



**National Campus and Community Radio Association/
l'Association nationale des radios étudiantes et communautaires
325 Dalhousie, Suite 230 Ottawa, Ontario, K1N 7G2**

October 16, 2009

**Review of Campus and Community Radio
*Broadcasting Notice of Consultation CRTC 2009-418***

EXECUTIVE SUMMARY

The NCRA/ANREC believes that stable funding is the most urgent need for our sector today. Our most important recommendation is for the CRTC to assist the campus and community radio sector to obtain stable funding.

The NCRA/ANREC also requests and recommends that the Commission:

Sector Objectives and Definition

- re-frame our sector's objectives to focus on provision of a community service rather than programming complimentary to public and commercial content
- harmonize the objectives in PN 2000-12 and PN 2000-13
- add requirement for volunteer engagement in production of c/c programming

Policy distinctions and licensing

- combine the campus and community radio policies, with some flexibility
- remove the distinction between Type A and Type B community stations
- retain the existing specifications for campus-based community stations in PN CRTC 2000-12 under "Structure of the Boards of Directors of Campus Stations"
- license and regulate instructional stations focused primarily on providing broadcasting training separately from c/c stations
- lengthen the c/c developmental license period to 5 years
- provide frequency protection to developmental stations, and reserve a suitable protected frequency for them at the completion of the developmental period
- give licensing priority to not-for-profit applicants that will provide full community access, limit new non-community access instructional and school stations to internet-only, closed-circuit, or very low power due to scarce spectrum

Programming content and music

- adopt uniform standards for all c/c stations (with the option for flexibility in key areas)
- harmonize the spoken word minimum across all license designations to 15%
- require c/c stations to play at least 20% of music from categories other than subcategory 21
- remove the hits requirement for campus-based community stations
- remove the category 3 requirement
- require stations to play at least 15% music by emerging artists, with flexibility
- reduce or remove the formal educational programming requirement for instructional stations
- overhaul the music category system
- strike the word "classical" from the proposed definition of Subcategory 36 (Experimental)
- create a Subcategory (37) for new compositions based on pre-recorded work
- consider a composition from Subcategory 36 as Canadian content when the artist and production categories are both fulfilled by a Canadian DJ

Diversity and OLM issues

- create a basic OLM programming requirement, with flexibility
- retain the existing policy content supporting third-language programming
- assist the sector with capacity building, training, and funding

Funding

- retain advertising limits for campus-based community stations, with flexibility and minor changes to the definition of advertising
- provide support for increased fundraising skills education in the c/c sector
- mandate that CCD contributions to the CRFC be unrestricted
- recommend to the Canada Revenue Agency that c/c stations receive charitable status
- recommend to Canadian Heritage to contribute funding to the c/c sector
- dedicate a mandatory portion of Canadian Content Development contributions to the Community Radio Fund of Canada for unrestricted distribution to c/c stations

Technical, licensing and spectrum issues

- give special consideration to c/c applicants in competitive licensing proceedings
- continue to offer accelerated processes for low-power stations at risk
- create a joint CRTC–Industry Canada advisory committee to:
 - reserve at least one protected frequency in each market for future sector development
 - ensure that low-power stations receive timely notification of applications that will impact their frequencies
 - provide low-power frequency protection to c/c stations
 - reserve some or all reassigned TV channels for c/c sector use, and consider the financial limitations of our sector regarding technological adaptations
- require commercial applicants to:
 - directly assist low-power stations they intend to displace and revise the definition of CCD contributions to include contributions of this kind
 - provide a second choice frequency allocation if approval of the first choice would result in a low-power c/c station losing its frequency
- make available dispute resolution services outlined in PN CRTC 2000-65
- avoid imposing mandatory digital conversion without considering our sectors' financial realities
- direct a portion of proceeds from any spectrum auction to the c/c sector to assist with digital transition

New Media

- provide additional support to our sector, to better meet the technical and financial challenges of the new media environment
- continue to recognize the importance of terrestrial broadcasting to Canadians, and refrain from viewing internet-only broadcasting as a replacement for c/c radio broadcasting
- require ISPs to set aside funds for our sector if a levy is established

Miscellaneous

- establish a web portal and give each licensee an account to facilitate filing and communication
- retain s. 22 of the BDU Regulations to ensure continued cable carriage
- apply SOR/97-192 (Ineligibility of Non-Canadians) flexibility to c/c stations to address not-for-profit distinctions
- develop and approve an NCRA/ANREC Code of Practice through the Industry-Administered Standards guidelines provided in PN CRTC 1988-13 to address programming content complaints, equitable portrayal, and cultural diversity

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Robert A. Morin
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
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October 16, 2009

Dear Secretary General:

**Re: Broadcasting Notice of Consultation CRTC 2009-418
Review of Campus and Community Radio**

Preliminary Comments

1. The National Campus and Community Radio Association/ l'Association nationale des radios étudiantes et communautaires (NCRA/ANREC) is a not-for-profit national association working to recognize, support, and encourage volunteer-based, non-profit, public-access campus and community-based broadcasters in Canada. We provide advice and advocacy for individual stations, and conduct lobbying and policy development initiatives for the sector with a view to advancing the role and increasing the effectiveness of our sector. Our goals are to ensure stability and support for individual stations, and to promote the long-term growth and effectiveness of the sector.
2. The NCRA/ANREC would like to appear at the public hearing in Gatineau, Quebec in January 2010.
3. Before addressing the questions posed by the Commission in the Notice of Consultation, we will first outline some of the goals of the NCRA/ANREC and our members that impact our responses to the questions listed below. Most of these goals are shared by the Community Radio Fund of Canada (CRFC), and also by the Alliance des radios communautaires du Canada (ARCC) and the Association des radiodiffuseurs communautaires du Quebec (ARCQ). (*N.B.: A joint submission with ARCC and ARCQ outlining our common issues, positions and recommendations is being submitted separately in this proceeding.*)
4. Generally, the NCRA/ANREC would like to ensure that the campus and community radio sector (the "c/c sector") is developed and sustained, so stations can maintain and increase the services they provide for the benefit of the communities they serve.

5. The services currently provided by our member stations include:
 - (a) high quality and accessible community-oriented local programming, including local news, public affairs, and arts;
 - (b) community access and training for community members;
 - (c) programming and projects that highlight and promote local and emerging music and musicians of all genres; and
 - (d) programming produced by and for minority-language and third language Canadians.

6. In order to achieve our goals and competently provide these services, we have the following objectives:
 - (a) To increase the skills and knowledge of station staff and volunteers in governance, management, programming, and other areas, so they can contribute to the development of their stations;
 - (b) To develop and support community radio in areas underserved by existing media and by community media, particularly rural areas; and
 - (c) To plan and deploy systems to support new program delivery technologies, including digital, satellite, Internet, and wireless network distribution.

7. In the context of this policy review, we have the following three key objectives that frame the rest of this submission:
 - (a) Ensure adequate spectrum availability and frequency protection so that community radio can operate and expand throughout the country;
 - (b) Create a supportive, less burdensome, and more flexible regulatory environment that takes into account the different needs and realities of c/c stations operating in different contexts;
 - (c) Increase the financial sustainability of stations so that they can achieve the goals outlined above.

Questions from the Notice of Consultation

8. To inform our responses, the NCRA/ANREC implemented an online survey of our members. Our responses below are drawn from their responses. It is important to note that our members operate in a wide variety of community contexts, and therefore there are few issues on which they all agree.

9. We note specific policy areas below that we believe are unclear to our members based on their survey responses. Despite our best efforts to inform them about the regulatory requirements, the existence of more than one policy and corresponding differences in programming requirements leads to some confusion. Our recommendations below are made with a view to simplifying the regulatory environment.

10. Where we mention a need for flexibility, we recommend that the Commission provide an option for stations to apply to propose reduced regulatory requirements on a case-by-case basis.

THE PLACE OF THE SECTOR IN THE BROADCASTING SYSTEM AND THE STRUCTURE

Q.1 Campus and community radio stations are largely defined by their programming. Should this view and predominant defining characteristic be expanded? If so, how?

11. The NCRA/ANREC feels that the notion of providing “programming differing in style and substance from that provided by other elements of the broadcasting system” is problematic because it asks the c/c sector to define itself in relation to other media services, rather than to our community stakeholders.
12. Most of our members feel that defining a c/c station should be based less on the station’s on-air content, and more on its role in the community as an institution that fills the needs of the community it serves. The involvement of community members in c/c broadcasting results in content being “pulled” from the community rather than “pushed” upon it, so broadcast content is based on interaction with the audience as well as the needs, values and goals of the community. In this way, c/c stations provide a social service that assists communities to develop local identities and increase community and social equity and diversity.
13. This view of c/c radio lends itself to replacing the current programming-based product-oriented definition with a positive vision for c/c radio that focuses on the community-access, not-for-profit, social service provided by c/c stations.
14. If the notion of complementarity to public and commercial broadcasters must remain, we would prefer to see it framed in the context of providing services and programming that meets identified community needs and values that are not met by other types of broadcasters.
15. We believe that this conception of c/c radio unifies community and community-based campus stations, but excludes many instructional stations. We will discuss this distinction in more detail below.

Q.2 The objectives for campus radio stations are outlined in paragraphs 13 to 17 of Public Notice 2000-12 while the objectives for community radio stations are outlined in paragraphs 12 to 18 of Public Notice 2000-13. Should these objectives be revised? If so, how?

16. We feel that the objectives outlined in the two policies are accurate, aside from the reservations expressed above. We recommend harmonizing the objectives in the two policies by emphasising community and community-based campus stations’ community access and public interest orientation, commitment to diversity, unique local content, and accountability to their stakeholders and communities.
17. We recommend framing the objectives of c/c radio in a more positive way rather than focusing on the sector’s role as providing an “alternative” to other broadcasters. All stations in the c/c radio sector provide local regional news and information, reflect the diversity of the community served, promote local arts and culture, and produce and disseminate local and regional content of social, economic and community relevance.

They are all not-for-profit public resources that are owned, operated, managed, and used by some or all of the stakeholders they are designed to serve.

18. We recommend adding additional areas of diversity to the description of our sector's role in reflecting the diversity of our communities. In addition to cultural diversity, our members also attempt to ensure that they reflect the diversity of gender, age, socio-economic class, ability, and sexual orientation present in their communities.
19. We disagree with paragraph 19 of PN CRTC 2000-13. Amongst NCRA/ANREC member stations, most community station programming is produced by volunteers. Funding levels are not sufficiently high to permit all of our member stations to hire staff to manage the station and produce programming. Despite this hardship, stations feel that volunteer engagement is what ensures that their program content is truly representative of the community, and that they provide community access, opportunities for democratic decision-making, and training for community members. We therefore recommend adding a requirement for volunteer engagement in the production of programming. We recognize that ARC du Canada, ARCQ, and their members may differ on this issue, so we recommend some flexibility on the level of volunteer involvement required of stations.
20. While the objectives described above and the volunteer engagement requirement could be applied to most community-based campus and community Type A and B stations, it would pose a problem for some instructional stations. We address that issue below.

Q.3 Presently, there are two main policies governing the campus and community radio sector. Is it still necessary to have two policies, or would the sector be better served by one policy? What would be the implications of combining both policies and regulatory approaches?

21. Most of our members agree that two policies may be redundant, especially now that community-based campus stations and community stations can be expected to achieve the same objectives (discussed above). Community-based campus stations are no longer merely campus-oriented broadcasters; they have become broadcasters that serve large and diverse communities well beyond the campuses on which they are located. We therefore recommend harmonizing all of the existing programming distinctions between these two types of stations below. We believe one policy would make it easier for stations to understand the regulatory requirements, and unify the sector.
22. We also recognize that community-based campus stations and community stations operate under different constraints with respect to funding (i.e. student levies, advertising), and governance (i.e. board composition, stakeholders, membership). These constraints lead to different pressures and challenges that affect stations' abilities to meet particular requirements. Unifying the policies without proper consideration of these differences could result in the imposition of impractical requirements on stations. We believe these issues could be addressed by including separate sections within one policy to address issues unique to community-based campus and community stations, and by providing flexibility for certain requirements (specified below).

23. In particular, we recommend retaining the existing specifications for community-based campus stations outlined in PN CRTC 2000-12 under the heading “Structure of the Boards of Directors of Campus Stations”. We also recommend retaining the current advertising limit distinction (see question #21).
24. In light of the shared objectives of community and community-based campus stations, we believe that instructional stations may need to be governed by a separate policy with different objectives. This is discussed in more detail below.
25. Some of our members are confused about the distinctions between the campus and community radio policies and do not realise how similar the policies, mandates and services of stations licensed under both policies can be. For example, some community stations are under the mistaken impression that community-based campus stations serve and broadcast to campuses only, and not the surrounding community. This type of misconception may be evident in the comments provided by individual stations.

Q.4 Presently, community stations are defined as either Type A or Type B stations. Is this distinction still relevant? Should this distinction be limited and simplified or otherwise changed? If so, how?

