



Broadcasting Regulatory Policy CRTC 2009-61

Route reference:

Broadcasting Public Notice 2008-1

Ottawa, 11 February 2009

Policy regarding the broadcast of hits by English-language FM radio stations

In this document, the Commission sets out its determinations regarding its review of the policy on the broadcast of hits by English-language FM radio stations. Specifically, the Commission is:

- *eliminating restrictions on the broadcast of hits by English-language commercial FM radio stations in English-language markets;*
- *maintaining the current restrictions on the broadcast of hits by English-language commercial FM radio stations in the bilingual markets of Montréal and Ottawa-Gatineau; and*
- *updating the list of charts used to determine hits.*

Introduction

1. In Broadcasting Public Notice 2008-1, the Commission called for comments on its policy regarding the broadcast of hits by English-language commercial FM radio stations. Specifically, it asked interested parties whether the policy is still relevant and effective in today's broadcasting environment.
2. According to the current policy set out in Public Notice 1997-42, English-language commercial FM radio stations must ensure, by condition of licence, that less than 50% of all musical selections aired during each broadcast week are hits.
3. A "hit" is defined in one of two ways, depending on the market served by a station:
 - In English-language markets, a hit is defined as any musical selection that, up to and including 31 December 1980, reached one of the Top 40 positions in the charts used by the Commission to determine hits.
 - In the bilingual markets of Montréal and Ottawa-Gatineau, a hit is defined as any musical selection that, at any time, has reached one of the Top 40 positions in the charts used by the Commission to determine hits.

4. The latter definition of a “hit” also applies to English-language campus radio stations.
5. The Commission also sought comments on a proposal to update the charts used to determine hits for both English-language commercial FM stations and campus stations. The Commission stated in the call for comments that it is of the view that restrictions on the broadcast of hits continue to be relevant for English-language campus radio stations. Consequently, the current review of the policy does not include campus radio stations.

Background

6. When the Commission last reviewed its policy regarding the broadcast of hits in 1997, it adopted a less restrictive definition of a hit for commercial FM radio stations serving English-language markets in order to permit the development of the Contemporary Hit Radio or Top 40 format on the FM band. However, the Commission did not completely eliminate the policy in order to protect AM stations offering the Oldies format from direct competition by FM stations, which broadcast with superior audio quality.
7. In the same policy review, the Commission opted to maintain the use of a stringent definition of a hit for English-language commercial FM stations serving the Montréal and Ottawa-Gatineau markets in order to protect French-language broadcasters in the two bilingual markets. French-language broadcasters are bound by the requirement to play minimum levels of French-language vocal music and, in 1997, the Commission acknowledged that they could be severely disadvantaged in retaining a high level of tuning by francophone listeners if they were forced to compete with English-language stations offering unlimited amounts of Top 40 music released since 1980.

The proceeding

8. The Commission received and considered written comments from 17 parties in response to the call for comments set out in Broadcasting Public Notice 2008-1. The parties included representatives of the commercial broadcasting industry, the recording industry, campus radio stations as well as individuals.
9. The public record for this proceeding is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings.”
10. After considering all of the written comments made in the course of this proceeding, the Commission has identified two issues to be addressed in its determinations:
 - Should the Commission eliminate the policy restricting the use of hits on English-language commercial FM radio stations operating in English-language markets?
 - Should the Commission eliminate the policy restricting the use of hits on English-language commercial FM radio stations operating in the bilingual markets of Montréal and Ottawa-Gatineau?

English-language markets

Position of parties

Financial viability of Oldies stations

11. In their written comments, some parties expressed concern about how the elimination of the policy would negatively affect Oldies stations on the AM band. The Canadian Independent Record Production Association (CIRPA) argued that the current restrictions on the use of hits should remain given that they provide a viable niche for AM stations. Durham Radio Inc. submitted that some Oldies AM stations will be negatively affected by competing FM stations adopting the Oldies format.
12. Other parties argued that market forces should dictate format choices and that eliminating the policy restricting the broadcast of hits would contribute to format diversity. Rogers Broadcasting Limited (Rogers) was of the view that the policy is in place for the benefit of very few AM stations. Furthermore, the Canadian Association of Broadcasters (CAB) and other parties submitted that the policy has proven ineffective considering that the financial position of Oldies stations has continued to deteriorate over the years.

