



14 September 2015

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

Re: Review of the regulatory framework for French-language vocal music applicable to the French-language commercial radio sector, Broadcasting Notices of Consultation CRTC 2015-318 and 2015-318-1 (Ottawa, 20 July 2015 and 27 July 2015), <http://crtc.gc.ca/eng/archive/2015/2015-318.htm>

1. The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. We do not ask to appear before the CRTC at its public hearing in November but will make ourselves available if the CRTC so requests.
2. The Forum supports a strong Canadian broadcasting system that serves the public interest. We are pleased to participate in the process initiated by Broadcasting Notice of Consultation 2015-318, regarding the regulatory framework for French-language vocal music in Canadian radio. Our comments on the issues raised in the Commission's notice are attached.
3. We look forward to the opportunity of reviewing other comments submitted in this proceeding.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

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Crisis? What crisis?

Let competitive broadcasters compete

Review of the regulatory framework for French-language vocal music applicable to the French-language commercial radio sector

Broadcasting Notices of Consultation 2015-318 and 2013-558-1

(Ottawa, 20 July 2015 and 27 July 2015)

Comments of the Forum for Research and Policy in Communications

14 September 2015

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I Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest.

II The CRTC and French-language vocal music

- 2 FRPC has intervened in this proceeding because we are concerned that the CRTC intends to abandon its 42-year old approach to popular French-language vocal music selections (FVM), which has ensured that French-language radio audiences have access to French-language music (see Appendix 1, for a summary of the policy from 1972 to the present).
- 3 The FVM policy requires French-language radio stations to ensure that 65% of the popular music selections they broadcast during the week are in French, and that 55% of the selections broadcast from 6 AM to 6 PM on weekdays are in French. It also regulates ‘montages’ – combinations of songs¹ that are “tightly woven and tied together by unifying elements such as a common rhythm or theme”.² A montage counts as a single Canadian or FVM selection when more than half of its duration consists of Canadian or FVM selections.

A The online challenge

- 4 The April 2015 edition of *optique culturelle* by the Observatoire de la culture et des communications du Québec reviewed the production of French-language recordings in Quebec, and concluded that Quebec audiences are moving towards subscription or free ad-based music streaming services, to save money or to simplify their use.³ It reports revenues for streaming music services in Canada grew by 53% in 2013 (compared to growth in digital albums and titles of just 8%).⁴ The Observatoire commented that if the tendency towards streaming

¹ Defined in the *Radio Regulations, 1986* as “a compilation of one minute or more in duration containing excerpts from several musical selections but does not include a medley”. A medley is “a compilation of one minute or more in duration in which artists or musicians combine excerpts from several musical selections within a single performance”.

² *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728 (Ottawa, 24 November 2011), <http://www.crtc.gc.ca/eng/archive/2011/2011-728.htm>, at para. 10, citing Public Notice CRTC 1998-132.

³ At 6 and 18.

⁴ *Ibid.*

continues, “l’industrie québécoise devra bagarrer ferme pour faire sa place dans l’univers de l’écoute de la musique en continu.”⁵

- 5 How is radio responding to the online challenge? Empirical analysis from a 2012 article (“And the Bands Played On: Digital Disintermediation and the Quality of New Recorded Music”⁶) that reviewed album releases from 1980 to 2010 found that more albums are enjoying commercial success without a significant level of traditional airplay by conventional radio stations: audiences are therefore learning about music they enjoy from sources other than radio.
- 6 Younger audiences in particular may be more likely to rely on online sources for music they enjoy, if radio stations ignore the music and artists gaining popularity online. The question for this proceeding is whether it is the CRTC’s role to help radio broadcasters regain audiences that are abandoning them to find music online.

B Who should answer the challenge?

- 7 Should the CRTC change its FVM policy – somehow – to help French radio recapture young people? No: we believe that if anyone is capable of developing innovative strategies for luring audiences to, or back to, their stations, it is Canada’s inventive, creative, entrepreneurial and competitive radio broadcasters.
- 8 After all, CRTC deregulation that began in 1990 when radio margins plummeted (in response to a nation-wide recession) now means that radio broadcasters may change formats and programming they offer, whenever they wish – provided they respect Parliament’s wishes with respect to the linguistic duality of and programming from Canada.
- 9 And like any other business radio broadcasters may also make investments that will strengthen their business, including the development of their own online presence and the promotion on their stations of music now available only online, whenever they wish.

C BnoC 2015-318: a solution in search of a problem, evidence and jurisdiction

⁵ *Ibid.*, at 18.

⁶ Joel Waldfogel, *And the Bands Played on: Digital Disintermediation and the Quality of New Recorded Music* (July 25, 2012). Available at SSRN: <http://ssrn.com/abstract=2117372> or <http://dx.doi.org/10.2139/ssrn.2117372>.

- 10 Yet Broadcasting Notice of Consultation CRTC 2015-318 makes it clear that the CRTC is preparing to abandon a successful policy, much in the same way that some financial institutions close outlets to improve customer service:

Q29. The Commission is prepared to consider shifting from a regulatory framework that is the same across the entire French-language commercial radio sector to an equitable regulatory framework that takes into account the different realities of licensees of French-language commercial radio stations.

- 11 The CRTC has not explained why it believes its FVM approach should change at this time, except to refer vaguely to the Internet – now so old that it cannot reasonably be described as a ‘New’ medium. If Internet radio threatens the viability of French-language radio (and this is unknown, because the CRTC does not publish information about Canadian radio stations’ Internet business), the solution is within the CRTC’s power: it could revisit its decision to forbear from regulating online radio stations. Gutting a mainstay of French-language radio regulation on the chance that French-language audiences will suddenly abandon the Internet seems like an overreaction.
- 12 Broadcasting Notice of Consultation CRTC 2015-318 also asks repeatedly about French-language musicians’ career development, with little reference to the role of MusicAction, French-language radio broadcasters’ initiative to ensure a base of Canadian French-language recordings by funding the recording of French-language music.
- 13 The CRTC is also silent about the status of French-language musicians, but we note that Statistics Canada reports that the number of people who described themselves as musicians in Quebec decreased by 200 people between 2006 and 2011: from 6.6 to 6.4 thousand (-3%).⁷ Meanwhile, the number of musicians in the rest of Canada fell by 1.6 thousand: from 27.5 to 25.9 thousand (-6%). Even if the CRTC were responsible for musicians’ employment and career development – and it is not – the musicians who are having a difficult time are in the rest of Canada, not Quebec.
- 14 Broadcasting Notice of Consultation CRTC 2015-318 is also mystifyingly silent as to how audiences will benefit by a reduction in French-language vocal music, just

⁷ Statistics Canada, 2006 “Occupation - National Occupational Classification for Statistics 2006 (720), Class of Worker (6) and Sex (3) for the Labour Force 15 Years and Over of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2006 Census - 20% Sample Data”; Statistics Canada, 2011 National Household Survey, Statistics Canada Catalogue no. 99-012-X2011060.

which broadcasters stand to benefit or lose by this approach, or how this approach will implement Parliament’s broadcasting policy for Canada.

15 Rather, the CRTC’s focus seems to be on the well-being of French-language broadcasters.

16 FRPC respectfully submits that if the CRTC has concerns about the nine French-language broadcasters that operate 19 French-language radio stations in Canada’s two bilingual markets – Montreal and Ottawa-Gatineau – these broadcasters are free to apply to the CRTC at any time for exceptions to the CRTC’s FVM regulations. The Commission should amend these broadcasters’ licences if their applications are supported by evidence.

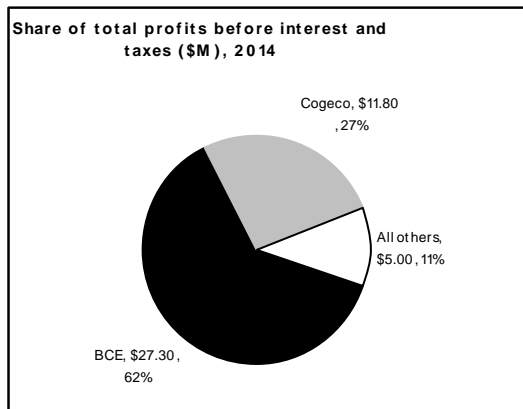
Radio ownership in Montreal & Ottawa-Gatineau, 2015

| Ownership groups | AM | FM | Total |
|---------------------|----|----|-------|
| 1 Cogeco | 1 | 4 | 5 |
| 2 Bell | | 4 | 4 |
| 3 RNC | | 3 | 3 |
| Subtotal, 3 largest | 1 | 11 | 12 |
| 4 Groupe Medias | 2 | | 2 |
| 5 9188-7208 | | 1 | 1 |
| 6 Media ClassiQ 1 | | 1 | 1 |
| 7 Radio Vie New | | 1 | 1 |
| 8 Radio Humsafar | 1 | | 1 |
| 9 Evanov | 1 | | 1 |
| Total | 5 | 14 | 19 |

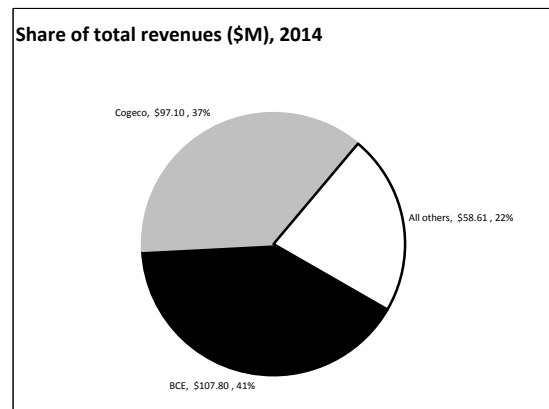
17 We note, however, that three of these broadcasters – Cogeco, Bell and RNC – now operate 12 (63%) of the 19 stations in Montreal and in Ottawa-Quebec, and that they are enjoying a certain modest success: together Cogeco and Bell took in 89% of all French radio profits in 2014.

Source: see Appendix 4

French radio profits before interest and taxes



French radio revenues



18 Cogeco and Bell’s success despite the 42-year old FVM policy suggests that the CRTC should require very compelling evidence before granting these broadcasters even more regulatory relief than they have been given in the past several decades.

- 19 The CRTC has also not explained why broadcasters should be granted yet more regulatory flexibility when they have either only paid lip service to the FVM policy, or have not met its requirements: more than half (58) of Canada's 96 private French-language radio stations have breached the CRTC's FVM requirements at least once, and 16 (17%) have breached these requirements more than once (see Appendix 2). If the CRTC is changing its FVM policy in the interests of 'equity' (the CRTC refers to an "equitable regulatory framework"), we remind the Commission of the old legal maxim that 'equity loves clean hands'.
- 20 Next, we note that French-language radio's financial performance is not manifesting a significant crisis that requires changes to a successful policy: to the contrary, French-language radio stations have been enjoying double-digit profit margins across the board. The only group of broadcasters that are clearly experiencing financial problems are the four English-language AM broadcasters in Montreal.

| Profit before interest and taxes, 2014 (number of stations) | | | |
|--|-------------------|-------------|------------------|
| PBIT margins | AM | FM | All radio |
| Radio | | | |
| English | 3.4% (109) | 22.9% (466) | 19.0% (575) |
| French | 10.7% (6) | 16.8% (90) | 16.7% (96) |
| Montreal | | | |
| French | 11.1% (4) | 21.0% (8) | 20.7% (12) |
| English & Ethnic | -16.6% (4) | 38.8% (5) | 26.4% (9) |
| Ottawa-Gatineau | | | |
| French | ND | 18.2% (5) | ND |
| English & Ethnic | ND | 26.0% (12) | ND |
| Small markets | | | |
| French | ND | ND | 10.2% (69) |
| English | ND | ND | 13.0% (413) |

Note: ND – no data publicly available

Source: CRTC statistical and financial summaries, 2014; see also Appendix 5

- 21 Under these circumstances, what justifies a change in the CRTC's French-language radio policy? Even if French-language radio broadcasters have different profit levels, Canada's broadcasting legislation does not require and does not give the CRTC the jurisdiction to ensure that all broadcasters enjoy equal, or even equitable, levels of profitability.
- 22 Moreover, we also note that thanks to the CRTC's idea that concentrated media ownership will benefit the broadcasting system, Bell and Cogeco took in 89% of French-language radio profits before interest and taxes (PBIT) in 2014, leaving

the remaining 11% of profits to all other French-language broadcasters. To the extent that any new regulatory measures are required, we suggest that the main one is to prevent large broadcasters from gaining even more control over French-language radio, by ensuring that all stations operate under the same, reasonably successful regulatory policies.

