTC.

Analyses of policy monitoring reports produced annually by the CRTC presented relevant data regarding renewals, such as the number of commercial stations, amounts of CTD contributions and service standards for processing renewal applications. Information about the stakeholders' relationship with the CRTC was also provided with, more importantly, a review of the similarities and inconsistencies in the licence renewal process. Of particular interest is the more frequent use of public hearings in renewals, not only of non-compliant stations, but also those in compliance. The results pertaining to monitoring and complaints

provided insight into actual practices and stakeholder comprehension of the complaint system. Included were data about how decisions are made and which elements of the *Broadcasting Act, 1991* are considered in the decisions, primarily as they apply to Canadian content implications. Problems with the process and suggestions for improvement are also identified.

These examples, particularly those related to non-compliance and to changes in the day to day recording of observations and data, demonstrate that which the CRTC faces in moving beyond case by case methods to a real form of streamlining with less tolerance for non-compliance. To give the CRTC the benefit of the doubt, it must be reiterated that the period at hand had been a transitory period for the Commission. To fully implement streamlining, the CRTC will have to disassociate itself from its personal relationships with station owners to avoid such inconsistencies as noted in this research. Given the way commissioners are chosen, it is unlikely that this separation will take place any time soon, as incumbents have a vested interest in maintaining their ties to the industry.

A further difficulty to achieving proper due process concerns the way criteria are interpreted. Although there has not been much change over time in the actual criteria used to reach a decision on licence renewals, variance depends on who interprets the criteria. That said, most interviewees reading the results would agree that, by and large, inconsistencies have not been dramatic. For the purpose of achieving democratic objectives, which include accountability and transparency, further policies should be developed to establish guidelines that set thresholds of non-compliance. For instance, as Cohen (Bonin, 2009b) suggests, it would be appropriate to determine at what point the CRTC should stop issuing short-term renewals and decide not to renew licences in a particular case.

The implication is that streamlining of the process is necessary to avoid inconsistencies that can be embarrassing for the CRTC in the long term. The case

of CHOI-FM, in particular, because of so many outstanding variables, has become the ‘poster child’ for non-compliance, yet, as the findings of this study show, the CKOD-FM case is just as much a representation of how a process can get out of hand when exceptions are made or in the absence of normative guidelines. In such cases, personal relationships get in the way of due process that attempts to achieve a course of action in the public interest.

Normative guidelines and policies fall in the realm of regulation in governance which will be discussed next.

6.1.3 Regulation and governance

Another important contribution of this research is that it reiterates the need for regulation in an industry where tendency to loosen regulation and to opt for more flexible forms of governance, such as co-regulation, have been ongoing. Though examples of repeated non-compliance in the current sample are few, there are still too many offences regarding broadcast levels of Canadian content, even if they are small infractions. As discussed, this result confirms Auer’s (2006) study. It does demonstrate that the system is working to a certain extent. The threat of sanctions is necessary, otherwise why would anyone comply? More significantly, however, findings validate the need for further evaluation to keep practices on track and to maintain policies to contend with problem areas, and from a broader perspective, to address risks of market failure that will always be present.

As was previously discussed, newer evaluation systems have been implemented in Europe, particularly in the United Kingdom and the Netherlands. Literature in Chapter 2 also discussed evaluation principles which should be considered when implementing any regulatory model or practice. These include accountability, democracy, diversity and the protection of vulnerable people. Additional evaluation principles in the radio sector were also outlined to demonstrate that the idea of evaluation and continued monitoring of the system is

hardly unreasonable, but necessary to uphold standards and the ideals of the *Broadcasting Act, 1991*.

As discussed in Chapter 5, three overarching themes in the results relating to process, decision-making and accountability touched on shortcomings in regulation and governance policy. Since the issues of process have been addressed, this section will reflect on decision-making and accountability. The consideration of decision-making in Chapter 5 outlined how politics and subjectivity may be important variables in explaining research findings related to the case-by-case approach and inconsistencies in how stations are treated. A review of the appointment status of commissioners, more specific criteria for evaluation, and a more diverse set of compliance tools including fines, to ensure responsible decision-making in the public interest are the most important ideas from this discussion.

Although it might not be in the Canadian tradition to propose the need for fines in an industry that is regulated and monitored by individuals whose interests are influenced by their past or future connections in the industry, there does not seem to be any other outcome that would significantly reduce non-compliance and increase the perceived compromised independence of commissioners. Providing the CRTC with its own “badge and gun” as suggested by Industry 1, appears to be a minimal approach to legitimacy and to perhaps ease the burden of decision-making which has favoured a more lenient approach given the alternatives. The idea of fines should not be implemented, however, without conducting an evaluation of the potential consequences in the Canadian context. How much money would be enough to deter a station without putting it out of business? What infractions are best corrected using alternative measures? These are only a couple of the questions that should be answered before moving forward with such an initiative. This dissertation also teaches that no measure should be considered alone, outside the parameters of a series of measures and policies.

Another aspect to be considered to improve governance is participatory decision-making. In international organizations such as the World Bank, “[t]here is much talk about participatory decision-making, transparency, and government responsiveness” (Arnold, 2008), but these objectives are illusionary if mechanisms for accountability do not work. In the case of the CRTC, efforts are being made for increased transparency, but more should be done to enhance accountability. This has been demonstrated in this research through its longitudinal study of licence renewals. Beyond fines and implementing a better system of evaluation, however, tools used for the purposes of social accountability, such as citizen report cards and participatory monitoring (Odugbemi & Martinson, 2007) would be less effective, given how the industry works and how citizens participate in CRTC activities. Although members of the general population may know that they can be heard, the impact of their comments and decisions is still relatively unknown. From the interview data collected here, it seems that this impact depends on who is listening and reading. Therefore, unless there is a change in decision-making policies, giving greater importance to citizens, enforcement can only come from within. Since it has been demonstrated that some station owners have little respect for regulation once given their licence, and others are interested mainly in the bottom line rather than in public interest objectives like sentiments of unity and identity, self-regulation is not an option. So while fines might be a suitable addition to the CRTC compliance enforcing toolbox, this introduction depends on government interest, awareness and responsiveness to the issues at hand. The CRTC certainly did not respond quickly in the case of CHOI-FM, so one wonders what it would take to generate sufficient interest to move forward on such a controversial measure as the introduction of fines.

Greater accountability, which is linked to the main objective of the research, necessitates higher standards with respect to the frequency of monitoring practices, the tools used, the chosen criteria, the compiled statistics and conducted follow-ups. These suggestions would not have been generated without evaluation

and review of CRTC practices. Now that some of the issues have been brought to light, the next step would be to encourage corrective measures. Monitoring practices have to be conducted more frequently. As some have suggested, electronic monitoring devices may be an appropriate tool in this respect. Log sheets alone cannot be used to account for Canadian content. Experience dealing with radio practitioners has revealed that more listening must be done. Announcers sometimes modify daily run sheets to make room for special requests or other modifications which are not always included in the standard run sheets provided to the CRTC or other organizations that deal with royalties. Consequently the data provided do not always represent reality. The retooling of CRTC regulatory interventions has been previously discussed. With regard to criteria for performance evaluation, it would seem that most are happy with what exists at present, but regular evaluation of their relevance would be essential to ensure they are kept up-to-date and supply information the CRTC is interested in obtaining, that is a well-rounded picture of a station's capability of promoting and upholding the ideals of the *Broadcasting Act, 1991*. Furthermore, the CRTC should take more time to consider the information it obtains. Not providing adequate statistics on its enforcement role is not transparent and obliges researchers to dig as if something is being hidden. Providing this information would, in itself, encourage the CRTC to uphold specific standards in its decision-making and would further legitimize its processes. Finally, some form of follow-up calendar should be developed to ensure that cases are not left unattended for extended periods of time, thereby perpetuating situations of non-compliance.

Accountability is also related to Canadian regulatory approaches, such as co-regulation. This research, as in earlier studies of the broadcasting system, supports regulation, but more importantly, it outlines shortcomings that must be addressed. This may require changes in the actual regulations and in the legislation. As highlighted in this research, the CBSC handles an important piece of the enforcement process. In order to enhance accountability and transparency, the CRTC should make a point of evaluating CBSC activities. To date, no

decision or practice of the CBSC has ever been verified by the CRTC. A regular audit would increase accountability in this respect and reinforce the relationship between the two organizations.

At the beginning of this research, it was also mentioned that the first part of the *Radio Regulations, 1986* dealt with content and was supplemented by the *Commercial radio policies, 1998 and 2006*. As far as this study is concerned, the criteria used for evaluating radio licence renewals should at least match what is used to evaluate initial radio applications. If not identical, there should be a clear distinction in the regulations to define both groups of criteria. For the moment, they are intertwined. A section in the *Commercial Radio Policy* addresses formats in the context of consolidated ownership alongside policies for Canadian content. Furthermore, the sanctions for non-compliance with each criterion should be explicitly stated instead of vaguely described in the legislation as a supposition rather than an actual consequence. As provided in section 32 of the *Broadcasting Act, 1991*, “every person who contravenes or fails to comply [...] is guilty of an offence punishable on summary conviction [and] is liable” to the fines mentioned. Even if guilty, nothing requires the CRTC to initiate court action. A change should ensure that the CRTC uses its powers on a systematic basis. Supplementary documents, such as Circular no. 444 are cumbersome for stakeholders who do not always remember to consult them. This particular document should be appended to the *Radio Regulations, 1986*, to increase its visibility. The present impression is that the CRTC is trying to hide it. Furthermore, the wording of the paragraph on mandatory orders in Circular no. 444 should be modified to offer clarity and improve CRTC enforcement of regulations. Instead of saying that “the Commission may issue a mandatory order”, the document should specify exactly when a mandatory order should be issued and change the “may” to “shall.”

This dissertation has shown that data about radio can be used to explain the past and orient the future. Radio, from its inception, has served to promote

Canadian content, values and ideals, thanks to regulation. Over the years, regulation has lost popularity in favour of market ideals, in some circles, questioning the legitimacy of the CRTC. Some have always been sceptical of the organization's ability to enforce regulation, given the people at its helm. This study has confirmed the CRTC's legitimacy, notwithstanding the issues related to its processes that must be addressed to ensure accountability to the fullest extent. Inconsistencies and particular cases of non-compliance have strengthened the argument in favour of evaluation, and problems with the CRTC licence renewal process have corroborated the conclusions of earlier studies. Problems in regulating consistently need to be addressed through improved practices, clearer standards, and changes to policies and regulations. Though this dissertation may be primarily of interest to academics, the radio industry, and government officials, there are applications that should interest society in general.

6.2 Relevance for society

The methodological and applied research applications of this research contribute to knowledge in communications, and in particular to the area of media policy. But, this project also fosters public awareness of CRTC licence renewal practices and raises questions related to the partial outsourcing of the complaint resolution processes, which are key to understanding how decisions are made with regards to commercial radio stations.

On a political level, the research helps the public understand how the arms-length relationship between government and the CRTC directs the day to day operations of the organization. Perhaps with a better understanding of the role of government, there might be more interest in lobbying for administrative fines or other tools that could aid the CRTC in maintaining higher broadcasting standards without having to choose between a light hand-slap and the revocation of a licence.

The project also demonstrates that the CRTC upholds Canadian social values through criteria such as Canadian content requirements. Holding culture in such high esteem does make it difficult for the Commission to make hard decisions regarding radio licence renewals, since social and cultural implications sometimes contradict other Canadian values.

For public administrators, this study has introduced scrutiny of the CRTC financial situation relative to regulation. Further inquiries into the actual cost of appropriate monitoring, the development of an electronic monitoring apparatus, and hiring more staff to fulfill monitoring tasks, are necessary to determine the CRTC's real financial needs, as questioned during interviews in this research.

Overall, the project sheds light on licence renewal, an understandable, but complex process for most Canadians. Finding a balance between the economic prosperity of the radio sector, while at the same time financing the music industry and promoting cultural values, is only one of the many challenges less than apparent to the average radio listener. Access to statistical data in the commercial sector is also something often demanded for public accountability purposes.

The many benefits of having conducted this research cannot conclude without pointing out certain limitations.

6.3 Limitations

The adopted methodology was described in the third chapter. Its choice was influenced by previous studies in communications and evaluation theory. Since no previous scientific research into the evaluation of the CRTC has been conducted, a normative research approach was warranted. Conditions for the type of evaluation conducted by evaluation professionals were not optimal, however, a modified option was chosen. Instead of asking all stakeholders to choose criteria and come to a consensus on the best way to conduct the evaluation, selected

criteria emerged from close analysis of the literature and the most significant policies and regulatory documents available from relevant Canadian government organizations and those used in the industry. Once criteria were chosen, they were compared to what was being used in practice, by examining CRTC decisions and reports. These documents were analyzed using the grounded theory approach described by Glaser and Strauss in 1967. This analysis was complemented by interviews with relevant stakeholders, including broadcasters in the commercial sector, interest groups, industry representatives, lawyers practicing in the radio industry, and current or past CRTC officials. Their testimonies were subsequently analyzed again, following the grounded theory approach, by coding relevant keywords to determine reoccurring issues relevant to the research. These data were then compared to the data previously obtained by analyzing CRTC decisions.

Though all precautions were taken to create the most valid and reliable study possible within the scope and scale, five limitations must be recognized.

The first limitation concerns theory. There are different lenses through which this study could have been conducted. As it was mentioned, an earlier study (Auer, 2006) looked at regulation from a legal perspective. Strict public administration theory could also have addressed processes and decision-making. As a communication scholar, however, it only made sense, that in the end, the study should be based in the discipline. Habermas' theory of the public sphere provided the most compelling link, because his theory offers a space to discuss values that have stood the test of time, such as democracy, transparency and accountability. This, in addition to certain aspects of the political economy of communication, governance and regulation theory influenced the research. But it is the contribution of evaluation theory that stretched communication into new territory which may or may not be acceptable to theorists in the field. Nonetheless, it is hoped that this attempt at introducing a new set of ideas will be deemed beneficial.

The second limitation has to do with the selection of the evaluation framework. There may have been better ways to evaluate the licence renewal process that were not taken into account, or that were ignored, given the time and budgetary constraints. One in particular was discarded at the outset for reasons of feasibility. It involved asking all relevant stakeholders to select appropriate evaluation criteria in a forum such as a focus group. Unfortunately, the nature of academic policy research has a few limitations on what is possible in the strictest sense of evaluation research. For one thing, seizing a policy decision-making process in real time and place is almost impossible, since it is always evolving and often takes place on different levels and may employ various forms, such as face to face discussions, telephone calls and e-mails. Policy also involves many different stakeholders who each have their own agendas and schedules which hinder the potential creation of a situation where all of them would be present at once.

The third limitation relates to the creation of the sample used for analysis. Although most of the work involved in reducing the population sample from the initial compiled results was done using a computer, much of the actual analysis and calculations were done by hand, which may have resulted in human error.

The fourth limitation has to do with the use of the computer. All searches performed used particular key words to identify relevant cases. Should the cases not have been coded in the same way as the words selected for the search, it is possible that some cases were left out. This also poses a problem for researchers who would attempt to replicate the study, as the CRTC web based environment is continually changing and will not remain static.

Finally, the fifth limitation has to do with the accuracy of the records consulted and the documents chosen for this research. As noted, not all cases included specific reasons for non-compliance. Had physical files been consulted

for all cases, this ‘missing’ information may have been found. Limiting document research to licence renewal decisions – although necessary in terms of feasibility – may have resulted in a truncation of the overall decision-making process, which begins at the time of licence application or acquisition. Further research would include all documentation covering the lifespan of a station under the propriety of a particular owner.

6.4 Areas for future research

On a positive note, this research provides insight into the evaluation of communication policies, particularly regarding the CRTC and radio licence renewals and provides new ideas for future research. The topic of licence renewal applications invoked strong opinions from interviewees in this study, as it appears to be an area of contention both in the way decisions are reached, but also in regard to following through on initial promises. Additional research could be conducted to determine how application decisions are made, how they resemble or differ from renewals, and what aspects are missing to ensure accountability between the time of application and renewal.

It would also be of interest to extend the current study over a longer period, and to include all instances of renewal, including administrative renewals, to determine if there are patterns that eluded observation in the current research. Additionally, it would be relevant to include other sectors such as public and community radio, in a more comprehensive study. An examination in terms of other media, such as television, would also be worthwhile to determine if the CRTC is consistent in its decision-making across all sectors and media, or if it has different approaches.

Observation from within the CRTC as decisions are made would also be beneficial since it would provide first-hand accounts of decision-making behaviours relevant to organizational communication as well as to policy

research. This observation could potentially focus not only on renewals, but on the entire process from the time an application is filed to the renewal period. Such a study would advance such research as that of Huisman (2001) who, as previously discussed, found particular characteristics of decision-making in meetings. Such a study could also reveal if the CRTC model is unique, or if it resembles that of other organizations, both within and outside government.

A few other suggestions pertain to the process. A cost-benefit analysis and a qualitative analysis would be warranted with regard to holding public hearings more frequently, and relative to the decision to streamline the licence renewal process. Research into the levels of compliance over a longer period, which would go beyond a single spot check in a seven-year period, would ascertain if stations are more frequently non-compliant than perceived at present. A geographical analysis of non-compliance over time would provide insight to the behaviours of certain regions as well as specific companies.

Finally, studies into the reasons for not complying with CRTC regulation, and the reasons behind repeat offences could advise the development of enforcement tools such as, but not restricted to fines. Furthermore, a study of the thresholds of non-compliance would be useful for the CRTC and the CBSC, both of which struggle with deciding when a particular sanction should be used as opposed to another.

6.5 Value of study, contributions and answers to questions

To conclude this dissertation, it is essential to look back on the contributions this study has provided to theoretical and applied research and academic knowledge. Revisiting the results of the initial research questions is also appropriate. There is one other topic that merits an explanation at this time of final reflection. It is the value of an academic setting in performing this study.

6.5.1 Value of study

Although this dissertation provides added value through varied contributions, there is an intrinsic value in this study that is only visible to insiders. It is the value of having been conducted in an academic setting. The environment in which doctoral research occurs provides rigour, depth and structure. Had this study been approached by an industry consultant, it would not have gone beyond an evaluation assessment. In other words, the theory that informs practice would be missing, probably as well as the explanation of the applied methodology, not to mention the thorough data analysis which goes beyond stating the obvious. A doctoral dissertation is more complex in that it completes a knowledge cycle that includes revisiting the theory introduced at the outset to explain the results at the end.

The reflection on these benefits is all the more appropriate given the subject matter. In evaluation, there is a constant battle among practitioners who favour clients and choose to answer whatever question they pose, and those who prefer true research that not only answers given questions, but searches for all possible questions whether they are answered or not. In other words, from the start, academic research differs from applied evaluation applications in that it tries to be objective. That said, this study answers a number of questions posed at the beginning of this exercise, but more importantly, it opens the door to many new questions that have been voluntarily left unanswered, and may only be resolved by further research that will hopefully involve the values of rigour, depth and structure synonymous with academic research.

6.5.2 Contributions

As described in Chapter 1, this research has provided a contribution to three areas of knowledge. On a theoretical level, it has enhanced existing knowledge by providing evidence supporting current theory on democracy, accountability and national identity. It has also challenged certain assumptions in

political economy concerning the ability of commercial radio to balance the cultural objectives of the *Broadcasting Act, 1991* and the market objectives that it consistently pursues. The dissertation has also provided an alternative means to assess national identity and has uncovered new facts surrounding the process used to renew commercial radio licences, such as the number of compliant and non compliant stations and the decision-making principles used to determine compliance.

On an applied research level, the dissertation provided information about relationships between commissioners and the industry, as well as among industry members themselves, further explaining existing power structures in the broadcasting system. The study also offers insight into the utility of evaluation as part of a complete framework to assess radio licence renewal performance. The evaluation of radio licence renewals also informs practitioners, researchers and society by providing new interpretations of the process.

Finally, the dissertation contributes to academic knowledge on three levels. From a teaching perspective, it has offered another approach (evaluation) to include when introducing communication models and methodology to students. It has also provided a way to resolve some of the contradictions that exist in the political economy of communication relative to reconciling opposing values. In the realm of research, it has promoted the study of democracy, accountability and national identity through the use of evaluation and offered a new context in which to use and test these concepts and their relation to one another in the radio broadcasting environment. This work offers inspiration to policy makers and broadcasters regarding the importance of evaluation in maintaining standards and enhancing transparency and legitimacy in their industry. It also encourages public awareness of facts, principles and processes that may not be readily recognized without research. The empirical data also support interest groups seeking regulatory reform.

6.5.3 Answers to questions

Having reviewed the literature on the topic, collected and analyzed the data, and reflected and discussed the results, this dissertation would not be complete without addressing, in a systematic way, the questions posed at the outset of this dissertation.

The first, and most important, is the extent to which the CRTC holds commercial radio owners accountable to the objectives of the *Broadcasting Act, 1991*, the *Radio Regulations, 1986*, conditions of licence, and promises made at the time of licence renewal. This research confirms that the CRTC does hold licensees accountable to their conditions of licence, the *Radio Regulations, 1986* and 2006, as well as the objectives of the *Broadcasting Act, 1991*. The extent of the accountability is the real conclusion of this research. Confronted by political shifts, changing personnel, personalities, heavy workload, and an ever-altering environment, it is not surprising that the CRTC adopted a ‘we do what we can’ attitude. Though the licence renewal process may not be the most vulnerable area of the Commission’s work, there are indicators that it must re-evaluate some of its practices relating to licence applications, which are a priority in the opinions of stakeholders interviewed. The CRTC has problems in ensuring accountability in a consistent fashion and has difficulties in imposing severe sanctions on stations that clearly fail to comply on multiple occasions. However, the CRTC rarely ignores non-compliance and certainly questions the behaviour of non-compliant stations.

The second question was: what are the types of promises, if any, made by radio licence holders at the time of licence renewal? This research has revealed that promises of performance are only used at the time of licence application, and if any are made at the time of renewal, they are not documented, and stations are not held accountable for them. For the time period examined, it is evident that conditions of licence have replaced promises of performance.

The third question queried common decision-making practices in commercial licence renewals. As it has been discussed, decision-making at the CRTC varies with the Chair and serving commissioners. The process of arriving at decisions in formal meetings, and through consultations with staff and the public, has been fairly consistent over the ten years observed. Documentation is consulted, and there appears to be a relationship with stakeholders that facilitates dialogue among parties.

The fourth and final question asked: what factors influence decision-making at the CRTC? This research has shown that there are numerous factors which contribute to CRTC decisions. Many of these involve individuals and include issues of personalities, close relationships with station owners, varying values and opinions, and particular feelings toward regulation. Unfortunately, these are different from person to person, making them difficult to eliminate. Other factors are less arbitrary. They involve precise criteria such as Canadian content quotas and logger tapes, compliance with conditions of licence, and comments or interventions from the public. Though these factors are indeed based on proof of performance in line with CRTC objectives, how they are interpreted is again left to the individuals. In this sense, the CRTC must find ways to minimize variance in interpretation to produce decisions that are consistent.

The CRTC's level of accountability, as highlighted, relies on a 'once in seven year spot check' of Canadian content, logger tape retention, levels of content broadcast (ethnic or French-language) and a review of station files (which may or may not contain complaints) interventions, CTD contributions, annual reports, and other relevant documentation. A question remains: what more should be done? This depends on how much weight is given to errors and mistakes over the period observed. For some broadcasters the 'if it ain't broke don't fix it' approach still prevails, and the idea of greater regulation is the last thing on their minds. However, if guidelines could be developed to determine a threshold of non-compliant behaviour, it would be a step in the right direction. Good

broadcasting policy in the future should try to navigate through prescribed norms and practices without making regulation more cumbersome, but by introducing relevant evaluation to ensure balanced and equitable decision-making in the public interest, which ultimately remains the goal of broadcasting in Canada.

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Appendix A

List of acronyms

ADISQ – Association québécoise de l’industrie du disque, du spectacle et de la vidéo
AMPs – Administrative monetary penalties
ASCAP – American Society of Composers and Publishers
BBC – British Broadcasting Corporation
BBM – Bureau of Broadcast Measurements
BRC – Better Regulation Commission
BRE – Better Regulation Executive
CAB – Canadian Association of Broadcasters
CANCON – Canadian content
CBC – Canadian Broadcasting Corporation
CBSC – Canadian Broadcast Standards Council
CCD – Canadian content development
CNR – Canadian National Railroad
CPRS – Canadian Performing Rights Society
CRBC – Canadian Radio Broadcasting Commission
CRTC – Canadian Radio-television and Telecommunications Commission
CTD- Canadian Talent Development
DAB – Digital Audio Broadcasting
FCA- Federal Court of Appeal
HRSDC – Human Resources and Skills Development Canada
OFCOM – Office of Communication
U.K. – United Kingdom
UNESCO – United Nations Educational, Scientific and Cultural Organization

Appendix B

List of definitions

Administrative renewals: Process by which the CRTC will grant a licence renewal to a station “for lack of time before the date that the licence will expire or for other administrative reasons, the Commission cannot examine the substantive issues that may exist with respect to the renewal of the licence in question” (Sincennes, 2008)

CRTC: The Canadian Radio-television and Telecommunications Commission or CRTC is the “independent public authority in charge of regulating and supervising Canadian broadcasting and telecommunications, [responsible for serving] the public interest and [is] governed by the *Broadcasting Act of 1991* and the *Telecommunications Act of 1993*” (CRTC, 2008a)

CRTC commissioned reviews or studies: These are products of research paid for by the CRTC. They can be conducted in-house or outsourced as the agency sees fit. Not all these reviews or studies are made public. They are usually conducted based on timely policy issues.

Conditions of licence: These are particular requirements included in licence renewals that describe what duties a station must fulfill to maintain its licence or provides a reminder of rules it must follow to continue to broadcast in Canada.

Evaluation: It is a “systematic assessment of the operation and/or outcomes of a program or policy, compared to a set of explicit or implicit standards, as a means of contributing to the improvement of the program or policy” (Weiss, 1998)

Licence renewal (radio): A licence renewal is a routine exercise that normally takes place every 7 years. A public notice process is used rather than a public hearing process. The CRTC makes an assessment about the station’s performance based on the fulfillment of the commitments made by the owners and managers, and takes note of any potential complaints to determine if they will renew the licence. The CRTC accepts public interventions as well (Salter & Odartey-Wellington, 2008). Administrative renewals also take place at different intervals and do not involve hearings (see definition above).

Monitoring exercise: A monitoring exercise takes place when a group or individual decides to examine a process or activity at a given period of time. This is not necessarily a systematic activity in the case of the CRTC and most often, the people involved in the process or activity are aware the process is taking place. In the case of radio licence renewals, the CRTC monitors the Canadian content played on air during a specific period of time by asking the stations to provide a log and copies of logger tapes for that period for them to review.

Parliamentary Committees: “Parliament has many committees which perform functions that cannot be adequately accomplished in debate or question period.”

These include the

- *Committee of the Whole (Supply, Ways and Means)* which is “chaired by the Deputy Speaker, this committee includes all members of the House of Commons meeting in its normal chamber”
- *Standing Committees* which “are the most important parliamentary committees”. They are “usually chaired by government MPs (except for the Committee on Public Accounts), they have 7-11 members, party representation being proportionate to that in the House of Commons. They include specialist committees, corresponding roughly in concern to government departments, and other committees dealing with matters such as public accounts, miscellaneous estimates and private bills, procedures and organization, privileges and elections”
- *Joint standing committees* of the House and Senate
- *Legislative committees* which “were created in the reforms of 1985. They are established to examine legislation after it has passed second reading. A different one is created for each bill. The chairmen are selected from a panel, which contains backbench members from each party. They normally have 7 members. Committees exist to consider policy issues, to examine estimates and annual reports, and to scrutinize government legislation after second reading, including supply and ways-and-means legislation” (Franks, 2009a)

Procedural Justice: “Refers to the fairness issues concerning the methods, mechanisms, and processes used to determine outcomes” (Folger & Cropanzano, 1998)

Radio: Radio has a few distinct definitions. It can be a technological device, related to the discussion about airwaves, but for this study, radio is a form of broadcasting as defined by the *Broadcasting Act, 1991*. It includes “any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place” (*Broadcasting Act, 1991*, Part 1).

Royal Commission: Royal commissions are created by the King/Queen on the advice of government and look into pre-prescribed issues. They have considerable powers and their reports are taken into account when the government considers laws in areas affected by the issues (National co-operative archive, 1999)

Task Force: A “task Force [is] established, like a Royal Commission, under the Inquiries Act. Members are appointed by the governor-in-council. The subject matter of a task force is generally less important than that of a royal commission. Investigation is less formal and extensive, and with smaller budgets the reports are not as lengthy. Less impartial and authoritative, the reports are usually more closely identified with the government and need not be made public. The government is not bound to follow the advice of a task force or even to comment on its report” (Franks, 2009b).

Appendix C

Broadcasting Act, 1991, c. 11

[Assented to February 1st, 1991]

An Act respecting broadcasting and to amend certain Acts in relation thereto and in relation to radiocommunication

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the Broadcasting Act.

PART I

GENERAL INTERPRETATION

Definitions

2. (1) In this Act,

“broadcasting”
« radiodiffusion »

“broadcasting” means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;

“broadcasting receiving apparatus”
« récepteur »

“broadcasting receiving apparatus” means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting;

“broadcasting undertaking”
« entreprise de radiodiffusion »

“broadcasting undertaking” includes a distribution undertaking, a programming undertaking and a network;

“Commission”
« Conseil »

“Commission” means the Canadian Radio-television and Telecommunications Commission established by the Canadian Radio-television and Telecommunications Commission Act;

“Corporation”
« Société »

“Corporation” means the Canadian Broadcasting Corporation continued by section 36;

“distribution undertaking”
« entreprise de distribution »

“distribution undertaking” means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking;

“encrypted”
« encodage »

“encrypted” means treated electronically or otherwise for the purpose of preventing intelligible reception;

“licence”
« licence »

“licence” means a licence to carry on a broadcasting undertaking issued by the Commission under this Act;

“Minister”
« ministre »

“Minister” means such member of the Queen’s Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;

“network”
« réseau »

“network” includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person;

“program”
« émission »

“program” means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

“programming undertaking”
« entreprise de programmation »

“programming undertaking” means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus;

“radio waves”
« ondes radioélectriques »

“radio waves” means electromagnetic waves of frequencies lower than 3 000 GHz that are propagated in space without artificial guide;

“temporary network operation”
« exploitation temporaire d’un réseau »

“temporary network operation” means a network operation with respect to a particular program or a series of programs that extends over a period not exceeding sixty days.

Meaning of “other means of telecommunication”

(2) For the purposes of this Act, “other means of telecommunication” means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system.

Interpretation

(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.

1991, c. 11, s. 2; 1993, c. 38, s. 81; 1995, c. 11, s. 43.

BROADCASTING POLICY FOR CANADA

Declaration

3. (1) It is hereby declared as the broadcasting policy for Canada that
- (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;
 - (b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;
 - (c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;
 - (d) the Canadian broadcasting system should
 - (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,
 - (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,
 - (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and
 - (iv) be readily adaptable to scientific and technological change;
 - (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
 - (f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;
 - (g) the programming originated by broadcasting undertakings should be of high standard;
 - (h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;
 - (i) the programming provided by the Canadian broadcasting system should

- (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
 - (ii) be drawn from local, regional, national and international sources,
 - (iii) include educational and community programs,
 - (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and
 - (v) include a significant contribution from the Canadian independent production sector;
- (j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;
- (k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;
- (l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;
- (m) the programming provided by the Corporation should
- (i) be predominantly and distinctively Canadian,
 - (ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
 - (iii) actively contribute to the flow and exchange of cultural expression,
 - (iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
 - (v) strive to be of equivalent quality in English and in French,
 - (vi) contribute to shared national consciousness and identity,
 - (vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
 - (viii) reflect the multicultural and multiracial nature of Canada;
- (n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and

where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);

(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

(r) the programming provided by alternative television programming services should

(i) be innovative and be complementary to the programming provided for mass audiences,

(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,

(iii) reflect Canada's regions and multicultural nature,

(iv) as far as possible, be acquired rather than produced by those services, and

(v) be made available throughout Canada by the most cost-efficient means;

(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public; and

(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide

reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

Further declaration

(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

APPLICATION

Binding on Her Majesty

4. (1) This Act is binding on Her Majesty in right of Canada or a province.

Application generally

(2) This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

(a) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(b) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; or

(c) any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

For greater certainty

(3) For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.

Idem

(4) For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the Telecommunications Act, when acting solely in that capacity.

1991, c. 11, s. 4; 1993, c. 38, s. 82; 1996, c. 31, s. 57.

PART II

OBJECTS AND POWERS OF THE COMMISSION IN RELATION TO BROADCASTING

OBJECTS

Objects

5. (1) Subject to this Act and the Radiocommunication Act and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

Regulatory policy

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

- (a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
- (b) takes into account regional needs and concerns;
- (c) is readily adaptable to scientific and technological change;
- (d) facilitates the provision of broadcasting to Canadians;
- (e) facilitates the provision of Canadian programs to Canadians;
- (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
- (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

Conflict

(3) The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

Employment equity

(4) Where a broadcasting undertaking is subject to the Employment Equity Act, the powers granted to the Commission under this Act do not extend to the regulation or supervision of matters concerning employment equity in relation to that broadcasting undertaking.

1991, c. 11, s. 5; 1995, c. 44, s. 46.

Policy guidelines and statements

6. The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.

Policy directions

7. (1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to

- (a) any of the objectives of the broadcasting policy set out in subsection 3(1); or
- (b) any of the objectives of the regulatory policy set out in subsection 5(2).

Exception

(2) No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence.

Directions binding

(3) An order made under subsection (1) is binding on the Commission beginning on the day on which the order comes into force and, subject to subsection (4), shall, if it so provides, apply with respect to any matter pending before the Commission on that day.

Exception

(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of

interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.

Publication and tabling

(5) A copy of each order made under subsection (1) shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

Consultation

(6) The Minister shall consult with the Commission before the Governor in Council makes an order under subsection (1).