Requirement to broadcast Canadian musical selections

13. CIRPA and other parties raised concerns that, without the policy, and with FM stations adopting the Oldies format, there would be a reduction in the airplay of new and emerging artists. They contended that FM stations that adopt the Oldies format would not play new and emerging artists as they are incompatible with their new format.
14. Furthermore, the Canadian Recording Industry Association (CRIA) was concerned that FM stations that adopt the Oldies format may expect the same exemption from the requirement to broadcast a certain level of Canadian musical selections that some Oldies AM stations have. Many Oldies AM stations are permitted, by condition of licence, to broadcast a minimum level of 30% Canadian musical selections instead of the 35% stipulated in the *Radio Regulations, 1986* (the Regulations). CRIA submitted that, if FM stations are given the option to reduce their minimum level of Canadian musical selections below the level set out in the Regulations, there would be less Canadian music being broadcast and the reduction would be inconsistent with the Commission's mandate in the *Broadcasting Act*.

Commission's analysis and determinations

15. The Commission considers that the primary purpose of the policy regarding the broadcast of hits in English-language markets is to protect Oldies AM stations. Overall, the financial evidence shows that the policy has not achieved its intended effect and that Oldies stations continue to face increasing competition from FM stations that program a large amount of "gold" musical selections, and from other sources, such as Internet and satellite radio.

16. There were 20 Oldies stations out of a total of 150 English-language AM stations operating in 2007. From 1996 to 2007, the Oldies stations' aggregate profit before income and taxes (PBIT) margin deteriorated to -32% of revenues, whereas the PBIT margin for all English-language AM stations increased to +7%. Given that Oldies stations continue to struggle financially, the Commission concludes that the policy has not been effective.
17. **In light of the above, and with a view to ensuring that its policies remain relevant to the Canadian broadcasting system, the Commission eliminates the policy restricting the broadcast of hits by English-language commercial FM radio stations in English-language markets, effective immediately.**
18. In addition, the Commission is of the view that it is important to maintain the total amount of Canadian music available to radio listeners.
19. **Consequently, the Commission will not be disposed to approve applications by English-language commercial FM stations for conditions of licence that would permit them to reduce the amount of Canadian music below the requirement set out in the Regulations or below the minimum level set out in their respective conditions of licence if greater than the level set in the Regulations, should they choose to adopt a format based on older musical selections.**

Bilingual markets of Montréal and Ottawa-Gatineau

Position of parties

20. In its intervention, the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) argued that the elimination of the policy in bilingual markets would contribute to a significant increase in the migration of francophone listeners from French-language popular music stations to English-language popular music stations. Other parties in favour of the policy argued that the policy supports Canada's linguistic duality and should therefore be left in place.
21. On the other hand, Rogers and the CAB were both of the view that the policy has failed to prevent the migration of the francophone audience tuning from French-language music stations to English-language music stations. The CAB advocated the elimination of the policy and suggested that, to stop the migration of the francophone audience both to English-language popular music stations and French-language spoken word stations, the regulatory requirement of French-language stations to play a minimum percentage of vocal musical selections in the French language be lowered.¹

¹ By regulation, French-language commercial stations must devote at least 65% of their vocal musical selections in content category 2 to musical selections in the French language over each broadcast week, and 55% between 6 a.m. and 6 p.m. Monday to Friday.

22. Also in support of the elimination of the policy, Evanov Radio Group argued that the policy impedes competition and prevents stations from playing the music their listeners want to hear.

