

16 December 2013

John Traversy  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

**Re: *Amendment to a condition of licence (local programming obligations)*, Application 2013-1475-7 (Ottawa, 11 November 2013)**

1. The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system that serves the public interest.
2. We are pleased to participate in the process initiated by application 2013-1475-7, an application by the Canadian Broadcasting Corporation to be granted the same treatment sought in *all for comments on proposed changes to the measurement of local programming requirements for conventional television stations*, Broadcasting Notice of Consultation 2013-529 (Ottawa, 1 October 2013), a notice of consultation triggered by application 2013-0389-1, submitted by Bell Media Inc. on 8 February 2013.
3. We look forward to the opportunity of reviewing other comments submitted in this proceeding.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

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## Why 'me too' will not do:

The CBC's application to average local programming hours does not meet the CRTC's threshold for reasons and evidence

*Amendment to a condition of licence (local programming obligations)*  
Application 2013-1475-7  
(Ottawa, 11 November 2013)

**Intervention of the  
Forum for Research and Policy in Communications**

16 December 2013

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## Executive Summary

### Introduction

- ES 1** The Forum for Research and Policy in Communications (FRPC) was recently established as a non-profit and non-partisan organization to advocate on behalf of the public interest in broadcasting and telecommunications.
- ES 2** In 1991 Parliament required that the broadcasting system's programming be drawn from local sources, as well as from regional, national and international sources. Television and radio stations provide local communities with information for, and entertainment from, their communities.

### CBC's application

- ES 3** The CBC has applied to amend the conditions of licence for its 14 English-language conventional television stations to permit them to broadcast minimum levels of local programming averaged over thirteen weeks, or quarterly, instead of airing minimum levels of this programming each week.
- ES 4** CBC's rationale for this application is to be granted the same 'flexibility' that the CRTC may grant with respect to the identical proposal submitted by Bell Media on behalf of private conventional television broadcasters.

### The Forum's submissions

- ES 5** The context for CBC's application is that its
- ES 6** The Forum opposes CBC's application for the nine following reasons:
1. The CRTC's *Rules of Practice and Procedure* require applicants to provide relevant facts, the grounds of their applications, and any other information about the application's purpose and scope. CBC's application has no facts to support its sole ground - which is to receive any regulatory flexibility obtained by private broadcasters - and provides no information about the purpose and scope of its local program averaging request.
  2. CBC is basing its application on the proposal set out in Broadcasting Notice of Consultation 2013-529. CBC's application is premature, however, not just because the CRTC has not yet issued its determination in this matter, but because the CBC is only in the 4th month of a 60-month licence.

3. When it renewed the CBC's licences seven months ago, the CRTC encouraged the CBC to exceed the minimum programming thresholds set by conditions of licence, where these were below CBC's past performance levels. CBC's application does not explain how the cyclical reduction in or elimination of local programming meets with the CRTC's view that CBC should exceed previous weekly local programming levels.
4. The CBC has told Canadians that it recognizes the importance of local programming, and that it is essential to its overall strategy. CBC's application does not explain how the cyclical reduction in or elimination of local programming is consistent with the recognition of local programming as being essential to the Corporation's strategy.
5. The CRTC considers broadcasters' requests for temporary programming case by case. CBC's application has not explained why this practice is inadequate or unduly burdensome for its needs, and has presented no evidence to show it has been disadvantaged by the practice.
6. The CRTC generally requires broadcasters seeking licensing amendments to describe the levels of programming currently being provided and that would be provided if the amendment were granted. CBC's application does not provide any evidence about levels of local programming that its English-language TV stations now broadcast, or would broadcast going forward.
7. The CRTC assesses economic need when it considers broadcasters' requests for licensing amendments. CBC's application provides no evidence to explain what impact approval of local program averaging would have on its financial position.
8. The CRTC generally asks broadcasters applying for permission to reduce local programming to explain the impact of this reduction on the communities they serve. CBC has not provided any information about its proposal's impact.
9. The *Broadcasting Act* requires the broadcasting system to safeguard, enrich and strengthen Canada's economic fabric. While a 2010 study by Deloitte & Touche found that every dollar spent by the CBC creates \$4 in spinoffs, CBC's application to cyclically reduce local programming does not provide any information on how this will affect the economies of the individual communities it serves.

### Forum's conclusions

- ES 7** The Forum respectfully submits that the privilege granted to Canadian broadcasters to use the airwaves owned by Canadians entails a responsibility to the communities they are licensed to serve. In our view, CBC bears a heightened responsibility to Canadians, not only because of Parliament's special policy objectives for the Corporation, but also because of the support given by Canadians to the CBC.
- ES 8** CBC could have but chose not to provide facts to demonstrate how its proposal will benefit local communities.
- ES 9** CBC's failure to support its application with any relevant evidence means that the CRTC should deny it.

### Forum's recommendations

- ES 10** The Forum recommends that the CRTC
- 1 Deny CBC's application due to its failure to provide the evidence required for this type of application.
  - 2 Use the opportunity presented by Broadcasting Notice of Consultation 2013-529 to reiterate the CRTC's position, as set out in Broadcasting Decision CRTC 2013-476, that the "local programming" referred to in Broadcasting Regulatory Policy 2010-442 consists of original local programming.
  - 3 Introduce a reporting requirement to collect the information necessary to evaluate CBC's proposal properly, by having local television stations report every 12 weeks about the level of original local programming they offered in the preceding 12 weeks, or alternatively by requiring broadcasters to report in their licence renewal applications the number of original and repeat local news and non-news program hours they broadcast in each week of their licence term, and
  - 4 Review local programming during the television consultation to develop a local programming policy that will raise the level of informative, entertaining and enlightening original local content available in Canada, that will remain in force for at least the next decade and that will not only serve Canadians' interests, but strengthen Canada's economy by creating new employment.