26. We believe that the distinctions between Type A and Type B stations are not as relevant as they once were. Due to the ever-changing nature of broadcasting technology (i.e. the introduction of satellite radio and TV, digital cable radio and TV, Wi-Fi, Internet radio, etc.), combined with signals that bleed from other markets, commercial media is available in most parts of the country. As a result, there is competition present and listeners are exposed to other types of broadcast media in most markets.
27. The current distinction between Type A and Type B stations makes the licensing application process more difficult, and requires stations to keep track of the differences in programming requirements. We believe this could be simplified without detracting from the services stations provide to their communities.
28. The most obvious distinction is the Spoken Word programming requirement – 15% for Type A stations and 25% for Type B stations. NCRA/ANREC members with both types of licenses, especially those located in small rural communities with small population bases and low funding levels, have noted the difficulty of producing high quality local spoken word programming. It can be labour-intensive, expensive, and relies on long-term volunteers or staff. Many small stations currently resort to programming obtained from other c/c stations in order to meet the 25% requirement. While excellent free c/c programming is available from stations across the country through the NCRA program exchange to supplement local programming, it is not locally-produced or locally-oriented. Some small stations feel that using this programming to meet the spoken word quota ties up airtime and reduces the number of opportunities for community members who are more interested in volunteering to produce locally-relevant music programming instead.
29. Therefore, we support harmonizing the spoken word requirements across all license designations by setting a minimum level of 15%. We are also open to discussing a

reasonable commitment to ensure that sufficient spoken word content is locally-produced. We discuss this in more detail under question #10.

30. Finally, we also note that the distinction between Type A and Type B stations is not well understood by our members. Some confuse these designations with developmental, low power, and protected stations. Many understand their own station's designation and programming requirements but not those of the other category. This confusion may be reflected in the submissions from our member stations.

Q.5 For campus stations, the Commission makes a distinction between community-based and instructional stations. Is this distinction still relevant? Should these distinctions be limited and simplified or otherwise changed? If so, how?

31. The NCRA/ANREC believes that the distinction is relevant. We feel that since the licensing transition was made from campus to community-based campus, most community-based campus stations have more in common with community stations than with instructional stations.
32. Specifically, most instructional stations serve as educational resources for colleges and universities that teach broadcasting skills. They tend to focus on skills required for employment in a commercial or public radio environment. While both community-based campus and instructional stations provide skills training to individuals, there is a key difference between them: many instructional radio stations do not share the c/c sector's focus on public access, diversity, and local non-mainstream content; instead, they provide training or access to the airwaves only to those who are enrolled in a connected broadcasting or journalism program.
33. We note that this may be an unfair generalization, as some instructional stations do play a more community-service oriented role, particularly where they exist in communities that are not served by other c/c radio services. Some instructional stations do combine their educational objectives with community access and training.
34. The NCRA/ANREC's instructional station members experience many of the same challenges faced by other not-for-profit c/c stations, and therefore they benefit from our regulatory assistance and lobbying work. For example, they experience low-power and frequency protection, financial, and copyright tariff difficulties. Regardless of their license designation and any policy distinctions, the NCRA/ANREC will continue to offer services to instructional stations, particularly those with a public service and community access orientation.
35. Despite our shared issues, we recommend licensing and regulating instructional stations that focus primarily on providing broadcasting training for students separately from community-based campus and community stations. We believe that only instructional stations that share the same objectives and meet a threshold of community access, diversity of voices and content, and public service should be included in the unified policy that we propose.

36. Further, in the context of spectrum scarcity, we recommend that the Commission give priority to new not-for-profit stations that allow for community access. We recommend that new instructional applicants that do not intend to fulfill the objectives we propose for c/c stations be encouraged to operate as Internet stations and available frequencies be reserved for stations that will fulfill those objectives.
37. We note that the NCRA/ANREC has not formally consulted with most instructional stations on this point. Several instructional stations that are NCRA/ANREC members and completed our survey indicated that they felt Internet-only would not adequately simulate a live broadcasting environment for students. Regardless, we feel that our recommendations are reasonable and practical in the context of existing spectrum management pressures.

Q.6 Currently, the Commission licenses developmental campus and community radio stations as noted above. Is this licensing approach still relevant? Should it be changed and, if so, what changes should be made?

38. The NCRA/ANREC supports the developmental licensing approach as one that assists in the establishment and development of new stations. However, we believe that changes are required due to pervasive spectrum scarcity.
39. Currently developmental frequencies are unprotected, and there is no system to reserve protected frequencies for stations to inhabit once their developmental licenses expire. This puts developmental stations at risk of being bumped from their frequencies by other applicants before reaching the three-year deadline to submit a broadcasting licence application. It also results in situations where there are no protected frequencies available for which these stations can apply upon completion of their license terms.
40. Developmental stations have extremely limited resources. They struggle to raise sufficient funds to pay for engineering briefs, and do not have enough regulatory experience to handle the complex procedures involved. They put enormous effort into constructing and establishing stations with no guarantee that they will be able to serve their communities beyond three years. We feel strongly that the Commission should recognize the investment communities put into creating developmental stations with a view to serving their communities permanently at the end of the developmental period.
41. Therefore, we propose to lengthen the developmental license period to five years to give organizations more time to complete planning, fundraising, and other tasks involved in creating a sustainable station. We also recommend collaborating with Industry Canada to provide frequency protection to developmental stations during the five-year period, and reserve a suitable protected frequency for them at the completion of the developmental period.
42. At the end of five years, stations would be required to prove that they are financially and organizationally viable in order to graduate to the protected full power frequency. In this sense, developmental licenses would serve as probationary periods; stations would graduate to a full c/c license at the end of the successful development period.

43. We note that some of our members are misinformed about the features that distinguish developmental stations from other license types.

Q.7 At present, the Commission's record of the membership of the board of directors of each station is only updated on a seven year basis (i.e. at the time of renewal). This is problematic since the Commission remains unaware of changes to the composition of the board over the licence term. How can the Commission be kept informed on a more frequent and routine basis?

44. The NCRA/ANREC recommends that the CRTC establish a web portal and give each licensee an account. Stations could log in to their own accounts to see their license terms and conditions, any applicable decisions, contact information, board of directors, and other pertinent information. Stations would be required to use this portal to update their contact and board information, submit license renewal applications and annual reports, and participate in other regulatory procedures. We believe this would simplify things for both licensees and the Commission.

Q.8 Applicants for campus and community stations are measured against the requirements of the policies by which they will be regulated to help determine whether they are to be licensed. Spectrum is increasingly scarce, which brings to light the possibility of competitive licensing scenarios involving applicants for campus and community radio stations and applicants for commercial and CBC stations. How should the Commission evaluate applications for campus and community radio stations in these competitive scenarios?

45. We believe insufficient priority has been given to developing the community broadcasting sector in Canada. There are few markets where commercial and CBC services are under-developed; on the other hand, many markets are not served, or are only partially served by c/c broadcasters. We believe this is contrary to the *Broadcasting Act*, which mandates that a healthy broadcast system is comprised of commercial, public and community elements. It is also contrary to the notion that the airwaves are publicly owned, and Canadians deserve to hear their own voices reflected on those airwaves independent from commercial interests.
46. To remedy this discrepancy, we believe the solution is for the Commission to consider whether a market is adequately served by c/c broadcasters before approving commercial and CBC applications, and to reserve at least one protected frequency in each market to ensure that future development of c/c radio services can occur. In areas where there are significant numbers of both English- and French-language speakers, at least two frequencies should be reserved, one for each type of language broadcaster.
47. We are aware that spectrum management is handled by Industry Canada. We also understand that Industry Canada cannot predict the future viability of every frequency in every market, but they can evaluate existing options and make predictions. We therefore recommend the establishment of formal communications between the CRTC and Industry Canada and the creation of a joint advisory committee. The committee's task would be to ensure that the Commission is fully apprised of how much spectrum is available in a given market and the range of available full-power and low-power options to inform its licensing decisions.

48. Given the important role that community broadcasters play in terms of contributing to the diversity of voices in the broadcasting system, providing an important source of locally-relevant content, official language minority (OLM) and third language services, and offering community access, we firmly believe that the development of this sector should take priority over increasing the number or broadcasting range of commercial radio services or providing opportunities for CBC or commercial stations to move from AM to FM. The important role of the *c/c* sector is supported by numerous external reports, studies, and CRTC decisions released during the last 10 years.
49. The funding and resources of our sector are grossly inadequate compared with the resources that commercial applicants and the CBC bring to the licensing process. The NCRA/ANREC feels strongly that we should not be expected to compete with those applicants under the guise of an equal playing field. By virtue of our not-for-profit nature and lack of mandated government funding, the *c/c* sector is at a serious disadvantage. As such, and in light of Canada's underdeveloped *c/c* sector, we believe *c/c* applicants should be given special consideration in competitive proceedings.
50. In assessing whether community radio services in a market are adequate to permit licensing of additional commercial or CBC stations, we suggest that the presence of a sole community broadcaster, particularly in an urban centre, does not mean that the community is properly served. There are several reasons for this. First, despite our best efforts one *c/c* broadcaster cannot fill every community need that the commercial and public sectors do not fulfill. Second, many community-based campus and Type B stations serve specific and complementary niche audiences and sub-communities within their communities. Third, many communities have significant French and English-speaking populations with different *c/c* broadcasting needs. Fourth, in some locations *c/c* broadcasters do not have sufficient signal coverage to serve the entire market. For these reasons, it may be necessary for multiple *c/c* broadcasters to work cooperatively to serve their larger communities. This already occurs in Vancouver, Ottawa and Toronto.
51. We recognize the commercial sector's inability to support these recommendations, as they put the needs of the *c/c* sector before those of the commercial sector. Therefore we are also open to supporting any alternate cooperative solutions to spectrum management that would permit both sectors to realise their goals simultaneously.

Q.9 How can the Commission ensure that a greater diversity of voices is provided in the broadcasting system through the campus and community radio sector?

52. The NCRA/ANREC believes that the *c/c* radio sector already provides a significant amount of diversity to the broadcasting system. Through our efforts to serve, represent and involve our communities, we are committed to ensuring diversity in our content, staff, and volunteer base. While improvements could certainly be made, we are nevertheless proud of our accomplishments in this regard.
53. If greater diversity of voices is possible through our work, we believe capacity-building for *c/c* stations is essential. With more resources at our disposal, we could train staff and volunteers, conduct more effective community recruitment and awareness

campaigns, develop comprehensive policies and procedures, produce policies and training materials in multiple languages, and avoid “tokenism” in our approach to increasing diversity. Most stations are currently limited in what they can accomplish in these areas due to lack of funding and expertise.

54. We also recommend preferential treatment for community radio when faced with spectrum management issues, as this will help to ensure that the c/c sector remains healthy and sustainable. Our stations cannot contribute to the diversity of voices if they cannot continue to broadcast.
55. We support retaining the existing policy content supporting third-language programming (PN CRTC 2000-13 paragraphs 17 and 18; PN CRTC 2000-12 paragraphs 16 and 17).
56. We also recommend instituting a basic OLM programming requirement. The requirement could be minimal (e.g. 1 program per week), but it would ensure a basic level of community service and cultural diversity. We recognize a need for flexibility to exempt stations located in rural areas, and stations in markets served by both Anglophone and Francophone, bilingual and/or ethnic community broadcasters.

PROGRAMMING REQUIREMENTS APPLICABLE TO THE SECTOR

Q.10 What are the effects of programming requirements, including spoken word and category limitations for music, for the campus and community radio sector? Should they be maintained or changed? If changes are necessary, what should they be?

57. The NCRA/ANREC believes that programming requirements help ensure that c/c stations serve and engage their communities, maintain diversity of voices, and avoid becoming solely entertainment. They help differentiate us from commercial and public broadcasters. Many of our member stations impose stricter standards on themselves than are currently imposed by the campus or community radio policies.
58. The requirements also assist stations to resist pressure from stakeholders to provide more mainstream content. For example, some community-based campus stations are pressured by student governments to provide less spoken word and more hits, which would appeal to the student body. Community stations often receive program proposals from people who want to emulate commercial radio programming.
59. At the same time, some small stations report difficulty meeting the existing spoken word requirement without broadcasting substantial non-local content (discussed in paragraph 28). Some of these stations also report greater community interest in traditional category 2 music rather than category 3. In contrast, community-based campus stations in urban centres report greater community interest in hearing specialty, emerging and experimental musical genres. Our recommendations outlined below attempt to take all of these issues into account.
60. Most stations also report that the current music categories described in PN CRTC 2000-14 (*Revised content categories and subcategories for radio*) are confusing, out-of-date,

and fail to accommodate new and emerging genres that are prominently featured in our members' programming. Our members report increasing difficulty explaining the distinctions between sub-categories to their volunteers, especially for new music that crosses genre boundaries and defies genre labelling. Confusion about which songs fall into category 2 vs. category 3 can lead to insufficient Canadian Content. In short, we recommend an overhaul of the music category system in the near future.

