

December 5, 2013

Mr. John Traversy
Secretary General
CRTC
Ottawa, ON K1A 02N2

**Re: Broadcasting Notice 2013-558
Notice of Consultation**

Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction

1. Regarding Broadcasting Notice of Consultation 2013-558, the Canadian Independent Music Association (CIMA) would like to be considered an intervener in this proceeding, and submit its comments on the Commission's approach to tangible benefits and determining the value of the transaction.
2. By way of background, CIMA represents Canada's domestic music industry, which consists of more than 190 Canadian-owned companies and professionals engaged in the worldwide production and commercialization of Canadian music. These Canadian-based companies, in turn, represent thousands of Canadian artists and bands.
3. CIMA's members are exclusively small and medium sized businesses, which include record producers, record labels, publishers, 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.
4. Some of the great Canadian independent artists and bands represented by our members include Feist, Rush, Broken Social Scene, Sarah McLachlan, K'naan, City and Colour, and Metric, to name but a few.
5. CIMA is dedicated to ensuring the long-term development of the Canadian-owned music sector, and to raise the profile of Canadian independent music both in Canada and around the world.
6. CIMA also owns and operates MusicOntario, the Ontario-based Music Industry Association (MIA) dedicated to the development of companies and emerging artists. MusicOntario provides invaluable services such as professional development seminars and workshops, networking opportunities, and information to those working in the Ontario music industry. Through MusicOntario, CIMA ensures that Canada's largest concentration of music activity is well served at a local level. It is estimated that approximately 80 percent of national music-related business investment happens in Ontario.
7. It is on behalf of these Canadian-owned small businesses that CIMA is speaking and providing comments on the tangible benefit system, as well as the calculation of the value of ownership transactions.

8. As a representative of Canada's music labels, publishers, studios, managers, agents, licensors and more, CIMA primarily represents those who receive Canadian Content Development (CCD) funds either from Radio Starmaker, FACTOR or from broadcasters directly. As recipients of CCD funds from radio, we have focused our responses to Notice of Consultation 2013-558 on questions that relate to the radio-broadcasting sector.

How should benefits be allocated?

9. CIMA understands that the Commission does not intend to raise the minimum tangible benefit contribution of six percent. However, CIMA recommends the Commission to consider a higher minimum contribution, as consolidation in radio broadcasting continues. Radio broadcaster transactions were formerly subject to a minimum tangible benefit contribution of 10 percent, which put them on par with television. Raising contribution levels back to this threshold would ensure CCD funds would continue to provide the appropriate level of support that emerging artists and their companies require in order to develop and grow in this global marketplace in which they compete.
10. With regard to Question seven, stated in paragraph 29 of Notice of Consultation 2013-558, CIMA believes that 0.5 percent should be deducted from the 1 percent discretionary minimum and reallocated to FACTOR. This is due to the alignment between the objectives of FACTOR/MUSICACTION and the Canadian Content Development (CCD) policy, as well as the lack of transparency associated with discretionary CCD contributions, explained in full below. Such a change would restore FACTOR/MUSICACTION's mandatory tangible benefit contribution to 2 percent, which was reduced to 1.5 percent in Broadcasting Decision 2010-449.
11. Grants from FACTOR help develop Canadian Content by supporting all stages and components of music creation. FACTOR has grant programs for new talent development and emerging artists, as well as tour and showcase support to help more established artists achieve a greater reach. FACTOR also supports the music companies who promote and develop Canadian talent, ensuring that Canada is home to a vibrant music industry. Given that the CRTC's Commercial Radio Policy places support for emerging talent as a key objective of the CCD policy, CIMA believes that funds spent through FACTOR best support the goals of the Commission.
12. CCD Contributions to FACTOR are also transparent and easy to account for, meaning that they come with minimal compliance and accounting costs for both radio broadcasters and the Commission. Upon receipt of a cheque from a radio broadcaster, FACTOR currently keeps track of all contributions made from various radio broadcasters on record, making compliance a simple matter of matching up licence obligations with reported accounts receivable.
13. The aforementioned transparency associated with FACTOR is more difficult for the one percent of tangible benefits left to the discretion of the broadcaster. In most ownership transfers, the purchasing broadcaster is not required to specify at the outset of the transaction what eligible CCD initiatives will be funded by discretionary tangible benefits, simply the amount of money that will be allotted to them. This leaves the task of compliance entirely to the Commission.

