



Canadian Independent Music Association

April 18, 2019

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario K1A 0N2

BY THE CRTC FORM

Re: Broadcasting Notice of Consultation CRTC 2019-72 – Licence renewal, SiriusXM requests to amend its conditions of licence 6 and 13 set out in Sirius Canada and XM Canada

Dear Mr. Doucet:

1. Regarding Broadcasting Notice of Consultation 2019-72, the Canadian Independent Music Association (CIMA) submits its comments on the application by **Sirius XM Canada Inc.** (SiriusXM) to renew the broadcasting licence for the national satellite subscription radio programming undertakings Sirius Canada and XM Canada, expiring 31 August 2019.
2. More specifically, SiriusXM has requested to amend its conditions of licence 6 and 13 set out in *Sirius Canada and XM Canada - Licence renewal*, Broadcasting Decision CRTC [2012-629](#), 16 November 2012.
3. CIMA is the not-for-profit national trade association representing the English language, Canadian-owned sector of the music industry.
4. Our membership comprises more than 300 Canadian-owned companies and representatives of Canadian-owned companies involved in every aspect of the music, sound recording and music-related industries.
5. They are exclusively small businesses which include: record producers, record labels, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.
6. It is on behalf of these Canadian-owned small businesses that CIMA is speaking and providing comments in regards to SiriusXM's current broadcasting licence renewal application.
7. From the outset, CIMA wishes to thank the CRTC for allowing the public to take part in this process.

8. CIMA and its membership value the vital partnership with SiriusXM, which has played a key role in the development and success of Canadian music companies and the artists it supports. SiriusXM is an important player in the Canadian market and we value its role and engagement within our industry.

CCD REDUCTION REQUEST FROM 4% TO 0.5%

9. In response to the Commission's inquiry regarding streamlining the number and types of initiatives it supports in order to simplify the process for both parties, SiriusXM is requesting a significant decrease to its required CCD contributions, with changes to the way it is allocated with no remaining residual discretionary allocation in years 3-7 of its licence, as stated below:

"SiriusXM has today filed with the Secretary General an amendment to its licence renewal application (copy attached) to reduce its required CCD percentage of broadcasting revenues from 4% to 2.5% in year one, 1.5% in year two, and 0.5% in years three to seven, which over the course of our licence renewal term is still substantially higher than the 0.5% contribution that terrestrial radio licensees are required to make pursuant to section 15 of the Radio Regulations, 1986 and the nil obligation levied against DMEO services. Contingent on approval of that reduction in the CCD percentage, SiriusXM is also proposing that its CCD contributions then be allocated as follows, with no remaining residual discretionary allocation."(CIMA's emphasis)

- Year 1: ... 2.5% of gross revenues
 - 20% to FACTOR
 - 10% to MUSICACTION
 - 5% to the Community Radio Fund of Canada
 - 1% to the Canada Media Fund for allocation to the Aboriginal Program;
and
 - The remainder to other eligible initiatives (discretionary contribution).
- Year 2: ... 1.5% of gross revenues
 - 20% to FACTOR
 - 10% to MUSICACTION
 - 5% to the Community Radio Fund of Canada
 - 3% to the Canada Media Fund for allocation to the Aboriginal Program;
and
 - The remainder to other eligible initiatives (discretionary contribution).

Years 3 to 7: ... 0.5% of gross revenues

- 50% to FACTOR
- 30% to MUSICACTION
- 15% to the Community Radio Fund of Canada
- 5% to the Canada Media Fund for allocation to the Aboriginal Program.

10. By way of background, the first licences of satellite radio services by subscription were granted in 2005 by the CRTC.
11. In 2005, Canada did not have satellite capabilities that could offer such services, and given the Canadian rules requiring the use of national infrastructure, the CRTC made an exception to allow these services to be provided by American satellites, the same used for the American Sirius and XM services.
12. The CRTC permitted these services to have a large majority of foreign channels, well above levels governing other broadcasting undertakings.
13. The CRTC made this decision due to the limited capacity of US infrastructure, which could not accommodate the addition of a large number of new Canadian channels.
14. The CRTC therefore permitted XM and Sirius services to offer a ratio of one Canadian content channel to nine US channels from US services XM and Sirius.
15. The CRTC also required XM and Sirius to make financial contributions representing the equivalent of 5% of their gross revenues to be dedicated towards Canadian Content Development (CCD) (FACTOR, Musicaction, and other designated recipients).
16. The CRTC sought to achieve a balance to ensure that these satellite services met the objectives of the Broadcasting Act.
17. As an aside, CIMA would like to remind the Commission it established the 5% CCD contribution level in the knowledge that these services would not be profitable during its first licence term, a dramatic difference from the profitability of SiriusXM today.
18. By establishing the 5% level of CCD contributions the CRTC also recognized that the Canadian content (CanCon) being broadcast was, and still is, significantly lower than those levels imposed on other Canadian broadcasting undertakings.
19. The following excerpts from the CRTC decision 2005-61 and from 2012-629 to licence these services reflects this desire of the Commission:

“69. The Commission recognizes that in building Canadian services on the services now provided using US satellite facilities that already carry extensive multi-channel services for the US market, the bandwidth available for the delivery of Canadian channels will be limited by the relative sizes of the Canadian and US markets and by the commercial considerations of the US satellite operators. The Commission considers that, as a result of these factors, the nature of these Canadian satellite subscription radio services renders the predominant use of Canadian creative and other resources impracticable. The Commission has therefore turned its attention to what the greatest use of Canadian creative resources might be, under the circumstances.”¹

“38. In assessing the CCD contribution level, the Commission is mindful of the objective of the Act to ensure that each broadcasting undertaking makes the greatest practicable use of Canadian creative and other resources, as well as the factors assessed in determining the appropriate level when Sirius Canada

¹ Broadcasting Public Notice CRTC 2005-61: <https://crtc.gc.ca/eng/archive/2005/pb2005-61.htm>

and XM Canada were initially licensed. It also notes that Sirius Canada and XM Canada were licensed as satellite subscription radio undertakings, not conventional commercial radio stations, and that its monetary contributions to the broadcasting system must be assessed together with its other regulatory obligations to ensure that it continues to make the greatest practicable use of Canadian resources.”²

20. In 2012, the Commission received an application by Sirius XM Canada Inc. (SiriusXM) relating to the broadcasting licences for the satellite subscription radio undertakings Sirius Canada and XM Canada.
21. SiriusXM had applied to amend its condition of licence to lower its CTD (now CCD) requirements to 0.5% from the original 5% of gross revenues in each broadcast year. It subsequently revised its application to 2% of gross annual revenues.
22. According to Broadcasting Decision 2012-269, the Commission rejected SiriusXM’s proposal and lowered its annual CCD contribution from 5% to 4%.
23. The decision reads as follows:
 - *“71. In assessing the CCD contribution level, the Commission is mindful of the objective of the Act to ensure that each broadcasting undertaking makes the greatest practicable use of Canadian creative and other resources, as well as the factors assessed in determining the appropriate level when Sirius Canada and XM Canada were initially licensed. It also notes that Sirius Canada and XM Canada were licensed as satellite subscription radio undertakings, not conventional commercial radio stations, and that its monetary contributions to the broadcasting system must be assessed together with its other regulatory obligations to ensure that it continues to make the greatest practicable use of Canadian resources.*
 - *72. The Commission notes the licensee’s commitment set out above to adhere to a condition of licence increasing the level of Canadian programming required on its original Canadian-produced channels from 50% to 70%. The Commission considers that this commitment constitutes an enhancement to the licensee’s current offering as it relates to the use of Canadian resources. The Commission also notes the licensee’s commitment to adhere to a condition of licence that would increase the broadcast of music by Canadian emerging artists from 25% to 40% on Canadian music channels. However, the Commission notes that the total number of unique original Canadian channels will be reduced, while the ratio of total Canadian channels offered to individual subscribers will remain unchanged.*
 - *73. The Commission further notes the licensee’s projected growth in revenues and the corresponding increase in the amount of money to be devoted to CCD. The Commission considers that this increase will ensure*

² Broadcasting Decision CRTC 2012-629: <https://crtc.gc.ca/eng/archive/2012/2012-629.htm>

vastly enhanced financial support for Canadian content during the next licence term when compared to the first term.

- *74. In light of these increased revenues and taking into account the other contributions to the Canadian broadcasting system by Sirius XM, the Commission is of the view that it would be appropriate to lower the annual CCD contribution level for Sirius XM from 5% to 4%. Accordingly, in the appendix to this decision, the Commission has set out a **condition of licence** to this effect.”*

24. Last year, a report prepared by the CRTC titled *Harnessing Change: The Future of Programming Distribution in Canada* offered context, in preparation for a review of the *Broadcasting Act* and the *Telecommunications Act* and included a section on Satellite Radio.

25. The passage below captures the CRTC’s insight into the applicant’s financial future:

- *“**Stable single-source revenues.** Satellite radio revenues come from subscriptions and although revenues have been increasing, the growth seems to be slowing down. Increased accessibility through integrated devices (in cars, for example) has helped the service increase subscriptions; however, satellite radio remains a relatively niche service, with a market share of 13%. Although revenues increased from 2015 to 2016, satellite radio’s market share did not.”³*

26. It seems that according to the Commission, SiriusXM in Canada has found a way to, at the very least, find stability in its profits.

Streamlined Approach to Eligible CCD Activities

27. CIMA does not agree with the applicant’s argument that the need for a streamlined approach to eligible activities justifies a reduction in CCD contributions.

