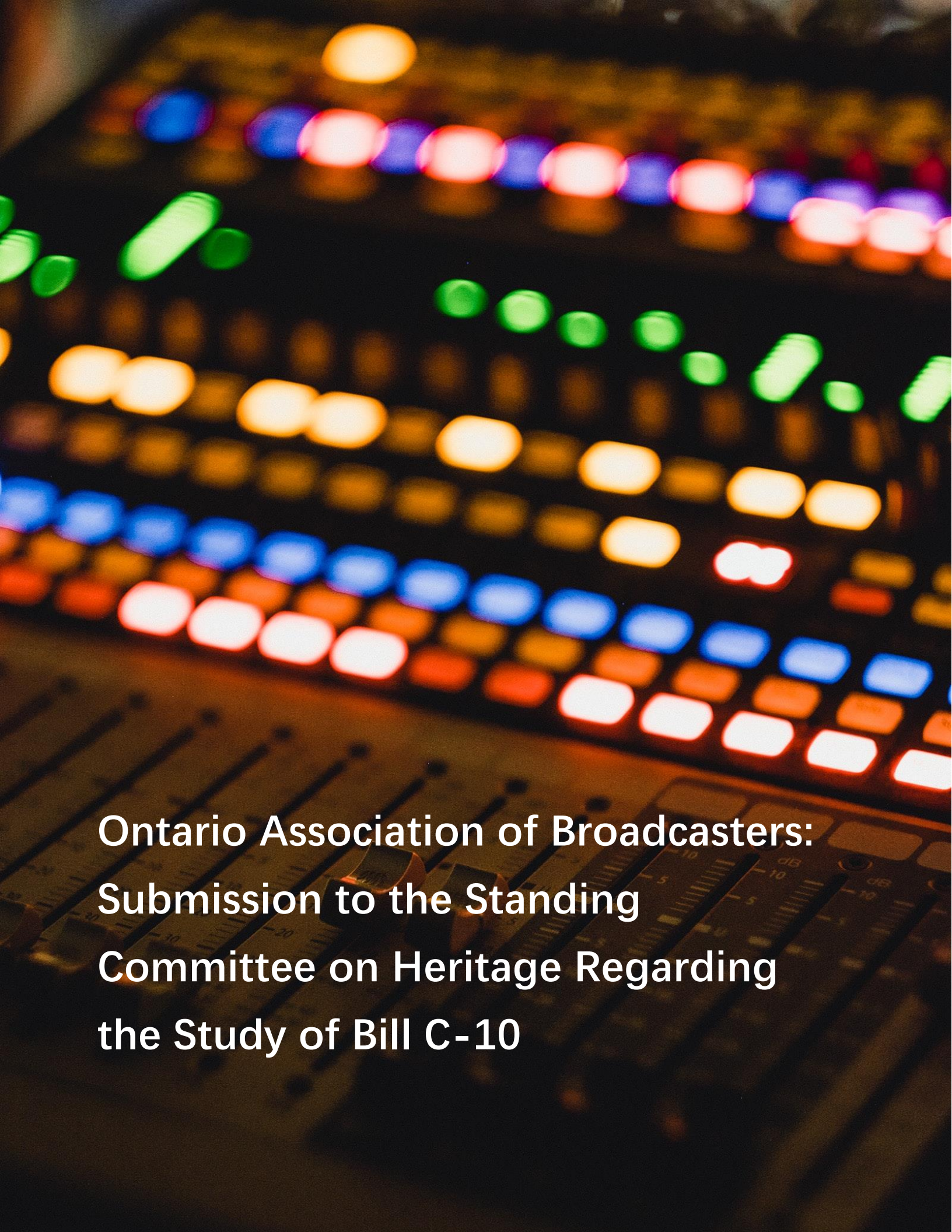

Ontario Association of Broadcasters: Submission to the Standing Committee on Heritage Regarding the Study of Bill C-10

Introduction

The Ontario Association of Broadcasters (OAB) is the voice of Broadcasting in the Province of Ontario. Although our membership is concentrated in Ontario, member stations span the country from coast to coast. Our members own and operate more than 350 radio stations – 49% of the stations in Canada (Appendix 1). The majority of OAB members are independent broadcasters operating in small and medium sized communities.

