



27 June 2014

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

Re: *Let's Talk TV*, Broadcasting Notice of Consultation 2014-190 (Ottawa, 24 April 2014)

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's interests.

We are pleased to participate in the process initiated by Broadcasting Notice of Consultation 2014-190, as the outcome of this proceeding will set the course for Canadian television for the next decade or more. Our comments on the issues raised in the Commission's notice are attached.

We look forward to the opportunity of reviewing other comments submitted in this proceeding, and respectfully request the opportunity to appear before the Commission at its 8 September 2014 public hearing in this matter.

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

Sincerely yours,

A handwritten signature in blue ink that reads 'Monica Auer'.

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Executive Director



Canadian television in 2025: For the few, or for the many?

Let's Talk TV: A conversation with Canadians about the future of television, Broadcasting
Notice of Consultation 2013-563 (Ottawa, 24 October 2013)

Comments of the Forum for Research and Policy in Communications

27 June 2014

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Executive Summary

I Introduction: Canadian television in 2025

- ES 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.
- ES 2** The Forum's position on broadcasting flows from our vision for Canada's communications system: a window to the world – a window for the world – and a mirror for ourselves.
- ES 3** Television programming and television distribution account for 90% of the broadcasting system's regulated revenues –the regulatory approach to television emerging from this proceeding will therefore set the course of Canadian broadcasting for most of the decade.
- ES 4** Evaluating the success of a new regulatory approach to television will require the CRTC to monitor and measure indicators about distribution and programming – and even more importantly, to set the specific targets the new approach is intended to achieve.
- ES 5** If the CRTC does not set out its objectives in quantitative terms now it will create uncertainty for every stakeholder in a sector worth \$15 billion and 50,000 jobs to Canada's economy:
- Canadians will not understand the benefits that the new regulatory approach to television is designed to achieve
 - Neither broadcasting distribution undertakings (BDUs) nor programmers will know the targets they are expected to meet, and
 - The CRTC will not know in 2025 whether its objectives have been met.
- ES 6** The regulatory policy emerging from Broadcasting Notice of Consultation (Broadcasting Notice of Consultation) 2014-190 must therefore set clear, measurable and enforceable goals for the choices that Canadians will have for accessing and watching television in Canada in 2025.
- ES 7** The Forum's comments in this proceeding are focussed on privately owned distribution and programming services.
- ES 8** In our view, the regulatory approach to television that emerges from this proceeding must be aimed at the programming of private television broadcasters.
- ES 9** Programming of the Canadian Broadcasting Corporation (CBC) is already addressed specifically by the *Broadcasting Act*, and through the CRTC's renewal decisions. Moreover, the programming of the CBC does not raise concerns – to the contrary, its very high-quality

Canadian programming predominates in its schedule. The CBC is struggling, to be sure – but with the limits imposed by its financial resources. Its Canadian programming performance has not been problematic.

- ES 10** The Forum is concerned by two procedural fairness issues in this proceeding. They involve questions of timing, accessibility of research and the overall quality of evidence and research made available through BNoC 2014-190 in this proceeding.
- ES 11** These issues are so serious that the CRTC must take corrective steps to ensure that the outcomes of its deliberations about broadcasting and television are fair to all, not just a few.
- ES 12** In 2013 the CRTC said it might review its ethnic broadcasting policy in 2015; since then five of Canada’s six over-the-air ethnic television stations announced major cuts to Canadian ethnic programming. A CRTC hearing in April 2014 considered these cuts; its results are not known. The CRTC’s 2014 workplan incorporated the ethnic broadcasting policy review into this proceeding (footnote 1), but only three of the 108 questions in BNoC 2014-190 address ethnic broadcasting (Q1, Q42a and Q42b).
- ES 13** The Forum recommends that as BNoC 2014-190 provided no notice that it would be reviewing Canada’s ethnic broadcasting policy, the CRTC should rescind the announcement in the 2014 workplan and review its ethnic broadcasting policy in a well-publicized hearing in 2015.
- ES 14** The 2007 *Cabinet Directive on Streamlining Regulation* applies to the CRTC and requires the CRTC to “[m]ake decisions based on evidence and the best available knowledge and science in Canada and worldwide”. The *Broadcasting Act* also gives the CRTC the authority to undertake research about matters within its jurisdiction.
- ES 15** Several of the research studies undertaken on behalf of the CRTC about Canadians’ views of Canadian television used approaches that did not follow generally accepted, mathematically-based principles of social science research. The studies’ unrepresentative samples mean that inferences cannot be drawn from their results about the population of Canada, of its regions or of Canadian women and men.
- ES 16** Before launching studies whose research designs may be so gravely flawed as to lack credibility, the CRTC should adopt the practice of other regulatory agencies and invite public comment on the validity and reliability of proposed research.
- ES 17** The CRTC did not release relevant information about this proceeding in a timely manner. BNoC 2014-190 included references to four reports about its *Let’s Talk TV* consultation, but did not refer to other reports in its possession when it published BNoC 2014-190 on 24 April 2014 – a March 2013 genre- protection report and an 8 April 2014 pick-and-pay report. The CRTC only made these reports available in early June. Moreover, the CRTC did

not provide any research on issues that are central to this proceeding – such as the availability of original Canadian and local television programming for Canadians to watch – although it is the only agency in Canada that collects these data.

- ES 18** The Forum recommends that the CRTC should establish a consultative committee on communications research to evaluate the types of information that the CRTC should collect and publish to meet the requirements of Canada’s broadcasting and telecommunications legislation.

II Creating a framework for 2025: more Canadian drama, more widely available to an older and more diverse audience

- ES 19** Changes in Canada’s population over the next decade will affect the needs and interests of Canadian television programming.
- ES 20** By 2025 34.5% of the country will be over 55 years of age, an increase from the current level of 28.9%. The number and proportion of people with age-related hearing- and seeing-limitations will increase. Decisions from this proceeding must ensure that all audio-visual content distributed by television stations and BDUs in Canada is 100% accessible.
- ES 21** By 2031 45% of Canadians over 14 years of age will be born outside of Canada, or have at least one parent born outside of Canada. Ensuring that the television system meets the needs and interests of Canada’s third-language and multicultural communities requires a separate and well-publicized policy review.
- ES 22** The Forum recommends that a new regulatory framework for Canadian television not distinguish between distribution platforms, but ensure that all distribution services contribute a reasonable and equitable share of the resources to finance high-quality local and national television program production.
- ES 23** We agree with the more than two-thirds of Canadians who believe that cable and satellite fees are much or somewhat too high, and should also require large non-conventional BDUs to begin supporting Canadian television program production by 2016.

III The structure of Canadian television in 2014: four companies have the resources to improve Canadians’ access to, enjoyment of and employment in Canadian television programming

- ES 24** Canadians have many choices when it comes to Canadian and non-Canadian programming services, but have almost no choice over
- what they must pay to access Canadian television
 - the services they must take from BDUs
 - the level of non-news local programming they receive from the local television

stations licensed to serve and reflect local communities, or

- the amount of provocative, compelling and well-resourced drama that is made by Canadians for Canadians, and that is available to audiences when they tend to use television the most – from 7 pm to 11 pm.

ES 25 The CRTC can give Canadians more choices in these areas through its regulatory framework for television.

ES 26 A new regulatory framework for Canadian television must be designed because Canadian television is not a complete market, as it was when the CRTC was created in 1968, and because the CRTC's historic approach to regulating BDUs and television programming services has placed broadcasters' interests before the public interest.

ES 27 In fact, past regulatory approaches have arguably led Canadian television programming into a period of decline: distribution services today account for most revenues (59%), operating income (62%) and employment (72%) in the television system. Programming has become the poor cousin to distribution.

ES 28 Today's television system is also highly concentrated – effectively controlled by four companies: in 2013 Bell, Shaw, Rogers and Quebecor accounted for 83% of all television revenues and 69% of the television system's employment opportunities.

ES 29 The CRTC can build on the structural strengths of Canada's television system – the financial dominance of distribution and four companies in the television system – to provide Canadians with more of the television content that they watch most often, and most need: Canadian drama, and diverse local programming.

ES 30 The Forum recommends that over the next decade the CRTC should

- Gradually eliminate simultaneous substitution, to provide Canadians with their first chance, after four decades of television regulation, to watch more Canadian television programming in prime time, when they like to watch television
- Gradually increase the level of original local programming outside of local news, to enable communities to hear and see themselves in the television system, and to enable people across Canada to gain experience and opportunities in the audio-visual sector,
- Gradually enable Canada's television programming services to broadcast more, very high-quality Canadian drama in prime time, to serve the interests and needs of Canadians in programming that reflects their country and their values,
- Require TV stations to continue over-the-air transmission, to give Canadians more distribution choices and new opportunities to innovate in the area of program

delivery, and

- Ensure that Canada's television system has the resources needed to increase Canadians' access to Canadian television programming, when they are most likely to be watching television.

IV Proposals for Canada's television system in 2025: widely available Canadian programming, serving the needs and interests of an older and more diverse audience

A The future of access to content in Canada's television system – more choices, for Canadians

- ES 31** The Forum agrees with Canadians who strongly object to the high prices they now pay to receive television service in Canada. In June 2014 92% thought the price was much or somewhat too high.
- ES 32** Consumer dissatisfaction with high BDU rates is driving them to seek less-expensive ways to access audio-visual content.
- ES 33** Ensuring choice for Canadians requires the CRTC to allow Canadians to escape from what is now a crumbling walled garden maintained by conventional BDUs.
- ES 34** A new regulatory approach to television must maintain Canadians' access to the programming broadcast over-the-air by television stations, to the programming broadcast by Canadian discretionary television services, and to a television system that is predominantly Canadian, effectively owned and controlled by Canadians.
- ES 35** The Forum opposes the termination of over-the-air television station transmission because it will eliminate distribution choices for Canadians, and because the benefits of this decision would flow primarily to BDUs. We believe that the main beneficiaries of the CRTC's determinations about television should be those who make and watch Canadian television.
- ES 36** Requiring TV stations to be distributed by BDUs might permit the stations' owners to access retransmission fee revenue, or the federal government to auction valuable television spectrum, but will deprive many Canadians of choice over their means of accessing these stations, and could result in even higher costs for BDUs subscribers (unless an all-Canadian service is regulated to be free or low-cost).
- ES 37** Forcing Canadian households to subscribe to BDU service to obtain any television programming service unreasonably transfers their income to BDUs – if just 270,000 more households had to subscribe to BDUs for \$30/month to obtain local TV service, BDUs' income would increase by \$97 million.
- ES 38** The discontinuation of over-the-air transmitters offers doubtful benefits to Canadians in

the shape of improved programming and employment. Private TV stations' total technical expenditures in 2013 amounted to \$80 million – even if every dollar went to new programming, BDUs would still receive a net benefit of \$17 million. BDUs could generate even more new income if, for example, they decided to charge local TV stations for the delivery of their signal to BDUs.

- ES 39** The evidence of the LPIF experiment shows that it is very unlikely that TV stations would re-allocate TV transmission monies to programming, instead of to their shareholders, as their legal duty would require. Even if the CRTC mandated this transfer it would be difficult to verify whether it happened, and impossible to know in the future if all monies that would have been allocated to transmission in the future, were now supporting local television program production.
- ES 40** The FRPC strongly recommends an all-Canadian basic package, if it
- Includes the nearest public and private conventional television services, in both official languages
 - Includes regional conventional television services, if no local conventional television services are available
 - Provides access to ethnic over-the-air television services to communities that do not have ethnic over-the-air television services
 - Includes mandatory or 9(1)(h) programming services, whose subscriber fees would be approved (but not authorized) by the Commission
 - Is broadcast in high-definition
 - Is available free, or at a charge that would cover fees declared to be reasonable by the CRTC, and
 - Continues to make channel capacity available for new local television services as these are licensed by the CRTC.
- ES 41** The success of an all-Canadian basic BDU package will depend on the programming that it provides, and its price. Current pricing of basic BDU service appears to bear no relationship to the costs of providing basic BDU service.
- ES 42** Canadians do not have access to the elementary data needed to evaluate the cost and pricing of basic BDU service, because the CRTC stopped collecting this information in 2005.
- ES 43** In June 2014 82% of Canadians agreed that the CRTC should collect data about the fees people pay for cable and satellite to ensure they are affordable; 84% of men and 85% of people over 65 years of age agreed.
- ES 44** The Forum recommends that CRTC rescind its staff's decision to stop collecting information

about the price that Canadians pay to receive basic BDU service.

- ES 45 A low- or no-cost all-Canadian basic BDU package will provide Canadians with meaningful choice, but only if local and national Canadian programming improves.
- ES 46 In June 2014 79% of Canadians agreed that the CRTC should regulate the prices that people pay to receive TV channels, and 83% of those over 65 years of age agreed.
- ES 47 The same survey found that 80% of Canadians believe that BDU rates should be regulated to stay within the rate of inflation; 84% of women, 84% of people in Quebec, and 87% of those over 65 years of age agreed.
- ES 48 Strengthening local television and national Canadian programming requires the CRTC to re-allocate the resources available in the television system.
- ES 49 The Forum recommends that the CRTC launch a review of its 1999 New Media exemption order to determine whether programming and distribution services that use the Internet are now able to contribute to achieving the objectives of the *Broadcasting Act*.
- ES 50 Too little information about Internet-delivered programming and distribution services exists; the only CRTC data about new media companies are old (for 2010 and 2011) and limited to revenues. A working group established by the CRTC in 2010 to develop measurement indicators for new media was disbanded after 3 meetings.
- ES 51 The Forum recommends that the CRTC establish a mechanism that by 2015 will develop new media metrics, and begin to publish revenue and expense information for new media programming and distribution services operating in whole or in part in Canada, by mid-2016.
- ES 52 The Forum recommends that the CRTC monitor new media revenues and expenses, and when revenues approach a third of the revenues of regulated conventional television services, undertake a public consultation to determine the appropriate support that new media services should provide to Canadian program production.
- ES 53 As existing resources in the regulated television system are unbalanced, the Forum recommends that the CRTC gradually increase the percentage of BDU broadcasting revenues devoted to supporting Canadian programming production, from 5.3% now, to 10% by 2025.
- ES 54 Based on BDUs' 2013 financial results, and assuming BDUs take no other action to raise their incomes, BDUs' support of new Canadian programming would bring their operating profit margins from 23.8%, to 16.1%. In 2013 the operating profit margin of Canada's private conventional TV stations was 4.7%, and for independent Category B specialty services, 11.3%.

ES 55 The Forum recommends that the CRTC establish Community Television Fund of Canada, to gradually permit BDUs to focus on their distribution businesses by relieving them of their current responsibility for community television channels.

B The future of content in Canada's television system

ES 56 BNoC 2014-190 provides no information about level of Canadian programming that is now available in Canada's television system. The Forum will post this information on its website (www.frpc.net) before August 2014.

ES 57 BNoC 2014-190 proposes to drop all requirements for the exhibition of Canadian content, except for an unknown level of local programming, and the carriage of Canadian programming services.

ES 58 Eliminating Canadian content and carriage requirements transforms a television system effectively owned and controlled by Canadians, into a foreign television system. This would entirely defeat the purposes of Parliament's broadcasting policy for Canada.

ES 59 Evidence from local Canadian television stations establishes that dropping requirements for Canadian programming will reduce the level of Canadian programming that broadcasters schedule.

ES 60 In June 2014 52% of Canadians disapproved of the idea of eliminating or dropping Canadian content requirements, and 51% disapproved if job losses would result. Among Canadians, 55% of women disapproved of dropping Canadian content requirements, and 60% disapproved if job losses would result.

ES 61 The Forum recommends that the CRTC not drop exhibition and carriage requirements for Canadian programming services, and that it not adopt policies that destroy employment opportunities.

ES 62 The Forum recommends that a new regulatory approach to local television stations television should instead

- Gradually require local TV stations to increase original non-news local programming, by an additional 2 hours/week by 2025,
- Require local TV stations to schedule this new, local programming from 6 pm to 11 pm, and
- Implement a new fund to support non-news local programming

ES 63 Improving local television stations will enable them to provide new content to replace foreign content now scheduled because of the simultaneous substitution rules.