Procedure for issuance of policy directions

8. (1) Where the Governor in Council proposes to make an order under section 7, the Minister shall cause the proposed order to be

- (a) published by notice in the Canada Gazette, which notice shall invite interested persons to make representations to the Minister with respect to the proposed order; and
- (b) laid before each House of Parliament.

Referral to committee

(2) Where a proposed order is laid before a House of Parliament pursuant to subsection (1), it shall stand referred to such committee thereof as the House considers appropriate to deal with the subject-matter of the order.

Implementation of proposal

(3) The Governor in Council may, after the expiration of forty sitting days of Parliament after a proposed order is laid before both Houses of Parliament in accordance with subsection (1), implement the proposal by making an order under section 7, either in the form proposed or revised in such manner as the Governor in Council deems advisable.

Consultation

(4) The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1).

Definition of “sitting day of Parliament”

(5) In this section, “sitting day of Parliament” means a day on which either House of Parliament sits.

GENERAL POWERS

Licences, etc.

9. (1) Subject to this Part, the Commission may, in furtherance of its objects,
- (a) establish classes of licences;
 - (b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee
 - (i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and
 - (ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(l) and (m);
 - (c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;
 - (d) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (b);
 - (e) suspend or revoke any licence;
 - (f) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;
 - (g) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and
 - (h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

Restrictions re conditions

- (2) Notwithstanding subsections (1) and 28(3), no licence of a distribution undertaking may be made subject to a condition that requires the licensee to substitute replacement material for commercial messages carried in a broadcasting signal received by that licensee.

Exception

- (3) Subsection (2) does not apply in respect of a condition of a licence renewed after October 4, 1987 where before that date the licensee was complying with such a condition.

Exemptions

- (4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class

specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

1991, c. 11, s. 9; 1994, c. 26, s. 10(F).

Regulations generally

10. (1) The Commission may, in furtherance of its objects, make regulations

- (a) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;
- (b) prescribing what constitutes a Canadian program for the purposes of this Act;
- (c) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1);
- (d) respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising;
- (e) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates;
- (f) prescribing the conditions for the operation of programming undertakings as part of a network and for the broadcasting of network programs, and respecting the broadcasting times to be reserved for network programs by any such undertakings;
- (g) respecting the carriage of any foreign or other programming services by distribution undertakings;
- (h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;
- (i) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify;
- (j) respecting the audit or examination of the records and books of account of licensees by the Commission or persons acting on behalf of the Commission; and
- (k) respecting such other matters as it deems necessary for the furtherance of its objects.

Application

(2) A regulation made under this section may be made applicable to all persons holding licences or to all persons holding licences of one or more classes.

Publication of proposed regulation

(3) A copy of each regulation that the Commission proposes to make under this section shall be published in the Canada Gazette and a reasonable opportunity

shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

Regulations respecting licence fees

11. (1) The Commission may make regulations

- (a) with the approval of the Treasury Board, establishing schedules of fees to be paid by licensees of any class;
- (b) providing for the establishment of classes of licensees for the purposes of paragraph (a);
- (c) providing for the payment of any fees payable by a licensee, including the time and manner of payment;
- (d) respecting the interest payable by a licensee in respect of any overdue fee; and
- (e) respecting such other matters as it deems necessary for the purposes of this section.

Criteria

(2) Regulations made under paragraph (1)(a) may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to

- (a) the revenues of the licensees;
- (b) the performance of the licensees in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and
- (c) the market served by the licensees.

Exceptions

(3) No regulations made under subsection (1) shall apply to the Corporation or to licensees carrying on programming undertakings on behalf of Her Majesty in right of a province.

Debt due to Her Majesty

(4) Fees payable by a licensee under this section and any interest thereon constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

Publication of proposed regulations

(5) A copy of each regulation that the Commission proposes to make under this section shall be published in the Canada Gazette and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

Inquiries

12. (1) Where it appears to the Commission that

(a) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order, or
(b) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part,
the Commission may inquire into, hear and determine the matter.

Mandatory orders

(2) The Commission may, by order, require any person to do, forthwith or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part or to any such regulation, licence, decision or order.

Referral to Commission

(3) Where an inquiry under subsection (1) is heard by a panel established under subsection 20(1) and the panel issues an order pursuant to subsection (2) of this section, any person who is affected by the order may, within thirty days after the making thereof, apply to the Commission to reconsider any decision or finding made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may re-hear any matter before deciding it.

Enforcement of mandatory orders

13. (1) Any order made under subsection 12(2) may be made an order of the Federal Court or of any superior court of a province and is enforceable in the same manner as an order of the court.

Procedure

(2) To make an order under subsection 12(2) an order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the registrar of the court a certified copy of the order, and thereupon the order becomes an order of the court.

Effect of variation or rescission

(3) Where an order that has been made an order of a court is rescinded or varied by a subsequent order of the Commission, the order of the court shall be deemed to have been cancelled and the subsequent order may, in the same manner, be made an order of the court.

Research

14. (1) The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada.

Review of technical matters

(2) The Commission shall review and consider any technical matter relating to broadcasting referred to the Commission by the Minister and shall make recommendations to the Minister with respect thereto.

Hearings and reports

15. (1) The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act.

Consultation

(2) The Minister shall consult with the Commission with regard to any request proposed to be made by the Governor in Council under subsection (1).

Powers respecting hearings

16. The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record.

Authority re questions of fact or law

17. The Commission has authority to determine questions of fact or law in relation to any matter within its jurisdiction under this Act.

HEARINGS AND PROCEDURE

Where public hearing required

18. (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with

(a) the issue of a licence, other than a licence to carry on a temporary network operation;

(b) the suspension or revocation of a licence;

- (c) the establishing of any performance objectives for the purposes of paragraph 11(2)(b); and
- (d) the making of an order under subsection 12(2).

Idem

(2) The Commission shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such a hearing is not required in the public interest.

Where public hearing in Commission's discretion

(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

Place of hearing

(4) A public hearing under this section may be held at such place in Canada as the Chairperson of the Commission may designate.

1991, c. 11, s. 18; 2001, c. 34, s. 32(E).

Notice of hearing

19. The Commission shall cause notice of

(a) any application received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation,

(b) any decision made by it to issue, amend or renew a licence, and

(c) any public hearing to be held by it under section 18

to be published in the Canada Gazette and in one or more newspapers of general circulation within any area affected or likely to be affected by the application, decision or matter to which the public hearing relates.

Panels of Commission

20. (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, at least two of whom shall be full-time members, to deal with, hear and determine any matter on behalf of the Commission.

Powers

(2) A panel that is established under subsection (1) has and may exercise all the powers and may perform all the duties and functions of the Commission in relation to any matter before the panel.

Decision

(3) A decision of a majority of the members of a panel established under subsection (1) is a decision of the panel.

Consultation

(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2) and the regulations made by the Commission under sections 10 and 11.

1991, c. 11, s. 20; 2001, c. 34, s. 32(E).

Rules

21. The Commission may make rules

- (a) respecting the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission; and
- (b) respecting the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings.

LICENCES

Conditions governing issue, amendment and renewal

22. (1) No licence shall be issued, amended or renewed under this Part

(a) if the issue, amendment or renewal of the licence is in contravention of a direction to the Commission issued by the Governor in Council under subsection 26(1); and

(b) subject to subsection (2), unless the Minister of Industry certifies to the Commission that the applicant for the issue, amendment or renewal of the licence

(i) has satisfied the requirements of the Radiocommunication Act and the regulations made under that Act, and

(ii) has been or will be issued a broadcasting certificate with respect to the radio apparatus that the applicant would be entitled to operate under the licence.

Exception

(2) The requirement set out in paragraph (1)(b) does not apply in respect of radio apparatus, or any class thereof, prescribed under paragraph 6(1)(m) of the Radiocommunication Act.

Suspension or revocation of broadcasting certificate

(3) No licence is of any force or effect during any period when the broadcasting certificate issued under the Radiocommunication Act with respect to the radio apparatus that the holder of the licence is entitled to operate under that Act is suspended or revoked.

Issue, etc., contravening this section

(4) Any licence issued, amended or renewed in contravention of this section is of no force or effect.

1991, c. 11, s. 22; 1995, c. 1, s. 31.

Consultation between Commission and Corporation

23. (1) The Commission shall, at the request of the Corporation, consult with the Corporation with regard to any conditions that the Commission proposes to attach to any licence issued or to be issued to the Corporation.

Reference to Minister

(2) If, notwithstanding the consultation provided for in subsection (1), the Commission attaches any condition to a licence referred to in subsection (1) that the Corporation is satisfied would unreasonably impede the Corporation in providing the programming contemplated by paragraphs 3(1)(l) and (m), the Corporation may, within thirty days after the decision of the Commission, refer the condition to the Minister for consideration.

Ministerial directive

(3) Subject to subsection (4), the Minister may, within ninety days after a condition is referred to the Minister under subsection (2), issue to the Commission a written directive with respect to the condition and the Commission shall comply with any such directive issued by the Minister.

Consultation

(4) The Minister shall consult with the Commission and with the Corporation before issuing a directive under subsection (3).

Publication and tabling of directive

(5) A directive issued by the Minister under subsection (3) shall be published forthwith in the Canada Gazette and shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the directive is

issued.

Conditions governing suspension and revocation

24. (1) No licence shall be suspended or revoked under this Part unless the licensee applies for or consents to the suspension or revocation or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that

(a) the licensee has contravened or failed to comply with any condition of the licence or with any order made under subsection 12(2) or any regulation made under this Part; or

(b) the licence was, at any time within the two years immediately preceding the date of publication in the Canada Gazette of the notice of the public hearing, held by a person to whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the Governor in Council under this Act.

Licences of Corporation

(2) No licence issued to the Corporation that is referred to in the schedule may be suspended or revoked under this Part except on application of or with the consent of the Corporation.

Publication of decision

(3) A copy of a decision of the Commission relating to the suspension or revocation of a licence, together with written reasons for the decision, shall, forthwith after the making of the decision, be forwarded by prepaid registered mail to all persons who were heard at or made any oral representations in connection with the hearing held under subsection (1), and a summary of the decision and of the reasons for the decision shall, at the same time, be published in the Canada Gazette and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision.

Report of alleged contravention or non-compliance by Corporation

25. (1) Where the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened or failed to comply with any condition of a licence referred to in the schedule, any order made under subsection 12(2) or any regulation made under this Part, the Commission shall forward to the Minister a report setting out the circumstances of the alleged contravention or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith.

Report to be tabled

(2) The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is received by the Minister.

GENERAL POWERS OF THE GOVERNOR IN COUNCIL

Directions

26. (1) The Governor in Council may, by order, issue directions to the Commission

- (a) respecting the maximum number of channels or frequencies for the use of which licences may be issued within a geographical area designated in the order;
- (b) respecting the reservation of channels or frequencies for the use of the Corporation or for any special purpose designated in the order;
- (c) respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted; and
- (d) prescribing the circumstances in which the Commission may issue licences to applicants that are agents of a province and are otherwise ineligible to hold a licence, and the conditions on which those licences may be issued.

Idem

(2) Where the Governor in Council deems the broadcast of any program to be of urgent importance to Canadians generally or to persons resident in any area of Canada, the Governor in Council may, by order, direct the Commission to issue a notice to licensees throughout Canada or throughout any area of Canada, of any class specified in the order, requiring the licensees to broadcast the program in accordance with the order, and licensees to whom any such notice is addressed shall comply with the notice.

Publication and tabling

(3) An order made under subsection (1) or (2) shall be published forthwith in the Canada Gazette and a copy thereof shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

Consultation

(4) The Minister shall consult with the Commission with regard to any order proposed to be made by the Governor in Council under subsection (1).

Directions re Free Trade Agreement

27. (1) The Governor in Council may, either on the recommendation of the Minister made at the request of the Commission or on the Governor in Council's own motion, issue directions of general application respecting the manner in which the Commission shall apply or interpret paragraph 3 of Article 2006 of the Agreement.

Effect of directions

(2) A direction issued under subsection (1) is binding on the Commission from the time it comes into force and, unless otherwise provided therein, applies in respect of matters pending before the Commission at that time.

Request of Commission

(3) The Commission may, in order to request the issuance of a direction under subsection (1), suspend the determination of any matter of which it is seised.

Definition of "Agreement"

(4) In this section, "Agreement" has the same meaning as in the Canada-United States Free Trade Agreement Implementation Act.

Setting aside or referring decisions back to Commission

28. (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).

Order on reference back

(2) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing shall set out the details of any matter that, in the opinion of the Governor in Council, may be material to the reconsideration and hearing.

Powers on reference back

(3) Where a decision is referred back to the Commission under this section, the Commission shall reconsider the matter and, after a hearing as provided for by subsection (1), may

- (a) rescind the decision or the issue, amendment or renewal of the licence;
- (b) rescind the issue of the licence and issue a licence on the same or different conditions to another person; or
- (c) confirm, either with or without change, variation or alteration, the decision or the issue, amendment or renewal of the licence.

Setting aside after confirmation

(4) Where, pursuant to paragraph (3)(c), the Commission confirms a decision or the issue, amendment or renewal of a licence, the Governor in Council may, within sixty days after the confirmation, on petition in writing of any person received within thirty days after that date or on the Governor in Council's own motion, by order, set aside the decision or the issue, amendment or renewal, if the Governor in Council is satisfied as to any of the matters referred to in subsection (1).

Reasons

(5) An order made under subsection (4) to set aside a decision or the issue, amendment or renewal of a licence shall set out the reasons of the Governor in Council therefor.

Filing of petitions

29. (1) Every person who petitions the Governor in Council under subsection 28(1) or (4) shall at the same time send a copy of the petition to the Commission.
Notice

(2) On receipt of a petition under subsection (1), the Commission shall forward a copy of the petition by prepaid registered mail to all persons who were heard at or made any oral representation in connection with the hearing held in the matter to which the petition relates.

Register

(3) The Commission shall establish and maintain a public register in which shall be kept a copy of each petition received by the Commission under subsection 28(1) or (4).

Amendment of schedule

30. The Governor in Council may, on the recommendation of the Minister made on the request of the Commission and with the consent of the Corporation, amend the schedule.

DECISIONS AND ORDERS

Decisions and orders final

31. (1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.

Appeal to Federal Court of Appeal

(2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

Entry of appeal

(3) No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.

Document deemed decision or order

(4) Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission.

OFFENCES

Broadcasting without or contrary to licence

32. (1) Every person who, not being exempt from the requirement to hold a licence, carries on a broadcasting undertaking without a licence therefor is guilty of an offence punishable on summary conviction and is liable

- (a) in the case of an individual, to a fine not exceeding twenty thousand dollars for each day that the offence continues; or
- (b) in the case of a corporation, to a fine not exceeding two hundred thousand dollars for each day that the offence continues.

Contravention of regulation or order

(2) Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

- (a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or
- (b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

Contravention of conditions of licence

33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction.

Limitation

34. Proceedings for an offence under subsection 32(2) or section 33, may be instituted within, but not after, two years after the time when the subject-matter of the proceedings arose.

PART III CANADIAN BROADCASTING CORPORATION

INTERPRETATION

Definitions

35. (1) In this Part,

“auditor”
« vérificateur »

“auditor” means the auditor of the Corporation;

“Board”
« conseil d’administration »

“Board” means the Board of Directors of the Corporation;

“Chairperson”
« président du conseil »

“Chairperson” means the Chairperson of the Board;

“director”
« administrateur »

“director” means a director of the Corporation;

“President”
« président-directeur général »

“President” means the President of the Corporation;

“wholly-owned subsidiary”
« filiale à cent pour cent »

“wholly-owned subsidiary” has the same meaning as in Part X of the Financial Administration Act.

Interpretation

(2) This Part shall be interpreted and applied so as to protect and enhance the freedom of expression and the journalistic, creative and programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers.

CONTINUATION OF CORPORATION

Corporation continued

36. (1) The corporation known as the Canadian Broadcasting Corporation is hereby continued and shall consist of those directors who from time to time compose the Board.

Board of Directors

(2) There shall be a Board of Directors of the Corporation consisting of twelve directors, including the Chairperson and the President, to be appointed by the Governor in Council.

Tenure

(3) A director shall be appointed to hold office during good behaviour for a term not exceeding five years and may be removed at any time by the Governor in Council for cause.

Re-appointment

(4) Subject to section 38, the Chairperson and the President are eligible for re-appointment on the expiration of any term of office but any other director who has served two consecutive terms is not, during the twelve months following the completion of the second term, eligible for appointment, except as Chairperson or President.

Continuation in office

(5) Notwithstanding subsections (3) and (4), if a director is not appointed to take office on the expiration of the term of office of an incumbent director, the incumbent director continues in office until a successor is appointed.

1991, c. 11, s. 36; 1995, c. 29, s. 4.

Oath of office

37. Every director shall, before entering on the director's duties, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:
I,, do solemnly swear (or affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of (Add, in the case where an oath is taken, "So help me God".)

Outside interests of directors

38. (1) A person is not eligible to be appointed or to continue as a director if the person is not a Canadian citizen who is ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, the person
(a) is engaged in the operation of a broadcasting undertaking;
(b) has any pecuniary or proprietary interest in a broadcasting undertaking; or
(c) is principally engaged in the production or distribution of program material that is primarily intended for use by a broadcasting undertaking.

Disposing of interest

(2) A director in whom any interest prohibited by subsection (1) vests by will or succession for the director's own benefit shall, within three months thereafter, absolutely dispose of that interest.

Responsibility of directors

39. Subject to this Part, the Board is responsible for the management of the businesses, activities and other affairs of the Corporation.

Accountability of Corporation to Parliament

40. The Corporation is ultimately accountable, through the Minister, to Parliament for the conduct of its affairs.

CHAIRPERSON

Powers, duties and functions

41. (1) The Chairperson shall preside at meetings of the Board and may exercise such powers and shall perform such other duties and functions as are assigned to the Chairperson by the by-laws of the Corporation.

Part-time

(2) The Chairperson shall perform the duties and functions of the office on a part-time basis.

Absence, incapacity or vacancy of office

(3) If the Chairperson is absent or incapacitated or if the office of Chairperson is vacant, the President shall act as Chairperson, and if both are absent or incapacitated or if both those offices are vacant, the Board may authorize a director to act as Chairperson, but no person so authorized by the Board has authority to act as Chairperson for a period exceeding sixty days without the approval of the Governor in Council.

PRESIDENT

Powers, duties and functions

42. (1) The President is the chief executive officer of the Corporation and has supervision over and direction of the work and staff of the Corporation and may exercise such powers and shall perform such other duties and functions as are assigned to the President by the by-laws of the Corporation.

Full-time

(2) The President shall perform the duties and functions of the office on a full-time basis.

Absence, incapacity or vacancy of office

(3) If the President is absent or incapacitated or if the office of President is vacant, the Board may authorize an officer of the Corporation to act as President, but no person so authorized by the Board has authority to act as President for a period exceeding sixty days without the approval of the Governor in Council.

REMUNERATION

Chairperson's and President's remuneration

43. (1) The Chairperson and the President shall be paid by the Corporation remuneration at the rate fixed by the Governor in Council.

Fees of other directors

(2) Each director, other than the Chairperson and the President, shall be paid by the Corporation such fees for attendance at meetings of the Board or any committee of directors as are fixed by the by-laws of the Corporation.

Expenses

(3) Each director is entitled to be paid by the Corporation such travel and living expenses incurred by the director in the performance of the duties of that director as are fixed by the by-laws of the Corporation.

STAFF

Employment of staff

44. (1) The Corporation may, on its own behalf, employ such officers and employees as it considers necessary for the conduct of its business.

Terms, etc., of employment

(2) The officers and employees employed by the Corporation under subsection (1) shall, subject to any by-laws made under section 51, be employed on such terms and conditions and at such rates of remuneration as the Board deems fit.

Not servants of Her Majesty

(3) The officers and employees employed by the Corporation under subsection (1) are not officers or servants of Her Majesty.

STANDING COMMITTEES

English and French language broadcasting committees

45. (1) The Board shall establish a standing committee of directors on English language broadcasting and a standing committee of directors on French language broadcasting, each consisting of the Chairperson, the President and such other directors as the Board may appoint.

Chairperson or President shall preside

(2) The Chairperson, or in the absence of the Chairperson, the President, shall preside at meetings of each standing committee established pursuant to subsection (1).

Absence of Chairperson and President

(3) In respect of each standing committee established pursuant to subsection (1), the Chairperson shall designate one of the directors to preside at meetings thereof in the event of the absence of both the Chairperson and the President.

Duties of committees

(4) The standing committee on English language broadcasting shall perform such duties in relation to English language broadcasting, and the standing committee on French language broadcasting shall perform such duties in relation to French language broadcasting, as are delegated to the committee by the by-laws of the Corporation.

OBJECTS AND POWERS

Objects and powers

46. (1) The Corporation is established for the purpose of providing the programming contemplated by paragraphs 3(1)(l) and (m), in accordance with the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, and for that purpose the Corporation may

- (a) establish, equip, maintain and operate broadcasting undertakings;
- (b) make operating agreements with licensees for the broadcasting of programs;
- (c) originate programs, secure programs from within or outside Canada by purchase, exchange or otherwise and make arrangements necessary for their transmission;
- (d) make contracts with any person, within or outside Canada, in connection with the production or presentation of programs originated or secured by the Corporation;
- (e) make contracts with any person, within or outside Canada, for performances in connection with the programs of the Corporation;
- (f) with the approval of the Governor in Council, make contracts with any person for the provision by the Corporation of consulting or engineering services outside Canada;
- (g) with the approval of the Governor in Council, distribute or market outside Canada programming services originated by the Corporation;
- (h) with the approval of the Minister, act as agent for or on behalf of any person in providing programming to any part of Canada not served by any other licensee;
- (i) collect news relating to current events in any part of the world and establish and subscribe to news agencies;
- (j) publish, distribute and preserve, whether for a consideration or otherwise, such audio-visual material, papers, periodicals and other literary matter as may seem conducive to the attainment of the objects of the Corporation;
- (k) produce, distribute and sell such consumer products as may seem conducive to the attainment of the objects of the Corporation;

- (l) acquire copyrights and trade-marks;
- (m) acquire and use any patent, patent rights, licences or concessions that the Board considers useful for the purposes of the Corporation;
- (n) make arrangements or agreements with any organization for the use of any rights, privileges or concessions that the Board considers useful for the purposes of the Corporation;
- (o) acquire broadcasting undertakings either by lease or by purchase;
- (p) make arrangements or agreements with any organization for the provision of broadcasting services;
- (q) subject to the approval of the Governor in Council, acquire, hold and dispose of shares of the capital stock of any company or corporation that is authorized to carry on any business incidental or conducive to the attainment of the objects of the Corporation; and
- (r) do all such other things as the Board deems incidental or conducive to the attainment of the objects of the Corporation.

International service

- (2) The Corporation shall, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, provide an international service in accordance with such directions as the Governor in Council may issue.

Power to act as agent

- (3) The Corporation may, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, act as an agent of Her Majesty in right of Canada or a province in respect of any broadcasting operations that it may be directed by the Governor in Council to carry out.

Extension of services

- (4) In planning extensions of broadcasting services, the Corporation shall have regard to the principles and purposes of the Official Languages Act.

Independence

- (5) The Corporation shall, in the pursuit of its objects and in the exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence.

Debt obligations

- 46.1 (1) The Corporation may, with the approval of the Minister of Finance, borrow money by any means, including the issuance and sale of bonds, debentures, notes and any other evidence of indebtedness of the Corporation.

Loans to the Corporation

(2) At the request of the Corporation, the Minister of Finance may, out of the Consolidated Revenue Fund, lend money to the Corporation on such terms and conditions as that Minister may fix.

Total indebtedness

(3) The total indebtedness outstanding in respect of borrowings under subsections (1) and (2) shall not exceed

(a) \$220,000,000; or

(b) such greater amount as may be authorized for the purposes of this subsection by Parliament under an appropriation Act.
1994, c. 18, s. 18; 2009, c. 31, s. 23.

AGENT OF HER MAJESTY

Corporation an agent of Her Majesty

47. (1) Except as provided in subsections 44(1) and 46(2), the Corporation is, for all purposes of this Act, an agent of Her Majesty, and it may exercise its powers under this Act only as an agent of Her Majesty.

Contracts

(2) The Corporation may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Corporation.

Property

(3) Property acquired by the Corporation is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Corporation.

Proceedings

(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Corporation on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Corporation in the name of the Corporation in any court that would have jurisdiction if the Corporation were not an agent of Her Majesty.

Acquisition and disposition of property

48. (1) Subject to subsection (2), the Corporation may purchase, lease or otherwise acquire any real or personal property that the Corporation deems necessary or convenient for carrying out its objects and may sell, lease or otherwise dispose of all or any part of any property acquired by it.

Restriction

(2) The Corporation shall not, without the approval of the Governor in Council, enter into

(a) any transaction for the acquisition of any real property or the disposition of any real or personal property, other than program material or rights therein, for a consideration in excess of four million dollars or such greater amount as the Governor in Council may by order prescribe; or

(b) a lease or other agreement for the use or occupation of real property involving an expenditure in excess of four million dollars or such greater amount as the Governor in Council may by order prescribe.

Retaining proceeds

(3) Subject to subsection (4), the Corporation may retain and use all of the proceeds of any transaction for the disposition of real or personal property.

Idem

(4) In the case of a transaction for the disposition of real or personal property requiring the approval of the Governor in Council under subsection (2), the Corporation may retain and use all or any part of the proceeds therefrom unless otherwise directed by the Governor in Council.

Expropriation

49. (1) Where, in the opinion of the Corporation, the taking or acquisition of any land or interest therein by the Corporation without the consent of the owner is required for the purpose of carrying out its objects, the Corporation shall so advise the appropriate Minister in relation to Part I of the Expropriation Act.

Application of Expropriation Act

(2) For the purposes of the Expropriation Act, any land or interest therein that, in the opinion of the Minister referred to in subsection (1), is required for the purpose of carrying out the objects of the Corporation shall be deemed to be land or an interest therein that, in the opinion of the Minister, is required for a public work or other public purpose and, in relation thereto, a reference to the Crown in that Act shall be construed as a reference to the Corporation.

HEAD OFFICE AND MEETINGS

Head office

50. (1) The head office of the Corporation shall be in the National Capital Region as described in the schedule to the National Capital Act or at such other place in Canada as the Governor in Council may specify.

Meetings

(2) The Board shall meet at least six times in each year.

Telephone conferences

(3) A director may, subject to the by-laws of the Corporation, participate in a meeting of the Board or a committee of directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other, and a director who participates in such a meeting by those means is deemed for the purposes of this Part to be present at the meeting.

BY-LAWS

By-laws

51. (1) The Board may make by-laws

- (a) respecting the calling of meetings of the Board;
 - (b) respecting the conduct of business at meetings of the Board, the establishment of special and standing committees of directors, the delegation of duties to special and standing committees of directors, including the committees referred to in section 45, and the fixing of quorums for meetings thereof;
 - (c) fixing the fees to be paid to directors, other than the Chairperson and the President, for attendance at meetings of the Board or any committee of directors, and the travel and living expenses to be paid to directors;
 - (d) respecting the duties and conduct of the directors, officers and employees of the Corporation and the terms and conditions of employment and of termination of employment of officers and employees of the Corporation, including the payment of any gratuity to those officers and employees or any one or more of them, whether by way of retirement allowance or otherwise;
 - (e) respecting the establishment, management and administration of a pension fund for the directors, officers and employees of the Corporation and their dependants, the contributions thereto to be made by the Corporation and the investment of the pension fund moneys thereof; and
 - (f) generally for the conduct and management of the affairs of the Corporation.
- Certain by-laws subject to Minister's approval

(2) No by-law made under paragraph (1)(c) or (e), and no by-law made under paragraph (1)(d) that provides for the payment of any gratuity referred to in that paragraph, has any effect unless it is approved by the Minister.

FINANCIAL PROVISIONS

Independence of the Corporation

52. (1) Nothing in sections 53 to 70 shall be interpreted or applied so as to limit the freedom of expression or the journalistic, creative or programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers.

Idem

(2) Without limiting the generality of subsection (1), and notwithstanding sections 53 to 70 or any regulation made under any of those sections, the Corporation is not required to

(a) submit to the Treasury Board or to the Minister or the Minister of Finance any information the provision of which could reasonably be expected to compromise or constrain the journalistic, creative or programming independence of the Corporation; or

(b) include in any corporate plan or summary thereof submitted to the Minister pursuant to section 54 or 55 any information the provision of which could reasonably be expected to limit the ability of the Corporation to exercise its journalistic, creative or programming independence.

Part VII of Financial Administration Act not to apply

52.1 Notwithstanding the Financial Administration Act, Part VII of that Act does not apply to a debt incurred by the Corporation.
1994, c. 18, s. 19.

Financial year

53. The financial year of the Corporation is the period beginning on April 1 in one year and ending on March 31 in the next year, unless the Governor in Council otherwise directs.

Corporate plan

54. (1) The Corporation shall annually submit a corporate plan to the Minister.

Scope of corporate plan

(2) The corporate plan of the Corporation shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any.

Contents of corporate plan

(3) The corporate plan of the Corporation shall include

(a) a statement of

(i) the objects for which the Corporation is incorporated, as set out in this Act,

(ii) the Corporation's objectives for the next five years and for each year in that period and the strategy the Corporation intends to employ to achieve them, and

(iii) the Corporation's expected performance for the year in which the plan is submitted as compared to its objectives for that year, as set out in the last corporate plan;

(b) the capital budget of the Corporation for the next following financial year of the Corporation;

(c) an operating budget for the next following financial year of the Corporation; and

(d) where the Corporation intends to borrow money in the next financial year, a general indication of the borrowing plans and strategies of the Corporation for that year.

Approval of Minister of Finance

(3.1) Where the Corporation includes a general indication of its plans to borrow money in its corporate plan, the Corporation shall submit that part of its corporate plan to the Minister of Finance for that Minister's approval.

Capital budgets

(4) The Corporation shall submit the capital budget to the Minister in a corporate plan pursuant to paragraph (3)(b) for the approval of the Treasury Board.

Notification of business activity

(5) Where the Corporation or a wholly-owned subsidiary of the Corporation proposes to carry out a substantial change to business activities in any period in a manner that is not consistent with the last corporate plan of the Corporation in

respect of that period, the Corporation shall forthwith notify the Minister in writing of the inconsistency in the manner of carrying on the business activity.

Scope of budgets

(6) The budgets of the Corporation referred to in paragraphs (3)(b) and (c) shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any.

Form of budgets

(7) The budgets of the Corporation referred to in paragraphs (3)(b) and (c) shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

Approval of multi-year items

(8) The Treasury Board may approve any item in a capital budget submitted pursuant to paragraph (3)(b) for any financial year or years following the financial year for which the budget is submitted.

1991, c. 11, s. 54; 1994, c. 18, s. 20.

Summary of plan

55. (1) The Corporation shall submit to the Minister, in respect of each financial year, a summary of the corporate plan submitted pursuant to section 54 that summarizes the information referred to in subsection 54(3), modified so as to be based on the financial resources proposed to be allocated to the Corporation as set out in the Estimates for that financial year that have been tabled in the House of Commons.

Scope of summary

(2) A summary shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any, and shall set out the major business decisions taken with respect thereto.

Form of summary

(3) A summary shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

Tabling in Parliament

(4) The Minister shall cause a copy of every summary received pursuant to this section to be laid before each House of Parliament.

Reference to committee

(5) A summary laid before a House of Parliament pursuant to subsection (4) stands permanently referred to such committee of that House or of both Houses of Parliament as may be designated or established to review matters relating to the business and activities of the Corporation.

Regulations

56. The Treasury Board may make regulations prescribing the form in which corporate plans and summaries required pursuant to sections 54 and 55 shall be prepared, the information to be included therein, the information to accompany corporate plans and the time at, before or within which they are to be submitted and summaries are to be laid before each House of Parliament.

Bank accounts

57. (1) The Corporation shall maintain in its own name one or more accounts with

- (a) any member of the Canadian Payments Association;
- (b) any local Cooperative Credit Society that is a member of a Central Cooperative Credit Society having membership in the Canadian Payments Association; and
- (c) subject to the approval of the Minister of Finance, any financial institution outside Canada.

Administration of Corporation funds

(2) All money received by the Corporation through the conduct of its operations or otherwise shall be deposited to the credit of the accounts established pursuant to subsection (1) and shall be administered by the Corporation exclusively in the exercise of its powers and the performance of its duties and functions.

Investments

(3) The Corporation may invest any money administered by it in bonds or other securities of, or guaranteed by, the Government of Canada.

Proprietor's Equity Account

(4) The Corporation shall, in its books of account, establish a Proprietor's Equity Account and shall credit thereto the amount of all money paid to the Corporation for capital purposes out of parliamentary appropriations.

Receiver General account

58. (1) The Corporation shall, if so directed by the Minister of Finance with the concurrence of the Minister, and may, if the Minister of Finance and the Minister approve, pay or cause to be paid all or any part of the money of the Corporation or of a wholly-owned subsidiary of the Corporation to the Receiver General to be paid into the Consolidated Revenue Fund and credited to a special account in the accounts of Canada in the name of the Corporation or subsidiary, and the Receiver General, subject to such terms and conditions as the Minister of Finance may prescribe, may pay out, for the purposes of the Corporation or subsidiary, or repay to the Corporation or subsidiary, all or any part of the money credited to the special account.

Interest

(2) Interest may be paid in respect of money credited to a special account pursuant to subsection (1), in accordance with and at rates fixed by the Minister of Finance with the approval of the Governor in Council.

Payment over surplus money

59. Subject to any other Act of Parliament, where the Minister and the Minister of Finance, with the approval of the Governor in Council, so direct, the Corporation shall pay or cause to be paid to the Receiver General so much of the money of the Corporation or of a wholly-owned subsidiary of the Corporation as those Ministers consider to be in excess of the amount that is required for the purposes of the Corporation or subsidiary, and any money so paid may be applied toward the discharge of any obligation of the Corporation or subsidiary to the Crown or may be applied as revenues of Canada.