23 FRPC's answers to the CRTC's are summarized below (and set out in greater detail in Appendix 6).

III Answers to CRTC questions and general conclusions: let private broadcasters compete

A General conclusions

24 FRPC's responses to the CRTC's questions are summarized below, and set out in somewhat more detail in Appendix 6.

25 Briefly, FRPC does not support the significant changes to the FVM policy being suggested at this time because

- There is no evidence to support the changes
- The broadcasters that are likely to benefit most from the changes are those whose French-language radio stations are already successful
- The CRTC's decisions to deregulate radio formats and other aspects of radio licensing (library size, hits, repeat factors) means that broadcasters have complete freedom to offer innovative programming to attract audiences
- Parliament established the CRTC to regulate broadcasting and ensure that Canadian audiences have access to Canadian programming, not to maximize broadcasters' profits or to manage musicians' careers, and
- Establishing a new body to finance musicians' career development is the responsibility of those who will benefit most from that body: broadcasters and the music sector – unless they can convince the federal or provincial governments to set aside scarce public resources to support a sector of the economy that enjoys double-digit profit margins

26 FRPC also notes that the CRTC has established a straightforward and reasonable process that enables licensees to ask to be exempted from its regulations: in our view, broadcasters that are encountering unusual difficulties in meeting the CRTC's FVM policy have an appropriate remedy at their disposal.

- 27 Finally, bearing in mind the somewhat limited information about online music services now available on the public record, FRPC respectfully submits the Commission may wish to hold off its final determinations on the FVM matters it has raised, to invite online streaming music services to provide information that may better inform the Commission's perspective.
- 28 A change that would benefit interested parties, is better CRTC decision-writing: in the past decade the CRTC's licensing and renewal decisions have become uninformative and nearly useless for evaluating broadcasters' performance over time. The absence of information about broadcasters' programming means that the communities they serve have no way of evaluating whether service is improving or worsening, and Parliament has no way of knowing whether broadcasters are, or are not, implementing its objectives for the broadcasting system.
- 29 FRPC therefore recommends that the CRTC's decisions include the information necessary to compare undertakings' performance over time.

B Response to CRTC questions - summary

| CRTC questions | FRPC response |
|--|--|
| <p>Q1. Are the findings stated in paragraph 28 accurate and why? Paragraph 28 findings:</p> <ul style="list-style-type: none"> • more competition from emerging platforms for the discovery, promotion, broadcast and consumption of music; • digital platforms changes and customizes Canadians' use of music • streaming increasingly popular; • HD Radio technology could increase diversity of radio services offered to Canadians; • Canadian production of English and French sound recordings is relatively stable and going well; • sound recording sales in French Canada have recently decreased for physical and digital albums, and digital tracks • the Quebec market share and the demand for French-language sound recordings are stable • commercial radio tuning is decreasing nationwide and in the French-language markets, especially among young listeners; • listeners are moving from French-language commercial stations to English-language stations in Montréal and Ottawa/Gatineau; • the French-language commercial radio sector is profitable, but this profitability varies depending on market and format; and | <p>Accurate but incomplete: they provide no data about French-language commercial radio's structure or financial performance</p> <p>This evidence supports the reasons given by the CRTC in 1998 and 2006 for maintaining, not weakening, the 65-55 FVM requirements:</p> <ol style="list-style-type: none"> 1 No shortage of French-language vocal music, because extensive catalogue exists 2 Maintaining 65-55 FVM requirement will continue to stimulate record industry and ensure continued availability of high quality French-language recordings 3 Requirements promote partnerships between French-language music sector and French-language radio 4 Playing more English-language music will not repatriate significant audiences to French-language stations (nor is there evidence that it will repatriate younger people from online music sources) 5 Francophones' access to French-language music matters more than marginal increases in audience: 6 French-language broadcasters have other options (such as playing emerging artists and formats now only available online) |

| CRTC questions | FRPC response |
|---|--|
| <ul style="list-style-type: none"> in Quebec stations operating under the "talk," "adult contemporary," "hot adult contemporary" and "musical hits" formats are generally among the most popular, with the last three formats being those of the most profitable stations | <p>7 FVM requirements do not prevent French-language radio from offering different programming, music or formats</p> |
| <p>Q2. What challenges and issues face the Canadian French-language music and commercial radio industries, given the new technologies and current environment? What tools and strategies help address these challenges and issues?</p> | <p>Parliament gave the CRTC the mandate to license and regulate radio – not musicians and not the music sector</p> <p>The CRTC has deregulated radio, has permitted highly concentrated ownership and ensures that the industry-established MusicAction is funded through tangible benefits</p> <p>There is no evidence of a crisis in French-language radio that requires changes to the FVM policy: changes are a solution to a non-existent problem</p> |
| <p>Q3. What benefits can the Canadian French-language music and commercial radio industries draw from these new technologies and the current environment? What tools and strategies can be used to optimize these benefits?</p> <p>Q4. How can the French-language commercial radio sector harness the new tools of the current environment, such as online platforms or HD Radio technology, to enhance the offering, discovery and promotion of musical content?</p> <p>Q5. Considering the contribution of the community and public radio sectors, how can the French-language commercial radio sector contribute to the continued support of Canadian French-language music artists?</p> | <p>The CRTC should not concern itself with these matters because</p> <ol style="list-style-type: none"> they are not in its jurisdiction even if they were in its jurisdiction, there is no evidence of a crisis in French-language radio or French-language music even if French-language musicians were within CRTC's jurisdiction, or French-language stations were losing audience, the music sector and French-language broadcasters can and should deal with these issues, not the CRTC A decision by the CRTC to attempt to 'support' French-language musicians and radio stations in general will require the re-regulation of French-language radio, as well as new levels of monitoring and enforcement: there is no evidence that the benefits of this exercise will outweigh its costs |
| <p>Q6. In 2015, to what extent is the French-language commercial radio sector still a leading source for discovering and listening to French-language selections and artists? How important is this sector to the discovery of musical selections according to the various demographic groups, in particular young listeners (aged 18 to 34)?</p> | <p>The CRTC has no express jurisdiction to ensure that French-language commercial radio stations are a source for discovering new artists, or for ensuring that these stations are important for the discovery of musical selections by 'younger' listeners from 18 to 34 years of age</p> <p>Responsibility for attracting audiences rests properly with radio broadcasters: let competitive broadcasters compete</p> |
| <p>Q7. What factors, in particular those relating to music programming, are responsible for the decrease in radio tuning levels among Canadians, especially among young listeners (aged 12 to 34)?</p> | <p>Listeners born in or after the 1950s when portable radios emerged, have always been accustomed to having technology that permits them to choose and hear their own music (thanks to record players, cassettes, Walkmans, portable CD players, iPods, NanoPods and and more)</p> |

| CRTC questions | FRPC response |
|---|--|
| | <p>The past fifteen years have made more music available than before, through the Internet</p> <p>A specific issue for mobile telephone users is that they do not easily permit users to access broadcast radio, but the CRTC's jurisdiction in this area is limited to asking telephone producers to correct this problem</p> |
| <p>Q8. To what extent does the broadcast of FVM selections influence commercial radio tuning among the different demographic groups, in particular young people (aged 18 to 34)? How does the impact of broadcasting FVM selections vary depending on musical format?</p> | <p>This question hypothesizes that FVM has a causal impact on tuning</p> <p>In our view, this link is not relevant to the CRTC's FVM policy, as the CRTC established this policy to implement section 3(1) of the Broadcasting Act, to ensure that French-language audiences have access to FVM</p> |
| <p>Q9. What link can be made between FVM artist exposure on French-language commercial radio (broadcast of musical selections, promotional interviews, advertising, etc.) and the benefits to the music industry?</p> | <p>As the CRTC has no jurisdiction with respect to the music sector, benefits to the music sector delivered by the FVM requirements are not relevant to the FVM policy</p> |
| <p>II Necessary changes to the current regulatory framework</p> | |
| <p>Q10. Do the current requirements regarding the broadcast of FVM selections effectively meet the demand of listeners in the various formats offered by the French-language commercial radio stations?</p> | <p>As the CRTC has deregulated radio stations' formats, it is not relevant whether the FVM requirements meet or do not meet listeners' demand: responsibility for attracting audiences lies entirely with radio broadcasters</p> |
| <p>Q11. Is the current supply of French-language sound recordings sufficient to allow French-language commercial radio stations with different formats to respect the current requirements for the broadcast of FVM selections?</p> | <p>There is no evidence that the supply of French-language recordings is insufficient to meet French-language radio stations' needs</p> <p>If the current supply of FVM recordings were insufficient, moreover, French-language radio broadcasters may look for other sources of French-language music (such as musicians who make their work available online), invest in French-language music, or call on MusicAction to work to increase the numbers of recordings it supports</p> <p>As the CRTC has deregulated radio stations with respect to formats, responsibility for choosing the formats or recordings they play to attract audiences now lies entirely with radio broadcasters</p> |
| <p>Q12. The French-language commercial radio sector broadcasts FVM selections to respond to the needs and interests of listeners (demand). To what extent must these stations also reflect the overall musical offering (genres, artists and selections) produced by Canadian artists in the French-language music industry?</p> | <p>Responsibility for radio stations' choice of musical offerings produced by Canadian French-language musicians lies entirely with radio broadcasters</p> |
| <p>Q13. In today's digital environment, where market barriers are breaking down, and given the proliferation of sources available for listening to music, are the current regulatory</p> | <p>It is not clear what the CRTC means by "market barriers are breaking down". Barriers to entry into Canada's commercial radio market remain: the CRTC decides</p> |

| CRTC questions | FRPC response |
|--|---|
| <p>category 2 FVM broadcast quotas (65% per broadcast week and 55% in peak listening periods), still an appropriate measure to meet the needs and interests of listeners, reflect their culture and Canada's linguistic duality and support French-language Canadian artists? Why?</p> | <p>whether and when to license new radio stations, and it has not indicated so far that it plans to grant licences to just anyone who applies for one</p> <p>If 'market' refers to technological alternatives, the issue of technology is not relevant: the CRTC developed its FVM policy to meet the requirements of the Broadcasting Act, not to address changing technologies</p> <p>Even if technology were relevant – and it is not, the record of this proceeding has a significant gap: the absence of any information about French-language broadcasters' income from their online offerings</p> <p>Finally, as Table 2 shows, the data presented by the CRTC provides contemporary evidentiary support for its reasons for maintaining the FVM policy in 1998 and 2006</p> |
| <p>Q14. What should be the required FVM broadcast levels for category 2 in the following two scenarios and why?</p> <ul style="list-style-type: none"> • the Commission decides to count each musical excerpt broadcast in a montage by a French-language commercial station individually if this montage is not considered a single musical selection under sections 2.2(11) and 2.2(12) of the Regulations; and • the Commission decides to maintain its calculation method for excerpts in montages. | <p>Under the first scenario, French-language broadcasters that prefer to broadcast English-language music will cram as many French-language selections into brief montages as possible. This will reduce the overall time allocated to FVM, and defeat the purpose of the FVM policy, regardless of the percentages chosen by the CRTC for FVM and introduce a significant degree of work for the CRTC, as it will be required to monitor montages even more closely than it does now.</p> |
| <p>Q15. Since a large majority of FVM selections currently broadcast by French-language commercial radio stations are Canadian, would it be more appropriate to impose quotas on this sector for the broadcast of French-language Canadian vocal music? If so, what should be the required broadcast levels for category 2 FVM and why?</p> | <p>The CRTC does not define "a large majority" and insufficient evidence is available from the CRTC's notice to answer this question in an informed manner</p> <p>That said, if 65% of station A's musical selections during the week are in French, then up to 35% are not in French</p> <p>If "large majority" means that two-thirds of the French-language selections broadcast by station A are Canadian, then 42.9% of station A's musical selections are Canadian ($66\% \times 65\% = 42.9\%$)</p> <p>If the CRTC required 42.9% of station A's musical selections to be Canadian and in French, then up to 57.1% of its selections could be non-Canadian and in English – in other words, French-language radio audiences' access to French-language music would decrease (possibly also reducing the royalty income of French-language musicians if English-language or non-Canadian musicians' works are played instead of Canadian French-language works), from 65% to 42.9%</p> <p>It is unclear why decreasing French-language radio audiences' access to French-language music would be in the</p> |