61. Most importantly, we recommend harmonizing the programming requirements across the sector for ease of implementation. Although we recommend reducing some of the existing requirements, we believe that strict adherence to our proposed c/c station definition and objectives will result in many stations broadcasting more than the minimum content requirements, and we strongly encourage them to do so.
62. Our recommendations for changes to the programming requirements are as follows:
 - a) *Spoken word*: We recommend setting the total minimum requirement at 15% for both community-based campus and community stations. We note that this is a minimum, and therefore we strongly suggest that stations provide more than 15% spoken word if they have the capacity to do so. We believe the lowering of the minimum requirement should not be seen as permission for stations to reduce their efforts to seek out marginalized voices, and encourage dialogue on community issues. We also support emphasis on locally-produced spoken word; by suggesting a reduction in the overall spoken word requirement, we are not suggesting a decreased responsibility to provide local content, as this is one of the strengths and responsibilities of the c/c sector. Based on information from our members, we believe most spoken word programming produced by c/c stations is original local programming, and we believe this will continue as long as stations adhere to the objectives we propose. If the Commission would prefer to specify a minimum percentage of local spoken word content, we are open to discussing a reasonable commitment. We also support re-visiting this issue prior to the next sector policy review proceeding to ensure that a reduction of the minimum does not result in a substantial reduction in spoken word content.
 - b) *OLM and third-language content*: See paragraphs 55 and 56.
 - c) *Music*: We recommend that both community-based campus and community stations be required to provide at least 20% of musical selections from categories other than subcategory 21 (pop, dance and rock). We believe it is important for c/c stations to include selections from category 3 in this 20%. However, in the spirit of simplifying the regulatory environment, we cautiously recommend removing the specific category 3 requirement, as we believe most c/c stations will continue to broadcast category 3 selections within this 20% in response to community demand. If the requirement is removed, we recommend re-visiting this issue prior to the next policy review to ensure that category 3 content does not decrease. As described above, the categories should be updated to ensure that stations classify selections correctly when calculating Canadian content.

- d) *Hits*: We recommend removing this requirement for community-based campus stations. It is difficult for volunteers to quantify hits, as they rarely have access to numerous years' worth of historical Nielson and Billboard charts. Our proposed definition and objectives will require stations to self-impose a cap on hits in favour of providing exposure to non-mainstream, local, and emerging artists.
 - e) *Emerging Artists*: Based on our proposed definition and objectives, we believe that most of our members will not have difficulty broadcasting at least 15% music by emerging artists. This belief is based on the definitions for "emerging artist" discussed in the CRTC document "Emerging Artists on Commercial Radio" (27 February 2008), all of which are based on artists' commercial chart status. However, we do not propose to quantify our emerging artist selections based on commercial charts. Instead, we propose to include artists appearing on the Yearshot charts, and local artists that do not appear on any chart. We also recommend flexibility for rural (and particularly remote northern) stations that do not receive free new music from record labels or artists themselves.
63. On behalf of our instructional station members, we also recommend that the existing requirement to broadcast at least 2 hours per week of formal educational programming be reduced or eliminated. Stations find it difficult to source this type of programming, they feel it does not serve their intended audiences, and it does not further their commitment to providing broadcasting training to students.
 64. We do not have enough information about the programming content of instructional stations to comment on the suitability of applying our programming recommendations to those stations.
 65. We note that some of our members are confused about the current programming requirements (though most voluntarily exceed the requirements, so regulatory non-compliance does not result). Staff and volunteers from stations licensed under both policies are exposed to discussion about each others' requirements. Some remember the requirements as they were prior to the changes announced in 2000, and some think their Promises of Performance are still in force. Many have not read the current policies at all and do not know where to find them. We believe that simplifying and harmonizing the policies will result in less confusion. We also recommend that the CRTC provide c/c stations with a simple point-form list of programming requirements that are not buried within a policy document.

Q.11 If the Commission were to amend any programming requirements, how would this affect the campus and community radio sector and its ability to maintain the distinctiveness of its programming to meet the stated goal of a greater role in ensuring Canadians have access to more diverse content? How would such changes affect other sectors?

66. Any changes to the programming requirements are likely to have a significant impact on c/c stations. Even the most positive changes will require re-training of staff and volunteers, re-design of paperwork and training manuals, and possibly re-organization of program schedules.

67. We believe that the disruption could be minimized through the adoption of uniform standards that apply to all community and community-based campus stations, with the option for flexibility in key areas. We also believe that sector involvement in the final determination of new programming requirements would help ensure that the changes are reasonable, necessary, and minimally disruptive. We discuss a proposed Code of Practice below that could be conducive to sector involvement and consultation.
68. With the exception of revised music categories, we believe the changes we recommend will not impact other sectors significantly. If the changes are successful in supporting the c/c sector to become stronger, more relevant, and more sustainable, our stations may attract a small number of listeners and advertisers from the commercial and public sectors. Otherwise we believe the sectors should perform complementary functions.
69. As long as our objectives are sufficiently clear, our programming will remain driven primarily by the needs and interests of our communities. We believe it is unlikely that most c/c stations or their programming will become less distinctive or unique.

EXPERIMENTAL MUSIC

Subcategory 36 (Experimental): Unconventional and non-traditional uses of classical instruments and sound equipment to create new sounds and orchestrations of these sounds. Included is audio art, turntablism, musique actuelle, electroacoustic and sound ecology. It does not include spinning or beat mixing where the alterations of previously recorded tracks are limited to mixes between two or more pieces or samples.

Q.12 Is the definition of experimental music proposed above appropriate? If not, how could it be improved?

Q.13 Under what circumstances should musical selections falling into the experimental category qualify as Canadian selections?

70. The NCRA/ANREC has expressed support for including turntablism and experimental music as musical categories and Canadian content frequently in the past. We feel that the Commission's report on the subject does a good job of summarizing the arguments that have been raised, surveying stations about their programs that feature this type of content, and clarifying some of the distinctions between different types of this music. We feel that the proposed definition for subcategory 36 (experimental) effectively addresses many of these issues.
71. NCRA/ANREC members have expressed a few concerns with the definition. First, some question the Commission's use of the term "classical" in reference to instruments, arguing that one of the hallmarks of experimental music is its use of non-traditional instruments to make sound. We therefore recommend striking the word "classical" from the definition.
72. NCRA/ANREC members also noted that the line between "turntablism" and "beat mixing" is both unclear and arbitrary. For example, they wonder why something would be acceptable as experimental music under the proposed definition if a DJ scratches over one or two pre-recorded pieces but not if they mix many pre-recorded tracks and

samples into one nearly unrecognizable piece. However, many agree there should be a limit to the length of the source material a DJ can include in the new composition, that it should involve some kind of artistic intent, and that it should be more than just mixing two songs together to maintain flow in a DJ set.

73. And as mentioned in the Commission's report, using pre-recorded work raises copyright issues and involves some subjective questions about creativity and what makes a composition created from existing music sufficiently new.
74. Finally, our members noted that not all experimental music involves use of pre-recorded tracks and not all music that uses pre-recorded samples should necessarily be considered experimental.
75. One possible way of resolving these problems is for the Commission to consider creating two new subcategories. We recommend the following:
 - a) Subcategory 36 for experimental music: This refers to the unconventional and non traditional uses of instruments and sound equipment to create new sounds and an orchestration of these sounds.

This makes room for new types of category 3 music, and Canadian content can still be determined using the MAPL system.
 - b) Subcategory 37 for music based on pre-recorded work: This refers to work that uses previously recorded sounds to create new sounds and orchestrations of those sounds. It can involve scratching, effects, manipulation, layering, beat mixing and digital editing where less than half of the original source material is used and more than two pieces are mixed together in one minute. The final work should be at least two minutes in length and does not refer to spinning, where the intent is to seamlessly blend one song into another for an extended set. Included is audio art, turntablism and sound ecology.
76. We acknowledge that our proposed definition for subcategory 37 does not fully address the issue of originality of the new composition. We note that since there is room for subjectivity in this matter, there will be situations where a DJ, volunteer, employee, or someone else qualified to judge originality will have to determine whether a composition properly falls under subcategory 37. However turntablism is a flexible art that does not lend itself to more precise definition, so we believe some level of subjectivity is unavoidable.
77. Assuming the originality of new work is established, we recommend applying the existing MAPL standard and designating the work as Canadian content when the artist and production categories are both fulfilled by a Canadian DJ.

AVAILABILITY OF PROGRAMMING DEDICATED TO OLM COMMUNITIES

Q.14 What are the challenges faced by OLM community broadcasters and program contributors in terms of access to the airwaves?

78. We refer the Commission to the submission of the NCRA/ANREC in the OLM proceeding earlier this year. Our situation has not changed since that was written, and our concerns and challenges remain the same.
79. In general, our members report challenges that focus on a lack of resources. They have difficulty recruiting OLM volunteers because they often have no bilingual staff and little money to conduct recruitment campaigns geared specifically toward OLM community members. They also have difficulty training OLM volunteers in their own language, and cannot produce translated training materials. They have little access to OLM news sources, spoken word material, or music for volunteers to use on-air.

Q.15 How can the Commission help ensure the presence of linguistic duality in the broadcasting system and the availability of content to OLM communities? In so doing, how can the Commission ensure that the needs and realities of OLM communities are reflected in programming?

80. The NCRA/ANREC believes that capacity building, training, and increased funding are the most obvious solutions to the challenges described above. C/c stations are mandated by existing CRTC policies to be directly reflective of their communities and promote diversity of voices to the greatest extent possible. Most stations are not hampered by lack of interest in achieving these objectives as they pertain to OLM or other communities, but they cannot achieve them without increased capacity and resources.
81. As mentioned earlier, we recommend introducing a general requirement for all c/c stations to provide a basic level OLM programming, unless a case can be made for exempting a station from the requirement (e.g. if other locally-produced OLM broadcasting services already exist in the community). We also encourage c/c stations to provide more than the minimum level of such programming where resources permit.
82. We agree with the principles outlined in CRTC decision 2009-481, and we would support integrating these principles into our programming requirements.

ELEMENTARY OR HIGH SCHOOL BASED CAMPUS STATIONS AND MICRO STATIONS

Q.16 Should the Commission license elementary or high school based stations, or should they be exempt from licensing?

Q.17 What requirements should the Commission impose on these stations as criteria for licensing or for exemption from licensing? Such requirements could relate to programming, ownership, composition of the board of directors and technical considerations.

83. While we support the development of these types of stations, we believe licensing and spectrum priority should be given to stations that provide broad community access and integrate community members into their programming and governance. If they will

adhere to our proposed definition and objectives for c/c radio, we believe they should be eligible for c/c licenses. If part or all of their programming is targeted toward a young population with limited or no access provided to other community members, we recommend that they be given lower licensing priority than c/c broadcasters that will serve a broader portion of the community.

84. Further, if they intend to limit their service to a school population or very limited sub-community, we recommend that they be limited to Internet-only, closed-circuit, or very low power for reasons of spectrum scarcity. As we understand it, elementary and high school stations may not allow public access to their facilities due to security and liability concerns. The NCRA/ANREC suggests that stations of this nature should not be eligible to occupy scarce spectrum in situations where it may preclude development of a c/c broadcasting service that will fully adhere to the objectives we propose.
85. If the Commission does license and regulate these stations, we recommend implementing requirements so that a minimum percentage of programming originates from students rather than parents, teachers, or staff. We also recommend a not-for-profit requirement, and adherence to the other programming requirements we recommended for all c/c stations above.

Q. 18 Should the Commission license micro radio stations or should these stations be exempt from licensing?

Q. 19 What requirements should the Commission impose on micro radio stations as criteria for licensing or for exemption from licensing? Such requirements could relate to programming, ownership, composition of the board of directors and technical considerations.

86. The NCRA/ANREC supports creating licensing procedures to serve rural OLM communities as described in paragraphs 37 and 38 of the Notice of Consultation. We recommend that the Commission license these stations to ensure that they provide local not-for-profit programming and community access to the greatest extent possible. We recommend that individual stations and network operators be required to adhere to our proposed objectives and definition for c/c stations, as well as to any governance and organisational requirements currently imposed on stations operating under the Community Radio Policy. We also believe it is reasonable to require adherence to the same programming requirements that we recommend above for c/c stations, with flexibility to substitute locally-produced programming with network programming where required.
87. The NCRA/ANREC would be pleased to make the shared content on our program exchange available to such stations if they are licensed as community stations.
88. If these types of stations are required to adhere to the same basic requirements as c/c stations (with modifications to account for their limited resources), they could increase their local content capacity to become full-fledged local c/c services operating at increased power in the future, without requiring drastic licensing changes. This would be beneficial in situations where community members may eventually be interested in becoming more involved in their local c/c broadcasting services.

MECHANISMS AND OPPORTUNITIES FOR FUNDING IN A SUSTAINABLE FASHION

Q.20 What are the challenges that the campus and community radio sector currently experiences with respect to funding?