## **I Introduction: the public interest in local news**

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization that was recently established to advocate on behalf of the Canadian public interest in broadcasting and telecommunications.
- 2 We welcome this opportunity to intervene regarding the application by the Canadian Broadcasting Corporation (CBC) to amend its conditions of licence to permit its over-the-air television stations to measure their required levels of local programming every quarter rather than every week.
- 3 Canadians' support for a national public broadcaster that reflects communities across Canada to themselves and to each other, and their strong interest in local broadcast content was given voice by Parliament in Canada's 1991 broadcasting legislation. Responsibility for implementing this aspect of the *Broadcasting Act* lies with the CRTC.

### **A *The special role of the CBC***

- 4 The CBC was established almost a century ago to play an important role in Canadians' lives, and in particular to provide Canadians with the opportunity to hear and see themselves reflected in the information and entertainment programming aired by Canada's broadcasting system.
- 5 Supported in part through Parliamentary appropriations, CBC provides programming that is predominantly Canadian and continues to be "a significant contributor to the cultural fabric of Canada ...."<sup>1</sup> The CBC provides a wide variety of programs that include local news, information and non-news programming.

### **B *The public's desire for local programming***

- 6 People across Canada value local television programming, whether they live in small, medium-sized or large communities. They value local television whether it is provided by the private sector, or the CBC. In 1996, for example, the Committee established to review the mandate of the CBC found that

... viewers want to feel as though the station that speaks to them is part of their community. This is obviously not the case for speciality

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<sup>1</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013), at ¶15.

networks, such as Newsworld, RDI and CNN, which operate on a national scale and are not expected to address local concerns. Mainstream commercial broadcasters, however, could not operate without a regional and a local presence. ... A public broadcaster is no different in this respect. ....<sup>2</sup>

- 7 In 2003, the House of Commons Standing Committee on Canadian Heritage reported on the state of Canada's broadcasting system, and noted that many of the witnesses who appeared before the Committee had "commented on the importance" of CBC's maintaining local programming.<sup>3</sup>
- 8 Three years later, in 2008, the House of Commons Standing Committee on Canadian Heritage voted unanimously to recommend that the government tell the CRTC that "conventional television must support a basic level of information services, including quality regional information services and local production."<sup>4</sup>
- 9 The concern that Canadians bring to their Members of Parliament and others about the availability of local programming is reflected in section 3 of the *Broadcasting Act*.

**C *Legislative support for local programming and news***

- 10 Canada's broadcasting legislation refers to local programming and information programming several times. The *Broadcasting Act* states that the programming provided by Canada's broadcasting system "should ... be drawn from local, regional, national and international sources".<sup>5</sup>
- 11 The *Act* reinforces the importance of local programming, by stating that broadcasting distribution undertakings (BDUs) "should give priority to the

<sup>2</sup> Mandate Review Committee, *Making Our Voices Heard: Canadian Broadcasting and Film for the 21<sup>st</sup> Century*, (Ottawa, January 1996) at 45.

<sup>3</sup> Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, (Ottawa, June 2003) at 205.

<sup>4</sup> House of Commons, Standing Committee on Canadian Heritage, *Minutes Of Proceedings: Meeting No. 27* (6 May 2008):

The question was put on the motion and it was agreed to, by a show of hands: YEAS: 10; NAYS: 0.

The motion, as amended, read as follows:

That, pursuant to Standing Order 108(2), that the following be reported to the House at the earliest opportunity:

The Standing Committee on Canadian Heritage recommends that the government point out to the Canadian Radio-television and Telecommunications Commission that conventional television must support a basic level of information services, including quality regional information services and local production.

<sup>5</sup> S. 3(1)(i)(ii).



- carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations".<sup>6</sup> Parliament even encouraged BDUs to provide local content, enabling them to "originate programming, including local programming ....".<sup>7</sup>
- 12 The English-language version of the *Broadcasting Act* states that programming offered by Canada's broadcasting system should provide a balance of information programs, programs that enlighten and programs that entertain.<sup>8</sup> The *Act* also states that Canada's broadcasting system should provide programming that provides the public with "a reasonable opportunity ... to be exposed to the expression of differing views on matters of public concern...."<sup>9</sup>
- 13 The French-language version of the *Act* offers a somewhat more active perspective on the importance of information programming than the English-language version. The former stipulates that the programming offered by the system should be simultaneously varied and as comprehensive as possible, that balanced programming should inform, and that to the extent possible it should offer the public the chance to take notice of different views on matters of interest to the public.
- 14 Differences in the translations of legislation have led the courts to adopt techniques for interpreting bilingual text,<sup>10</sup> with the Supreme Court of Canada directing that the "shared meaning rule for the interpretation of bilingual legislation dictates that the common meaning between the English and French legislative texts should be accepted."<sup>11</sup> In 2012 Mr. Justice Pelletier of the Federal Court of Appeal thought

... it useful to say a word about the drafting of bilingual statutes. Bilingual legislation is not drafted in one language and then translated into the other. Each version is drafted independently, without reference to the other, on the basis of a common set of instructions, Canada, Department of Justice, "Bilingual and Bijural Legislative Drafting of Federal Legislation: A Brief History of Drafting for the Government of Canada", online: <[http://www.justice.gc.ca/eng/news-nouv/others-autres/2009/doc\\_32413d.html](http://www.justice.gc.ca/eng/news-nouv/others-autres/2009/doc_32413d.html)>. As a result, it frequently happens that one language version of the law uses words or sentence

<sup>6</sup> S. 3(1)(f)(i).

<sup>7</sup> S. 3(1)(f)(iv).

<sup>8</sup> S. 3(1)(f)(i).

<sup>9</sup> S. 3(1)(f)(ii).

<sup>10</sup> *M.V. Stormont v. Canada*, 2012 FCA 93, per Pelletier J.A. for the Court.