60. (1) to (6) [Repealed, 2005, c. 30, s. 41]

Reports to Minister

(7) The Board shall make to the Minister such reports of the financial affairs of the Corporation as the Minister requires.

1991, c. 11, s. 60; 2005, c. 30, s. 41.

Auditor of the Corporation

61. The Auditor General of Canada is the auditor of the Corporation.

62. [Repealed, 2005, c. 30, s. 42]

63. [Repealed, 2005, c. 30, s. 42]

64. [Repealed, 2005, c. 30, s. 42]

65. [Repealed, 2005, c. 30, s. 42]

66. [Repealed, 2005, c. 30, s. 42]

67. [Repealed, 2005, c. 30, s. 42]
68. [Repealed, 2005, c. 30, s. 42]
69. [Repealed, 2005, c. 30, s. 42]

Report on wholly-owned subsidiaries

70. The Corporation shall forthwith notify the Minister and the President of the Treasury Board of the name of any corporation that becomes or ceases to be a wholly-owned subsidiary of the Corporation.

REPORT TO PARLIAMENT

Annual report

71. (1) The Corporation shall, as soon as possible after, but in any case within three months after, the end of each financial year, submit an annual report on the operations of the Corporation in that year concurrently to the Minister and to the President of the Treasury Board, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Reference to committee

(2) An annual report laid before a House of Parliament pursuant to subsection (1) stands permanently referred to such committee of that House or of both Houses of Parliament as may be designated or established to review matters relating to the business and activities of the Corporation.

Form and contents

(3) The annual report of the Corporation shall include

- (a) the financial statements of the Corporation referred to in subsection 131(4) of the Financial Administration Act,
- (b) the annual auditor's report referred to in section 132 of the Financial Administration Act,
- (c) a statement on the extent to which the Corporation has met its objectives for the financial year,
- (d) quantitative information respecting the performance of the Corporation, including its wholly-owned subsidiaries, if any, relative to the Corporation's objectives, and
- (e) such other information in respect of the financial affairs of the Corporation as is required by this Part or by the Minister to be included therein, and shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

1991, c. 11, s. 71; 2005, c. 30, s. 43.

PART IV
RELATED AND CONSEQUENTIAL AMENDMENTS, REPEAL,
TRANSITIONAL AND COMING INTO FORCE

RELATED AND CONSEQUENTIAL AMENDMENTS

72. to 88. [Amendments]

REPEAL

89. [Repeal]

TRANSITIONAL

Definitions

90. (1) In this section,

“Executive Committee”
« bureau »

“Executive Committee” means the Executive Committee of the Commission, as it existed on the day immediately before the coming into force of section 80;

“former Act”
« loi abrogée »

“former Act” means the Broadcasting Act, chapter B-9 of the Revised Statutes of Canada, 1985.

Pending proceedings

(2) Any proceedings pending before the Commission or Executive Committee on the day immediately before the coming into force of this subsection shall be taken up and continued before the Commission under and in conformity with this Act.

Continuation of previous orders, etc.

(3) Every decision, order, rule and regulation issued, rendered or made under the former Act by the Commission or Executive Committee that is in force on the coming into force of this subsection and that is not inconsistent with this Act or any other Act of Parliament shall be deemed to have been issued, rendered or made by the Commission under this Act.

Continuation of directions

(4) Every direction issued to the Commission by the Governor in Council under the former Act that is in force on the day immediately preceding the coming into force of this subsection and that is not inconsistent with this Act or any other Act of Parliament shall be deemed to have been issued by the Governor in Council under this Act.

Continuation of licences

(5) Every broadcasting licence authorizing the carrying on of a broadcasting undertaking issued under the former Act and in effect on the day immediately preceding the coming into force of this subsection shall continue in effect for the unexpired portion of its term as if it were a licence authorizing the carrying on of a broadcasting undertaking issued under this Act and may be amended, renewed, suspended or revoked in the manner provided in this Act.

Full-time members of Commission

91. (1) Every person holding office as Chairman, Vice-Chairman or full-time member of the Commission immediately before the coming into force of section 76 shall continue in office and be deemed to have been appointed under section 3 of the Canadian Radio-television and Telecommunications Commission Act, as amended by this Act, to hold office for the remainder of the term for which the person had been appointed before the coming into force of section 76.

Part-time members of Commission

(2) The part-time members of the Commission holding office immediately before the coming into force of section 76 shall cease to hold office on the coming into force of that section.

Directors of Corporation

92. Every person holding office as a director of the Corporation immediately before the coming into force of section 36 shall continue in office and be deemed to have been appointed under that section to hold office for the remainder of the term for which the person had been appointed before the coming into force of that section.

COMING INTO FORCE

Coming into force

*93. This Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

* [Note: Act in force June 4, 1991, see SI/91-86.]

SCHEDULE

(Sections 24, 25 and 30)

1. Any licence issued pursuant to C.R.T.C. Decision No. 87-140 of February 23, 1987.
2. Any licence issued pursuant to C.R.T.C. Decision No. 88-181 of March 30, 1988.
3. Any licence issued in connection with the operation of any radio or television station owned and operated by the Corporation.

Appendix D

Radio Regulations, 1986

SOR/86-982

Registration September 18, 1986

BROADCASTING ACT

Radio Regulations, 1986

Whereas a copy of the proposed Regulations respecting radio broadcasting, substantially in the form set out in the schedule hereto, was published in the Canada Gazette Part I on March 29, 1986 and a reasonable opportunity was thereby afforded to licensees and other interested persons to make representations with respect thereto.

Therefore, the Canadian Radio-television and Telecommunications Commission, on the recommendation of the Executive Committee, pursuant to subsection 16(1) of the Broadcasting Act, hereby revokes the Radio (A.M.) Broadcasting Regulations, C.R.C., c. 379 and the Radio (F.M.) Broadcasting Regulations, C.R.C., c. 380 and makes the annexed Regulations respecting radio broadcasting, in substitution therefor.

Hull, Quebec, September 18, 1986

Regulations Respecting Radio Broadcasting

SHORT TITLE

1. These Regulations may be cited as the Radio Regulations, 1986.

INTERPRETATION

2. In these Regulations,

“Act” means the Broadcasting Act; (Loi)

“alcoholic beverage”, in respect of a commercial message, means an alcoholic beverage the sale of which is regulated by the law of the province in which the commercial message is broadcast; (boisson alcoolisée)

“A.M. licensee” means a person licensed to operate an A.M. station; (titulaire M.A.)

“A.M. station” means a station that broadcasts in the A.M. frequency band of 525 to 1605 kHz, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee; (station M.A.)

“broadcast day” means the total number of hours devoted to broadcasting for a period beginning at six o’clock in the forenoon and ending at midnight on the same day; (journée de radiodiffusion)

“broadcast week” means seven consecutive broadcast days, beginning on Sunday; (semaine de radiodiffusion)

“campus station” means an A.M. station, F.M. station or digital radio station that is licensed as a campus station; (station de campus)

“Canadian” means

- (a) a Canadian citizen,
- (b) a permanent resident, as defined in the Immigration Act, 1976,
- (c) a person whose ordinary place of residence was in Canada throughout the six months immediately preceding that person’s contribution to a musical composition, performance or concert, or
- (d) a licensee; (Canadien)

“commercial message” means an advertisement intended to sell or promote goods, services, natural resources or activities and includes an advertisement that mentions or displays in a list of prizes the name of the person selling or promoting those goods, services, natural resources or activities; (message publicitaire)

“commercial station” means an A.M. station, F.M. station or digital radio station, other than one that

- (a) is owned and operated by the Corporation or a not-for profit corporation; or
- (b) is a campus station, community station, native station or ethnic station; (station commerciale)

“community station” means an A.M. station, F.M. station or digital radio station that is licensed as a community station; (station communautaire)

“content category” means any category of broadcast matter that is described in the appendix to Public Notice CRTC 2000-14 dated January 28, 2000 and entitled Revised Content Categories and Subcategories for Radio, published in the Canada Gazette Part I on February 5, 2000; (catégorie de teneur)

“content subcategory” means any subcategory of broadcast matter that is described in the appendix to Public Notice CRTC 2000-14 dated January 28, 2000 and entitled Revised Content Categories and Subcategories for Radio, published in the Canada Gazette Part I on February 5, 2000; (sous-catégorie de teneur)

“contour” means a service contour marked for a licensed A.M. station or a licensed F.M. station on the map that pertains to that station and that is most recently published by the Department of Industry; (périmètre de rayonnement)

“digital radio licensee” means a person licensed to operate a digital radio station; (titulaire radio numérique)

“digital radio station” means a station that broadcasts in the frequency band of 1452 to 1492 MHz (L-band) using a digital transmission system, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee; (station de radio numérique)

“digital service area” means a service area marked for a licensed digital radio station on the map that pertains to that station and that is most recently published by the Department of Industry; (zone de desserte numérique)

“election period” means

(a) in the case of a federal or provincial election or of a federal, provincial or municipal referendum, the period beginning on the date of the announcement of the election or referendum and ending on the date the election or referendum is held, or

(b) in the case of a municipal election, the period beginning two months before the date of the election and ending on the date the election is held; (période électorale)

“ethnic program” means a program in any language that is specifically directed toward any culturally or racially distinct group, other than one whose heritage is Aboriginal Canadian, from France or from the British Isles; (émission à caractère ethnique)

“ethnic station” means an A.M. station, F.M. station or digital radio station that is licensed as an ethnic station; (station à caractère ethnique)

“F.M. licensee” means a person licensed to operate an F.M. station; (titulaire M.F.)

“F.M. station” means a station that broadcasts in the F.M. frequency band of 88 to 108 MHz, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee; (station M.F.)

“licensed” means licensed by the Commission pursuant to paragraph 9(1)(b) of the Act; (autorisé)

“licensee” means a person licensed to operate an A.M. station, F.M. station, digital radio station or radio network; (titulaire)

“market” means

- (a) in the case of an A.M. station, the A.M. daytime 15mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller,
 - (b) in the case of an F.M. station, the F.M. 3mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller, or
 - (c) in the case of a digital radio station, the digital service area; (marché)
- “medley” means a compilation of one minute or more in duration in which artists or musicians combine excerpts from several musical selections within a single performance; (pot-pourri)

“montage” means a compilation of one minute or more in duration containing excerpts from several musical selections but does not include a medley; (montage)

“musical selection” means any live or recorded music of one minute or more in duration that is broadcast uninterrupted, and includes a medley and a montage; (pièce musicale)

“native station” means an A.M. station, F.M. station or digital radio station that is licensed as a native station; (station autochtone)

“network” means a licensed radio network; (réseau)

“official contour” [Repealed, SOR/2008-177, s. 1]

“production content” [Repealed, SOR/91-517, s. 1]

“quarter hour” means a period of 15 minutes, commencing on the hour, or 15, 30 or 45 minutes past the hour; (quart d’heure)

“spoken word content” [Repealed, SOR/93-258, s. 1]

“station” means a radio programming undertaking or a broadcasting transmitting undertaking; (station)

“third language program” means an ethnic program in a language other than English, French, or a language of the Aboriginal peoples of Canada; (émission dans une troisième langue)

“Type A community station” means a community station that is licensed as a Type A community station. (station communautaire de type A)

SOR/88-549, s. 1; SOR/91-517, s. 1; SOR/93-258, s. 1; SOR/94-222, s. 1;
SOR/96-324, s. 1; SOR/98-597, s. 1; SOR/2000-235, s. 1; SOR/2000-239, s. 1;
SOR/2008-177, s. 1.

APPLICATION

2.1 (1) These Regulations do not apply in respect of programming that is broadcast by a licensee using a subsidiary communications multiplex operations channel.

(2) For the purposes of this section, “baseband” means signals in the frequency range of 0 to 99 kHz that are used as input to the transmitter of an F.M. station; (bande de base)

“subsidiary communications multiplex operations channel” means a frequency band containing one or more subcarriers that is centred at 76 kHz in the baseband during stereophonic or monophonic transmission in the main channel or at 59.5 kHz in the baseband where there is no stereophonic or monophonic transmission in the main channel. (canal d’exploitation multiplexe de communications secondaires)

SOR/89-163, s. 1.

PART I

CANADIAN AND MUSICAL CONTENT

[SOR/93-517, s. 1]

2.2 (1) For the purposes of this section, “ethnic programming period” means that portion of a broadcast week during which a licensee broadcasts ethnic programs.

(2) For the purposes of this section, “Canadian selection” means a musical selection

(a) that meets at least two of the following conditions, namely,

(i) the music is or lyrics are performed principally by a Canadian,

(ii) the music is composed entirely by a Canadian,

(iii) the lyrics are written entirely by a Canadian,

(iv) the musical selection consists of a live performance that is

(A) recorded wholly in Canada, or

(B) performed wholly in and broadcast live in Canada, and

(v) the musical selection was performed live or recorded after September 1, 1991, and a Canadian who has collaborated with a non-Canadian receives at least fifty per cent of the credit as composer and lyricist according to the records of a recognized performing rights society;

(b) that is an instrumental performance of a musical composition that meets the conditions set out in subparagraph (a)(ii) or (iii);

(c) that is a performance of a musical composition that a Canadian has composed for instruments only; or

(d) that has already qualified as a Canadian selection under regulations previously in effect.

(3) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station other than a community station or campus station shall, in a broadcast week, devote at least 10% of its musical selections from content category 3 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

(3.1) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station shall, in a broadcast week, devote

(a) at least 25% of its musical selections from content subcategory 31 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day; and

(b) at least 20% of its musical selections from content subcategory 34 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

(4) If 7% or more of the musical selections broadcast by the licensee during an ethnic programming period are Canadian selections and are scheduled in a reasonable manner throughout the period, the requirements of subsections (3), (3.1) and (7) to (9) apply only in respect of the musical selections that are broadcast during the part of the broadcast week that is not devoted to ethnic programs.

(5) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a campus station, commercial station or community station in the French language shall, in a broadcast week, devote at least 65% of its vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

(6) An A.M. licensee, F.M. licensee or digital radio licensee may, in a broadcast week, reduce the percentage of its Canadian musical selections from content category 2 referred to in subsections (7) to (9) to

(a) not less than 20% if, in that broadcast week, the licensee devotes at least 35%, but less than 50%, of all of its musical selections to instrumental selections; and

(b) not less than 15% if, in that broadcast week, the licensee devotes at least 50% of all of its musical selections to instrumental selections.

(7) Except as otherwise provided under a condition of its licence and subject to subsection (6), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station other than a commercial station, community station or campus station shall, in a broadcast week, devote at least 30% of its musical selections from content category 2 to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

(8) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (6), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station, community station or campus station shall, in a broadcast week, devote at least 35% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

(9) Except as otherwise provided under a condition of its licence and subject to subsection (6), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on the Friday of that week, devote at least 35% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

(10) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station in the French language shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on the Friday of that week, devote at least 55% of its vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

(11) For the purpose of this section, a montage is deemed to be a Canadian selection broadcast in its entirety if

- (a) the total duration of the excerpts of Canadian selections from content category 2 is greater than 50% of the total duration of the montage; and
- (b) the total duration of the montage is four minutes or more.

(12) For the purpose of this section, a montage is deemed to be a musical selection in the French language broadcast in its entirety if

- (a) the total duration of the excerpts of vocal musical selections in the French language from content category 2 is greater than 50% of the total duration of the montage; and
- (b) the total duration of the montage is four minutes or more.

(13) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station in the French language – other than a commercial station, community station or campus station – shall, in a broadcast week, devote at least 65% of its vocal musical selections from content category 2 to musical selections in the French language and schedule them in a reasonable manner throughout each broadcast day.

(14) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a community station or campus station in the French language shall, in a broadcast

week, devote at least 65% of its vocal musical selections from content category 2 to musical selections in the French language.

SOR/91-517, s. 2; SOR/92-609, s. 1(F); SOR/93-517, s. 2; SOR/96-324, s. 2; SOR/98-597, s. 2; SOR/2000-239, s. 2; SOR/2008-177, s. 2.

PART I.1

BROADCASTING CONTENT

3. A licensee shall not broadcast

- (a) anything in contravention of the law;
- (b) any abusive comment that, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
- (c) any obscene or profane language;
- (d) any false or misleading news; or
- (e) any telephone interview or conversation, or any part thereof, with any person unless
 - (i) the person's oral or written consent to the interview or conversation being broadcast was obtained prior to the broadcast, or
 - (ii) the person telephoned the station for the purpose of participating in a broadcast.

SOR/91-586, s. 1.

3.1 For the purposes of paragraph 3(b), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the Criminal Code.

SOR/91-586, s. 2.

4. (1) A licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage only if
- (a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
 - (b) subject to subsection (2), the commercial message is not designed to promote the general consumption of alcoholic beverages; and
 - (c) the commercial message complies with the Code for Broadcast Advertising of Alcoholic Beverages, published by the Commission on August 1, 1996.
- (2) Paragraph (1)(b) does not apply so as to prohibit industry, public service or brand preference advertising.

SOR/93-209, s. 1; SOR/95-451, s. 1; SOR/97-100, s. 1.

5. (1) Before January 1, 1999, a licensee shall not broadcast a commercial message for, or an endorsement of, a device to which the Food and Drugs Act applies unless
- (a) the script of the commercial message or endorsement has been approved by the Minister of Health to indicate, to the extent that it is possible to do so on the basis of a script, that a commercial message or an endorsement conforming to the approved script would comply with the applicable provisions, administered by that Minister, of the Food and Drugs Act, the Controlled Drugs and Substances Act and regulations made pursuant to those Acts or to the Department of Health Act; and
 - (b) the script bears the script number assigned to it by that Minister.
- (2) Before January 1, 1999, when a licensee broadcasts a commercial message or an endorsement referred to in subsection (1), the licensee shall keep a record of the script for a period of one year after the date of the broadcast, which record shall contain
- (a) the name of the device to which the script relates;
 - (b) the name of the sponsor or advertising agency that submitted the script for approval; and
 - (c) the script number referred to in paragraph (1)(b).
- (3) A licensee shall provide the record required by subsection (2) to the Commission or to an inspector designated pursuant to the Food and Drugs Act, acting on behalf of the Commission, where the Commission or the inspector so requests for the purpose of audit or examination.
- (4) The approval of the script of a commercial message or an endorsement referred to in subsection (1) does not indicate that the commercial message or endorsement complies with the applicable legislation.

SOR/92-613, s. 1; SOR/93-209, s. 2; SOR/97-290, s. 1.

POLITICAL BROADCASTS

6. During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

ETHNIC PROGRAMS

7. (1) The licensee of an ethnic station shall devote not less than 60 per cent of its broadcast week to ethnic programs.
- (2) Except as otherwise provided under a condition of its licence, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate an ethnic station shall devote at least 50% of a broadcast week to third language programs.
- (3) Except as otherwise provided under a condition of its licence to devote up to 40% of a broadcast week to third language programs, an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a station other than an

ethnic station shall devote not more than 15% of a broadcast week to third language programs.

(4) Despite subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a Type A community station, or a campus station broadcasting in a market where there is no ethnic station, may devote up to 40% of a broadcast week to third language programs.

SOR/2000-235, s. 2; SOR/2008-177, s. 3.

LOGS AND RECORDS

8. (1) Except otherwise provided under a condition of its licence, a licensee shall (a) keep, in a form acceptable to the Commission, a program log or a machine readable record of the matter broadcast by the licensee;

(b) retain the log or record for a period of one year after the date when the matter was broadcast; and

(c) cause to be entered in the log or record each day the following information:

(i) the date,

(ii) the call letters, location and frequency of the licensee's station,

(iii) the time at which each station identification announcement is made,

(iv) in relation to each program broadcast,

(A) the title and a brief description,

(B) subject to subsection (2), the number of the relevant content category,

(C) the time at which the program begins and ends,

(D) the code set out in the schedule indicating the origin of the program and where applicable the language, type or group, and

(E) if applicable, the code set out in the schedule identifying non-Canadian programming, and

(v) in relation to each commercial message, the quarter hour during which it is broadcast, its duration and the number of the relevant content subcategory.

(2) Where a program falls into more than one content category, a licensee shall cause to be entered in its program log or machine readable record the two principal content categories in descending order of their relative importance in terms of broadcast time.

(3) The times required to be entered pursuant to subparagraph (1)(c)(iii), clause (1)(c)(iv)(C) and subparagraph (1)(c)(v) are local times.

(4) A licensee shall furnish, to the Commission on request, its program log or machine readable record for any day, with a certificate by or on behalf of the licensee attesting to the accuracy of its content.

(5) A licensee shall retain a clear and intelligible tape recording or other exact copy of all matter broadcast

(a) for four weeks from the date of the broadcast; or

(b) where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and so notifies the

licensee before the expiration of the period referred to in paragraph (a), for eight weeks from the date of the broadcast.

(6) Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith.

(7) Subsections (1) to (4) do not apply to a person licensed to operate a radio network.

SOR/88-549, s. 2; SOR/98-597, s. 3; SOR/2006-9, s. 1; SOR/2008-177, s. 4.

REQUESTS FOR INFORMATION

9. (1) For the purposes of this section,

“Canadian musical selection” means a musical selection that meets the criteria set out in subsection 2.2(2); (*pièce musicale canadienne*)

“hit” has the meaning indicated on pages 19 to 22 of Public Notice CRTC 1986-248 of September 19, 1986 entitled Regulations Respecting Radio Broadcasting and published in the Canada Gazette Part I on October 4, 1986, as amended by page 23 of Public Notice CRTC 1990-111 of December 17, 1990 entitled An FM Policy for the Nineties and published in the Canada Gazette Part I on December 29, 1990. (*grand succès*)

(2) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

(3) At the request of the Commission, a licensee shall submit for any period specified by the Commission in its request

(a) the information required by the most recent Station Self-assessment Report form issued by the Commission; and

(b) a list of the musical selections in the order in which they are broadcast by the licensee during that period that includes the title and performer of each musical selection and a legend that identifies

(i) any Canadian musical selection,

(ii) any hit,

(iii) any instrumental selection,

(iv) any content category 3 musical selection that is described in the appendix to Public Notice CRTC 2000-14 dated January 28, 2000 and entitled Revised Content Categories and Subcategories for Radio, published in the Canada Gazette Part I on February 5, 2000,

(v) the language of the musical selection, where the musical selection is not an instrumental selection.

(4) At the request of the Commission, a licensee shall provide the Commission with a response to any inquiry regarding the licensee’s programming, ownership

or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking.

SOR/92-609, s. 2; SOR/2000-239, s. 3.

AFFILIATION

10. (1) For the purposes of this section, "affiliation agreement" means an agreement between one or more A.M. licensees, F.M. licensees or digital radio licensees and another party, according to which programs provided by the other party are to be broadcast by the licensee's station at a predetermined time.

(2) An A.M. licensee, F.M. licensee or digital radio licensee shall not enter into an affiliation agreement with a person who is deemed to be a non-Canadian under section 3 of the Direction to the CRTC (Ineligibility of Non-Canadians).

SOR/88-549, s. 3; SOR/2008-177, s. 5.

OWNERSHIP OF EQUIPMENT AND FACILITIES

10.1 Except as otherwise provided pursuant to a condition of its licence, a licensee shall own and operate its transmitter.

SOR/93-355, s. 1.

TRANSFER OF OWNERSHIP OR CONTROL

11. (1) For the purposes of this section,

"associate", when used to indicate a relationship with any person, includes

- (a) a partner of the person,
- (b) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,
- (c) the spouse or common-law partner of the person,
 - (c.1) a child of the person or of their spouse or common-law partner, including a child adopted in fact by the person or by the spouse or common-law partner,
 - (c.2) the spouse or common-law partner of a child referred to in paragraph (c.1),
- (d) a relative of the person, or of the spouse or common-law partner referred to in paragraph (c), if that relative has the same residence as the person,
- (e) a corporation of which the person alone, or a person together with one or more associates as described in this definition, has, directly or indirectly, control of 50 per cent or more of the voting interests,
- (f) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of 50 per cent or more of the voting interests, and
- (g) a person, with whom the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee

corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange; (liens)

“common-law partner”, in respect of a person, means an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year; (conjoint de fait)

“common shares” means the shares that represent the residual equity in the earnings of the corporation, and includes securities that are convertible into such shares at all times at the option of the holder and the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit. (actions ordinaires)

“person” includes an individual, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them; (personne)

“voting interest”, in respect of

- (a) a corporation with share capital, means the vote attached to a voting share,
- (b) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share,
- (c) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it, and
- (d) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in the management of it or to vote on the election of the persons to be entrusted with the power and responsibility to manage it; (intérêt avec droit de vote)

“voting share” means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation, either under all circumstances or under a circumstance that has occurred and is continuing, and includes any security that is convertible into such a share at all times at the option of the holder. (action avec droit de vote)

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

- (a) the person is, directly or indirectly, the beneficial owner of the voting interest; or
- (b) the person, by means of an arrangement, a contract, an understanding or an agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion

of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement.

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(a) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(b) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or

(c) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice.

(3.1) [Repealed, SOR/2000-235, s. 3]

(4) Except as otherwise provided pursuant to a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in

(a) a change by whatever means of the effective control of its undertaking;

(b) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee;

(c) a person together with an associate

(i) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who control less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who own less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who own less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee; or

(d) another A.M. licensee, F.M. licensee or digital radio licensee that broadcasts in the same market and in the same language as the licensee, an associate of that other licensee or that other licensee together with its associate, who owns less than

- (i) 30% of the issued common shares of the licensee or of a person who has, directly or indirectly, effective control of the licensee, owning 30% or more but less than 40% of those shares, or
 - (ii) 40% of the issued common shares of the licensee or of a person who has, directly or indirectly, effective control of the licensee, owning 40% or more but less than 50% of those shares.
- (5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in
 - (a) a person alone
 - (i) who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,
 - (ii) who controls less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,
 - (iii) who controls less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or
 - (iv) who controls less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee; or
 - (b) a person together with an associate
 - (i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,
 - (ii) who control less than 20 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,
 - (iii) who control less than 40 per cent of the voting interests of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee, or
 - (iv) who control less than 40 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40 per cent or more but less than 50 per cent of those interests but not having, directly or indirectly, effective control of the licensee.
- (6) A notification referred to in subsection (5) shall set out the following information:
 - (a) the name of the person or the names of the person and the associate;
 - (b) the percentage of the voting interests controlled by the person or by the person and the associate; and
 - (c) a copy or a complete description of the act, agreement or transaction.

SOR/93-355, s. 2; SOR/96-324, s. 3; SOR/98-598, s. 1; SOR/2000-235, s. 3; SOR/2001-357, s. 1; SOR/2008-177, s. 6.

LOCAL MANAGEMENT AGREEMENT

11.1 (1) The definitions in this subsection apply in this section.

“associate” has the same meaning as in subsection 11(1). (liens)

“local management agreement” means an arrangement, contract, understanding or agreement between two or more licensees or their associates that relates, directly or indirectly, to any aspect of the management, administration or operation of two or more stations, at least two of which

(a) broadcast in the same market; or

(b) broadcast in adjacent markets, with each station’s A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be, overlapping the A.M. 15 mV/m contour, F.M. 3 mV/m contour or digital service area of the other station. (convention de gestion locale)

(2) Except as otherwise provided in subsection (3) or under a condition of its licence, a licensee shall not enter into, or operate its station pursuant to, a local management agreement.

(3) A licensee may operate its station pursuant to a local management agreement that was entered into before March 31, 1999 until December 31, 2001.

SOR/99-431, s. 1; SOR/2008-177, s. 7.

PART II

APPLICATION

12. This Part applies only to F.M. licensees and digital radio licensees.

SOR/91-517, s. 3; SOR/2008-177, s. 8.

13. [Repealed, SOR/93-358, s. 2]

SIMULCASTING

14. (1) An F.M. licensee or digital radio licensee that is also an A.M. licensee shall not, during the broadcast day, broadcast simultaneously on its F.M. station or digital radio station the same matter that is being broadcast on its A.M. station if any part of the F.M. station’s 3 mV/m contour or the digital radio station’s digital service area overlaps with any part of the A.M. station’s daytime 15 mV/m contour.

(2) Notwithstanding subsection (1), a licensee may broadcast simultaneously if the simultaneous broadcasting is authorized pursuant to a condition of the

licensee's licence or if the broadcast consists of a special live program that includes commentary that is an integral part of the program and relates to

- (a) a royal or vice-regal address, including a speech from the throne;
- (b) an address by the Prime Minister of Canada or the first minister of a province;
- (c) the results of a federal, provincial or municipal election or referendum;
- (d) a federal, provincial or municipal budget; or
- (e) an announcement of an emergency situation or disaster as issued by a police department, fire department or any organization designated by a federal, provincial or municipal government as being responsible for the coordination of emergency relief.

(3) Notwithstanding subsection (1), a licensee may broadcast simultaneously for a maximum of 42 hours during any broadcast week.

SOR/91-517, s. 3; SOR/96-324, s. 4; SOR/98-597, s. 4(F); SOR/2008-177, s. 9.

PART III

CANADIAN CONTENT DEVELOPMENT

15. (1) The following definitions apply in this Part.

“broadcast year” means the period beginning on September 1 and ending on August 31 of the following year. (année de radiodiffusion)

“eligible initiative” means an initiative that is considered to be eligible for Canadian content development funding as indicated in Broadcasting Public Notice CRTC 2006-158, dated December 15, 2006 and entitled Commercial Radio Policy 2006. (projet admissible)

“FACTOR” means the not-for-profit organization known as The Foundation Assisting Canadian Talent on Recordings. (FACTOR)

“MUSICACTION” means the not-for-profit organization known as MUSICACTION. (MUSICACTION)

“spoken word station” means an A.M. station, F.M. station or digital radio station that devotes more than 50% of a broadcast week to programming from content category 1. (station de créations orales)

“total revenues” means the total broadcast revenues reported by an A.M. licensee, F.M. licensee or digital radio licensee in its annual returns for the previous broadcast year. (revenus totaux)

(2) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or

ethnic station shall contribute the following amount annually to eligible initiatives:

- (a) if the licensee's total revenues are less than \$625,000, \$500;
- (b) if the licensee's total revenues are at least \$625,000 but not more than \$1,250,000, \$1,000; and
- (c) if the licensee's total revenues are more than \$1,250,000, \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.

(3) If a condition of licence imposed prior to June 1, 2007 requires the licensee to make a contribution to the development of Canadian content or Canadian talent that is other than that referred to in subsection (2), the amount that the licensee is required to contribute under that subsection is reduced by the amount that the licensee is required to contribute under the condition of its licence.

(4) Except as otherwise provided under a condition of its licence, the licensee shall make at least 60% of the contribution referred to in subsection (2) to FACTOR or MUSICACTION. However, if the licensee's station is an ethnic station or spoken word station, the licensee may instead make that percentage of the contribution to any eligible initiative that supports the creation of ethnic programs or programming from content category 1, as the case may be.

SOR/2008-177, s. 10.

SCHEDULE

(Sections 2 and 8)

CODES INDICATING ORIGIN, LANGUAGE, TYPE AND GROUP OF PROGRAMMING AND NON-CANADIAN PROGRAMMING

A. Code Indicating Origin

Column I Item Code	Column II Description
1. Local	Local programming as defined in Broadcasting Public Notice CRTC 2006-158, dated December 15, 2006 and entitled <i>Commercial Radio Policy 2006</i> .
2. Net (to be followed by the name of the network)	Programming obtained from a network licensed by the Commission
3. Rebroad	Programming rebroadcast from another station, other than a network
4. Simulcast	Programming simulcast pursuant to subsection 14(3) of these Regulations
5. Other	Programming other than local programming, network programming, rebroadcasts from another station or simulcasts

B. Code Indicating Language

Column I Item Code	Column II Description
1. [Abbreviated name]	Programming in a language other than the official language for which the station was principally licensed or, in the case of an ethnic station, the language of the spoken word content of the program

C. Code Indicating Type

Column I Item Code	Column II Description
1. Type A	A program the spoken word content of which is in a language other than French, English or a language of the aboriginal peoples of Canada
2. Type B	A program the spoken word content of which is in French or English and that is directed toward a distinct ethnic group the mother tongue or common language of which in its country of origin is French or English
3. Type C	A program the spoken word content of which is in French or English and that is directed toward a distinct ethnic group the mother tongue of which is included in Type A
4. Type D	A bilingual program the spoken word content of which is in French or English as well as a language other than French, English or a language of the aboriginal peoples of Canada and that is directed toward a distinct ethnic group
5. Type E	A program the spoken word content of which is in French or English and that is directed toward ethnic groups or the general public and that depicts Canada's cultural diversity through services that are multicultural, cross-cultural or inter-cultural
6. Type X	Where the licensee is not required by a condition of licence to broadcast prescribed levels of Type A, B, C, D or E programming, an ethnic program.

D. Code Indicating Group

Column I Item Code	Column II Description
1. (Abbreviated name)	The distinct ethnic group toward which an ethnic program is directed.

E. Code Identifying Non-Canadian Programming

Column I Item Code	Column II Description
1. NC	Programming that originates outside Canada other than local programming as defined in Broadcasting Public Notice CRTC 2006-158, dated December 15, 2006 and entitled <i>Commercial Radio Policy 2006</i> , and other than programming that is produced by a Canadian as defined in section 1 of the <i>Direction to the CRTC (Ineligibility of Non-Canadians)</i> .

SOR/88-549, s. 4(F); SOR/91-517, ss. 4 to 7; SOR/93-517, s. 3; SOR/96-324, s. 5; SOR/98-597, ss. 5, 6; SOR/2000-235, ss. 4, 5; SOR/2008-177, s. 11.