89. The c/c sector faces a substantial number of challenges with respect to funding that have been exacerbated by the recent economic recession. These challenges lead to stagnation because stations have only enough money to maintain the status quo with nothing extra to put into new projects, technology upgrades, or station enhancements. Stations are also hampered in their abilities to embark on long-term growth projects because unstable funding prevents them from creating reliable budget projections. (A quantitative discussion of our funding issues can be found in our joint submission with ARCC and ARCQ.)
90. The main funding challenges of NCRA/ANREC members can be divided into 6 areas, which affect both community and community-based campus stations:
 - (a) *Declining or low advertising revenue.* Not all c/c stations sell advertising, but many that do have noted the increasing number of commercial broadcasters in their markets with which they must compete. Many find that advertisers are reluctant because they perceive c/c stations as having a limited market share, catering to niche audiences, and lacking block programming. Many stations also experience resistance from community members who object to corporate advertising.
 - (b) *Student levy and university difficulties.* Many community-based campus stations have reported that students are less willing to support non-academic programs and services due to increasing tuition fees. Some universities have declining enrolment, which has resulted in reduced student levies. Many community-based campus stations receive relatively small levies that are insufficient to keep the station open without supplementary fundraising, which is difficult in communities that also have a community station. Student governments are notoriously unstable and their support for stations fluctuates; one station recently lost its student levy completely after they were forced into a funding referendum for which they were unprepared. Community-based campus stations have also experienced a significant decline in the free services formerly offered by universities, and are now charged market value for rent, utilities, janitorial services, and even building construction and renovation.
 - (c) *Instability of annual fundraising income.* Many stations report donor fatigue and reduced donations, which they attribute to increased numbers of community organizations asking for community support. They also report increased competition within the media market and suggest that multiplying media options mean that more effort is required to educate community members who are not already supporters about the value and importance of c/c radio. While a few stations have reported increases in funding drive revenue, many have reported reaching a fundraising ceiling which they cannot exceed despite their best efforts. Some members have suggested that fundraising revenue is likely to remain low

because their listenership is rooted in marginalized communities that face disproportionate levels of poverty. Stations' inability to obtain charitable status means that they cannot offer tax receipts to donors. (A CRTC recommendation to the Canada Revenue Agency to provide charitable status to c/c stations would be helpful in this regard.)

- (d) *Few grant opportunities.* To our knowledge, all NCRA/ANREC members face significant difficulty obtaining grant funding. Most grant opportunities focus on new projects rather than providing operating or infrastructure funding. Our members do not meet the criteria for most provincial or federal arts, cultural, or official languages grants. Lack of charitable status and affiliation with a university renders many stations ineligible for foundation funding.
- (e) *Staffing issues.* Most stations have insufficient funds to hire enough qualified staff, pay them properly, offer professional training, or provide extended health or dental benefits. In most cases, lack of staff means that stations have difficulty administering effective fundraising, advertising, or marketing initiatives. Low salaries and benefits and overwhelming job descriptions often lead to burnout and high turnover rates, which prevents stations from establishing continuity in their fundraising procedures.
- (f) *Miscellaneous.* The number of copyright tariffs that apply to not-for-profit stations has been steadily increasing. Stations have reported spending more money on incentives for funding drive donors because record labels have reduced the amount of free merchandise they provide. One station reported a decrease in rental income from sub-carriers that are suffering financially due to excessive market competition. Several stations also worry that a lack of funding for the NCRA/ANREC to continue to offer support programs and services will lead to decreased capacity for stations.

- 91. We would also like to make a few comments on the financial data presented by the CRTC. First, we are concerned that the line labelled "profit" misconstrues the financial reality of our members. It is unclear what this line represents, but we suspect it refers to money spent on capital equipment purchases, volunteer support, or other expenses that are not itemized in the lines above. We assure the Commission that very few, and perhaps none, of our members are well-funded enough to accrue a true surplus.
- 92. We also wish to draw the Commission's attention to the discrepancy in funding between Francophone and Anglophone stations illustrated by the financial data. Both types of stations are severely under-funded, but the problem is much worse for Anglophone and bilingual stations. Francophone stations outside Quebec are eligible for federal funding through Canadian Heritage, and stations inside Quebec are eligible for provincial funding. In contrast, Anglophone and bilingual stations throughout Canada are not currently eligible for any government funding. As a result, there is a vast discrepancy between the operating budgets of Francophone and Anglophone stations that are attempting to carry out the same objectives.

93. In general, Anglophone and bilingual stations operate on approximately one third the budget of Francophone stations in markets under 1 million inhabitants, and approximately two thirds in markets over 1 million. This is particularly evident in the average salaries at Anglophone and bilingual c/c stations, which are extremely low given the range of skills and expertise expected of these employees: only \$15,000 per year at Type A and Type B community stations in markets with fewer than 100,000 inhabitants.
94. We also note that our members employ a high percentage of part-time staff, which is not clear from the numbers provided. This is due to stations' financial constraints, which prevent them from hiring full-time staff. Most of our members have ample work to occupy the time of full-time staff but cannot afford to pay them, and instead rely on volunteer labour to complete key tasks. In this regard, it may be useful to develop a method to quantify the number of unpaid and underpaid hours. This would assist us to accurately determine the funding needs of the sector.

Q.21 Are advertising limits for campus stations still relevant? Should they be maintained? What would be the impact if they were raised or lowered?

95. While we recommend harmonizing most of the policy content for community-based campus and community stations, we support retaining the existing advertising limits for community-based campus stations, particularly in communities where both community and community-based campus broadcasters co-exist. This is in recognition of the student funding received by most of these stations, and to minimize competition for advertising sales with community broadcasters that rely more heavily on advertising revenue. While we recommend regulating instructional stations under a separate policy, we recommend retaining the advertising limit for them for the same reason.
96. Where community-based campus or instructional stations are faced with low student levies or levy cancellation, we recommend that stations have the opportunity to apply for a reduction or exemption from the limit. We also recommend re-visiting this policy in light of forthcoming sector funding. If it remains inadequate, it may be necessary to remove the limit to ensure that stations in financial jeopardy can continue to exist.
97. Most of our community-based campus members report that they rarely approach the limit, and that their listeners would not likely tolerate more advertising. Most support retaining the limit to maintain their distinct non-commercial sound, and to resist student government pressure to sell more ads to make up for proposed levy cuts.
98. We also recommend minor changes for all community-based campus stations to ensure that the advertising limits are functional. Specifically, we recommend changing the limit from a strict 4 minutes per hour to an average of 4 minutes per hour. This will allow stations to broadcast more advertising during programs that enjoy significant community financial support. We also recommend allowing stations to exceed the limit on special occasions, like during station-sponsored arts festivals. We also recommend exempting promotional ticket giveaways and similar activities from the definition of advertising, and focusing solely on produced or scripted ad spots.

99. Finally, we note that some NCRA/ANREC members are confused about advertising restrictions. Some believe restrictions are still in place for community stations and were not aware that the restriction had been lifted.

Q.22 How have their capacities for fund raising increased or decreased since the last review of this sector's policies?

100. The NCRA/ANREC has observed both increases and decreases in our members' fundraising capacities.
101. The increases are due to increased creativity and sophistication of fundraising methods, though this is primarily seen at c/c stations with more staff and larger budgets. For example, stations have begun to use the Internet more for fundraising purposes and are now raising money from Internet listeners located outside of their local broadcast market. A few stations have worked hard to increase their community profiles and fundraising efficiency, and have reported increasingly successful funding drives.
102. However, many stations have reported decreased fundraising revenue despite the improvements described above. Some of the reasons for this are laid out above in the answer to question #20.
103. The NCRA/ANREC recommends that CRTC and federal government support for increased fundraising skills education throughout the c/c sector could build fundraising capacity amongst stations and associations and enable coordinated national fundraising campaigns.

Q.23 How has the CRFC affected the funding of this sector? How could it be improved?

104. As noted in our response to question #20, a significant problem facing Anglophone and bilingual c/c broadcasters is the lack of grant opportunities available to them. Many stations believe that the CRFC holds significant promise for them in the future in this regard. They are eager to see growth in the amount of funds and the scope of funding programs available.
105. We believe that the CRFC has already made a positive impact on sector funding. A considerable number of stations received funding this year, and their reports indicate that the funded projects have been successful. The grants have enabled many stations to perform community outreach and increase the diversity of their programming. All stations report enthusiasm for the idea that a body finally exists to provide funding programs for which they will be eligible to apply.
106. However, funding is badly needed for urban and rural stations, small and large. In particular, stations need funding for equipment purchases, infrastructure development, organizational development, operational and fixed expenses, and emergency expenses. They also need it to perform effective outreach and create programming that effectively meets the needs of their communities.

107. For this reason, it is vitally important that the CRFC receive unrestricted funds and have the autonomy to develop ongoing funding programs and streams to disperse funds where they are most needed. Funding that is tied to projects creates more work for stations, and does not necessarily lead to a net gain.
108. The NCRA/ANREC also recommends increased flexibility with regard to application deadlines. The most recent April deadline coincided with some stations' funding drives, which made it difficult for them to complete applications on time. Eventually, rolling application dates would make it much easier for station staff to prepare effective applications without detracting from other station priorities. If the license designations and policies applicable to the c/c sector change as a result of this policy review proceeding, we also recommend that the CRFC re-evaluate which types of licensees are eligible for funding.

Q. 24 What funding models for campus and community radio are viable in the short, medium and long term? From where should this funding originate and what form should it take? For instance, should the commercial radio sector be mandated to devote certain portions of its funding directed at CCD to the CRFC?

109. The NCRA/ANREC, ARCC and ARCQ defer to the submission from the Community Radio Fund of Canada on the proposed mechanism for CCD funding of the not-for-profit radio sector. We have reviewed the CRFC's recommendations and rationale, and we support the recommendations in that submission.

ADDRESSING CONCERNS OF THE SECTOR WITH REGARD TO SCARCITY OF SPECTRUM

Q.25 Are there any accelerated processes that the Commission should implement when considering technical amendments for low-power radio stations in cases where such stations are at risk of losing the frequency on which they operate?

110. We believe that accelerated processes are important. However, we believe it is more important to provide frequency protection to low-power stations so that special processes are not required and frequencies cannot be lost, and to ensure better notification for low-power stations so that they are prepared to participate in any proceedings that do occur.
111. We recommend that the CRTC and Industry Canada work together to ensure that low-power stations receive timely notification of applications that will impact their frequencies. At present low-power stations are not entitled to any advance notification under Industry Canada or CRTC rules, and are not formally notified of these applications at all. We intend to participate in an upcoming Industry Canada stakeholder meeting to express these concerns, and we have written a letter, which is attached to this submission as Appendix B.
112. The NCRA/ANREC also believes that spectrum scarcity necessitates providing frequency protection to low-power c/c stations. Low-power stations fulfill exactly the same objectives as protected c/c stations; many have simply chosen the low-power route because it is less expensive. In some locations, protected frequencies are not available,

and low-power is the only option for new c/c stations. Without some form of low-power protection, it will not be financially viable to develop new stations to serve communities located in congested areas. The time, effort, and cost of developing a station would not be worthwhile if these stations risk losing their frequencies soon after they are licensed. We therefore recommend that the CRTC collaborate with Industry Canada to address this issue.

113. We appreciate the efforts of Commission staff to accommodate our low-power members when faced with the risk of losing their frequencies. The recent practices of shortened comment periods and accelerated processing of applications by stations at risk to move to new frequencies have been extremely helpful. Regardless, these situations cause enormous stress for stations and detract immensely from their abilities to carry out their objectives. It would be preferable if these emergencies could be prevented. We also worry that a spectrum scarcity will render these accelerated processes ineffective, as stations at risk will have nowhere to move except to other unprotected frequencies.
114. To reduce the risk of these occurrences, the NCRA/ANREC recommends that the Commission reserve at least one protected frequency in every market possible, as described in paragraph 46. We recognize the concerns of the commercial radio sector with this proposal, as there are many AM stations also facing FM spectrum scarcity issues. However, we argue that the requirements of the *Broadcasting Act* have not been met if communities cannot obtain or develop c/c radio services.
115. We also strongly encourage commercial applicants that intend to displace a low-power c/c station to provide financial and technical assistance. Further, we recommend that the Commission revise the definition of Canadian Content Development contributions to include donations of this kind. The Commission has already certified the CRFC as an eligible recipient based on a principle that supporting the c/c sector contributes to the development of Canadian content. By revising the definition as we suggest, the Commission would be strengthening its commitment to this principle.
116. Eventually we hope the CRFC can administer these emergency contributions directed to individual stations. In the meantime, we believe it should be possible for commercial applicants to make CCD-eligible contributions directly to c/c stations that will be affected by commercial applications. We believe this would encourage commercial broadcasters to voluntarily offer support, and it would reduce the burden on c/c stations and the NCRA/ANREC to persuade commercial applicants to participate in negotiating a solution.
117. In the absence of reserved frequencies for c/c stations, we believe a “shoehorn” approach will be required. This will entail commercial and c/c stations finding ways to co-exist using the small amount of remaining spectrum by applying creative technical solutions, like directional antennae. These solutions are more likely to be possible if commercial broadcasters have a CCD-related incentive to assist c/c broadcasters. We also strongly recommend that commercial broadcasters be flexible about permitting a minor degree of interference at the outside edges of their protected contours if it will help ensure that a community can be served by a c/c station. We also recommend that

the Commission make available its dispute resolution practices and procedures (outlined in PN CRTC 2000-65) to c/c and commercial parties in these situations.

118. We further recommend that the Commission encourage commercial applicants to provide a second choice frequency allocation if approval of the first choice would result in a low-power c/c station losing its frequency. If no second choice is available, we encourage the applicant, the Commission, and Industry Canada to assist the c/c station to determine whether another suitable frequency exists without requiring the c/c station to incur the unplanned costs of an engineering survey. If no alternate frequency is available, we ask the Commission to give priority to the c/c station for continued use, even if formal protection is not provided. We believe that the public interest of ensuring that Canadians in all markets can be served by c/c radio services should outweigh the strength of a commercial application that proposes to eliminate an existing c/c service.