Moreover, this compliance must happen on a year-to-year basis.

14. This lack of transparency poses challenges given that there have been multiple instances of broadcasters misinterpreting the CCD eligibility of certain initiatives. For instance, in broadcasting decision 2012-577, Vista Inc. proposed to spend \$90,000 over three years to send employees to a career accelerator program for professional development. The Commission was required to order a redirection of these funds as a condition of ownership transfer. These sorts of misinterpretations are understandable in a system where broadcasters choose their own CCD initiatives with minimal guidance from the Commission.
15. To this end, CIMA also suggests the Commission revisit its explanation of eligible CCD initiatives, located at <http://www.crtc.gc.ca/eng/general/ccdparties.html>. The list appropriately contains an inexhaustive list of eligible and ineligible initiatives; we would suggest adding examples of allowable spending *within* those initiatives, as well as guidance as to which initiatives best support the objectives of the CCD policy. This information and advice would provide greater clarity for all parties.
16. In order to further provide guidance and ensure that benefits are allocated to initiatives that best support the development of Canadian content, CIMA recommends the tangible benefit policy to be amended, encouraging broadcasters to direct their discretionary benefits to those organizations that clearly have a measurable mandate to support emerging artists and the industry, such as our national and provincial music industry associations (MIAs). As the Commission notes in the Commercial Radio Policy, these not-for-profit MIAs directly foster new and emerging Canadian talent. For example, CIMA's music exporting services (Canadian Blast) provide emerging artists and music companies with the business opportunities, networks and tools they need to grow and sustain their careers over the long term. MusicOntario, along with Canada's other provincial MIAs, are mandated to provide robust services and professional development programs to emerging artists and businesses in their respective provinces. The Commission, therefore, should structure a policy that encourages broadcasters to direct a significant portion of their discretionary benefits to music industry associations.

In what situations should broadcasters be exempt?

17. With regard to the questions stated in Paragraph 37 of Notice of Consultation 2013-558, CIMA agrees with the Commission's view that "the requirement to provide tangible benefits should apply to all applicants seeking approval for transfers of ownership or control of broadcasting undertakings."
18. With regard to Question nine, stated in paragraph 37 of Notice of Consultation 2013-558, CIMA has seen no evidence to support further CCD exemptions for radio, based on market size or type of station. The current profitability exemption is sufficient to ensure the survival of struggling stations. CIMA explains the evidence supporting this position in the following paragraphs.
19. A fundamental principle of the Broadcasting Act is that the "Canadian broadcasting system shall be effectively owned and controlled by Canadians." Given the reality that changes in ownership

are negotiated in what is essentially a non-competitive process, a combination of guaranteed tangible benefits and CRTC approval ensures that consolidation in the broadcasting industry is yielding tangible returns for Canadians, Canadian creative industries and the emerging artists they represent.

20. Further, CIMA agrees that commercial programming undertakings will, in most cases, only be acquired if the purchaser considers that it can ultimately profit from the acquisition (paragraph 33). Indeed, only two unprofitable stations were acquired in 2012. One was quickly rebranded in an effort to improve profitability after a market analysis concluded that it was possible (CIGV-FM, Decision 2012-97). The other unprofitable acquisition was not substantive, with ownership not effectively changing hands, but rather between two companies owned by the same individual (CIKT-FM, Decision 2012-687). Both of these cases illustrate that future profitability is a key concern in voluntary ownership changes.
21. CIMA disagrees with the consideration raised in paragraph 35, that “in the case of radio, it may be appropriate to consider market size and type of station rather than profitability when considering exemptions from the requirement to provide tangible benefits.” It is currently unclear what problem such a change would solve. No broadcasting decision in the last two years has exempted a broadcaster from tangible benefits for these reasons. As the Commission notes, broadcast undertakings will usually be acquired if the purchaser believes they can benefit. If a station is profitable, the purchaser will almost certainly benefit. Even a profitable station in a small market will bring financial benefits to a potential buyer. Further, these types of small stations would likely yield very small transaction values. Given the current substantial financial health of the radio sector, as well as the fact that this financial health is led by market leaders like BCE Inc. with substantial profits, it is unlikely that a minimal tangible benefit package on a small transaction price would pose a serious impediment to the acquisition.
22. It should also be noted that the Commission has the authority to grant exemptions to the tangible benefit policy in exceptional circumstances, which it has exercised from time to time in the past. For instance, in Broadcasting Decision 2012-694, an unprofitable radio station in its first few years of operation was acquired without being subjected to the tangible benefit policy. The reason stated is that ownership had changed hands involuntarily. The Commission deemed that this exceptional circumstance of an involuntary ownership transfer warranted an exemption. This example illustrates that the Commission could retain its authority to grant exemptions where it deems necessary without granting further general exemption criteria.
23. With respect to Question eight, stated in paragraph 37 of Notice of Consultation 2013-558, CIMA submits that tangible benefits should be provided as part of the transfer of ownership or control of all radio programming undertakings. The advantage, explained below, is an assurance that the domestic music industry is able to continue supporting the Canadian economy. Contributions from tangible benefits are a vital support to the small businesses that make up CIMA and the emerging artists they support. With the help of tangible benefit contributions, Canada’s music industry will be able to continue promoting economic growth and the