Appendix E

Commercial Radio Policy, 1998

NOTICE

Ottawa, 30 April 1998

Public Notice CRTC 1998-41

INTRODUCTION

1. In Public Notice CRTC 1997-104 dated 1 August 1997 and entitled A Review of the Commission's Policies for Commercial Radio, the Commission announced that it would hold a public hearing, beginning on 1 December 1997, to review its policy framework for commercial radio.
2. The Commission received written submissions from 58 parties in response to its call for comments contained in that public notice. Thirty-two parties appeared during the hearing to elaborate on their comments and suggestions. The Commission thanks all who filed comments for the thoughtfulness and quality of their submissions. They have assisted the Commission greatly in its deliberations.
3. As indicated in the Commission's 1997 Vision Statement, the Commission manages a delicate balance between achieving various social and cultural objectives and ensuring an economically strong and competitive communications industry. The Commission considers that its policy framework for commercial radio should focus on enhancing the access that Canadians have to Canadian music and other programming reflective of their communities and their country. A strong and competitive radio industry is vital to the achievement of this goal. As radio moves toward digital transmission and increased competition, it is important that it retain the flexibility to respond to these and other challenges if it is to continue to make its important contribution to the goals set out in the Broadcasting Act (the Act).
4. In the following pages, the Commission sets out its revised policy for conventional commercial radio stations only. As indicated in Public Notice CRTC 1997-105 entitled An Agenda for Review of the Commission's Policies for Radio, the Commission intends to review its approach to the various other types of radio programming undertakings within the next two years.

HIGHLIGHTS OF THE COMMISSION'S REVISED POLICY FOR COMMERCIAL RADIO

5. The Commission's radio policy reflects the broadcasting policy objectives set out in section 3 of the Act. These objectives may be summarized as follows:

- Radio programming should be predominantly Canadian;
- Radio should provide listeners with varied and comprehensive programming from a variety of sources including the Canadian Broadcasting Corporation (CBC), private commercial stations and not-for-profit stations. The presence of different news voices should be encouraged, and listeners should have a diversity of programming from which to choose;
- Programming should be of high standard and balanced on matters of public concern;
- Radio should provide service that is relevant to local communities;
- Programming should reflect Canada's linguistic duality, and;
- Programming should reflect Canada's cultural and racial diversity, including the needs and interests of Aboriginal peoples.

6. The Commission's revised policy for commercial radio has three major objectives. The first major objective of the Commission is to ensure a strong, well-financed radio industry that is better poised to achieve its obligations under the Act and to meet the challenges of the 21st century. In the Commission's view, increased consolidation of ownership will enable the radio industry to strengthen its overall performance, attract new investment, and compete more effectively with other forms of media. Accordingly, the Commission has revised its policy on common ownership. The Commission is satisfied that the revised policy will provide for a strengthened radio industry, while responding to longstanding concerns regarding diversity of news voices, media cross-ownership and fair competition.

7. Accordingly, in markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as 2 AM and 2 FM stations in that language.

8. In assessing an application filed in accordance with the revised common ownership policy, the Commission will consider the impact of the application on the diversity of news voices and the level of competition in the market. In particular, it will take into account the amount of equity the applicant may have in other radio stations operating in the same language in that market, as well as the applicant's holdings in other local media and the existence of any local radio management agreements (LMAs) to which the applicant is a party.

9. Further, pending completion of a review of its policy regarding LMAs, the Commission will expect the applicant to undertake not to enter into an LMA on a going forward basis without the Commission's approval.

10. In order to encourage competition and choice for listeners, the Commission has also revoked its Radio Market Policy. The Commission, following its consideration of applications for new market entry, will be prepared to issue licences, depending on the individual merits of the applications, in particular the benefits their approval will bring to the communities concerned and the broadcasting system as a whole.

11. The second major Commission objective is to ensure pride of place for Canadian artists. The Commission will therefore issue a proposed amendment to the Radio Regulations, 1986 (the regulations) increasing the required level of Canadian content for popular music selections (category 2) broadcast each week to 35%. This will expand the exposure given to Canadian artists and works, and provide increased support to the Canadian music industry as a whole.

12. The Commission is confident that, as stronger, more effective strategic relationships between the radio and music industries develop, the cooperative initiatives and efforts of these industries to promote and support Canadian music will succeed in bringing about a level of Canadian content that reaches 40% in five years.

13. As a further means to ensure that Canadian music is exposed during periods of high listening, the Commission will issue a proposed amendment to the regulations requiring that a minimum of 35% of popular music selections broadcast between 6:00 a.m. and 6:00 p.m., Monday through Friday, be Canadian. Only Canadian selections played in their entirety may be included in calculating the percentage of Canadian category 2 musical selections broadcast by a station.

14. The Commission will also expect licensees that offer high levels of traditional and special interest music (category 3) to increase their commitments to Canadian music in this category at the time of licence renewal. Concert music stations will also be asked to provide specific commitments with respect to the broadcast of works by Canadian composers. In addition, the Commission generally considers that there should be an increase in the level of Canadian music broadcast during ethnic programming periods. This issue will be addressed at the time that the Commission reviews its policy on ethnic broadcasting.

15. The Commission will maintain the current definition set out in the regulations of a Canadian selection. This definition, commonly referred to as the MAPL system, helps to ensure that Canadian artists and works have access to the airwaves, and helps support a Canadian-based music and recording industry. The Commission considers that the current system has been successful in meeting these goals, and has the added virtue of being relatively simple to administer.

16. The third major Commission objective is to ensure that a French-language presence in radio broadcasting is maintained. Accordingly, the Commission will retain its requirement that at least 65% of the vocal popular (category 2) music selections broadcast each week by French-language AM and FM stations is in the French language. In order to ensure that French-language selections receive exposure during periods of high listening, the Commission will issue a proposed amendment to the regulations requiring that a minimum of 55% of the popular vocal music selections broadcast between 6:00 a.m. and 6:00 p.m., Monday through Friday, be in the French language.

17. Furthermore, in order to ensure that French-language selections receive the intended exposure prescribed by the regulations, only those French-language selections played in their entirety may be included in calculating the percentage of category 2 French-language vocal music.

18. The Commission considers that, beyond the measures described above, increased cooperation between the radio and music industries to promote Canadian music and foster new talent will be essential to ensure a vibrant Canadian music scene and the continued availability of quality recordings for airplay. This will, in turn, contribute to the success and distinctiveness of Canadian radio as it moves into an increasingly competitive environment.

19. The Commission commends the Canadian Association of Broadcasters (CAB) for making a number of valuable commitments at the hearing designed to promote Canadian music and foster a closer working relationship with the music industry. The Commission strongly supports these initiatives, and expects the CAB to report annually on its activities in this regard, including activities to support and promote both the French- and English-language sectors of the music industry, especially with respect to new Canadian talent.

20. The Commission has also requested the recording industry to provide the Commission with annual updates of its own initiatives, as well as those undertaken by the recording industry in cooperation with broadcasters, to support and promote Canadian music.

21. The Commission has revised its benefits policy to ensure support for the development and promotion of Canadian music talent, and to foster cooperation between the radio and music industries. Specifically, the Commission has amended the benefits test for commercial radio to require, as a general rule, a minimum direct financial contribution to Canadian talent development representing 6% of the value of transactions involving transfers of ownership and control. Consistent with the Commission's existing benefits policy, the Commission will not impose benefits requirements in the case of transactions involving unprofitable undertakings.

22. The contribution will be allocated to: a new Canadian music marketing and promotion fund to support co-operative broadcaster/music industry activities and initiatives; eligible third party organizations directly involved in the development of Canadian musical and other artistic talent, including FACTOR and MusicAction; and other Canadian talent development initiatives.

23. The Commission notes that the highlights described above are intended for the convenience of the reader only. In the following pages, the Commission addresses in greater detail, these and its other policy determinations with respect to commercial radio. The Commission intends to review its approach to commercial radio in five years, including its revised policy on common ownership, and its policies designed to ensure exposure for Canadian artists and a distinctive French-language presence.

OWNERSHIP ISSUES

Common Ownership Policy

24. In the past, the Commission has viewed its common ownership policy as one of the more effective tools at its disposal to ensure that a diversity of voices exists in a community. Under this policy, the Commission has generally restricted a person to ownership of a maximum of one AM and one FM undertaking operating in the same language and in the same market.

25. At the hearing, representatives of the music industry and others argued that diversity would best be served by increasing the number of licensees in a market rather than by allowing increased consolidation. Some of these parties also expressed concern that increased common ownership could lead to a reduction in the diversity of news voices in a market and could have a negative impact on smaller, independent radio stations, as well as on community radio stations.

26. On the other hand, there was general agreement among the CAB and most representatives of the radio industry that the common ownership policy should be relaxed to permit a person to own more than one AM and one FM station in a market. The CAB, on behalf of its member radio stations, explained that the current ownership restrictions make it difficult for radio to compete effectively with other forms of media for advertising revenue, and harm the industry's financial performance. The industry representatives argued that increased consolidation of ownership would allow the radio industry to become more competitive with other forms of media, strengthen its overall performance, and help attract new investment. Other benefits identified by the CAB included increased diversity among formats and increased resources for programming.

27. Several individual broadcasters offered suggestions at the hearing as to possible ownership models. Most, however, indicated that they would be willing to support a proposal advanced by the CAB that the Commission amend its policy by increasing the permissible level of common ownership of radio undertakings in

a given market by an amount that would vary depending on the total number of stations serving that market in a given language. Thus, in markets served by four or fewer radio stations in a given language, as well as in markets served by six stations, a person could be permitted to own as many as two AM and two FM stations operating in that language.

28. In a market served by five stations in a given language, a person would be restricted to ownership of no more than three stations, provided that this number includes at least one AM and at least one FM station.

29. The CAB further proposed that, in markets served by seven or more English-language stations, common ownership would be restricted to no more than three AM and two FM stations, while in markets served by seven or more French-language stations, such ownership would be restricted to no more than two AM and three FM stations.

30. The Commission is convinced that increased consolidation of ownership within the radio industry will enable it to strengthen its overall performance, and attract new investment. This, in turn, will assist the industry to compete more effectively with other forms of media and enhance its contribution to the support of Canadian cultural expression.

31. In reviewing its common ownership policy and determining which ownership model it should adopt, the Commission also considered a number of factors, including: the impact on diversity of news voices in markets of different sizes; the impact of cross-media ownership; possible impact on diversity of formats; and implications for competition.

Diversity of News Voices

32. One of the objectives of the Commission's longstanding policy on common ownership has been to preserve the availability of distinct news voices in a community. The Commission notes that, in recent years, there has been a considerable increase in the number of local, regional and national news sources available in most markets, including new conventional radio and television stations, specialty programming services, community radio stations and regional newspapers, as well as emerging alternative sources of information such as the Internet. In determining a model for a new common ownership policy, the Commission has sought to strike a reasonable and acceptable balance between its concerns for preserving a diversity of news voices in a market, and the benefits of permitting increased consolidation of ownership within the radio industry.

Cross-ownership and Equity Interests

33. The Commission is alert to concerns regarding the impact on competition and the diversity of news voices in a market raised by media cross-ownership and the equity interests of a person in a multiple of local radio stations. In particular,

ownership or control by one person of radio, television, print and/or distribution undertakings, or equity interests held by that person in a multiple of radio licensees in a given market, might give the person a market dominance that could affect the level of true competition available in the market. This situation would also give rise to concerns such as the potential for gate-keeping with respect to information, and the concentration of the advertising market in one person's hands.

34. The Commission will therefore assess these concerns when examining an application for a new licence or for authority to transfer the ownership or effective control of an undertaking.

Diversity of Formats

35. A number of broadcasters at the hearing stated that an increase in the number of stations a person is permitted to own in a market would lead to an increase in the diversity of formats offered. The Commission agrees that one of the benefits of consolidation could be some increase in the diversity of formats offered in some individual markets. Nevertheless, it does not consider that the extent of any such increase overall would be as great as that forecast by the broadcasting industry. For example, while the Commission accepts the argument that one owner with several stations in a market will likely offer different formats on each of these stations, it is not convinced that this owner would maintain formats that differ from those employed by stations that are owned by other broadcasters in that market.

Competitive Implications

36. The radio industry operates in a competitive environment in which some of its competitors in other media have been allowed to consolidate. The Commission acknowledges that increased consolidation of ownership will reduce the number of competitors in some markets. It is the Commission's view, however, that the CAB's specific proposal for a revised common ownership policy could lead to an unacceptable reduction in the number of individual broadcasters, particularly in larger markets. In fact, this proposal could lead to a situation where only four markets in Canada would have more than two radio stations owners operating in any one language (Toronto, Vancouver, Edmonton and Winnipeg). The Commission believes that such a reduction in the number of radio broadcasters could also lead to an unacceptable reduction in the diversity of news voices and in competition.

37. Accordingly, the Commission focused on developing a model that will allow for some measure of consolidation, while taking into account its general concerns for preserving a diversity of news voices and maintaining competition.

The Commission's Conclusions

38. Having considered all of the foregoing, the Commission has revised its common ownership policy as follows. In markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.

39. For the purpose of the revised common ownership policy, "control" shall mean "effective control" as the latter term is defined in section 11(3) of the regulations.

40. In addition to other issues that may be raised in the context of a particular application, persons filing applications under the revised common ownership policy will be required to address the impact on diversity of news voices and the level of competition in the market.

41. In assessing these matters, the Commission will take into account the amount of equity (voting and non-voting) that the applicant may have in other radio stations operating in the same language in the market concerned, as well as its equity holdings in other local media.

42. In addition, the Commission will issue a proposed amendment to section 11(4)(d) of the regulations to specify that the licensee of a radio station must obtain the Commission's approval prior to acquiring a certain level of equity in another radio station operating in the same language and in the same market. The level of equity that would trigger the filing of such an application would be examined in the context of the public process held to consider this amendment.

Local Management Agreements

43. In Public Notice CRTC 1996-138 dated 16 October 1996 and entitled Commission's Approach to Dealing with Local Management Agreements in Canadian Radio Markets, the Commission stated that it will generally accept local management agreements (LMAs) in markets of any size, without requiring prior approval, provided the parties to the agreement respect certain specific criteria.

44. The Commission's LMA policy was intended to assist radio broadcasters in achieving cost savings and greater marketing parity with other media during periods of financial difficulty. Cost savings are normally realized under LMAs through the integration of several operational components of one radio station, often involving the technical, sales and promotion and general administrative activities, with similar operational components of a radio station operated by another licensee in the same market.

45. As this policy was enacted at a time when the common ownership policy generally restricted persons to ownership of no more than one AM and one FM undertaking in the same language and in the same market, the Commission considers it appropriate to review its LMA policy. In particular, increased consolidation of ownership in a market involving stations that are party to an LMA could raise questions as to whether this would lead to market dominance by one broadcaster to the undue detriment of others in a market, or effectively create a monopoly in a market that would otherwise be competitive under the revised common ownership policy. In Public Notice CRTC 1998-42 of today's date, the Commission has announced a public process to examine this matter.

46. Existing LMAs will be taken into account by the Commission in considering applications by persons to acquire ownership or control of more than one AM and one FM station in the same language and in the same market. Moreover, until the review of the LMA policy is completed, a person who applies to acquire ownership or control of more than one AM and one FM station in the same language and in the same market will be expected to undertake not to enter into an LMA, on a going forward basis, without the Commission's prior approval.

Programming Commitments In Ownership Transactions

47. As part of this process, parties were asked to comment on whether or not the Commission should expect additional programming commitments from applicants proposing to enter into transactions that would result in them owning more than one AM and one FM station in a market.

48. General concerns about the impact that consolidation of ownership could have on news programming were raised by several parties. They emphasized the important role that radio plays in the dissemination of local news and information. Some parties expressed the view that local news coverage has declined in Quebec as a consequence of the consolidation of ownership that has occurred in that province in recent years. They were concerned that this trend could continue if ownership requirements were loosened further.

49. On behalf of the recording industry, the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) argued that the Commission should not introduce a two-tier regulatory system with respect to radio programming. It considered that all stations, not just those coming under the requirements of any new policy on common ownership, have a responsibility to raise the level of Canadian music they play and ensure reasonable distribution of French-language Canadian musical selections.

50. The Canadian Independent Record Production Association (CIRPA) added that obligations to ensure diversity in the market through the provision of different formats should be expected and enforced by condition of licence. The CBC also raised the possibility of re-regulating formats.

51. The CAB and several individual owners of commercial radio stations did not consider that programming commitments any greater than those required of other broadcasters should be imposed on applicants proposing a consolidation of radio ownership in a community. It was generally argued that additional requirements would slow the financial recovery of radio.

The Commission's Conclusions

52. The Commission considers that all radio licensees have an obligation to contribute to the cultural objectives set out in the Act, and that this obligation is particularly important in situations where one owner is allowed the privilege of owning several stations in a community. It is not prepared, however, to return to a regime where FM radio formats would be strictly defined and regulated. The Commission essentially abandoned this strategy in 1990 largely because of the difficulties in defining and distinguishing between various types of popular music.

53. With respect to commitments in other areas, such as levels of news and spoken word, the Commission considers that setting across-the-board requirements would not take into account the particular needs of different communities or the differing resources of licensees.

54. The Commission has therefore decided to use a case-by-case approach in assessing programming commitments. Applicants seeking to acquire ownership or control of more than one AM and one FM station in a given language and market will be required to outline how their proposed programming will benefit the community and further the objectives of the Act. The Commission will retain the option of requiring adherence, by condition of licence, to particular commitments made by applicants.

Other CAB Proposals

55. The CAB presented three other proposals in the context of its proposed changes to the common ownership policy.

56. The first proposal was that any change to the policy should be reviewed in three years. The Commission expects that it will take more than three years before the effects of the ownership consolidation that will take place under this revised policy are fully known. Therefore, the Commission intends to review its common ownership policy in five years, at the same time as it reviews its overall policy approach to commercial radio broadcasting.

57. The CAB also made a proposal intended to strengthen the position of small market radio stations. Specifically, it suggested that the Commission refrain from issuing calls for competing applications in situations where the owner of a single station in a small market applies for a second licence (AM or FM), or seeks authority to move its existing AM station to the FM band. It also proposed that the

owner of one AM and one FM station in a small market be permitted to apply for a third station in that market without the Commission issuing a call for other applications.

58. The Commission considers that implementation of this proposal would be inconsistent with its efforts to encourage competition and diversity in the radio industry, as it may unduly favour incumbent radio station owners.

59. Accordingly, consistent with its objective of encouraging competition and choice, the Commission will assess each application, whether for a licence to carry on a new radio station or to convert an existing AM station to the FM band, on its merits, and will issue a call for competing applications in those circumstances where it determines that a call is warranted.

60. The third CAB proposal was that the Commission simplify and accelerate the processing of applications for authority to transfer ownership or control, or to acquire the assets, of a radio station. The CAB indicated that the intent of its proposal is to ensure that the delay associated with the Commission's public process does not unduly impede implementation of industry consolidation.

61. The Commission notes that it has already taken numerous, significant steps to streamline the application process now in place, and will continue to process all applications as expeditiously as possible, taking into account the particular circumstances of each case.

The Benefits Test

62. The Commission currently applies the benefits test in its consideration of applications for authority to transfer ownership or control of programming undertakings. Because the Commission does not solicit competing applications, the onus is on the applicant to demonstrate that the application filed is the best possible proposal under the circumstances and that the benefits proposed in the application are commensurate with the size and nature of the transaction.

63. The Commission assesses the benefits proposed in each application on a case-by-case basis. Although there are no set guidelines or benchmarks concerning what would constitute an acceptable level of tangible benefits in such transactions, the Commission notes that these have generally represented approximately 10% of the value of a transaction.

64. CIRPA and ADISQ stated that, if the Commission does permit multiple station ownership, the benefits policy should be maintained, and support for Canadian music, including financial contributions to Canadian talent development, should increase.

65. Broadcasters, on the other hand, generally expressed the view that the Commission should eliminate the benefits test for transactions involving radio

undertakings. The CAB argued that the radio industry faces significant economic challenges and that consolidation, itself, will be costly. It also claimed that many benefits to listeners will result from multiple station ownership and the development of a healthy radio industry. Examples given of such benefits were an increase in the number of formats and the capacity for improved news programming.

66. In its final argument, the CAB submitted a proposal to replace the existing benefits test with a contribution that would flow through to FACTOR, MusicAction and a new Canadian music marketing and promotion fund; and would also be used to assist the transition of stations to digital radio.

67. This contribution would represent 3% of the value of the total transaction. According to the CAB's proposal, the value of unprofitable stations involved in a transaction would not be included in calculating the required contribution, nor would contributions be required in respect of transactions with a value of less than \$7.5 million.

The Commission's Conclusions

68. The Commission is of the view that, in the absence of a competitive process to consider applications involving the transfer of ownership and control of radio broadcasting undertakings (which, by definition, make use of frequencies that are scarce public resources), the benefits test will continue to be an appropriate mechanism for ensuring that the public interest is served in the case of transfers of ownership and control.

69. The Commission considers that the introduction of digital technology, technical upgrades, programming improvements and other benefits, are likely to be implemented, or implemented more quickly, as a result of multiple station ownership and a financially healthy radio industry. Accordingly, the Commission generally considers it reasonable that there be some reduction in the level of tangible benefits associated with ownership transactions. It also finds it reasonable that benefits be directed to the support of the Canadian music industry, including third party organizations such as FACTOR and MusicAction which are involved in the development of Canadian talent.

70. In consideration of the above, the Commission has decided to modify its benefits policy in respect of all transfers of ownership and control of radio undertakings. Specifically, the Commission has determined that it will henceforth expect that, in the case of such applications, commitments be made to implement clear and unequivocal benefits representing a minimum direct financial contribution to Canadian talent development of 6% of the value of the transaction. Consistent with the Commission's existing benefits policy, and as stipulated in Public Notice CRTC 1993-68 dated 26 May 1993, the Commission will forgo benefits requirements for unprofitable undertakings. The Commission will measure profitability according to the average profit before interest and taxes

(PBIT) of the undertaking over the three years preceding the filing date of the application. The Commission will not systematically apply this exemption to stations in the first five years of operation. In cases where an applicant is applying to acquire a group of stations, all or some of which fall below this threshold, the Commission will consider profitability on an aggregate basis.

71. As also stated in Public Notice CRTC 1993-68, the Commission will continue to expect the purchaser of an undertaking to fulfil any benefits commitments that the current licensee of the undertaking has not fulfilled. The Commission considers that benefits commitments are part of the obligations of a licensee and should be implemented regardless of ownership changes.

72. The Commission will expect financial contributions to be distributed as follows:

- 3% to be allocated to a new Canadian music marketing and promotion fund;
- 2% to be allocated, at the discretion of the purchaser, to FACTOR or MusicAction; and
- 1% to be allocated, at the discretion of the purchaser, to either of the above initiatives, to other Canadian talent development initiatives, or to other eligible third parties directly involved in the development of Canadian musical and other artistic talent, in accordance with Public Notice CRTC 1995-196, as may be amended from time to time.

73. The purpose of the Canadian music marketing and promotion fund will be to support co-operative activities by broadcasters and the music industry to market and promote Canadian music, including new talent. The Commission expects the fund to be jointly administered by representatives of the broadcasting and recording industries. Accordingly, the Commission expects the CAB, in co-operation with representatives of the recording industry, to submit a proposal for the Commission's prior approval, detailing how the fund will be administered and operated. The proposal should be submitted no later than 1 September 1998, and should specify how the fund will be allocated to ensure support for both French- and English-language music, including the development of new Canadian talent. The Commission will also require the submission of annual reports on the fund's activities, including details of all disbursements from, and activities supported by, the fund.

74. The Commission notes that commitments for contributions to Canadian talent development made in the context of applications for authority to transfer ownership or effective control of a radio programming undertaking will remain separate and apart from the annual contributions to Canadian talent development by commercial AM and FM stations made either in accordance with commitments

given at the time of previous transfer applications, or pursuant to conditions of licence imposed in accordance with the policy set out in Public Notice CRTC 1995-196, as amended from time to time.

Radio Market Policy

75. The Commission set out its Radio Market Policy in Public Notice CRTC 1991-74 dated 23 July 1991. The purpose of this policy was to ensure that the introduction of an additional commercial AM or FM station in a given market would not unduly affect the ability of existing AM and FM stations to discharge their programming responsibilities. The radio market policy established three criteria that the Commission would use to assess the capacity of markets to support additional commercial radio stations. The three criteria represent measurements of group profitability, individual profitability and revenue growth within specific markets. Data concerning these measurements have been published annually by the Commission for use by potential applicants and other interested parties.

76. At the hearing, the CAB argued that the Radio Market Policy should be maintained. According to the CAB, the criteria of the Radio Market Policy: "... are an information system. They have never prevented anybody from applying for a licence, and indeed, never prevented [the Commission] from granting a licence." Some representatives of the music industry argued, however, that the Commission should consider issuing more licences, thereby creating a more competitive environment.

The Commission's Conclusions

77. The Commission's strategy, as set out in its 1997 Vision statement, is to "rely more on market forces to permit fair and sustainable competition." In the Commission's view, the new common ownership policy should allow existing radio station owners to improve their existing financial situation and their ability to compete effectively with new entrants.

78. Accordingly, consistent with its desire to encourage competition and choice, the Commission has determined that it will no longer apply the criteria outlined in the Radio Market Policy. The Commission, following its consideration of applications for new market entry, will be prepared to issue licences, depending on the individual merits of the applications, in particular the benefits their approval will bring to the communities concerned and the broadcasting system as a whole.

79. The Commission does, however, recognize the usefulness of relevant market information to potential applicants for radio licences in making their assessment of the relevant strength of a market. Therefore, the Commission intends to make available to potential applicants and other interested parties, aggregate financial

summaries for medium and large markets. This aggregate market information will be made available on an annual basis.

ISSUES RELATED TO CANADIAN MUSIC

Promotion of Canadian Music

80. The Commission's primary approach to ensuring Canadian content on radio has been to require stations to play specific minimum levels of Canadian music. Broadcasters are also required to make annual contributions toward the development of Canadian talent.

81. At the public hearing, both the broadcasting industry and the recording industry generally agreed that increased co-operation between the two sectors to promote Canadian music and support new talent is important. Such co-operation could provide increased support to Canadian artists, and help ensure the continued success of the Canadian music industry and increase the supply of Canadian recordings.

82. The CAB made commitments to move forward with a number of initiatives designed to promote Canadian music and to increase the sales of Canadian recordings. These initiatives are:

- A new Annual Canadian Radio Music Awards event will be held to celebrate new Canadian artists.
- A Canadian Radio Music Month will be held annually in the month prior to the Canadian Radio Music Awards. Candidates for the awards will be promoted during radio programming.
- A Virtual Music Store will be established to help make Canadian music played on commercial radio available for purchase through a central site on the Internet.
- A Radio Stars program will be established to provide free promotion to new artists and new recordings. Under this plan, music-based stations will broadcast commercial messages on behalf of record companies or Canadian artists at no charge.
- The CAB will host a conference to launch a new initiative to bring together all sectors involved in the promotion of Canadian music.

The Commission's Conclusions

83. Historically, radio has played an important role in promoting Canadian artists and music. The Commission notes that the radio industry in Quebec has been

particularly active in this regard. In that province, artists sometimes co-host radio programs to promote their appearances. Artist interviews are also used to promote both the artist and the station.

84. The Commission considers the CAB's commitments to be of great potential significance for the future promotion of Canadian music. It encourages the CAB to continue to explore ways of working with all sectors in the music industry to ensure the industry's continued success. Such efforts to increase the availability of high-quality Canadian recordings will, in turn, contribute to the success and distinctiveness of Canadian radio.

85. The Commission commends the CAB for these valuable initiatives. It expects the CAB to report annually on its activities in this regard, including its activities to support and promote both the French- and English-language sectors of the music industry, and new Canadian talent in particular.

Level of Category 2 Music

86. Currently, section 2.2 of the regulations requires that at least 30% of musical selections (category 2) broadcast each week be Canadian, and that these selections be distributed in a reasonable manner throughout each broadcast day.

87. This regulation ensures that Canadian artists and Canadian works are heard on radio. It also has played an important role in the development of a Canadian music and recording industry.

88. In their comments, broadcasters generally agreed that the requirement for Canadian content in category 2 music should be maintained at the existing level, but noted that it is sometimes difficult to fulfil the existing quota without playing some material that is of lower quality, or without keeping some selections on the playlist for longer periods. The CAB contended that no increase in the required level of Canadian content should be implemented until sales of Canadian recordings, as a percentage of total recordings sold, exceed 15%. The CAB further suggested that the requirement for Canadian music would then be set at a level that is two times the retail sales of Canadian music, as a percentage of all record sales in Canada. The percentage would be averaged over a three-year period to remove the impact of year-to-year fluctuations.

89. On the other hand, several representatives of the recording industry argued that the level should be increased immediately to levels that, they suggested, should range from 35% to 40%. Others recommended further increases, to be introduced over time until a 50% level is achieved. Those advocating increases argued that these are necessary to achieve the objectives of the Act. They also considered that the current level of new releases, plus the extensive catalogue of Canadian recordings that has accumulated since Canadian content requirements were first implemented, is assurance that sufficient material will be available to fulfil a higher requirement.

90. Music industry representatives generally opposed the CAB's plan to tie Canadian content levels to record sales. They argued that statistics with respect to record sales are released infrequently, and expressed concern about their reliability. According to these parties, the lack of reliable annual statistics would make it very difficult to implement the CAB's plan. They also argued that the increased airplay of recordings has a demonstrated positive influence on sales, and that to make an increase in Canadian record sales a prerequisite for any increase in Canadian content would ignore this reality.

The Commission's Conclusions

91. The Commission considers that playing Canadian music is a vital contribution that radio makes toward fulfilling the cultural goals set out in the Act. It also considers that the regulations requiring minimum levels of Canadian music have been important elements in bringing the Canadian music industry to its current level of success.

92. Moreover, the Commission is convinced that there is an adequate supply of Canadian recordings available to support an increase in the required level of category 2 music on radio stations. It notes that French-language radio stations already provide levels of Canadian music that are generally well in excess of 35%.

93. The Canadian content requirements set out in the radio regulations, unlike those applied to television broadcasters, do not generally involve large incremental direct expenses since radio stations do not have to pay for the production of the recordings. Therefore, playing Canadian music is a contribution to the Act's objectives that radio can make, even in times of economic difficulty. The Commission also notes that the 1990 increase in the required Canadian content level for most FM stations has had no apparent inhibiting effect on the growth of listening to FM stations.

94. Based on the foregoing, and taking into account the maturity of the Canadian radio industry, the Commission considers that an immediate increase in the level of Canadian content from 30% to 35% is both manageable and appropriate. It will expand the exposure given to Canadian artists and provide increased support to the Canadian music industry as a whole.

95. Accordingly, the Commission will issue a proposed amendment to the regulations shortly requiring that at least 35% of category 2 musical selections broadcast by commercial AM and FM stations each broadcast week be Canadian selections.

96. The Commission notes that some licensees, in exceptional circumstances, are currently subject to conditions of licence allowing for lower minimum Canadian content levels than that generally required by way of regulation. Some others are

required to broadcast higher levels than the required minimum. The Commission expects these licensees to continue to operate in accordance with their current commitments.

97. The Commission is confident that the cooperative initiatives and efforts of the broadcasting and music industries to promote and support Canadian music will succeed in bringing about a level of Canadian content that reaches 40% in five years.

Distribution of Canadian Category 2 Selections

98. To ensure that Canadian selections are played during periods of high listening, the regulations require that Canadian selections be reasonably distributed throughout the broadcast day.

99. In Public Notice CRTC 1990-111 dated 17 December 1990 and entitled An FM Policy for the Nineties, the Commission set out the following criteria for determining if the distribution of Canadian selections is reasonable:

- at least 25% of the popular music selections (category 2) broadcast between 6:00 a.m. and 7:00 p.m. Monday through Friday must be Canadian;
- there should be a reasonably even distribution of Canadian selections in the above dayparts and throughout the broadcast week; and
- there should be a significant presence of Canadian music in high audience periods, these traditionally being the morning and afternoon drive.

100. The terms “reasonably even” distribution and “significant presence” have never been specifically defined.

101. Representatives of the broadcasting industry suggested that the current guidelines, including the 25% minimum for weekdays between 6:00 a.m. and 7:00 p.m., are sufficient. They do not believe that special requirements are necessary for the morning and afternoon periods, noting that many stations are enjoying increased listening in the midday period. They also noted that fewer records are generally played in the morning drive period, so that the addition or deletion of even one record could make a major change to Canadian content levels in this period.

102. Some broadcasters also argued that programming higher levels of Canadian content in the evening could be beneficial, since listening by younger people, who are major buyers of recordings, is often higher at that time.

103. Representatives of the recording industry, on the other hand, considered that more stringent distribution requirements are necessary. They suggested that the current system allows stations to concentrate higher levels of Canadian selections in the evening and on weekends when listening is often lower. They claimed that this practice lowers the exposure of Canadian selections, with a consequent negative effect on record sales.

104. They therefore recommended that compliance with Canadian content requirements be measured over shorter periods, for example, every three hours, and hourly in prime morning and afternoon periods.

The Commission's Conclusions

105. The Commission agrees with the recording industry that the current system, which specifies a minimum level of only 25% Canadian content on weekdays between 6:00 a.m. and 7:00 p.m., can lead to lower levels of Canadian content during those periods when most people are listening. The Commission notes in this regard that the music use study it carried out in preparation for the hearing does indicate that some stations program lower levels of Canadian content in peak listening times, especially in the morning drive. On the other hand, it acknowledges the argument made by the radio industry that stations should have some flexibility to adjust their programming. Further, the Commission does not want to implement a system that would have it regulating programming content unduly over short time periods.

106. The Commission will therefore issue shortly a proposed amendment to the regulations requiring that at least 35% of category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m., Monday through Friday, be Canadian selections. The Commission considers that this increased level, as well as the reduction of the daytime measurement period from 13 to 12 hours, will increase exposure of Canadian music during hours of higher listening, but will still give licensees considerable flexibility in adjusting their programming.

107. The Commission notes that, in exceptional cases, licensees are currently subject to conditions of licences allowing for minimum Canadian content levels that are lower than the current or the proposed regulated minimum level. The Commission invites these licensees to apply for a condition of licence that would specify a level of distribution for Canadian content between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, that corresponds with their overall category 2 Canadian content requirement.