| CRTC questions | FRPC response |
|---|--|
| | public interest. |
| Q16. Does the broadcast of a minimum percentage of FVM selections during peak listening periods (currently 55% from Monday to Friday between 6 a.m. to 6 p.m.) maximize access to and the promotion of Canadian FVM and why? | Yes. |
| If not, should peak listening periods be redefined for FVM selections and in what way? | See above. |
| Q17. Is the Commission's practice of considering a musical selection as FVM if more than 50% of the duration of the vocal portion is in the French language appropriate for French-language stations? If so, should it be codified by the Regulations? | Yes. |
| Q18. Could changing the quotas for FVM affect the level of bilingual versus wholly French-language musical selections found in the programming of French-language commercial stations and to what extent? | Insufficient evidence is available publicly to answer the question in an informed manner |
| Q19. The Commission is considering counting montage excerpts individually for French-language stations instead of counting the montage itself as a single musical selection. What would the impact be on: <ul style="list-style-type: none"> • the popularity and performance of the French-language commercial radio industry, particularly in the bilingual markets? • the popularity and performance of the French-language music industry? | <p>The purpose of the CRTC's FVM policy is to implement the <i>Broadcasting Act</i>, not to address the popularity or performance of French-language radio or French-language music</p> <p>Montage excerpts should not be counted as individual selections because this will have the counterintuitive effect of reducing the time in which French-language radio audiences have access to FVM, contrary to Parliament's broadcasting policy for Canada.</p> |
| Q20. Should the Commission maintain the provisions set out in sections 2.2(11) and 2.2(12) of the Regulations relating to the calculation of Canadian montages and FVM and why? | The CRTC should either maintain or increase the level of FVM now available to French-language radio station audiences |
| Q21. Are there music formats, markets and groups of listeners that are more likely to be influenced or affected by changes in the regulatory framework regarding FVM? If so, which ones and why? | It is not clear how these questions are relevant to the CRTC's jurisdiction |
| Q22. There is a shift of young French-language listeners to English-language stations in the bilingual markets of Montréal and, in particular, Ottawa/Gatineau. | The purpose of the CRTC's FVM policy is to implement the <i>Broadcasting Act</i> , not to promote the careers of emerging French-language Canadian artists |
| 1. To what degree is this trend attributable to the music content offered and, in particular, to FVM? | CRTC deregulation of commercial radio means that broadcasters, not the CRTC, are responsible for attracting audiences |
| 2. Are there musical formats that are more affected by competition in bilingual markets? If so, which ones and why? | |
| 3. How could the Commission change its regulatory framework to ensure a better competitive balance between English- and French-language radio stations in bilingual markets? | As for a better competitive balance between English-language and French-language radio stations in bilingual markets, profit margins of the 13 French-language FM stations in Ottawa-Gatineau and Montreal are lower than their 17 English-language counterparts are respectable: 18.2% in Ottawa-Gatineau, and 21% in Montreal |
| | The 4 French-language AM stations in Montreal are also doing better than the 4 English-language AM stations: |

| CRTC questions | FRPC response |
|--|--|
| | 11.1% vs -16.6% |
| <p>Q23. In the current environment, how do emerging French-language Canadian artists make use of the various media to ensure their promotion and career development? Is French-language commercial radio a coveted media outlet for this purpose and why?</p> | <p>Respectfully, we do not understand the relevance of these questions to the CRTC's jurisdiction</p> <p>The purpose of the CRTC's FVM policy is to implement the <i>Broadcasting Act</i>, not to promote the careers of emerging French-language Canadian artists</p> |
| <p>Q24. In addition to broadcasting musical selections, the French-language commercial radio sector contributes to developing the careers of emerging artists through promotional interviews and some CCD contributions. Overall, does this sector provide adequate support to emerging French-language Canadian artists?</p> | Yes |
| <p>Q25. What would be the impact and benefits for emerging French-language Canadian artists and the French-language commercial radio sector of imposing a minimum regulatory threshold for the broadcast of musical selections by emerging Canadian artists?</p> | Stations that are doing little will slowly improve; stations that are doing more may reduce their efforts |
| <p>III New Measures</p> | |
| <p>Q26. Would setting up a fund or a funding mechanism similar to the CCD policy, but geared specifically to music discovery, be desirable? What might be its components?</p> <p>Q26. Would setting up a fund or a funding mechanism similar to the CCD policy, but geared specifically to music discovery, be desirable? What might be its components?</p> <p>Q28.</p> <ol style="list-style-type: none"> 1. How can the French-language music and commercial radio sectors adapt to the proliferation of competing sources for music consumption and work together to attract and keep their listeners and consumers, particularly the younger generation? 2. How can the French-language music and commercial radio sectors work together to allow French-language Canadian music to have a stronger presence on the various digital broadcasting platforms? 3. Is it feasible and desirable to consider creating a working group that would meet regularly to discuss the needs of representatives, topical issues and measures for addressing them in an effective manner? | <p>These matters are not the CRTC's business. Even if it were (and it is not because these matters are not set out in the <i>Broadcasting Act</i>), the CRTC deregulated commercial radio since 1990 to permit broadcasters to compete with each other</p> <p>The CRTC should only re-involve itself at this time if utterly compelling evidence exists demonstrating a crisis in French-language radio – but with double digit profit margins for French-language radio, where is the crisis?</p> <p>We also note that nothing prevents broadcasters from performing any of these tasks on their own</p> <p>The CRTC's role should be to ensure that Parliament's broadcasting policy for the Canada is being implemented, not to micromanage broadcasters' financial performance</p> |
| <p>Q29. The Commission is prepared to consider shifting from a regulatory framework that is the same across the entire French-language commercial radio sector to an equitable regulatory framework that takes into account the different realities of licensees of French-language commercial radio stations.</p> <ol style="list-style-type: none"> 1. What are the elements of the regulatory framework for FVM that should apply unvaryingly to the entire French- | This framework is already in place and does not require change: any licensee may ask the CRTC to be exempted from its regulations, provided it submits evidence to justify this exemption |

| CRTC questions | FRPC response |
|--|---|
| <p>language commercial radio sector and why?</p> <p>2. Which elements of the current regulatory framework for FVM could be part of the à la carte regulatory system described above and why?</p> <p>3. What criteria (e.g., economic reality, target audience, music format) should the Commission use as a basis for varying the requirements of an à la carte system?</p> <p>4. If such an à la carte system were adopted, how would the Commission ensure that each station in the sector continues to contribute equitably to the support and promotion of French-language Canadian artists?</p> | |
| <p>Q30. Aside from the measures proposed in this notice, what other innovative measures falling within the Commission's jurisdiction should be examined to allow the French-language commercial radio sector to support more effectively Canadian French-language artists, better meet the needs and interests of their listeners and reflect their culture, particularly in terms of linguistic duality.</p> | <p>The CRTC should describe individual radio stations' performance in detail in its licence renewal decisions to permit communities, stakeholders and other parties understand and compare broadcasters' service and success in meeting the objectives of Canada's broadcasting legislation over time</p> |

Appendices

Appendix 1 CRTC's regulation of FVM**French-language vocal music in Canada**

- 1 The Commission has described its requirements for French-language vocal music as “the cornerstone of its regulatory structure for radio”.⁸ It has also explained that the 65% French-language vocal music requirement is “one way of ensuring that French-language radio stations reflect the needs and interests of their audiences”,⁹ “to support a francophone recording industry in Canada and to allow francophones to have access to music reflecting their culture.”¹⁰
- 2 In 2011 the Commission reiterated “its view that French-language broadcasters must continue striving to contribute to the development of French-language expression.”¹¹

Regulatory context

- 3 The CRTC first set minimum standards for French-language vocal music forty-three years ago. In 1972 the CRTC studied the music broadcast by French-language radio stations and determined that on “on some French-language radio stations less than half of the musical selections broadcast were French-language selections.”¹²

⁸ *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60 (Ottawa, 21 April 1995), <http://www.crtc.gc.ca/eng/archive/1995/pb95-60.htm>

⁹ *A review of the Commission's Policies for Commercial Radio*, Public Notice CRTC 1997-104 (Ottawa, 1 August 1997), <http://www.crtc.gc.ca/eng/archive/1997/PB97-104.HTM>, at para 76.

¹⁰ *Commercial Radio Policy 1998* (Public Notice CRTC 1998-41) (Ottawa, 30 April 1998), <http://www.crtc.gc.ca/eng/archive/1998/PB98-41.HTM> at para. 151.

¹¹ *Complaint regarding the broadcast of French-language vocal music by CKOI-FM Montréal*, Broadcasting Decision CRTC 2011-726 (Ottawa, 224 November 2011), <http://www.crtc.gc.ca/eng/archive/2011/2011-726.htm>, at para. 16.

¹² (“Background”), <http://crtc.gc.ca/eng/archive/1985/PB85-100.htm>.

The 1968 *Broadcasting Act* stipulated under s. 3(e) that “all Canadians are entitled to broadcasting service in English and French as public funds become available”. It is worth recalling that during the 1960s a number of movements arose internationally to protest what they described as imperialism. The Front de Libération du Québec (FLQ) said it opposed Anglo-Saxon imperialism in Quebec, and initiated more than 150 acts of violence, including the bombing of Montreal’s stock exchange in 1969, and in 1970, the kidnapping of the British Trade Commissioner and the murder of Quebec’s Labour minister the same year. During the 1970 ‘October Crisis’, Prime Minister Trudeau told the CBC that his government “has pledged that it will introduce legislation which deals not only with the symptoms but with the social causes which often underlie or serve as an excuse for crime and disorder” (Wikipedia: https://en.wikipedia.org/wiki/Front_de_lib%C3%A9ration_du_Qu%C3%A9bec#October_crisis).

1973: CRTC introduces 65%-75% requirement for FVM

- 4 The CRTC raised the matter of French-language vocal music with French-language broadcasters. In early 1973 it granted CKAC Limitée a radio network licence involving CKAC Montreal, CHLN Trois-Rivieres, CHLT Sherbrooke and CKCH Hull. Noting “the applicant’s comments concerning the large proportion of English-language vocal music broadcast by CKAC and its associated stations”, the CRTC said that it expected

... each station will establish, in cooperation with other broadcasters concerned with this question, a reasonable scheme to improve this situation as soon as possible.¹³

- 5 The Commission also set measureable objectives for the amount of French-language vocal music that radio stations were to broadcast – in unpublished correspondence from the CRTC’s Chairman to the Chairman of the Association canadienne de la radio et de la télévision de langue française (ACRTF). The CRTC’s Chairman apparently informed French-language radio broadcasters that they would have to ensure that 75% of the vocal popular music selections they broadcast between 6 am and 6 pm weekdays, and 65% of all vocal music selections broadcast during the week, were in French.¹⁴ The CRTC set these requirements by condition of licence¹⁵ until 1992.¹⁶

1980: CRTC reduces FVM to 65%

¹³ Decision CRTC 73-54 (Ottawa, 26 January 1973). In Decision CRTC 73-56, released on the same date, the CRTC considered renewal applications filed by Mutual Broadcasting Limited, CJRS Radio Sherbrooke Limitée, CJTR Radio Trois-Rivieres Limitée and CJRC Radio Capitale Limitée:

At the Hearing, the Commission heard comments by the applicants concerning the high percentage of English vocal music broadcast by certain network stations.