<sup>11</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 SCR 23, per Cromwell J. for the majority, at ¶203 [citations omitted].

structures that are not the precise equivalents of those used in the other language version. The issue is not whether one is a faithful translation of the other but rather, whether both versions convey the same idea.

- 15 In that decision Pelletier JA held that the correct approach to interpreting bilingual legislation “is to compare the English and the French version directly.”<sup>12</sup> The English-language and French-language versions of the sections of the *Broadcasting Act* that address news and information from local sources are set out below, with italics showing differences between the two versions:

3(1)(i) the programming provided by the Canadian broadcasting system should	3(1)(i) la programmation offerte par le système canadien de radiodiffusion devrait <i>à la fois</i> :
(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,	(i) être <i>variée et aussi large que possible</i> en offrant à l'intention des hommes, femmes et enfants de tous âges, intérêts et goûts une programmation équilibrée <i>qui renseigne, éclaire et divertit,</i>
(ii) be drawn from local, regional, national and international sources, ....	(ii) puiser aux sources locales, régionales, nationales et internationales, ...
(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern ....	(iv) dans la mesure du possible, offrir au public <i>l'occasion de prendre connaissance d'opinions divergentes sur des sujets qui l'intéressent ...</i>

- 16 In our view, Parliament’s legislation requires the broadcasting system to provide as large a range of local news and information as possible, and does not permit local programming to be sacrificed or weakened so as to strengthen regional or national programming.

- 17 In late 2012, and even though the *Broadcasting Act* does not specifically require the Corporation to provide original local programming, the CRTC noted that

... [t]he CBC acknowledged the importance of local programming and stated that it remained an essential part of its corporate strategy.<sup>13</sup>

<sup>12</sup> *Ibid.*, at ¶14.

<sup>13</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013), at ¶95,

18 The Forum respectfully submits that Parliament's legislation establishes the importance of local programming and local news within Canada's broadcasting system, for all broadcasters including the CBC.

*D The CRTC and local programming*

19 The CRTC, to whom Parliament has entrusted the regulation and supervision of the broadcasting system,<sup>14</sup> recognized the importance of local television stations at least as early as 1975. In renewing the licence of CHLT-TV Sherbrooke the Commission said that one of its

... most important objectives ... is the establishment and development of local and regional television stations. The policies and decisions of the Commission have always been directed at strengthening the resources of local stations, including a sufficient number of qualified staff, to enable them to produce an adequate number of quality programs to meet the needs and aspirations of the population. ....<sup>15</sup>

20 Very little is known about the levels of local programming and news now provided by Canadian over-the-air television stations, however. After studying the state of Canada's broadcasting system at the beginning of the 21<sup>st</sup> century, however, the House of Commons Standing Committee on Canadian Heritage concluded that it was "extremely difficult ... to say much about overall trends in the production of local news or non-news programming in Canada."<sup>16</sup> Among other things it criticized definitional inconsistencies and a lack of data about local news and information.<sup>17</sup>

21 Having issued the CBC application with respect to which this intervention is being filed as a Part 1 application, the CRTC has not provided any information other than that submitted by the CBC itself.

*E The CRTC's May 2013 renewal of the CBC's licences*

22 The CRTC renewed CBC's licences this past May. Its decision imposes conditions of licence that require CBC's over-the-air TV stations to broadcast minimum levels of local television programming. The level of local television

<sup>14</sup> S. 3(2).

<sup>15</sup> Decision CRTC 75-373.

<sup>16</sup> House of Commons, Standing Committee on Canadian Heritage, *Our Cultural Sovereignty*, (June 2003) at 347.

<sup>17</sup> *Ibid.*, at 361-362. The Committee therefore concluded that "the time has come to rationalize and harmonize the many CRTC policies that address various elements of community, local and regional broadcasting."

to be broadcast varies by the size of the location served by a specific television station:

French-language stations (all markets):	at least 5 hours/week
English-language stations (metropolitan markets):	at least 14 hours/week
French-language stations (non-metropolitan markets):	at least 7 hours/week. <sup>18</sup>

23 The CRTC specifically encouraged “the CBC to exceed the minimum levels set out in the conditions of licence, especially where those minimum levels are below the CBC’s historic levels of programming and expenditures”,<sup>19</sup> because the CRTC considered “that the CBC is well positioned to surpass these minimum levels.”<sup>20</sup>

24 Noting that the condition of licence it was imposing on the CBC would permit it to reduce local programming in several markets,<sup>21</sup> the CRTC nonetheless set out its expectation that the CBC will “maintain current levels of local/regional programming in markets where the levels imposed by condition of licence are lower than current commitments.”<sup>22</sup>

25 The CRTC defined

... local programming as programming produced by local stations with local personnel or programming produced by locally based independent producers that reflects the particular needs and interests of the market’s residents.<sup>23</sup>

26 The CRTC did not define how much locally-produced content is required for the CBC to count a program as ‘local’, however, and did not specifically require that CBC’s local programming be original. The conditions of licence in Broadcasting Decision CRTC 2013-263 simply refer to “programming”, not to “original programming”.<sup>24</sup>

<sup>18</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013), Appendix 3.

<sup>19</sup> *Ibid.*, at ¶24.

<sup>20</sup> *Ibid.*,

<sup>21</sup> Halifax, Regina, Winnipeg and Yellowknife. *Ibid.*, at ¶100.

<sup>22</sup> *Ibid.*, at ¶102.

<sup>23</sup> *Ibid.*, at ¶98.

<sup>24</sup> Appendix 3 to Broadcasting Decision CRTC 2013-263, conditions of licence 14 and 21.