- ES 64** The Forum recommends that the CRTC should instead temporarily reduce Canadian programming requirements for Canadian television stations, by requiring them to ensure that 35% of their 8 pm – 11 pm schedule consists of Canadian drama.
- ES 65** Drama programming is the most-watched of all program categories, and is the most expensive to produce. Increasing BDUs' support for Canadian program production while mandating specific levels of Canadian drama when this type of programming is still most watched, will establish whether highly-targeted programming requirements will produce the high-quality programming that Canadians like to watch.
- ES 66** The Forum also recommends that discretionary television services that schedule little or no drama, also be required to ensure that 35% of their 8 pm to 11 pm schedule is Canadian.
- ES 67** At the end of ten years the CRTC will be able to evaluate and report on the impact of this change on audiences, program availability and production, and employment opportunities.
- ES 68** The Forum recommends the gradual elimination of simultaneous substitution:
- first for the period from 9 pm to 11 pm,
 - next for the hour from 8 pm to 9 pm,
 - then for the period from 7 pm to 8 pm,
 - and finally for the entire 6 pm to midnight period.
- ES 69** The schedule space freed by simultaneous substitution requirements will permit Canada's four largest broadcasters to use more of their Canadian programming on local stations, to broadcast more, high-quality drama from 8 pm to 11 pm, and to broadcast a range of new, news or public affairs, entertainment, variety or performing arts programming from and about their local communities.

V Conclusions: how do we get from here, to there?

- ES 70** Canada's television distribution system resembles the walled garden that once dominated the Internet, in which users were restricted to certain types of content and allowed to navigate in particular areas of websites.
- ES 71** The transition from analog to digital television transmitters and TV sets, and the development of new and innovative devices, have enabled many to flee the BDU garden.
- ES 72** The CRTC should not add mortar to these walls to prop them up. That will simply drive more Canadians away from their own television system. Rather, it should look to strengthening Canadian television programming to make more of it available to Canadian television audiences when they tend to watch television.
- ES 73** Maintaining the status quo – leaving control of Canadian television distribution and

- programming in the hands of a few companies – harms the interests of the many: the millions of Canadians who want choice, who want to know more about their communities than news about traffic, floods or snowfalls, and who especially want more, high-quality Canadian programming with the creativity and innovation of *Game of Thrones*, *Breaking Bad* or *Downton Abbey*. Canada needs more programs like *Vikings* and *Orphan Black*.
- ES 74** The Forum opposes radical changes to the current system – in its current form, carefully balancing requirements and resources, a push in the wrong direction will almost immediately harm thousands of people. At the same time, the many sources of support for Canadian program production are not fixed – meaning that the financial support that exists for programming services today, such as provincial tax credits,, may not be there tomorrow.
- ES 75** A new regulatory approach to television must not make radical changes. Sensible public policies implement changes over time, with incremental steps whose impact can be measured and evaluated.
- ES 76** Canada’s television system must nevertheless become self-reliant, and its dependency on foreign programming must be slowly eliminated. A new regulatory approach to television gives the CRTC this opportunity.
- ES 77** **A single system that is predominantly Canadian – and one regulatory authority.** The CRTC has the power, the authority and the mandate to set a new path for Canada’s television system by setting enforceable and enforced targets so that, by 2025, century, Canada’s communications system is finally, clearly, and identifiably, Canadian.
- ES 78** **Affordable access and a wealth of resources.** The CRTC can ensure that Canada’s television system serves the needs and interests of the many.
- ES 79** **High standards – and a country whose culture, society and economy are enriched and strengthened by its television system.** The CRTC can ensure that the resources available today meet the needs and interests of all Canadians.

List of recommendations

Recommendation 1	The CRTC must change its approach to public policy proceedings by providing a more detailed public record, along with clear notice to the public when additions are made to the public record	12
Recommendation 2	Each determination from the BNoC 2014-190 proceeding must be supported by reasons based on evidence	12
Recommendation 3	The CRTC should establish a consultative committee to report on the information and data that it should collect and publish about Canada's broadcasting system to enable Parliament and Canadians to know how Canada's broadcasting policy is being implemented	13
Recommendation 4	By 2025, 100% of the television programs broadcast in Canada's regulated broadcast system must be fully accessible to those who are blind, have limited sight, are deaf or have limited hearing	16
Recommendation 5	By 2025, 55% of people in Canada's larger cities will be immigrants or the children of immigrants; the CRTC should hold a separate and well-publicized policy hearing and issue a new ethnic broadcasting policy with enforceable targets for the availability of news and entertainment programming over the air and from other distribution platforms	17
Recommendation 6	The CRTC should report annually on the hours of original and total Canadian and foreign programming broadcast by Canadian television services, by service and ownership group	27
Recommendation 7	The CRTC should undertake decennial content analyses of the programming broadcast by Canadian television and radio services to evaluate the degree to which they are meeting the <i>Broadcasting Act's</i> objectives regarding the reflection and portrayal of Canada's men and women, multicultural communities and Indigenous peoples	28
Recommendation 8	The CRTC should collect basic financial information about exempted television programming and distribution services, including total revenues, expenditures on Canadian programming, total expenditures and employment opportunities	30

Recommendation 9	The CRTC should modify its data collection system to be able to determine the level of non-Canadian ownership for individual broadcasting licensees, and for the Canadian broadcasting system as a whole	31
Recommendation 10	Determinations about a new regulatory framework for Canadian television must require the four largest broadcasting companies in Canada – that controlled 83% of the television system’s revenues in 2013 - to increase their support for and broadcast of Canadian programming.	32
Recommendation 11	The CRTC should monitor and report on employment levels in Canada's television system, by occupation and source of employment (within regulated broadcasting services, and if possible, in the independent production sector on an aggregated level)	34
Recommendation 12	If only 270,000 more households subscribed to BDUs because over-the-air transmission is discontinued, and basic cable rates averaged \$30/month, BDU subscriber revenue would increase by \$97 million; meanwhile allocating 100% of <i>all</i> ‘technical’ expenses to local programming would increase local expenditures by a maximum of \$80 million. As the costs to Canadians outweigh the benefits, the CRTC should retain over-the-air TV transmission	42
Recommendation 13	Create a modified local programming fund to support local non-news programming, with governance divided between broadcasters, the public and employees	44
Recommendation 14	The CRTC should mandate the provision of an all-Canadian basic tier, at no charge, or for CRTC-approved subscriber rates	47
Recommendation 15	The CRTC must resume the collection and publication of basic rate information for BDU services, along with information such as penetration and subscription levels	49
Recommendation 16	The CRTC should regulate the rates charged for the all-Canadian basic tier of BDU services proposed in BNoC 2014-190 (and which the Forum supports provided certain qualifications are met) to ensure that these rates are affordable for all Canadians	50

- Recommendation 17 After the basic cable package has been assembled, and made available to subscribers at low cost or free of charge, subscribers should be free to choose as many individual Canadian services they like. For every foreign service, however, subscribers would choose at least one Canadian service. 53
- Recommendation 18 Dropping the current requirement that Canadian programming services predominate in Canada's broadcasting system is contrary to the *Broadcasting Act* and the CRTC's mandate to enforce the *Broadcasting Act* 55
- Recommendation 19 The CRTC should require currently exempted, large, New Media programming and distribution undertakings to submit elementary financial information to enable the CRTC to determine whether the original grounds of its New Media exemption order continue to exist, and the CRTC should publish these data in its annual statistical and financial summaries for BDUs and pay and specialty services 59
- Recommendation 20 Large non-conventional distribution services should be required to provide financial support for Canadian television program production by September 2016 59
- Recommendation 21 The CRTC should raise BDUs' financial support for Canadian program production from 5.4% in 2014, to 10% in 2025 61
- Recommendation 22 A new regulatory framework for Canadian television must be independent of other support mechanisms for private and public television 61
- Recommendation 23 Neither BDUs nor the manufacturers of set-top boxes should be permitted to collect data about households' viewing, until Canadians have had an opportunity to review and comment on the CRTC's internal set-top boxes report 62
- Recommendation 24 The CRTC should replace its current 55% requirement for Canadian content on private television stations with a 35% Canadian drama requirement from 8 pm to 11 pm each broadcast week 65
- Recommendation 25 The CRTC should publish Canadian exhibition levels for individual broadcast ownership groups and their individual

	programming services for each broadcast year since 2000, and for each broadcast year going forward	66
Recommendation 26	The CRTC should gradually eliminate simultaneous substitution provisions, over time	68
Recommendation 27	The CRTC should launch a proceeding to consider the establishment and support of an independent community television funding mechanism that is focused primarily on the production of local news, public affairs, arts, and community access programming, with the objective of independently produced community television programming representing the majority of community television programming by 2025.	69

I Introduction: Canadian television choices in 2025

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization that believes Canada's broadcasting system must offer and support high-quality programming that is made in Canada, that is affordable to all, and that uses all forms of technology to ensure that our broadcasting system's audio-visual content is accessible to Canadians wherever they are.
- 2 The FRPC was established to undertake research and policy analysis about communications, including broadcasting, that supports this vision.
- 3 Our comments in this proceeding urge the Commission to adopt a new framework for television that will provide everyone in Canada with easy and affordable ways of accessing television content that serves the cultural, social and economic interests and needs of Canadians.
- 4 In brief, the CRTC should move from a framework in which Canadian television is a walled garden, to one in which it is a national park.

A In a time of plenty, why limit choice through regulation?

- 5 BNoC 2014-190 asks Canadians to view its framework for regulating Canadian television in terms of the framework's impact on choice, creation and empowerment.
- 6 An obvious question is whether Canada should bother to regulate television at all.
- 7 Television broadcasting is regulated for two reasons. The first has to do with the unique impact of broadcast media. Broadcasting is not like other industries – say, curtain manufacturing. Curtains that are poorly made and poorly hung pose little danger to society¹ -- badly run broadcasting undertakings, on the other hand, do.

¹ To paraphrase *The Economist*, "A dangerous embrace; Reregulation" (14 May 2011):

...

The reason banks are regulated and hairdressers are not is that a badly run barber poses little danger to outsiders. Banks, on the other hand, cause widespread chaos when they collapse. One sick bank going broke can destroy confidence in the entire banking system and start runs that could bring down healthy banks too. Most advanced economies try

8 There are old and new examples of the unique power of the broadcast media. In 1938 the first American radio broadcast of *War of the Worlds* led to mass hysteria and panic on the US east coast. More recently, in 1994, radio stations in Rwanda helped to widen the genocide that happened there, by broadcasting calls for attacks.

9 Mass media's critical role in democracy and its democratic institutions is also well known.

... freedom of expression "protects listeners as well as speakers". That is to say as listeners and readers, members of the public have a right to information pertaining to public institutions and particularly the courts. Here the press plays a fundamentally important role.... It is only through the press that most individuals can really learn of what is transpiring in the courts. They as "listeners" or readers have a right to receive this information. Only then can they make an assessment of the institution. Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media....²

10 Advertisers today also clearly believe that television broadcasting matters – in 2013 they spent \$2.9 billion on conventional and discretionary television advertising to influence viewers' attitudes and behaviour.³

11 Broadcasting is not like the drapery industry, and that is why Parliament gave broadcasting special standing in law. In 1932, 1958, 1968 and 1991 Parliament decided that broadcasters' ability to influence the path of nations required the imposition of limits to ensure that broadcasting serves the public interest of Canada. That is why the 1991 *Broadcasting Act*⁴ affirms, at the outset, that broadcasting – including television – is a public service that is essential to maintaining, and enhancing, Canada's national identity and cultural sovereignty.

to prevent that by offering deposit insurance to savers. They also regulate banks to make sure they do not gamble with savers' protected deposits.

² *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 (per Cory J.), citing *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712, at 767.

³ CRTC, *Statistical and Financial Summaries, 2009-2013*, for private commercial television and pay and discretionary television services.

⁴ R.S.C. 1985, c. B-9.01, as am. to S.C. 2010, c. 12, s. 1719.

12 The Forum’s position on broadcasting is based on Parliament’s broadcasting legislation, but also flows from our vision for Canada’s communications system: a window to the world – a window for the world – and a mirror for ourselves.

13 A window works both ways: it allows us to see the world; it allows the world to see us – Canada: not some pale copy of the United States or France, but Canada.

14 A mirror only works one way: it allows us to see ourselves. If we don’t make an appearance in the mirror, no one else is going to do it for us.

15 That is the essential construct of the Canadian broadcasting system that we, at the Forum, bring to our activities. It is a view of broadcasting that was originally reflected by the CRTC in 1971, when it first began to consider a regulatory framework for cable television:

Canadian broadcasting must strive for high standards and excellence. It must provide the widest possible choice. It must be open to world currents and not deprive viewers of the challenges of ideas and cultural achievements from other countries. Basic services in English and French must be available as rapidly as possible to all Canadians including those in more remote areas of the country. At the same time, Canadian broadcasting must “safeguard, enrich, and strengthen the cultural, political, social and economic fabric of Canada.”⁵

16 As for broadcasting (in its widest sense, however the definition may change), we support a free flow of information from the most diverse and comprehensive

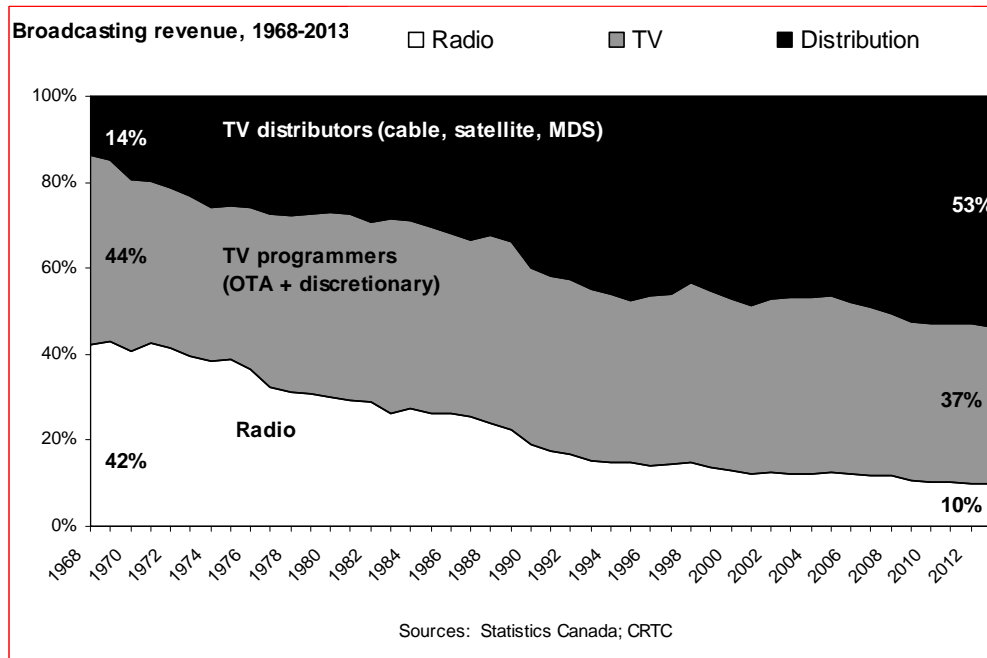
1968: The Canadian **broadcasting** system **should** be effectively owned and controlled by Canadians so as to **safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada** (s. 3(b))

1991: the Canadian **broadcasting** system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and **provides**, through its programming, **a public service essential to the maintenance and enhancement of national identity and cultural sovereignty...** (s. 3(1)(b))

⁵ *The Integration of Cable Television in the Canadian Broadcasting System*, Public Announcement, Statement of the CRTC in preparation for the public hearing to be held beginning April 26, 1971 in Montréal at the Sheraton-Mt. Royal Hotel (Ottawa, 26 February 1971) at 7.