promotion of Canadian culture.

24. Tangible benefits comprise a key pillar of support to the development of Canadian content. As an organization representing individuals engaged in this development, CIMA believes that keeping CCD exemptions to a minimum is in the best interests of all stakeholders. Through organizations like FACTOR and Radio Starmaker, as well as individual partnerships with broadcasters, tangible benefits are a fundamentally important source of revenue for Canada's independent music industry. Tangible benefits comprised the majority of CCD contributions to FACTOR in 2011-2012, and supported \$21,965,000 in Canadian Content Development initiatives nationwide.
25. This investment in Canada's music industry is a source of jobs and economic growth for the country. According to CIMA's *Sound Analysis* report, Canada's independent music industry contributes \$303 million to Canada's GDP annually and employs over 13,400 Canadians. It is estimated that for every \$10 million in revenue, the music industry was able to generate \$8.2 million in GDP impact. Consider that in English Canada, the independent music sector is not a homogenous industry, it is a community of Canadian-owned small businesses (46 percent are sole proprietors), in which 60 percent earn less than \$50,000 a year in gross revenues, and the top 10 percent earn more than \$500,000 annually. As the Commission can appreciate, CCD benefits form a significant component of the foundation upon which the music industry is built.

Schedule for the payment of tangible benefits

26. With respect to Questions 10 and 11 of paragraph 42, CIMA believes that the Commission should encourage radio broadcasters to pay outstanding tangible benefits before the close of an ownership transaction. This system would ensure both administrative ease and transparency for all parties involved.
27. CIMA also believes that purchasers *must* agree to assume all outstanding tangible benefits from previous transactions, paying the required amounts in full by the dates originally agreed upon.
28. With respect to the concerns raised in paragraphs 38-42 of Notice of Consultation 2013-558, CIMA understands and concurs with the Commission's view that the current case-by-case approach to settling unfilled tangible benefits requirements may be both difficult to administer and inefficient in ensuring these funds are expended appropriately.
29. Instances of pre-existing tangible benefits owing at the time of a new ownership transfer appear to be fairly rare. In 2012, only one of seven ownership transfers in radio contained unfulfilled, future tangible benefit obligations (Broadcasting Decision 2012-557). In this case, Vista Inc. offered to pay all \$662,574 in future benefits by the original dates agreed to by Halliburton, in addition to the new tangible benefits they were obligated to pay.
30. CIMA believes that this case sets an excellent precedent for the tangible benefit system. At a minimum, the purchaser must be prepared to assume any pre-existing tangible benefit obligations owed to eligible CCD initiatives as a condition of approval, over-and-above the

tangible benefits required of the new transaction. Further, CIMA suggests that broadcasters must agree to pay all outstanding benefits by the dates originally agreed upon, ensuring no delay in the receipt of tangible benefit funds by the recipients.