While the Commission is aware of the difficulties involved in improving the situation, it does not share the applicants’ general conclusions and expects them to take part in studies undertaken by other interested broadcasters in order to find realistic solutions as soon as possible.

¹⁴ The correspondence is briefly described but not reproduced in *French-language Popular Music*, Public Notice CRTC 1986-67 (Ottawa, 19 March 1986), <http://crtc.gc.ca/eng/archive/1986/PB86-67.htm>. It refers to letters from the CRTC’s Chairman to ACRTF’s Chair dated 28 November 1973, and 12 June 1974.

In 2008, however, the Canadian Association of Broadcasters said the CRTC wrote to the ACRTF in 1972, to “initially set an FVM quota of 75% applicable only to French-language stations outside the bilingual markets (Montreal and Ottawa-Hull)” – CAB, *Policy Regarding the Broadcast of Hits by FM Radio Stations: Comments*, (Ottawa, 4 March 2008), http://www.cab-acr.ca/english/research/08/sub_mar0408.pdf, para. 35.

¹⁵ In the 1970s many broadcasters’ conditions of licence were not set out in the CRTC’s published decisions, but were physically attached to their actual licences.

¹⁶ See *A Review of the CRTC’s Regulations and Policies for Radio*, Public Notice CRTC 1992-72 (Ottawa, 2 November 1992) <http://www.crtc.gc.ca/eng/archive/1992/PB92-72.htm>.

- 6 Seven years later, in 1980, the CRTC noted that some French-language radio stations in Montreal were having difficulties in meeting the French-language vocal music requirements.¹⁷ It dropped the requirement that 75% of vocal music selections broadcast from 6 am to 6 pm be in French, but maintained the minimum 65% requirement for weekly programming.¹⁸
- 7 Around this time – a period when the CRTC was carefully monitoring radio stations to ensure the implementation of its 1975 FM policy that set limits on the format and repetition of the musical selections broadcast by radio stations – English-language broadcasters were also concerned about the availability of Canadian English-language musical selections for their radio stations. In 1982, therefore, several private radio broadcasters (CHUM, Moffat and Rogers) and the Canadian Independent Record Production Association¹⁹ established two organizations to produce Canadian records in Canada: the Foundation Assisting Canadian Talent on Recordings (FACTOR), for English-language recordings, and MusicAction for French-language recordings.

1983-1985: CRTC reduces FVM to 55%

- 8 In 1983 the CRTC acknowledged that Montreal's only French-language radio station at the time – CKOI-FM – could not easily meet the 65% French-language vocal music requirement for its progressive rock format. Noting the station's plans to promote and develop new French-language music, the CRTC allowed CKOI-FM to reduce its French-language vocal music from 65% to 55%.²⁰ In 1984 CKOI-FM was the only one of 94 private radio stations in Quebec²¹ to be granted this exception.²²
- 9 By early 1985 "a number" of French-language radio broadcasters had applied to the CRTC for authorization to reduce the 65% French-language vocal music requirement.²³ They argued that a decrease in the number of French-language recordings made it difficult to meet the requirement.

¹⁷ Described in Public Notice CRTC 1985-100, <http://crtc.gc.ca/eng/archive/1985/PB85-100.htm>.

¹⁸ *Ibid.*

¹⁹ CIRPA – now the Canadian Independent Music Association (CIMA).

²⁰ Decision CRTC 83-804.

²¹ Statistics Canada, *Radio and television broadcasting 1983*, (Ottawa, December 1984) at 22.

²² *Radio Futura Ltée*, Decision CRTC 84-137 (Ottawa, 23 February 1984),

<http://www.crtc.gc.ca/eng/archive/1984/DB84-137.HTM>.

²³ *Task Force on French-language Popular Music*, Public Notice CRTC 1985-100 (Ottawa, 22 May 1985), <http://CRTC.gc.ca/eng/archive/1985/PB85-100.htm>.

- 10 The CRTC therefore established a Consultative Committee on French-language vocal music in May 1985, to obtain empirical data and to explore “viable solutions or alternatives”.²⁴ The Committee in turn established a task force. Unfortunately, the task force’ report did not achieve consensus on the appropriate level of French-language vocal music that French-language radio stations should broadcast. The Committee then submitted an edited version of the task force report to the CRTC in December 1985. Most of the broadcasters who had participated in the task force went on to form a separate working group through the CAB, and reported separately in January 1986.²⁵

1986-1989: CRTC temporarily maintains 55% FVM

- 11 In March 1986, the CRTC decided that “a large reduction in the airplay of French-language music is not an appropriate response to the relative lack of French-language recordings”²⁶ – but agreed anyway to reduce the 65% French-language vocal music requirement to 55% for two years.²⁷ This change affected all French-language AM stations, and ten FM stations.²⁸
- 12 The CRTC stressed that the March 1986 reduction in French-language vocal music levels was temporary, and set out “its intention to return to the 65% requirement governing French-language recordings as quickly as a revitalized supply of the product makes it feasible to do so.”²⁹ The Commission reminded broadcasters that the requirements were minimum standards that they should try to surpass.³⁰
- 13 The CRTC also said that licensees had “an important role to play in the development of new Canadian francophone talent”.³¹ It encouraged “the radio industry to develop and participate in joint initiatives such as MUSICACTION so as to ensure that such programs are effective.” Coincidentally – that same year – MusicAction and

²⁴ *Ibid.*

²⁵ *French-language vocal music*, Public Notice CRTC 1986-67 (Ottawa, 19 March 1986), <http://crtc.gc.ca/eng/archive/1986/PB86-67.htm>.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ To 55% for CKOI-FM Montreal, CKMF-FM Montreal or CKTF-FM Gatineau, and to 60% for CJMF-FM Quebec, CHIK-FM Quebec and CHOI-FM Quebec City: CAB, *Policy Regarding the Broadcast of Hits by FM Radio Stations: Comments*, (Ottawa, 4 March 2008), http://www.cab-acr.ca/english/research/08/sub_mar0408.pdf, para. 40.

²⁹ *French-language vocal music*, Public Notice CRTC 1986-67 (Ottawa, 19 March 1986), <http://crtc.gc.ca/eng/archive/1986/PB86-67.htm>.

³⁰ *Ibid.*

³¹ *Ibid.*

FACTOR began to administer a five-year, \$25 million sound-recording program³² previously run by the federal Department of Communications.³³ French-language music was to receive 40% of this sum: \$10 million, or \$2.5 million per year to 1991.

- 14 When the CRTC reduced its requirements for French-language vocal music in March 1986, it also dropped advertising time limits on all AM stations, and hourly advertising limits for FM stations³⁴ because of technological, social and economic forces. It said,

Currently, Canada is experiencing substantial change which exerts a profound influence upon the broadcasting system. In radio, a variety of technological, social and economic forces are converging to stimulate new competition, new audio service concepts, improved and more efficient delivery options and new patterns of consumer utilization. Furthermore, the Commission notes that many of its radio licensees have experienced financial difficulties over the past few years. An increasing number of stations have not had significant growth in their revenues at a time when their operating costs have increased dramatically.

- 15 The Commission explained that the objective of its regulations was “to provide Canadian radio broadcasters with a flexible and efficient framework that will encourage the development and support of Canadian musical talent and artistic expression.”³⁵
- 16 In 1987 the CRTC also stopped evaluating the use of French-language hits by FM radio stations.³⁶ By 1988 the CRTC had also allowed eleven French-language FM radio stations to reduce their French-language vocal music.³⁷

³² Federal Minister Marcel Masse announced a \$25 million, 5-year development strategy to help reverse a decline in the production of Canadian content recordings on 9 May 1986.

FACTOR, “Our History”, <https://www.factor.ca/aboutthefoundation/ourhistory> [accessed 9 September 2015]. The SDRP was worth \$25 million over the first five years; FACTOR administered 60% of the funds for English-language music; MusicAction administered the remaining 40% for French-language music.

³³ Now Canadian Heritage.

³⁴ *Proposed regulations respecting Radio (A.M.) and Radio (F.M.) Broadcasting*, Public Notice CRTC 1986-66 (Ottawa, 19 March 1986), <http://www.crtc.gc.ca/eng/archive/1986/PB86-66.htm>.

³⁵ *New Radio AM and FM Regulations*, News Release (Ottawa, 19 March 1986) at 1.

³⁶ Circular No. 332 (Ottawa, 15 May 1987). In Public Notice CRTC 1990-111 the CRTC said that “imposition of restrictions on the use of hits ... would represent an undue burden for French-language broadcasters.”

³⁷ *French-language Popular Music*, Public Notice CRTC 1988-84 (Ottawa, 26 May 1988), <http://crtc.gc.ca/eng/archive/1988/PB88-84.htm>.

- 17 At this time the CRTC was also taking note of stations' use of montages – “musical selections in which artists or musicians combine excerpts from several songs ... within a single performance”.³⁸ Some stations, especially those broadcasting dance music, were combining segments of FVM in medleys with foreign programming, and counting each segment as a single selection: this practice enabled the stations to meet their FVM requirements but reduced the airtime available for French-language music. In 1988 the CRTC said that

A medley must be played in its entirety to count as a Canadian or French-language vocal selection. As set out in Circular 343, a medley may be classified as a Canadian or a French-language selection depending on the predominant type of material that it contains. For example, an entire medley would count as a Canadian selection if over 50% of its duration consisted of excerpts from selections that are Canadian.³⁹

- 18 The CRTC's two-year temporary reduction in French-language vocal music lasted from 1986 to July 1990, when it re-introduced the 65% weekly requirement for all French-language AM and FM stations.⁴⁰
- 19 In early 1990 evidence filed by ADISQ found that 43% of those surveyed believed that French-language radio stations did not play enough music from francophone Québécois artists, and 2% thought too much of this music was being played.⁴¹

1990: CRTC reinstates 65-55% requirements

- 20 The CRTC reinstated its French-language vocal music requirements in mid-1990, and encouraged broadcasters and other stakeholders “to increase the availability of quality French-language material”. Six months later the CRTC dropped restrictions on the number of hits that French-language radio stations could broadcast” to enable them to “face stiff competition from English-language music stations in

³⁸ Analysis by the Commission of medleys and montages, Circular 343 (Ottawa, 11 May 1988).

³⁹ *Regulations Amending the Radio Regulations, 1986 - Commercial Radio Programming*, Public Notice CRTC 1998-132, (Ottawa, 17 December 1988), <http://www.crtc.gc.ca/eng/archive/1998/pb98-132.htm>At ¶32.

⁴⁰ See *French-language Popular Music*, Public Notice CRTC 1988-84 (Ottawa, 26 May 1988), <http://crtc.gc.ca/eng/archive/1988/PB88-84.htm>; *Atlantic Region and Quebec Region*, Decision CRTC 89-458 (Ottawa, 10 July 1989), <http://crtc.gc.ca/eng/archive/1989/DB89-458.htm>; *French-Language Popular Music*, Public Notice CRTC 1990-21 (Ottawa, 19 February 1990), <http://crtc.gc.ca/eng/archive/1990%5CPB90-21.htm>.