28. The applicant currently operates under a licence that has clear parameters set by the Commission that define what qualifies as eligible activities. Why would additional clarity or guidelines warrant a reduction in contributions to CCD?

29. It is important to remember that the Commission established three guiding principles to guide the analysis of the eligibility of an initiative:

- a. *CCD funds must be used to support, develop or promote Canadian musical or spoken word talent, including journalists.*
- b. *All CCD funding must entail direct, out-of-pocket expenditures.*
- c. *All expenditures must be directed to projects that go well above and beyond promotional activities and regular programming costs.⁴*

³ *Harnessing Change: The Future of Programming Distribution in Canada:*
<https://crtc.gc.ca/eng/publications/s15/a2.htm>

⁴ *Canadian Content Development Contributions and Eligible Initiatives:*
<https://crtc.gc.ca/eng/general/ccdparties.htm>

30. Similarly, the Commission considers that the following parties and activities are eligible for CCD funding:

- a. *National, provincial, and territorial music industry associations (MIAs)*
- b. *Schools and educational institutions that are accredited by provincial authorities; and benefit students of music and journalism by way of scholarships or the purchase of musical instruments*
- c. *Initiatives, including talent contests, for the production and promotion of Canadian local music and local musical artists, particularly emerging artists*
- d. *Independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast*
- e. *Audio content initiatives further advancing the fulfillment of specific objectives of the Canadian broadcasting system as outlined in the Act such as the CRFC, Indigenous radio and other specialized audio broadcasting services dedicated to the particular needs and interests of children, Aboriginal peoples, and persons with disabilities⁵*

31. CIMA is concerned with the applicant's history of non-compliance with its broadcasting licence commitments related to CCD as records indicate that SiriusXM is in apparent non-compliance for the 2014-2015, 2015-2016 and 2016-2017 broadcast years and that the Commission found SiriusXM in non-compliance with its CCD condition of licence 13(a) for the 2013-2014 broadcast year.

32. In its application SiriusXM also includes a number of measures that could be pursued to streamline the process of assessing eligibility of contributions should the Commission reject its request for a reduction in CCD contributions.

33. CIMA opposes SiriusXM's request that states:

"SiriusXM submits that a materiality threshold should be applied to the review of CCD contributions. Specifically, SiriusXM suggests that licencees should be considered in material compliance with their CCD contribution requirements for a broadcast year so long as no more than 2% of total expenditures during the year are alleged to be non-compliant."

34. CIMA believes that the eligibility criteria set out by the Commission for all CCD initiatives are clearly stated and that the onus is on the licence holder to ensure compliance.

35. A history of non-compliance is not a valid reason to reduce required CCD contributions and eliminating discretionary allocations.

36. Therefore we do not support a materiality threshold. To our knowledge no other broadcaster has been given such leeway, and it is not a precedent that should be set.

⁵ Ibid.

37. As the music industry continues to transition to new business models, it is the view of CIMA that satellite radio will continue to have an important role in helping to create a following for new acts and to build their audiences.
38. SiriusXM has and should continue to fulfill this role.
39. As pointed out by the Commission and SiriusXM, the incumbent pays very large sums of annual contributions that support the Canadian music industry.
40. CCD contributions are integral to Canada's cultural policy framework. They ensure that much needed capital exists to keep the Canadian cultural sector vital, growing, and representative of diverse voices.
41. Accordingly, any amendment that would impact previously agreed upon CCD contributions must be scrutinized with great care.
42. The operative question is: would it support the mandate of the CRTC and the Broadcasting Act to substantially decrease conditions of licence that require the licensee to make contributions to CCD? If not, then the terms of the 2019-72 application cannot be accepted.
43. Furthermore, eliminating the licensee's CCD responsibilities cannot be seen as benefiting the Canadian music industry.

SiriusXM's discretionary initiatives: an essential and valued partner

44. CIMA wishes to strongly state the importance of SiriusXM as a partner of the Canadian music industry. As a broadcaster with a unique platform, SiriusXM offers a multitude of opportunities for our Canadian artists to be heard and discovered by SiriusXM listeners. In addition, SiriusXM supports a large number of initiatives through its CCD contributions to FACTOR and MUSICACTION, as well as its "discretionary contributions" envelope, some of which would otherwise not be possible.
45. SiriusXM has supported many members of our association in a variety of important events and initiative that wouldn't have been eligible through other means.
46. SiriusXM's contributions are not only appreciated, but for many are crucial and continue to make a difference in artists' careers.
47. Therefore, several SiriusXM initiatives significantly support the Canadian music industry and CIMA would like to underscore this point.
48. As such, CIMA opposes SiriusXM's proposal to decrease the percentage of allowed "eligible initiatives (discretionary contributions)" in the first two years, and eliminating it entirely in years 3-7.
49. CIMA supports the current mandatory allocation of contributions to the CCD corresponding to:
 - no less than 20% to FACTOR;
 - no less than 10% to MUSICACTION;
 - no less than 5% to the Community Radio Fund of Canada; and
 - the remainder to other eligible initiatives (discretionary contribution)
50. CIMA notes that SiriusXM has proposed a 1-5% contribution to the "Canada Media Fund for allocation to the Aboriginal Program."