108. The Commission further notes that it will issue a proposed amendment to the regulations requiring that category 2 Canadian selections be played in their entirety for the purpose of meeting Canadian content requirements.

Level of Category 3 Music

109. Section 2.2 of the regulations requires that at least 10% of the traditional and special interest music selections (category 3) broadcast each week by commercial radio stations be Canadian. The lower requirement for Canadian content in category 3 music was established because of the generally limited availability of Canadian recordings of specialized types of music, such as concert music and jazz.

110. Of the music industry representatives that appeared at the public hearing, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) commented extensively on the minimum level of category 3 music that should be required. SOCAN considered that the level of Canadian category 3 music required should be raised from 10% to 25%. Further, it recommended that at least 15% of the concert music broadcast be by Canadian composers.

111. The CBC, whose networks and stations are required to broadcast a minimum level of 20% category 3 music, opposed raising the level required of commercial stations. The CBC noted that, in order to meet the 20% level, it often records concerts and produces its own recordings for broadcast. The CBC did not consider that those commercial stations whose program formats are based on category 3 music would have the resources to undertake extensive recording activities or the broadcast of live music.

112. There was very little comment from commercial broadcasters regarding the requirement for category 3 music.

The Commission's Conclusions

113. Most of the category 3 music that is programmed on Canadian radio is broadcast on stations owned and operated by the CBC and on not-for-profit stations. The appropriate level of Canadian music for these stations will be considered during the separate reviews for these sectors proposed by the Commission in Public Notice CRTC 1997-105.

114. Most commercial radio stations play little, if any, category 3 music. Exceptions include a concert music station serving Toronto/Cobourg, as well as a commercial concert music station that has been licensed for Montréal but is not yet on the air. There are also a few commercial stations in Canada that offer gospel music formats.

115. Given the limited number of commercial stations involved, the Commission has concluded that it would be best to deal with the issue of Canadian content levels for category 3 music on these stations on a case-by-case basis. At licence renewal time, commercial FM stations operating in the specialty format, as well as AM stations that offer high levels of category 3 music, will generally be expected to propose an increase in the current level of Canadian music they play.

They will also be asked to indicate why they consider their proposed levels to be adequate. Concert music stations will also be asked to provide specific commitments with respect to the broadcast of works by Canadian composers. All interested parties will have a chance to comment on the reasonableness of these commitments during the intervention process.

Music Broadcast During Ethnic Programming Periods

116. Section 2.2 of the regulations states that, where 7% or more of the music selections broadcast during an ethnic programming period are Canadian selections, this time period will not be considered when determining whether or not a licensee is in compliance with the required levels of Canadian content for category 2 and category 3 music.

117. Only SOCAN commented on this particular regulation, and recommended that the required level of Canadian content for ethnic programming periods be raised to 12%.

The Commission's Conclusions

118. As noted in the Commission's Vision Action Calendar issued on 17 April 1998, the Commission will hold a public process to review its ethnic broadcasting policy in 1998/99. Although the Commission considers that an increase in Canadian content during ethnic programming periods may well be appropriate, any examination of this issue should take place in the context of that review. All interested parties will then have an opportunity to comment.

Overnight Canadian Content

119. The current Canadian content regulations relate only to the broadcast day, that being the time period between 6:00 a.m. to midnight, Sunday to Saturday.

120. The recording industry considered that Canadian content requirements should be extended to include the overnight period, even though listening during this period is very low. Airplay for Canadian music in the overnight period has assumed greater importance since the development of Broadcast Data Systems (BDS) monitoring technology. This system electronically monitors the programming of radio stations to measure the number of times that individual selections are played. The information is used to assemble charts that appear in music magazines. The recording industry argued that, since the overnight period is included in the BDS monitoring program, it is important that Canadian selections be played during this period if they are to obtain the highest possible placement on the charts.

121. Commercial broadcasters argued that there is no need to extend the Canadian content regulations to cover the midnight to 6:00 a.m. period. They noted that the Commission's music use study, which analyzed an overnight programming period

for five English-language music stations in Toronto and five French-language music stations in Montréal, found that the Montréal stations achieved an average Canadian content level of 38%, while that for the Toronto stations was 28%.

The Commission's Conclusions

122. The Commission recognizes the importance of airplay for Canadian music selections in terms of their placement on charts assembled using BDS technology. It notes from its monitoring study, however, that some stations play significant levels of Canadian content in the overnight period. In the circumstances, the Commission is reluctant to allocate what would be a substantial increase in resources to monitor radio programming during a time period when listening is very low.

123. The Commission therefore does not propose to introduce any new regulatory requirement for Canadian content in the overnight period at this time. It does, however, encourage broadcasters to meet the daytime levels of Canadian content required during the overnight hours as well.

New Canadian Artists

124. There is currently no specific requirement with respect to playing music by new Canadian artists. Licensees are required, however, to make an annual financial contribution to the development of Canadian talent.

125. The CAB did not support the establishment of an across-the-board requirement for broadcasting music by new Canadian artists. It noted that it would be difficult to establish a quota that would be fair for stations in all formats. The CAB did, however, outline a strategy for promoting Canadian music, including music by new artists. This strategy is described in an earlier section of this notice.

126. Some individual licensees of private commercial radio stations suggested that a bonus system for selections by new Canadian artists be established. Under this system, selections by new Canadian artists would be given additional credit toward meeting Canadian content requirements.

127. Although representatives of the music industry agreed that it is important that there be opportunities for listeners to hear music by new Canadian artists, they generally opposed any bonus system for new Canadian artists that may ultimately result in a lowering of the overall level of Canadian music that stations broadcast.

128. Two representatives of the francophone music industry considered that one-third of all French-language selections played should be new selections or selections by new artists.

The Commission's Conclusions

129. The Commission agrees with representatives of the broadcasting industry that it would be very difficult to develop an across-the-board requirement for the broadcast of recordings by new Canadian artists that could be fairly applied to all formats. It agrees that a bonus system would eliminate some of these difficulties, but shares the concerns of the music industry that this could decrease the overall level of Canadian music that stations play.

130. The Commission considers that the promotion and development of new Canadian artists is an area that will benefit greatly from increased co-operation between the music and broadcasting industries. Earlier in this document, the Commission noted that the various commitments by the CAB to promote Canadian music, and benefits contributions resulting from transfers of ownership and control, will provide additional support for new talent.

131. The Commission reiterates its expectation that the CAB report annually on its activities to promote and support both the French- and English-language sectors of the music industry, especially with respect to new talent.

132. The Commission considers that it would be appropriate to allow these initiatives to develop, and for it to evaluate their success, before deciding if any new regulatory initiatives with respect to playing the music of new Canadian artists are necessary.

Canadian Talent Development

133. In Public Notice CRTC 1995-196, the Commission set out a new approach to contributions to Canadian talent development by commercial AM and FM stations. Under this policy, the licensee of each commercial station was given the opportunity to apply for relief from previous direct cost commitments for Canadian talent development made as part of its last licence renewal, and to amend its licence by adding a condition of licence requiring it to make annual payments to eligible third parties involved in Canadian talent development at the level identified for it in the CAB's Distribution Guidelines for Canadian Talent Development. The licences of most private commercial stations now include this condition.

134. The purpose of the CAB guidelines is to ensure that Canadian commercial radio stations allocate, in total, a minimum of \$1.8 million each year to eligible third parties associated with Canadian talent development. This \$1.8 million is over and above commitments made in the context of applications for new licences or in applications involving the transfer of ownership or effective control of radio stations.

135. The Commission wishes to emphasize the importance it places on Canadian talent development. It notes that compliance with these conditions of licence is

required on an annual basis and expects all stations to ensure that these commitments are fulfilled so that eligible third parties receive the funding to which they are entitled.

Defining a Canadian Selection: the MAPL System

136. Currently, a musical selection must generally meet at least two of the five criteria set out below in order to qualify as a Canadian selection. This is commonly referred to as the MAPL system.

- M (music) – the music is composed entirely by a Canadian.
- A (artist) – the music is, or the lyrics are, performed principally by a Canadian.
- P (production) – the musical selection consists of a live performance that is recorded wholly in Canada, or performed wholly in Canada and broadcast live in Canada.
- L (Lyrics) – The lyrics are entirely written by a Canadian.
- The musical selection was performed live or recorded after 1 September 1991, and a Canadian who has collaborated with a non-Canadian receives at least half of the credit as a composer and lyricist.

137. There are also three special cases where a musical selection may qualify as Canadian, even if it satisfies fewer than two of the MAPL criteria. An instrumental performance of a musical composition written or composed entirely by a Canadian, a performance of a musical composition that a Canadian has composed for instruments only, and a musical selection that has already qualified as a Canadian selection under previous regulations, are all deemed to be Canadian selections.

138. Representatives of SOCAN and La Société professionnelle des auteurs et des compositeurs du Québec (SPACQ), as well as some broadcasters and individuals, considered that the existing system should be maintained. They were generally of the view that the current MAPL system provides for balanced consideration of a range of factors and elements that are essential to a strong Canadian music industry.

139. ADISQ, on the other hand, suggested that a consultative process be established to develop a system that would better balance artistic criteria with the resources necessary to produce a recording. MusicLane Inc. was also concerned about the industrial aspect of recording, and generally recommended that “pre-mastering” by a Canadian company be required if a recording is to qualify under the production criterion.

140. The Canadian Recording Industry Association (CRIA) considered that the performance of a Canadian artist in a recording should carry extra weight in the MAPL system. The CAB and some individual licensees of commercial radio stations carried this argument further, and proposed that the definition be changed so that the recorded performance of a Canadian artist would qualify as Canadian, even if the recording did not meet any other of the MAPL criteria. The CBC proposed a variation of this proposal, suggesting that the existing requirement that two MAPL criteria be met should be maintained for category 2 selections, but that subcategory 31 (concert music) selections by Canadian artists should automatically qualify as Canadian.

141. The Alberta Recording Industries Association (ARIA), on the other hand, suggested that the MAPL criteria be made stricter than they currently are by requiring that, in order for a selection to qualify as Canadian, the artists, composers and lyricists must have Canadian residency, and that copyrights must either be owned by a resident Canadian or assigned to a Canadian-owned publishing company.

The Commission's Conclusions

142. The MAPL system and the minimum requirements for Canadian content have two essential objectives:

- To ensure that Canadian artists and their works have access to Canadian airwaves; and
- To support a Canadian-based music and recording industry.

143. The two objectives go hand in hand. If Canadian artists, other than the relatively few who have been signed directly by non-Canadian labels, are to make recordings, Canadian recording facilities have to be available. If works by Canadian composers are to be recorded, there should be an incentive to make use of Canadian compositions.

144. The Commission continues to view these two goals as critical. The Commission recognizes that allowing a recording to automatically qualify as Canadian if the principal artist is Canadian may ensure some additional access for Canadian artists to radio playlists. The Commission notes, however, that, under such a regime, a recording made outside of Canada of a non-Canadian song would qualify as Canadian, provided the performing artist is Canadian. The Commission is not convinced that such a change would assist in achieving the second objective, namely the support of a Canadian-based recording industry. The Commission also notes that many of the artists who would benefit from such a change have already received considerable international success.

145. Another goal of the Commission has been to make the system of defining a Canadian selection readily verifiable and easy to administer. The Commission notes in this regard that the proposed addition of new criteria, such as Canadian residency, or any other modification related to production and copyright ownership, would make the system more complicated and difficult to verify.

146. The Commission will therefore maintain the current MAPL system.

Role of the Recording Industry

147. As noted earlier, the CAB has proposed a number of important initiatives to promote and support Canadian music. The recording industry also plays an integral role within the Canadian broadcasting system. Given that this industry has a critical interest in ensuring that the Commission's policies and the broadcasters' initiatives achieve their common objectives, the Commission expects the recording industry to collaborate fully with the broadcasting industry in efforts to support and promote Canadian music.

148. To this end, the Commission strongly encourages the recording industry, in particular CIRPA, ADISQ and CRIA, to provide the Commission with annual updates concerning their own initiatives, and those they undertake with the broadcasting industry, to support and promote Canadian talent. As part of these annual updates, the Commission requests CIRPA, ADISQ and CRIA to provide it with relevant information that will assist the Commission in evaluating the impact of its policies and the industries' effort to provide increased support to Canadian music. Such information might include data on the release and sales of Canadian recordings, and on industry employment.

149. The Commission will review its policies related to Canadian music in five years when it again reviews its overall policy approach to commercial radio broadcasting.

PROGRAMMING THAT REFLECTS CANADA'S LINGUISTIC DUALITY

Level of French-Language Vocal Music

150. Currently, in order to ensure that French-language radio stations reflect the needs and interests of their audiences, at least 65% of the vocal popular (category 2) music selections that they broadcast each week must be in the French language, and must be scheduled in a reasonable manner throughout the broadcast day.

151. The Commission's requirements are based on two related goals. It wishes to support a francophone recording industry in Canada and to allow francophones to have access to music reflecting their culture. The Commission has always considered it to be the responsibility of French-language broadcasters to continue their efforts to contribute to the development of French-language expression.

152. Most parties, including representatives of the broadcasting and music industries, agree that the current required level of French-language vocal music is generally appropriate.

153. Broadcasters, however, argued that there is a shortage of French-language material; as a result, stations make excessive use of many of the same artists and selections, leading, in turn, to an overexposure of some songs and a similarity in sound between stations.

154. Broadcasters also noted that, in addition to the airplay they provide for French-language selections, they make an important contribution to the promotion of French-Canadian artists through interviews, on-air promotion of events, and other talent development initiatives.

155. While supporting the maintenance of the 65% requirement, the CAB recommended that the Commission reduce the requirement to 55% in the Montréal and Ottawa-Hull markets. The CAB argued that French-language music stations operating in bilingual markets are losing listeners to English-language stations, and that a reduction in the requirement would help these stations to compete more effectively.

156. Radiomutuel inc. (Radiomutuel) proposed that the Commission reduce the requirement for French-language vocal music to 55% in Montréal and 51% in Ottawa-Hull. Radiomutuel further recommended that the French-language popular music requirement be lowered for AM stations to allow them to develop formats not generally offered by FM stations. In particular, Radiomutuel indicated that there is an insufficient number of French-language recordings in the contemporary hit radio, country, and oldies/gold formats to achieve the 65% level. It suggested that a reduction in the minimum requirement for AM stations would provide diversity, as well as a window for the exposure of French-language Canadian artists in different genres.

157. Representatives of the music industry emphasized the importance of the French-language vocal music requirement in providing exposure for French-language talent. ADISQ disagreed with the claim by broadcasters that there is a lack of French-language material, and suggested that broadcasters are often reluctant to try new sounds.

158. Representatives of the music industry also opposed the granting of any exception to the 65% requirement. With respect to the broadcasters' request that the Commission reduce the level for the Montréal and Ottawa-Hull markets, ADISQ agreed that young people generally prefer to listen to English-language rock music, but added that they generally return to French-language music as they get older. ADISQ also argued that the movement of audiences to English-language stations is not as extensive as broadcasters suggested.

The Commission's Conclusions

159. The Commission recognizes that the inventory of French-language popular music available to French-language broadcasters is smaller than the amount of English-language music available to English-language broadcasters. The Commission notes, however, that after almost 25 years of regulated requirements for French-language vocal music, these broadcasters have a considerable catalogue of current and past French-language selections available to them. It also considers that the maintenance of the 65% French-language popular music content requirement will continue to stimulate the record industry and ensure the continued availability of high quality French-language recordings.

160. Commitments made by the CAB to promote Canadian music, as well as the increased support for Canadian music derived from benefits contributions, will also help to increase support for the French-language music industry, and foster partnership and cooperation between that industry and broadcasters. As noted earlier, the radio industry in Quebec is already very active in promoting Canadian artists and music. The Commission is satisfied that these initiatives will assist greatly in addressing broadcasters' concerns regarding the supply of French-language vocal music.

161. The Commission recognizes that some movement of listening from French-language to English-language stations has occurred in Montréal and Ottawa-Hull, especially among younger listeners. The Commission, however, is not convinced that permitting French-language stations to increase the level of English-language selections will repatriate significant audiences. The Commission also considers that the importance of providing exposure for French-language popular music in francophone communities outweighs the benefits to be derived from any marginal increase in audience. The Commission further notes that other adjustments in programming may be effective in ensuring that listeners' needs are met.

162. With respect to French-language AM stations, the Commission is not convinced that the 65% requirement for French-language vocal music is an obstacle to providing diverse formats of music. This is especially the case, given that most of these stations are talk oriented, and the fact that the number of musical selections they broadcast is limited, relative to the available inventory of French-language vocal music selections.

163. The Commission reiterates the importance of maintaining a French-language presence in radio broadcasting and of providing exposure for francophone artists. Accordingly, the Commission will maintain its requirement for all French-language radio broadcasters that at least 65% of the vocal category 2 music selections that are broadcast each week be in the French language.

Distribution of French-Language Vocal Music

164. Section 2.2 of the regulations requires that French-language vocal music selections be scheduled in a reasonable manner throughout each broadcast day. This requirement is intended to ensure that French-language selections are heard during periods of higher listening.

165. The CAB and other broadcasters considered that French-language stations distribute French-language vocal music in a responsible manner, and that no revision to the current requirement is needed. Broadcasters also argued that, given the high level of French-language vocal music required, the Commission should maintain the flexibility provided by the current scheduling requirement. Télémédia Communications Inc. further suggested that the distribution of French-language vocal selections be calculated on a weekly basis, rather than a daily basis. The CAB also argued that tightening distribution requirements would reduce programming diversity and would result in a more homogeneous sound from station to station.

166. ADISQ, on the other hand, claimed that broadcasters are not providing sufficient exposure to French-language selections during peak hours. Representatives of the music industry and of community broadcasters recommended that stricter scheduling requirements be imposed to ensure that French-language vocal music is reasonably distributed during all time periods.

The Commission's Conclusions

167. The intent of the regulatory requirement pertaining to the scheduling of French-language music is to ensure that these selections are heard during periods of higher listening. Prior to the public hearing, the Commission conducted an analysis of the programming of French-language vocal music by commercial stations in Montréal and Québec. The analysis indicated that some stations scheduled relatively low levels of French-language music during peak audience times, and made up for the shortfall in the other time periods.

168. The Commission recognizes the importance of providing broadcasters with flexibility to adjust their programming to meet the needs of their audiences and to compete effectively. On the other hand, it considers that stricter measures are needed to ensure that French-language music is reasonably scheduled throughout the day.

169. Accordingly, the Commission will issue shortly a proposed amendment to the regulations requiring that a minimum of 55% of the vocal category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m., Monday through Friday, be in the French language. This, combined with the further requirement set out below, will ensure that French-language music selections are played in their entirety, and are exposed during periods of high listening.

Shortening of Selections

170. SPACQ and ADISQ expressed concern that some stations are shortening French-language selections, and recommended that only selections played in their entirety should qualify for credit as a French-language vocal selection or as Canadian content.

171. Radiomutuel confirmed that selections are, in fact, shortened, and claimed that this practice allows broadcasters to present selections that may not otherwise be broadcast, especially songs by new artists and new selections from established artists.

The Commission's Conclusions

172. The Commission considers that the practice of shortening French-language vocal music selections for the purpose of meeting the content requirements for such music is inconsistent with the objectives of the Act and the regulations.

173. The Commission notes that the definitions for the radio content categories and sub-categories set out in Public Notice CRTC 1991-19 and in the 1991 Glossary of Radio Terms, define a musical selection as "Music of one minute in length or more, broadcast uninterrupted ...".

174. In addition to the above definition, and in order to eliminate any ambiguity as to the Commission's objectives, the Commission will issue a proposed amendment to the regulations requiring that category 2 Canadian selections and category 2 French-language selections be played in their entirety for the purpose of meeting Canadian content and French-language vocal music requirements. The Commission expects broadcasters to take measures immediately to ensure that such selections are played in their entirety.

175. With respect to medleys and montages, the Commission reminds licensees that it evaluates these as a single musical selection when calculating compliance with the regulations. Circular No. 343, dated 11 May 1988 and entitled Analysis by the Commission of medleys and montages, describes medleys and montages as "musical selections in which artists or musicians combine excerpts from several songs ... within a single performance". In the circular, the Commissions advised licensees that it:

... regards a montage or medley as having all of the characteristics of a single musical selection, regardless of whether there is verbal material between the excerpts, and accordingly evaluates a medley or montage as a single selection. In determining the main content of such a selection, the Commission uses the duration of the predominant type of material.

176. The Commission will review its approach to maintaining a French-language presence in radio broadcasting, and specifically its policy on French-language

vocal music, when it conducts its next review of its policies for commercial radio in five years. This will enable the Commission to assess the effectiveness of the broadcasting and music industries' efforts in promoting Canadian music in the French language, as well as the contributions in this area resulting from transfers of ownership or control.

FOREIGN-PRODUCED PROGRAMMING

177. There is currently no regulation or policy specifying any minimum amount of Canadian-produced programming that a radio station must broadcast. Canadian content regulations relate only to the level of Canadian musical selections that are broadcast. In recent years, some Canadian radio stations have increased their use of foreign-produced syndicated programming. In light of this development, the Commission asked parties to comment on whether or not it would be appropriate to impose an additional requirement on radio stations that they broadcast a minimum amount of Canadian-produced programming.

178. A survey of ten markets conducted by the Commission in preparation for the hearing revealed that approximately half of the English-language stations surveyed scheduled some non-Canadian syndicated programming. No non-Canadian programming was found on any French-language station.

179. While the use of non-Canadian programming was generally not extensive, the survey showed that three AM talk stations were broadcasting more American-produced programming than Canadian-produced programming.

180. The CAB and some individual commercial broadcasters suggested that regulations limiting the level of foreign-produced programming are unnecessary. They considered that the strength of radio is its local programming, and that most stations with very high levels of non-Canadian programming would ultimately be unsuccessful.

181. The CAB also argued that, in assessing the predominant use of Canadian creative and other resources in the creation and presentation of programming, the administrative, technical and creative infrastructure should also be taken into account. It contended that these factors, coupled with Canadian music requirements, are sufficient to ensure that radio is predominantly Canadian.

182. The licensees of two AM stations operating in the talk format pointed out that talk stations are comparatively expensive to operate. They considered that it is important to have the flexibility to supplement Canadian programming with non-Canadian programming in order to allow such stations to successfully launch and maintain their formats. They also considered that imported syndicated programming serves as a low-cost method of filling out the programming schedules of talk stations, especially during periods of lower listening.

183. Several other parties, including the Friends of Canadian Broadcasting, the CBC, Union des artistes, CIRPA and some individual broadcasters, expressed concern about the increased use of foreign programming, and suggested that regulatory requirements should be considered in light of the Act's objectives.

The Commission's Conclusions

184. The Commission considers that the broadcast of Canadian-produced programming is a key component of the general objective set out in section 3(1)(f) of the Act, that "each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming."

185. The Commission notes that most stations broadcast very low levels of non-Canadian programming. Accordingly, it is not convinced that a regulation specifying a minimum requirement for Canadian programming would be the best approach.

186. Accordingly, the Commission will address situations involving stations that broadcast high levels of non-Canadian programming on a case-by-case basis, at the time of licence renewal. Any requirement for a minimum level of Canadian-produced programming will be imposed by way of condition of licence where deemed appropriate.

187. The Commission also intends to amend the logging requirement set out in the regulations to require that licensees identify all non-Canadian produced programming broadcast. This will facilitate the Commission's ability to monitor performance in this area.

LOCAL PROGRAMMING

188. Section 3(1)(i)(ii) of the Act states that the programming provided by the Canadian broadcasting system should be drawn from local, regional, national and international sources" (emphasis added). The radio industry has historically been the sector of the broadcasting system that has provided the lion's share of programming addressing local issues and concerns. In many smaller communities, local radio stations are the only daily source of local news, information and emergency messages.

189. The Commission's local programming policy for radio is set out in Public Notice CRTC 1993-38 entitled Policies for Local Programming on Commercial Radio Stations and Advertising on Campus Stations. Under this policy, licensees of commercial FM stations in markets served by more than one private commercial radio station are generally required to devote at least one-third of the broadcast week to local programming if they wish to solicit or accept local advertising. This requirement is imposed as a condition of licence.

190. Local programming is defined as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.

191. Although the one-third guideline does not apply to AM stations, the policy makes provision for AM stations to indicate, at the time of licence renewal, the amount of local programming they propose to broadcast, and to indicate how they will provide information of direct and particular relevance to the communities they serve. The Commission also has the discretion to impose certain requirements by condition of licence where necessary.

192. In practice, however, questioning of applicants at renewal time about the levels of local programming on their AM stations has generally been directed to those for whom low levels of local programming have been identified as a problem in previous renewal decisions.

193. The CAB and some individual commercial broadcasters considered that local programming requirements for commercial stations are unnecessary. They suggested that radio is essentially local in nature and will remain responsive to local markets without regulations. They further believed that loosening current restrictions on the number of stations an individual licensee may own in a market will give broadcasting companies more revenue to re-invest in local service.

194. The CBC, as well as some commercial broadcasters, considered that the current approach is appropriate in that it ensures minimum levels of local programming while allowing flexibility for AM stations.

195. Two parties associated with the music industry believed that the local programming guideline for FM stations should be applied to AM stations as well. They suggested that this would provide additional opportunities for recordings by local and regional artists to receive airplay.

The Commission's Conclusions

196. In the Commission's view, the local programming guideline for commercial FM stations serves to ensure that a strong local presence is maintained. As noted in the previous section of this document, a few stations are making significant use

of acquired programming. The Commission, however, agrees with the CAB that most radio stations will continue to focus on local programming.

197. A more flexible approach for AM stations was chosen by the Commission to allow syndicated programming formats to develop. Such formats provide a complete music service for stations, while providing opportunities in each hour for the insertion of local information. These services have allowed some financially-troubled AM stations to stay on the air. The Commission is concerned that imposing an overall local programming requirement on AM stations could have a negative impact on some stations that are in financial difficulty, as well as on some Canadian networks.

198. The Commission will therefore maintain its one-third local programming guideline with respect to FM stations in competitive markets. It will also generally maintain its case-by-case approach for AM stations. In the future, all AM stations will be asked to make commitments in their licence renewal applications to a minimum level of local programming, and to describe how they will provide sufficient service to their local communities. Conditions of licence will be imposed in cases where the Commission deems them to be appropriate.

WEATHER WARNINGS

199. The Canadian Meteorological and Oceanographic Society expressed concern that it is often difficult to ensure that weather warnings are broadcast in a timely manner. It recommended that the CRTC convene a meeting of interested parties from government and the broadcasting industry to document existing standards with respect to broadcasting weather warnings and to make recommendations for improvements.

200. The CAB, as well as several individual broadcasters, agreed that such a process could be useful and expressed a willingness to participate.

The Commission's Conclusions

201. The Commission agrees that radio plays an important role in assisting members of the public to deal with weather emergencies. It notes that many stations provided outstanding service to their communities during the January 1998 ice storms and other weather emergencies in recent years in different regions of the country.

202. It is concerned, however, that ensuring the prompt broadcast of weather warnings may present difficulties for stations that make use of automated systems and satellite programming, especially in the evenings and on weekends. In these cases, there may be limited staff available to attend to such warnings.

203. The Commission will therefore convene a meeting of interested parties to discuss ways to ensure the prompt broadcast of weather warnings.

BROADCAST STANDARDS

204. To help ensure that radio programming is of high standard, the regulations prohibit the broadcast of: anything in contravention of the law; any abusive comment that, when taken in context, tends or is likely to expose an individual to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability; any obscene or profane language; any false or misleading news; any telephone conversation or interview without consent; and any advertisement of alcoholic beverages unless it meets the standards of the applicable code and the regulations.

205. Radio broadcasters must also adhere, by condition of licence, to the Broadcast Code for Advertising to Children and the Sex-Role Portrayal Code for Television and Radio Programming. Application of the condition of licence pertaining to the sex-role portrayal code may, upon request by a licensee, be suspended so long as it remains a member in good standing of the Canadian Broadcast Standards Council (CBSC). The Commission has also established a policy on open-line programming, which is set out in Public Notice CRTC 1988-213.

206. The CAB argued that it is not necessary to maintain the regulation that generally prohibits the broadcast of any telephone conversation with a person unless that person's consent is received prior to the broadcast or unless the person telephoned the station for the purpose of participating in a broadcast. Other parties, however, supported retention of the regulation, and at least one commercial broadcaster indicated that the regulation did not impose an undue burden on broadcasters.

207. Friends of Canadian Broadcasting expressed concern about the self-regulatory process noting that some broadcasters appear to be broadcasting programming produced outside Canada that contravenes guidelines administered by the CBSC.

The Commission's Conclusions

208. The Commission considers that the policies and regulations described above, despite the minimal constraints they may impose on broadcasters, are necessary to ensure that programming is of high standard and otherwise meets the objectives of the Act. The Commission will therefore maintain the requirements in their current form.

209. With respect to concerns about foreign-produced programming, the Commission reminds broadcasters that they are responsible for all programming broadcast, whatever the origin.

210. As indicated in the Commission's April 1998 Vision Action Calendar, it will hold a public review of the self-regulatory process in the winter of 1998/99. Issues related to the standards applicable to both Canadian and non-Canadian syndicated programming will be explored as part of that review.

OTHER MATTERS

Role of CBC Radio

211. Several parties at the hearing noted that CBC radio plays an important role in expanding the diversity of radio programming available to Canadians, as well as in providing a national stage for Canadian artists. Its financial support of Canadian musicians and its commitments to broadcast performances by Canadian artists make the CBC a leader in Canadian talent development. The Commission encourages the Corporation to continue to explore appropriate and effective ways of cooperating with private broadcasters in matters related to Canadian talent development.

212. The Commission plans to explore the role of CBC radio more fully at the time it next considers the licence renewal of the Corporation's radio networks.

Programming that Reflects Canada's Cultural Diversity

213. Section 3(d)(iii) of the Act states, in part, that the broadcasting system, through its programming and employment opportunities arising out of its operations, should reflect the multicultural and multiracial nature of Canadian society. The Commission's Vision statement also emphasizes that programming should reflect the cultural diversity of Canada. The Commission encourages broadcasters to reflect the cultural diversity of Canada in their programming and employment practices, especially with respect to news, music and promotion of Canadian artists.

Radio and the Internet

214. Discussion at the hearing concerning the Internet focused primarily on a plan by the CAB to establish a "virtual record store." This initiative, which was discussed earlier in this document in the section dealing with promotion of Canadian music, would enable listeners to order, through the Internet, Canadian recordings they have heard on the radio.

215. The Commission considers that the Internet can be a positive vehicle for promoting and enhancing the business of radio and the recording industry. As noted in the Commission's April 1998 Vision Action Calendar, it will hold a public process in the fall of 1998 on new media. Issues related to the Internet will be explored more fully in this process.

Laura M. Talbot-Allan, Secretary General

Appendix F

Commercial Radio Policy, 2006

Broadcasting Public Notice CRTC 2006-158

Ottawa, 15 December 2006

In this public notice, the Commission sets out its revised policy for commercial radio. Areas addressed include airplay and financial support for Canadian music and French-language vocal music, cultural diversity, local management agreements and local sales agreements, local programming and infomercials. The Commission considers that the measures announced in this policy, particularly its new approach to Canadian content development, will allow the commercial radio sector to contribute more effectively to the achievement of the goals set out in the Broadcasting Act, while enabling it to operate effectively in an increasingly competitive environment for the delivery of audio programming.

This public notice is one of three issued following the Commission's review of its policy for commercial radio announced in Review of the commercial radio policy, Broadcasting Notice of Public Hearing CRTC 2006-1, 31 January 2006, and that was the subject of a public hearing in the National Capital Region that began on 15 May 2006. The other two public notices are Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets, Broadcasting Public Notice CRTC 2006-159, 15 December 2006, and, Digital Radio Policy, Broadcasting Public Notice CRTC 2006-160, 15 December 2006.

Dissenting opinions by Commissioners Cram and Langford are attached.

INTRODUCTION

1. In Review of the Commercial Radio Policy, Broadcasting Notice of Public Hearing CRTC 2006-1, 13 January 2006 (the Notice), the Commission announced that it would hold a public hearing commencing on 15 May 2006 to review its commercial radio policies and invited comments on the matters set out in the Notice.

2. The Notice set out the following overall objectives for the review:

To develop policies that assist in creating conditions for:

- A strong, well-financed commercial radio sector in both official languages capable of contributing to the fulfillment of the policy objectives set out in the Broadcasting Act (the Act).

- A commercial radio sector that makes effective contributions to Canadian artists through airplay of Canadian music, French-language vocal music, and contributions to Canadian talent development (CTD) that are commensurate with the financial health of the sector.
- A commercial radio sector that provides listeners with a greater diversity of musical genres, and airplay for a greater variety of Canadian artists in both official languages.
- A commercial radio sector that reflects the multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within society.
- A commercial radio sector that provides listeners with an appropriate amount of regularly-scheduled, locally produced news and information.
- A commercial radio sector capable of making the transition to digital transmission, and of exploiting new and emerging distribution platforms in a manner that furthers the objectives of the Act.

3. The Commission received 194 written comments in response to the Notice, and 48 parties made oral presentations at the hearing, which took place between 15 May and 18 May 2006. Participating parties included private individuals, unions and guilds, commercial radio broadcasters, including the Canadian Association of Broadcasters (CAB), not-for-profit radio broadcasters and various representatives from the Canadian music industry.

4. In general, commercial radio broadcasters stressed that, since the Commission's last review of radio in 1998 (the 1998 Review), which resulted in Commercial Radio Policy 1998, Public Notice CRTC 1998-41, 30 April 1998 (the 1998 Commercial Radio Policy), there has been a proliferation of alternative technologies for the distribution of music to consumers. In their view, it is likely that these devices will continue to proliferate and become more sophisticated and attractive in the next few years. While there is little evidence so far of an impact on broadcasters' revenues, commercial radio broadcasters submitted that a significant effect on listeners' habits is inevitable, and the financial performance of commercial radio stations may well decline as a result. Commercial radio broadcasters also presented their views on the Commission's current radio policies and discussed possible changes in some areas.