⁴¹ *French-Language Popular Music*, Public Notice CRTC 1990-21 (Ottawa, 19 February 1990), <http://crtc.gc.ca/eng/archive/1990%5CPB90-21.htm>.

communities such as Montreal and Ottawa-Hull.”⁴² It also removed restrictions on the size of their music list and repeat factor. (The CRTC similarly deregulated English-language FM stations a year after issuing its ‘FM policy for the 90s’.⁴³)

1998: CRTC maintains 65-55% requirements

21 The CRTC again considered French-language vocal music requirements when it reviewed its commercial radio policy in 1998. Broadcasters “argued that there is a shortage of French-language material; as a result, stations make excessive use of many of the same artists and selections, leading, in turn, to an overexposure of some songs and a similarity in sound between stations.”⁴⁴ The CAB and Radiomutuel asked the CRTC to reduce the French-language vocal music to 55% for stations in Montreal and Ottawa-Hull, to stem the flow of listeners to English-language stations.⁴⁵

22 The CRTC set out seven reasons for deciding in 1998 to maintain the French-language vocal music requirements:

(1) No shortage of French-language vocal music: “after almost 25 years of regulated requirements for French-language vocal music, these broadcasters have a considerable catalogue of current and past French-language selections available to them”

(2) Requirements stimulate availability of French-language vocal music: “the maintenance of the 65% French-language popular music content requirement will continue to stimulate the record industry and ensure the continued availability of high quality French-language recordings”

(3) Requirements promote partnerships: “Commitments made by the CAB to promote Canadian music, as well as the increased support for Canadian music derived from benefits contributions, will also help to increase support for the French-language music industry, and foster partnership and cooperation between that industry and broadcasters”

(4) Playing more English-language music will not repatriate significant audiences to French-language stations: although “some movement of listening from French-language to English-language stations has occurred in Montréal and Ottawa-Hull, especially among younger

⁴² *An FM Policy for the Nineties*, Public Notice CRTC 1990-111 (Ottawa, 17 December 1990), <http://www.crtc.gc.ca/eng/archive/1990/pb90-111.htm>.

⁴³ CRTC-PN 1992-72, *A Review of the CRTC’s Regulations and Policies for Radio*, Public Notice CRTC 1992-72 (Ottawa, 2 November 1992).

⁴⁴ Commercial Radio Policy 1998 (Public Notice CRTC 1998-41) (Ottawa, 30 April 1998), <http://www.crtc.gc.ca/eng/archive/1998/PB98-41.HTM>, at para. 153.

⁴⁵ *Ibid.* at paras. 155-156.

listeners[, the] Commission ... is not convinced that permitting French-language stations to increase the level of English-language selections will repatriate significant audiences”

(5) Francophones’ access to French-language music matters more than marginal increases in audience: “The Commission also considers that the importance of providing exposure for French-language popular music in francophone communities outweighs the benefits to be derived from any marginal increase in audience”

(6) French-language broadcasters have other options: “The Commission further notes that other adjustments in programming may be effective in ensuring that listeners’ needs are met”, and

(7) French-language vocal music requirements may not be the problem: “... the Commission is not convinced that the 65% requirement for French-language vocal music is an obstacle to providing diverse formats of music. This is especially the case, given that most of these stations are talk oriented, and the fact that the number of musical selections they broadcast is limited, relative to the available inventory of French-language vocal music selections.”⁴⁶

- 23 The CRTC also disclosed that it had analyzed French-language vocal music broadcast by commercial radio stations in Montreal and Quebec, and found that some stations broadcast relatively little French-language vocal music during peak audience times, and/or cut French-language selections short. The CRTC therefore amended the *Radio Regulations, 1986* to add the requirement that at least 55% of the popular music selections aired from 6 AM to 6 PM weekdays be in French, and that such selections be complete.⁴⁷

2006: CRTC maintains 65-55% requirements

- 24 The CRTC reviewed its commercial radio policy in 2006, and again set out its position that the French-language vocal music requirement supports a Canadian francophone recording industry, and that French-language broadcasters are responsible for supporting French-language expression.⁴⁸ French-language radio members of the CAB said that because young Francophones wanted music in English, the CRTC should give a 1.5 time credit for emerging artists,⁴⁹ while l’ADISQ and CIRRA

⁴⁶ *Ibid.*, at paras. 159-162.

⁴⁷ *Ibid.*, at para. 169 and 174.

⁴⁸ *Review of the Commercial Radio Policy*, Broadcasting Notice of Public Hearing CRTC 2006-1 (Ottawa, 13 January 2006), <http://www.crtc.gc.ca/eng/archive/2006/n2006-1.htm>, at para. 61.

⁴⁹ <http://www.crtc.gc.ca/eng/archive/2006/pb2006-158.htm>, at para. 58.

suggested that the CRTC ensure that a specified percentage of the French-language vocal music broadcast come from emerging artists.⁵⁰

- 25 The CRTC decided not to change the “more stringent” French-language vocal music requirements” it had introduced in 1999 because they had had a positive impact on the airplay of emerging artists,⁵¹ and because French-language broadcasters were then beginning to compete “with new, largely unregulated technologies for the delivery of audio programming.”⁵²
- 26 Almost immediately after the CRTC published its 2006 commercial radio policy, it commissioned a study of all of its regulations from two lawyers. While offering no evidence to support their conclusions, Christian Leblanc and Lawrence Dunbar criticized the CRTC’s French-language vocal music requirements:

...

The objective of this regulation is obviously to encourage airplay opportunities for French-language vocal artists, and to ensure, consistent with the policy objectives in subsection 3(1) of the Act (particularly paragraph 3(1)(m)), that Canada's linguistic duality will be reflected on the radio airwaves.

We understand the rationale for this policy and the regulations that implement it, and we appreciate that this 65/55 rule was thoroughly reviewed in the context of the 2006 Commercial Radio Policy proceeding. However, we believe the implications of this 65/55 policy should be reviewed in the context of the highly competitive marketplace in which radio broadcasters operate today. As the Commission noted in its Commercial Radio Policy 2006, the new digital audio technologies, such as MP3 players, iPods, satellite radio and Internet music services, allow young people to access the music they want to listen to from many diverse sources, when they want to listen.

Also, francophone radio listeners in Canada have always demonstrated a strong interest in popular English-language music. In that respect the commercial radio marketplace is very different than the television marketplace, where francophone viewers have always shown a strong preference for programming in their own language.

Therefore it is understandable that francophone broadcasters, particularly those in bilingual markets such as Ottawa and Montreal,

⁵⁰ *Ibid.*, at paras. 59 and 66.

⁵¹ *Ibid.* at para. 88.

⁵² *Ibid.*

complain that the "65/55" French-language vocal music rule puts them at a competitive disadvantage with English-language stations in the same market.

As noted above, it is principally for that reason that the Commission continues to apply its hits policy to English-language broadcasters in Montreal and Ottawa. This has been the regulator's attempt to "level the playing field." We question, however, whether this excessively regulatory approach is still necessary, or is consistent with the principles of Smart Regulation.⁵³

- 27 In 2014 the CRTC reviewed its policy for commercial radio, but decided "that any changes to these key elements of its policy for radio require a more complete record. **It will therefore consider local programming, required levels of Canadian musical selections, and the use of montages and the programming of French-language vocal music by French-language stations as part of a more comprehensive policy review to be conducted at a later time.**"⁵⁴ [bold font in the original]

⁵³ Laurence J.E. Dunbar and Christian Leblanc, *Review of the regulatory framework for broadcasting services in Canada: FINAL REPORT* (Ottawa, August 31, 2007) at 209.

⁵⁴ *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554 (Ottawa, 28 October 2014), <http://www.crtc.gc.ca/eng/archive/2014/2014-554.htm>, para. 102.

Appendix 2 Compliance issues and French radio

The CRTC's website publishes results from its monitoring of five French-language radio stations' compliance with the French-language vocal music requirements: CFGL-FM Laval, CJMC-FM Sainte-Anne-des-Monts, CKVM-FM Ville Marie, CJEC-FM Québec and CHLX-FM Gatineau. The results show that all five stations exceeded the CRTC's requirements:

As shown below in Table 1, FRPC's review of the CRTC's licensing decisions found another four stations that breached the FVM requirements from 2010 to 2015 – the period covered by the five monitoring analyses on the CRTC's website. The CRTC then also issued five other decisions in this period that showed breaches of the French-language vocal music requirements.

Table 1 FVM breaches identified by CRTC from 2010 to 2013

| CRTC decisions from 2010 to 2013 mentioning French-language vocal music breaches by eight stations | | | | Monitoring reports on CRTC website | | |
|---|----------|-----------|------------------------|------------------------------------|-----------|------------|
| Station | Decision | Period | FVM % (65 wk/55 wkday) | Station | Period | FVM (week) |
| | | | | CHLX-FM (2013) | Oct 2013 | 66.3% |
| CKLX-FM | 2013-123 | Aug 2012 | FVM 46.6% (week) | | | |
| | | | | CJMC-FM (2012) | July 2012 | 74.0% |
| | | | | CKVM-FM (2012) | July 2012 | 71.9% |
| CJEC-FM | 2012-587 | June 2012 | FVM 63.7% (week) | CJEC-FM (2013) | Oct 2013 | 66.1% |
| CFTX-FM | 2011-727 | June 2010 | FVM 63.1% (week) | | | |
| CIPC-FM | 2011-548 | Feb 2010 | FVM 53.5% (wkdays) | | | |
| | | | | CFGL-FM (2010) | May 2010 | 65.2% |
| KOUI-FM | 2011-726 | June 2010 | English montages | | | |
| CKTF-FM | 2011-725 | May 2010 | English montages | | | |
| CFMV-FM* | 2010-56 | Mar 2008 | FVM 49.2% (week) | | | |
| CFMV-FM | 2010-883 | Mar 2008 | FVM 49.2% (week) | | | |
| CJSO-FM | 2010-857 | Mar 2008 | FVM 59.4% (week) | | | |

* CFMV-FM appears twice because it first applied for a licence amendment, then its its renewal

Appendix 3 Stations failing to comply with CRTC's French-language vocal music requirements, 1984-2015

| Station | Year | Licensee | Decision | Insuff't FVM | Canadian FVM sel'n cut short | Insuff't FVM montage | FVM CoL not met | Excessive English content | Total |
|---------|------|--|----------|--------------|------------------------------|----------------------|-----------------|---------------------------|-------|
| CFAI-FM | 1993 | La Cooperative des Montagnes Limitee | 93-164 | 1 | | | | | 1 |
| CFGL-FM | 1987 | Stereo Laval Inc. | 87-374 | 1 | | | | | 1 |
| CFIN-FM | 1986 | Coaticook FM Inc. | 86-595 | 1 | | | | | 1 |
| CFIN-FM | 1987 | Coaticook FM Inc. | 87-756 | 1 | | | | 1 | 2 |
| CFLO-FM | 1997 | Soneme Inc. | 97-504 | 1 | | | | | 1 |
| CFLS | 1990 | Radio Etchemin Inc. | 90-646 | 1 | | | | | 1 |
| CFMV-FM | 2010 | Radio du Golfe Inc. | 2010-56 | 1 | | | | | 1 |
| CFMV-FM | 2010 | Radio du Golfe Inc. | 2010-883 | 1 | | | | | 1 |
| CFOM-FM | 2002 | Entreprises Radio Etchemin inc. | 02-368 | 1 | | | | | 1 |
| CFTX-FM | 2011 | RNC Media Inc. | 2011-727 | 1 | 1 | | | | 2 |
| CFXM-FM | 2002 | Cooperative de travail de la radio de Granby | 02-347 | 1 | | | | | 1 |
| CFXM-FM | 2006 | Cooperative de travail de la radio de Granby | 2006-300 | 1 | | | | | 1 |
| CHAA-FM | 2001 | Radio Communautaire de la Rive-Sud Inc. | 01-139 | 1 | | | | | 1 |
| CHAD | 1994 | Radio Nord | 94-634 | 1 | | | | | 1 |
| CHAI-FM | 1993 | Radio communautaire de Chateauguay Chai-MF | 93-194 | 1 | | | | | 1 |
| CHIK-FM | 1985 | Mutual Broadcasting Canada Limited | 85-924 | 1 | | | | | 1 |
| CHIK-FM | 2002 | Astral | 02-346 | 1 | | | | | 1 |
| CHIP-FM | 1988 | La Radio du Pontiac | 88-573 | | | | 1 | | 1 |
| CHLM-FM | 1997 | Radio Nord | 97-448 | 1 | | | | | 1 |
| CHLN-FM | 2009 | Corus | 2009-525 | 1 | | | | | 1 |
| CHLT-FM | 2009 | Corus | 2009-525 | 1 | | | | | 1 |
| CHNC-FM | 2001 | Radio CHNC Ltee | 2001-416 | 1 | | | | | 1 |
| CHNC-FM | 2008 | Radio CHNC Ltee | 2008-51 | 1 | | | | | 1 |
| CHOC-FM | 1988 | Radio communautaire du Saguenay Inc. | 88-720 | 1 | | | | | 1 |
| CHOC-FM | 1991 | Radio communautaire du Saguenay Inc. | 91-361 | 1 | | | | | 1 |