## II CBC's application to average local programming over 13 weeks

### A The application (in its entirety)

27 The CBC is asking the CRTC to amend a condition of the licence granted in Broadcasting Decision CRTC 2013-263 whose purpose will be to permit local programming levels to be measured four, instead of fifty-two, times per year. Specifically, the CBC is proposing to add a term to its conditions of licence that will allow it to broadcast minimum levels of local programming averaged over thirteen weeks, instead of each week, by adding the bolded text noted below:

21. If the licensee operates in a:

a) metropolitan market as defined in Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services - Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008 (Broadcasting Public Notice 2008-100), the licensee shall broadcast at least fourteen hours of Canadian local programming per week, **averaged quarterly throughout the broadcast year**. Of these 14 hours, at least 1 hour per week shall consist of non-news local programming.

b) non-metropolitan market as defined in Broadcasting Public Notice 2008-100, the licensee shall broadcast at least seven hours of Canadian local programming per week, **averaged quarterly throughout the broadcast year**.

28 The reasons and evidence CBC has offered to support the current application to amend its conditions of licence are, in their entirety, as follows:

There is currently a process underway in BNC 2013-529, *Call for comments on proposed changes to the measurement of local programming requirements for conventional television stations* to amend the standardized COLs for English-language conventional television stations outlined in BRP 2011-442. It is based on a proposal by Bell Media.

The rationale for the proposed changes is give English-language conventional television broadcasters the flexibility to temporarily reduce the amount of local programming during holiday periods (to account for staffing issues) or to cover special events. If approved, these broadcasters would have sufficient flexibility to address small variations that may arise without reducing their overall local programming obligations.

These harmonized levels of local programming and weekly measurement are incorporated into CBC/Radio-Canada's conditions of licence set out in Appendix 3 of CRTC Decision 2013-263. CBC/Radio-Canada is requesting to modify the wording in the conditions of licence applicable to CBC/Radio-Canada's English-language conventional television (network and stations) to correspond to Bell Media's proposal, if approved. Approval of CBC/Radio-Canada request and Bell

Media's proposal at the same time would create symmetry for English-language conventional broadcasters subject to the harmonized local programming requirements.

Private and public conventional television stations face the same challenges in meeting local programming levels that are calculated on a weekly basis. All conventional television stations would benefit from the flexibility to provide high quality local programming that serves the needs of the local audiences.

Furthermore, as noted by Bell Media in its application, the proposal would not result in a reduction in the amount of local programming hours that conventional stations are required to broadcast.

In the Corporation's view, there is no absolutely no rationale for the Commission to exclude any English-language conventional television broadcaster from obtaining this flexibility. We respectfully submit that should the Commission be inclined to approve Bell Media's proposal, then the continued imposition of a weekly calculation requirement to measure local programming on CBC/Radio-Canada's English-language conventional television stations would be unfair.

**B Context of CBC's proposal**

29 The context for CBC's proposal - which the CBC did not provide - is that it operates 27 over-the-air television stations<sup>25</sup> in 20 communities, in Canada's two official languages. CBC operates 14 English-language over-the-air television stations, in 14 communities:

Province or territory	CBC's conventional English-language TV stations and the communities they are licensed to serve
British Columbia	1. CBUT-DT Vancouver
Alberta	2. CBRT-DT Calgary 3. CBXT-DT Edmonton
Saskatchewan	4. CBKT-DT Regina
Manitoba	5. CBWT-DT Winnipeg
Ontario	6. CBET-DT Windsor 7. CBLT-DT Toronto 8. CBOT-DT Ottawa
Quebec	9. CBMT-DT Montréal
New Brunswick	10. CBAT-DT Fredericton
Nova Scotia	11. CBHT-DT Halifax
PEI	12. CBCT-DT Charlottetown
Newfoundland and Labrador	13. CBNT-DT St. John's
Northwest Territories	14. CFYK-DT Yellowknife

<sup>25</sup> CBC, *Annual Report 2012-2013*, at 32.

- 30 CBC's over-the-air television stations are now operating in the fourth month year of a sixty-month licence. The CRTC renewed the licences in May 2013;<sup>26</sup> they expire at the end of August 2018.
- 31 In renewing the CBC's licences, the CRTC took stock of CBC's financial position. The CRTC was aware that the CBC's Parliament appropriations are being reduced by \$115 million over the next three years, and that the termination of the Local Programming Improvement Fund (LPIF) spells the loss of another \$45 million to support CBC programming.<sup>27</sup>
- 32 The CRTC partially approved and partially denied CBC's request in its renewal application for local program averaging. It approved the proposal for the CBC's French-language conventional TV stations, but denied it for the Corporation's English-language stations - because "the CBC did not provide sufficient rationale" to justify the request.<sup>28</sup>
- 33 Bearing in mind the CBC's financial position and also its interpretation of its mandate with respect to local programming, the CRTC held that the "CBC must serve local and regional audiences."<sup>29</sup> It set conditions of licence - "to ensure minimum levels of programming that must be broadcast even if further adjustments to the CBC's programming priorities and strategies occur"<sup>30</sup> - for CBC's local television stations.
- 34 In denying the CBC's request for local program averaging for the Corporation's English-language stations, the CRTC would have been aware of its own previous finding that program averaging tends to benefit broadcasters, at the expense of the objectives of the *Broadcasting Act*. In the 1980s, the CRTC found that when broadcasters scheduled their Canadian programming over the broadcast year, Canadian content was concentrated into the low-viewing summer months, and less expensive foreign content was given prime place in the higher-audience fall season.<sup>31</sup>

<sup>26</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013).

<sup>27</sup> *Ibid.*, at ¶18.

<sup>28</sup> Broadcasting Decision CRTC 2013-263, at ¶112.

<sup>29</sup> *Ibid.*, "Summary".

<sup>30</sup> *Ibid.*, at ¶23.

<sup>31</sup> See, *Canadian Content in Television*, Public Notice (Ottawa, 25 August 1981), "Summary of submissions"; *Policy Statement on Canadian Content on Television*, Public Notice CRTC 83-18 (Ottawa, 31 January 1983) at 16.