The OAB values the work of the Standing Committee on Heritage in providing the appropriate scrutiny to Bill C-10. Changes to the *Broadcasting Act* are not a frequent occurrence in our federal parliament. Any amendments must both ensure our broadcasting system remains modern and that there are provisions to provide oversight of new technologies, while incorporating them into the existing broadcasting system in an appropriate fashion. Of paramount importance, regulations must not result in economic harm to existing broadcasters.

Radio Broadcasting in Canada

Local radio stations are content creators. Private sector radio stations employ over 8,000 Canadians engaged in the production and delivery of unique content made for Canadians, by Canadians. In addition to its role in the promotion and distribution of Canadian music, each radio station creates unique, spoken word content, produced from a local perspective. Collectively, local radio produces over 400,000 hours of original spoken word content every year.

Radio is an integral part of the fabric of our communities. With the closures of many local newspapers, in many areas, local radio stations have become the only reliable source for local news content. Reaching approximately 70% of the Canadian population, private radio broadcasters are often the only local media capable of providing immediate messaging in times of crisis.

As mandated by the Federal and Provincial governments, radio stations are an essential service. Most recently, stations have remained open to disseminate important, locally focused information regarding the evolving COVID-19 pandemic. Unlike non-essential businesses, private radio stations must continue operations, maintaining staff and news departments to ensure programming integrity. This service has been invaluable to the public, but it has also resulted in stations incurring operational costs, regardless of the loss of advertising revenue.

As is the case with other Canadian content creators, radio is threatened by foreign digital players. Over the period 2015 to 2019, private sector radio has seen a decline in constant dollar revenues of 15.6%. (1) According to a recent study commissioned by the CAB, one third of Canadian radio stations are in danger of closing within three years, leaving many smaller communities without a local voice. (2)

Bill C-10

A primary goal of Bill C-10 is to level the playing field between the Canadian broadcasting industry and foreign digital services. The core problem is that proposed amendments to the Act do not achieve that goal and do little to address the broader forces at play in the radio broadcasting landscape.

The *Broadcasting Act* is not legislation that sees frequent updates, so when it was announced that major changes were being contemplated in mid-2020, radio broadcasters hoped to see recognition that the increasing move to digital platforms was putting our business model at a disadvantage. However, in lieu of creating a competitive balance, the new legislation will establish that most of the regulatory burden will continue to fall upon Canadian conventional broadcasters. The result will be that Canadian radio broadcasters will not have the needed flexibility to compete with foreign, online competition which does not need to adhere to the same regulations.

Specifically, Bill C-10 amends the Act to establish two classes of broadcasters: online only broadcasters and traditional broadcasters. Existing broadcasters will continue to be highly regulated while online, (mainly foreign)

broadcasters will be largely exempt. This places the Canadian radio broadcasting industry at a competitive disadvantage that will grow over time. Bill C-10, as written, will inadvertently cause harm to the domestic industry; the Industry will continue to decline due to an unbalanced regulatory approach that favours foreign, online entities.

Issues and Proposed Changes

The OAB believes that Bill C-10 should be passed in an expeditious fashion, albeit with some important wording changes. Our proposed changes to wording of Bill C-10 would provide direction to the CRTC to consider market forces and, wherever possible, ensure there is a level playing field between radio broadcasters and the online streaming industry.

Issue 1 - Unnecessary Regulation

While the CRTC clearly has a role in supporting Canadian culture, it is important that regulations and the administration of those regulations do not inadvertently harm Canadian Radio Broadcasters. Our proposed amendments will provide a clear direction to the CRTC to consider market forces and use a "light touch" when developing regulations and policies. This will help ensure that, wherever possible, there is regulatory symmetry between streaming and conventional broadcasters.

Issue 2- Regulations that may harm the Canadian Radio Industry

From a public policy standpoint, the challenge is how to balance the need for regulation that supports overall Canadian culture, with the fact that overregulation can cause harm to the Canadian radio industry, a prime contributor to Canadian culture.

