



# ACTRA

November 4, 2005

M s. Diane Rhéaume  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario K1A0N2

VIA Email [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca)

Dear M s. Rhéaume,

**Re: Broadcasting Public Notice CRTC 2005-94**

1. Please accept this letter as an intervention of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of the call for interventions/comments regarding applications by Canadian Satellite Radio Inc. Application No. 2005-1067-9, SIR IUS Canada Inc. Application No. 2005-1068-7 to amend their respective licences for their satellite subscription radio undertakings and by CHUM Limited Application No. 2005-1136-2 to amend its licence for a subscription radio undertaking.
2. ACTRA has represented the interests of professional performers working in the English language media in every region of Canada for over sixty years. ACTRA's principal function is looking after the collective bargaining needs of the more than 2,000 members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences.
3. On September 9, 2005 the government made the following public announcement:

The Government also welcomes the recent requests by CSR and SIR IUS Canada for the CRTC to amend their licences to enhance their offering of Canadian and French-language programming. The CRTC's forthcoming public process to review the licence amendments will enable Canadians to express their views on issues such as the impact of new technologies on Canadian content and consumer choice.

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**Alliance of Canadian Cinema, Television and Radio Artists**

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Affiliated with the Canadian Labour Congress (CLC)  
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4. ACTRA is pleased to participate in this process to review the proposed amendments and to express our views on the impact of new technologies particularly those of the applicants, on Canadian content.
5. The three applicants are requesting amendments respectively to two licenses for satellite radio services and one license for a terrestrial subscription service. The proposed amendments to licenses permit would still these services to offer programming predominantly produced and sourced outside of Canada; primarily in the United States. In other words these applicants are requesting amendments to licenses that permit them to carry on business as licensed undertakings without having to adhere to the broadcast policy, or observe the Radio Regulations.
6. The amendments proposed by the three applicants are not sufficient to comply with the *Broadcasting Act* the Radio regulations 1986 or the Broadcast distribution regulations.

s.3(1)(e) of the *Broadcasting Act* states,

... each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;

s.3(1)(f) of the *Broadcasting Act* requires that,

... each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

Article 6 (2) of the *Broadcast Distribution Regulations* require that Canadian creative resources are used on Canadian licensed undertakings,

... a licensee shall ensure, in respect of each of analog and digital technology, that a majority of the video and audio channels received by a subscriber are devoted to the distribution of Canadian programming services...

7. Over the last two decades, the Canadian music industry has become successful in its own market, and in international markets. A significant part of its success has been due to a regulatory strategy - the strategy of ensuring exposure for Canadian artists on Canadian radio. With access to their own market, Canadian musicians, both French and English, have been able to build domestic careers,

and launch international careers based on the experience, exposure, and income they have generated in Canada.

8. Content requirements in the *Radio Regulations* are the basis that the Canadian music industry has built much of its success. Currently, the standard for radio is 35%. The lack of Canadian channels on these services is contrary to the principles set out in the *Radio Regulations* and in section 3 (1) (f) of the *Broadcasting Act*.
9. The proposed amendments do little to address the fact that these services will give preponderance in exposure and career opportunities to non-Canadian musicians.
10. The Licenses in question would purport to be only specialty services of a narrow nature and limited appeal, yet these services are to be offered across Canada and have been aggressively advertised to a broad spectrum of society.
11. The amendments proposed to the licenses for these services will not alleviate or in any way restore balance to the broadcasting system. The license amendments proposed by CSR and Sirius will not alter the precedents set in these licenses that will have long term and far reaching affect for new services and distribution technologies in future, jeopardizing key elements of Canadian broadcasting policy and the Commission's ability to effectively regulate an evolving radio and television broadcasting.

#### **Sirius Canada Limited and Canadian Satellite Radio Inc.**

12. Canadian Satellite Radio Inc. (CSR) in partnership with XM Satellite Radio Inc. proposed to offer a service of 101 channels with only four produced in Canada by CSR. The Canadian Broadcasting Corporation (CBC) in partnership with SIRIUS Satellite Radio and Standard Radio Inc. as Sirius Canada Limited (Sirius) proposed to offer 78 channels with only four produced in Canada by the CBC.
13. The minimum license conditions the Commission required of CSR in CR TC decision 2005-246 and of Sirius Canada in CR TC decision 2005-247 are summarized as follows:
  - a. at least eight original channels produced in Canada, with a maximum of nine foreign channels able to be offered for each Canadian channel;
  - b. at least 85% of the musical selections and spoken word programming broadcast on the Canadian channels must be Canadian;
  - c. at least 25% of the Canadian channels must be in the French language (minimum of three);
  - d. at least 25% of the musical selections on the Canadian channels must be new Canadian musical selections; and
  - e. a further 25% of the selections must be by emerging Canadian artists.

The licenses must also contribute at least 5% of their gross annual revenues to initiatives for the development of Canadian talent, such as FACTOR or MusicAction funds that assist the development of new musical

artists. These contributions will be allocated equally to the development of English and French-language talent.

