



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

April 15, 2008

Via Epass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa ON K1A 0N2

Dear Mr. Morin:

Re: Proposed Amendments to the *Radio Regulations, 1986*

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB considers that it is necessary and timely to provide comments regarding the implementation of the amendments to the *Radio Regulations, 1986* ("the Regulations"), as they relate to the introduction of the new Canadian Content Development (CCD) Policy.
3. Since the beginning of the year 2007, the Commission has incorporated the new CCD Policy as a condition of licence (COL) in radio licence renewals issued. These COLs were intended to cover the transitional period between 1 January 2007 and 1 September 2007, when the amendments to the Regulations were intended to come into effect. However, more than seven months into the current broadcasting year, the enactment of the amendments continues to be delayed, and this has created an inequity in the application of the new CCD Policy for radio

broadcasters. The inequity is that otherwise equal radio licensees are now, and have been for several months, subject to different regimes vis-à-vis required investments in Canadian content development.

4. **The CAB strongly believes that the Commission must provide parity on this matter for every private radio licensee in the Canadian broadcasting system.**
5. Accordingly, the CAB requests that, consistent with the obligation placed on the Commission to be “*sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings*”¹, the Commission address the inconsistency and uncertainty created by the current application of the new CCD Policy to some but not all radio broadcasters, differentiated only by the timing of their licence renewal. The CAB proposes the following methods to remedy the situation.
6. First, the CAB requests that any monies paid by broadcasters under the new CCD Policy since 1 September 2007 for the current broadcasting year ending August 31st, 2008, that exceed the payments due under the pre-existing policy (i.e.: The CAB Plan or specific COL based on the financial contribution quantum established by the CAB Plan), be permitted to be carried forward and applied against any CCD payments that become due within the 2008-2009 broadcast year. This will ensure fairness and consistency among broadcasters in their contributions to mandatory annual contribution to Canadian content development.
7. Second, the CAB requests that the Commission take steps within its authority, including making a further amendment to the Regulations as required, to establish that the CCD policy comes into effect as of 1 September 2008.
8. Third, the CAB requests that the Commission indicate clearly, through the release of a circular or any other means it deems appropriate, that it suspends application of the transitional condition of licence with respect to the annual mandatory contribution to CCD that was imposed on private radio stations whose licences have been renewed since the release of the Commercial Radio Policy of 2006, BPN CRTC 2006-158, dated 15 December 2006.
9. The CAB submits that the Commission is precluded from enacting the amendments to the Regulations to take force as of 1 September 2007, as originally proposed, due to the legal presumption against retroactivity. The CAB further submits that enacting the amendments to take force prospectively, as of 1 September 2008, would simplify and clarify the administrative implementation of

¹ s. 5(2)(g) of the *Broadcasting Act*.

the amendments for the radio industry. Most importantly, it would provide parity on this matter for every private radio licensee in the Canadian broadcasting system.

Conclusion

10. Based on the foregoing, the CAB submits that the amendments to the Regulations may not come into force as of 1 September 2007 because of the presumption against retroactivity. In keeping with the Commission's obligation under the *Broadcasting Act* to consider the administrative burden faced by its licensees, the CAB further submits that the most appropriate date for the amendments to come into force is 1 September 2008 in accordance with the broadcast year, to facilitate the transition into the administration of the new CCD Policy.
11. Finally, the CAB submits that all monies collected by broadcasters that have already begun payments under the new CCD Policy should be carried forward and applied against any payments that will become due within the next fiscal year.
12. The CAB would be pleased to provide the Commission with further information on request.

Sincerely,

Original signed by

Glenn O'Farrell
President and CEO

c.c. CRTC Commissioners
Scott Hutton, Executive Director, Broadcasting, CRTC
John Keogh, Senior General Counsel, Legal, CRTC
Robert Ramsay, Senior Director, Radio Policy and Applications, CRTC