- voices – local, national and international. Among other things, this ensures the proper functioning of a democratic society;
- 17 The Forum also works to help safeguard the interests of listeners and viewers, so that they can have the widest range of viewing and listening choices, including Canadian choices that reflect Canadian values, history, ideas and concerns; and that Canadian ownership is of crucial importance in maintaining and further developing national identity and cultural sovereignty.
- 18 In telecommunications, meanwhile, the Forum works to help minimize the cost of telecom services to consumers, while recognizing entrepreneurs' reasonable interest in a fair return on their investment.
- 19 The Forum works to accommodate the requirements of both broadcasting and telecommunications in the world's rapidly changing technological environment.
- B Canada's regulatory framework for television must strengthen Canadian choices**
- 20 The outcome of the BNoC 2014-190 proceeding will effectively determine the direction of Canadian broadcasting. Although Canadians spend roughly the same amount of time with radio as with television, television programming and distribution are now the dominant forces within the broadcasting industry.
- 21 Figure 1 shows that in 1968 television distribution and programming accounted for just over half (56%) of broadcasting's total revenues (excluding the CBC). Last year television distribution and programming accounted for 90% of all broadcast revenues (excluding the CBC and New Media).

Figure 1 Revenues in Canada’s broadcasting system, 1968-2013, by medium



- 22 Canada’s broadcasting system has therefore changed from one in which radio and television were almost equal, when the CRTC was first created, to one in which television is the dominant sector.
- 23 Canada’s broadcasting industry will continue to change. We need change. New ideas, innovation and new technologies can benefit everyone in the broadcasting system, from the audiences that access broadcast programming using a range of devices, to those creating, producing and distributing programming content.
- 24 In fact, Parliament ensured that the *Broadcasting Act* is able to embrace change.⁶

⁶ Jim Edwards (Parliamentary Secretary to the Minister of Communications) told the House during the 2nd reading of Bill C-40, *An Act respecting broadcasting and to amend certain Acts in relation thereto and in relation to radiocommunications*):

...

Before drafting the new broadcasting legislation, we decided that our goal would be to tackle the paradox of modern broadcasting in the Canadian context. To put it another way, we would draft a legislative policy and regulatory structure in such a way as to take into account and favour

- 25 The Forum therefore welcomes the opportunity provided by BNoC 2014-190 to consider how changes can be harnessed to serve the public interest within a new regulatory approach to television.
- 26 The timing for this review is ideal. It permits the Commission to implement a new television policy in the 2016 television licence renewals of the four companies that now control four-fifths of Canadian television revenues.⁷ and while Quebecor's television licences currently expire in August 2015⁸ the Commission could administratively renew these so that they also expire in 2016.
- 27 As licences can be renewed for up to seven years,⁹ the results from BNoC 2014-190 will effectively guide Canada's broadcasting system for most of the next decade, or at least until 2023.
- 28 The Forum's comments today apply for the most part to private programming and television services. In our view, the special standing of the Canadian Broadcasting Corporation (CBC), and its ever-more precarious financial position, require the Commission to develop a separate CBC policy, taking into account its unique responsibilities, structure and financial support.
- 29 The CBC's recent announcements of major job and programming cuts clearly raise the direction of a new regulatory approach to private television distribution and programming even more significant.

technological progress, while at the same time stressing the diversity and creation of Canadian programs.

...

House of Commons Debates, 34th Parl. 2nd Sess. (3 November 1989).

⁷ The conventional and discretionary television licences of Bell and Shaw (including Corus) expire in 2016: see Broadcasting Decisions CRTC 2011-444, 2011-445 and 2011-447. Rogers recently asked to renew its television licences to 2016 – Rogers, *CRTC Public Hearing Transcript* (Gatineau, 8 April 2014) at ¶180:

We have asked for a two-year licence term expiring August 31st, 2016. This proposed licence term will allow all large broadcast groups and interested stakeholders to participate in a full review of the effectiveness of the group policy and consider any changes that might be required as a result of the performance of all groups over the same five-year period. It will also allow us to make commitments to the new licence term with a full understanding of the regulatory framework that will be established as a result of the Let's Talk TV proceeding.

⁸ *TVA Group Inc. – Licence renewals*, Broadcasting Decision CRTC 2012-242 (Ottawa, 26 April 2012).

⁹ S. 9(1)(b).

30 A new regulatory approach to television must finally – after almost half a century – give Canadians affordable access to high-quality Canadian television programming that they are likely to watch. It must gradually wean the television system from its dependency on American television networks. It must give Canadians more, and more affordable, Canadian choices.

31 In the pages that follow the Forum responds to the questions and issues raised in BNoC 2014-190. While our answers to the specific questions raised in the CRTC’s notice are set out in Appendix 1, we have addressed a number of issues that we view as especially important in this comment.

32 Our comment begins with a review of the legal framework that currently guides Canada’s television policy as well as the CRTC’s regulatory approach to programming and distribution services. We then describe the television system available to Canadians today, providing the evidence that grounds our response to the issues raised in BNoC 2014-190. Next we discuss the issues raised by BNoC 2014-190 and which most concern the Forum. Our conclusions follow, along with a summary of our overarching recommendations.

33 Before setting out our views on the issues raised in BNoC 2014-190, however, the Forum would like to address two points related to the procedural fairness of this proceeding.

C Procedural fairness issues

34 The CRTC is a federal administrative tribunal whose decisions must be made in a procedurally fair manner.¹⁰

1 *Clear notice should have been given about ethnic broadcasting policy review*

35 First, the Forum is concerned about the way in which the CRTC has included a review of its ethnic broadcasting policy in this proceeding. In its 2013 3-year plan (<http://www.crtc.gc.ca/eng/backgrnd/plan2013.htm>) the CRTC said that it would research and review its ethnic broadcasting policy in 2013/14, and that it might “undertake a public consultation to review its ethnic policy” in 2015/16.

36 The CRTC subsequently incorporated its ethnic broadcasting policy review into the current proceeding – through a footnote to its current 3-year plan (<http://www.crtc.gc.ca/eng/backgrnd/plan2014.htm>):

¹⁰ See e.g., *Genex Communications Inc. v. Canada (Attorney General)*, 2005 FCA 283:

Initiatives set out in the 2013-16 Three-Year Plan that will be considered with the Public Consultation on Television include: Review of Policies for Genre Protection, Category “A” Specialty Services and Ethnic Broadcasting.

- 37 BNoC 2014-190 raises several questions about ethnic broadcasting and cultural diversity, but does not state that this proceeding involves a review of the CRTC’s ethnic broadcasting policy.
- 38 With respect, the CRTC should have clearly publicized the fact that BNoC 2014-190 involves not just a review of the Commission’s general television policy, but a review of its ethnic broadcasting policy.¹¹
- 2 ***Lack of timely and well-designed research on public record puts the public at a disadvantage***
- 39 Second, the Forum has serious concerns about the level of relevant, valid and reliable evidence that has been available to the public to evaluate the issues in BNoC 2014-190. Seven years ago the *Cabinet Directive on Streamlining Regulation*¹² ordered agencies such as the CRTC to base regulatory changes on solid evidence – preferably objective and empirical evidence.
- 40 BNoC 2014-190 offers very little evidence about the proposals it makes. It refers to
- Let’s Talk TV: A report on comments received during Phase I;
 - Reports from “Flash!” Conferences received during Phase I;
 - Let’s Talk TV: A conversation with Canadians – Quantitative Research Report (the Quantitative Research Report), public opinion research conducted by Harris/Décima; and
 - Let’s Talk TV: Choicebook, research conducted by Hill+Knowlton Strategies (results to be available on the Commission website shortly).¹³
- 41 The CRTC has placed substantially more information on the public record in other proceedings. For instance, when the CRTC sought public comment for its

¹¹ The Forum has contacted several multicultural organizations to ask whether they would be intervening, but none was aware that the CRTC planned to review ethnic broadcasting via BNoC 2014-190.

¹² <http://www.tbs-sct.gc.ca/rtrap-parfa/gfrpg-gperf/gfrpg-gperf01-eng.asp>.

¹³ BNoC 2014-190, at ¶16.

1998 Canadian television policy review, it notified the public about the information available to them:

- ownership of licensed conventional, specialty and pay television undertakings as of 31 May 1997;
- comparative information relating to revenues and viewership for conventional, specialty and pay television programming undertakings for the years 1993 to 1997, inclusive;
- Fall 1991 and Fall 1996 BBM television viewing and scheduling data;
- data derived from the program logs of conventional television stations for the broadcast year 1996/97;
- information concerning independent productions that received Canadian program recognition for the years 1994 to 1997, inclusive; and,
- information concerning the financial performance of, and programming expenses by, conventional, specialty and pay television undertakings, on an aggregate basis, for the years 1993 to 1997, inclusive.¹⁴

42 In fact, even before desktop PCs were a gleam in Bill Gates eye, the CRTC published ‘macro statistics’ that included analyses of the television programming broadcast in Canada, by broadcast group (CBC, CBC affiliates, CTV, TVA, etc.), and by program origin (% Canadian, % foreign).¹⁵

43 In other words, the CRTC provided the public with information about the programming that was actually being aired by the television system.

44 BNoC 2014-190 has not published information about the programming that is broadcast and viewed available in Canada’s television now, as part of the record of this proceeding. Some of it may be available, from a variety of CRTC and other sources – but how many members of the public would know where to find this kind of information, especially since relatively new CRTC documents are no longer available online? Examples include:

¹⁴ Canadian Television Policy Review - Call for Comments, Public Notice CRTC 1998-57, (Ottawa, 12 June 1998) <http://www.crtc.gc.ca/eng/archive/1998/PB98-57.HTM>.

¹⁵ CRTC, *Broadcasting and Telecommunications Macro-Statistics*, (Gatineau: Statistical Information Centre, 1972/84).

- *Communications Monitoring Reports* (2008 to 2013), 2008 unavailable online
- *Broadcast Policy Monitoring Reports* (2000 to 2007), unavailable online
- Current CRTC ownership charts (<http://www.crtc.gc.ca/ownership/eng/ownership.htm>) (historical charts not available online), and
- *Statistical and Financial Summaries*, for private commercial television, for broadcast distribution undertakings, for pay and specialty television services and for individual pay and specialty television services, but only for the past four years.

45 It is also unclear why the CRTC waited until after it published BNoC 2014-190 to make three studies available about the issues it discusses. The CRTC had two of the three studies on hand when it published BNoC 2014-190 – they were submitted to the CRTC on 15 March 2013 and 8 April 2014. Why were they only announced on 6 June 2014, through the CRTC’s “Today’s Releases” webpage?¹⁶ Similarly, why did the CRTC not amend BNoC 2014-190 to notify interested parties that it published an *Analysis of CRTC Choicebook: Panel*,¹⁷ by Hill+Knowlton Strategies on 1 May 2014? It was instead linked to the long-closed *Let’s Talk TV* consultation of Broadcasting Notice of Consultation 2013-563.¹⁸

46 We note as well that although the March 2013 and April 2014 studies were added to the CRTC’s “Open Proceedings” webpage,¹⁹ this is a page where parties submit comments electronically, typically on the proceeding deadline. Since the two studies were not mentioned in April’s BNoC 2014-190, how many parties missed notice of their availability until they filed on the June 27th deadline?

47 While we will comment on the serious methodological flaws in some of the CRTC’s research in Part III of this submission, the Forum respectfully submits that Canadians expect more from the CRTC. Parliament established it as an expert tribunal to regulate an industry that generates billions of dollars for Canada’s

¹⁶ <http://crtc.gc.ca/eng/whatsnew/2014/j0606.htm>.

¹⁷ <http://www.crtc.gc.ca/eng/publications/reports/rp140424b.htm#h6>.

¹⁸ See 2013-563 at <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Defaut.aspx?Lang=eng&YA=2013&S=C&PA=b&PT=nc&PST=a#2013-563>.

¹⁹ <http://crtc.gc.ca/eng/archive/2014/2014-190.htm>.

economy and that affects the entire population’s access to information, analysis and entertainment. The companies in these industries expend significant resources on staff, research and studies that support their goals. Where is the expert-level, objective research that monitors how the broadcasting system is achieving the Act’s objectives for Canadians?

- 48 Canada is falling behind other countries that regulate their communications industries using evidence gathered from professionally designed research. In the United States, for example, the Federal Communications Commission invites public comment on the design of key research studies – before these begin. Public comment on research design issues strengthens the utility of this research, and reduces the time spent during subsequent comment periods deciding whether the studies were properly conducted, and whether new research is required. The CRTC should adopt this approach: it would benefit from a more professional approach to the collection of evidence related to communications, and so would the public.
- 49 The Forum respectfully submits that agencies such as the CRTC bear a duty in proceedings involving the future of a multi-billion dollar industry to provide a clear and useful public record with a reasonable time frame for interested parties to review, consult and refine their comments.²⁰ The CRTC should announce the publication of new information relevant to proceedings by supplementing its originating notice of consultation, with links to the new information.

²⁰ *Proposed CRTC Procedures and Practices in Relation to Broadcasting Matters*, Public Announcement (Ottawa, 25 July 1978) at 3-4:

While the statutory responsibility for the discharge of its mandate rests on the Commission alone, it is nevertheless the view of the Commission that no single person or group embodies the public interest and that the assistance and active participation of significant numbers of the general public are indispensable to the decision-making process.

...

The requirement to apply to the Commission for licensing, combined with self-interest, ensures the involvement of the broadcasting industry in the public hearing process. The same is not true of the general public. In fact, it is impossible to guarantee the involvement of the latter, and the most that the Commission can do is to facilitate public access and involvement. ...

Further public involvement requires a heightened public awareness of the existence and role fo the Commission in general, an awareness of particular hearings and issues, and access to relevant information.

...

[underlining in original text]

Recommendation 1 The CRTC must change its approach to public policy proceedings by providing a more detailed public record, along with clear notice to the public when additions are made to the public record

50 At the same time, the Forum has welcomed the specific requests in BNoC 2014-190 for evidence with respect to all proposals.²¹ Even if the CRTC were not limited to the evidence that parties submit in this proceeding,²² FRPC respectfully submits that the Commission, expert tribunal that it is, must ensure that the evidence on which it relies, supports its final determinations.²³

51 In that context, we recommend that the CRTC ensure that it requires as much evidence about proposals that advocate a deregulatory approach to television, as it requires from proposals advocating a regulatory approach to television.

Recommendation 2 Each determination from the BNoC 2014-190 proceeding must be supported by reasons based on evidence

52 The CRTC's current approach to its own collection of empirical and objective evidence about broadcasting has improved from the mid-1990s, when the Commission stopped publishing annual reports about its own activities, or about

²¹ BNoC 2014-190, "Procedure": "The Commission requests that, whenever possible, parties provide evidence in support of whatever comments or proposals they may make." In other proceedings the Commission of the day required proponents of regulation to tender evidence to support the maintenance or imposition of evidence, but did not similarly require evidence from proponents of deregulation. Based on the cookbook approach to regulation – sauce for the goose is sauce for the gander – we urge the Commission to evaluate proposals for and against regulation based on all available evidence.

²² The *Broadcasting Act* does not set parameters on the evidence that the CRTC may or may not consider. See also *Re: Sound v. Fitness Industry Council of Canada*, 2014 FCA 48:

[52] Agencies such as the [Copyright] Board that administer a complex regulatory program are not restricted to the evidence adduced by the parties. They are charged with exercising broad substantive and procedural discretion to enable them to achieve an outcome that best serves the public interest implicated in the particular program. Thus, when not satisfied with the accuracy or completeness of the parties' evidence these tribunals may seek additional information from other sources.

²³ *Canadian Association of Broadcasters v. Society of Composers, Authors and Music Publishers of Canada*, 2006 FCA 337, at ¶16:

The Board is entitled to the greatest deference in the exercise of its discretion to set a rate and, accordingly, the discretionary decisions lying at the heart of its expertise are reviewable only for patent unreasonableness. However, it must explain the basis of its decisions in a manner that enables the Court on judicial review to determine on the basis of the reasons, read in context, whether the decision was rationally supportable. When an administrative tribunal's decision is reviewable on a standard of reasonableness, its reasons are the central focus of a judicial review: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 (CanLII), [2003] 1 S.C.R. 247, 2003 SCC 20, at paras. 48-9, 54-5.

the general state of the broadcasting system. The introduction of the *Broadcasting Policy Monitoring Reports* beginning in 1999, and of the *Communications Monitoring Reports* in 2008, provided a much-needed window on changes in Canadian broadcasting.

53 The CRTC has, however, never held a public proceeding to ask Canadians about the type of information and evidence it should collect to evaluate its implementation of Parliament’s broadcasting policy for Canada.