51. CIMA is intrigued by this proposal and requests more information be made available about this proposal. Specifically, information on the types of programs this funding would support and whether there is a direct link to supporting music.

Definition of “new Canadian artist”:

52. Under the current condition of licence 6, a “new Canadian musical selection” is defined as a Canadian selection that has been released in the **6 months** prior to the date that the musical selection is broadcast.
53. SiriusXM proposes to amend the current condition to a “new Canadian musical selection” is a Canadian selection that has been released in the **18 months** prior to the date that the musical selection is broadcast.
54. CIMA believes that the additional 12 months SiriusXM proposes would reduce the amount of new music broadcast on its channels, as there would be a reduced turnover of new tracks being played.
55. As an example, before the merger several years ago, XM promoted channels like the Canadian channel “The Verge” as a new music channel with no national identity. Under the merged SiriusXM, this channel is now grouped in the channel line-up under “Canadian” as if it were part of a special interest group.
56. There is a limited amount of bandwidth and airtime that Canadian music has on these channels and if more of that bandwidth becomes filled with older repertoire, it works against Canadian independent labels and their artists that are in the business of releasing new material.
57. In essence, this would reduce the already limited obligation of broadcasting Canadian content even further.
58. Therefore, CIMA proposes that a “new Canadian selections” is defined as a Canadian selection that has been released **no more than 12 months prior** to the date that the musical selection is broadcast.

“Emerging English Canadian artists”

59. Of the 25% dedicated to “new Canadian music selection” 40% is obligated to be “emerging Canadian artists” as defined in the *Radio Regulations*.
60. The current definition of “emerging Canadian artist” which was adopted by the CRTC in 2012 reads as follows:
- He/she is Canadian (that is, meets the “A” criterion of the MAPL system)
 - Has never previously charted or reached the Top 40 position on the music charts listed in Schedule A* or the Top 25 position on the music charts listed in Schedule B*
 - Schedule A: RPM 100 Singles until 3 September 1988, RPM Retail Singles from 10 September 1988 to 10 February 1990, Record Retail Singles until 1 April 1996, Canadian Music Network National Airplay, Billboard Hot 100 Singles or the Billboard Canadian Hot 100.
 - Schedule B: The Record Country, RPM 100 Country Tracks, Canadian Music Network Country Top 50 Audience, Billboard Hot Country or the Nielsen BDS Country Spins.

- An artist would retain the status of “Emerging Canadian Artist” for a period of **36 months** from the date he/she reaches the positions on the music charts mentioned above.
61. SiriusXM proposes to replace the current definition of “emerging Canadian artists in part with:
 - *“Emerging English Canadian artist” is an artist who has not yet achieved “Gold” record sales according to SoundScan or has not reached a position on the Nielsen Canada Top 200 Billboard Album Chart or a position in the Top 20 on the Nielsen Emerging Chart. The artist would retain the status of “emerging English Canadian artist” until a period of **48 months** has passed from the date in which the artist has achieved the position on the charts noted herein.”*
 62. CIMA agrees that the current definition and metrics used should be updated to reflect the realities of our current market and appreciates SiriusXM’s efforts in this regard.
 63. CIMA proposes an amendment to SiriusXM’s proposed definition, as follows: “an artist that has not reached a position on the Nielsen Canada Top 200 Billboard Album Chart or the Top 20 on the Nielsen Emerging Chart **for 4 or more consecutive weeks.**”
 64. The length of time an artist remains on the charts is an important factor that must be taken into consideration, as it not uncommon for an artist to spike in popularity with a song, make a chart for one week, and not reach a position on the charts again.
 65. CIMA believes that amending the definition to include the requirement of **4 or more consecutive weeks** more accurately reflects an appropriate level of success where an artist may no longer be considered “emerging.”
 66. Furthermore, CIMA opposes SiriusXM’s proposed extension of the period of time an artist would retain the status of “emerging English Canadian artist” for an additional year.
 67. CIMA believes this change would reduce the opportunity for turnover of new artists and limit the airtime of artist that would benefit greatly from the exposure this status provides them.
 68. CIMA submits that the artist should retain the status of “emerging English Canadian artist” until a period of **36 months** have passed from the date in which the artist has achieved the position on the charts noted herein.
 69. We wish to thank the Commission’s consideration of these requests.

Yours sincerely,



Stuart Johnston
President
Canadian Independent Music Association