| Station | Year | Licensee | Decision | Insuff't FVM | Canadian FVM sel'n cut short | Insuff't FVM montage | FVM CoL not met | Excessive English content | Total |
|---------|------|---|----------|--------------|------------------------------|----------------------|-----------------|---------------------------|-------|
| CHOC-FM | 1996 | Radio communautaire du Saguenay Inc. | 96-717 | 1 | | | | | 1 |
| CHOI-FM | 1988 | Les Entreprises de Radiodiffusion de la Capitale Inc. | 88-472 | 1 | | | | | 1 |
| CHOI-FM | 1995 | Les Entreprises de Radiodiffusion de la Capitale Inc. | 95-120 | 1 | | | | | 1 |
| CHOI-FM | 2002 | Genex Communications Inc. | 02-189 | 1 | | | | 1 | 2 |
| CHOI-FM | 2004 | Genex Communications Inc. | 04-271 | 1 | | | | | 1 |
| CHOM-FM | 1984 | Maisonneuve Broadcasting Ltd. | 1984-43 | 1 | | | | | 1 |
| CIBL-FM | 1990 | Radio Communautaire Francophone de Montreal Inc. | 90-654 | 1 | | | | | 1 |
| CIBO-FM | 1986 | Radio Communautaire M.F. de Senneterre Inc. | 86-605 | 1 | | | | | 1 |
| CIGB-FM | 1987 | Legerbourg Inc. | 87-68 | 1 | | | | | 1 |
| CIHO-FM | 2009 | Radio MF Charlevois Inc. | 2009-533 | 1 | | | | | 1 |
| CIMO-FM | 1987 | Communications Radiomutuel Inc. | 87-83 | 1 | | | | | 1 |
| CINQ-FM | 1993 | Radio Centre-Ville Saint-Louis | 93-442 | 1 | | | | | 1 |
| CINQ-FM | 1995 | Radio Centre-Ville Saint-Louis | 95-587 | 1 | | | | | 1 |
| CIPC-FM | 1996 | Radio Port-Cartier Inc. | 96-465 | 1 | | | | | 1 |
| CIPC-FM | 2011 | Radio Port-Cartier Inc. | 2011-548 | | | 1 | | | 1 |
| CJDM-FM | 1988 | Communications Grantham Inc. | 88-405 | 1 | | | | | 1 |
| CJEC-FM | 2012 | CJEC inc. | 2012-587 | 1 | | | | | 1 |
| CJEM-FM | 1995 | Edmundston Radio Limited | 95-363 | 1 | | | | | 1 |
| CJFM-FM | 1990 | Standard | 90-538 | 1 | | | | | 1 |
| CJMF-FM | 1985 | CJMF-FM Ltee | 85-739 | 1 | | | | | 1 |
| CJMF-FM | 1987 | CJMF-FM Ltee | 87-845 | 1 | | | | | 1 |
| CJMS | 1994 | Radiomutuel | 1994-105 | 1 | | | | | 1 |
| CJMS | 2006 | 3553230 Canada Inc. | 2006-352 | 1 | | | | | 1 |
| CJMT | 1994 | Radio Chicoutimi Inc. | 94-668 | 1 | | | | | 1 |
| CJRC | 1987 | Radiomutuel | 87-205 | 1 | | | | | 1 |
| CJSO-FM | 2010 | Radio Diffusion Sorel-Tracy | 2010-857 | 1 | | | | | 1 |

| Station | Year | Licensee | Decision | Insuff't FVM | Canadian FVM sel'n cut short | Insuff't FVM montage | FVM CoL not met | Excessive English content | Total |
|-------------|----------|---|-----------|--------------|------------------------------|----------------------|-----------------|---------------------------|-------------|
| CJVL | 1991 | Clival Inc. | 91-359 | 1 | | | | | 1 |
| CKCH | 1994 | Telemedia | 94-667 | 1 | | | | | 1 |
| CKCN-FM | 1990 | Radio Sept-Iles inc. | 90-8 | 1 | | | | | 1 |
| CKCN-FM | 2005 | Radio Sept-Iles inc. | 2005-113 | 1 | | | | | 1 |
| CKCV | 1987 | Telemedia | 1987-76 | 1 | | | | | 1 |
| CKLS | 1994 | Radio La Saree Inc. | 94-571 | 1 | | | | | 1 |
| CKLX-FM | 2013 | RNC Media | 2013-123 | 1 | | | | | 1 |
| CKMF-FM | 1987 | Radiomutuel | 87-69 | 1 | | | | | 1 |
| CKMF-FM | 1988 | Radiomutuel | 88-120 | 1 | | | | | 1 |
| CKMF-FM | 1994 | Radiomutuel | 1994-105 | 1 | | | | | 1 |
| CKOD-FM | 2006 | Radio Express Inc. | 2006-353 | 1 | | | | | 1 |
| CKOI-FM | 2011 | Cogeco | 2011-726 | | 1 | | | | 1 |
| CKRB | 1991 | Radio-Beauce Inc. | 91-310 | 1 | | | | | 1 |
| CKRL-FM | 1988 | CKRL-FM 89,1 inc. | 88-722 | 1 | | | | | 1 |
| CKRL-FM | 1996 | CKRL-FM 89,1 inc. | 96-734 | 1 | | | | | 1 |
| CKRO-FM | 1994 | Radio Peninsule Inc. | 94-107 | 1 | | | | | 1 |
| CKRS | 1998 | Radiomutuel | 98-126 | 1 | | | | | 1 |
| CKRS | 2000 | Radiomutuel | 00-416 | 1 | | | | | 1 |
| CKRS-FM | 2009 | Corus | 2009-525 | 1 | | | | | 1 |
| CKTF-FM | 2011 | Astral | 2011-725 | | 1 | | | | 1 |
| CKUM-FM | 1995 | Les Medias Acadiens Universitaires inc. | 95-364 | 1 | | | | | 1 |
| CKVD | 1994 | Radio Nord | 94-572 | 1 | | | | | 1 |
| CKVL | 1999 | Metromedia | 99-93 | 1 | | | | | 1 |
| CKVM-FM | 1997 | Radio Temiscamingue Inc. | 97-528 | 1 | | | | | 1 |
| CKVM-FM | 2007 | Radio Temiscamingue Inc. | 2007-331 | 1 | | | | | 1 |
| CKYK-FM | 2005 | CKYK-FM Inc. | 2005-114 | 1 | | | | | 1 |
| 57 stations | 29 years | 50 licensees | 77 dec'ns | 71 | 3 | 1 | 1 | 2 | 80 breaches |

We also note that while the CRTC has often mentioned the challenges facing French-language radio stations in locations such as Gatineau and Montreal, many stations that breached the French-language vocal music requirements were in smaller French-language communities, where they are typically the only radio station licensed to serve the area.

| Location | Station | Year | FVM infractions |
|-----------------------|-------------|------|-----------------|
| Alma | CKYK-FM | 2005 | 1 |
| Amos | CHAD | 1994 | 1 |
| Chandler | CFMV-FM | 2010 | 2 |
| Chateauguay | CHAI-FM | 1993 | 1 |
| Chicoutimi | CJMT | 1994 | 1 |
| | | 1998 | 1 |
| | CKRS | 2000 | 1 |
| | | 2009 | 1 |
| Coaticook | CFIN-FM | 1986 | 1 |
| | | 1987 | 1 |
| Drummondville | CJDM-FM | 1988 | 1 |
| Dryden | CJIV-FM | 2011 | 1 |
| Edmundston | CFAI-FM | 1993 | 1 |
| | CJEM-FM | 1995 | 1 |
| Fort-Coulonge | CHIP-FM | 1988 | 1 |
| Gatineau (4 stations) | CFTX-FM | 2011 | 1 |
| | CJRC | 1987 | 1 |
| | CKCH (Hull) | 1994 | 1 |
| | CKTF-FM | 2011 | 1 |
| Granby | CFXM-FM | 2002 | 1 |
| | | 2006 | 1 |
| Jonquiere | CHOC-FM | 1988 | 1 |
| | | 1991 | 1 |
| | | 1996 | 1 |
| La Sarre | CKLS | 1994 | 1 |
| Laval | CFGL-FM | 1987 | 1 |
| Levis | CFLS | 1990 | 1 |
| | CFOM-FM | 2002 | 1 |
| Longueuil | CHAA-FM | 2001 | 1 |
| Magog | CIMO-FM | 1987 | 1 |
| Moncton | CKUM-FM | 1995 | 1 |
| Mont-Laurier | CFLO-FM | 1997 | 1 |
| Montreal (8 stations) | CHOM-FM | 1984 | 1 |
| | CIBL-FM | 1990 | 1 |
| | CINQ-FM | 1993 | 1 |
| | | 1995 | 1 |
| | CJFM-FM | 1990 | 1 |
| | CJMS | 1994 | 1 |
| | CKLX-FM | 2013 | 1 |
| | CKMF-FM | 1987 | 1 |
| | | 1988 | 1 |
| | | 1994 | 1 |
| | CKOI-FM | 2011 | 1 |
| New Carlisle | CHNC-FM | 2001 | 1 |
| | | 2008 | 1 |

| Location | Station | Year | FVM infractions |
|--------------------------|---------|------|-----------------|
| Pokemouche | CKRO-FM | 1994 | 1 |
| Port Cartier | CIPC-FM | 1996 | 1 |
| Port-Cartier | CIPC-FM | 2011 | 1 |
| Quebec City | CHIK-FM | 1985 | 1 |
| | | 2002 | 1 |
| | CHOI-FM | 1988 | 1 |
| | | 1995 | 1 |
| | | 2002 | 1 |
| | | 2004 | 1 |
| | CJEC-FM | 2012 | 1 |
| | CJMF-FM | 1985 | 1 |
| | | 1987 | 1 |
| | CKCV | 1987 | 1 |
| | CKRL-FM | 1988 | 1 |
| 1996 | | 1 | |
| Rouyn | CHLM-FM | 1997 | 1 |
| Saint Constant | CJMS | 2006 | 1 |
| Salaberry-de-Valleyfield | CKOD-FM | 2006 | 1 |
| Senneterre | CIBO-FM | 1986 | 1 |
| Sept-Iles | CKCN-FM | 1990 | 1 |
| | | 2005 | 1 |
| Sherbrooke | CHLT-FM | 2009 | 1 |
| Sorel-Tracy | CJSO-FM | 2010 | 1 |
| Ste-Marie-de-Beauce | CJVL | 1991 | 1 |
| St-Georges de Beauce | CKRB | 1991 | 1 |
| St-Hilarion | CIHO-FM | 2009 | 1 |
| Trois-Rivieres | CHLN-FM | 2009 | 1 |
| | CIGB-FM | 1987 | 1 |
| Val d'Or | CKVD | 1994 | 1 |
| Verdun | CKVL | 1999 | 1 |
| Ville-Marie | CKVM-FM | 1997 | 1 |
| | | 2007 | 1 |
| 40 locations | | | 78 infractions |