54 The result is that Canadians have almost no access to published information about the actual programming that is available to them from Canadian broadcasters. Without the Forum’s analysis of the OMNI programming logs, for example, how would Canadians have known that the amount of original, third-language programming produced by the OMNI stations decreased 42.3% between the 2009/10 and 2012/13 broadcast years?²⁴

55 Much of what the CRTC publishes is obsessed with broadcasters’ financial performance. Neither Canadians nor Parliament can evaluate the CRTC’s progress in implementing Canada’s broadcasting policy objectives based solely on information about broadcasters’ revenues and expenditures.

56 The CRTC should establish a consultative committee consisting of representatives from the industry, academia, non-licensee stakeholder organizations and public interest groups to review the types of information now collected and published by the CRTC. This committee should report on whether the CRTC should collect and publish different or additional information about broadcasting. After hearing public comment on the committee’s report, the CRTC should implement a new data-collection and data-reporting approach.

Recommendation 3 The CRTC should establish a consultative committee to report on the information and data that it should collect and publish about Canada’s broadcasting system to enable Parliament and Canadians to know how Canada’s broadcasting policy is being implemented

²⁴ FRPC, *Re: Applications for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty television services, Broadcasting Notice of Consultation 2014-26 (Ottawa, 29 January 2014)*, (Ottawa, 27 March 2014), (“FRPC addl evidence – OMNI – 2014-26 – 27 Mar 2014.pdf”) at 1.

D Outline of the Forum's submission

- 57 Our comments begin in Part II with a review of the current structure of Canada's television system. We urge the Commission to frame its analysis of the challenges facing Canada's television system on the system as it is today – not as many of us remember it in 1968. The structure of Canadian television in 2014 is very different from the world of 1968 – and Canada's regulatory framework for television should take these changes into account. The Forum's recommendations are therefore based on today's television system, and the changes that will affect Canadian society over the next decade.
- 58 Part III discusses a number of the ideas proposed by BNoC 2014-190, first with respect to BDUs and then for programming services. The Forum is especially concerned by suggestions that would reduce Canadians' choices by ending their free reception of over-the-air television. In our view this and other proposals would grant BDUs unprecedented power over audiences' choices of programming services, without benefiting Canada's television system. In our view the CRTC's goal in this proceeding should be to maximize the availability of high-quality Canadian television programming that Canadians will want to watch. The Forum supports a regulatory policy for Canadian television that serves the public interest by ensuring that Canadians have access to programming by, for and about themselves, as well as access to a wide range of programming services from around the world.
- 59 Part IV provides our general conclusions about the questions raised by BNoC 2014-190, and a summary of the recommendations made by the Forum in Parts 1, II and III. Our detailed responses to the CRTC's questions are set out in tabular format in Appendix 1.

II Why plan for 2025? Because Canada is changing.

- 60 Canada's broadcasting system is regulated to ensure that Canadians have access to high-quality Canadian and other programming that they want to watch.
- 61 Creating a regulatory framework for Canadian television must ensure that it meets the objectives of Canada's broadcasting policy, in 2025, and that it adapts to Canadians' changing needs and interests.
- 62 What will Canadians' needs and interests be in 2025? Speculative as this question may sound, we do know something about what Canada will be like in a decade, barring major unforeseen events.
- 63 Trends in the composition of Canada's population are, for example, well known.

A More people will have seeing and hearing limitations

64 Parliament requires the broadcasting system to provide programming that can be accessed by people with disabilities.

3(1)(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose

65 The probability that people will suffer loss of hearing or loss of eyesight increases with age. In 2012 37.8% and 51.4%, respectively, of people over 55 years of age had problems seeing or hearing²⁵ for age-related reasons that include macular degeneration and hearing loss.

66 From 2001 to 2011 the numbers of people with loss of hearing grew by 27% (to 874 thousand people), and by 52% for those with loss of eyesight (to 756 thousand people) (see Appendix 11).

67 By 2025 more than a third of Canada's population (34.5%) will be over 55 years of age, and current estimates suggest that the incidence of loss of hearing or eyesight will increase significantly, perhaps doubling (see Appendix 11, Figure 7).

68 The CRTC's regulatory framework for television currently provides mixed levels of access to people with loss of hearing or eyesight. The Commission requires television programming services to ensure that most or all of their programs are captioned – but the quality of captioning may be poor. It requires some BDUs to provide free digital set-top boxes to people who are blind or have limited sight,²⁶ yet requires only four hours/week of described video for conventional television stations and category A specialty services. The requirement for pay-per-view services is even less specific – they need only make described video available 'where possible' (see Appendix 11).

69 A new regulatory framework for Canadian television should ensure that by 2025, the programming it offers is accessible to all Canadians – including the blind, those with limited sight, the deaf and or those with limited hearing.

²⁵ Statistics Canada, "Adults with disabilities by type, sex and age group, Canada 2012" Cat. 89-654-X, Table 3.1, <http://www.statcan.gc.ca/pub/89-654-x/2013001/tbl/tbl3.1-eng.htm>.

²⁶ CRTC, "TV access for people with visual impairments: described video and audio description", http://www.crtc.gc.ca/eng/INFO_SHT/b322.htm (accessed 24 June 2014).

Recommendation 4 By 2025, 100% of the television programs broadcast in Canada's regulated broadcast system must be fully accessible to those who are blind, have limited sight, are deaf or have limited hearing

B Canada will be even more culturally diverse

70 Television provides information that is critical to participation in everyday life, and to social identities. Statistics Canada estimated that in 2011 roughly a third of the population identified an origin other than Canada or Europe, and that 6.5 million (20%) of 32.9 million people in Canada spoke a language other than English or French at home.²⁷

71 Over the next twenty years the proportion of Canada's population born outside the country could increase from 19.8% in 2006,²⁸ to over 25% in 2031. Statistics Canada also estimates that by 2031

- 45% of Canadians over 14 years of age will have been born outside Canada or have at least one parent born outside of Canada (compared to 39% in 2006)
- Roughly 55% of people living in census metropolitan areas will be immigrants or their Canadian born-children
- 60% of people in Toronto and Vancouver will belong to a visible minority, and that
- 24% of those living in Toronto will belong to the South Asian visible minority group, while people of a Chinese background will make up 23% of Vancouver's population²⁹

²⁷ Statistics Canada, *2011 National Household Survey: Data Tables* (Mother Tongue (8), Language Spoken Most Often at Home (8), Other Language Spoken Regularly at Home (9), First Official Language Spoken (5), Immigrant Status and Period of Immigration (11) Age Groups (12) and Sex (3) for the Population in Private Households of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2011 National Household Survey).

²⁸ Statistics Canada, *Projections of the Diversity of the Canadian Population*, "The ethnocultural diversity of the Canadian population", Cat. 91-551-X, <http://www.statcan.gc.ca/pub/91-551-x/2010001/ana-eng.htm>

²⁹ Statistics Canada, *Projections of the Diversity of the Canadian Population*, "Highlights", Cat. 91-551-X, <http://www.statcan.gc.ca/pub/91-551-x/2010001/hl-fs-eng.htm#a3>.

- 72 Meanwhile, we know little about ethnic television in Canada, or how the needs and interests of Canada's ethnocultural communities are reflected on air – except that concerns have been raised about these issues.³⁰
- 73 The lack of information in BNoC 2014-190 about the current state of ethnic television in Canada, and the minimal reference to multicultural communities' needs and interests justify a separate a separate public hearing to review and revise the CRTC's ethnic broadcasting policy. That proceeding should include objective evidence from properly-designed empirical research, and a thorough analysis of the degree to which the objectives of the CRTC's current ethnic broadcasting policy have been met. The CRTC should then develop a policy that will set concrete targets for the availability of important categories of news and entertainment over the air, and from other distribution platforms, and for the portrayal of Canada's multicultural reality.

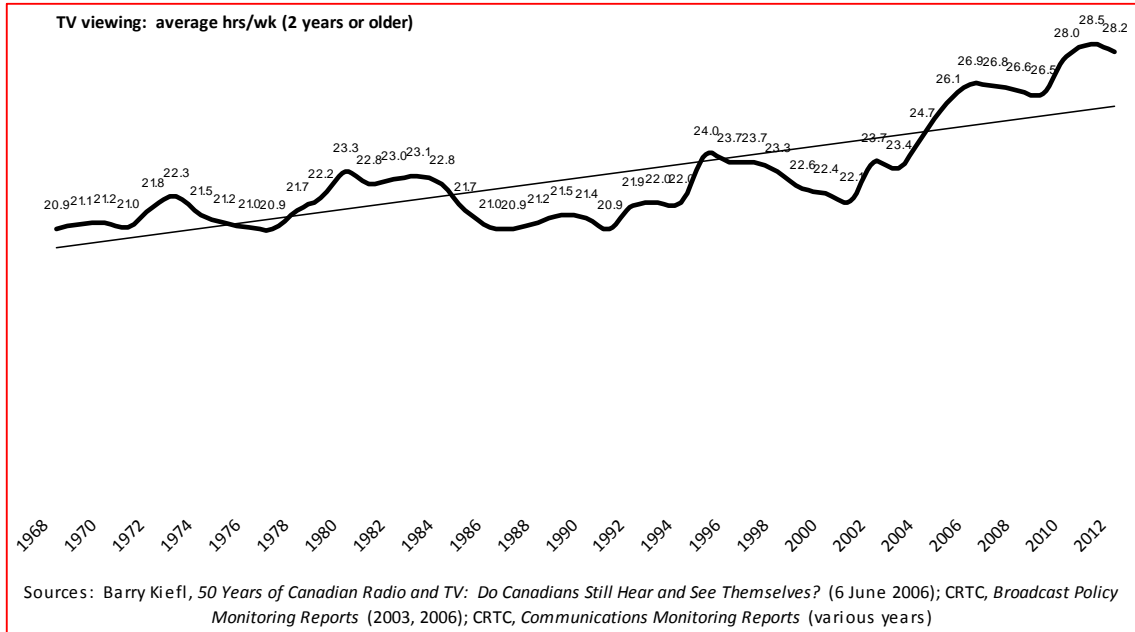
Recommendation 5 By 2025, 55% of people in Canada's larger cities will be immigrants or the children of immigrants; the CRTC should hold a separate and well-publicized policy hearing and issue a new ethnic broadcasting policy with enforceable targets for the availability of news and entertainment programming over the air and from other distribution platforms

C People will probably still be watching TV

- 74 Canadians began a love affair with audio-visual programming content half a century ago, and it is unlikely to fade away any time soon. Since 1968 Canadians have on average watched more than twenty hours of television per week (Figure 2).

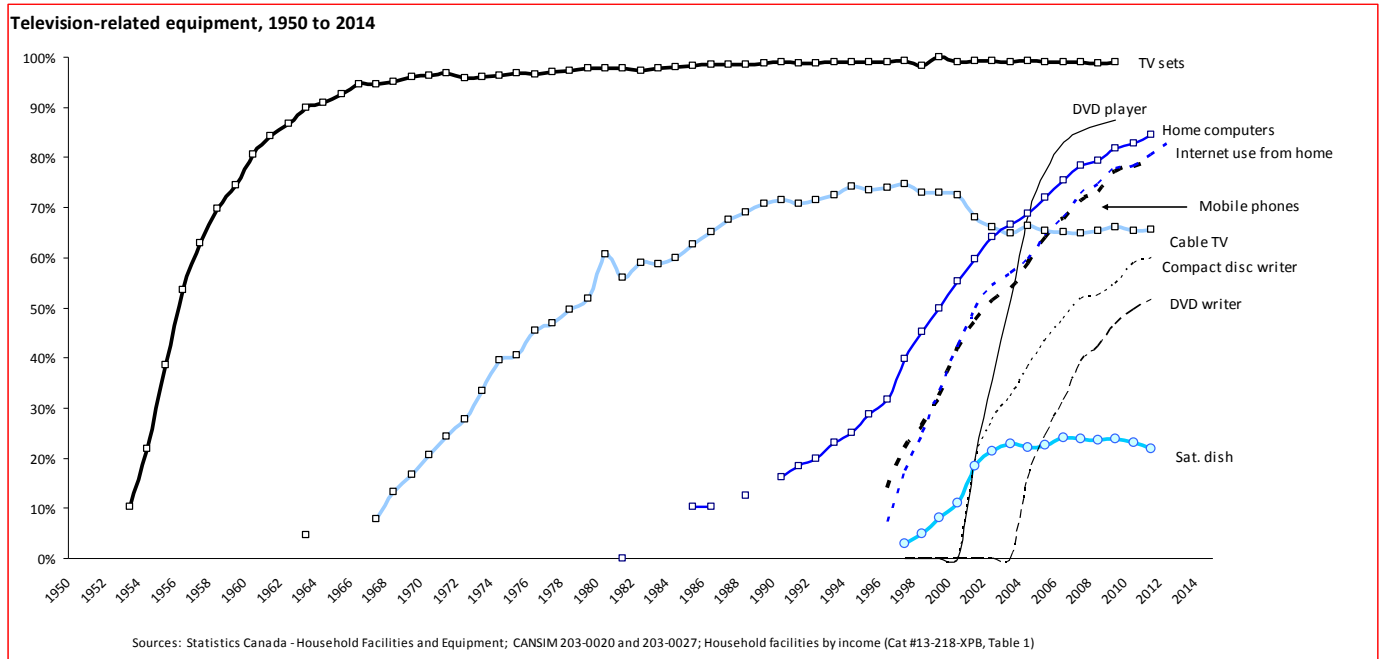
³⁰ Most recently, in the proceeding to renew the licences now held by Rogers for its OMNI ethnic over-the-air television stations.

Figure 2 Average hours / week spent with television, 1968-2012



75 The time Canadians spend watching or listening to Canadian television programming has not been affected by the introduction, from time to time, of new devices for accessing this content (Figure 3).

Figure 3 Television-related equipment, 1950-2014



D Innovative devices and content will generate new revenue

76 Finally, audiences’ ongoing love affairs with audio-visual content will encourage innovation in technological devices to distribute and access content and new ideas for attractive content that will draw audiences and generate income for distributors and programmers alike.

77 Short-term income could come from programming whose value lies in its immediacy, such as news and sports; long-term income from programming whose value lies in continued rebroadcasts, such as drama and documentaries.

78 For the Forum, these four sets of facts about Canadian television audiences – an aging population in which more people will have physical difficulties watching or hearing television, a more diverse and more multicultural society, and continual if not increasing interest in watching television – are relevant for the regulatory approach to television that emerges from this proceeding.

III Canadian television in 2014

79 BNoC 2014-190 presents eighty sets of questions about the future of Canada's television system for Canadians to answer. While describing the television system as "thriving", BNoC 2014-190 says "there may be risks to public policy objectives" if the CRTC does not change its current regulatory approach to the television system.³¹

80 BNoC 2014-190 describes the public policy objectives that may now be at risk in today's television system as follows:

- "Providing Canadians with a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and creativity"
- The system should be adaptable to changes in technology
- The programming should be affordable
- "Serving the needs and interests of Canadians. For example, the programming provided should:
 - o present information and analysis concerning Canada and other countries from a Canadian point of view;
 - o be accessible to people with disabilities; and
 - o reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples in society.
- "Supporting Canadian creators so that they can provide Canadians with varied and compelling creative content that is drawn from local, regional, national and international sources and that is available on a range of platforms."³²

³¹ *Ibid.*, at ¶32.

³² *Ibid.*, at ¶33.

- 81 BNoC 2014-190’s list of Parliament’s objectives for Canada’s broadcasting policy ignores Canadian control, Canadian content and employment opportunities – all objectives listed in the *Broadcasting Act*. The *Act* mandates that the broadcasting system “shall be effectively owned and controlled by Canadians”,³³ for example.
- 82 Parliament has also directed the broadcasting system to “safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada”.³⁴ The *Act* says the broadcasting system should address Canadians’ needs with respect to employment opportunities.³⁵ It calls on private networks and private programming undertakings to “contribute significantly to the creation and presentation of Canadian programming”, “to an extent consistent with the financial and other resources available to them”.³⁶
- 83 Even more specifically, Parliament required “each broadcasting undertaking” to
- ... make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;³⁷
- 84 By ignoring these provisions BNoC 2014-190 makes it more difficult for the public to understand and address the ramifications of proposals that affect the achievement of Parliament’s objectives in these areas.
- A TV system in BNoC 2014-190 ignores local, Indigenous and multicultural communities, and employment opportunities**
- 85 As for the ‘television system’ itself, BNoC 2014-190 describes the system in terms of nine general concepts:

³³ S. 3(1)(a).