Commission's analysis and determinations

23. The Commission acknowledges that there has been some erosion of the tuning by francophones to French-language popular music stations in Montréal. However, Bureau of Broadcast Measurement (BBM) data submitted by the CAB suggests that most of this tuning has gone to French-language talk stations, not English-language music stations. Specifically, according to this data, the tuning share of French-language stations remained consistent from 2003 to 2007 at 85 to 87% of listeners 12 years of age and older. However, the tuning share of French-language music stations dropped 9% from 62% in 2003 to 53% in 2007, while the tuning share of French-language talk stations increased by almost the same percentage. From this data, the evidence fails to indicate that the policy on the broadcast of hits is not effective in Montréal.
24. In its submission to the Commission, the CAB provided a similar set of BBM data for the Ottawa-Gatineau market. Compared to Montréal, the Ottawa-Gatineau market was more dynamic due to the establishment of new English- and French-language popular music stations between 2003 and 2007.
25. The Commission finds that these significant additions to the Ottawa-Gatineau radio market make it difficult to draw firm conclusions about the effectiveness of the policy from the BBM data at this time.
26. The Commission is therefore of the view that no convincing evidence was presented that indicates that the restriction on the broadcast of hits in the bilingual markets of Montréal and Ottawa-Gatineau is ineffective and should be modified. The policy continues to have a positive effect on linguistic duality in the bilingual markets.
27. Further, the Commission notes that the CAB's suggestion to lower the minimum level of French-language musical selections broadcast on French-language commercial radio stations was already examined during the 2006 review of the Commercial Radio Policy (Broadcasting Public Notice 2006-158). The Commission considers that it would be more appropriate to examine this issue in the context of the next review of the Commercial Radio Policy.
28. **Accordingly, the Commission is satisfied that the policy concerning the broadcast of hits in the bilingual markets of Montréal and Ottawa-Gatineau continues to have a positive effect on linguistic duality and will therefore remain in effect.**

29. **The definition of a “hit” will remain as follows:**

Any musical selection that, at any time, has reached one of the Top 40 positions in the charts used by the Commission to determine hits.

Charts used to determine hits

30. Since the last policy review in 1997, several of the charts used to determine hits were discontinued. Given that the policy regarding the broadcast of hits remains in effect for English-language commercial FM radio stations serving the bilingual markets of Montréal and Ottawa-Gatineau and for campus radio stations, the Commission expands the lists of charts to determine hits to include Nielson BDS Country Spins Chart and the Billboard Canadian Hot 100 Chart. The Commission received no comments opposing the addition of the two charts. The list shall now read as follows:

- Nielson BDS Country Spins
- Billboard Canadian Hot 100
- Billboard Hot 100 Singles
- Billboard Hot Country

31. The Commission notes that the catalogue of past hits also includes selections that reached one of the Top 40 positions on any of the following charts:

- Canadian Music Network National Airplay
- Canadian Music Network Country Top 50 Audience
- The Record Country
- RPM 100 Country Tracks
- RPM 100 Singles
- RPM Retail Singles
- The Record Retail Singles

32. The latest charts used to determine hits will be those contained in publications dated up to and including two Saturdays before the date of broadcast. Canadian selections that enter the Top 40 will continue to be considered as non-hits for one year from the date they first enter the Top 40. In addition, selections performed and aired live, or contained in a live performance recorded primarily for broadcast use will not be counted as hits.

Other matters

33. In light of these determinations, the Commission is also issuing Broadcasting Regulatory Policy 2009-62 and Broadcasting Regulatory Policy 2009-63 which update the standard conditions of licence that apply to licensees of commercial AM and FM radio stations and campus radio stations.

Secretary General

Related documents

- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Conditions of licence for campus radio stations*, Broadcasting Regulatory Policy CRTC 2009-63, 11 February 2009
- *Call for comments on the policy regarding the broadcast of hits by FM radio stations* – Notice of Consultation, Broadcasting Public Notice CRTC 2008-1, 4 January 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Revised Policy on the Use of Hits by English-Language Radio Stations*, Public Notice CRTC 1997-42, 23 April 1997

This document is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.