14. The September 9<sup>th</sup> government press release that announced upholding the CR TC decisions for CSR and of Sirius stated that;

The proposals put forward by Canadian Satellite Radio and SIRIUS will raise the level of Canadian and French-language content higher than was required in the original CR TC decisions and ensures a variety of Canadian choices for the benefit of all Canadians.

15. Sirius and CSR have applied to amend their licenses summarized as follows:

-each have requested to amend their respective licenses to undertake that a minimum of the eight channels will be Canadian produced. The minimum of French language programming proposed on both CSR and Sirius will be four channels. Two of the four French channels for CSR will be of musical programming and three of the four of the French channels for Sirius will be of musical programming;

-within the first 36 months of operation if these services achieve 25% or more of their respective subscriber objectives they will ensure that for any new Canadian channels added there will be an equal number that are English and French; and

-within the first 36 months of operation if it reaches 25% or more of its subscriber projections but has been unable to add a further two Canadian channels it will contribute an extra 1% (6%) to the CTD.

16. In respect of the Sirius and CSR services the proposed amendments do not increase the number of Canadian channels, rather the amendments merely replace English language channels with French language channels.
17. In addition neither the Sirius nor the CSR proposals make a firm commitment to increase the number of Canadian channels. Their proposal only suggests that in the event either of these services exceed 25% of their initial subscriber projection increase over the three years from the date of commencement of the services that they may either add additional Canadian channels (one French and one English).
18. The amendments proposed by CSR and Sirius are not in accord with the *Broadcasting Act* or the intent of the broadcast policy in the *Act* and clearly do not satisfy the government's public statement that CSR and Sirius "will raise the level of Canadian and French-language content higher than was required in the original CR TC decisions".

19. The Commission must amend the conditions of licence for CSR and Sirius to ensure that Canadian content levels are increased:

- CSR and Sirius must increase the number of programming channels on their respective services now to attain a Canadian content ratio that as a minimum would be equivalent to at least 40% Canadian content level for music or such higher level as may be established by regulations in the future;
- Require CSR and Sirius to present credible evidence that the nature of the services they provide now or in the future are of "specialized content or format or the use of languages other than French or English" that renders the maximum use of Canadian content impracticable; and
- CSR and Sirius must be required to appear before the Commission on or before January 1, 2009, in a public hearing to review their compliance with Canadian content requirements.

#### CHUM Limited

20. CHUM Limited (CHUM) proposed to launch its undertaking using terrestrial transmitters with 50 channels, all of which were to be Canadian-produced. Ten of the channels were proposed to be French-language channels, and five other channels, devoted, one each for the Aboriginal, Chinese, German, Italian, and South Asian communities.

21. CRTC decision 2005-248 required CHUM to fulfill weekly requirements for levels of Canadian music comparable to those that apply to conventional radio stations. Under the *Radio Regulations, 1986* (the Regulations) which require radio licensees, subject to conditions of licence, to devote, during each broadcast week, at least 35% of musical selections from content category 2 (Popular Music), at least 10% of musical selections from content category 3 (Special Interest Music) and at least 7% of musical selections played during ethnic programming periods to Canadian musical selections. The Commission further allows "oldies" stations, by condition of licence, to devote 30% of musical selections from content category 2 to Canadian selections, in light of the more limited availability of Canadian music appropriate to the format.

22. CHUM has applied to amend its licence as follows:

- now proposing a linkage rule of one foreign (US) produced channel for one Canadian channel;

- no more than 35% of the musical selections on the Canadian channels are required to be Canadian musical selections; and


- increase the percentage of its rebroadcasts of AM or FM stations from 10% to 50% for Canadian channels.

23. The CHUM application proposes that the Commission grant the amendments to its license and states that it believes that it is entitled to the equivalent 9:1 linkage as CSR and Sirius but that it would settle for a 1:1 linkage of Canadian programmed channels to foreign channels commensurate with pay audio services.
24. The government announcement to uphold the broadcast licenses for CSR and Sirius on the proviso that they would seek amendments to increase the number of Canadian channels did not reference or apply to CHUM. There was nothing in the government's announcement that provides a basis for CHUM to reduce its commitment to Canadian Content levels set out in its conditions of license.
25. The Commission must deny CHUM's request to amend its license to reduce its Canadian content obligations. There is no provision in the *Broadcasting Act* or the Regulations that would justify CHUM reducing the Canadian content levels of its subscription terrestrial service. For the Commission to find otherwise would be in contravention of the *Broadcasting Act* and would set a very destructive precedent.

## Conclusion

26. In closing ACTA notes that the Commission's process is based only on written interventions without recourse to public hearings on the proposed changes and without a right of reply by interested parties that have chosen to intervene. In the event that the Commission was to add a public hearing to this process we request the opportunity to appear before the Commission.
27. Additionally ACTA expects that the Commission will not set policy through these applications and licensing amendment decisions.

We thank the Commission for the opportunity to provide it with our concerns and recommendations.



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