Q.26 What is the impact of the changes announced by the Department of Industry regarding the domestic protection regulations for FM stations?

119. We anticipate that the impacts of these changes may be both positive and negative. The positive impacts may not be known until the 1 January 2011 deadline passes. It is possible that spectrum may become available that is currently protected but unused, and that this may create additional space for new c/c stations. It is also possible that many existing commercial stations will expand to their maximum parameters leaving less space available for new c/c stations.
120. On the other hand, c/c stations that wish to expand to their maximum parameters are already experiencing difficulty raising sufficient funds to complete engineering studies and purchase new equipment in order to apply before the deadline. These stations will be at a significant disadvantage compared with commercial broadcasters that typically have access to funds without requiring years of fundraising. C/c stations will then lose the opportunity to expand to their maximum parameters despite having received less than two years' notice of the change. Two years is a short time for some c/c stations to raise funds while also covering their basic monthly expenses.
121. We also expect that most available spectrum that is liberated when protection to maximum parameters is removed may be suitable only for low-power use. While this may enable the creation of additional c/c stations in congested areas, it may not result in any improvement to the c/c sector unless some form of protection can be provided for c/c low-power stations.
122. We note that although the changes proposed by Industry Canada will prevent stations from having an automatic right of expansion within their maximum contours, stations will still be free to apply for technical amendments to expand their operational contours. This puts low-power c/c stations at continued risk of being bumped from their unprotected frequencies.
123. It is important to note that some NCRA/ANREC member stations do not understand these changes or how they will be affected. We will attempt to provide them with

information and assistance, particularly as the deadline draws near. We have requested exemptions for c/c stations from Industry Canada (see Appendix B).

Q.27 How widespread are protection issues for low-power campus and community broadcasters?

124. During the past five years, the NCRA/ANREC has assisted at least six stations with low power protection issues. These stations include CJAI, CHMA, CFXU, CFBX, CHES, and CJAM. Issues have arisen mainly in densely populated areas where spectrum scarcity is most severe. Suitable frequencies can be scarce in mountainous regions too, where uneven terrain and limited antenna sites result in fewer desirable frequencies.
125. Currently, there are a number of stations holding developmental licenses that will have difficulty finding suitable protected frequencies to which they can move. In the Victoria market, an AM instructional station is at risk of losing its ability to continue broadcasting, as there are no protected FM frequencies available and it cannot afford to pay the exorbitant costs of maintaining its aging AM transmitter.
126. For some time we have been advising new low-power or developmental stations to research protected frequency options from the outset, and plan to apply for a power upgrade as soon as possible to avoid being bumped from their frequencies or finding no spectrum available.
127. For stations that are newly established, this is a great source of stress that detracts from the service they can provide to their communities. For example, a low-power station that has its frequency threatened by a new commercial applicant must mobilize immediately in order to respond. With few paid staff, it must begin engineering research, emergency fundraising, letter writing campaigns, and negotiation with the applicants, in addition to their daily administrative duties. It is further disadvantaged due to the absence of notification requirements, so it may not find out that its frequency is threatened until quite late in the process.
128. This is one of the biggest issues facing the sector because it will prevent future sector development, or restrict it to groups outside the most congested areas that can organize and fundraise effectively enough to apply for a protected license from the outset. We note that Internet-only broadcasting is not currently a solution that would allow us to meet our proposed objectives for reasons described in question #32. We also note that AM is not a viable option, as the costs of purchasing, installing, and maintaining an AM transmitter are far beyond the means of not-for-profit organizations.
129. For these reasons, we strongly encourage the Commission to work with Industry Canada to establish reserved frequencies and protection for low-power stations as described in paragraphs 46, 112 and 114 to ensure that the goals of the *Broadcasting Act* are carried out to their fullest extent. We believe that licensing objectives should be relevant to the determination of which broadcasters receive frequency protection, not just technical considerations.

130. As described in paragraphs 115 and 116, we recommend that the CCD policy be modified so that direct contributions by commercial broadcasters to assist low-power c/c stations will be eligible as CCD contributions.

Q.28 Some long term solutions to the FM frequency shortage problem could involve the reassignment of television spectrum (channels 5 and 6) to radio, and/or the adoption of a digital radio standard. What policies or measures could the Commission take in the event of these changes with respect to the campus and community radio sector?

131. We have heard indirectly from Industry Canada staff that channels 5 and 6 have already been reserved for U.S. digital television. However, in the event that re-assignment does occur, the NCRA/ANREC would like the Commission and Industry Canada to consider reserving some or all reassigned channels for c/c sector use.
132. Although this re-assignment could eliminate the barriers to c/c sector growth caused by spectrum scarcity, our main concern is that use of this new spectrum could require modified transmission equipment and receivers, which our stations and many of our listeners could not afford. We hope the Commission will take technical, equipment, and cost requirements into account when determining how to proceed on this issue.
133. We are also concerned that adoption of a digital radio standard will pose similar problems as those described above. We encourage the CRTC to avoid implementing requirements for all radio broadcasters to convert to digital without first taking our financial reality into consideration.

ROLE AND PARTICIPATION OF C/C BROADCASTERS IN NEW MEDIA ENVIRONMENT

Q.29 Campus and community radio serves a function that is not necessarily provided by other components of the broadcasting system in terms of the programming provided and opportunities for community access. Is there a similar need in the new media environment?

134. The NCRA/ANREC believes there is a similar need in the new media environment. C/c radio serves community needs and provides a focal point for community information and interaction. New media presents another platform to carry out this mandate, in more creative and flexible ways than traditional radio permits. Since increasing numbers of community members are looking for content in the new media environment, c/c stations must be present in that environment to remain relevant.
135. We note that some c/c radio listeners do not yet have reliable access to online audio media. Barriers to access may include poverty, disabilities, and remote locations without affordable access to high speed Internet. Many listeners also prefer listening to the radio at home, in their cars, or using portable devices. Further, c/c radio stations remain local hubs of community involvement, training, and communication.
136. We recognize the significant future potential of new media. However, at this point we feel that a new media presence is complementary to our terrestrial radio presence, but it cannot replace traditional radio broadcasting due to challenges outlined below.

Meanwhile it is important for c/c radio to continue to provide and develop our existing community services and to use our radio infrastructure to support the development of a supplementary new media presence.

137. The Commission's recent new media decision suggests that there is no way for the Commission to regulate this or establish minimum levels of Canadian content or c/c sector content on the Internet. For this reason, we think it is important to develop new media services as complementary to our traditional broadcasting services. This strategy will allow us to retain the legitimacy that comes with recognition from a federal regulator, and the protective measures and regulations that ensure the preservation of our local mandate and objectives.

Q.30 What are the benefits of a new media presence for campus and community radio stations? Do audiences expect such a presence?

138. Our members report that the benefits of a new media presence are substantial. It helps stations increase their visibility, recruitment, advertising revenue, promotion of special events, and outreach. It ensures that we remain current and relevant, particularly for younger listeners who turn to the new media environment first. It also enables c/c stations to expand their listening audiences to other parts of Canada and to other countries. This is particularly important for third language and special interest programs, and can help stations increase their program-specific fundraising. Stations can also provide listeners with higher quality audio by making programs available on their website for listeners to download.
139. A new media presence is also particularly important because it allows listeners to customize their listening experience and listen to specific programs when they choose to listen, rather than missing programs that are not scheduled at convenient times. This overcomes the challenges created by c/c stations' complex schedules with numerous specialty one- or two-hour programs that are broadcast only once per week.
140. Stations overwhelmingly report that their listeners, stakeholders, and community members expect them to have a new media presence. This may take the form of a simple website, a simultaneous webstream of their radio broadcast, access to archived programming, and podcasts.
141. New media technologies also facilitate exchange of programming between c/c stations and collaborative programming projects. This collaboration is important to our sector's sense of community.

Q.31 What challenges do campus and community radio stations face with respect to participation in the new media environment?

142. We believe that the main challenge c/c stations face is lack of funding. This impacts stations' abilities to innovate, expand operations, upgrade equipment and software, learn to use and maintain them, research and develop new initiatives, train staff and volunteers, and provide reliable high quality new media services. Many stations now report that they spend almost as much on maintaining a reliable new media presence,

including the cost of computers, bandwidth, web design, web hosting, and repairs, as they do on traditional technology like CD players and transmitters.

143. Most NCRA/ANREC member stations rely heavily on volunteers due to a shortage of paid staff. Volunteer turnover causes difficulties with maintaining technical improvements initiated by a volunteer with specific technical skills. Having a large contingent of volunteers with different comfort and skill levels with technology also creates a challenge for stations in terms of providing sufficient training so that all volunteers can participate in stations' new media initiatives.
144. There is also great uncertainty about the copyright tariffs that c/c stations might incur through our new media activities. Copyright collectives are proposing new tariffs that may apply to our sector's activities, including digital storage of music and webcasting. We anticipate additional tariffs that may prohibit some stations' abilities to participate in new media activities like podcasting. Copyright collectives are able to propose tariffs that apply retroactively, which creates added concerns for our members. We are concerned that tariffs may become sufficiently prohibitive that some of the smaller c/c stations will be prevented from participating in new media initiatives at all. A copy of our recent submission to the Copyright Consultation process is attached as Appendix C.
145. We therefore recommend that a portion of c/c sector funding be directed toward new media development to assist us in overcoming these challenges. We also recommend that if an Internet Service Provider levy is established, that a portion of the levy be set aside for the c/c radio sector to assist us in developing our new media presence.
146. In light of the c/c sector's exclusion from the Commission's recent new media proceeding, we also recommend that the Commission provide improved support and consultation in the future. This will enable us to be proactive about creating plans and infrastructure to engage in new media broadcasting while continuing to meet our stated objectives.
147. We are also aware that the Canadian Association for Community Television Users and Stations (CACTUS) are proposing the creation of a Community-Access Media Fund from the BDU levy, to which community radio stations could also apply, possibly in combination with groups creating content for television and new media. We are interested to explore CAMF as one source of on-going funding that could stabilize our members. Although we are uncertain at this point what overall impact collaboration with other media might have on the services we offer, we welcome the opportunity to explore the benefits that new media and such collaboration represents.
148. Further, we believe that Canadians deserve access to new media technologies in addition to radio and television. The CRTC's decision not to regulate the internet means an absence of funding mechanisms to ensure that private and public new media broadcasters support public-access new media and Canadian Content Development. We believe it will therefore be necessary to leverage the funding mechanisms in place for radio and television broadcasting in order to create true public-access new media capacity. The proposed CAMF is one way of doing this.

Q.32 Is there a role for Internet-only community or campus radio stations? In particular, given their primary objective to train students to be professional broadcasters, could instructional stations fulfil their mandate via an Internet-only model?

149. We believe there is a role for Internet-only stations, but we would like to discourage the Commission from viewing Internet-only stations as a replacement for c/c radio broadcasters. We also discourage the Commission from using the possibility of Internet broadcasting to reduce a c/c applicant's chances of prevailing in a competitive licensing proceeding.
150. As stated above, we believe that Internet broadcasting complements our radio services well, but it does not provide a replacement for a variety of reasons. The technical issues, costs, and barriers to access by all community members render Internet-only broadcasting inherently inferior when compared with radio broadcasting. That will likely change in future, but the c/c sector cannot currently provide the same level of community service and community-access in an online-only environment.
151. Our members also report that obtaining a broadcasting license and permission to use the airwaves lends an air of legitimacy that assists new stations in gaining valuable community support, donations, and participation.
152. On the other hand, the NCRA/ANREC believes that instructional and elementary school or high school stations could fulfill their mandates via an Internet-only model. This is particularly so if they do not provide specific local content, community access, and other community services, and if their focus is on providing students with skills to function in an increasingly digital commercial radio environment. In fact, we encourage the Commission to consider licensing future instructional and school stations as Internet-only in order to ensure that sufficient spectrum remains for c/c stations that provide community-access and meet the other stated c/c objectives.
153. We acknowledge that some of our instructional station members believe that Internet-only broadcasting would not properly simulate an actively licensed radio station environment. We encourage those stations to consider broadening their mandates to include community access and other c/c radio objectives. Alternatively, we believe that confining future instructional and school stations to the Internet is a reasonable compromise given the problem of spectrum scarcity and the underdeveloped state of c/c radio in many regions of Canada.
154. We suggest that a compromise could be struck so that instructional and school stations still receive accreditation from the CRTC to lend legitimacy to their operations while broadcasting on the Internet. While the CRTC has stated that it will not regulate the new media environment, we suggest that instructional and school stations could voluntarily commit to a regulatory code that includes minimum percentages of Canadian content, spoken word, hours of broadcasting, station IDs, and other requirements. This will ensure that these stations fulfill their training mandates by providing a training environment that accurately simulates licensed radio broadcasting.

Q.33 How can the Internet provide an opportunity for the reflection of official language minority communities?