³⁴ S. 3(1)(d)(i).

³⁵ S. 3(1)(d)(iv).

³⁶ S. 3(1)(s).

³⁷ S. 3(1)(f).

- Employment – the television system employs almost 60,000 people directly
- Programming services – a wide range of over 700 Canadian and non-Canadian services, operating in a number of languages and types of programming
- Distribution services – BDUs
- Audiences – millions of Canadian viewers on a variety of platforms.
- Viewing –stable in terms of viewing overall, and in terms of Canadian television programming
- Companies – includes “large, vertically integrated (VI) companies as well as smaller players”
- Revenue – “economically diverse, garnering revenues from different sources”, and
- Producers, and
- Licensed and exempt services – the latter including “[b]roadcasting services delivered over the Internet or on mobile devices”.³⁸

86 The *Broadcasting Act*, meanwhile, also refers specifically to

- Canadian children, women and men
- local communities, within regions and across the country
- Indigenous communities
- third-language and multicultural communities, and
- future employees (‘employment opportunities’ could refer to existing and future positions).

87 In our view, answering the questions in BNoC 2014-190 requires more context about the way in which Canada’s television system currently meets these objectives, than BNoC 2014-190 provides. Some components of Canada’s television system are being very well served by the CRTC’s regulatory approach to television; others are not.

88 In the remainder of this section, therefore, the Forum provides an overview of what we know about Canada’s television system in relation to Parliament’s broadcasting policy for Canada.

³⁸ BNoC 2014-190, at ¶¶12-16.

B Access to and content of Canadian television: more foreign content

1 Increased access to national and foreign programming services

89 Canadians can now access TV stations free over-the-air, if the antennae of their television sets (many households have more than one) are able to receive television stations in the local area. BNoC 2014-190 does not state how many people rely on over-the-air service to access Canada's television system, however.

90 Canadians who subscribe to BDUs can also access a wide range of Canadian and foreign radio and television signals. BNoC 2014-190 does not state how many services are available, however, or whether all Canadians in all parts of Canada have access to the same services. The CRTC's *2013 Communications Monitoring Report*, on the other hand, states that 744 television services are authorized to broadcast in Canada, of which 232 (31%) are foreign.

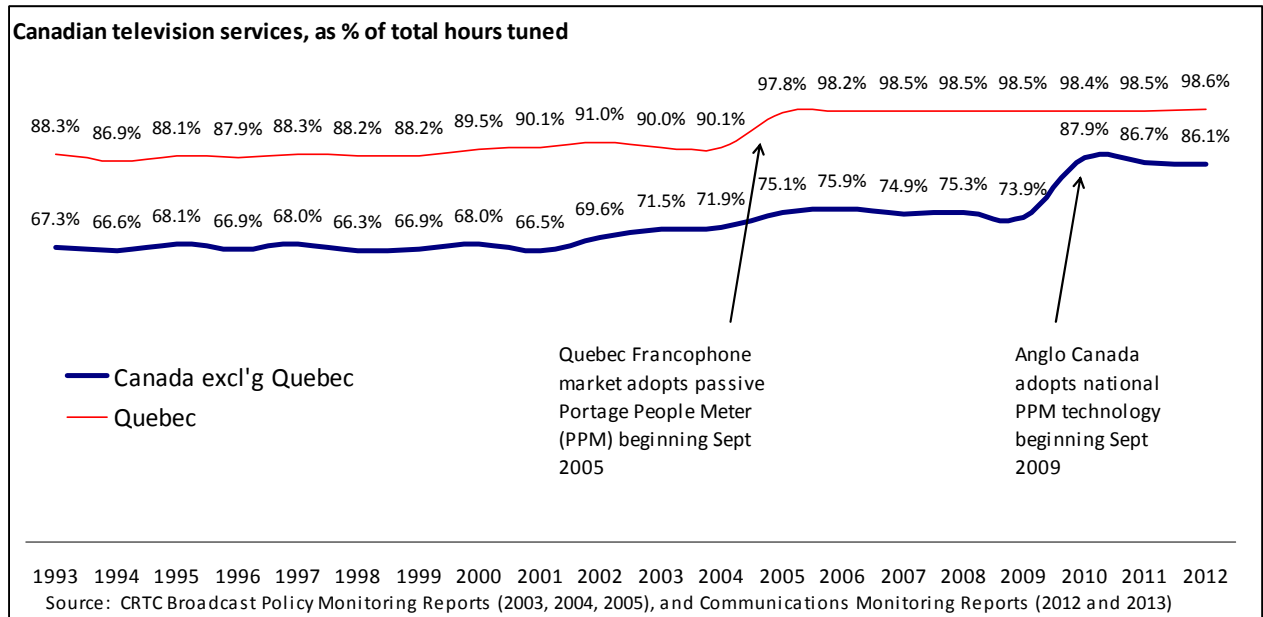
91 The basic package offered by Bell's FIBE TV service to people in Ottawa, meanwhile, includes 89 radio and television services (Appendix 4). Of these, 27 are over-the-air Canadian television services. Twenty-three are Canadian radio stations, and 28 are satellite-to-cable television services that are also discretionary television services. Ninety percent (90%) of the services were Canadian; five of FIBE TV's over-the-air Canadian television stations are local; five conventional American television stations are also included.

92 (BDU subscribers can obtain over 190 channels from Rogers' basic cable package,³⁹ but obtaining the list of television services provided on the basic service proved impossible, even through Rogers' online web chat service; see Appendix 19.)

93 Canadian television services receive a majority of Canadians' viewing time. Since 1993 the share of total viewing hours received by Canadian television services has grown to 86% in English-speaking Canada, and to almost 99% in Quebec (Figure 4).

³⁹ The Rogers website does not provide a list of channels in the basic package, but does provide a list of the 891 channels available in total using an HD converter.

Figure 4 Percent of viewing time spent with Canadian TV services



2 Little information about Canadians’ access to programming content

a Availability of Canadian and foreign television programming

94 The CRTC’s regulations currently require that 55% of private broadcasters’, and 60% of the CBC’s conventional television stations’ schedules be Canadian. Levels of Canadian content for individual pay and specialty services vary, and are set by condition of licence.

95 The CRTC has also developed policies to encourage the production and broadcast of certain types of programming. From 2000 to 2010 the CRTC’s 1999 television policy the CRTC required large broadcasters to broadcast an average of 8 hours/week of Canadian drama, music and dance, variety, long-form documentary programs, and non-news/non-sports regional programming, from 7 pm to 11 pm.⁴⁰ The CRTC dropped quantitative requirements for local newscasts, however.⁴¹

⁴⁰ BUILDING ON SUCCESS - A POLICY FRAMEWORK FOR CANADIAN TELEVISION, Public Notice CRTC 1999-97 (Ottawa, 11 June 1999), <http://www.crtc.gc.ca/eng/archive/1999/PB99-97.htm>, at ¶¶29-43.

⁴¹ *Ibid.*, at ¶44.

- 96 The 1999 policy made drama programs – dramatic and comedic television series, made-for-TV movies, theatrical films and other fictional, scripted programming – a priority because they are popular, but expensive to produce. Drama tends to attract 40% or more of Canadians’ viewing time, but relatively little is made in Canada about Canada because it is less expensive to buy American drama.
- 97 BNoC 2014-190 now proposes the elimination of Canadian content regulations and requirements for Canadian television services. The notice does not provide any figures about the level of Canadian programming hours now or previously available in Canada’s television broadcasting system.
- 98 Limited information about the broadcast of different types of Canadian programming is available from the CRTC, for the period from 1999 to 2011, for three private TV stations, from 7 pm to 11 pm.⁴²
- 99 From 1999 to 2010 the level of Canadian drama broadcast by the three television stations owned by Canada’s largest broadcasters decreased. Canadian drama initially made up almost a fifth (19.6%) of the hours broadcast in the peak viewing period from 7 pm to 11 pm (see Appendix 5). By 2011 Canadian drama made up 14.8% of the peak viewing period.
- 100 Overall, total hours of Canadian drama broadcast from 7 pm to 11 pm decreased by 24% between 1999 and 2011, for a total loss per year of 210 hours of programming.
- 101 In 2010 the CRTC replaced its hours-based priority-programming policy with a policy focussed on expenditures. Conditions of licence now require Canada’s largest broadcasters to spend 30% of the revenues from their over-the-air and specialty television service on Canadian programming.⁴³ They must also devote 5% of their revenues to Programs of National Interest (PNI programs), which include drama, long-form documentaries and the televising of certain national awards programs celebrating Canadian creative talent.⁴⁴
- 102 BNoC 2014-190 does not describe the impact of the CRTC’s expenditure-based policy on the availability of Canadian drama or other Canadian programming. Has it resulted, for example, in the same, more or fewer hours of Canadian program production?

⁴² The stations were CIII-TV Toronto, CFMT-TV Montréal and CFTO-TV Toronto, owned by Canada’s largest broadcasters.

⁴³ See e.g., Broadcasting Decision CRTC 2011-444.

⁴⁴ Broadcasting Regulatory Policy CRTC 2010-167 at ¶¶70-71.

- 103 On 17 June 2014 the Forum therefore applied to the Commission for permission to submit statistics about the programming broadcast by all Canadian television programming stations and services in November 1999 and November 2013, before the end of July 2014. This information is set out in approximately 400 separate television program logs, each consisting of thousands of lines of program details. Simply downloading this information from the CRTC's website to the Forum's computers took more than a day.
- 104 On 25 June 2014 the CRTC denied the Forum's application to place evidence about the programming actually available from Canadian television services on the public record. The Commission said that it had given interveners 7 months to develop their evidence, had provided 60 days instead of the normal 35 for public comment, and had extended the deadline to file comments about BNoC 2014-190 from 25 June 2014 to 27 June 2014:

Le Conseil note qu'il a lancé la conversation avec les Canadiens sur l'avenir de la télévision en octobre 2013 laissant plus de 7 mois aux intervenants pour formuler leurs preuves et points de vue sur les enjeux soulevés lors de ce processus. Le Conseil note également qu'il avait déjà prolongé la date de dépôt à 60 jours au lieu des 35 jours habituels, jusqu'au 25 juin 2014. De plus, veuillez noter que dans l'Avis de consultation 2014-190-2 publié le 23 juin 2014, le Conseil a prorogé la date limite pour les interventions au 27 juin 2014.

À la lumière de ce qui précède, le Conseil refuse votre demande.

- 105 Had the Commission asked – and it did not – the Forum would have explained that it was first established in November 2013, and was immediately faced with submitting comments regarding the CRTC's tangible benefits policy and the renewal of Rogers' television services. The latter proceeding only ended with the submission of final comments on 22 April 2014. The two-day gap between filing reply comments and the launch of the BNoC 2014-190 process on 24 April was insufficient to undertake a detailed analysis of 400 program logs.
- 106 The Forum also notes that the CRTC did not advise Canadians before it published BNoC 2014-190 that it would not provide any information about the level and type of programming broadcast by Canadian television services in Canada's television system. Given the significance of proposals to drop Canadian exhibition requirements, one would have expected the CRTC to undertake precisely this analysis, to provide a basis for understanding the impact of its proposal on Canada's television system. BNoC 2014-190 does not explain why it does not provide any information about the level and type of Canadian programming available in Canada's television system, however.

107 It is unclear why the CRTC no longer publishes information about the level of Canadian programming broadcast by Canada's television system. Australia's regulatory authority does. Its statistics identify the country's individual television broadcasters, and the hours of Australian programs they broadcast year, making it possible to compare the broadcasters' progress in increasing Australians' access to Australian programming. Why does the CRTC not provide this information for Canadians?

Recommendation 6 The CRTC should report annually on the hours of original and total Canadian and foreign programming broadcast by Canadian television services, by service and ownership group

108 The Forum nevertheless intends to proceed to analyze these data – approximately 400 television program logs, each consisting of thousands of lines of program details – and to place the results of its analysis on its website (www.frpc.net).

b Popularity of Canadian television programming

109 Canadian programming currently attracts 38.5% of the hours to private Canadian programming services in Canada excluding Quebec, but 69.3% of the hours tuned in Quebec.⁴⁵

110 Since the 1999/2000 broadcast year, the percentage of time spent watching Canadian programs, on Canadian television programming services, has decreased, except for French-language programs carried by French-language pay and specialty services (Appendix 6).

c Reflection of Canadian society and its values

111 The CRTC has not published any analyses of the degree to which Canada's television system reflects Canadian society since the late 1980s, when it commissioned content analyses about the portrayal of women in Canadian radio and television programs and advertising.⁴⁶

⁴⁵ 2013 *Communications Monitoring Report*, at 81.

⁴⁶ See, for example, the following studies undertaken by Erin Research for the CRTC:
The Portrayal of Gender in Canadian Television Programming, 1984-1988, cat. BC92-41/1990E (Minister of Supply and Services Canada: Ottawa, 1990)
The Portrayal of Gender in Canadian Television Advertising, 1984-1988, cat. BC92-50/1990E (Minister of Supply and Services Canada: Ottawa, 1990)

- 112 The absence of any empirical evidence makes it impossible for Canadians and Parliament to evaluate the degree to which the television system is meeting the Act's objectives regarding portrayal and reflection.

Recommendation 7 The CRTC should undertake decennial content analyses of the programming broadcast by Canadian television and radio services to evaluate the degree to which they are meeting the *Broadcasting Act's* objectives regarding the reflection and portrayal of Canada's men and women, multicultural communities and Indigenous peoples

C Role of regulation: 56% fewer regulations for private TV since 1973

- 113 While many of the questions in BNoC 2014-190 ask whether a new regulatory approach to television should reduce regulatory requirements, the notice provides no context for deregulation.

1 Level of deregulation largely unknown

- 114 In fact, the number of substantive regulations for over-the-air television has dropped by 56% since the 1970s – from 69 provisions in 1973, to 30 now (see Appendix 15). The reasons that the CRTC gave for deregulating included:

... to provide a more streamlined regulatory framework to meet the objectives of the *Broadcasting Act*⁴⁷

... its commitments to a more streamlined and supervisory regulatory framework⁴⁸

... [ensuring the industry has] more flexibility to provide Canadians with a wide range of Canadian programming of the highest possible quality....⁴⁹

The Portrayal of Gender in Canadian Radio Programming, 1984-1988, cat. BC92-48/1990E (Minister of Supply and Services Canada: Ottawa, 1990)

The Portrayal of Gender in Canadian Radio Advertising, 1984-1988, cat. BC92-47/1990E (Minister of Supply and Services Canada: Ottawa, 1990)

⁴⁷ CRTC (20 March 1985) *Public Notice CRTC 1985-58: Introducing Flexibility into the Content of Local Television Programming*, emphasis added.

⁴⁸ CRTC (22 September 1988) *Public Notice CRTC 1988-159: The Canadian Broadcast Standards Council*.

⁴⁹ *Public Notice CRTC 1990-95: Proposed Policy for Local Television Programming* (18 October 1990).

... [encouraging] high quality Canadian TV shows by eliminating unnecessary quantitative requirements and giving stations greater flexibility to pool their resources⁵⁰

... [affording] licensees as much flexibility as possible⁵¹

... [ensuring that its regulatory framework] be streamlined and limited to those regulatory elements necessary to achieve the objectives of the *Act*, and be flexible and responsive to technological developments and other changes in the broadcasting environment⁵²

[The principle that programming] that reflects the views and values of Canadians, strengthens cultural sovereignty and national identity, that is designed for a competitive Canadian marketplace and is positioned for success in foreign markets, will depend upon a flexible regulatory framework.⁵³

115 BNoC 2014-190 does not address the question of whether successive waves of deregulation achieved the *Act*'s objectives. Specifically, did they increase communities' ability to see and hear themselves in Canadian television, or to be reflected to others? Did they increase employment opportunities for Canadians in their television system? Did they give Canadians more hours of high-quality Canadian entertainment, including dramatic programs made in Canada, by Canadians, for Canadians? Perhaps – just perhaps – the time has come to re-introduce a measure of regulation, because deregulation does not appear to have worked. Or, change the system itself in such a way that the various elements are more likely to contribute to the achievements of the objectives of the *Act*.