5. Other parties cited the generally positive financial results that commercial radio broadcasters have enjoyed since 1998 and argued that the commercial radio industry was in a good position to strengthen its contributions to the achievement of the objectives set out in the Act, particularly with respect to the airplay of Canadian and French-language music, the exposure of emerging artists, and

monetary assistance for CTD. The parties also raised a number of other issues, which are addressed throughout this public notice.

6. During the public hearing, the Commission asked seventeen parties to file additional information by 29 May 2006. All participants were afforded the opportunity to file final comments on any topic covered by the review by 12 June 2006.

THE RADIO BROADCASTING ENVIRONMENT

The evolving marketplace for the delivery of audio programming

7. The delivery and consumption of audio programming has changed dramatically since the 1998 Review. The marketplace within which commercial radio stations compete is evolving with the advent of new regulated and unregulated technologies. Such new audio technologies include MP3 players, iPods and other personal media devices, Internet music services and radio streaming, including streaming over wireless broadband, podcasting, peer-to-peer file sharing and downloading, cell phone radio, and satellite radio. New technological innovations are constantly being introduced into this marketplace. However, despite this competitively challenging economic environment and a decline in overall tuning to conventional radio since 1999, the Canadian commercial radio industry remains healthy from a financial perspective, as discussed below.

Tuning to conventional radio

8. Overall weekly listening levels to conventional radio decreased by roughly one hour and twenty-five minutes from 1999 to 2005 to 19.1 average weekly hours tuned per capita. The decrease is most notable in the teen demographic (12-17) and for adults aged from 18 to 34.

9. Emerging technologies and more media choices will continue to erode in-house and at-work listening. Higher cell phone, MP3 and satellite radio penetration will increasingly challenge in-car listening. As a result, audiences to conventional radio are expected to decline over the next several years.

The current financial health of the Canadian commercial radio industry

10. Canadian commercial AM and FM radio stations, as a group, experienced an average annual growth in total revenues of 5.5% between the broadcast years 2001 and 2005. Increases in the limits on the number of stations that a licensee may own in a single market established by the 1998 Commercial Radio Policy resulted in a consolidation of radio ownership, enhanced operational synergies and improved profitability.

11. French-language commercial AM and FM radio revenues totalled \$208 million in 2005, an increase of 7% from 2004 to 2005. French-language radio has

experienced an average annual revenue increase of 5% over the past four years. The profit before interest and taxes (PBIT) of French-language commercial radio totalled \$23.7 million in 2005, an increase of 3.6% from the previous year. Average PBIT margin was 13.57% during the 2001-2005 period. Revenues for French-language FM radio increased by 10.6% from 2004 to 2005 and by an average of 7% per year over the past four years. However, revenues for French-language AM radio decreased by 23% from 2004 to 2005 and by an average of 8.5% per year over the last four years.

12. English-language commercial AM and FM radio revenues totalled \$1.1 billion in 2005. Total revenues increased by 9% from 2004 to 2005, and enjoyed an average annual growth rate of 5.8% over the past four years. The PBIT of English-language commercial radio totalled \$249.6 million in 2005, an increase of 26.6% from the previous year. Average PBIT margin was 19.25% during the 2001-2005 period. English-language FM radio revenues increased by 11.3% from 2004 to 2005, with an average annual increase of 8% per year over the past four years. English-language AM radio revenues increased by 2% from 2004 to 2005 and achieved 2001 revenue levels.

13. The number of English-language radio stations continues to increase annually. Roughly 55% of the new English-language FM stations reporting in 2005 were by licensees who had converted their AM stations to the FM band.

14. Total revenues for ethnic radio increased 11.6% from \$31.2 million in 2004 to \$34.8 million in 2005. A significant portion of this increase was due to two new FM radio stations, CJSA-FM Toronto and CKDG-FM Montréal, which reported for the first time in 2005. Total revenues achieved by ethnic radio stations increased by an average of 5.7% per year over the past four years.

15. PBIT for all Canadian AM and FM stations combined increased from \$171 million (16% of total revenues) in 2001 to \$277 million (20.8% of total revenues) in 2005.

16. PBIT grew at an average annual rate of 14.3% for English-language stations, but only by 0.1% for French-language stations, between 2001 and 2005. PBIT margins for English-language stations mirrored the growth seen overall in the radio industry. However, the average PBIT margin for French-language stations has gradually declined from 13.8% in 2001 to 11.4% in 2005.

17. The PBIT of all Canadian AM stations rose from a loss of \$16.9 million in 2001 to a profit of \$13.6 million in 2005.

18. FM stations remain the main contributor to profit in the commercial radio sector. FM PBIT grew at an average annual rate of 8.8%, from a total of \$188 million (margin of 24.7%) in 2001 to \$263.3 million (margin of 25.5%) in 2005.

Commercial radio's strengths

19. The current levels of radio profitability are a function of general economic activity, industry consolidation and the industry's competitive advantages over other media. Radio's competitive strength can be attributed to the factors listed below.

- Radio's focus on issues of interest to the local community generates substantial audience reach and revenue from local business.
- Radio's lower media and commercial production costs, relative to television, make it an attractive medium for advertisers.
- Morning and afternoon drive periods provide a captive audience for radio advertising.
- Radio advertising can be targeted to a specific demographic, based on station format and the region that the station serves.
- Radio listening levels remain strong in the summer months while television viewing decreases.
- Network television has generally shifted away from local advertising in recent years to regional and national advertising, leaving the local business to radio.

20. To date, radio has been able to use its competitive advantages to more than offset declines in tuning with increases in advertising rates.

The future impact of new technologies on conventional radio

21. The key challenge facing the radio industry is to keep radio relevant and local in an environment of rapidly changing technology and consumer behaviour.

22. According to a study conducted by Jeff Osbourne for the CAB (the Osbourne Study), radio broadcasters generally view the Internet as a complementary way to connect with their listeners. The Osbourne Study noted that tests were underway to use the Internet as a cost-effective programming research tool, but that it does not appear that anyone has found the formula for substantially recouping Internet costs from advertisers.

23. The Osbourne Study found that, among advertisers and media planners, podcasting is generally perceived as a positive development that may help radio broadcasters repatriate younger listeners. The study did not anticipate that podcasting would have a significant negative impact on radio advertising revenues in the short or medium term.¹

24. According to the CAB's submission, while the short term impacts of the parallel, for the most part unregulated, systems of new audio technologies may be modest, their combined effect may result in a reduction in tuning levels to conventional radio, followed, eventually, by a loss of advertising revenue.
25. The CAB developed two scenarios for the likely future impact of new technologies on tuning to conventional radio: the low impact scenario and the high impact scenario. These scenarios were based on assumptions relating to impact on tuning under each scenario in four locations - at home, in vehicles, at work, and in all other locations.
26. Based on these assumptions for tuning by location compounded over a 10-year period, the resulting impacts on overall tuning levels were determined under each of the two scenarios. The estimated declines in overall tuning levels were expressed as a percentage reduction in the tuning levels that would otherwise have been achieved.
27. The CAB's model linked estimated declines in total hours tuned to estimated declines in advertising revenues. Based on its model, impact on revenue lags behind the impact on tuning in the short term. However, as the impact on tuning increases, the impact on revenues becomes greater.
28. The CAB submitted that, under its low impact scenario, a 4.9% reduction in overall tuning in Year 5 would lead to a 1% reduction in advertising revenues. Under its high impact scenario, an 8.5% reduction in overall tuning in Year 5 would lead to a 3% reduction in advertising revenues.
29. The CAB provided estimates of the impact of new technologies against 2005 radio revenues. In Year 5, under the CAB's low impact scenario, radio advertising revenues would be \$13 million less than actual 2005 revenues. In Year 10, under the CAB's low impact scenario, radio advertising revenues would be \$62 million less than actual 2005 revenues.
30. In Year 5, under the CAB's high impact scenario, radio advertising revenues would be \$39 million less than actual 2005 revenues. In Year 10 of the CAB's high impact scenario, radio ad revenues would be \$189 million less than actual 2005 revenues.²
31. It is apparent from the above that, while the radio industry is currently healthy, it is entering a period of uncertainty as it comes to grips with the challenges and opportunities that will be provided by new technologies for the distribution of audio programming. Many radio broadcasters are themselves exploring ways of using new distribution platforms to complement the service provided by their conventional radio stations. In addition to continuing to monitor how new distribution technologies for audio programming are affecting the radio industry, the Commission also intends to question radio licensees, at licence renewal and in

new licensing and ownership transfer proceedings, about their plans to employ new distribution platforms to the benefit of the Canadian broadcasting system.

Airplay and financial support for Canadian music, including French-language vocal music

32. The Canadian broadcasting system has an important role to play in showcasing the work and contributing to the development and promotion of Canadian artists. Section 3(1)(d)(ii) of the Act provides that the Canadian broadcasting system should “encourage the development of Canadian expression by . displaying Canadian talent in entertainment programming.” Section 3(1)(e) of the Act provides that “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.” Section 3(1)(f) provides that “each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources.”

33. The commercial radio sector contributes to the fulfilment of the objectives set out above in two ways. The first is through the airplay of Canadian music, including French-language vocal music, which provides a showcase for the work of Canadian artists. The second is through financial contributions to CTD that are commensurate with the financial health of the sector. These development initiatives help ensure the availability and promotion of high quality Canadian music, and other creative material, for broadcast.

Current approach

Airplay

Canadian music

34. Section 2.2 of the Radio Regulations, 1986 (the Radio Regulations) sets out the minimum levels of Canadian musical selections required of radio stations holding commercial licences. The Radio Regulations require that at least 35% of the popular (category 2) musical selections and at least 10% of the special interest (category 3) musical selections aired during each broadcast week be Canadian selections.

35. To ensure that Canadian selections are not relegated to times when relatively small audiences are tuned to radio, such as on weekday evenings and on weekends, the Radio Regulations also require that at least 35% of the category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m., Monday through Friday during any broadcast week, be Canadian selections.

36. The Radio Regulations provide that a musical selection must generally meet at least two of the criteria set out below in order to qualify as a Canadian selection. This is commonly referred to as the MAPL system.

37.

- M (music) - the music is composed entirely by a Canadian.
- A (artist) - the music is, or the lyrics are, performed principally by a Canadian.
- P (production) - the musical selection consists of a live performance that is recorded wholly in Canada, or performed wholly in Canada and broadcast live in Canada.
- L (Lyrics) - the lyrics are entirely written by a Canadian.

The musical selection was performed live or recorded after 1 September 1991, and a Canadian who has collaborated with a non-Canadian receives at least half of the credit as a composer and lyricist.

French-language vocal music

38. To ensure that French-language radio stations holding commercial licences serve the needs and interests of their audiences, section 2.2 of the Radio Regulations requires that at least 65% of the category 2 vocal musical selections aired by French-language stations during each broadcast week be in the French language. To ensure that French-language vocal selections are not consigned to periods with relatively small audiences, the Radio Regulations also require that at least 55% of the category 2 vocal musical selections aired by French-language stations each week between 6 a.m. and 6 p.m., Monday through Friday during any broadcast week be French-language selections.

Emerging Canadian artists

39. The 1998 Commercial Radio Policy noted that representatives of the music industry had stressed the importance of providing opportunities for the commercial radio audience to hear music by new Canadian artists. As a result, the Commission indicated that it had considered the possibility of establishing a quota requiring the airing of a minimum percentage of selections by such artists. It also considered bonus incentives to increase airplay of musical selections by new Canadian artists, whereby the broadcast of each recording by a new Canadian artist would count for more than one Canadian selection when calculating the total number of Canadian selections to establish compliance with the regulated requirements for Canadian music. However, the 1998 Commercial Radio Policy concluded that a quota system would be difficult to apply fairly to stations operating in different formats, and that an incentive system could entail a reduction in the overall level of Canadian music broadcast.

Financial support for Canadian talent development

40. Radio broadcasters make commitments to CTD as part of three regulatory processes: licence renewals, the transfer of the ownership or control of radio undertakings, and as part of applications for new licences.

41. In Contributions by radio stations to Canadian Talent Development - A new approach, Public Notice CRTC 1995-196, 17 November 1995 (Public Notice 1995-196), the Commission introduced an approach that has resulted in most stations adhering to a condition of licence requiring minimum annual direct payments to eligible third parties involved in CTD according to the contribution levels identified in the CAB's Distribution Guidelines for Canadian Talent Development (the CAB Plan). The contribution levels for individual stations were based on the size of their market by population. The CAB Plan was designed to ensure at least \$1.8 million would flow to eligible third parties each year. During the 2004-2005 broadcast year, the total of all contributions made to fulfill conditions of licence imposed during licence renewals was \$2.83 million.

42. In the 1998 Commercial Radio Policy, the Commission required that parties seeking to acquire ownership or control of profitable radio undertakings make CTD commitments in the form of tangible benefits of no less than 6% of the value of transactions. The benefits must be distributed as follows:

- 3% to a new Canadian music marketing and promotion fund,
- 2% to the Foundation Assisting Canadian Talent on Recordings (FACTOR) or MUSICACTION, at the discretion of the purchaser, and
- 1% to either of the above initiatives, to other CTD initiatives, or to other eligible third parties as described in Public Notice 1995-196.

43. The broadcasting industry subsequently established the Radio Starmaker Fund and Fonds Radiostar in 2000 to fill the role of the music marketing and promotion fund.

44. Contributions to CTD from ownership transfers are typically made in seven equal annual instalments. Such contributions totalled \$12.24 million during the 2004-2005 broadcast year.

45. From 1999 through 2005, the Commission considered 226 applications for new radio undertakings at competitive hearings, almost all of which proposed commercial FM stations. It licensed 81 new stations as a result of those hearings. During the same period, the Commission also licensed numerous other radio stations as the result of non-competitive licensing processes. While many applicants for new stations proposed to adopt the standard condition of licence requiring participation in the CAB Plan referenced above, most also proposed

additional contributions that exceeded the minimum levels required by the CAB Plan, some by a very wide margin.

46. CTD proposals associated with applications for new radio licences usually entail contributions that are paid in equal annual instalments over a seven-year period. Total CTD contributions made by new stations amounted to \$5.79 million during the 2004-2005 broadcast year.

Positions of parties

Airplay

Canadian music

47. In the Notice, the Commission requested comments on, among other things, the possibility of broadening the variety of Canadian artists receiving airplay through an increase in the minimum level of Canadian category 2 musical selections from 35% to 40%. The Notice also pointed out that most of the commercial radio stations that operate in the specialty format are governed by individual conditions of licence, rather than the minimum 10% level of category 3 music set out in the Radio Regulations. The Commission asked whether this approach should continue or whether the minimum level of category 3 music set out in the Radio Regulations should be raised.

48. Parties representing the music industry, broadcasters, guilds and unions, other interested organizations, as well as individual members of the public made suggestions regarding the appropriate level of Canadian music to be aired.

49. Most parties other than broadcasters recommended increases in the current minimum levels of Canadian musical selections that must be broadcast. Such parties included the Canadian Music Publishers' Association (CMPA), the Alliance of Canadian Cinema, Television, and Radio Artists (ACTRA), the Canadian Independent Record Production Association (CIRPA), and the Songwriters' Association of Canada (Songwriters). Songwriters suggested the highest level: 55% for category 2 selections. All of these parties submitted that there is an adequate supply of Canadian selections that are worthy of airplay in all genres, and some contended that an increase would reduce over-reliance on a few Canadian artists, a phenomenon known as "artist burn."

50. CIRPA proposed a minimum level of 45% for Canadian category 3 musical selections. The Canadian Conference of the Arts (CCA), l'Association québécoise de l'industrie du disque du spectacle et de la vidéo (ADISQ) and the Canadian Music Centre (CMC) proposed new requirements for higher levels of Canadian concert music (subcategory 31) and jazz and blues music (subcategory 34). Concert music generally includes classical, opera and extended excerpts from popular musicals.

51. The CMC submitted that, while popular music stations require a constant supply of new material, classical and jazz music has a much longer shelf life and the overall inventory becomes significant. Evidence was submitted that the Canadian Music Industry Database contains more than 2,200 jazz and blues and more than 1,000 classical recordings.

52. The CAB and other commercial radio broadcasters supported the current required levels for Canadian category 2 musical selections, although some suggested relatively minor adjustments in areas such as the level required of “oldies” stations. They argued that listeners are not seeking more Canadian music, and that increases in the required percentages of Canadian category 2 musical selections would increase the use, by current radio listeners, of alternative methods of hearing their favourite foreign music, such as CDs, the Internet, satellite radio, iPods, and MP3 players. In support of this view, the CAB cited data from Statistics Canada indicating that Canadian recordings only comprised 17% of total sales of recordings in 1998 and 16% of total sales of recordings in 2000 and 2003. In their view, an increase would, in fact, increase artist burn. In the view of the CAB and other commercial broadcasters, the higher levels of Canadian music required by the 1998 Commercial Radio Policy, and the subsequent amendments to the Radio Regulations, caused too many stations to adopt gold-based formats, reducing the variety of music formats available to listeners.

French-language vocal music

53. In the Notice, the Commission asked, among other things, whether the current regulatory provisions had been successful in ensuring that a diversity of French-language vocal music (MVF) and artists is being aired, or whether a reduction in the MVF requirements might assist in achieving this objective.

54. The Quebec-based music industry, including Artisti, La Guilde des musiciens et musiciennes du Québec (GMMQ), la Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada inc. (SODRAC), la Société professionnelle des auteurs et des compositeurs du Québec (SPACQ), and l’Union des artistes (UDA) generally supported the retention of the current MVF requirements, as did l’Alliance des radios communautaires du Canada (ARC du Canada) and l’Alliance des radios communautaires du Québec (ARC du Québec), among others.

55. The Ministère de la culture et des communications du Québec (MCCQ) supported the retention of current MVF levels, but requested that a portion of this quota be devoted to music by emerging French-language artists.

56. L’ADISQ submitted that, based on its observations, French-language stations were broadcasting more English-language selections than French-language selections during peak listening periods despite the regulation that requires a minimum level of 55% French-language vocal selections between 6 a.m. and 6

p.m., Monday through Friday. According to l'ADISQ, the likely explanation for this is heavy use of montages of English-language music, which can entail the broadcast of many abridged English-language musical selections. L'ADISQ argued that the Radio Regulations should be amended to limit the abusive use of English-language montages to circumvent MVF requirements.

57. On the other hand, CAB members operating French-language stations maintained that the current MVF levels have a negative effect on the diversity of music formats available to listeners. They also stated that, because Francophone youth, in particular, seeks out music in English, they are under heavy competition for Francophone listeners from English-language stations in the bilingual markets of Montréal and Gatineau-Ottawa.

58. The CAB therefore proposed an incentive-based system to increase the airplay of emerging artists whereby new musical selections by new artists would receive a 150% credit when assessing compliance with the MVF portion of the Radio Regulations. A selection would be considered “new” for 12 months after its first appearance on a chart published by l'ADISQ in *Le Palmarès*, and an artist would be considered to be a “new artist” for four years from the date his or her first selection appeared on the chart.

59. L'ADISQ further suggested the implementation of a quota system under which half of the 65% of the musical selections that are required to be in the French language over the broadcast week, and 40% of the 55% MVF requirement over the 6 a.m. to 6 p.m. period Monday to Friday, would have to qualify as “new selections.” All selections by an artist whose first album was released no more than two years before the date the selection was played would be considered as a “new selection” for the purpose of the quota.

60. Astral Media Radio inc. (Astral) presented a plan whereby broadcasters would choose from one of three options requiring minimum levels of Canadian musical selections and MVF selections that would differ according to the percentage of new musical selections or selections by new artists that a station would air. The musical formats of the stations would influence the broadcasters' choices.

Emerging Canadian artists

61. The Notice solicited responses to questions about the possibility of increasing the airplay of selections by emerging artists, including the appropriate level, the most effective regulatory approach to ensure airplay, and potential definitions of the term “emerging Canadian artist.”

62. A large number of broadcasters and music industry representatives responded to the Commission's questions about encouraging the airplay of selections by emerging artists. Commercial radio broadcasters unanimously favoured approaches that would provide a bonus for the airplay of such selections when calculating the percentage of Canadian music that a station plays.

63. The CAB recommended the introduction of a bonus system, to be known as “Smart 35.” Under the CAB’s system, radio broadcasters would receive a 125% credit towards the fulfilment of Canadian music requirements when a musical selection by an emerging Canadian artist is played between 6:00 a.m. and 6:00 p.m., Monday to Friday.

64. The CAB suggested that, for the English-language markets, a performer be considered as an “emerging Canadian artist” up until 12 full months after the date the artist’s first selection reaches the Top 40 on Broadcast Data System (BDS) or Mediabase all-format charts, or becomes gold certified for the first time.

65. According to the CAB, the minimum level for Canadian category 2 musical selections, before applying its bonus system, should be 30%, so that any station playing emerging artists would never fall below that level.

66. Music industry representatives were generally supportive of incentive proposals to encourage the airplay of emerging Canadian artists, although many cautioned that such approaches must be accompanied by safeguards to ensure that the overall level of Canadian musical selections is not reduced. However, some, including CIRPA and the Canadian Independent Recording Artists’ Association (CIRAA), were opposed to incentives due to that potential effect, and instead proposed quotas for the airplay of emerging artists. Several proposed definitions of the term “emerging Canadian artist” for regulatory purposes.

67. As an example of a quota system to encourage the airplay of emerging Canadian artists, CIRAA proposed that no less than 33.3% of Canadian musical selections played during the 6 a.m. to 6 p.m. daytime period and no less than 50% of the Canadian selections aired between 6 p.m. and midnight during weekdays and weekends be selections by emerging Canadian artists. Stations with formats that cannot play emerging Canadian artists by definition (e.g. classic rock, oldies) would require an exemption from this quota.

Financial support for Canadian talent development

68. The Notice solicited comments on what types of initiatives are most effective for CTD, whether the 6% requirement for ownership transactions remains appropriate, whether the overall \$1.8 million target for eligible third parties in the context of licence renewals remains appropriate in 2006, and whether CTD amounts for stations within the CAB Plan that are now tied to market size should instead be tied to individual stations’ revenues, as well as on other matters.

69. Most music industry representatives recommended increases in the radio sector’s overall contributions to CTD initiatives, with suggested levels ranging from \$10 to \$17 million per year, and/or 1% - 2% of the radio industry’s total revenues. Based on the data supplied in broadcasters’ annual returns that are submitted to the Commission, 1% of the radio industry’s total revenues amounted to \$13.33 million for the 2004-2005 year.

70. Several music industry representatives suggested that stations' contributions be based on a percentage of revenues when licences are being renewed, while others favoured an approach based on "percentage of profits." Paul Audley & Associates was retained by l'ADISQ and recommended two possible alternative methods of assuring that a least \$16.5 million would be raised for CTD through the renewal of licences, based on 2003-2004 annual return data. One method would employ a formula based on percentages of revenues that would increase from smaller to larger stations; the other was based on a formula whereby the percentage of revenues of ownership groups would increase from smaller to larger groups.

71. The MCCQ argued that it would be more equitable to establish the level of contribution based on a station's revenues rather than based on the size of the market in which the station operates.

72. A coalition composed of nine provincial and territorial Music Industry Associations (the MIAs) from the Yukon Territory, British Columbia, Alberta, Saskatchewan, Manitoba, Northern Ontario, Nova Scotia, New Brunswick, and Newfoundland and Labrador was concerned with new and emerging artists as well as the lack of variety on station playlists. The MIAs argued that the music industry is best placed to develop Canadian talent, and that contributions should be directed to organisations whose mandates specifically reflect the development of the music industry. The MIAs were of the view that the majority of contributions should go to FACTOR/MUSICACTION and the Radio Starmaker Fund and Fonds Radiostar, with the rest going to regional grassroots development undertaken by the provincial and territorial MIAs.

73. The MIAs recommended that the minimum requirement for CTD funding at the time of ownership transfers be raised from 6% to 10%, with 1% dedicated to the MIAs, yielding \$2 million per year. Some other parties also suggested that the minimum requirement in the case of ownership transfers be increased to 10%.

74. Other proposals related to CTD funding came from the National Campus and Community Radio Association (NCRA) in conjunction with ARC du Canada and ARC du Québec. These parties requested \$5 million to aid in the development of community broadcasting. La Fondation Radio Enfants requested \$500,000 for a fund dedicated to the development of young radio talent. Aboriginal Voices Radio Inc. (AVR) proposed that the CTD policy be modified to allow CTD funding to be directed to support AVR or any native broadcaster featuring music and spoken word programming that is predominantly and distinctively Aboriginal. Such funds would be used for the development, operations and expansion of the Canadian native radio broadcasting infrastructure. The Centre for Research-Action on Race Relations (CRARR) recommended that a portion of CTD funds be earmarked or allocated to diverse talent and program development.

75. The CAB stated that the Radio Starmaker Fund and Fonds Radiostar was its preferred single avenue for the bulk of future CTD contributions by broadcasters. The CAB argued that distributing all contributions to these organizations would maintain a minimum yearly support level for the Radio Starmaker Fund and Fonds Radiostar, as well as bring about standardized reporting and accounting practices for all funds. Regarding the minimum amounts in applications for ownership transfers, the CAB proposed that 5% of the value of the transaction be allocated between the Radio Starmaker Fund and Fonds Radiostar.

76. The CAB explained that the private radio industry wants to target CTD funding at initiatives that have a direct relationship with the content that is played by its stations, as opposed to programs that are more “infrastructure” oriented, such as marketing support for independent music labels, business development grants and video production. The CAB therefore proposed that, in the future, only the following programs within FACTOR and MUSICACTION would receive support:

- new musical works programs, excluding initiatives that support video production;
- touring and showcasing grants for artists not eligible for Radio Starmaker Fund or Fonds Radiostar funding;
- songwriter workshop grants under the collective initiatives programs in the case of FACTOR; and
- support to lyricists and composers, in the case of MUSICACTION.

77. Regarding the amounts dedicated to CTD funding, the CAB proposed that the current system continue unaltered for two years following the Commission’s announcement of its new policies in other areas. In year 2, the CAB would consult with the music industry to assess market conditions and establish a new CTD agreement for years 3, 4 and 5. The CAB explained that negotiations would be conducted taking into consideration the total amounts actually received from the broadcasting industry by eligible third parties during the preceding three years, as well as relevant financial indicators and market conditions.

78. The CAB justified its approach by making reference to the uncertainty related to both the amount of CTD funding that will be available over the next several years and the health of the radio sector as competition from unregulated media continues to grow.

79. Nonetheless, the French-language stations of the CAB proposed that, if the Commission were to conclude that immediate increases in contributions to CTD were advisable, the amounts based on the current market size requirements could be increased to reflect inflation in the period between the establishment of the CAB Plan in 1995 and the present. The increase for each market would amount to 25%.

80. The Ontario Independent Radio Group (OIRG), an alliance of independent Ontario broadcasters, advocated a cap on the amount of CTD contributions that could be proposed by applicants for new licences. However, the Jim Pattison Broadcast Group Limited Partnership opposed such a cap, stating that applicants should be free to present CTD plans that would deliver the maximum benefits to the Canadian broadcasting system.

Commission's analysis and determinations

81. In this section, the Commission sets out its revised approach to airplay for Canadian music, including French-language vocal music, and to development initiatives. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission considers that it is appropriate to replace the expression "Canadian talent development" (CTD) with "Canadian content development" (CCD). The Commission's approach involves a number of changes to the requirements related to airplay, and focuses primarily on CCD. The Commission considers that well-targeted CCD initiatives allocated to the support, promotion, training and development of Canadian musical and spoken-word talent will increase the supply of and demand for high-quality Canadian music in a variety of genres as well as enlarge the supply of spoken word material for broadcast.

Airplay

Category 2 selections

82. The Commission has taken note of the suggestions made, mainly by representatives of the music industry, that there are supplies of Canadian music in most genres that would permit increases in the required minimum levels of Canadian category 2 musical selections. It also notes, however, the arguments made by the commercial radio industry that demand by listeners for more Canadian music has not been demonstrated, and that listeners, especially youth, are turning more and more to unregulated sources of music.

83. The minimum levels of Canadian category 2 selections were increased, by regulation, from 30% to 35% in 1999 as a result of the 1998 Review. This has led to a substantial increase in the total amount of Canadian music available to radio listeners. Many stations, especially French-language stations, have exceeded the minimum levels. However, Commission studies have not indicated that there has been a meaningful increase in the airplay of selections by new and emerging Canadian artists by English-language stations.

84. A number of statistics were cited with respect to the sale of Canadian recordings. Evidence provided by CIRPA, and according to The Canadian Music Industry 2005 Economic Profile issued by the Department of Canadian Heritage, indicates that Canadian artists' share of the top 2,000 album sales tracked by Soundscan increased upward between 16% and 25% between 1998 and 2005. The

CAB cited data from Statistics Canada indicating that Canadian recordings comprised 17% of total sales of recordings in 1998 and 16% of total sales of recordings in 2000 and 2003. The Commission is of the view that these sales figures do not indicate a level of demand that would support a further increase in the required levels of Canadian category 2 selections at this time.

85. The Commission is also not convinced that a further increase in the required levels of Canadian category 2 music is the best way to foster the airplay of music by emerging Canadian artists, and is concerned that an increase could lead to more repetition of the musical selections by Canadian artists that are already established. Further, it does not consider that an increase to the required level of Canadian category 2 music is appropriate at a time when the radio industry must respond to the challenge of competing with new, largely unregulated sources for the delivery of audio programming.

86. Accordingly, the Commission will retain the existing requirements respecting the levels of category 2 Canadian selections set out in the Radio Regulations.

French-language vocal music

87. With respect to French-language vocal music, the Commission notes comments by representatives of the music industry that increases in the required minimum levels would be achievable. It also notes, however, the comments by French-language broadcasters that MVF levels are too high, leading to high levels of repetition for the most popular selections and artists.

88. The Commission notes suggestions for bonus systems related to MVF, whereby selections by emerging Canadian French-language artists would receive additional weight in meeting the required MVF levels. However, the Commission is concerned that implementation of a bonus system, such as that suggested by the CAB where a selection by an emerging Canadian French-language artist would receive a 150% credit toward meeting MVF requirements, would lead to a decrease in the total number of MVF selections that are played. It further notes that, since the more stringent MVF requirements were established in 1999, Commission studies indicate that there has been an increase in the airplay of selections by emerging Canadian artists on French-language stations. The Commission is satisfied that the current MVF requirements are having a positive effect and does not consider that they should be amended at this time. As is the case with category 2 music, the Commission is concerned about raising the required MVF levels at a time when the radio industry must respond to the challenges of competing with new, largely unregulated technologies for the delivery of audio programming.

89. In light of the above, the Commission will retain the existing requirements respecting the levels of French-language vocal musical selections in category 2 for commercial broadcasters set out in the Radio Regulations.

Emerging Canadian artists

90. The Commission notes suggestions made by many parties for either quotas or incentive systems for increasing the airplay of musical selections by emerging Canadian artists. However, an incentive or bonus system such as that suggested by the CAB, where a selection by an emerging artist would receive a 125% credit toward meeting requirements for Canadian selections, would lead to a decrease in the number of Canadian musical selections that are played. The Commission also remains of the view that, as stated in the 1998 Commercial Radio Policy, it would be difficult to apply either an incentive or a quota system fairly to stations operating in different formats because the playing of music by emerging Canadian artists is not appropriate for all formats. To mitigate this effect, and the possibility that the variety of formats might be reduced due to additional requirements, exemptions for “oldies” stations would be necessary, and perhaps for other types of stations as well. The Commission is further concerned about the potential effects of imposing additional regulations related to the airplay of music by emerging Canadian artists at a time when the number and attractiveness of alternatives to commercial radio for the delivery of music to consumers is increasing.

91. In light of the difficulties with a common approach for all stations set out above, the Commission considers that a system under which commitments to broadcast selections by emerging Canadian artists and to promote such artists are assessed on a case-by-case basis taking into account the particular circumstances of each station would be more appropriate. The Commission considers that this approach will provide broadcasters with the flexibility to tailor their commitments with respect to emerging Canadian artists to the musical genres that they feature in their programming.

92. Accordingly, applicants for new licences, licence renewals and transfers of ownership or control of radio stations will be asked to make specific commitments to provide airplay for and to promote emerging Canadian artists and their music. Following the public process in each case, the Commission may decide to impose conditions of licence.

Category 3 selections

93. With respect to airplay for category 3 selections, the Commission has considered the suggestions of parties advocating an increase in the requirements for Canadian concert and jazz music. It notes the CMC’s argument that, while popular music stations require a constant supply of new material, classical and jazz music have a much longer shelf life when it is suitable for airplay. The Commission further notes that most commercial specialty format stations that have assumed conditions of licence obliging them to play a predominance of music from either subcategory 31 (concert music) or subcategory 34 (jazz and blues) have conditions of licence requiring levels of Canadian music in category 3 that are higher than the current regulatory levels. It therefore considers that a

modest increase would bring the regulations more in line with the levels of Canadian music that are actually played by stations offering formats based on music from subcategory 31 or 34, while still providing such stations with the flexibility to respond to competition from new sources of audio programming.

94. Accordingly, the Commissions considers it appropriate to require that at least 25% of musical selections from subcategory 31 (concert music) and at least 20% of subcategory 34 selections (jazz and blues) aired during each broadcast week by commercial radio stations be Canadian. The Commission will therefore issue, and seek comment on the wording of, proposed amendments to the Radio Regulations. The amended regulations will, however, not immediately affect radio licensees that are currently subject to conditions of licence related to airplay for Canadian category 3 musical selections. In such cases, current conditions of licence will continue to apply until the end of the licence term.

Montages

95. Regarding the issue of montages, the Commission emphasizes the importance of playing musical selections in their entirety. However, the Commission has recognized that there can be positive aspects to programming montages.³ Properly used, montages allow audiences to discover new Canadian artists or selections that would not otherwise be broadcast. The Commission is, however, of the view that montages should not be used to circumvent the regulatory requirements related to MVF.