155. We believe the Internet can assist OLM communities to develop additional language and community resources to supplement what is available on c/c radio. For example, if groups would like to broadcast for more time than is available on their local c/c station, and spectrum scarcity or lack of resources prevent them from creating a separate station, they can use the Internet to provide additional content to community members by webstream or podcast.
156. The Internet also enables community members to download OLM content from their local c/c station at any time, rather than having to tune in during the program's weekly timeslot in order to hear it. Further, it can enable stations to obtain local programming content and engage local volunteers remotely. In larger or rural communities that experience bad weather, this may encourage more OLM community members to participate in creating OLM programming without the requirement for those volunteers to secure weekly transportation to the station. Remote broadcasting via the Internet can also enable stations to broadcast from OLM events.
157. The web presence of c/c stations can also enable OLM volunteers to conduct outreach, provide written content to supplement their audio programming, provide written translation of other station programming content, and list OLM resources (including OLM musicians and artists) to which community members can be referred.
158. Finally, the NCRA/ANREC's online program exchange allows OLM programmers to share spoken word and music content with other stations across the country. While this may not fulfill the local content requirement, it would serve as an excellent supplement for stations who have difficulty recruiting sufficient OLM volunteers to create reliable local weekly content.

Q.34 What impact will mobile devices have on the campus and community radio sector? What opportunities do mobile devices present?

159. We anticipate that mobile devices will have a substantial impact on c/c radio. Once Wi-Fi becomes a standard component in cars, access will not be limited to physical buildings or city centres and radio will become a more portable medium. It is already possible to stream radio stations through cell phones, and transportation services like Greyhound and Via Rail are providing Wi-Fi services to travellers on some busy routes.
160. We anticipate that Wi-Fi options will provide more convenience to some of our listeners. If we can deliver our programming in mobile-friendly formats, we will be able to appeal to younger and more technically-savvy listeners who no longer listen to traditional radio broadcasts. We can also use mobile devices as an opportunity, similar to other new media technologies, to deliver additional content and information to listeners, and to carry out branding of our stations. It will be essential for the c/c radio sector to access these technologies to ensure that we remain part of the lives of community members who will be using them. In a sea of commercial mobile content, we may also provide some of the only diverse Canadian voices.

161. We ask that the CRTC keep c/c radio in mind when regulating distribution of signals on this platform. We understand that Telus recently presented a report recommending that new spectrum space be auctioned off and the revenue turned over to private sector broadcasters to help them transfer to digital and other new media. If this occurs, it is important that some of the proceeds be directed toward the c/c radio sector to assist us with this transition as well.

CULTURAL DIVERSITY FOR THE C/C SECTOR

Q.35 Is the approach that the Commission has taken for small commercial radio operators concerning cultural diversity appropriate for the campus and community radio sector? If not, why not? If it is not, please propose an alternative approach. Please consult the appendix to Broadcasting Public Notice 2007-122 when considering your comments.

162. The NCRA/ANREC and our members have some concerns about applying the same standards to c/c broadcasters that are applied to commercial broadcasters. Our concerns are not with the content of the best practices as outlined in the appendix to PN 2007-122; our members generally support the implementation of those or similar best practices for cultural diversity. In fact, many of our members feel those practices are already in place in the sector. However, the NCRA/ANREC believes it would be more appropriate to develop standards that are geared specifically to the not-for-profit environment in which we operate. We discuss a proposed NCRA/ANREC Code of Practice below, and we believe this is one of the areas that could be addressed by such a Code.

Additional areas of concern

C/c stations rely on cable FM carriage of their signals and the elimination of section 22 of the BDU Regulations under PN CRTC 2008-100 will affect them in significant ways

163. Currently, a fair number of NCRA/ANREC stations rely on cable carriage to distribute their services to areas that are within or in close proximity to their licensed area, but that cannot receive their service due to terrain limitations or a weak signal.
164. Cable carriage also helps to offset spectrum limitations. For example, it assists stations that are intended to serve geographically large urban or rural communities but cannot increase their power due to spectrum scarcity.
165. A few of our members used cable FM before obtaining an FM radio license, and report that it was a valuable and effective way of training programmers and building an audience in anticipation of obtaining a broadcasting license.
166. Cable carriage also provides improved sound quality to listeners that are located in congested areas that experience regular signal interference, and it provides listeners with stereo sound that is an improvement over the sound quality from c/c stations' mono or old stereo transmitters.

167. One of our members, CJTR in Regina, reports having their station carried by 2 different cable operators in Saskatchewan that serve the entire province. Since most Saskatchewan communities are not currently served by c/c radio stations, this provides an important service. However, if mandatory cable carriage is discontinued, CJTR is concerned that this service may cease.
168. Some of our members continue to experience difficulties getting local cable companies to cooperate and fulfill their requirements under section 22 of the Broadcasting Distribution Regulations to carry local c/c stations. Some BDUs seem to be reluctant to put effort into testing the signal and ensuring that it is clear. Some of our members have given up their efforts to obtain cable carriage for this reason.
169. The NCRA/ANREC inadvertently failed to submit a rationale for retaining section 22 of the Regulations as required under CRTC 2007-10. This was an oversight, as we were not aware that the Commission intended to eliminate all Regulations unless submissions were made to support retaining them. We strongly encourage the CRTC to consider reinstating this section, as it is extremely valuable to the c/c radio sector.
170. Finally, the NCRA/ANREC submitted a supplementary brief after the OLM hearings in January 2009 regarding the estimated cost of mandatory cable carriage and mandatory conversion by cable companies of our analogue signals to enable them to be broadcast on digital FM cable. We refer the Commission to that brief, and we continue to believe that the cost to BDUs will be minimal in most locations. We therefore believe that it is a reasonable public service contribution for BDUs to make.

Obscenity and profanity

171. Since the last c/c sector policy review, the CRTC has received several complaints about profanity or obscenity heard on c/c stations that were not immediately resolved. In a few cases, disagreement has occurred about whether stations' policies are sufficiently precise and restrictive to ensure that further complaints are not received. Combined with the Commission's reliance on the vague "high standard" provision of the Broadcasting Act, and recent permissive changes to the law of freedom of expression in Canada, this leaves our members feeling confused about their regulatory responsibilities.
172. On several occasions, CRTC staff have suggested that c/c stations should be subject to the standards of the Canadian Broadcast Standards Council. Many of our members strongly object to this suggestion, as they feel that the CBSC is commercially-oriented, and that their standards and decisions are infused with commercial sensibilities. The NCRA/ANREC and most of our members feel that imposing CBSC standards on our members is not appropriate.
173. Further, some of our members, particularly those operating in large urban centres, feel that their role is to expose listeners to new material, to give voice to people and sentiments that are not heard in mainstream media, and to "push the boundaries" of what is commonly acceptable. They see attempts to relegate certain words, ideas, or

modes of expression to late night as censorship that further marginalises people who are already on the margins of society.

174. At the same time, c/c stations are firmly opposed to broadcasting content that is discriminatory, hateful or gratuitously offensive, and have high expectations of their programmers in that regard. All c/c stations take care to provide respectful programming content that appeals to a wide variety of people in order to be representative of the diversity in their communities and obtain sufficiently broad community support.
175. In this context, we believe that it would be most appropriate to develop our own broadcasting standards. This could be accomplished via an NCRA/ANREC Code of Practice, which is outlined below. The Code would contain basic minimum standards to which all stations could adhere, and a definition of the term “high standard”. Stations operating in more conservative environments could then add additional content to suit their own needs. The Code could also offer some flexibility, allowing stations to justify deviations from the basic minimums in certain circumstances.
176. For similar reasons, we feel it would be appropriate to create an NCRA/ANREC Equitable Portrayal Code to replace the CAB Code that is currently a condition of licence for all campus stations under Broadcasting Regulatory Policy CRTC 2009-63.

Direction to the CRTC: Ineligibility of Non-Canadians SOR/97-192

177. We understand that c/c stations must adhere to this policy direction. However, recent experience with the application of this policy direction to an NCRA/ANREC member station raised some concerns. In particular, decision-making processes at our stations are not comparable to those of commercial radio stations in terms of staff decision-making powers, the relationship of staff and volunteers to boards of directors, and the composition of boards of directors and membership.
178. This issue is particularly complicated at campus radio stations that have board appointees from the university financial administration and elected student government. Stations in this situation have no power to determine the citizenship of these appointees.
179. The issue also arises with respect to the decision-making powers of staff. For example, a Programming Director may have relatively little independent decision-making power and takes direction from a volunteer Programming Committee comprised of community members and students.
180. Membership is also a complicated concept, as campus stations’ memberships may include by default all undergraduate and graduate students due to the contributions students make through their student fees.
181. In light of these issues, we ask that CRTC staff work closely with c/c stations that are not yet in compliance to determine the most practical ways of applying the policy direction to ensure sufficient Canadian involvement while avoiding the imposition of undue administrative burdens and unnecessary barriers to volunteer participation.

Comments on EKOS Report

182. The NCRA/ANREC has some reservations about the 2008 EKOS study and the resulting report entitled “Canada’s Community and Campus Radio Broadcasting Sectors: An Analysis of the Sector’s Roles and Impacts in the Context of Current Technological and Media Sector Changes”. Our comments and recommendations are attached as Appendix A.

Proposal: Sector Code of Practice

183. Many of our members have expressed concern about the structure within which they respond to community concerns about programming. The Association believes that campus and community stations would benefit from a framework that will facilitate the administration and programming of such stations, and ensure that they are more responsive to these and other community needs.
184. We propose the creation of an NCRA/ANREC Code of Practice, an Industry-Administered Standard for which the Commission provided guidelines in 1988 (Public Notice CRTC 1988-13: *Guidelines for Developing Industry-Administered Standards*). At that time, the Commission expressed interest in eliminating all but the essential regulations necessary to achieve the objectives of the *Broadcasting Act*, and encouraged industry and related groups to assume greater responsibility for their own operations.
185. Adherence to this proposed Code by community-based campus and community stations will be voluntary. We understand that ARCQ and ARC du Canada have already developed and are well-served by internal association and other industry standards.
186. This proposal arises in part from examinations of the community radio regulatory environment in Australia. In that country, the Broadcasting Services Act 1992 mandates a general role for community broadcasting, while enjoining community broadcasters to create a Code of Practice that encompasses a number of regulatory areas. This Code speaks to such areas as the guiding principles of the sector, its core programming requirements, advertising, the sector's relationship with the regulator, and a programming complaints process. Similar to the process outlined in CRTC 1988-13, the Australian Code has been created “in consultation with the [regulator]”.
187. Similarly, in the United States the Corporation for Public Broadcasting has developed an internal code of compliance that addresses governance, transparency, community involvement and equity.
188. We propose that the Community Radio Code be created through a collaborative process among the members of the community radio sector, the NCRC/ANREC, the CRTC, and the Canadian public, as outlined in PN CRTC 1988-13. We will provide the Commission with a more specific proposal at the upcoming hearing.

Conclusion

189. Despite the significant challenges facing the sector, c/c radio still manages to provide a broad range of high quality, local programming produced by and for a diverse range of people. Given cutbacks in local commercial and public news production across the country, the c/c sector is positioned to be one of the most vibrant media sources serving local Canadian communities.
190. We appreciate the Commission's efforts to consult with the c/c sector, and we appreciate the opportunity to participate in ongoing dialogue about the strengths, challenges, and future of the sector. We look forward to working with the Commission to ensure that new regulations both support and promote the development of this vital sector.

Sincerely,

A handwritten signature in black ink that reads "Freya Zaltz". The signature is fluid and cursive, with the first name "Freya" and the last name "Zaltz" clearly legible.

Freya Zaltz
Regulatory Affairs Director
NCRA/ANREC

cc: Industry Canada

APPENDIX A

Comments on the 2008 EKOS Report “Canada’s Community and Campus Radio Broadcasting Sectors: An Analysis of the Sector’s Roles and Impacts in the Context of Current Technological and Media Sector Changes”

In 2007, Canadian Heritage undertook a study of the campus and community radio sector and selected EKOS Research Associates to conduct a sector-wide survey. As part of this study, Canadian Heritage also formed an advisory group, comprised of representatives from Canadian Heritage, EKOS, the CRTC, and six c/c sector organizations and associations. Despite the efforts and consultation involved in the development and implementation of the survey and its follow-up report, all those involved feel that the summary report is incomplete and of limited use. All the same, it constitutes a first step in studying the sector, and it makes some correct and valid points about our accomplishments, strengths, and challenges.

Overall, the NCRA/ANREC feels that the summary report is incomplete to the point of being misleading, particularly regarding the financial reality and character of the sector. While much valuable information is included in the report, we suggest specific content is lacking. We recommend remedies and tactics for further study to complete the government's understanding of the sector, in the interest of promoting its long-term health and efficacy.

Limitations

This study was limited by a poor fit between its methodology and the sector's capacity. EKOS chose a methodology that applies well to sectors like private broadcasters, where the entities studied regularly collect and update such data as metrics for self-management, performance indicators, and strategic thinking.

In our opinion, EKOS' methodology concerning a Research Advisory Committee, the Document and Literature Review, and Key Informant Interviews (parts A-C) were well-implemented. Section D was particularly incomplete; despite EKOS' efforts, the response rate was only one-third, and therefore the data collected is not statistically significant.