116 The absence of context about the specific objectives of regulation and deregulation of Canada's television system leaves the impression that deregulation is as, if not more, effective than regulation in meeting Parliament's objectives for broadcasting.

⁵⁰ *News Release: Putting More High-quality Canadian Shows On The Air Is Key To New CRTC Policy On Local TV Programming*, (15 February 1991) p. 1.

⁵¹ *Public Notice CRTC 1992-28: New Flexibility with Regard to Canadian Program Expenditures by Canadian Television Stations*" (8 April 1992).

⁵² *Public Notice CRTC 1993-74, Structural Public Hearing*, (3 June 1993), p. 3.

⁵³ *CRTC, Fact Sheet: 1998 Canadian Television Policy Review*, (5 October 1998), p. 2.

2 Extent of exempted services in Canada’s television system is unknown

117 Very little information is available about the number of exempted television services that operate in part or in whole in Canada.

118 In particular, no information has been published about the financial position of programming and programming distribution services that operate in whole or in part within Canada and that use the Internet to reach Canadian audiences.

119 The lack of information about so-called New Media undertakings – not the Internet itself – makes it impossible to determine whether these services are able or unable to contribute to Parliament’s broadcasting objectives for Canada.

Recommendation 8 The CRTC should collect basic financial information about exempted television programming and distribution services, including total revenues, expenditures on Canadian programming, total expenditures and employment opportunities

D Ownership and control: 4 companies control Canada’s television system

1 Level of foreign ownership in Canadian television system is unknown

120 Canadian ownership and control of Canadian television distribution and programming services is specifically mandated by a *Direction to the CRTC (Ineligibility of Non-Canadians)*.⁵⁴ It directs the CRTC not to issue broadcasting licences to non-Canadians, and not to amend or renew broadcasting licences of non-Canadians.⁵⁵ It defines ‘non-Canadians’ as entities that are not Canadian; it defines ‘Canadians’ to include as Canadian citizens ordinarily resident in Canada, and corporations where 80% of the voting shares are held by Canadians, and whose chief executive officer and 80% of their directors are Canadian.⁵⁶

121 As of 2010 the CRTC was unable to describe the number and percentage of voting shares held by non-Canadians in Canadian broadcast licensees or in the Canadian broadcasting system,⁵⁷ or of the level of debt held by non-Canadians in Canadian broadcasting services.⁵⁸

54 SOR/97-192.

55 S. 2.

56 S. 1.

57 *Access to Information Act* A-2010-00011.

58 *Access to Information Act* A-2010-00010.

Recommendation 9 The CRTC should modify its data collection system to be able to determine the level of non-Canadian ownership for individual broadcasting licensees, and for the Canadian broadcasting system as a whole

2 Tenure, rather than quality, governs the system

122 The regulatory approach to television that the CRTC issues after this proceeding will apply to a television system that is fundamentally different from the one the CRTC faced for the first time in the late 1960s.

123 In 1968 the ‘newness’ of the new broadcasting legislation and the CRTC itself made it difficult to predict regulatory approaches. Licences, for example, were specifically limited in duration and could be rescinded by a new and unknown Commission – often leading to claims that broadcasting was a risky business because licences might be lost for the slightest regulatory infraction.

124 Today’s broadcasting system is essentially one of tenure. Even if regulatory non-compliance is widespread,⁵⁹ very few broadcasters have ever lost their licences due to regulatory non-compliance, and none has been a large broadcaster the size of Rogers, Shaw or Quebecor.

125 The CRTC also decided in 1978 that once licences were granted, their expiration did not automatically terminate licensees’ tenure, so to speak. It announced that it would not accept applications for licences that it had already granted:⁶⁰ this effectively shifted responsibility for finding the most qualified licensees from the CRTC, to broadcasters themselves, who located successors of whom they approved.⁶¹ Certainty for broadcasters came at the expense of audiences who might have benefited from innovative ideas from new broadcasters, excluded from local broadcasting by the accident of timing.

126 Having removed broadcasters’ fear that they might easily lose their licences, the CRTC used its policy-making power to seek improvements in broadcasters’ Canadian programming. Canada’s private television broadcasters have broadcast a wide range of Canadian programs, including popular and high-

⁵⁹ See e.g., M. Auer, “The CRTC’s enforcement of Canada’s Broadcasting Legislation: ‘Concern’, ‘Serious Concern’, and ‘Grave Concern’”, Vol. 8:3, *Canadian Journal of Law and Technology* (Nov. 2006), 115-152.

⁶⁰ *Proposed CRTC Procedures and Practices Relating to Broadcasting Matters*, Public Announcement (Ottawa, 25 July 1978) at 44-47.

⁶¹ While the CRTC was and is always free to deny broadcasters’ applications to transfer control or ownership to others, it does this so infrequently as to make denial a rarity.

quality dramas: *Less Than Kind, Call Me Fitz, Le Vertige, Orphan Black, Flashpoint, The Borgias, Blackstone, Yamaska, Vikings, Murdoch Mysteries* and *Corner Gas*, to name just a few. The perennial challenge for the CRTC has been to weigh broadcasters' desire to reward their shareholders, against the *Broadcasting Act's* desire for Canadian programming.

3 Control over resources

127 A second change involves the structure of Canada's television system. In 1968 65 companies controlled the country's 68 private television stations.⁶²

128 Today, four companies – BCE, Shaw, Rogers and Quebecor – dominate the system, taking in 82.8% of all revenues from conventional television, discretionary television service and distribution (Appendix 13).

Recommendation 10 Determinations about a new regulatory framework for Canadian television must require the four largest broadcasting companies in Canada – that controlled 83% of the television system's revenues in 2013 - to increase their support for and broadcast of Canadian programming.

E Employment opportunities: now 75% lower for programming services, than in 2006

129 Employment is one of the areas that is doing more poorly than others. Growth has been uneven within the regulated television industry as a whole. Where TV stations provided three-quarters (74.2%) of employment opportunities in 1968, cable and satellite companies provided 72% of these opportunities in 2013.

130 Parliament's encouragement of independent program production in the 1991 *Broadcasting Act* had the effect of encouraging private television programmers to reduce in-house program production, and to contract out non-news and non-sports programming. The federal government expects this trend to increase in Quebec.⁶³

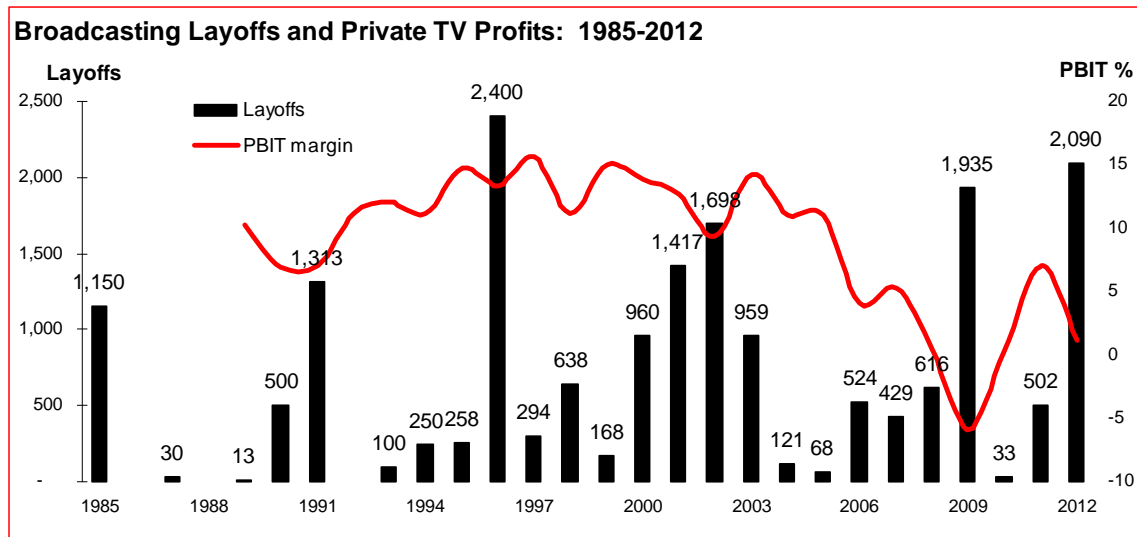
⁶² M. Auer, "Is bigger really better? TV and radio ownership policy under review" *Policy Options* (Sept. 2007) at 80; author's database.

⁶³ Service Canada, *Producers, Directors, Choreographers and Related Occupations*, "Unit Group 5131", "Motion picture and sound recording industries", http://www.servicecanada.gc.ca/eng/qc/job_futures/statistics/5131.shtml#stats:

Employment in the film and sound recording industry rose sharply in the second half of the 1990s. That increase may be explained mainly by the trend toward contracting out the production of television programs, sharp growth in foreign production of television films,

131 The absence until 2009 of conditions of licence requiring minimum levels of local news allowed television stations to reduce, and in some cases cancel, local newscasts. Since 2006, local television station employment has fallen by 24%, and more than 2,000 jobs have been lost. The losses happened across Canada, regardless of private television stations’ overall financial performance (Figure 5).⁶⁴

Figure 5 Broadcasting layoffs and private TV profits, 1985-2012



television series and films in Quebec, the popularity of Quebec films and the development of new market niches.

By creating programs that subsidize only television programs produced by private producers, governments have triggered a major move toward contracting out, which has resulted in a shift in employment from the broadcasting industry to the film and sound recording industry. The subcontracting trend had its greatest impact in the second half of the 1990s. In fact, employment in the film and sound recording industries increased less rapidly since 2000. Since a few new channels are likely to be created over the next few years, these industries should still benefit somewhat from the subcontracting trend, but less than before.

⁶⁴ In August 2013 Bell Media cut more than 100 jobs in Toronto and Montréal after its parent, BCE Inc., spent \$3.4 billion to acquire Astral; in May 2014 Bell Media’s 1st-quarter revenues increased by 40.7%, but Bell Media announced plans to cut up to 120 jobs in Toronto. Mahdhavi Acharya-Tom Yew, “Bell Media cutting 120 television jobs in Toronto”, thestar.com (*Toronto Star*, 23 June 2014), http://www.thestar.com/business/tech_news/2014/06/23/bell_media_cutting_120_television_jobs_in_toronto.print.html.

132 As the majority of private TV stations' programming expenditures are for local news and information, the majority of jobs lost would be in the area of news and information. Unfortunately, the CRTC does not report on employment by type of programming. Meanwhile, the federal government itself believes that the number of journalists in Quebec is likely to "decrease significantly in the next few years", because "media consolidation, mergers and convergence are expected to hold and even intensify".⁶⁵

133 Job losses at television stations were not countered by job gains at other television programming services: since 2006 Canadian discretionary television services hired 821 people; many discretionary services operate with very few staff. As discretionary services tend to be located in Toronto and Montréal, local communities that lose private television jobs do not benefit when jobs relocate elsewhere.

Recommendation 11 The CRTC should monitor and report on employment levels in Canada's television system, by occupation and source of employment (within regulated broadcasting services, and if possible, in the independent production sector on an aggregated level)

F A new regulatory approach to television must be based on Parliament's policy objectives and the resources of today's television system

134 These changes in the structure of Canada's television system which we have outlined above are material to the CRTC's determinations in this proceeding, because of the subtle but powerful role that memory plays in decision-making.

135 A recent article explained that American political and regulatory institutions contributed to the 2008-2009 "financial meltdown" because they misperceived the state of the financial industry. Although financial innovation and investments had been stifled by overregulation in the 1960s and 1970s, deregulation had corrected those problems by the end of the 1980s. Unfortunately, deregulation continued into the 1990s and early 2000s with horrific consequences for the world economy. Decision-makers continued to

⁶⁵ Service Canada, "Journalists", Job Futures Quebec, http://www.servicecanada.gc.ca/eng/qc/job_futures/statistics/5123.shtml.

deregulate because they viewed the market as it had been – not as it actually was by the 2000s.⁶⁶

- 136 The television system that the CRTC now regulates is fundamentally different from what it was in 1968. The regulatory approach to television that emerges from this proceeding must determine how resources in the system are to be allocated to achieve Parliament’s objectives in light of the fact that BDUs control the majority of the television system’s revenues and profits, and four companies dominate the system.
- 137 Today’s television system is also different from that of 1968 for one other important reason – the creation of additional sources of funding for Canadian programming by the Commission, private broadcasters and different levels of government. Instruments for financial support include special instruments such as the Canadian Media Fund (CMF) and provincial and federal tax credits.
- 138 The challenge for the Commission, broadcasters and other stakeholders in the television system is that these support mechanisms can change without warning. In June 2014 a coalition of professionals in Quebec’s audio-visual industry protested that province’s decision to cut provincial tax credits for film and television production. They noted that audio-visual television “production is very mobile Skilled talent will go where the jobs are and will be very difficult to recover once lost.”⁶⁷
- 139 How, then, should Canada’s television system develop for the next decade?

⁶⁶ Jack H. Knott, “The president, congress, and the financial crisis: ideology and moral hazard in economic governance”, Vol. 42:1 *Presidential Studies Quarterly* (Mar. 2012), at 81.

⁶⁷ Canada News Wire, “The film, television and interactive media industries mobilized in response to cuts to Quebec tax credits” (Montréal, 19 June 2014), <http://www.newswire.ca/en/story/1375819/the-film-television-and-interactive-media-industries-mobilized-in-response-to-cuts-to-quebec-tax-credits>.

IV Proposals for Canada’s television system in 2025: better access + better content = more choice

140 This section sets out the Forum’s response to a number of issues raised by BNoC 2014-190 in its questions.

141 Answers to the detailed questions in BNoC 2014-190 are set out in Appendix 1; this section discusses a number of key issues in greater detail.

142 Our discussion begins with issues related to Canadians’ access to their television system, and ends with issues about the programming to be made available within the system.

A The future of Canadians’ access to content in their television system – more choices

143 BNoC 2014-190’s proposals for distribution services will affect Canadians’ choices for accessing Canadian and foreign television services.

1 Maintaining and increasing choices for accessing television in Canada

a Continue over-the-air television distribution

144 BNoC 2014-190 asks whether

- regulatory intervention is required to maintain access to local television stations
- compelling reasons exists to maintain and support over-the-air transmission, and whether
- the discontinuation of over-the-air transmission would permit local television stations to allocate more resources to programming (Q24).

145 Our short answers are yes, yes and no. Our argument below explains why.

146 Our discussion of the discontinuation of over-the-air transmitters begins by noting that although the *Broadcasting Act* regulates “any transmission of programs ... by radio waves or other means of telecommunication for reception

by the public”,⁶⁸ it does not expressly require television stations to distribute their signals using over-the-air transmitters.

147 Yet conventional television programming services have always distributed their services via over-the-air transmitters. Their control of their transmitters enabled broadcasters to maintain control over their broadcasts. In fact, the CRTC only required TV stations to own and control their transmission equipment in 1992.⁶⁹

148 BDUs in Canada have also distributed Canadian television stations’ signals, since the launch of the first cable system in southern Ontario in the late 1940s. As BDUs initially captured TV signals just after TV stations broadcast them, BDUs were rebroadcasting TV signals even if the rebroadcast seemed or was actually simultaneous with the broadcast.

149 Early on the CRTC questioned the BDU practice of using TV stations’ signals without compensating the TV stations for their use.⁷⁰ At the time this question arose, however, BDUs were viewed as an infant industry that needed to reinvest its income into cable infrastructure.

150 The question of BDUs’ payment for TV stations’ signals arose again in the early 2000s when BDUs did not own many TV stations, and when the advertising revenues on which TV stations rely decreased. BDUs loudly denounced calls for compensation; broadcasters closed several TV stations, and reduced local programming, triggering a public relations campaign known as ‘the TV wars’.

151 In 2009 the CRTC dealt with TV stations’ decreasing revenues by proposing to give them the right to deny BDUs the use of their TV signals if BDUs did not compensate them for using the signals.

152 In 2012 the Supreme Court concluded that a retransmission-consent regime would be illegal because of provisions of Canada’s *Copyright Act*. First, that *Act* does not give broadcasters the “right to authorize or prohibit a BDU from

68 S. 2(1), “broadcasting”.

69 Public Notice CRTC 1992-68.

70 *Cable Broadcasting: “A Single System”*, Policy Statement on Cable (Ottawa, 16 July 1971) at 21:

..