Appendix 4 Private radio station ownership in Montreal and Ottawa-Gatineau, September 2015

| Private radio station ownership in Montreal and Ottawa-Gatineau | | |
|--|--|---|
| Location | AM | FM |
| Montreal | 10: 5 French, 3 English, 2 Ethnic Bell – CJAD (Eng) Bell – CKGM (Eng) Cogeco – CKAC (Fre) Evanov – CHRF (Fre) Evanov – CFMB (Ethnic) Groupe Médias – CJMS (Fre) Groupe Médias – CJWI (Fre) Radio Humsafar – CJLV (Fre) Radio Humsafar – CHRN (Eng) Radio Moyen Orient – CHOU (Ethnic) <i>Tietolman – New AM (Fre)</i> <i>Tietolman – New AM (Fre)</i> <i>Tietolman – New AM (Eng)</i> | 14: 8 French, 4 English, 2 Ethnic Bell – CITE-FM (Fre) Bell – CKMF-FM (Fre) Bell – CHOM-FM (Eng) Bell – CJFM-FM (Eng) Cogeco – CHMP-FM (Fre) Cogeco – CKBE-FM (Eng) Cogeco – CKOI-FM (Fre) Cogeco – CFGL-FM (Fre) RNC – CKLX-FM (Fre) 9188-7208 – CJVD-FM (Fre) Media ClassiQ – CJPX-FM (Fre) AGNI – CJVD-FM (Eng) Group CHCR – CKDG-FM (Ethnic) Neeti Ray – CKIN-FM (Ethnic) |
| Ottawa-Gatineau | 3 (3 English) Bell – CFGO (Eng) Bell – CFRA (Eng) Rogers – CIWW (Eng) | 17 (10 English, 6 French, 1 Ethnic) Bell – CIMF-FM (Fre) Bell – CKTF-FM (Fre) Bell – CJMJ-FM (Eng) Bell – CKKL-FM (Eng) Cogeco – CKOF-FM (Fre) RNC – CFTX-FM (Fre) RNC – CHLX-FM (Fre) Corus – CJOT-FM (Eng) Corus – CKQB-CKQB-FM (Eng) Rogers – CHEZ-FM (Eng) Rogers – CISS-FM (Eng) Evanov – CJWL-FM (Eng) Torres – CIDG-FM (Eng) Newcap – CIHT-FM (Eng) Newcap – CILV-FM (Eng) Radio Vie New-FM (Fre) Lombardi – CJLL-FM (Ethnic) |

Note: ND – no data publicly available

Source: CRTC *Diversity of Voices – Montreal, – Ottawa-Gatineau*

Appendix 5 Profit margins for commercial radio, by medium, language and location, 2010-2014

| PBIT margins | 2010 | 2011 | 2012 | 2013 | 2014 | # stations in 2014 |
|------------------------|-------------|-------------|-------------|-------------|-------------|---------------------------|
| Radio | | | | | | |
| English | 20.1% | 20.6% | 21.0% | 21.6% | 19.0% | 575 |
| French | 16.7% | 14.2% | 15.4% | 14.4% | 16.7% | 96 |
| FM | | | | | | |
| English | 22.5% | 23.1% | 23.6% | 25.0% | 22.9% | 466 |
| French | 18.2% | 15.0% | 15.6% | 14.7% | 16.8% | 90 |
| AM | | | | | | |
| English | 11.3% | 11.2% | 11.0% | 8.3% | 3.4% | 109 |
| French | -15.6% | -2.8% | 3.7% | -3.1% | 10.7% | 6 |
| Montreal | | | | | | |
| FM - French | 22.7% | 20.6% | 20.0% | 17.0% | 21.0% | 8 |
| FM – English & Ethnic | 38.6% | 39.4% | 31.8% | 36.3% | 38.8% | 5 |
| AM - French | -20.8% | -5.3% | 3.2% | 0.1% | 11.1% | 4 |
| AM – English & Ethnic | 0.0% | 3.1% | -1.4% | -15.2% | -16.6% | 4 |
| Ottawa-Gatineau | | | | | | |
| FM – French | 24.7% | 15.7% | 20.0% | 16.0% | 18.2% | 5 |
| FM - English & Ethnic | 26.5% | 24.3% | 23.3% | 28.0% | 26.0% | 12 |
| Small markets | | | | | | |
| French | 10.3% | 6.6% | 9.1% | 11.0% | 10.2% | 69 |
| English | 13.2% | 13.3% | 12.0% | 13.6% | 13.0% | 413 |

No data for Ottawa-Gatineau AM

Appendix 6 FRPC's response to the CRTC's questions

Q1. Are the findings stated in paragraph 28 accurate and why?

- 1 According to paragraph 28,
 - with the current breakdown of barriers between markets and countries, traditional radio must face increased competition from emerging platforms for the discovery, promotion, broadcast and consumption of music;
 - HD Radio technology has the potential to increase the diversity of radio services offered to Canadians;
 - the advent of digital platforms changes and customizes Canadians' consumption of music;
 - streaming is increasingly popular;
 - overall the French-language commercial radio sector is profitable, but this profitability varies depending on market and format; and
 - in the Quebec markets, stations operating under the "talk," "adult contemporary," "hot adult contemporary" and "musical hits" formats are generally among the most popular, with the last three formats being those of the most profitable stations.
 - the Canadian production of sound recordings, including products in French, is relatively stable and going well;
 - sound recording sales to Canadian French-language consumers have decreased in recent years for all media (physical and digital albums, and digital tracks);
 - the Quebec market share and the demand for French-language sound recordings are stable;
 - commercial radio tuning is decreasing both nationwide and in the French-language markets;
 - the decrease in tuning levels is most pronounced among young listeners;
 - a listener shift from French-language commercial stations to English-language stations can be seen in the bilingual markets of Montréal and, to a greater extent, Ottawa/Gatineau;
- 2 The facts set out by the CRTC appear accurate but are incomplete because they provide no information about French-language commercial radio's structure or financial performance.
- 3 That said, we note that the CRTC's reasons for maintaining the 65-55 FVM requirements in 1998 and 2006 are equally well supported by the evidence set out above:

Table 2 The CRTC's 1998 and 2006 rationales for its FVM policies

| CRTC's 1998 and 2006 policies | | 2015 evidence |
|---|--|---|
| Reason | Grounds | |
| (1) No shortage of French-language vocal music: | "after almost 25 years of regulated requirements for French-language vocal music, these broadcasters have a considerable catalogue of current and past French-language selections available to them" | Canadian production of French-language sound records is stable, meaning the number of catalogue selections is growing |
| (2) Requirements stimulate availability of | the maintenance of the 65% French-language popular music content requirement will continue | |

| | | |
|--|---|--|
| French-language vocal music: “ | to stimulate the record industry and ensure the continued availability of high quality French-language recordings” | |
| (4) Playing more English-language music will not repatriate significant audiences to French-language stations: | although “some movement of listening from French-language to English-language stations has occurred in Montréal and Ottawa-Hull, especially among younger listeners[, the] Commission ... is not convinced that permitting French-language stations to increase the level of English-language selections will repatriate significant audiences” | No evidence that reducing FVM will repatriate younger listeners; if tuning is decreasing among young people in and outside Quebec, changing FVM requirements is unlikely to affect tuning |
| (5) Francophones’ access to French-language music matters more than marginal increases in audience | “The Commission also considers that the importance of providing exposure for French-language popular music in francophone communities outweighs the benefits to be derived from any marginal increase in audience” | No evidence that increasing level of English-language vocal music will benefit francophone communities in terms of Parliament’s broadcasting policy |
| (6) French-language broadcasters have other options | “The Commission further notes that other adjustments in programming may be effective in ensuring that listeners’ needs are met”, | French-language broadcasters are entirely free to modify all other aspects of their programming |
| (7) French-language vocal music requirements may not be the problem: | “... the Commission is not convinced that the 65% requirement for French-language vocal music is an obstacle to providing diverse formats of music. This is especially the case, given that most of these stations are talk oriented, and the fact that the number of musical selections they broadcast is limited, relative to the available inventory of French-language vocal music selections.” | French-language broadcasters are profitable, and there is no evidence that FVM requirements inhibit provision of different radio formats, especially as catalogue of available selections continues to grow and MusicAction continues to receive funding |

Q2. What challenges and issues face the Canadian French-language music and commercial radio industries, given the new technologies and current environment? What tools and strategies help address these challenges and issues?

- 4 Respectfully, the CRTC has no direct mandate from Parliament to support the Canadian French-language music sector, regardless of the ‘challenges and issues’ it faces. Canada’s music sector is neither licensed nor regulated by the CRTC and the decision to delegate administration of \$25 million in funding to FACTOR/MusicAction was not made by the Commission, but by the Department of Communications.
- 5 As for French-language commercial radio, the CRTC has removed almost all of its regulations for this sector. Regulatory stalwarts will easily recall the variety of regulations and conditions of licence to which radio stations were once subject, including requirements for
 - the ratio of vocal to instrumental selections;

- the ratio of the language of the vocal selections;
 - the size of the weekly music list (the number of distinct musical selections, excluding repeat use, broadcast during a typical week);
 - the maximum repeat factor (the number of times the most frequently broadcast selection was to be repeated in the course of a typical week);
 - the ratio of hits to cover versions of hits to non-hits;
 - the ratio of current, recent or past repertoires;
 - the percentage of new musical material for which popularity had not yet been established by publications or other stations
 - the size of radio stations' music library
 - restrictions on networking
 - advertising limits during the hour, day and week
- 6 The CRTC has also allowed broadcasters to expand greatly in size, to maximize the benefits of vertical integration. Two broadcast groups take in most of French-language radio stations' revenues and profits.
- 7 Broadcasters that want French-language radio station licences must, however, ensure that their programming meets the *Broadcasting Act's* requirements, and this is why the CRTC has almost always required French-language radio to broadcast French-language music.
- 8 The only limit on French-language radio stations is on non-French popular music: up to 35% of popular music selections during the week may be in English, and up to 45% during weekdays.
- 9 As for tools and strategies for meeting challenges and issues, FRPC respectfully submits that these matters are outside the CRTC's jurisdiction: Parliament gave the CRTC the responsibility to license and regulate broadcasters, not to guarantee them ongoing operational support to deal with challenges. Having deregulated radio to permit stations to compete with each other, the CRTC's only concern should be with the programming they provide to the communities they are licensed to serve, and whether that programming meets the requirements of the *Act*.
- 10 Moreover, even if French-language radio's 'challenges and issues' were within the CRTC's jurisdiction – and they are not – the Commission has not set out any evidence that such challenges and issues have affected French-language radio stations' ability to operate. What are the problems that the CRTC thinks it should be solving?

Q3. What benefits can the Canadian French-language music and commercial radio industries draw from these new technologies and the current environment? What tools and strategies can be used to optimize these benefits?

Q4. How can the French-language commercial radio sector harness the new tools of the current environment, such as online platforms or HD Radio technology, to enhance the offering, discovery and promotion of musical content?

Q5. Considering the contribution of the community and public radio sectors, how can the French-language commercial radio sector contribute to the continued support of Canadian French-language music artists?

11 The CRTC should not concern itself with these matters, for six reasons:

A They do not fall within the CRTC's jurisdiction

B Even if these matters were within the CRTC's jurisdiction, there is no evidence that French-language radio requires the CRTC's assistance in general (see **Error! Reference source not found.**)

C Even if French-language musicians were within the CRTC's jurisdiction, there is no evidence that they require the CRTC's assistance (see **Error! Reference source not found.**)

D Even if French-language musicians were within the CRTC's jurisdiction, or if French-language radio stations required the CRTC's assistance, the music sector and French-language broadcasters are better placed than the CRTC to make the decisions that will support their sector

E A decision by the CRTC to attempt to 'support' French-language musicians and radio stations in general will require the CRTC to engage in a level of re-regulation and compliance evaluations whose costs will significantly outweigh any benefits, and

F A decision by the CRTC to 'support' French-language AM radio in particular will require the CRTC to engage in a level of re-regulation and compliance evaluations whose costs will significantly outweigh any benefits.

Q6. In 2015, to what extent is the French-language commercial radio sector still a leading source for discovering and listening to French-language selections and artists?

How important is this sector to the discovery of musical selections according to the various demographic groups, in particular young listeners (aged 18 to 34)?

12 The CRTC has no express jurisdiction to ensure that French-language commercial radio stations are a source for discovering new artists, or for ensuring that these stations are important for the discovery of musical selections by 'younger'⁵⁵ listeners from 18 to 34 years of age

13 Responsibility for attracting audiences rests properly with radio broadcasters.

Q7. What factors, in particular those relating to music programming, are responsible for the decrease in radio tuning levels among Canadians, especially among young listeners (aged 12 to 34)?