Many of our stations only collect and analyze as much financial data as required for fiscal responsibility, and not enough to analyze trends. As well, many of our stations are dramatically understaffed, and EKOS' request for information was often seen by stations as less urgent than day-to-day essential tasks. Under-funding itself contributes to the difficulty of financial administration.

There is also a problem with some of the financial data that was reported. It is skewed to suggest that the sector is healthier than it actually is. We recognize, and EKOS agrees, that stations with fewer resources and time would have had more difficulty in responding to the survey, which is one explanation for a lack of response from many stations.

Another problem that was not identified until the end of the survey was the frequency of “don't know” responses. When stations were answering questions, the fillable field for “don't know” was the same as “not applicable.”

As a result of the low response rate and the inability to distinguish between responses indicating lack of information vs. inapplicable questions, the data is skewed to make the sector appear more stable and viable than it is. It also means an inaccurate representation of proportional reliance on different funding sources (i.e. ad revenue), among other systemic skews.

Furthermore, community and campus radio stations are not-for-profit operations that must report and assess financial information responsibly, but they tend to measure success based on other non-financial information – such as relationships with other community groups, volunteer retention and engagement, and informal feedback from community members. The successes indicated by this information are often intangible, and are either unmeasured or, in many cases, immeasurable. They include cohesion and collaboration with other community organizations, positive relationships with listeners and with core funders, contribution to local cultural life, and quality of local programming and its relevance to the community.

The EKOS study had no way of measuring nor reflecting these types of success, nor of assessing the social and cultural impact of stations in their communities. The advisory committee attempted to address this in the development stages of the study. Members representing the sector indicated their concerns that a data-based survey would not highlight the sector's qualitative information sufficiently. EKOS attempted to address this by holding numerous "key informant" interviews with a variety of people from the sector, including those who were currently active on the national level as well as those who were involved over a long period of time. However, there were simply not enough questions directed at the stations themselves that were qualitative in nature.

Gaps -- Areas requiring further research

We agree that further research can improve the government's knowledge of the campus and community radio sector. Further studies should be carried out by a party sensitive to the challenges described above, and must use more appropriate methodology, as recommended below.

As well, two problems timing of the survey led to a low response rate. First, only four weeks were provided to inform stations of the survey and obtain their responses. Despite receiving member contact information provided by the associations, EKOS chose to contact stations using out-of-date contact information provided by the CRTC and did not reach many stations at all. Second, as some stations were not notified about the survey until December, station staff were focused on holiday scheduling issues and station operations and had little time to complete the survey. The financial limitations faced by c/c stations meant that smaller stations with fewer staff were less likely to have time to complete the survey. In future, any similar study should take these factors into account.

What is missing?

Financial

- Advertising and "Other" should not be the only revenue categories (revenue should

include grants, students levies, funding drives, etc.). The absence of these categories may have led to a substantial number of “Don’t know/No response” answers to financial questions.

- Over half of the revenue is reported as coming from advertising. This shows a skew toward better-resourced, and Francophone stations

Community Economic Impact approach

There isn't anything in the report to measure or evaluate stations' impacts on their communities' economic development

Listener Numbers

StatsCan and BBM data were inadequate to report listenership; no other data is available. Accurate listenership information would be helpful, but would require new research.

Social, Cultural Impact

The report includes very little information on impacts. It is difficult to study and quantify, but social and cultural impact is at the heart of our sector.

Return on Public Investment

The EKOS report cannot give us indications of the return Canadians would receive from public investment in the sector, in areas including:

- volunteerism
- interconnectedness
- skills training
- platform for media democracy, and for artists & grassroots organizations to use for dissemination and promotion of their work.
- fostering local arts, culture
- local information programming
- job creation
- local content creation
- democratic governance of media institutions
- reflection of ideas, values, and opinions of the community

Strengths and Useful Content

Funding

The report accurately acknowledges the funding challenges experienced by campus and community radio stations, and notes that some stations are operating with no surplus or savings, or are operating with a deficit. We agree that stations' funding challenges include:

- ongoing risk of losing student levy funds
- lack of eligibility for provincial and federal funding\
- available funding is project-oriented rather than operational
- difficulty obtaining and keeping charitable status, which drastically reduces stations' sources of grant and donation funding

Other Challenges

The report also highlights a number of other challenges faced by campus and community stations that we agree are important. They include:

- few staff leading to heavy reliance on inexperienced volunteers to perform administrative and governance tasks and produce spoken word programming
- high volunteer and staff turnover requiring constant training
- excess time spent dealing with urgent and day-to-day issues and insufficient time left for grant applications, fundraising, in-depth training for staff
- difficulty attracting and retaining board members due to distance/population issues, amount of work/commitment, and mobility of student populations

Successes and Strengths

Despite the study's shortcomings, we are pleased that sufficient data was collected to acknowledge the important contributions campus and community radio makes to local communities, individuals, and the Canadian broadcast system as a whole. We agree that these strengths and successes are what makes our sector unique and valuable, and underscore the need for further support and development. They include:

- keeping our programming current by relying on our community presence and physical proximity to our listenership
- providing opportunities that commercial radio does not, including training for staff and volunteers in on-air, technical, editing, communications, policy and administrative skills (training is described as a "significant effort on the part of the stations as a significant benefit to the community with respect to the transfer of skills/training")
- providing volunteers with positive experiences and "skills that contribute to the overall development of the Canadian broadcast system"
- providing many opportunities for a variety of views to be expressed over our airwaves
- featuring a significant amount of Canadian content through music and spoken word

Recommendations

1. That the sector be studied further with a broader approach, and with the primary goals of determining:
 - (a) the main challenges faced by c/c broadcasters, and suitable remedies; and
 - (b) the value for Canadians created by investment in the sector.
2. That methodology and approach to further study be crafted in a way that is appropriate to small and/or struggling not-for-profit operations, and that the study be implemented by researchers familiar with the sector, using literature on the sector.
3. That further study include more focus on the intangible returns and benefits that truly measure the success of community broadcasters, and not only on the purely fiscal operations, which are only a small part of the picture.
4. That further study carefully consider section 7.6 of the report, where EKOS recommendations in many ways agree with ours.
5. That further study be better resourced - EKOS is a private contractor, and made, as far as we can see, efforts commensurate with their compensation. But more effort is needed to fully engage the sector, to improve response rate, to dig deeper, and to report more qualitative data as well as quantitative to more fully represent the role of not-for-profit broadcasters in their communities.

APPENDIX B



NCRA-ANREC
325 Dalhousie, Suite 230
Ottawa, Ontario, K1N 7G2

October 16, 2009

Industry Canada
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

Attention: Mr. Paul Vaccani
Director, Broadcast Applications Engineering

Dear Mr. Vaccani:

1. I am writing on behalf of the National Campus and Community Radio Association/ l'Association nationale des radios étudiantes et communautaires (NCRA/ANREC). We are a not-for-profit national association working to recognize, support, and encourage volunteer-based, non-profit, public-access campus and community-based broadcasters (c/c radio) in Canada. We provide advice and advocacy for individual stations, and conduct lobbying and policy development initiatives for the sector with a view to advancing the role and increasing the effectiveness of our sector. Our goals are to ensure stability and support for individual stations, and to promote the long-term growth and effectiveness of the sector.
2. I have addressed this letter to you, since our sector had direct contact with you in June 2009 through your presentation at our annual conference in Montreal. If this letter should be properly addressed to a different person at Industry Canada, I hope you will forward it accordingly.
3. I am writing to address five pressing issues. They are: low-power notice requirements, low-power frequency protection, frequency reservations for c/c radio, exemption from the SMBR-003-08 2011 deadline, and the Broadcast Technical Advisory Committee Meeting planned for November 30, 2009.

4. I am attaching a copy of our submission to the Canadian Radio-television and Telecommunications Commission's Campus and Community Radio Review (Broadcasting Notice of Consultation CRTC 2009-418). All of the issues addressed below are discussed in significant detail in the CRTC submission, particularly in answer to questions 8, 25, 26, and 27. Rather than repeating that detail here, I hope you can refer to the relevant sections of the CRTC submission after reading this letter.

Low-Power Notice Requirements

5. It has come to our attention that BPR-3 – Application Procedures and Rules for FM Broadcasting Undertakings does not contain any notification requirement for existing low-power c/c stations that will be affected by new applicants or existing stations that wish to change their technical parameters. We have been unable to find any other Industry Canada policy that provides for notification under these circumstances.
6. While we recognize that low-power stations currently do not enjoy frequency protection, we would like to request that you consider changes to your policies and procedures to ensure that low-power stations are notified of potential impacts on their broadcasting services early enough to allow them to find a solution before the impacts occur.
7. Specifically, we are referring to low-power c/c radio stations that have been “bumped” from their frequencies by commercial applicants. In most cases, these low-power stations are not notified of the commercial applications until very late in the application process. This situation frequently leaves low-power stations without sufficient time to complete the necessary fundraising, engineering work, negotiation with commercial applicants, or CRTC and Industry Canada applications to ensure that their broadcasting services will not be disrupted. Required notification by commercial applicants at the time of application that encroachment on a low-power signal is likely to occur would provide these stations with several months of additional time to ensure that their communities do not lose the benefits of their services.
8. We are making a similar request of the CRTC, as they also do not have any notice requirements for broadcasting or technical amendment applications that will affect existing low-power stations.
9. We also request that Industry Canada offer additional technical assistance to low-power stations that risk losing their frequencies to other applicants. As described above, those stations experience significant difficulty raising funds to hire an engineer on short notice to determine whether another suitable frequency exists to which they can move. Technical assistance from staff at Industry Canada and the CRTC would assist these stations in ensuring that the valuable community service they provide will not be lost due to lack of resources.

Low-Power Frequency Protection

10. There are numerous markets throughout Canada that are not yet served by local community radio services. The Broadcasting Act mandates that a healthy broadcasting system is comprised of commercial, public and community elements, yet community radio is woefully underdeveloped in Canada. We realise that Industry Canada's activities are not governed by the Broadcasting Act, but we believe that Industry Canada's decision-making powers directly impact the development and content of the Canadian broadcasting system.
11. Due to increasing spectrum scarcity, it is becoming more difficult to find protected frequencies for new c/c radio stations, or existing c/c stations that are broadcasting at low-power or very low-power (i.e. stations holding "developmental licenses"). At the same time, it is becoming increasingly common for existing unprotected stations to experience encroachment from new commercial applicants, or existing commercial stations that wish to change their technical parameters.
12. At this time, we feel it is unreasonable to relegate c/c radio stations to internet-only, particularly where commercial radio has been given such privileged status in terms of its occupation of the FM band. There are a variety of reasons why the NCRA/ANREC and its members feel that internet-only broadcasting is not a suitable substitute for FM broadcasting at this time. Our comments on that issue can be found in the enclosed copy of our submission to the CRTC Campus and Community Radio Review.
13. We do not yet know what the impact will be of SMBR-003-08 - Changes to the Domestic Protection Criteria for FM Broadcast Stations. It is possible that these changes will create more available spectrum for use by c/c radio stations. However, we anticipate that the changes are more likely to result in more available low-power unprotected frequencies, and not necessarily in more protected frequencies.
14. Without protected status, low-power c/c radio stations are taking a substantial financial risk. The volunteer labour requirements and costs of setting up a c/c radio station are huge, and community groups are unlikely to create new stations to serve their communities if they are unable to obtain protected frequencies and risk losing their unprotected frequencies after a short time on the air.
15. Therefore, we request that Industry Canada collaborate with the CRTC on instituting some form of frequency protection for low-power c/c radio stations to ensure that the provisions of the Broadcasting Act can be given their intended effect.

Frequency Reservation

16. Due to increasing spectrum scarcity, and the underdeveloped nature of Canadian community radio, we request that Industry Canada and the CRTC work together to determine whether available frequencies can be reserved for use by low-power c/c stations or by new c/c stations in communities that are not yet served by local c/c radio. We are seeking at least one protected frequency in each market, and possibly

two in markets where the population includes substantial proportions of both French and English speakers.

17. We note that other Western countries have instituted frequency reservation systems for community broadcasters, including the United States, which reserved the lower end of the FM band for exclusive community radio use.
18. Clearly spectrum scarcity will prevent that from being possible in all markets, but we believe it could be considered in markets outside of the most congested areas. Further discussion on this issue can be found in the attached CRTC submission.

SMBR-003-08 - Exemption from the 2011 Deadline

19. The January 2011 deadline for broadcasters to apply to expand to their unused maximum parameters is problematic for c/c radio stations. This is because c/c stations are severely under-funded, and require many years to achieve their fundraising goals. Most stations that wish to expand their broadcast parameters to their maximum protected contours will be required to purchase revised engineering briefs, new transmitters and antennae, which cost many thousands of dollars. Even if they started when SMBR-003-08 was first announced, most stations do not have the capacity to raise the funds required to apply by January 2011.
20. Many stations have long-term goals to expand to their maximum protected parameters. This is particularly true in communities where c/c stations' existing signals do not adequately reach the entire community, or where signal strength is weak in some locations. Losing the opportunity to expand to their maximum parameters will create a hardship for c/c stations, particularly if they lose the benefit of protection over their unused contours and other applicants are permitted to apply to use that spectrum in the interim.
21. Therefore, we request an exemption from the January 2011 deadline for c/c stations. Additional discussion about the anticipated impact of SMBR-003-08 on c/c stations can be found in the enclosed submission to the CRTC. I refer you specifically to our response to question #26.