Stated simply the fundamental relationship is: television stations are the suppliers, and cable television systems are the users.

Thus the basic principle involved is: one should pay for what he uses to operate his business.

[underlining in the original text]

retransmitting” their signals.⁷¹ Second, it provides that local signals’ copyright is not infringed when BDUs act as retransmitters and retransmit local signals.⁷²

- 153 The Forum opposes the discontinuation of over-the-air transmission of television stations’ programming, for several reasons.
- 154 First, we believe that discontinuing over-the-air transmission could be viewed as an attempt to circumvent the 2012 Supreme Court’s decision on retransmission fees. If over-the-air transmission ends, BDUs would no longer be ‘retransmitting’ TV stations, but transmitting them. TV stations would become free to charge BDUs fees to carry their stations.
- 155 The CRTC should not mandate the discontinuation of over-the-air transmitters if the main effect would be to circumvent the *Copyright Act*. Even if this were not the case, questions about the CRTC’s involvement would come up. If BDUs no longer rebroadcast, but transmit, their signals, could over-the-air TV stations negotiate and charge a subscriber fee, like pay and specialty television services? Would the CRTC have the legal jurisdiction to regulate this fee, if it became excessive? What impact would a new retransmission regime have on smaller BDUs that do not own TV stations?
- 156 Perhaps most importantly of all, if all or some of these fees are passed on to subscribers, will Canadians enjoy more or less ‘choice’ than they now have, given that they will now be paying for signals they previously obtained free of charge?
- 157 Second, although BNoC 2014-190 identifies ‘costs’ as the reason for the discontinuation of over-the-air transmitters, it has not identified the costs of over-the-air transmission. In 2013 private conventional TV stations spent \$80 million, or 4.3% of their total operating expenditures,⁷³ on ‘technical functions in 2013. Do all \$80 million represent transmission costs? We do not know, making it impossible to weigh the impact of allocating transmission costs, to programming.
- 158 Third, BNoC 2014-190 provides no information about the numbers of Canadians or Canadian households that the discontinuation of over-the-air transmitters could affect, because those households do not now want, cannot obtain or cannot afford BDU service.

⁷¹ Retransmission Reference, at ¶150 [per Rothstein J.].

⁷² *Ibid.*, at ¶¶54-56.

⁷³ CRTC, *Private conventional television: Statistical and Financial Summaries, 2009-2013*.

- 159 In 2013 it was estimated that 19.3% of homes in the United States relied on over-the-air television signals, a slight increase from the previous year.⁷⁴ GfK Media & Entertainment, which provided the estimate, concluded that “over-the-air broadcasting remains an important distribution platform of TV programming”. Among households that had dropped cable or satellite service, the majority cited the cost of service, or inadequate value for cost as their reason.
- 160 Reliable information about households in Canada that do and do not subscribe to BDUs is no longer published by the CRTC. It stopped reporting information about BDU household penetration, homes passed and percentage take-up rates in the early 2000s. The information that the CRTC does report may also have gaps; Statistics Canada reported in 2005 that the CRTC’s data do not include information about small terrestrial BDUs, which could have as many as one million subscribers.⁷⁵
- 161 Statistics Canada’s information suggests that at least 20% of households in Canada may not be able to obtain, may not be able to afford, or may not want to subscribe to cable or DTH (Figure 6). The data are problematic for several reasons, however;⁷⁶ very little information is available about households’ access to BDU service in rural communities.

⁷⁴ Dennis Wharton, National Association of Broadcasters, “Over-the-air Renaissance Continues as Pay TV Cord-Cutting Rises” (21 June 2013) <<http://www.nab.org/documents/newsroom/pressRelease.asp?id=3168>>, citing GfK Media & Entertainment.

⁷⁵ <http://www.crtc.gc.ca/eng/publications/reports/radio/cmri.htm>.

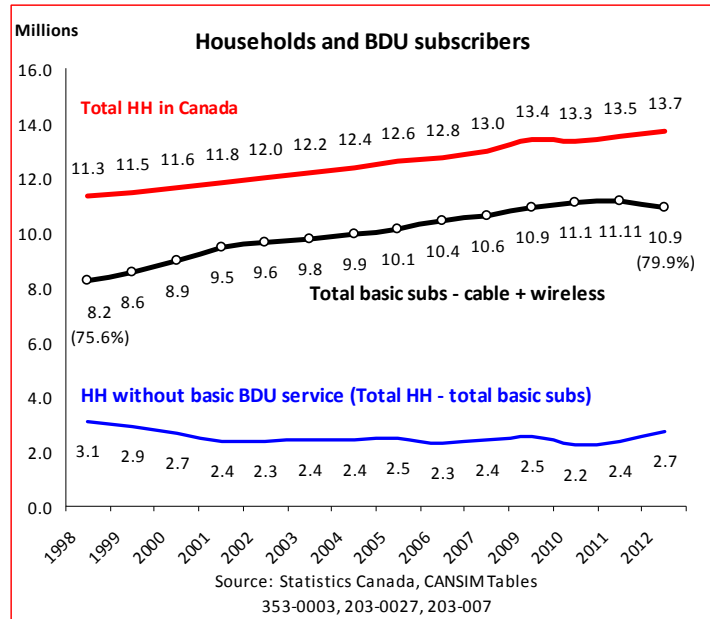
⁷⁶ CANSIM 353-0003 reports on total wireless and basic subscribers from 1998 to 2012. It also reports on total households in the area that cable is licensed to serve – but not wireless, and the household data in any event were no longer collected from 2011 on. Household data collected for other Statistics Canada surveys may not be valid for use in results about cable and satellite distribution.

Meanwhile, the CANSIM 353-0003 data for total households for cable television in 2011 estimates that 15.5 million households were in the area served by cable – and that there were only 11.1 million subscribers for both wireless and cable: this suggests that just 71% of possible households took cable and/or DTH.

Finally, the data do not address the multi-set household issue; a number of households have more than one television set. We do not know how many of these sets rely on BDU or over-the-air service.

Figure 6 Households and BDU subscriptions, 1998-2012

162 The problematic data mean that we do not know how many people would be affected by the discontinuation of over-the-air transmitters. Does the CRTC know this figure? We do not know. But not knowing how many people would be affected by turning off over-the-air transmitters makes it impossible to evaluate the impact of this change on the Canadian public. Businesses, as well as individual households could be affected: a Canadian company recently announced plans to sell its device, the Tablo, which has “digital recording capabilities and electronic-guide functionality for those who rely on over-the-air signals for their TV.”⁷⁷ Turning off OTA transmitters may also turn off Tablo.



163 Fourth, BNoC 2014-190 does not explain why broadcasters would allocate money they now spend on transmission, to programming. A number of TV stations, the majority owned by the four largest private broadcasters in Canada, have received funding from the Local Programming Improvement Fund (LPIF) - \$40 million in 2012/13. LPIF funding ends in August 2014. TV stations might allocate some of the \$80 million they now spend on technical functions to local programming to make up for the loss of LPIF funding – but will they do so without a regulatory requirement?

164 Fifth, would the savings from discontinuing over-the-air transmitters outweigh its costs? Suppose that 10% of the 2.7 million households now estimated as not having BDU service – in other words, just 270,000 more households – decided to subscribe to BDUs for \$30 per month. The new subscribers would raise total

⁷⁷ Derek Abma, “Ottawa company brings PVR capability to over-the-air TV” *The Wire Report* (20 June 2014), <http://www.thewirereport.ca/news/2014/06/20/ottawa-company-brings-pvr-capability-to-over-the-air-tv/28446>. The company’s name is Nuvyyo Inc.

BDU subscription revenues by \$97.2 million (Table 1).⁷⁸ In other words, discontinuing over-the-air transmission could save up to \$80 million of expenditures for TV stations, but cost Canadian households \$97 million.

Table 1 Hypothetical revenue if current non-subscribers subscribed to BDU service

HH without BDU service % and number assumed to subscribe if over-the-air transmitters turned off	2,700,000	12 x monthly fee @ \$30.00
10%	270,000	\$97,200,000
20%	540,000	\$194,400,000
30%	810,000	\$291,600,000
40%	1,080,000	\$388,800,000
50%	1,350,000	\$486,000,000

- 165 Sixth, even if the CRTC enforced TV stations’ use of transmission monies for programming, would those benefits outweigh the costs for Canadians? In 2013 allocating private TV stations’ entire \$80 million operating budget for technical functions to programming would have raised total Canadian programming expenditures by only 13%.⁷⁹
- 166 Finally, even if total Canadian programming expenditures increased by 13%, it is not clear whether BDUs might levy charges that would reduce this figure. BNoC 2014-190 notes that in Phases 1 and 2 of the *Let’s Talk TV* consultation some parties had found that BDUs were imposing “additional costs to purchase different receivers or decoders” and “when broadband cap limits are exceeded.”⁸⁰ Suppose some or all BDUs charge TV stations that they do not own a fee when TV stations deliver their signals to the BDUs’ headends?⁸¹ BDUs would then benefit from new revenues gained by requiring households to subscribe to BDUs to receive local TV signals, and from new revenues from TV stations’ signal delivery.
- 167 The absence of clear and significant benefits for terminating over-the-air TV transmission leads us to wonder whether this proposal is being considered

⁷⁸ Additional revenues might be generated by connection fees.

⁷⁹ According to the CRTC’s statistical and financial summaries for conventional private television, private TV stations spent \$605.4 million on Canadian programming in 2013.

⁸⁰ BNoC 2014-190, at ¶129.

⁸¹ Which may be the case for some or all pay and specialty services.

because of other financial benefits it might generate. The 700 MHz spectrum auction generated \$5.3 billion in new income for Canada’s federal government.⁸² The United States Federal Communications Commission is currently encouraging American television stations to relinquish their digital spectrum.⁸³ If Canadian television stations were required to end over-the-air transmission, would it become part of a new spectrum auction? If so, would potential income to the federal government several billion dollars of revenues from a spectrum auction outweigh the loss of choice for individual Canadian households?

168 Ending over-the-air transmission essentially forces Canadian audiences into a walled garden controlled by BDUs. It does not increase Canadians’ choice, but reduces it.

169 For the Forum, the detrimental impact of, and unanswered questions about, ending over-the-air transmission completely outweigh the hypothetical benefit of increased funding for Canadian programming.

Recommendation 12 If only 270,000 more households subscribed to BDUs because over-the-air transmission is discontinued, and basic cable rates averaged \$30/month, BDU subscriber revenue would increase by \$97 million; meanwhile allocating 100% of all ‘technical’ expenses to local programming would increase local expenditures by a maximum of \$80 million. As the costs to Canadians outweigh the benefits, the CRTC should retain over-the-air TV transmission

170 The Forum agrees that local TV stations have not regained the financial strength they enjoyed from the 1970s to the 1990s.

171 The reasons remain a mystery because the CRTC refuses to publish high-level financial information about individual television stations, even while it publishes precisely the same type of information for individual discretionary television

⁸² Industry Canada, “700 MHz Spectrum Auction-Process and Results” Backgrounder, Date Modified: 2014-02-19 , <http://news.gc.ca/web/article-en.do?nid=816869>.

⁸³ Ted Johnson, “FCC Chairman Tom Wheeler Pitches Broadcasters on ‘Once-In-a-Lifetime’ Chance to Auction Spectrum”, *Variety* (9 January 2014) <http://variety.com/2014/tv/news/fcc-chairman-tom-wheeler-pitches-broadcasters-on-once-in-a-lifetime-chance-to-auction-spectrum-1201040801/>:

FCC chairman Tom Wheeler said Thursday that TV stations have a “once in a lifetime” opportunity to sell off their spectrum as part of plans to auction off airwaves for wireless use.

Wheeler’s hard-sell remarks at the Computer History Museum in Mountain View, Calif., come as broadcasters express reservations about participating in the incentive auction — at least until they have more information on how it will work. The incentive auction, to be held in mid-2015, is intended to free up spectrum that will then be auctioned off for wireless use. But the changes are expected to remake the channel lineup in many markets, as stations that participate would go out of business or share their spectrum with other license holders.

services. Are local advertising revenues really inadequate to support local television programming? We do not know – and neither did the CRTC when it was developing its policies regarding local television programming.⁸⁴

- 172 Or are there other explanations for the level of local advertising expenditures being reported by Canada’s private TV stations? Are some local advertising sales being reported as part of stations’ national advertising sales? Do some local television stations put local advertisers on stand-by, so to speak – by forcing their local customers to wait until the stations can assure themselves that no national advertisers might want to purchase specific local programs?
- 173 Despite the uncertainty that surrounds local television the Forum supports the creation of a modified local programming fund, to support non-news and non-sports programming, as long as it were made in the context of a rate-regulated, low-cost all-Canadian basic BDU package.
- 174 In particular, a new local programming fund should be specifically designed to ensure that local television stations produce and broadcast original local news and non-news programming – relying on local production resources, rather than rebroadcasts of national or regional television programming services, for example.
- 175 To ensure that local production resources are strengthened, the Fund should monitor and report each year by city on numbers of original news stories, reporters and news bureaux.⁸⁵ The CRTC itself does not publish this information, does not collect information about the numbers of full-time or equivalent journalists employed by commercial television stations,⁸⁶ and in 2010 did not have any information about the number of radio or TV news bureaux in Canada.⁸⁷
- 176 That said, we oppose the Fund’s being governed by the broadcasters that receive these monies. In 2010, for example, the Board of Directors of Canadian Local

⁸⁴ In September 2010 the CRTC disclosed that it had not conducted any studies on the profitability of local news and local programming for local television stations between 1999 and September 2010. CRTC response to *Access to Information Act* A-2010-00049 at 1.

⁸⁵ These indicators were set out in Broadcasting Regulatory Policy CRTC 2008-100 the LPIF was supposed to report on these indicators; it did not publish such reports.

⁸⁶ CRTC response to *Access to Information Act* A-2010-00016, as amended by correspondence with the Office of the Information Commissioner on 6 October 2010.

⁸⁷ CRTC response to *Access to Information Act* A-2010-00014.

Program Improvement Fund Inc. consisted of RNC Média’s Executive Chairman, CTV Globemedia’s Vice-President Regulatory Affairs, CBC’s Senior Director Regulatory Affairs, the Pattison Group’s President and a BDU nominee.⁸⁸ A board that is designed to strengthen local programming should include representatives of the public intended to be served by this local programming, and those directly involved in local program production – station employees.

Recommendation 13 Create a modified local programming fund to support local non-news programming, with governance divided between broadcasters, the public and employees

***b* Mandate an all-Canadian basic tier**

- 177 BNoC 2014-190 asks whether BDUs should provide an ‘all-Canadian’ basic tier of service, an idea that the CRTC has considered and rejected by the CRTC several times since 2000.⁸⁹
- 178 The Forum supports an all-Canadian basic BDU service (ACB) – although we note that the CBC announcement on 26 June 2014 of its plans to shift from a broadcast-based service to an Internet-based service within six years is likely to have ramifications for the ACB.⁹⁰

⁸⁸ CRTC response to *Access to Information Act* request A-2011-00039, at E-6.

⁸⁹ In *Call for comments on the channel placement of services whose distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act*, Broadcasting Public Notice CRTC 2002-49 (Ottawa, 16 August 2002) at ¶12 the CRTC wrote that,

... the introduction of the foundation tier concept would be disruptive for consumers and would have major technical and operational implications for distributors and programming service providers. Furthermore, it would represent a major change to the regulatory framework relating to basic service. The Commission is, therefore, of the view that the foundation tier is neither practical nor appropriate.

In *Rate deregulation for cable systems*, Decision CRTC 2001-630 (Ottawa, 4 October 2001), <http://www.crtc.gc.ca/eng/archive/2001/DB2001-630.htm>, at ¶14, Vision TV proposed a “foundation tier” consisting of “a nucleus of public interest services, provided at a reasonable cost, with other groups of discretionary offerings packaged and priced separately”, but the CRTC did not address the proposal.

In 2008 the CRTC dismissed the idea of an all-Canadian basic; it said in *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Regulatory Policy CRTC 2008-100, at ¶139 that : “ ... BDU competition will be sufficient to ensure that rates are affordable.”