31. Broadcasting Decision 2012-557 focused primarily on tangible benefits owed in the future, not overdue benefits from previous years. As is the case with any CCD contributions in arrears, CIMA firmly believes that the purchaser must be required to pay outstanding benefits *immediately* as a condition of license.
32. CIMA submits that there is a significant benefit to obligate purchasers to pay all future tangible benefits in advance of closing any ownership transaction. For the Commission and radio broadcasters, administrative costs could be significantly reduced. A need for administrative efficiency clearly exists among both radio broadcasters and the Commission, as it was the rationale behind Broadcasting Decision 2013-476, wherein over half of radio broadcasters were relieved of their basic CCD contribution obligations.
33. Greater transparency is another obvious benefit of requiring radio broadcasters to pay all future benefits in advance of completing an ownership transfer. Currently, the system of case-by-case negotiation requires recipients of benefits to follow each individual case, with no certainty as to when, and if, these obligated benefits will be allocated. Tracking these cases is administratively taxing to benefit recipients, who could otherwise be devoting their efforts to supporting and developing emerging artists and/or growing their companies.

Valuing the Calculation

34. CIMA believes that the importance of a transparent and predictable approach to the valuation of a transaction cannot be understated. There have been numerous prominent examples of adjustments in the proposed ownership transaction value in the last several years, leading to adjustments that have directly impacted the size of tangible benefit packages. CIMA also believes that ownership transactions should reflect the true value of an acquisition to the purchaser, rather than simply the value of licenced holdings.
35. With regard to Questions 12 and 13, paragraph 58 of Notice of Consultation 2013-558, CIMA believes that the value of advertising revenue gained from online platforms must be added to the value of the licenced radio service. The growing importance of online distribution will mean that a tangible benefit calculation that excludes online and non-licenced distribution methods will not truly reflect the full value of a broadcasting undertaking. As the value of online radio grows, a tangible benefit package that only includes currently licensed holdings will become progressively more detached from the real value of a radio broadcaster. This will deprive Canadians and Canadian content creators of valuable resources that could be used to create the content to populate this growing component of the Canadian broadcasting system. Our evidence supporting this assertion is explained below.
36. The reality of the modern radio broadcast market is that distribution is changing rapidly. Online radio is a fast growing, yet unregulated, market. While comprehensive, comparable, year-over-

year Canadian data is unavailable, studies from the United States show that online radio listenership has been growing substantially over the past decade. In 2013, over 33 percent of respondents to an Edison Research survey reported that they had listened to online radio in the past week. This is up from 17 percent in 2010, and eight percent in 2003. Moreover, the amount of time listeners spent online listening to radio has increased from over six hours per week in 2008 to 11.5 hours per week in 2013.

37. Available Canadian studies have shown online listenership in Canada to be as high as 33 percent, as early as 2010. This indicates that Canadians may be listening to more online radio than Americans. Further, 58 percent of Canadians listened to local stations online, rather than streaming services such as Rdio, Deezer or others. This indicates that most Canadians who listen to online radio are listening to broadcasters who have CRTC-licensed operations. In other words, Canadians are increasingly turning to online sources to complement or replace their traditional listening on terrestrial radio.
38. In other words, the above statistics should serve to indicate that online radio in Canada is an increasingly important asset for terrestrial radio broadcasters.
39. With regard to Question 14, CIMA believes that the Commission should choose the second method of value allocation, proposed in paragraph 57. As mentioned previously, the value of radio holdings will change drastically from year-to-year, driven by changes in technology and consumer habits. The allocation of value for an ownership transfer in radio must both reflect the truest possible market value of a station's holdings, as well as provide predictability and transparency. CIMA believes that the second method accomplishes all of these objectives. By projecting Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) for a broadcaster once its assets are brought to a mature state, the Commission would ensure that Canadians receive the greatest possible benefit from a change in ownership. This extra step would also provide much-needed transparency to a discussion on the future value of radio broadcasting assets, allowing decision-makers and broadcasting stakeholders to have a more informed dialogue on radio broadcasting policy issues.
40. Thank you for allowing CIMA the opportunity to provide comments on Broadcasting Notice 2013-558. We ask that the Commission consider our submission when it deliberates this important issue. If there are any questions or concerns, please direct your staff to contact Chris Martin, Research and Communications Coordinator at chris@cimamusic.ca. Further, CIMA would be pleased to address the Commission directly, should an oral submission be required.

Yours sincerely,

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