NOTICE OF GROUNDS FOR OBJECTION

Filed by L'Alliance des radios communautaires du Canada (**ARCC**), L'Association des radiodiffuseurs communautaires du Quebec (**ARCQ**), and the National Campus and Community Radio Association/ L'Association nationale des radios étudiantes et communautaires (**NCRA**) (the "Associations")

In relation to proposed tariff *Re:Sound Tariff 1.B – Non-Commercial Radio, Simulcasting, Non-Interactive and Semi-Interaction Streaming (2025-2029)*

Filed with the Copyright Board on 2023-11-15 pursuant to Rule 18 of *Copyright Board Rules of Practice and Procedure*

The Associations object to the proposed royalty rates under Rule 19(b) of the *Copyright Board Rules of Practice and Procedure* on the following grounds:

1) Although the pre-amble and notice of grounds filed by Re:Sound confirm that paragraph 4(1) of the proposed tariff 1.B would only apply if the $100 annual statutory fee payable by community systems in s. 72(3) of the *Copyright Act* is amended or repealed, the Associations submit that the proposed rate of 2% of stations' annual operating costs is too high. SOCAN's tariff 1B, which has licensed the same over-the-air performance right at the same rate for the last 35 years, remains set at 1.9% of stations' annual operating costs. Further, the 1.9% due to SOCAN under tariff 1B <u>includes</u> royalties for webstreams and simulcasts, whereas Re:Sound is proposing in paragraph 4(2) an additional payment by stations of $1000/year for webstreams and simulcasts in addition to the 2% royalty under paragraph 4(1). The Associations view this as unreasonable.

   Many of the Associations' member stations struggle financially. This situation worsened during the pandemic when stations' sources of income were reduced, and many stations have not yet recovered. All the Associations' member stations are not-for-profit organizations that operate on a break-even basis and it is rare for them to end the fiscal year with a surplus. Thus any increase in operating costs, in the form of increased tariffs or other costs, can result in a station being unable to meet its basic financial obligations unless it can increase its fundraising by an equal amount. If s. 72(3) of the *Copyright Act* is removed, an increase in royalties from $100/year to 2% of gross annual operating costs would be significant enough that some stations that are already in precarious financial positions may have to cease operating. $100 would only constitute 2% of gross annual operating costs for a station with total operating costs of $5000; very few members of the

Associations have operating costs so low. For a mid-sized community station with gross annual operating costs of $200,000, the fee under the proposed tariff would increase from $100 to $4000, an increase of 3900%.

2) The proposed rate of $1000/year for webcasts and simulcasts in paragraph 4(2) is unaffordable for most stations, especially when compared with the current rate of $25/year for non-interactive webcasts and semi-interactive webcasts (other than simulcasts) and $25/year for simulcasts (as set out in *Re:Sound Tariff 1.B.2 – Non-Commercial Simulcasts and Webcasts (2013-2019)*, approved December 5, 2020). In its reasons for that tariff, the Board stated at paragraphs 30-33 that the rates and related terms of conditions were "fair", "nominal and appropriate for incidental uses", and that "[n]ominal royalties are appropriate to a flat fee structure and support affordability for non-profit organizations." Further, at para. 31, the Board noted that that simulcasting and webcasting are "incidental to broadcasting", which they remain to this day, and that "[a]lthough webcasting can be a primary activity… the rate of $25 per year is appropriate for these non-commercial uses". The new rate proposed by Re:Sound is a 1900% increase that the Associations do not believe is justified. The financial position of the Associations' station members has not improved since the Board's decision was made in 2020.

The Associations object to the proposed terms and conditions under Rule 19(b) of the *Copyright Board Rules of Practice and Procedure* on the following grounds:

1) Re:Sound proposes in subsection 5(2) that each non-commercial radio station shall forward to Re:Sound a written certified declaration of the actual gross operating costs. Stations would have to incur an additional unnecessary expense in order to obtain a certified declaration, which would be particularly prohibitive to small rural volunteer-run stations with no staff that operate on minimal budgets.

The Associations propose that it would be more appropriate to maintain the existing rates $100/year and $25/year for each of webcasts and simulcast and eliminating the requirement for a certified declaration of actual gross operating expenses.

<u>Information about the objectors</u>

Together the Associations have roughly 190 members. A majority of those members are AM/FM radio stations licensed under either the Canadian Radio-television and Telecommunications Commission's Community Radio Policy or the Native Broadcasting Policy. A small number of the NCRA's members are licence-exempt Indigenous stations, online-only radio stations that are affiliated with a college or university and/or stream more than 10 hours of original hosted programming a week and are not-for-profit registered societies, corporations or cooperatives in Canada with provisions in their by-laws ensuring that they are public access, volunteer-based and community-oriented, and not-for-profit groups in the process of applying for licences. According to statistics on the CRTC's website, there are roughly 235 licensed campus, community, and Indigenous stations in Canada, so the majority of them are members of the Associations.

If any further details are required, please contact: Freya Zaltz, Legal Counsel for ARCC, ARCQ, NCRA (freyazaltz@gmail.com)