35 The CBC's current local program averaging application could have the same negative effects on local programming. If approved, it will permit the CBC to reduce the level of local programming from one week to the next, as long as it meets the required level averaged over thirteen weeks. In theory, CBC could reduce local programming hours in thirteen week cycles: by increasing local programming in the first half of a 13-week cycle, reducing it in the last half, reducing it in the first half of the next 13-week cycle, and increasing it in the last half of the cycle.

36 For the following reasons the Forum respectfully submits that the CRTC should deny CBC's application.

### III **Nine problems with the CBC's application**

37 The CRTC should approve the CBC's application if it was made in accordance with the CRTC's procedural regulations, if approval achieves Parliament's objectives for the broadcasting system, and if approval would serve the public interest. The FRPC considers that CBC's application does not meet these requirements, however, and should therefore be denied.

#### A ***Few reasons and only one fact***

38 The CRTC's regulations for making applications are set out in the *Rules of Practice and Procedure*. They require applicants to provide a "clear and concise statement of the relevant facts" and the "grounds of the application",<sup>32</sup> and "any other information that might inform the Commission as to the nature, purpose and scope of the application".<sup>33</sup>

39 While the *Rules* do not set out specific requirements for applications to amend conditions of broadcasting licences, the CRTC has denied requests for amendments to broadcasters' licences on the grounds of insufficient evidence. For example, in 2001, it denied Global's request to be relieved of a condition of licence that prohibited the broadcast of local advertising by CKMI-Quebec City. The CRTC found that Global had not offered any "...indication of the magnitude of the potential impact".<sup>34</sup>

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<sup>32</sup> S. 22(2)(e).

<sup>33</sup> S. 22(2)(g).

<sup>34</sup> *Ibid.*, at ¶92



40 In 2010 the CRTC denied also Rogers' application to reduce Canadian content levels on its conventional television stations. Rogers had failed to provide sufficient evidence to demonstrate the financial necessity of the proposed reduction. Similarly, in 2013 the CRTC denied Bell Media's request to amend the conditions of licence for Book TV, due to inadequate evidence. The Commission noted that Bell had

... not provided any concrete proposals to demonstrate how the proposed changes to its conditions of licence would be in keeping with the nature of service for which Book Television was licensed or benefit Canadian programming, and in particular, Canadian drama.<sup>35</sup>

41 The Forum respectfully submits that these examples establish that applications to amend conditions of licence require, at a bare minimum, evidence to establish the need for the amendment and the impact that approval would have on the programming undertaking and the communities it serves.

42 What does CBC's application provide? It refers to

- Bell Media's application to change private conventional television stations' local programming requirements,
- public and private broadcasters' shared challenges in meeting local programming levels,
- Bell Media's statement that approval of its application would not reduce local programming requirements,

and

- the absence of a rationale for the CRTC to exclude non-private English-language conventional television broadcasters from obtaining the flexibility granted to private English-language conventional television broadcasters.

43 CBC's only argument can easily be summarized in two words: 'me too!'. It wants any flexibility that the CRTC grants to other broadcasters. The Forum respectfully submits that 'me too' is an insufficient reason for the CRTC to modify the conditions of licence of Canada's national public broadcaster. The CBC's separate status within the *Broadcasting Act* and the public support it

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<sup>35</sup> *Book Television – Licence amendments*, Broadcasting Decision CRTC 2013-339 (Ottawa, 17 July 2013) at ¶17.

- receives demand more: CBC is not like any other broadcaster - in fact, being treated in exactly the same fashion as every other broadcaster erases its distinctiveness. As a result, even if CBC's 'me too' argument had merit - and it does not - the facts that may be relevant to Bell's application (which CBC did not provide) are unlikely to be relevant to CBC's application, given CBC's unique status within the broadcasting system.
- 44 CBC's decision not to provide facts to support its local program averaging application is all the more striking as the CRTC had already denied one request for local program averaging because the Corporation "did not provide sufficient rationale" to justify its request.<sup>36</sup> In our view, approving the current application without more evidence than presented in the CBC renewal proceeding would bring the CRTC's administration of the *Broadcasting Act* into disrepute.
- 45 CBC also failed to provide any facts to support other claims made in its application. For instance, CBC asserts that private and public conventional television stations face the same challenges in meeting local programming levels that are calculated on a weekly basis - but does not provide facts to support this point, which are needed given its special status under the *Act*, and its receipt of substantial Parliamentary appropriations.
- 46 CBC also asserts that approval of its application would not result in a fewer local programming hours than conventional television stations are required to broadcast. Unfortunately CBC did not offer any concrete commitments to support this claim, or any objective evidence from its own logs to demonstrate whether the level of local programming it is providing has grown, is being maintained, or has decreased.
- 47 The FRPC respectfully submits that the CBC's application does not meet the threshold of evidence required to support its reasons for making its application.
- B CBC's application is premature***
- 48 The CBC has applied for the same regulatory flexibility accorded to private conventional television broadcasters - but is premature in making this application because the CRTC has not issued its determination with respect to

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<sup>36</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013), at ¶112.