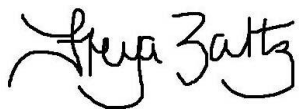
Technical Advisory Committee on Broadcasting (B-TAC)

22. During your session at the conference in June 2009, you informed us that a B-TAC meeting would be held on November 30, 2009 in Ottawa. You further indicated that all Industry Canada broadcasting stakeholders are welcome to attend B-TAC meetings. We were not aware of the existence of this committee prior to June 2009.
23. The NCRA/ANREC would like to send at least one representative to this meeting. However, I am unable to find any information about the meeting on the Industry Canada website.
24. We would appreciate receiving an agenda and details about the time and location. We would also like to know whether there is a procedure for confirming our intention to attend, and the number of people we will be sending.

Conclusion

25. Finally, I would also like to remind you of concerns that were raised during your presentation in June 2009. It is common for our member stations and representatives from our association to be told by both Industry Canada and the CRTC that our concerns and questions are more properly dealt with by the other agency. This results in an experience much like a game of ping-pong, where we are bounced back and forth between agencies without ever making any headway. Most significantly, this has occurred in the context of our previous requests for low-power frequency protection.
26. We are uncertain of the best way to proceed on this issue. Our primary recommendation would be for Industry Canada and the CRTC to meet and clarify which agency has decision-making authority over which aspects of our requests. Perhaps then it would be possible to work collaboratively to make changes that are favourable to the development of c/c radio in Canada. Would the B-TAC meeting be an appropriate venue for this type of discussion? We look forward to receiving your input on this.
27. Thank you for your attention to our concerns. We would appreciate the opportunity to discuss our ideas in more detail with Industry Canada staff and learn more about Industry Canada procedures and how they may be modified to assist our sector. To enable us to do so, please confirm the names and contact information of the appropriate people to contact.

Sincerely,



Freya Zaltz
Regulatory Affairs Director
NCRA/ANREC

cc: Canadian Radio-Television and Telecommunications Commission

APPENDIX C

(This was submitted to <http://copyright.econsultation.ca/> on September 13, 2009 as part of the federal government Copyright Consultation process.)

Dear Industry Minister Tony Clement and Canadian Heritage Minister James Moore,

The National Campus and Community Radio Association (NCRA) is a non-profit, national association of organizations and individuals committed to volunteer-based, community-oriented radio broadcasting. The NCRA represents 70 radio stations across Canada.

Non-commercial, campus, and community-based (c/c) broadcasters are largely volunteer-run, not-for-profit organizations, which are nonetheless subject to the current Canadian copyright regime. These organizations are largely under-funded (some stations operate on budgets of less than \$20,000 per year) and are therefore particularly vulnerable to changes in the law that would increase their cost of doing business. It is for this reason that the NCRA takes a great interest in proposed changes to Canadian copyright legislation that could have a disastrous impact on its members' viability.

Our member stations are locally owned and operated; serve an important educational function by offering free training to individuals wishing to involve themselves in radio; and strive to achieve balanced programming that presents a wide variety of perspectives, especially underrepresented voices and content. Our member stations are especially important in providing opportunities for emerging and local artists to bring their works to a larger audience. It is no exaggeration to say that many commercially successful Canadian artists owe their start to community and campus radio stations. Because these stations are non-commercial, they can afford to take the risk of playing works by unknown artists who would otherwise not have their works heard on the radio. Canadian artists, the Canadian music industry, and the Canadian public all derive great benefit from the support provided by c/c broadcasters to foster the creativity of Canadian artists.

Despite the important function of c/c stations, these stations are not earning revenue from the use of copyrighted materials and must fundraise in order to pay tariffs. This brings the sector in line with educational users of copyrighted material who have similar concerns about tariffs being applied to them. C/c radio is also separated quite clearly from commercial users who basically pay a portion of their profits to the copyright collectives for the privilege of using their copyrighted material in order to earn revenue. Given these stations have no financial motive of gain, one possible legislative remedy would be to expand section 29.3 of the current act to include "community systems" such as c/c radio as being exempt from paying tariffs.

Tariffs

It is important to highlight, at the outset, that the Canadian government has already made adjustments to Canadian copyright law to protect c/c broadcasters. Recognizing both the importance and vulnerability of c/c broadcasters, the Canadian government enacted section 68.1 of the *Copyright Act*, which carves out an exception for c/c stations, providing a

maximum cap on tariffs for the performance in public or the communication to the public by telecommunication of performer's performances of musical works or sound recordings. Tariff section 68.1 refers to tariffs from the Neighbouring Rights Copyright Collective (NRCC) only, and the sector is additionally subject to tariffs by the Canadian Mechanical Reproduction Rights Agency (CMRRA) and the Society of Composers, Authors and Music Publishers of Canada (SOCAN - tariffs 1B and 22) that do not have a tariff cap in place.

Section 68.1 has not prevented copyright collectives from seeking to introduce new tariffs that affect c/c stations. The result of these new tariffs is that copyright collectives are proposing to charge c/c stations multiple tariffs for use of the same broadcast material. If approved by the Copyright Board, these multiple tariffs cannot help but have a chilling effect on the activities of c/c broadcasters, either by restricting their ability to embrace new technologies or by threatening their survival.

In order to ensure that Canadians continue to reap the benefits of a strong c/c broadcasting industry, the NCRA supports the expansion of section 68.1 to introduce reasonable caps on all copyright tariffs that apply to c/c broadcasters. These caps would ensure that Canadian artists receive a reasonable compensation for the use of their works while protecting the existence of c/c broadcasters.

The NCRA also supports the introduction of a clause limiting not-for-profit broadcasting tariffs to current and future years only, so that stations cannot be charged retroactive tariffs for years past. Because they represent costs which cannot reasonably be anticipated; retroactive tariffs can have a devastating impact on small broadcasters, which do not have the resources to accommodate sudden changes in expenses. The NCRA feels that this amendment to the *Copyright Act* is a reasonable measure designed to protect an industry that the government has already recognized as being deserving of special protection.

The Copyright Board

The current tariff approval system under Canada's *Copyright Act* is an adversarial process wherein copyright collectives propose tariffs that can then be objected to by prospective users. The Copyright Board then considers the submission in light of the objections and any supplemental submissions made by the parties before making its decision. In making its decisions, the Copyright Board is guided by three specific factors set out in section 68(2)(a) of the *Copyright Act*, namely, whether the tariff is *prima facie* valid, whether the tariff would result in a financial disadvantage to Canadian broadcasters, given the linguistic and content requirements under section 3 of the *Broadcasting Act*, and payments are to be made in a single payment. In addition, section 68(2)(b) permits the Board to take into account any factor that it considers appropriate.

The NCRA believes that the direction provided to the Board in subsection 68(2)(a) is insufficient. This section must be expanded to direct the Board to consider the potential impact that the tariff will have on users. Under the current system, absent objections from user groups, tariffs could theoretically be set at any limit. While section 68(2)(b) does permit the Board to take other factors into account, the NCRA believes that formal direction should be provided to the Board that its decisions should, at a minimum, take into account the impact the proposed tariff will have on the affected users and should not impose unreasonable financial hardship on vulnerable or emerging industries.

Similarly, the Copyright Board needs to take into account the existing copyright tariffs already in place when they make their decisions. Under the current regime, any number of copyright collectives may come into existence and propose new tariffs for similar uses of the same copyrighted material. As long as new proposals fall within the requirements for acceptable tariffs, they will be certified. The Copyright Board needs to consider the financial hardship that increased and increasing tariffs place on non-profit entities such as c/c radio stations and no matter how reasonable each individual tariff may be, and deny any new tariffs on that basis. If the amount of tariffs being levied on an organization are so great the organization can no longer function, the copyright tariff system is not working. With regard to communication of works to the public by telecommunication, the Board should be encouraged to weigh proposed tariffs in light of the entirety of section 3 of the *Broadcasting Act*, which promotes a strong diversity of voices in broadcasting. Specific exceptions or caps should be considered for vulnerable and non-commercial industries, such as c/c broadcasters. Given that the balance of power in the tariff approval process clearly favours the copyright collectives, it is only reasonable that the Copyright Board be required to act in the public interest

Digital Media

In the past few years, new tariffs have been proposed and awarded for internet streaming, podcasting, and archiving. Unlike analog broadcasting technology, which is essentially ephemeral and generally results in no fixation of the broadcast, digital broadcasting technologies require a fixed copy of the broadcast. This allows users the flexibility to listen to broadcasts and/or podcasts whenever and wherever they wish. To the c/c radio sector, internet streaming, podcasting and archiving are essentially the same activity: broadcasting. Unfortunately, the impact of the new tariffs is that non-profit radio stations are being penalized for embracing modern technology.

For example, c/c stations that have begun webcasting or podcasting in order to reach a broader audience may soon be subject to several proposed tariffs for these activities, even though the content of the webcast or podcast is an exact duplicate of their radio broadcast, for which they have already paid several tariffs, often to the same collectives. SOCAN Tariff 22 involves a flat rate of \$200 per month for radio stations to use music in their internet broadcasts, which are identical copies of their radio broadcasts for which tariffs have already been paid. While this may seem like a relatively small amount, as mentioned earlier, some c/c stations operate on budgets of less than \$20,000 per year. To such stations, a tariff of \$200 per month represents more than 10% of those stations' revenue— placing online activities out of their financial reach. In many cases, c/c stations will be forced to cease providing digital broadcasting services if tariffs continue to increase because these stations derive no commercial revenue from their services to cover the costs of the tariffs. As digital broadcasting services become more and more prevalent, high tariffs will effectively bar c/c stations from participation, making it increasingly difficult for them to compete with commercial stations for advertising revenue. This problem is further compounded as c/c stations have little potential to generate online revenue to support their online activities due to relatively low traffic to their websites. The CRTC has expressed disappointment that c/c stations have not been engaging more with digital media as stations play an important role in serving linguistic minority groups in Canada. In its 2009 Report to the Governor in Council on English- and French-language

broadcasting services in English and French linguistic minority communities in Canada, the CRTC noted:

The Commission considers it urgent that the federal government recognize that new media can play a major role in promoting the cultures of official-language minority communities and that the government incite these communities to adopt these new technologies as soon as possible.

However, the current copyright scheme actually prohibits c/c stations from participating in the new media environment due to high tariffs and the possibility of new and/or retroactive tariffs being imposed. In order to fully participate in the new media environment, amendments to the Copyright Act are necessary to cap tariffs relating to podcasting and webcasting for c/c radio stations and to minimize or prevent multiple tariffs for these activities.

Archiving

Related to issues of digital broadcasting is the question of archived copies of works. Stations are now subject to an additional tariff for keeping digital copies of sound recordings beyond 30 days. The only way to avoid this tariff is to obtain all music on CD; refrain from making any copies or archiving programs; and to delete all digital logs at the end of the mandatory 30-day CTRC logging requirement. This interferes with stations' abilities to keep pace with technological advancement and penalizes them for introducing more effective internal operations while using the material for non-commercial purposes. Furthermore, independent and emerging artists are increasingly choosing to distribute music digitally rather than on CD, preventing stations from avoiding this tariff.

C/C stations cannot continue to pay additional tariffs in order to archive and store material for internal radio station use. Exceptions to the *Copyright Act* should be introduced, either capping tariffs for archiving broadcasts at a reasonable rate or permitting archiving of copies for the purpose of broadcasting for c/c stations.

Circumvention of Digital Protection Measures

One particular point of concern with regard to the proposed changes introduced in Bill C-61 was the prohibition on circumventing digital protection measures (defined in Bill C-61 as "technological measures"). Bill C-61 did contain new section 41.17 which created an exception to the prohibition for broadcasting undertakings which circumvented technological measures for the purposes of making an ephemeral reproduction of a work. However, as discussed above, digital broadcasting services require the use of reproductions of works that are more than ephemeral.

There are practical reasons why a radio station would need to circumvent digital locks in order to fully use copyright materials (particularly music) in both analogue and digital formats – a station running on automation during the late night would need to digitize a CD so it could be played, which would not be possible without breaking any locks in place on the CD. Likewise, investigative journalism can necessitate the circumvention of digital locks. If the Government of Canada decides to introduce a prohibition on circumvention of digital protection measures, the NCRA supports the introduction of exceptions for non-

commercial and/or non-infringing purposes as well as industry-specific exceptions such as proposed section 41.17 of Bill C-61. However, such exceptions should go beyond allowing mere ephemeral reproductions and should take into account the realities of industry practice.

Conclusion

The NCRA completely agrees that artists are entitled to fair and reasonable compensation for their efforts and appreciates that the tariff system is necessary to enable cost-effective distribution of funds to artists. The NCRA's members provide important services to musicians, record labels, copyright collectives and the Canadian public. These stations promote and encourage Canadian culture and add an important diversity of voices to our nation's airwaves. If Canadians wish to continue to benefit from c/c broadcasters, which we strongly believe that they do, then some protection must be extended in the Copyright Act to prevent aggressive tariffs from threatening the very existence of these organizations.

Respectfully submitted,

National Campus/Community Radio Association of Canada (NCRA/ANREC)