14 Listeners born in or after the 1950s, when transistor radios were invented, have always been accustomed to having technology that permits them to choose and hear their own music.

15 The past fifteen years have made more music available than before, through the Internet.

16 A specific issue for mobile telephone users has long been that they do not easily permit users to access broadcast radio.

Q8. To what extent does the broadcast of FVM selections influence commercial radio tuning among the different demographic groups, in particular young people (aged 18 to 34)? How does the impact of broadcasting FVM selections vary depending on musical format?

17 This question appears to state that FVM has a causal impact on tuning.

18 In our view, this link is not relevant to the CRTC's FVM policy, as the CRTC established this policy to implement section 3(1) of the Broadcasting Act, not to affect tuning levels.

⁵⁵ English-language popular culture has not always viewed people over thirty years of age as 'young', as the 1960s tag, 'Don't trust anyone over 30' attests. The 1968 movie, *Wild in the Streets*, for example, proposed that everyone over 30 be drugged and interned; and the 1976 movie, *Logan's Run*, described a society that requires people to commit suicide on their thirtieth birthdays.

Q9. What link can be made between FVM artist exposure on French-language commercial radio (broadcast of musical selections, promotional interviews, advertising, etc.) and the benefits to the music industry?

- 19 As the CRTC has no jurisdiction with respect to the music sector, the benefits to the music sector delivered by the FVM requirements are not relevant to the FVM policy.

Q10. Do the current requirements regarding the broadcast of FVM selections effectively meet the demand of listeners in the various formats offered by the French-language commercial radio stations?

- 20 As the CRTC has deregulated radio stations' formats, it is not relevant whether the FVM requirements meet or do not meet listeners' demand, because responsibility for attracting audiences now lies entirely with radio broadcasters.

Q11. Is the current supply of French-language sound recordings sufficient to allow French-language commercial radio stations with different formats to respect the current requirements for the broadcast of FVM selections?

- 21 There is no evidence that the supply of French-language recordings is insufficient to meet French-language radio stations' needs.
- 22 If the current supply of FVM recordings were insufficient, moreover, French-language radio broadcasters may look for other sources of French-language music (such as musicians who make their work available online), invest in French-language music, or call on MusicAction to work to increase the numbers of recordings it supports.
- 23 As the CRTC has deregulated radio stations with respect to formats, responsibility for choosing the formats or recordings they play to attract audiences now lies entirely with radio broadcasters.

Q12. The French-language commercial radio sector broadcasts FVM selections to respond to the needs and interests of listeners (demand). To what extent must these stations also reflect the overall musical offering (genres, artists and selections) produced by Canadian artists in the French-language music industry?

- 24 Responsibility for radio stations' choice of musical offerings produced by Canadian French-language musicians lies entirely with radio broadcasters.

Q13. In today's digital environment, where market barriers are breaking down, and given the proliferation of sources available for listening to music, are the current regulatory category 2 FVM broadcast quotas (65% per broadcast week and 55% in peak listening periods), still an appropriate measure to meet the needs and interests of listeners, reflect their culture and Canada's linguistic duality and support French-language Canadian artists? Why?

- 25 It is not clear what the CRTC means by "market barriers are breaking down". Barriers to entry into Canada's commercial radio market remain: the CRTC decides whether and when to license new radio stations, and it has not indicated so far that it plans to grant licences to anyone who applies for one.
- 26 If 'market' refers to technological alternatives, the issue of technology is not relevant: the CRTC developed its FVM policy to meet the requirements of the Broadcasting Act, not to address changing technologies.
- 27 Even if technology were relevant – and it is not, the record of this proceeding has a significant gap: the absence of any information about French-language broadcasters' income from their online offerings.

Q14. What should be the required FVM broadcast levels for category 2 in the following two scenarios and why?

- **the Commission decides to count each musical excerpt broadcast in a montage by a French-language commercial station individually if this montage is not considered a single musical selection under sections 2.2(11) and 2.2(12) of the Regulations; and**

- **the Commission decides to maintain its calculation method for excerpts in montages.**

28 In the absence of any rationale for the CRTC's choice of these two scenarios – which stations would they assist, and why do those stations require assistance? – we note that the FVM policy is based on numbers of selections.

29 Under the first scenario, French-language broadcasters that prefer to broadcast English-language music will cram as many French-language selections into brief montages as possible. This will reduce the overall time allocated to FVM, and defeat the purpose of the FVM policy, regardless of the percentages chosen by the CRTC for FVM. This scenario will also introduce a significant degree of work for the CRTC, as it will be required to monitor montages even more closely than it does now.

Q15. Since a large majority of FVM selections currently broadcast by French-language commercial radio stations are Canadian, would it be more appropriate to impose quotas on this sector for the broadcast of French-language Canadian vocal music? If so, what should be the required broadcast levels for category 2 FVM and why?

30 The CRTC does not define “a large majority” and insufficient evidence is available from the CRTC's notice to answer this question in an informed manner.

31 That said, assume that the FVM policy requires station A to ensure that 65% of its musical selections during the week are in French, and permits 35% of its selections to be in English.

32 Then suppose that a “large majority” means that two-thirds of the French-language selections broadcast by station A are Canadian. If so, 42.9% of the musical selections broadcast by A during the week are Canadian ($66\% \times 65\% = 42.9\%$).

33 If the CRTC were to require Station A to ensure only that 42.9% of its musical selections during the week were Canadian and in French, the level of English-language selections would increase by more than half, from 35% to 57.1%.

34 The only way to ensure that French-language radio station audiences continue to have access to the level of French-language music now available to them – our preference - would be to set the Canadian FVM requirement to 65%.

35 In our view, this requirement may have the unintended negative consequence of driving some listeners to seek more diversity in music online.

36 FRPC therefore supports continuation of the current FVM policy.

Q16. Does the broadcast of a minimum percentage of FVM selections during peak listening periods (currently 55% from Monday to Friday between 6 a.m. to 6 p.m.) maximize access to and the promotion of Canadian FVM and why?

37 Yes.

If not, should peak listening periods be redefined for FVM selections and in what way?

38 See above.

Q17. Is the Commission's practice of considering a musical selection as FVM if more than 50% of the duration of the vocal portion is in the French language appropriate for French-language stations? If so, should it be codified by the Regulations?

39 Yes.

Q18. Could changing the quotas for FVM affect the level of bilingual versus wholly French-language musical selections found in the programming of French-language commercial stations and to what extent?

40 Insufficient evidence is available from the record of this proceeding to answer the question in an informed manner.

Q19. The Commission is considering counting montage excerpts individually for French-language stations instead of counting the montage itself as a single musical selection. What would the impact be on:

- the popularity and performance of the French-language commercial radio industry, particularly in the bilingual markets?
- the popularity and performance of the French-language music industry?

41 As the purpose of the CRTC's FVM policy is to implement the Broadcasting Act, not to address the popularity or performance of French-language radio or French-language music, we think this question is not relevant.

42 In our view, montage excerpts should not be counted as individual selections because this will have the counterintuitive effect of reducing the time in which French-language radio audiences have access to FVM, which would be contrary to Parliament's broadcasting policy for Canada.

Q20. Should the Commission maintain the provisions set out in sections 2.2(11) and 2.2(12) of the Regulations relating to the calculation of Canadian montages and FVM and why?

43 Yes, to maintain the reasonable level of FVM now available to French-language radio station audiences.

Q21. Are there music formats, markets and groups of listeners that are more likely to be influenced or affected by changes in the regulatory framework regarding FVM? If so, which ones and why?

Q22. There is a shift of young French-language listeners to English-language stations in the bilingual markets of Montréal and, in particular, Ottawa/Gatineau.

1. To what degree is this trend attributable to the music content offered and, in particular, to FVM?
2. Are there musical formats that are more affected by competition in bilingual markets? If so, which ones and why?
3. How could the Commission change its regulatory framework to ensure a better competitive balance between English- and French-language radio stations in bilingual markets?

Q23. In the current environment, how do emerging French-language Canadian artists make use of the various media to ensure their promotion and career development? Is French-language commercial radio a coveted media outlet for this purpose and why?

44 Respectfully, we do not understand the relevance of these questions to the CRTC's jurisdiction.

45 The purpose of the CRTC's FVM policy is to implement the Broadcasting Act, not to promote the careers of emerging French-language Canadian artists.

46 The CRTC has deregulated commercial radio formats, so that radio station broadcasters, not the CRTC, are responsible for attracting audiences.

47 As for a better competitive balance between English-language and French-language radio stations in bilingual markets, the profit margins of the 13 French-language FM stations in Ottawa-Gatineau and Montreal are lower than their 17 English-language counterparts, the French-language stations' profit

margins are very respectable: 18.2% in Ottawa-Gatineau, and 21% in Montreal. The 4 French-language AM stations in Montreal are also doing better than the 4 English-language AM stations: 11.1% vs -16.6%. (See Appendix 5)

Q24. In addition to broadcasting musical selections, the French-language commercial radio sector contributes to developing the careers of emerging artists through promotional interviews and some CCD contributions. Overall, does this sector provide adequate support to emerging French-language Canadian artists?

48 Yes.

Q25. What would be the impact and benefits for emerging French-language Canadian artists and the French-language commercial radio sector of imposing a minimum regulatory threshold for the broadcast of musical selections by emerging Canadian artists?

49 Stations that are doing little will slowly improve; stations that are doing more may reduce their efforts.

A New Measures

Q26. Would setting up a fund or a funding mechanism similar to the CCD policy, but geared specifically to music discovery, be desirable? What might be its components?

Q26. Would setting up a fund or a funding mechanism similar to the CCD policy, but geared specifically to music discovery, be desirable? What might be its components?

Q28.

1. How can the French-language music and commercial radio sectors adapt to the proliferation of competing sources for music consumption and work together to attract and keep their listeners and consumers, particularly the younger generation?

2. How can the French-language music and commercial radio sectors work together to allow French-language Canadian music to have a stronger presence on the various digital broadcasting platforms?

3. Is it feasible and desirable to consider creating a working group that would meet regularly to discuss the needs of representatives, topical issues and measures for addressing them in an effective manner?

50 These matters are not the business of the CRTC. Even if it were (and it is not because these matters are not set out in the Broadcasting Act), the CRTC has for several decades deregulated commercial radio in Canada to free broadcasters' entrepreneurial spirit: the CRTC should only re-involve itself at this time if utterly compelling evidence exists demonstrating a crisis in French-language radio. With double digit profit margins, where is the crisis?

51 We also note that nothing prevents broadcasters from performing any of these tasks on their own. Broadcasters should compete with each other for audiences, and work with each other for common interests. The CRTC should ensure that Parliament's broadcasting policy for the Canada is being implemented.

Q29. The Commission is prepared to consider shifting from a regulatory framework that is the same across the entire French-language commercial radio sector to an equitable regulatory framework that takes into account the different realities of licensees of French-language commercial radio stations.

1. What are the elements of the regulatory framework for FVM that should apply unvaryingly to the entire French-language commercial radio sector and why?

2. Which elements of the current regulatory framework for FVM could be part of the à la carte regulatory system described above and why?

3. What criteria (e.g., economic reality, target audience, music format) should the Commission use as a basis for varying the requirements of an à la carte system?

4. If such an à la carte system were adopted, how would the Commission ensure that each station in the sector continues to contribute equitably to the support and promotion of French-language Canadian artists?

52 This framework is already in place: nothing prevents any licensee from asking the CRTC to be exempted from its regulations because of the 'realities' it faces.

53 What justifies a new regulatory framework, and who will benefit from it?

Q30. Aside from the measures proposed in this notice, what other innovative measures falling within the Commission's jurisdiction should be examined to allow the French-language commercial radio sector to support more effectively Canadian French-language artists, better meet the needs and interests of their listeners and reflect their culture, particularly in terms of linguistic duality.

54 The CRTC should set out its evaluations of individual radio stations' performance when it renews their licences: this information will be a huge step towards enabling interested parties to monitor progress towards the important goals noted by the Commission in question 30. At the moment, the CRTC's licence renewal decisions are remarkable for the lack of information they provide, rather than for their utility.

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