- Broadcasting Notice of Consultation 2013-529. It is therefore unknown what significance that proceeding will have for the CBC's application.
- 49 CBC's application is also premature because the Corporation is only in the fourth month of a sixty-month licence. In renewing the CBC's licences this past May the CRTC reviewed CBC's financial position and set programming requirements in accordance with that position, stating specifically, in fact, that the minimum levels of programming required "must be broadcast even if further adjustments to the CBC's programming priorities and strategies occur".<sup>37</sup>
- 50 Have any facts have changed since the renewal decision to support CBC's second request for local program averaging for its English-language TV stations? We do not know - and neither does the CRTC, as the CBC's application does not provide any facts on this point.
- 51 As the CRTC's procedural *Rules* permit the CBC to re-file its application once the CRTC issues its determination with respect to Broadcasting Decision CRTC 2013-529, the Forum respectfully submits that the CRTC should deny CBC's premature application.
- C CBC has not addressed concerns of Broadcasting Decision CRTC 2013-293***
- 52 In renewing the CBC's licences this past spring, the CRTC specifically encouraged "the CBC to exceed the minimum levels set out in the conditions of licence, especially where those minimum levels are below the CBC's historic levels of programming and expenditures".<sup>38</sup> The CRTC made this statement because it considered "that the CBC is well positioned to surpass these minimum levels."<sup>39</sup>
- 53 CBC's local program averaging application is entirely silent on how local program averaging comports with the CRTC's 'encouragement' to exceed the minimum programming levels in its conditions of licence.
- 54 In the absence of an explanation as to how CBC's application complies with the terms of its licences, the CRTC should deny the application.

<sup>37</sup> *Ibid.*, at ¶23.

<sup>38</sup> *Ibid.*, at ¶24.

<sup>39</sup> *Ibid.*,

**D** *CBC's application inconsistent with its public statements*

**55** The CBC's application is also inconsistent with many of its recent statements about the Corporation's plans to strengthen local programming. Two years ago, for example, the CBC told Members of Parliament that it was reinstating local news programs:

Canadians also told us that they missed their local news on the weekend, so we're responding, and we've adjusted. With the help of the local programming improvement fund, we've re-established local weekend news on Radio-Canada in 12 of 13 communities. On the CBC side, Toronto's already up and running, and weekend news will also be available in Calgary this winter. But actually, there's much more.

Last month we announced the next phase of our 2015 local service improvement plan. It includes weekend local news for Edmonton, Ottawa, the Maritimes, and Newfoundland and Labrador by next spring and new radio and online services for the Waterloo region and London, Ontario, by next fall. We've also accelerated by six months construction of our new multimedia station in Rimouski. We'll be offering better regional services across all of eastern Quebec by next fall.<sup>40</sup>

...

Our goal is to expand local services to an additional six million Canadians over the next five years. This is what we are offering Canadians.<sup>41</sup>

**56** This past year CBC told the CRTC that it would not reduce local programming in markets where it was currently exceeding local programming targets:

[t]he CBC acknowledged the importance of local programming and stated that it remained an essential part of its corporate strategy. The CBC also recognized that the proposed requirements could be interpreted as a decrease in local programming for certain markets, such as Halifax, Regina, Winnipeg and Yellowknife. However, it stated that it had no intention of lowering the level of local programming in markets where it was currently surpassing its targets.<sup>42</sup>

**57** If the CBC has new information establishing the impossibility of meeting its commitments, it should have provided that information in its application, but did not do so. Since approving the CBC's current application in the absence of

<sup>40</sup> Hubert Lacroix, President and CEO, CBC, *Evidence*, 41<sup>st</sup> Parl, 1<sup>st</sup> Sess (25 October 2011), Standing Committee on Canadian Heritage < <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5195437&Language=E&Mode=1&Parl=41&Ses=1#Int-4435231>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> Broadcasting Decision CRTC 2013-263, at ¶95.

such information would bring the CRTC's administration of the *Broadcasting Act* into disrepute, the Commission should deny CBC's application.

***E CBC has not explained why current CRTC procedures for temporary suspensions of conditions of licence are burdensome or inadequate***

58 The CRTC has frequently accommodated broadcasters' requests for temporary programming changes,<sup>43</sup> and specifically referred to its case-by-case practice when it renewed CBC's licences.<sup>44</sup> The CBC has not explained whether it has lost its capacity to plan ahead for holidays and special events.

59 The CBC has also not explained why the CRTC's temporary application route does not provide it with the "flexibility" it is now seeking, or why the CRTC's case-by-case practice is inadequate. The CBC has not provided any examples of applications it has made that have been unreasonably denied by the CRTC.

60 The CRTC should not amend broadcasters' conditions of licence in the absence of evidence that its practices are not working, or that they are unduly burdensome for applicants, when weighed against the benefits that the conditions are designed to yield. The CRTC should, for this reason, deny CBC's application.

***F CBC has not described how much original and repeat local programming is now being and will be broadcast***

61 The CRTC has previously asked broadcasters asking for amendments to their conditions of licence for local programming to provide information about the level of that programming being provided. For example, when the CRTC considered a request by V Interactions to change its local programming, it asked for and reviewed tapes of its local programming to measure levels of local content:

Local programming

25. At the hearing, the Commission asked V Interactions to submit logger tapes of all newscasts aired during the course of one broadcast week by each of its stations. Analysis of these newscasts revealed that while complying with its conditions of licence concerning local news, V Interactions' stations broadcast on average only a few minutes of local

<sup>43</sup> The CRTC referred to these case-by-case exceptions in its 2013 renewal of the CBC's licences, at ¶¶110-111.

<sup>44</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013),, at ¶¶110-111.

segments originating in the markets in which the newscasts are broadcast. The Commission notes in particular that, for the sample week, the newscasts of the stations in Québec, Saguenay, Sherbrooke and Trois-Rivières contained no segments covering local arts and shows or local sports.

26. The Commission notes, however, that V Interactions' commitments will allow a considerable increase in the broadcast of segments of local news per broadcast week ...<sup>45</sup>

62 CBC's English-language conventional television stations are currently required to broadcast 728 and 364 hours per year of local programming, depending on whether they serve large or smaller communities. Are they meeting this objective?: the public does not know because CBC has not provided this information. Would CBC ever return to standard weekly levels of local programming?: we do not know because CBC has not offered any commitments in this area. We believe it is reasonable to assume that once it is eliminated from the schedule, local programming will never return.

63 The Forum respectfully submits that the CRTC should not amend its measurement approach to local programming without clear evidence about the amendment's impact on communities' access to original weekly local programming. In the absence of this evidence - and in the absence of any commitment to reinstate weekly local program levels at a future date, the CRTC should deny CBC's application.