96. Accordingly, the Commission will closely monitor the use of montages and will deal with any problems on a case-by-case basis, imposing necessary measures when appropriate.

Canadian content development

97. In light of the growth in revenue and profitability that the radio industry has experienced since the 1998 Review, and given that an increased demand for Canadian music has not been demonstrated as discussed earlier, the Commission considers that additional emphasis should be placed on the development and promotion of Canadian talent through financial contributions by broadcasters to the development of audio content for broadcast. Such initiatives will not only help to develop and advance the careers of emerging Canadian artists but will increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. They will also enlarge the supply of spoken word material for broadcast. Further, the initiatives can also be tailored in a flexible manner that is representative of the programming and revenues of particular stations. Stations make CCD commitments at the time of licence renewals, when applications for new licences are considered, and as tangible benefits at the time of the transfer of ownership and control of radio undertakings.

98. In order to make the most effective use of these financial contributions, the Commission considers that such contributions should be used to fund initiatives that lead to the creation and promotion of audio content for broadcast using Canadian resources. This is achieved by the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. In light of this approach, initiatives not targeted to the development of Canadian audio content, such as visual arts exhibitions, theatre and dance will no longer qualify for contributions by radio broadcasters.

99. CCD initiatives by broadcasters are important at the local, regional and national levels. In reflecting the circumstances of their local communities, local initiatives by broadcasters can provide an important first step in the discovery and showcasing of new artists. Not-for-profit MIAs, operating in most regions, foster new and emerging talent. They do valuable work with those very early in their careers, providing various forms of support, information, communication, education, as well as business and market development services. These also support artists as they develop their professional careers.

100. At the national level, FACTOR and MUSICACTION are the most important vehicles for the development of a variety of Canadian artists, including new and emerging artists. In operation since the mid-1980s, FACTOR and MUSICACTION are well-known and established organizations that have implemented a variety of programs that have resulted in the emergence of many well-known Canadian artists.

101. Programs such as those supporting new recordings, touring and showcasing are especially valuable for artists who do not qualify for funding from the Radio Starmaker Fund or Fonds Radiostar. The Collective Initiative grants program, supported, in part, by funding from the Department of Canadian Heritage, underwrites initiatives by music organizations, including the MIAs, that sustain the development of such artists, including emerging songwriters.

102. The Commission notes that the Department of Canadian Heritage has initiated a program providing financial assistance to certain Canadian recording firms. These firms, as participants in this program, are no longer eligible for funding from FACTOR or MUSICACTION. More funding from FACTOR or MUSICACTION will therefore likely be available for programs that support emerging Canadian artists.

103. The Commission notes comments by parties concerning the necessity for accountability and transparency with regard to CCD. In this regard, the Commission commends FACTOR and MUSICACTION for the very detailed accounting of their activities in their latest annual reports.

104. The Radio Starmaker Fund and Fonds RadioStar were created following the 1998 Review. These funds provide support for the marketing and promotion of established artists, contributing to their national and international success. The

Radio Starmaker Fund and Fonds RadioStar are the largest recipients of financial support from radio broadcasters, and the Commission commends them for adjusting their eligibility criteria for certain less-established categories of music. The Commission encourages these funds to provide similar flexibility to other types of music for niche audiences, thereby further recognizing the diversity of Canadian musical talent.

105. The Commission notes that, at the hearing, questions were raised about a few instances where there was a lack of communication between FACTOR and the Radio Starmaker Fund, in situations where artists submitted invoices for refunds to both organizations. The Commission was assured that these problems were resolved, and encourages both organizations to continue to communicate fully on such matters. The Commission notes that MUSICACTION and Fonds RadioStar share a common administration.

Eligible initiatives

106. As noted above, stations make CCD commitments to support FACTOR and MUSICACTION as well as to the Radio Starmaker Fund and Fonds RadioStar. Commitments to FACTOR and MUSICACTION may be made at the time of licence renewal, as part of applications for new licences and as commitments in the context of applications to transfer the ownership and control of radio undertakings. Commitments to the Radio Starmaker Fund or Fonds RadioStar are made only in the context of applications to transfer the ownership or control of radio undertakings.

107. The Commission is adopting a revised list of other CCD initiatives that are eligible for CCD contributions. This list replaces the lists and descriptions of eligible initiatives set out in An FM policy for the nineties, Public Notice 1990-111, 17 December 1990 and Public Notice 1995-196. Contributions should be dedicated to initiatives that will provide high quality audio content for broadcast. All CCD initiatives must involve direct expenditures, and must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists.

108. In addition to FACTOR and MUSICACTION, the Commission considers that the following parties and initiatives are eligible for CCD funding:

- National, provincial, and territorial music industry associations (MIAs).
- Schools and educational institutions that are accredited by provincial authorities. Such contributions must specifically benefit students of music and journalism, including scholarships and the purchase of musical instruments.
- Initiatives, including talent contests, for the production and promotion of local music and local musical artists, particularly emerging artists.

- Independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast.
- Audio content initiatives that would further advance the fulfilment of specific objectives of the Canadian broadcasting system as outlined in the Act such as a community radio fund, Native radio and other specialized audio broadcasting services dedicated to serving the particular needs and interests of children, Aboriginal peoples, and persons with disabilities.

109. Regarding ineligible initiatives, the Commission maintains its position that grants to schools and educational institutions offering courses in broadcasting or devoted to the continuing education of radio station staff will not qualify. Memberships by broadcasters in music associations and broadcasters' fees for attendance at conferences are also not eligible.

110. Licensees should ensure that contributions are spent on Canadian resources only, except on rare occasions, such as foreign touring or showcasing, where the promotion of Canadian talent necessarily entails some costs incurred outside the country.

111. In proposing CCD projects, applicants should provide sufficient details to clearly show how the initiatives contribute to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Licensees will be required to provide details about the CCD projects funded by their stations in their annual returns.

112. The Commission is confident that increasing amounts of well-targeted funding for CCD will lead to the expansion of activities at all levels of the music industry and to the creation of larger pools of high quality music by emerging Canadian artists, including Canadian French-language artists.

The three levels of CCD contributions

113. In this section, the Commission sets out its approach to CCD contributions made at three levels: a basic annual CCD contribution, additional contributions over and above the basic CCD contribution related to applications for new licences, and contributions made in relation to applications for the transfer of ownership or control of radio undertakings.

Basic annual CCD contributions

114. Each station holding a commercial radio licence makes annual financial commitments to CCD at the time of licence renewal, which are applied by condition of licence. Most stations currently adhere to the contribution regime set out in the CAB Plan, which establishes five contribution levels according to the size of each market by population. Annual contribution levels range from \$400 for the smallest markets to \$27,000 for the largest markets. The CAB Plan was

adopted at a time when the radio industry was emerging from a period of financial difficulty. As stated earlier, the financial position of the industry has, on the whole, been healthy for some years now, but the contribution regime does not entail automatic adjustments to reflect the evolving financial situation of radio broadcasters. As well, some of the smaller radio players in large markets are at a marked disadvantage under the current market-based approach, which mandates the same funding level for all stations in the same market, regardless of the size of the stations' revenues.

115. In consideration of the growth in revenue and profitability radio has enjoyed, the Commission has determined that a basic CCD contribution system, applied as a regulation, based on stations' revenues rather than on the size of the market in which they operate, is more appropriate. Such an approach will ensure that stations with comparable revenues make comparable payments. It will also take into account the unique circumstances of small stations regardless of the size of their markets and automatically adjust for changes in the financial situation of radio stations. This system will apply to all stations holding a commercial radio licence, including such stations licensed in the future.

116. The total amount of each station's basic annual CCD contribution will be determined as follows:

- Stations with total revenues in the previous broadcast year of less than \$625,000 will make a fixed contribution of \$500.
- Stations with total revenues in the previous broadcast year between \$625,000 and \$1,250,000 will make a fixed contribution of \$1,000.
- Stations with total revenues exceeding \$1,250,000 in the previous broadcast year will contribute \$1,000 plus 0.5% of the portion of the previous year's total revenues that exceeds \$1,250,000.

117. Annual returns from radio broadcasters from the 2004-2005 broadcast year indicated that \$2.83 million was generated in basic contributions imposed through the renewal of licences under the previous plan. The Commission estimates that, if the revised CCD policy were applied to the 2004-2005 broadcast year, \$4.10 million would have been generated from the new basic annual CCD contribution. The Commission considers that the new levels will provide a reasonable level of assured funding for CCD initiatives.

118. To ensure continuity of assured funding, no less than 60% of the basic annual CCD contribution must be forwarded to FACTOR or MUSICACTION. The remaining amount may be directed to any eligible CCD initiative, at the discretion of the licensee. The distribution of funds in all of Canada's regions is of critical importance, and the Commission expects that FACTOR and MUSICACTION will continue their efforts to develop talent in all regions of Canada, in all popular music genres.

119. Because they operate stations that make relatively limited use of Canadian music, ethnic licensees or those airing predominately spoken word material will not be required to contribute to FACTOR or MUSICACTION. They will be free to direct their payments to eligible initiatives that support their content.

120. In order to implement these measures, the Commission will issue, and seek comment on the wording of, a proposed amendment to the Radio Regulations requiring stations holding commercial licences to make a basic annual CCD contribution based on their revenues. It is expected that the new regulation will become effective on 1 September 2007.

121. The Commission notes that contributions currently paid by radio licensees are established by condition of licence. As a transitional measure, the new basic annual CCD contribution model will allow for deductions of amounts paid under these conditions of licence from the total amount payable under the new model. For example, if a broadcaster pays \$400 dollars annually by condition of licence under the CAB Plan, this amount would be deducted from the total amount payable under the basic annual CCD contribution model.

122. Stations currently subject to conditions of licence concerning CCD arising from their original licensing will continue to fulfill those commitments until they have been fully discharged.

Additional CCD contributions related to applications for new licences

123. Applicants make commitments for CCD in the context of applications for licences to operate new commercial radio stations. Such commitments, especially when made in the context of a competitive process, often exceed the minimum levels required under the CAB Plan. Annual returns from radio broadcasters from the 2004-2005 broadcast year indicate that \$5.79 million in payments were made by stations to fulfill commitments made in the process of obtaining a new licence.

124. Since all stations licensed in the future will be subject to the new regulation requiring a basic annual CCD contribution, applicants for new commercial radio licences will include CCD payments as part of their proposed business plan. As is the case today, such applicants may wish to make CCD commitments over and above the basic annual CCD contributions. In such instances, no less than 20% of an applicant's funding commitment that is over and above the basic annual CCD contribution must be allocated to FACTOR or MUSICACTION. The remaining amount could be directed to any eligible CCD initiative, at the discretion of the applicant. These commitments will continue to be imposed by condition of licence.

Contributions in relation to applications for the transfer of ownership or control of radio undertakings

125. Applicants make commitments to CCD in the context of applications for the transfer of ownership or control of radio undertakings. Such applicants are currently required to make a minimum direct financial contribution of 6% of the value of the transaction to CCD. Annual returns from radio broadcasters from the 2004-2005 broadcast year show \$12.24 million in benefit payments pursuant to transfers of ownership.

126. The Commission considers that it is appropriate to retain the current policy of requiring a financial contribution of 6% of the value of the transaction to CCD, as well as the exemption applied to the acquisition of unprofitable undertakings. The current distribution of the contribution will also remain unchanged:

- 3% to be allocated to the Radio Starmaker Fund and Fonds Radiostar;
- 2% to FACTOR or MUSICACTION;
- 1%, at the discretion of the purchaser, to any eligible CCD initiative.

CONCLUSION

127. Total CCD contributions from radio broadcasters were \$20.87 million in 2005. The Commission projects that, if the new system were applied to the 2005-2006 broadcast year, total contributions to CCD would have risen by between \$3.5 million and \$4 million.

128. The Commission strongly encourages licensees to contact the organizations mentioned above, and other recipients of their CCD funds, in order to establish payment schedules that are convenient to all parties. All funds must be paid in full by the end of the broadcast year.

CULTURAL DIVERSITY

Current approach

129. Since the late 1990s, the Commission has made cultural diversity one of its key priorities. When the Commission refers to cultural diversity, it is referring to the inclusion of groups that have been traditionally under-represented in broadcasting: ethnocultural minorities, Aboriginal peoples, as well as persons with disabilities. Such under-representation includes these groups' presence and portrayal on the air and their participation in the industry.

130. The Commission expects broadcasters to share the responsibility for assisting in the development of a broadcasting system that reflects these under-represented groups. This is in accordance with section 3(d)(iii) of the Act, which states that the broadcasting system should "through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial

nature of Canadian society and the special place of aboriginal peoples within that society.”

131. In response to this goal, the 1998 Commercial Radio Policy encouraged broadcasters to “reflect the cultural diversity of Canada in their programming and employment practices, especially with respect to news, music and the promotion of Canadian artists.”

132. In the case of television, the Commission’s strategy to date has been two-fold: (a) requiring all broadcast groups to file corporate plans at licence renewal as well as annual progress reports, and (b) the creation of an industry/community Task Force for Cultural Diversity on Television to undertake research and develop best practices and industry initiatives. This strategy has recently come to include persons with disabilities as well.⁴ While there may be parallels to radio that could be drawn from the experience of implementing this strategy for television thus far, the Commission considered it essential that the industry and public have an opportunity to share their views on the unique challenges of making radio more reflective of Canada’s cultural diversity.

Positions of parties

133. In response to questions set out in the Notice, 20 parties commented on the question of how to address diversity in radio. Nine broad issues were identified by the parties:

- the business case for diversity in radio;
- the importance of local representation for inclusion and accurate reflection;
- the need for inclusive and balanced programming, particularly in news and public affairs;
- the particularities of French-language radio that may limit efforts to improve diversity;
- the role of community and ethnic radio in contributing to diversity in the radio sector as a whole;
- the lack of opportunities for reflection of Aboriginal peoples, including lack of airplay for Aboriginal music;
- the role of CCD in fostering diversity;
- the role of diverse ownership as a means to ensure full participation of minorities in radio; and
- best practices and annual reporting on diversity for radio licensees.

The business case for diversity in radio

134. In their respective submissions, the New Canada Institute, the CAB and CKUA Radio referred to the “business case for diversity in radio.” According to the New Canada Institute, this issue involves focusing on local service and the capacity to serve local communities. Similarly, the CAB referred to the

recognition of business and community relevance, i.e., the need for private radio to adapt to a more diverse customer base in order to remain competitive. The business case for diversity in radio hence comprises several aspects of diversity such as the importance of local representation for inclusion and accurate reflection, a specific issue raised by a number of participants in this proceeding including the New Canada Institute, la Fédération nationale des communications (FNC), ARC du Québec and CKUA Radio. CHUM and CRARR also expressly raised the particular need for inclusive and balanced programming in news and public affairs as a key aspect of business and community relevance.

Incorporating diversity in radio

135. In addition to raising the importance of local representation, the New Canada Institute emphasized various programming and corporate aspects to take into account when assessing cultural diversity in radio. These aspects included music, spoken word, phone-in shows, community outreach, public service announcements, CCD and ownership. CHUM was of the view that the representation of diversity should focus on genres of programming that are generally produced by the radio stations themselves, such as news, information and community programming, as opposed to music playlists, which are often dictated by research and sales data, and are consequently more challenging for program directors to design based on diversity objectives.

Recognizing the particularities of French-language radio

136. The CAB, CRARR, Impératif français and l'Association des communautés françaises de l'Ontario (ACFO) commented, in their written submissions, on the particularities of French-language radio in advancing cultural diversity in radio. For instance, the CAB highlighted the fact that there is a greater reliance on network programming in French-language radio in comparison with English-language radio, and consequently, less opportunity for French-language stations to be programmed on an individual basis. CRARR submitted that “perspectives and speakers of interest and concern to members of minority and Aboriginal communities are completely neglected and omitted from radio programming,” especially in French-language radio, while Impératif français and l'ACFO supported a greater diversity in programming as long as this objective was pursued with a focus on French-language programming.

The role of community and ethnic radio in contributing to diversity

137. L'ARC du Québec, iBiquity, Impératif français and l'ACFO stressed the unique role that community and ethnic radio play in contributing to diversity in the radio sector as a whole. In particular, l'ARC du Québec recommended creating a fund for community broadcasting, in light of the crucial role of community radio in broadcasting a diversity of formats, musical genres and emerging artists. Magda de la Torre also suggested that the CAB membership take into account and tap into the wide variety and talent pool that exist in the various

ethnic media, for instance to make local and community news more representative of the community's diversity.

The role of CCD in fostering diversity

138. Some interveners cited the role that funds like FACTOR, MUSICACTION, the Radio Starmaker Fund and Fonds Radiostar can play in fostering cultural diversity. CRARR recommended that a portion of these funds be earmarked or allocated to diverse talent and program development. The CAB noted that radio can extend its support to more diversity initiatives in leveraging discretionary funds, for instance, with cultural organizations becoming eligible recipients, with monies targeted towards education, mentorship, scholarship, outreach and other initiatives related to the broadcasting system. AVR recommended that funding for Aboriginal music and spoken word be utilized for the development, operations and expansion of native radio infrastructure in light of the lack of airplay for Aboriginal music on commercial radio, and lack of opportunities for reflection of Aboriginal peoples.

The role of diverse ownership as a means to ensure full participation of minorities in radio

139. The New Canada Institute and CRARR raised the role of independent ownership, as well as diverse and minority ownership as a means to ensure full participation of minorities in radio. The New Canada Institute submitted that diversity in radio ownership involves the capacity for minorities to own radio stations beyond ethnic stations. For that purpose, it recommended that the Commission give preference to small companies and new applicants at radio hearings to ensure that minorities can own part of the mainstream of the broadcasting system.

Best practices and annual reporting on diversity

140. This issue, which includes extending the Commission's cultural diversity approach in television to radio, was the primary focus of discussions at the public hearing concerning cultural diversity in radio. It was also addressed in additional comments submitted by the CAB, CRARR, the New Canada Institute and Magda de la Torre in comments filed after the hearing. This issue is the focus of the Commission's analysis and determinations in this public notice.

141. The CAB recognized the need to advance cultural diversity within the commercial radio industry. The CAB submitted that the radio industry had shown the necessary commitment and transparency to achieve this objective in proposing a set of tools for improving diversity in commercial radio. These tools include best practices for radio licensees to follow, as well as a general template for reporting annually to the Commission on implementing diversity initiatives arising from the best practices.

142. CHUM supported the establishment of best practices and annual reporting as outlined by the CAB. CRARR submitted that radio stations should address diversity and employment equity in annual reports, where applicable.

The need for further research

143. In discussing best practices and annual reporting, some parties raised the question of whether research specific to cultural diversity in radio is needed prior to implementing an approach such as the one proposed by the CAB. The CAB, on the other hand, took the position that no research specific to cultural diversity in radio is necessary at the present time. The CAB was of the view that the industry has completed sufficient research and consultations through the Task Force for Cultural Diversity on Television and the Report on the Presence, Portrayal and Participation of Persons with Disabilities in Television Programming, which both built on experiences in Canadian and international media to advance diversity. According to the CAB, conducting further research on diversity in radio would delay the process of implementing best practices by radio broadcasters.

144. Contrary to the CAB, CRARR was of the view that there is a risk that the CAB's proposed guidelines, which are similar to those developed for television, would become theoretical in an environment where most radio licensees are small and have less structured human resources practices than large television corporations. Accordingly, CRARR recommended establishing a task force for cultural diversity in radio, which would include radio broadcasters, and be responsible for reviewing the work of the Task Force for Cultural Diversity on Television in order to more appropriately extend the Commission's current approach to radio. Magda de la Torre recommended that a specific study of audience measurement mechanisms be conducted as well, in order for radio companies to better understand and reflect current demographic realities.

145. The CAB and CHUM were confident that best practices in implementing cultural diversity in television can be adapted to radio.

146. In its final comments the New Canada Institute expressed concern that the tools developed by the CAB lacked concrete measures and specific targets, and to that effect, it suggested tangible examples to foster diversity in radio, such as the production of a radio show portraying world music, which would play music from around the world and highlight Canadian artists of various origins and the inclusion of sports news of interest to various cultural groups, such as soccer and cricket.

Commission's analysis and determinations

147. The Commission commends the CAB's initiative in proposing that the commercial radio industry build on the experience developed by the television industry to improve the presence and portrayal of Canada's cultural diversity - ethnocultural minorities, Aboriginal peoples and persons with disabilities. The

Commission is of the view that the CAB's best practices on cultural diversity and general template for reporting annually to the Commission filed in the proceeding represent positive and effective tools for radio licensees. Furthermore, the Commission considers that a task force on cultural diversity in radio is not necessary at this stage, given the substantive research and consultation undertaken concerning diversity in television.

148. However, the Commission notes that the public record of this proceeding, with the exception of CHUM's intervention, makes little mention of the particularities or the specific challenges of making radio more reflective of Canada's cultural diversity. In this regard, the Commission notes that the best practices do not address the role that talent development and emerging Canadian artists can play in fostering cultural diversity in commercial radio. The selection and promotion of new and emerging artists from ethnocultural minorities, Aboriginal peoples and persons with disabilities can contribute to a better reflection of the diversity of Canada's artistic talent, by increasing the diversity of voices and musical genres in radio. Accordingly, the Commission is of the view that the CAB should amend its best practices to address this important area.

149. In addition, the CAB's best practices make no specific reference to the inclusion of persons with disabilities. The Commission considers the inclusion of persons with disabilities to be an integral element in the reflection of cultural diversity. Given the issues and barriers faced by persons with disabilities most recently identified by the industry research on the presence, portrayal and participation of persons with disabilities in television programming in 2005, the Commission considers that the CAB's best practices should be modified in order to take this group into account.

150. In accordance with the above, the Commission requires the CAB to amend its best practices and to file a revised version with the Commission no later than three months from the date of this public notice. The Commission expects all commercial radio licensees to adopt the revised best practices, once approved.

151. With respect to the CAB's proposal for annual reporting by radio licensees, the Commission is of the view that the annual reporting template provided by the CAB will ensure accountability on the part of radio licensees and provide the Commission and the public with the means to measure progress in improving the reflection of Canada's diversity in radio.

152. However, given the various concerns raised by interveners about the specific circumstances and challenges of small radio operators, such as limited human resources and reporting capacity, the Commission considers the CAB's annual reporting proposal is best suited to large commercial radio groups. The Commission considers it appropriate that larger corporate groups be accountable through annual reporting to the Commission since they have greater corporate capacity than small radio operators. Additionally, several large radio groups hold both radio and television licences and therefore already have established reporting

experience for the cultural diversity initiatives pertaining to their television stations.

153. Accordingly, the Commission requires the CAB to develop a specific approach for small commercial radio stations. At a minimum, this approach should address, for the purposes of reporting on cultural diversity, the criteria the Commission should use to determine which radio licensees should be considered “small” and why. It should also address the most appropriate reporting mechanism for such stations, including frequency of reporting.

154. The CAB must file its proposal for small radio licensees with the Commission no later than six months from the date of this Public Notice. Upon receipt of the CAB’s revised best practices and the proposal for small radio licensees, the Commission will determine when it expects radio licensees to commence filing reports.

LOCAL MANAGEMENT AGREEMENTS AND LOCAL SALES AGREEMENTS

Current approach

155. In Local Management Agreements, Public Notice CRTC 1999-176, 1 November 1999 (the 1999 LMA Policy), the Commission announced that it had adopted amendments to the Radio Regulations to include a provision, under section 11.1, that prohibits any licensee from entering into or operating its station(s) pursuant to a Local Management Agreement (LMA) without the Commission’s prior approval and a condition of licence permitting it to do so. Section 11.1 defines an LMA as follows:

“local management agreement” means an arrangement, contract, understanding or agreement between two or more licensees or their associates that relates, directly or indirectly, to any aspect of the management, administration or operation of two or more stations that broadcast in the same market.

156. As indicated in the 1999 LMA Policy, the Commission evaluates LMAs on a case-by-case basis and takes into consideration the circumstances under which an LMA would be acceptable. As part of its evaluation of an LMA, the Commission examines the potential impact on diversity of voices and the dynamics or competitive forces in a given market. An LMA could be found to be acceptable on the basis that it does not constitute a change in the effective control of an undertaking. Consequently, the Commission expects that:

- parties to an LMA ensure that distinct and separate programming and news services are maintained, and that their management remains under the respective responsibility of each licensee. This includes the program director and the news director, as well as other related staff assigned to programming and/or news activities; and

- all assets of the undertakings involved in an LMA remain under the ownership of each respective licensee.

In addition, the Commission is generally disposed to approve LMAs that:

- include unprofitable stations;
- include a number of stations that does not exceed the number of undertakings that may be commonly owned under the 1998 Commercial Radio Policy; and
- are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance.

157. On 31 January 2005, following the licence renewal of certain radio stations, the Commission issued The Commission's policy on local management agreements (LMAs) - Determinations concerning the appropriateness of various existing and proposed LMAs, including local sales agreements, between licensees of radio stations serving the same market, Broadcasting Public Notice CRTC 2005-10 (Public Notice 2005-10). In Public Notice 2005-10, the Commission determined that Local Sales Agreements (LSAs) fall within the definition of an LMA set out in section 11.1 of the Radio Regulations. As a result, licensees of commercial radio stations serving the same market who wish to enter into an LSA, or any similar business arrangement, whether formal or informal, must first apply for Commission approval to obtain conditions of licence authorizing them to do so.

158. At the same time, the Commission indicated that it would review various aspects of the LMA Policy during the Commercial Radio Policy Review.

159. Aspects to be reviewed would include the context under which an LMA could be acceptable. For example, the Commission could consider whether an LMA should be employed only as a temporary alternative business model, and whether an LMA involving broadcasters operating radio stations in adjacent markets would fall within the definition of an LMA.

Positions of parties

160. The Competition Bureau (the Bureau) submitted comments, which included a detailed study conducted by Dr. Ralph Winter about the issue of LMAs and their potential impact in a given market.

161. In its submission, the Bureau stated that LMAs should be dealt with in the same manner as any other merger. It argued LMAs have the same competitive effects on advertising markets as a consolidation in ownership and should be subject to the same competitive analysis. The Bureau further submitted that LMAs will likely result in significant increases in local advertising rates.

According to the Bureau, LMAs have an impact on competition in relevant advertising markets to the extent that they have the effect of entrenching or increasing the ability of radio stations to exercise market power by raising advertising rates or reducing quality. It submitted that the Commission should examine not only the competitive effect of LMAs on other stations, but also the effect on advertisers whose rates and choices are negatively impacted by LMAs.

162. The Bureau also stated that the combined control of radio stations through mergers or LMAs would lead to competition policy concerns when such control leads to a potential lessening of competition. It argued that radio advertising has no sufficiently close substitutes and, thus, competition principles would not justify expanding the product market to include other media in an LMA. Finally, the Bureau stated that attention must be paid to unique aspects of the radio market that make it difficult for competitors to respond to a post-merger price increase.

163. At the hearing, parties from the broadcasting industry, such as Newfoundland Capital Corporation, for Newcap Inc. (Newcap), the OIRG, the CAB and CHUM, provided their views on some of the points raised by the Bureau and on LMAs in general.

164. None of the broadcasters agreed with the Bureau's position that radio advertising has no sufficiently close substitutes.

165. The CAB argued that the Bureau's position flows from the wrong assumption. It submitted that LSAs, which ensure that one sales force sells all of the local advertising on behalf of two otherwise independent licensees, can have a very positive effect on radio and can enable the radio industry to present the medium more efficiently against other media and make the process easier for buyers. The CAB also argued that, when broadcasters talk about a business's radio budget, they are really referring to its advertising budget. Radio stations compete for this advertising budget with every other medium, especially in smaller markets where there is a local newspaper and perhaps a local television station and a couple of radio stations. In short, parties to an LSA are not competing for a share of radio budgets, but rather for a share of advertising dollars.

166. Newcap submitted that, because of the impact on revenues resulting from the termination of LMAs, its stations went from being profitable to being cash flow negative in every one of the markets involved. As a result, Newcap has invested more money, made changes and, in some cases, has applied for an extra licence. Newcap was of the view that, in small market situations, an LSA can make the difference between making money or not. It submitted that the ability to work together on sales brings a consolidated offering for advertisers in the marketplace and allows the stations involved to be more profitable.

167. Newcap also noted that most advertisers have advertising budgets so if there is an increase in what it costs to be on radio there will be a subsequent decrease on

the amount spent on other media. Newcap also argued that, in a market where there is only one newspaper or one television station, or one billboard company for outdoor advertising, they will effectively set the rates and charge whatever they want.

168. The OIRG argued that radio operates in a competitive advertising market and that the benefits of LMAs or LSAs are very significant in that they enable stations to sell the product better and more efficiently. Furthermore, the OIRG advocated allowing LMAs and LSAs on a case-by-case basis to improve the profitability of stations in smaller markets by allowing operators to share costs such as traffic, accounting and engineering. The OIRG submitted that such an approach provides small market stations the same opportunity as large market clustered operations.

169. CHUM disagreed with the Bureau's position and was of the view that radio stations should be allowed to enter into an LSA as long as the number of stations in the arrangement complies with the ownership limits set out in the 1998 Commercial Radio policy as it applies to the market in question. CHUM agreed that the use of LSAs should be for local advertising only, and that the different owners should maintain distinct and separate programming services, distinct and separate news voices and distinct station operations.

Commission's analysis and determinations

170. As stated in Public Notice 2005-10, the Commission is concerned about the possible negative consequences of LMAs over time. The possible consequences include the potential disadvantage to which they subject competitors who are not party to them, the chilling effect such agreements may have on the decisions of potential new entrants, and the extent to which they may reduce, ultimately to the detriment of the services provided to the public, the incentive for some or all parties to an LMA to manage their stations efficiently, compete effectively and improve their programming. The Commission is particularly concerned about the potential impact that LMAs might have on the diversity of voices that exists in a given market.

171. Accordingly, the Commission specified in Public Notice 2005-10 that it would generally approve LMAs only where it was satisfied that the circumstances so warrant, taking into account the general principles and other relevant elements identified in the 1999 LMA Policy.

172. The Commission has considered the positions of parties relating to the appropriateness of LMAs in small radio markets. Contrary to the position of the Bureau, radio broadcasters were of the view that radio does compete for advertising in a market with other media. Accordingly, they considered that the use of LMAs is appropriate.

173. The Commission agrees with the interveners that radio competes with other media for advertising in a given market. However, it remains of the view that LMAs could have negative consequences.

174. Nonetheless, the Commission accepts the position of representatives of the radio industry that, in some instances, an LMA could be an appropriate arrangement to ensure the viability of the radio stations involved. For example, the use of an LMA could be acceptable in a market where the radio undertakings applying to operate under such an arrangement are i) the only stations serving the market, and there is no potential growth that would permit new entrants and, ii) in serious financial difficulties.

175. In cases where the Commission determines that an LMA is warranted, it will continue to require clear assurance from the applicant that the LMA will serve to sustain distinct and separate programming services and news voices through maintaining distinct and separate station operations in these areas.

176. Accordingly, as stipulated in the 1999 LMA Policy, the Commission will continue to evaluate proposed LMAs on a case-by-case basis. The Commission considers that an LMA could be found acceptable on the basis that it does not constitute a change in the effective control of an undertaking. Consequently, the Commission will continue to expect that:

- parties to an LMA ensure that distinct and separate programming and news services are maintained, and that their management remains under the respective responsibility of each licensee. This includes the program director and news director, as well as other related staff assigned to programming and/or news activities; and
- all assets of the undertakings involved in an LMA remain under the ownership of each respective licensee.

177. The Commission will generally be inclined to approve LMAs that:

- include unprofitable stations;
- include a number of stations that does not exceed the number of undertakings that may be commonly owned under the 1998 Commercial Radio Policy; and
- are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance.

178. In light of concerns about the possible negative consequences of LMAs over time and the potential impact they might have on the diversity of voices that exists in a given market, the Commission considers that it would be appropriate to extend its LMA definition so that it applies to stations that operate in adjacent markets but whose contours overlap. Accordingly the Commission will issue, and

seek comment on the wording of, a proposed amendment to the Radio Regulations that amends the definition of an LMA.

179. The Commission will not consider, as part of its LMA definition, business arrangements such as tower space rental or equipment rental as well as arrangements for national sales activities.

180. The Commission further reaffirms its determination that LSAs fall within the definition of an LMA set out in section 11.1 of the Radio Regulations, as stated in Public Notice 2005-10.

181. Licensees of commercial radio stations that wish to enter into an LMA, or any similar business arrangement, whether formal or informal, must first apply for Commission approval to obtain conditions of licence authorizing them to do so.

LOCAL PROGRAMMING

Current approach

General requirements

182. The Commission's local programming policy for radio was set out in Policies for local programming on commercial radio stations and advertising on campus stations, Public Notice CRTC 1993-38, 19 April 1993, and reaffirmed in the 1998 Commercial Radio Policy. Under the local programming policy, licensees of commercial FM stations in markets served by more than one private commercial radio station are required to devote at least one-third of the broadcast week to local programming. Commercial FM licensees broadcasting less than one-third local programming must, by condition of licence, refrain from soliciting or accepting local advertising.

183. Local programming is defined as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.

184. The requirement to devote at least one-third of the broadcast week to local programming does not apply to AM stations. The 1998 Commercial Radio Policy stated:

The Commission will, generally maintain its case-by-case approach for AM stations. In the future, all AM stations will be asked to make commitments in their licence renewal applications to a minimum level of local programming, and to describe how they will provide sufficient service to their local communities. Conditions of licence will be imposed in cases where the Commission deems them to be appropriate

185. In renewing the licences of two Ontario FM radio stations, the Commission concluded that those stations had neglected, on an ongoing basis, their mandate to provide local programming services or had actually breached their conditions of licence requiring them to devote at least one-third of the broadcast week to local programming. As a result, those stations received short-term licence renewals. The Commission has also investigated several complaints about other stations concerning deficiencies in local programming in recent years.