Assuming that an existing or proposed regulation would, if unequally applied, be harmful to Canadian radio broadcasters, there are three options:

a) Only implement regulations which equally impact Canadian broadcasters and foreign streaming companies (level the playing field through symmetry);

b) Eliminate the regulation entirely (level the playing field through deregulation);

c) If a regulation only applies to Canadian Broadcasters and it negatively impacts their ability to compete, provide financial compensation (level the playing field through financial compensation).

Our proposed amendments would require the Commission to treat streaming and conventional broadcasters in a fair and equitable manner. They direct the CRTC to consider the financial harm that might flow from unequal regulation and, if they cannot mitigate that harm through other means, provide financial compensation. Compensation would be largely funded from a portion of the payments expected to flow from Foreign streaming companies.

Detailed Description of Amendments

Proposed Amendment 1

With reference to *Objects and Powers of the Commission in Relation to Broadcasting*, Section 5(2) (g) of the *Broadcasting Act* currently states that:

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that…. (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings and;

We propose Bill C-10 amends Section 5(2)(g) **by adding the following:**

(g.1) uses measures that are proportionate to their purpose and that interfere with broadcast operations to the minimum extent necessary to achieve the broadcasting policy

(g.2) recognizes the impact of regulatory delays within the competitive marketplace and ensures that any policy decisions or approvals are processed in a timely manner

(g.3) takes into account the ever-increasing rate of technological change and provides for regular reviews and updates of policies and regulations

Proposed Amendment 2

With reference to *Objects and Powers of the Commission in Relation to Broadcasting*, Section 5(2) of the *Broadcasting Act* is amended by Bill C-10 by adding paragraph (2) (h).

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that…

(h) takes into account the variety of broadcasting undertakings to which this Act applies*, and to the greatest extent possible avoids imposing obligations on any class of broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1);*

To provide greater certainty, **we propose inserting the underlined and bolded text** to this amendment.

(h) takes into account the variety of broadcasting undertakings to which this Act applies **and wherever possible, obligations shall be implemented in a symmetrical manner between classes of undertakings** and *to the greatest extent possible avoids imposing obligations on any class of broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1)*

Proposed Amendments 3 and 4

We propose then adding to Paragraph (2)(h):

(h.1) if they are not of an economic nature, obligations that are imposed only upon a single class of broadcasting undertaking should consider not only the contribution to broadcasting policy set out in 3(1), but must also consider the potential economic harm that such obligations could have upon that class of broadcasting undertaking within the competitive marketplace and;

(h.2) if that class of undertaking would be harmed, financial compensation should be provided.

We propose to add a section 9.2 to Bill C-10's amendments of Section 9 of the Broadcasting Act:

9.2 The Commission, in furtherance of its objectives, must explicitly demonstrate that its policies, regulations, orders, decisions and guidelines result in a fair, equitable and technology neutral regulatory burden for all undertakings.

Note

Proposed wording changes are similar to those contained within Order in Council *Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*
https://laws.justice.gc.ca/eng/regulations/SOR-2006-355/FullText.html
Direction
1 In exercising its powers and performing its duties under the Telecommunications Act, the Canadian Radio-television and Telecommunications Commission (the "Commission") shall implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:
(1)(a) the Commission should
(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
(ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;
(b)the Commission, when relying on regulation, should use measures that … (iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner,

Sources

1. CRTC 2019 Radio Statistical and Financial Summaries, Bank of Canada
2. *The Crisis in Canadian Media and the future of local Broadcasters* - Communications Management Inc. - July 31, 2020
3. All estimates of audience size were sourced from Numeris, Spring 2020 survey

Appendix 1

List of stations operated by OAB members

Province	# of Locations/Stations
British Columbia	50
Alberta	54
Saskatchewan	18
Manitoba	21
Ontario	145
Quebec	2
New Brunswick	10
Nova Scotia	15
Prince Edward Island	6
Newfoundland & Labrador	30
Northwest Territories	2
Total	**353**