**G *CBC has not presented evidence of economic need***

64 As noted previously, the CRTC assesses 'economic necessity' when considering broadcasters' requests for licensing amendments. In 2001, for example, the CRTC denied Global's request for the elimination of a local-advertising prohibition, because the licensee did not demonstrate that the prohibition was causing harm: the CRTC instead noted Global's statement that "it is "comfortable with the current position" and "comfortable with the past performance.""<sup>46</sup>

<sup>45</sup> Broadcasting Decision CRTC 2012-243, at ¶25-26.

<sup>46</sup> *Licence renewals for the television stations controlled by Global*, Broadcasting Decision CRTC 2001-458, "Request for local advertising on CKMI-TV Quebec City", at ¶90.

- 65 Similarly when the CRTC considered CBC's local-averaging request, it considered not only the Corporation's past but also its forecast financial performance: it reviewed the CBC's performance from 2002 to 2019.<sup>47</sup>
- 66 The CBC has not provided any information on how approval of its application will change its financial position. Assuming that the CBC will continue to solicit and broadcast local advertising, while reducing local programming expenses, the CBC could even stand to benefit financially from the application's approval. The CBC has not provided any information on this aspect of its application, however, making it impossible for Canadians to consider or challenge the point.
- 67 The CRTC should not grant CBC's application without evidence to explain why and to what degree it would benefit the Corporation now, and going forward.
- H CBC has not explained how this change will benefit Canadian communities*
- 68 The CRTC has previously required broadcasters seeking reductions in their local programming, to explain the effect of these changes on the communities they serve. CBC has not explained how its proposal will either benefit, or affect, its audiences.
- 69 The silence of CBC's application about its impact on audiences raises complex questions related to the CBC's commercial activities. For instance, if local audiences leave the CBC because of cycles of reduced or non-existent local programming, will CBC's advertising sales suffer? If so, will CBC then seek additional regulatory 'flexibility' to deal with this new financial position? Alternatively, what would happen if the CBC did not reduce its local programming - while its private competitors did?: could approval of this application now forestall the development of a new, competitive and potentially lucrative counter-programming strategy for the Corporation?
- 70 In the absence of any kind of analysis about its proposal's impact on the audiences served by its English-language conventional TV stations, the CRTC should deny CBC's application.

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<sup>47</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013), at ¶20.

**I *CBC has not addressed its proposal's impact on Parliament's objectives for Canada's economic fabric***

71 CBC's application does not provide the information needed by the CRTC to approve the application - which would be to demonstrate how potential 13-week long periods of little or no local programming from CBC's local television stations helps to achieve Parliament's objective that Canada's broadcasting system should "serve to safeguard, enrich and strengthen the ... economic fabric of Canada".<sup>48</sup>

72 Two years ago, however, the CBC told Parliament that its expenditures benefit the economy, by a 1 to 4 ratio:

CBC/Radio-Canada invests more in programs made by Canadians than all of the private conventional broadcasters combined: \$696 million, compared with \$681 million last year. That investment supports local businesses, independent production companies, caterers, designers, electricians. In fact, a study by Deloitte & Touche last June found that every dollar invested in CBC/Radio-Canada creates almost \$4 in value to the Canadian economy.<sup>49</sup>

73 CBC has not provided any evidence about the impact of its proposal on employment opportunities - but unless the Corporation claims otherwise, it seems safe to assume that local-averaging will permit it to reduce staff numbers or hours, as it will be able to reduce local programming levels for several weeks at a time.

74 How will these program reductions affect the economies of the twenty local communities where CBC's over-the-air stations are located?

75 The Forum respectfully submits that the CRTC should deny CBC's application, if there is a risk that approving the application would weaken the economies of many large, medium and small communities across Canada.

**IV *Conclusions and recommendations***

76 The Forum respectfully submits, as the CRTC has said in the past, that the privilege granted to broadcasters to use the public airwaves entails a

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<sup>48</sup> *Broadcasting Act*, s. 3(1)(d)(i).

<sup>49</sup> Hubert Lacroix, President and CEO, CBC, *Evidence*, (Ottawa, 25 October 2011) 41<sup>st</sup> Parl, 1<sup>st</sup> Sess, Standing Committee on Canadian Heritage <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5195437&Language=E&Mode=1&Parl=41&Ses=1#Int-4435231>>.



- responsibility to the people in the communities that broadcasters are licensed to serve.<sup>50</sup> The CBC has a special responsibility, due to Parliament's decision to create, maintain and fund this national public broadcaster, to serve the communities in which Canadians live and work.
- 77 Canadians' support for the CBC means that they "have a right to expect more from it: more attention, more curiosity, more sensitivity, more dedication in telling Canadians about themselves and about what is going on everywhere in the country."<sup>51</sup>
- 78 We agree, as many others have said, that providing local service to Canadian communities poses challenges:
- ... Our greatest challenge is that this is a national policy framework, but the impacts are very local. The communication challenge is trying to give individual Canadians the information at the local level.<sup>52</sup>
- 79 That said, the CRTC's licensing decisions should strengthen, not weaken or reduce Canadians' access to new programming from and about their communities. The CRTC considered a local program averaging request from CBC this past May, and noted that "the CBC did not provide sufficient rationale to justify such a departure" for its English-language conventional television stations.<sup>53</sup>
- 80 Moreover, because it bears a duty to make its decisions based on the evidence submitted by applications, the Commission should not grant evidence-free, me-too applications that will weak Canadians' access to original programming.

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<sup>50</sup> *Policy for Local Television Programming*, Public Notice CRTC 1991-22 (Ottawa, 15 February 1991):

... While each television licensee must ensure that it meets the Canadian content requirements set out in the regulations, it also has a special responsibility to serve the public residing within the particular geographic area it is licensed to serve. Licensees should do so through programs directed towards local concerns as well as through the provision of programs of regional, national or international interest.