Local programming and ownership consolidation

186. Section 3(1)(iv) of the Act states that the programming provided by the Canadian broadcasting system should “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.” In response to this objective, the Commission has addressed concerns about concentration of ownership partly through its policy, modified most recently in the 1998 Commercial Radio Policy, which limits the number of radio licences a broadcaster may control in a particular market.

187. In the 1998 Commercial Radio Policy, the Commission noted concerns raised by several parties about the impact that consolidation of ownership could have on news programming. Those parties had emphasized the important role that radio plays in the dissemination of local news and information, and had expressed the view that local news coverage had declined in Quebec as a consequence of the consolidation of ownership that had occurred. The parties had expressed concern that this trend could continue if ownership requirements were loosened further.

188. The Commission concluded, however, that setting across-the-board requirements for levels of news and spoken word would not take into account the particular needs of different communities or the differing resources of licensees. The Commission therefore decided to adopt a case-by-case approach in assessing programming commitments in the context of ownership changes. Accordingly, applicants seeking to acquire ownership or control of more than one AM and one FM station in a given language and market are required to outline how their proposed programming will benefit the community and further the objectives of the Act. The Commission retained the option of requiring adherence, by condition of licence, to particular commitments made by applicants.

189. For example, in Exchange of radio assets in Quebec between Astral Media Radio inc. and Corus Entertainment Inc., Broadcasting Decision CRTC 2005-15, 21 January 2005 (Decision 2005-15), the Commission approved applications by

Astral and a wholly owned subsidiary of Corus Entertainment Inc. for authority to acquire several radio undertakings in Quebec as part of an exchange of assets. The Commission added conditions to the licences of the AM stations involved requiring minimum, and increasing, levels of local programming.

Positions of parties

190. In the Notice, the Commission posed questions about the local programming policy, including whether FM stations should be obligated to broadcast a minimum amount of news and information and whether AM stations should be obligated to program a minimum level of local programming.

191. In general, those responding to the questions supported the current local programming policy, and many recommended that the current policies should not be changed.

192. Commercial radio broadcasters maintained that the Commission should continue its current policy of refraining from imposing specific minimum local programming requirements for AM stations, but review their situations at the time of their licence renewals. Rogers noted that new specific minimum local programming requirements for AM stations would merely jeopardize the financial viability of what is already an economically marginal sector of the industry, with no material benefits for local listeners. Moreover, commercial radio broadcasters submitted that the Commission should not consider a minimum news requirement for music-based FM stations because any such requirements would reduce the competitiveness of those stations in relation to other sources of audio programming.

193. The CAB submitted that private radio provides listeners with high levels of local programming, including news and information, and noted the medium's ability to reach large segments of the listening audience with public alerts at times of emergency. It argued that industry consolidation has delivered benefits to the broadcasting system and to the status of local programming and that consolidation has not led to more syndicated or network programming. Moreover, the CAB stressed that the private radio industry recognizes the inherent value of local programming and news programming for its listeners and intends to maintain its commitment to local communities, with a continuing emphasis on locally produced content.

194. The MCCQ acknowledged the important role that radio plays in providing local information and noted that production of local news can be a heavy burden for stations, especially those that are not part of a network. The MCCQ further noted that, in its second response to the June 2003 report of the Standing Committee on Canadian Heritage entitled *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, the Government of Canada had acknowledged the importance of Canadians continuing to have access to information and public

affairs programming that reflects a diversity of views and the perspectives of their community.

195. The FNC expressed concern about the “Montréalization of the airwaves,”⁵ and argued that radio must provide local programming. The FNC submitted that certain radio licensees had taken advantage of the Commission’s streamlined local programming requirements to abandon the listeners that they serve, thereby reducing the capacity of their stations to respond to changes.

196. ARC du Canada pointed out that community radio responds to local needs for information and local identity, and proposed the creation of a community radio fund through broadcasters’ CCD contributions. This fund would support local news and public affairs programming. The NCRA supported this proposal.

197. Friends of Canadian Broadcasting (Friends) cautioned that leaving the obligation to provide local news and information programming to voluntary commitments is not warranted, in view of the conflict of interest demonstrated when commercial radio undertakings seek to reduce local labour costs and import programming content from distant, often non-Canadian, locations.

198. L’ADISQ submitted that licensees must include in their programming spoken word of direct relevance to the communities that they serve, including local news, weather, and sports as well as the promotion of local activities and events. L’ADISQ also requested that all stations make formal commitments with respect to the coverage of local cultural events.

199. Le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP) generally agreed with the Commission’s definition of local programming set out in the 1998 Commercial Radio Policy but suggested that the second paragraph be amended to read as follows:

[TRANSLATION] In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities. Licensees must serve their communities with newscasts consisting of information gathered and handled by their own teams of journalists. (material that CPSC suggested be added is in *italics*.)

200. In addition, the CPSC requested that the Commission require licensees, by condition of licence, to offer at least 180 minutes of news per week. The length of newscasts could vary, but could never be less than two minutes. The CPSC further submitted that sports, weather and traffic reports should be presented outside of newscasts.

201. Michael Fockler, a broadcasting consultant, argued that regulations defining local market, principal marketing area and a one-third level of local programming are often misinterpreted and applied somewhat arbitrarily. Mr. Fockler submitted

that some radio stations originate programming from a distant studio with no connection to the licensed market. In such situations, committed local broadcasters find it difficult to compete. These difficulties are compounded when licensees go beyond their mandated local market and become regional stations that provide minimal service to many communities and do not provide in-depth coverage to any community. In Southern Ontario, for example, Mr. Fockler submitted that large stations in urban centres claim to serve vast and disparate areas with little commonality and squeeze out broadcasters interested in targeting specific communities.

Commission's analysis and determinations

202. Section 3(1)(i)(ii) of the Act states that the programming provided by the Canadian broadcasting system should be “drawn from local, regional, national, and international sources” (emphasis added). Local programming is of ongoing importance to local communities. As stated in the 1998 Commercial Radio Policy, “The radio industry has historically been the sector of the broadcasting system that has provided the lion’s share of programming addressing local issues and concerns. In many smaller communities, local radio stations are the only daily source of local news, information, and emergency messages.”

203. The Commission further recognizes the significance of local news coverage. As stated in CHNO-FM Sudbury -Licence renewal, Broadcasting Decision CRTC 2005-22, 31 January 2005:

One of the objectives of the broadcasting policy for Canada, as set out in the Broadcasting Act, is that the programming provided by the Canadian broadcasting system should offer a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern. The broadcast of news programming by commercial radio licensees, especially local news, is an essential aspect of their responsibility to ensure the provision of this diversity of views.

204. The majority of interventions filed in this process support the current policy with respect to local programming. The Commission further recognizes the efforts made by commercial radio operators to provide local information to their listeners.

205. As the number of other sources of music proliferates, programming that reflects the particular needs and interests of local audiences may constitute a defining feature that will allow commercial radio stations to remain competitive with other alternatives for the distribution of music. The Commission is further of the view that the most successful radio stations are those that provide effective local programming and service to their communities.

206. Accordingly, the Commission will maintain its one-third local programming requirement with respect to FM stations in competitive markets and the case-by-

case approach for AM stations. All applicants will be required, in their licence renewal applications, as well as in applications for new licences and for the transfer of ownership, to address local programming and to describe how the service they provide meets the particular needs and interests of their local communities. Should complaints or interventions be filed, the Commission will expect licensees to respond with suitable commitments, if required. Conditions of licence will be imposed where the Commission deems them to be appropriate.

207. In order to provide greater clarity in respect of the programming elements that must be included in local programming, the Commission is rewording the second paragraph of the definition of local programming. The new definition will read:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

208. The Commission notes that many radio stations make use of a programming technique generally known as “voice tracking.” Using this technique, the contributions of announcers are recorded in advance and inserted into the programming mix at appropriate times. The Commission considers that programming produced using voice tracking qualifies as local programming when it fulfils the definition of local programming set out above.

INFOMERCIALS

Current approach

209. The Commission considers infomercials to be advertising (category 5), the amount of which is not regulated on commercial radio. There is currently no policy governing the airing of infomercials on radio.

210. The Commission’s current policy statements on infomercials are intended for television.⁶ An infomercial is defined as television programming “exceeding 12 minutes in length that combines entertainment or information with the sale or promotion of goods or services into a virtually indistinguishable whole. It may also involve the promotion of products mentioned in distinct commercial breaks within the infomercial programming itself.”

211. The reference to “exceeding 12 minutes in length” reflects the fact that, in television, stations are limited to no more than 12 minutes per hour of advertising. Television stations wishing to exceed this limit in order to broadcast infomercials may file applications for conditions of licence permitting them to do so.

212. Criteria for the broadcast of infomercials on television include the following:

In order to avoid any confusion on the part of the viewer, infomercials must be identified as follows:

a) each production broadcast must be preceded and concluded with a clear and prominent written and oral announcement that the programming constitutes paid commercial programming; and

b) a clear and prominent written announcement must also be made prior to each ordering opportunity indicating that the programming the viewer is watching constitutes paid commercial programming. The Commission will also expect licensees who air commercial messages that are 2 minutes or longer to adhere to this requirement concerning the identification of paid commercial programming.

Positions of parties

213. The Notice requested the views of interested parties on whether the Commission should develop a policy on the use of infomercials on radio.

214. The CAB agreed that radio infomercials should be identified with a prominent announcement that the programming in question constitutes paid commercial programming and stated that no formal policy should be required with respect to the nature, length or content of radio infomercials.

215. Friends stated: “The Commission should articulate a policy on radio infomercials akin to those in its television policy. In considering representations from commercial radio interests, the Commission should bear in mind that only its policy protects the listening public from abuse.”

Commission’s analysis and determinations

216. The Act requires that the programming originating by broadcasting undertakings should be of high standard and notes that both the CAB Code of Ethics and that of the Radio-Television News Directors Association of Canada contain provisions respecting the accuracy of information provided by broadcasters. In this spirit, the Commission considers that radio listeners should be informed when the airtime for longer advertising segments is, in fact, paid by an advertiser.

217. The Commission further notes that, from time to time, listeners have complained about infomercials on radio and pointed out that infomercials are often not identified on the air as paid advertising. The infomercial segments noted by the Commission are frequently related to real estate, car repairs, financial advice, travel, health and other topics.

218. Accordingly, the Commission hereby advises the licensees of all commercial radio stations that advertising segments exceeding three minutes in duration must be identified as follows:

- a. each production broadcast must be preceded by and concluded with a clear and prominent announcement that the programming constitutes a paid commercial segment; and
- b. such an announcement must be repeated prior to the resumption of the production following each break in the program.

Conclusion

219. The Commission considers that the measures announced in this policy, particularly its new approach for Canadian content development, will allow the commercial radio sector to contribute more effectively to the achievement of the goals set out the Act, while enabling it to operate effectively in an increasingly competitive environment for the delivery of audio programming.

Secretary General

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www.crtc.gc.ca*

DISSENTING OPINION OF COMMISSIONER BARBARA CRAM

I disagree with my colleagues in the majority both as to not increasing the amount of Canadian Content but also the increased funding to FACTOR.

I understand my colleague Commissioner Langford will be further addressing the issue of Canadian Content and therefore I will not dwell upon it. I can only state that if the Commission had accepted the argument of a lack of commercial demand for Canadian music as a reason for not increasing Canadian Content at the time of the original Radio Policy in the 1970's Canadian airwaves would have retained its Canadian Content of single digit proportions and Canada's music industry would not have become the second -albeit now third largest in the world.

Having first decided not to increase Canadian Content, my colleagues in the majority were then faced with a dilemma. They had given a concession to radio broadcasters, there had to be something given back to the broadcasting system in

return. They deemed a ‘national’ vehicle was required and, by default, FACTOR was chosen as it is the only association that purports to be ‘national’ in relation to the English music industry.*

In its intervention with respect to the public hearing held in Regina in October of this year, CIRPA supported FACTOR notwithstanding that they had ‘governance challenges’. CIRPA claimed these ‘governance challenges’ are being addressed. However, based on my eight years with the Commission, these challenges have only gotten worse. Witness the following allocations from FACTOR over the years:

% of funding	2001-2002^{**}	2004-2005^{***}	2005-2006^{****}	% of total Cdn pop'n 2002-2005
BC	24.3%	17.8%	15.8%	13.2%-13.2%
Alta	2.8%	1.6%	1.34%	9.9%-10%
Sask	1.3%	0.7%	0.24%	3.3%-3.1%
Man	1.7%	3.6%	3.6%	3.7%-3.6%
Ont	34.4%	48.7%	58.9%	38.2%-38.9%
PQ	20.8%	19.2%	14.9%	23.8%-23.5%
NS	10%	4.2%	3.2%	3%-2.9%
NB	1%	0.6%	0.07%	2.4%-2.3%
PEI	1.9%	1.4%	0.17%	0.4%-0.4%
NFLD	0.6%	0.6%	0.32%	1.7%-1.6%
YK and Terr	1.2%	1.5%	0.53%	0.3%-0.3%

Now whilst one cannot and should not expect complete regional or provincial parity, it is my belief that at least an effort should be made to move towards some semblance of parity but indeed it appears the numbers show exactly the opposite. FACTOR’s monies come from the taxpayers of Canada in the approximate amount of \$10 million dollars per annum and also from radio broadcasters all across Canada. It is indeed ironic that the Commission has been licensing many more new radio stations in Alberta in the recent past than in any other area of the country. And yet the benefits allocated by those new broadcasting entities to FACTOR definitely do not remain in the province. The profits of these new radio stations come from Alberta, the profits pay for the benefit monies to FACTOR and the FACTOR monies go elsewhere.

I am unaware as to how FACTOR’s ‘governance challenges’ are being addressed; however, to date these efforts are producing perverse results. At least in 2004-

2005 FACTOR participated in information sessions outside of Ontario, with one of them being in France. In 2005-2006, FACTOR held five ‘information panels’ in Toronto.

FACTOR has in the past defended its uneven allocations saying it gives money only to the best. I cannot accept this premise given the Canadian Idol experience where Kalan Porter from Alberta rose to the top along with Theresa Sokyrka from Saskatchewan. I also cannot accept that the Maritimes does not have some of the ‘best’ given the strength of the East Coast Music Awards.

Alternatively, maybe FACTOR is correct in saying they give money only to the best. Bruce Cockburn, Rita McNeil, and many other well established artists have received support from FACTOR in recent years.

My colleagues in the majority are giving the broadcasting system’s money to an organization over which the Commission has no control and which has ‘governance challenges’ which, to date, empirical data shows have not been resolved but exacerbated.

I would have increased the Canadian Content requirement. Respectfully, I believe the majority decision has given us the worst of both worlds.

DISSENTING OPINION OF COMMISSIONER STUART LANGFORD

I disagree with my colleagues in the majority for a number of reasons. First, based on the evidence, their assessment of the future prospects for commercial radio in Canada are overly pessimistic. Second, their conclusions regarding appropriate Canadian content levels and support for emerging Canadian artists display a marked absence of imagination. Finally, their approach to Canadian talent development penalizes success, is unfairly weighted in favour of a national approach to the disadvantage of local initiatives and seems designed to produce more Canadian content for an industry unable or unwilling to broadcast most of what is already available.

Industry well-being

Paragraphs 10 to 18 of the majority decision purport to assess the financial “health of the Canadian commercial radio industry.” The statistics provided are, one assumes, accurate. Where the majority goes wrong, however, is in treating all of them as equally pertinent. In my opinion, for the purposes of developing a new radio policy, emphasis must be placed on paragraphs 17 and 18.

Paragraph 17 reveals that business is not so good in AM radio land. There are exceptions, but so few exceptions that, to borrow a well known morsel of folk wisdom, they do little more than prove the rule. Paragraph 18, however, provides irrefutable evidence that all, financially, is very well indeed in the world of FM.

Still, the majority concludes in paragraph 31 that despite today's rose colored skies, black clouds are forming just beyond the horizon and soon the deluge may come: "While the radio industry is currently healthy, it is (emphasis added) entering a period of uncertainty." For the word "is" in the second half of the quotation above, I would substitute the words "may be". Regulators should work with realities, in my opinion, not the unsubstantiated and self-serving projections of bottom line fixated industry representatives (paragraphs 29 & 30).

A shaky foundation

The questionable conclusions in paragraph 31 form the shaky foundation upon which the majority builds its case for maintaining current Canadian content levels for popular music, putting off support for emerging artists until another day and refocusing the development of talent on content. Had the majority taken another approach, beginning with a recognition that AM and FM constitute two different worlds, it is my opinion that it could have constructed a far more imaginative policy structure on a far more solid foundation of fact, simply by maintaining the existing Canadian content rules for AM radio, and in recognition of its financial well-being, formulating a new FM-only policy that reflects the objectives listed in paragraph 2 of the majority decision.

Canadian content, emerging artists and talent development

Imaginative is the absolute last word that springs to my mind when I review paragraphs 32 to 96 of the majority decision. In essence, with exceptions so minor as, in my opinion, to be practically inconsequential, the majority's view of an appropriate future approach to promoting Canadian content and talent appears to have been envisaged by looking in a rearview mirror. What they believe they saw there, though, is anyone's guess. Let's take a look.

Glancing back, I see an FM industry growing wealthy. Overall, meeting the 1999-2006 requirement to air 35% Canadian content for category 2 popular music appears to have presented broadcasters with no hardship whatsoever. In the few instances where it did - for particular formats or stations competing directly with a myriad of U.S. signals, for example - exceptions could be and often were made. So easy has it been for the FM radio industry to meet the 35% level, that in the last six years dozens of applicants in competitive hearings across Canada have proposed launching new stations required by condition of licence (COL) to air more than 35% Canadian content in category 2.

The strategy worked. By my count, which may be understated (I might have missed a few) but is certainly not inflated, between 2000 and the middle of this year, 44 new FM stations were licensed which carried COLs requiring them to air more than the stipulated 35% Canadian popular music level. One new licence contains a 37% level, one is at 42%, a full 39 are at 40% and three agreed to and were licensed to provide a 45% level. These levels are telling. Even more telling

is that they were voluntarily assumed by the applicants. It was not the Commission's idea, it was theirs.

So comfortable are FM operators with a 40% popular music COL that at the most recent competitive application hearing which began October 30, 2006 in Regina, eight of the 19 applicants for commercial licences in Saskatchewan and Alberta, proposed to accept a COL requiring them to meet a 40% level. Yet, in the face of these compelling facts, the majority has concluded that a new Radio Policy requiring anything above the old 35% level would present a hardship for broadcasters. Go figure.

Name that tune, again

In my mind, even more confusing than the majority's apparent inability to recognize that the FM industry itself has set 40% as the new standard for popular Canadian music, is the fact that the majority has identified another problem, but done nothing about it. I refer to the sad fact that though broadcasters have adhered to the letter of the law requiring 35% or more, many have openly defied the spirit underlying it. They meet the 35% level but they do so by playing just a few marquee artists over and over again. That's great for big names like Shania Twain and Avril Lavigne, but not so good for lesser known performers.

The majority, judging by the language in paragraph 85, has thrown up its hands and declared that this problem defies remedy. One of the reasons it cites for keeping Canadian music levels at 35% is, "that an increase could lead to more repetition of the musical selections by Canadian artists that are already established." That's not solving a problem, it's running away from it. Solving this problem and promoting Canadian talent, as the Broadcasting Act requires, means enshrining the 40% level most new licensees say they are comfortable with in a new FM policy, and requiring broadcasters to meet that level, not by spinning the same selections over and over but by providing as many Canadian artists as possible airtime on their stations. That's what I would have done. That's what the majority should have done. Instead, it has bowed to industry pressures and done nothing.

Chicken and egg conundrums

The problem with moving to 40%, according to the Canadian Association of Broadcasters (CAB) is that, "listeners are not seeking more Canadian music." In support of this view, the CAB provided sales figures revealing that during three monitored years (1998, 2000 and 2003) Canadian recordings accounted for only 16 or 17% of total sales in Canada.

In paragraph 84, the majority indicates that it finds this CAB argument persuasive: "The Commission is of the view that these sales figures do not indicate a level of demand that would support a further increase in the required levels of Canadian category 2 selections at this time."

Apparently it never occurred to the majority to turn the problem around and look at it differently. In my opinion, the reason sales of Canadian CDs are so low is that in most instances buyers don't know they exist. With most FM stations playing mostly U.S. artists with just a few big name Canadians featured over and over so as to meet the 35% content requirement, most Canadian artists are simply never aired. Who is going to buy a CD they've never heard by an artist they've never heard of?

Emerging artists

Lack of imagination also appears to be the hallmark of the majority's reaction to the plight of Canada's new and emerging artists. Rather than solving the problem by requiring FM licensees to provide airplay opportunities for as many Canadian artists as possible, the majority has decided to duck the problem today and leave it to be solved on a case-by-case basis during future licence renewal processes. This is simply unacceptable.

To say to emerging artists that some day down the road things will improve is the regulatory equivalent of promising pie in the sky when you die. The Commission's case-by-case approach (paragraph 92) once more leaves most Canadian musical talent out of the new radio policy as they were left out of the old. The case-by-case approach will result, not in the establishment of a clear regulatory directive supporting these artists but in the equivalent of a crazy quilt policy made up of dozens, perhaps hundreds, of rulings, each more or less different than the last.

If flexibility is necessary, the better way is to set a standard and put the onus on licensees either to meet it or to apply to the Commission for a variation in light of their particular circumstances. Supporting new and emerging Canadian artists by playing their music should be the rule, not doing so, the exception. The majority has got it backwards. As to the sort of bonus or credit systems the CAB and other industry representatives suggested, I say no. With the right to exclusive use of valuable and scarce public property, a radio frequency, comes a duty to Canadians. Broadcasters should not have to be bribed to do their duty.

Talent development

Finally, I come to the majority's new Canadian Talent development scheme. It is flawed from start to finish.

What's in a name?

First of all, the decision to replace the word "talent" with the word "content", though simply window dressing and, practically speaking, valueless, is incredibly ironic. The sad fact is that because airplay opportunities are almost non-existent, there is already too much Canadian "content" being produced. What is needed is

more airplay for Canadian artists, not money to produce recordings that sit gathering dust somewhere.

Don't dance, don't ask me

Another small point: the majority's decision in paragraph 98 to prohibit support for visual arts exhibitions, theatre and dance is curious. Such initiatives never received much in the way of funding under the old Radio Policy, but the little they did get must have been welcome. I find it impossible to imagine what mischief the majority thinks it is curing in making this ruling.

Not all visual arts exhibitions feature paintings and sculptures hanging and standing alone in the hushed silence of a gallery. Many are multi-media in nature, containing performance components that include a musical element. Why should the musical artists who take part in such creative endeavors be deprived of support? And the last time I looked, dance and music were practically inseparable, as are music and many theatrical productions. Why cut off the few dollars that may spell the difference between an artistic endeavor living or dying? It seems short-sighted to me.

Playing favorites

Now we come to the majority's views on where Canadian talent (henceforth "content") development money is best spent. Paragraph 108 recognizes that options exist, but the tenor of paragraphs 100 to 128 is that FACTOR and MUSICACTION are the Commission's beneficiaries of choice.

To ensure that they are amply funded, the new Radio Policy expands from one (transfers of ownership) to three (transfers of ownership, licence renewals and annual commitments) the occasions triggering CTD (now CCD) payments to favored recipients, i.e., FACTOR and MUSICACTION. From now on, in all three circumstances, a significant share of payments made must go to FACTOR and/or MUSICACTION:

1. They will continue to receive 2% of the value of the transaction when the ownership and control of a radio undertaking changes (paragraph 126).
2. They are guaranteed a significant annual income: "no less than 60% of the basic annual CCD contribution must be forwarded to Factor or MUSICACTION" (paragraph 118).
3. Applicants for new commercial radio licences who make CCD commitments over and above the basic annual level must direct "no less than 20%" of that amount to FACTOR and/or MUSICACTION (paragraph 124).

One wonders why. If there is one thing that eight years of sitting on radio licensing application panels has taught me, beyond the realization that, after 2000, a 40% Canadian popular music content level is what most FM radio operators saw and still see as logical, it is that FACTOR and MUSICACTION are not everyone's idea of ideal talent development organizations. Their national mandate too often turns out to be a Montréal, Toronto, Vancouver focus. "The regions," as the Maritimes, the prairies and the north so pointedly refer to themselves, do not appear to be major FACTOR and MUSICACTION concerns.

I am not opposed to increasing funding for talent development, though unlike the majority I do not regard such funding as a substitute for airplay. However, I am opposed to playing favorites. In my opinion, guaranteed funding is not a good idea. It can lead to complacency. If you are not required to prove yourself, you are less likely to work hard for the stakeholders who rely on you. I prefer a more market-reflective approach, where candidates for talent development subsidies are required to compete on a level playing field for available dollars.

Penalizing success

Who gets the money is one issue. How each contribution is levied is quite another. The old system, described in paragraph 114 of the majority decision, was not perfect. What system is? However, it was laudable in one sense; it did not penalize success. The new system does. The concept reminds one more of the Income Tax Act than a policy designed to enhance musical talent.

I believe in a regulatory environment that encourages success. Until something demonstrably better can be developed, I would stick with the existing annual financial commitment system under which payments are based on a given market's potential to deliver profits. It isn't perfect, but it does recognize the fact that in any defined market it should be ability not governmental or regulatory policy that distinguishes the winners from the losers. The old system is not a clone of the Income Tax Act either, and that's a good thing.

Final Word

To sum up, in my opinion the majority has squandered an opportunity to bring the 1998 Radio Policy into line with twenty-first century stakeholder expectations. Most successful recent applications for new FM licenses have declared themselves comfortable with a 40% or more category 2 Canadian content requirement. Most applicants for new licences over the past five years have preferred to direct the lion's share of CTD commitments to local rather than national (FACTOR and MUSICACTION) initiatives. Too few Canadian artists benefit from receiving exposure on conventional FM radio.

In light of these facts, I would have done things far differently than the majority. I would have distinguished between the financial realities facing AM and FM radio broadcasters. I would have reaffirmed the status quo for AM radio in Canada but

made logical changes for FM. I would have taken my mandate as contained in The Broadcasting Act seriously and done considerably more for Canadian artists in terms of content requirements and support levels. The majority's decision to cave in to industry demands and virtually ignore the needs of Canadian artists is simply unacceptable.

Footnotes:

1 CAB Submission, Appendix B, Osborne 2006, p. 29.

2 CAB Submission, paragraphs 114 and 115.

3 Regulations Amending the Radio Regulations, 1986 - Commercial Radio Programming, Public Notice CRTC 1998-132, 17 December 1998,

4 See Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (paragraphs 51-53).

5 "la montréalisation des ondes"

6 Amendment to the Television Broadcasting Regulations, 1987 to permit, by condition of licence, the airing of "infomercials" during the broadcast day, Public Notice CRTC 1994-139, 7 November 1994, and Clarification of certain matters relating to the airing of "infomercials" during the broadcast day, Public Notice CRTC 1995-93, 13 June 1995

* I do not purport to address MUSICACTION which receives 40% of the total funding from both the federal government and broadcasters. Obviously the majority of these monies would go both to Quebec and New Brunswick.

** FACTOR 2001-2002 Annual Report

*** FACTOR 2004-2005 Annual Report

**** FACTOR's 2005-2006 Annual Report did not include a total provincial allocation table. This analysis is based on allocations to Sound Recordings, Video, Marketing/Promo, Touring/Showcasing and Marketing Grants consisting of a total of \$12,560,961 out of total loans/awards of \$14,024,651.

Appendix G

Circular No. 444

Ottawa, 7 May 2001

To all licensees of radio programming undertakings

PRACTICES REGARDING RADIO NON-COMPLIANCE

Each year, the Commission processes numerous licence renewal applications, including those relating to radio stations. This circular clarifies how the Commission deals with the licence renewals of radio stations that have been found in apparent non-compliance with the provisions of the Broadcasting Act, the Radio Regulations, 1986 or the conditions of their licence.

1. The Commission assesses the compliance of radio licensees with requirements set out in the Broadcasting Act (the Act), the Radio Regulations, 1986 (the regulations) and in conditions of licence through the complaints process or on its own initiative pursuant to its compliance monitoring plan. The compliance record of each station during a licence period is usually reviewed at the time that the Commission considers the renewal of the station's licence. When a station is found to be operating in compliance, the Commission normally renews the licence for a term of seven years, subject to its regional licence renewal plan and considerations related to its workload.

2. Non-compliance most often occurs with respect to requirements regarding logger tapes, the level of Canadian music broadcast and, for French-language stations, the level of French-language vocal music selections. Requirements related to logger tapes are set out in sections 8(5) and 8(6) of the regulations, while those related to levels of Canadian and French-language vocal selections are found within section 2. Stations can, however, be in non-compliance with other requirements.

3. When analyses of stations are performed, the Commission affords each the opportunity to comment in writing on the preliminary results. When apparent non-compliance is observed for the first time in relation to a station, the Commission notes that observation in the Public Notice that calls for public comment on the renewal of the licence. Since the licensee has been given an opportunity to comment on the findings of apparent non-compliance through correspondence and to specify the measures that will be put into place to ensure future compliance, the licensee is usually not asked to appear at a public hearing. The station normally is granted a short-term licence renewal, generally for four years, to permit a further review of its compliance within a reasonable period of time.

4. The procedure is different where a licensee is already operating under a short-term renewal due to non-compliance during the previous licence term and is found to be in apparent non-compliance during the current licence term, or where a licensee is found in apparent non-compliance twice during a full licence term. In these situations, the Notice of Public Hearing calling for public comment on the renewal of the licence mentions the nature of the non-compliance and generally specifies that the licensee is expected to show cause why a mandatory order should not be issued pursuant to section 12(2) of the Act. As well, the licensee is generally called to appear at a public hearing to discuss the problem.

5. Based on the evidence filed or heard, the Commission may issue a mandatory order requiring the fulfilment of any requirement after it has considered an instance of apparent non-compliance with that requirement. A mandatory order may become an order of the Federal Court or any superior court of a province when the Commission files the order with the court. The mandatory order then becomes enforceable in the same manner as orders of the Court. According to the Federal Court Rules, anyone who disobeys an order of the Court may be found guilty of contempt of court, and may be subject to a financial penalty.

6. If the Commission is fully satisfied with the measures that the licensee has taken and is satisfied that non-compliance is not likely to recur, it generally does not impose a mandatory order but renews the licence for a term not exceeding two years. Where the Commission is not satisfied that the licensee has taken all necessary measures to ensure that non-compliance will not recur, and where it considers that a short-term renewal may not in itself correct the non-compliance situation, it may also issue a mandatory order.

Secretary General

Appendix H

Interview questionnaires (standard questions): station owners and/or managers

I- Identification

1. What is your occupation?
2. How many years have you occupied this position?
3. Have you held any other positions in this company, if yes, which ones?

II- Relationship with the CRTC

1. How do you describe your relationship with the CRTC?
2. How do you feel your relationship compares with that of other station owners/managers in the industry?
3. How satisfied are you with the CRTC and its mandate?
4. In your opinion what could be improved?

III- Licence renewal process

1. What is your understanding of the radio licence renewal process?
2. What is your degree of satisfaction with this process?
3. How would you rate your client satisfaction with regards to this process?
4. How do you feel about the human resources invested in this process?
5. How do you feel about the financial resources invested in this process?
6. What improvements could be made to the process?

IV- Accountability

1. To what extent do you feel the decisions about your station are conducted in an equitable fashion vis-à-vis other stations?
2. What mechanisms are in place to ensure you are held accountable for the promises you make at the time of renewal?
- 3- What mechanisms are in place to ensure the CRTC is accountable for its decisions with regards to this process?
- 4- How do you feel about the fact the CBSC decisions are not held into account at the time of renewal?
- 5- How would you feel about regular evaluations of the CRTC's performance in holding stations accountable for their promises?

Interview questionnaires (standard questions): CRTC officials

I- Identification

1. What is your occupation?
2. How many years have you occupied this position?
3. Have you held any other positions within the CRTC, if yes, which ones?

II- Relationship with the station owners/managers

1. How do you describe your relationship with the station managers/owners?
2. How satisfied are you with your ability to fulfill your mandate?
4. In your opinion what could be improved?

III- Licence renewal process

1. What is your understanding of the radio licence renewal process?
2. What is your degree of satisfaction with this process?
3. How would you rate your clients' satisfaction with regards to this process?
4. How do you feel about the human resources invested in this process?
5. How do you feel about the financial resources invested in this process?
6. What improvements could be made to the process?

IV- Accountability

1. To what extent do you feel the decision-making process regarding licence renewals are conducted in an equitable fashion vis-à-vis other stations?
2. What mechanisms are in place to ensure you hold stations accountable for the promises they make at the time of renewal?
- 3- What mechanisms are in place to ensure that you are held accountable for your decisions with regards to this process?
- 4- How do you feel about the fact the CBSC decisions are not held into account at the time of renewal?

Interview questionnaires (standard questions): CAB, CBSC and public interest group

I- Identification

1. What is your occupation?
2. How many years have you occupied this position?
3. Have you held any other positions within this organization, if yes, which ones?

II- Relationship with the station owners/managers

1. How do you describe your relationship with the station managers/owners?
2. How do you describe your relationship with the CRTC?
3. How satisfied are you with your ability to fulfill your mandate (in relation to the public, the station owners and/or the CRTC)?

III- Licence renewal process

1. What is your understanding of the radio licence renewal process?
2. What is your degree of satisfaction with this process?
3. How would you rate your (clients') satisfaction with regards to this process?
4. How do you feel about the human resources invested in this process?
5. How do you feel about the financial resources invested in this process?
6. What improvements could be made to the process?

IV- Accountability

1. To what extent do you feel the decision-making process regarding licence renewals are conducted in an equitable fashion vis-à-vis other stations?
2. What mechanisms are in place to ensure the stations are held accountable for the promises they make at the time of renewal?
- 3- What mechanisms are in place to ensure that the CRTC is held accountable for its decisions with regards to this process?
- 4- How do you feel about the fact the CBSC decisions are not held into account at the time of renewal?