

NOTICE OF GROUNDS FOR PROPOSED TARIFF

Filed with the Copyright Board by Re:Sound on 2023-10-13 pursuant to Rule 15 of *Copyright Board Rules of Practice and Procedure*

RE:SOUND TARIFF 4 – SATELLITE RADIO SERVICES (2025-2029)

1. Uses covered by the proposed tariff

The proposed tariff applies to the communication to the public by telecommunication (for private use) in Canada of recorded music by satellite radio (ie. SiriusXM Canada) and satellite radio simulcasts.

Simulcast refers to the simultaneous online stream of a satellite radio broadcast. A simulcast is identical to the original satellite radio signal and the listener cannot exercise any control over the content or the timing of the music. For example, the listener cannot skip, pause, rewind or fast-forward a song or influence which songs they hear by indicating a preference for a musical genre, artist or song. If the possibility of such influence over the music exists, a stream is not a simulcast, regardless of whether the listener actually uses any of the semi-interactive functionality available or not.

The proposed tariff does not apply to non-interactive streaming or semi-interactive streaming by SiriusXM, which is instead subject to Re:Sound Tariff 8 (Non-Interactive & Semi-Interactive Streaming). Any online-only channels and streaming with any element of customization or interactivity such as the ability to pause, skip, rewind, fast-forward or indicate a preference for musical genres, artists or songs, are not subject to the proposed tariff, but are subject to Re:Sound Tariff 8 instead.

The proposed tariff does not apply to any online activities by SiriusXM except for simulcasts. However, the proposed tariff does permit the use of wireless functionalities (such as a WiFi or Bluetooth functionality) integrated with a satellite radio receiving device that allows the relay of a satellite radio signal to local speakers for subscribers' private use.

The proposed tariff does not apply to SiriusXM’s commercial subscriptions/subscribers and/or the supply of satellite radio as background music, which is subject instead to Re:Sound Tariff 3.A (Background Music Suppliers).

The proposed tariff does not apply to the public performance of recorded music. Businesses which play satellite radio for customers and the general public in their establishments are subject to Re:Sound Tariff 3.B (Background Music) unless public performance royalties are paid on their behalf by their music supplier pursuant to Re:Sound Tariff 3.A (Background Music Suppliers).

2. Basis for proposed royalty rates

The proposed rate for satellite radio broadcasts is based on international best practices, namely the rate that SiriusXM pays in the United States to SoundExchange under its Pre-Existing Satellite Digital Audio Radio Services rate for 2018-2027. The proposed per subscription minimum fee is based on the current Re:Sound Satellite Radio Services Tariff, increased to reflect the increase to the main rate. The proposed minimum fee structure is changed from subscribers to subscriptions to reflect the fact that a given household could hold multiple subscriptions, while being counted as a single subscriber.

The proposed rate for simulcasts is based on a percentage of revenue or per play formula. This “greater-of” formula is proposed to ensure that the royalties paid reflect the amount of music used and that rights holders are fairly compensated for the use of their music in simulcasts regardless of a satellite radio service’s choice of business model. The proposed percentage of revenue rate for simulcasts is the same rate proposed for satellite radio broadcasts. The proposed per play rate for simulcasts is based on international best practices, namely the 2023 SoundExchange Non-Subscription Commercial Webcaster rate, which is lower than the Subscription Commercial Webcaster rate applicable to SiriusXM’s simulcasts in the United States. The minimum fees for simulcasts are also based on the SoundExchange Non-Subscription Commercial Webcaster rates.

3. Description of the group of users intended to be covered by the proposed tariff

The proposed tariff applies to satellite radio services operating in Canada ie. SiriusXM Canada.

The proposed tariff does not apply to subscribers of SiriusXM Canada. It does not apply to commercial radio stations, the Canadian Broadcasting Corporation, pay audio services or background music suppliers.

4. Explanation of how the information that would be collected by Re:Sound pursuant to the proposed tariff would be used

The information to be collected under section 5 of the proposed tariff would be used by Re:Sound to calculate and verify a satellite radio service's royalty payments. The information regarding the simulcast audience would be used by Re:Sound to assess the relative size and importance of the simulcast audience to the over-the-air audience in order to ensure the proposed royalty rates and formula for simulcasts is appropriate.

The music use information to be collected under section 6 of the proposed tariff would be used by Re:Sound for the purposes of distributions, to ensure that the royalties collected are distributed to the appropriate rights holders.

5. Identification and explanation of changes from the previously approved tariff

The main changes to the proposed tariff from the previously approved Re:Sound-SOCAN Satellite Radio Services Tariff (Re:Sound 2011-2018; SOCAN 2010-2018) relate to:

- (a) The removal of the SOCAN portions of the tariff as the proposed tariff is being proposed by Re:Sound alone.
- (b) The addition of simulcasts to the scope of the proposed tariff as directed by the Copyright Board in its Re:Sound Tariff 8 decision. The addition of simulcasts to the proposed tariff results in additional definitions (channel, device, file, play, simulcasts, simulcasting income) and additional reporting requirements (section 5(c)).
- (c) The application of the minimum fee to subscriptions as opposed to subscribers as explained above.
- (d) Revisions to the definition of "service revenue" to include revenue for the sale of hardware and accessories used in the reception of the service.

- (e) Revisions to the music use reporting requirements (section 6) to require reporting within 14 days after the end of each month in order to allow for more timely and efficient distributions to rights holders. In addition, all music use information is to be provided on a mandatory basis as it is essential for accurate and timely distributions to rights holders that Re:Sound receive all required music use reporting.
- (f) Wording changes for greater clarity including:
 - (i) the scope of the proposed tariff and its application to a satellite radio service's online activities (section 3(2));
 - (ii) the method of calculating minimum fees (section 4(3));
 - (iii) the application of the reference month in calculating monthly payments (section 5).
- (g) Additional reporting requirements regarding the type of subscriptions offered to ensure that royalties are being paid for all subscriptions (section 5(a)).
- (h) Revisions for consistency with other more recently approved Re:Sound tariffs including:
 - (i) the list of music use information to be provided (section 6);
 - (ii) timing of payments of any understatements following an audit (section 7(5));
 - (iii) confidentiality (section 8).
- (i) Revisions to the audit provision (section 7(4)) to allow for the sharing of audit results with SOCAN (as is currently permitted under the joint tariff) as well as with any other Canadian collective society with a tariff applicable to satellite radio services.
- (j) Revisions to the adjustments provision (section 9) to impose a 12 month limit on adjustments on account of overpayments made by a satellite radio service. As a self-reporting tariff, the accurate calculation of royalties owing rests solely on the satellite radio service. In order to be able to make timely and accurate distributions to rights holders, Re:Sound cannot be subject to unlimited adjustments on account of retroactive overpayments, based on information that is solely in the hands of the service.
- (k) The addition of a late fee (section 10) to provide a financial disincentive for late reporting of both the financial information and the music use information required under the proposed tariff. The last approved tariff provides for interest payable on late payments which acts as a disincentive for a satellite radio service to miss its payment due dates. The proposed revisions would provide a similar disincentive for late reporting which increases

Re:Sound's costs of administering the tariff and can result in delayed distributions to rights holders.

- (1) Revisions to the Addresses for Notices and Delivery of Notices and Payments provisions (sections 11 and 12) to remove references to fax numbers as fax is no longer used as a means of communication by Re:Sound. In addition, section 12(1) is revised to require that reporting be provided concurrently when a payment is made by electronic bank transfer so that Re:Sound can identify and process the payment.