This concept of local reflection is founded on the principle that the right to use the public airwaves entails a responsibility to those members of the Canadian public resident in a licensee's service area.

<sup>51</sup> Mandate Review Committee, *Making Our Voices Heard: Canadian Broadcasting and Film for the 21<sup>st</sup> Century*, (Ottawa, January 1996) at 46.

<sup>52</sup> Jean-Pierre Blais, Assistant Deputy Minister, Cultural Affairs, Department of Canadian Heritage, *Evidence*, 40<sup>th</sup> Parl., 3<sup>rd</sup> Sess. (Ottawa, 7 March 2011) <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5016122&Language=E&Mode=1&Parl=40&Ses=3>>.

<sup>53</sup> *Canadian Broadcasting Corporation – Licence Renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013), at ¶112.

81 The CBC could have, but chose not to provide any relevant facts to support its me-too application. Evidence was needed, because its absence mocks meaningful public participation in this process. As the Federal Court of Appeal held in 1976, the application process must

... provide members of the public with a reasonable opportunity to know the subject matter of the hearing, and what it involved from the point of view of the public, in sufficient time to decide whether or not to exercise their statutory right of presentation and to prepare themselves for the task of presentation if they decided to make a presentation. **In other words**, what the statute contemplates, in my view, is a meaningful hearing that would be calculated to aid the Commission, or its Executive Committee, to reach a conclusion that reflects a consideration of the public interest as well as a consideration of the private interest of the licensee; it **does not contemplate a public meeting at which members of the public are merely given an opportunity to "blow off steam"**<sup>54</sup>

[bold font added]

82 Given the potentially serious consequences of CBC's proposal, it should have provided the relevant facts mentioned in The Forum's submission above - including actual and forecast hours of original local news and non-news programming - to enable the CRTC and the public to assess its proposal.

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84 The CRTC should hold the CBC to a higher standard.

1 *Deny CBC's proposal due to inadequate reasons and insufficient evidence*

85 In our view, CBC's failure to provide well-reasoned arguments and facts to support those arguments does not allow the CRTC to approve it under the CRTC's current *Rules of Procedure*. The absence of arguments and facts from CBC to support its application is especially significant given the reasons noted in our intervention that weigh against CBC's proposal.

86 The CRTC should deny the application on the grounds of insufficient reasons and inadequate evidence.

<sup>54</sup> *Re Canadian Radio-Television Commission and London Cable TV Ltd.*, [1976] 2 F.C. 621, (sub nom. *Canada (Canadian Radio Television Commission), Re*) 13 N.R. 292, (sub nom. *London Cable TV Ltd. v. Canada (Canadian Radio Television & Telecommunications Commission)*) 29 C.P.R. (2d) 268, 67 D.L.R. (3d) 267, 1976 CarswellNat 44, at ¶6.

**2** *Clarify existing condition of licence*

- 87 The Forum respectfully submits that the CRTC should take this opportunity to clarify that the conditions of CBC's licences that refer to "local programming", actually refer to "original local programming".
- 88 This clarification would reflect the CRTC's statement in Broadcasting Decision CRTC 2013-467, when it discussed the applications by Thunder Bay and Newcap, to combine local programming on their twin-stick operations. The CRTC approved these applications, writing that:

[i]f approved, this would, for example, permit Thunder Bay to broadcast a combined total of 14 hours of ***original*** local programming on both of its stations in Thunder Bay without having to ensure that at least seven hours of local programming was broadcast on each individual station. Newcap would be permitted to do the same on the stations that it operates. ...

...

The Commission notes that the new requirement to offer a minimum of seven hours of local programming per week would result in a significant increase to the overall amount of local programming broadcast by these stations in their respective markets in comparison to the commitments both licensees made for the current licence term. ***The proposed combined requirement of 14 hours of original, local programming on both stations combined would also increase the amount of local programming provided in these markets*** by the same amount while providing increased flexibility to the licensees to choose how to allocate the local news programming on their respective stations.<sup>55</sup>

[emphasis added]

- 89 Explaining that 'local programming' means 'original local programming' will ensure that the CBC is guided by a clear understanding of the CRTC's expectations.

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<sup>55</sup> Various independent conventional and community-based television programming undertakings – Licence renewals, Broadcasting Decision CRTC 2013-476 (Ottawa, ) at ¶¶6 and 10.

*3 Collect data: require CBC's local television stations to report every 12 weeks about the level of original local programming they offered in the preceding 12 weeks*

90 CBC failed to provide any data about the programming that is or is not being produced and distributed by its local television stations.<sup>56</sup>

91 The CRTC should invite the CBC to report annually about the level of original local programming it produces about, in and for local communities. If reporting to local communities about the ways in which it serves those communities is too onerous, the CRTC should require the CBC to report the levels of original local news and non-news programming it provides, for each week of their licence term, using the electronic log data they submit twelve times each year to the CRTC.

*4 Review local programming during the television consultation*

92 The coming public consultation on television provides the CRTC with a unique and important opportunity

- to obtain a clear record about the state of local television in Canada,
- to provide Canadians with an opportunity to comment on this sector, and
- to develop a policy for local programming that will not only strengthen local programming and increase original local content that informs, enlightens and entertains, but that will also stand, if not the test of all time, at least for the next decade.

93 The CRTC should collect and provide information about local programming in the public notice it is expected to issue for the 2014 consultation on Canadian television.

\*\*\* End of document \*\*\*

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<sup>56</sup> Centralcasting as it is commonly understood removes the transmission function, and much of the production functions, from local television stations. According to Wikipedia, CBMT-DT's master control has been moved to CBC's Toronto Broadcast Centre (<http://en.wikipedia.org/wiki/CBMT-DT>, accessed 16 December 2013).