⁹⁰ CBC, “CBC to cut back supper-hour news, in-house productions: Corporation will have up to 1,500 fewer employees by 2020” (26 June 2014, 11:00 AM ET) , <http://www.cbc.ca/news/canada/cbc-to-cut-back-supper-hour-news-in-house-productions-1.2688409>.

- 179 While today’s BDUs, and the Internet, can make thousands of TV channels available to subscribers, the CRTC’s BDU regulations do not limit the size of basic BDU service – they simply specify the channels that BDUs must at least include in the basic service.
- 180 There are no limits to the number of services in BDUs’ basic service because when the CRTC introduced its first major policy for cable television in 1975, cable systems were unable to carry more than a dozen or so channels. These were easily filled with local English-language and French-language services, and a few cross-border television stations (CBS, NBC, ABC and PBS, known as US 3+1). The CRTC therefore ensured that local Canadian services were given priority when BDUs selected the channels for their basic service.
- 181 The CRTC’s decision to stop regulating basic BDU rates as of 2002, and the absence of limits to the number of channels on basic BDU service enabled BDUs to add channels to the basic package, and increase the rates paid by subscribers on the basis that they were now receiving more services.
- 182 As Appendix 4 shows, the basic service now includes dozens of channels, including a number of sports channels. (*Consumer Choice in Linear Television Services* notes that “10 out of 11 sports-themed cable networks [known as specialty services in Canada] generate 65% or more of their subscribers from carriage in basic and extended basic tiers, rather than sports theme packs or stand-alone options.”⁹¹)
- 183 The Forum strongly supports the all-Canadian basic (ACB) proposals, if three qualifications are met.
- 184 First, the ACB’s rate must be regulated, unless it is offered free of charge, or for a fee that consists of the rates for ACB mandatory 9(1)(h) services whose rates are regulated by the CRTC. The CRTC previously considered free access to essential broadcast services distributed by BDUs, in 1971:

If cable and broadcasting are to exist in harmony and some form of equity between them is established, then essential broadcast services would be provided free to almost all Canadians. Cable television would be an optional means of receiving additional

⁹¹ David Keeble, (Ottawa, 8 April 2014) at 7, citing statistics from Paul Kagan, but not clarifying whether they apply jointly or separately to Canada and the United States.

programming which would have to be strong in itself in order to contribute to programming.⁹²

- 185 We note in passing that adopting the FIBE TV basic service tier would mean the removal of 79% of the tier's services from basic – if the CRTC does not regulate the basic rate, would a FIBE TV ACB cost 79% less than the current FIBE TV basic service (in other words, \$13.58, or 79% less than the \$64.90 fee now charged).
- 186 Second, BDUs must affirm on their annual returns that they received no financial or other remuneration for their carriage of these services.
- 187 Third, the services on the ACB must include ethnic and Indigenous services that broadcast over-the-air, if the location served by a BDU does not already have a local ethnic or Indigenous television service. An unknown number of households rely on BDUs' carriage of local radio stations to improve signal reception; the CRTC should determine the impact on those households if radio stations are not included in the ACB. The ACB services must also include the closest local television stations, for communities that do not have their own local television stations.
- 188 The ACB might also include non-local television programming services if subscribers are not charged for these services, and if they do not solicit local advertising. We note that in 1987, Rogers guaranteed carriage of all services offered free of charge to BDUs and BDU subscribers.⁹³
- 189 Finally, all-Canadian basic BDU services must be provided in high-definition. Otherwise the ACB risks becoming a perpetual second-class service, used primarily as a marketing device to upsell subscribers to clearer and more expensive discretionary services.
- 190 To summarize, the Forum supports an ACB if its services include

⁹² *The Integration of Cable Television in the Canadian Broadcasting System*, Public Announcement, Statement of the CRTC in preparation for the public hearing to be held beginning April 26, 1971 in Montréal at the Sheraton-Mt. Royal Hotel (Ottawa, 26 February 1971) at 22

⁹³ *Introductory statement to decisions CRTC 87-895 to 887-906: Canadian specialty and pay television services*, Public Notice CRTC 1987-260 (Ottawa, 30 November 1987) at 29:

In cases of services licensed only for distribution on the basic service, based exclusively on advertising revenue or publicly funded, with no charge to cable or its subscribers, we will carry all that are made available to us. We guarantee access to such CRTC licensed services.

(President, Rogers Cablesystems Inc.; CRTC public hearing, May 1987).

- Include the nearest public and private conventional television services, in both official languages
- Include regional conventional television services, if no local conventional television services are available
- Provide access to ethnic over-the-air television services to communities that do not have ethnic over-the-air television services
- Include existing and future mandatory or 9(1)(h) programming services, whose subscriber fees would be approved (but not authorized) by the Commission⁹⁴
- Include existing and future community television programming services
- Be available free, or at a charge limited to fees declared to be reasonable by the CRTC, and
- Continue to make channel capacity available for new local television services as these are licensed by the CRTC.

Recommendation 14 The CRTC should mandate the provision of an all-Canadian basic tier, at no charge, or for CRTC-approved subscriber rates

***c* Affordability**

191 BNoC 2014-190 notes that parties complained in Phases 1 and 2 of the *Let's Talk TV* consultation about “arbitrary price increases and additional fees imposed by service providers, such as fees for paper bills, as well as other service charges.”⁹⁵ It then asks whether measures are “needed to promote a more dynamic market for BDUs?”, and suggests exempting small BDUs from licensing if they operate in locations already served by larger BDUs (Q74 and Q75).

⁹⁴ In other words, the CRTC would accept invitations from P&Sp services to issue ‘declarations’ that the rates they are proposing are reasonable – to forestall prolonged negotiations between large BDUs and independent programming services, and to maximize Canadians’ prompt access to a wide variety of television services as part of the basic tier.

⁹⁵ BNoC 2014-190, at ¶132.

- 192 While the 1968 *Broadcasting Act* did not mention BDU rates, the 1991 *Broadcasting Act* specifically requires the rates charged by BDUs to deliver programming services to be affordable.⁹⁶
- 193 The CRTC regulated basic cable rates from 1968 to 1990 without an express direction from Parliament, and then continued to regulate the basic rates charged by terrestrial BDUs like cable, to 2002 when it discontinued basic rate regulation. Rates for basic Direct-to-Home (DTH) services, two of which were licensed in 1997, were never regulated.⁹⁷
- 194 Beginning in the 1990s the CRTC began to exempt a number of BDU services from regulation, usually because they were fairly small. In 1997 the CRTC also decided to deregulate basic BDU service rates. It anticipated that competition between terrestrial BDUs and the two new DTH BDU services would be as effective as rate regulation in restraining price increases.⁹⁸ The CRTC retained the discretion to revisit this decision,⁹⁹ however.
- 195 BNoC 2014-190 provides little information about the affordability of basic BDU service, the degree to which the BDU sector is competitive, or the number of

⁹⁶ S. 3(1)(t)(ii): “distribution undertakings ... should provide efficient delivery of programming at affordable rates”

⁹⁷ Broadcasting Decision CRTC 97-38 (Ottawa, 31 January 1997) licensed Shaw’s application for the national DTH Homestar satellite distribution service.

⁹⁸ *Ibid.*, at ¶¶22 and 46:

22. In Public Notice CRTC 1996-69, the Commission proposed not to regulate the rates of new distribution undertakings entering into competition with existing undertakings. Having taken into account the relevant written and oral comments in this proceeding, the Commission remains of the view that it should not regulate the subscriber fees of new entrants. It considers that to do so would not be in keeping with the objectives of encouraging increased reliance on market forces in the provision of services and ensuring fair and sustainable competition in the delivery of communications services to the home.

...

46. ... The Commission's view is that new competitors, whether DTH, wireless or wireline, will be able to easily enter the market, so that, as soon as the cable operator raises its rates above competitive levels, the competitor(s) will enter (or re-enter) the market and thus pressure the cable operator to reduce its rates.”

⁹⁹ *NEW REGULATORY FRAMEWORK FOR BROADCASTING DISTRIBUTION UNDERTAKINGS*, Public Notice CRTC 1997-25 (Ottawa, 11 March 1997), at ¶28:

A licensee would become fee deregulated 60 days following provision to the Commission of appropriate documentation verifying that the two-pronged test has been met, and that subscribers have been notified of the licensee's proposal to be deregulated. The Commission would retain the discretion to disallow or suspend such deregulation pending the receipt of additional information, the completion of a public hearing into the matter, or both if deemed necessary by the Commission.

small non-vertically integrated BDUs that are now in operation. This may be because the CRTC stopped collecting and publishing statistics about small BDU systems in the 1990s, and about the average price of basic BDU service in 2005 (see Appendix 8). The CRTC also stopped publishing statistics about the percentage of households with access to BDU service and that subscribe to BDU service. Had these data been available they would have allowed parties to monitor the effectiveness of rate deregulation on the affordability of basic rates, and would have permitted the relationship between BDU penetration and subscription levels and BDU rates to be examined empirically.

- 196 Some limited information is available for different locations in Canada, however. BDU rates were deregulated in Ottawa in the summer of 2002. Between 2002 and 2013, the rate for basic cable service increased by 112.6%. To put this into perspective, the price charged for a litre of gas in Ottawa increased by 105.2% over the same period. How have BDU basic rates changed in other parts of Canada, or in rural compared to urban communities?

Recommendation 15 The CRTC must resume the collection and publication of basic rate information for BDU services, along with information such as penetration and subscription levels

- 197 Given the context set out above, it is not clear how many small BDUs would launch in areas already served by Canada’s largest BDUs, whether the prices charged by small BDUs would have an effect of larger BDUs’ prices, or how long competition would have to exist for large BDU rates to decrease.
- 198 We note that while Parliament also requires private networks and programming undertakings – including BDUs – to “be responsive to the evolving demands of the public”,¹⁰⁰ BDU rates have increased many times above the rate of inflation, suggesting that BDUs are disregarding Canadians’ concerns: in June 2014 70% of Canadians said that cable and satellite fees are much too high, and another 22% said they were somewhat too high (Appendix 9).
- 199 The current anti-regulatory but pro-consumer climate may help to explain proposals from the CRTC to try to stimulate yet more competition in the BDU market, and thereby moderate BDU rates. Yet the evidence from before and after 2002 in the BDU sector demonstrates that the most effective impact on moderating BDU rates was CRTC rate regulation. The evidence from the wireless telephony sector also shows that even if four service providers operate in almost

¹⁰⁰ S. 3(1)(i)(ii).

every city, service prices increase: why, then, would the CRTC believe it is reasonable to suppose that allowing very small BDUs into a location already served by Rogers, Shaw or BCE would ensure that BDU rates are affordable?

- 200 The Forum believes that the available evidence establishes that regulation was successful in moderating BDU basic rate charges. The CRTC should resume regulation of basic rates, by setting out the parameters under which rates may or may not be charged for an all-Canadian basic tier of programming services.

Recommendation 16 The CRTC should regulate the rates charged for the all-Canadian basic tier of BDU services proposed in BNoC 2014-190 (and which the Forum supports provided certain qualifications are met) to ensure that these rates are affordable for all Canadians

d Pick-and-pay and packaging

- 201 BNoC 2014-190 proposes that BDUs subscribers be permitted to choose all discretionary television programming services one by one, and also to build their own packages.¹⁰¹ Enabling BDUs subscribers to pay for one channel at a time is appealing because it might let BDUs subscribers pick programming channels like they pick books in a bookstore.

- 202 The allure of pick-and-pay was reflected by the 1,320 comments received by the CRTC from its *Let's Talk TV* consultations.¹⁰²

- 203 Unfortunately, the empirical data collected by these consultations is unrepresentative of the Canadian population because it was not gathered using generally accepted procedures for statistical survey research. Those who completed the online Choicebook tended to be young men.¹⁰³

- 204 The original Choicebook was then replicated with a randomly recruited panel, described as representative¹⁰⁴ – but the degree to which respondents to the

¹⁰¹ At ¶144.

¹⁰² <http://www.crtc.gc.ca/broadcast/eng/hearings/2013/2013-563oc2.htm>: “The CRTC received 1,320 comments from all regions of Canada. Most comments were from the online discussion forum (450), followed by e-mails (322), phone (304), and the intervention webform (244) which includes letters (10) and faxes (4).”

¹⁰³ Hill+Knowlton Strategies, *Analysis of CRTC Choicebook: Comparison of Panel, Public, and Public Weighted*, (1 May 2014) <http://www.crtc.gc.ca/eng/publications/reports/rp140424c.htm>: “We know, for example, that the public group was more likely to be male (70%) and tended to be younger than the actual population of Canada.”

¹⁰⁴ <http://www.crtc.gc.ca/eng/publications/reports/rp140424b.htm#h6>:

online survey are representative of the entire population, which includes people who are not online or rarely use computers, is unknown.

- 205 The Forum supports the CRTC’s attempts to encourage Canadians to participate in its regulatory process. There are many ways to encourage participation. In this case, the lack of well-designed empirical research to measure Canadians’ attitudes towards significant changes to its regulatory approach to television which could affect thousands of jobs, many companies and millions of dollars in revenues and expenditures, is simply jaw-dropping.
- 206 Meanwhile, the case-based study commissioned by the CRTC, *Consumer Choice in Linear Television Services*,¹⁰⁵ found that the pick-and-pay option was available in Canada, but not in the United States.¹⁰⁶
- 207 The United States has also studied pick-and-pay, and issued a detailed report. It has not (yet) adopted this system.¹⁰⁷
- 208 Separate from the FCC’s analysis of pick-and-pay, recent quantitative research from professional economists establishes that the harms of a pick-and-pay

The data presented here are based on a representative sample drawn from the Ekos Probit online panel, which is a randomly recruited panel.

Respondents were randomly selected to participate in this study and were invited (by email) to visit the Choicebook site.

A total of 1252 completions were achieved. A sample of this size has a margin of error of plus or minus 2.8%. The margin of error for subsamples will be larger. The data presented here are weighted based on age within gender within region.

We note that the Hill-Knowlton study does not discuss the degree to which the sample of respondents who completed the Choicebook were representative of the original, randomly selected respondents.

¹⁰⁵ David Keeble, (Ottawa, 8 April 2014).

¹⁰⁶ *Ibid.*, at 5.

¹⁰⁷ United States, Federal Communications Commission, *Report on the Packaging and Sale of Video Programming Services to the Public*, (18 November 2004), submitted to Hon. Joe Barton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives. The FCC’s report identified harms and benefits. Harms included price increases “at nearly three times the rate of inflation”, limited consumer choice and bundling practices that force consumers to take services “that they do not watch or wish to receive, including objectionable content.” (*Ibid.*, at 4). Benefits included reductions in transaction costs, economies of scale for programmers, enhanced convenience for consumers (at 5).

system outweigh its benefits. We draw the CRTC’s attention to the 2011 study, “The Welfare Effects of Bundling in Multichannel Television Markets”.¹⁰⁸

- 209 The authors used television ratings data to model the impact of different pick-and-pay and packaging approaches. Their model took audience tastes into account, by estimating household preferences for each of 50 cable television channels. They also considered the costs of programming services for BDUs, and considered the implications of large ownership groups in programming and distribution for programming service bargaining and costs. Crawford and Yurukoglu concluded that forcing BDUs to completely unbundle their packages would double the prices that BDUs would then have to pay for programming services,¹⁰⁹ and objectively reduce consumer welfare.¹¹⁰
- 210 The CRTC’s own research about pick-and-pay – comments submitted online by 1400 individuals and organizations with an interest in the proceeding in Phase 1 – provides a picture of their views. Apart from the fact that the questions posed by the CRTC’s Choicebook often offered confusing choices between different concepts, those who responded to the Choicebook are not representative of the Canadian population. For that, a professionally designed survey would have been required, to ensure that each member of the public in Canada had an equal chance of being selected to participate in the survey: since the Hill-Knowlton study that replicated part of the Phase 1 research also relied on self-selected online participants, its results are also unrepresentative of the Canadian population.
- 211 The absence of well-designed evidence about Canadians’ views on pick-and-pay and its implications, about the impact of a pick-and-pay model across Canada, and about the impact of a pick-and-pay model on vertically integrated and non-

¹⁰⁸ Gregory S. Crawford (Department of Economics, University of Warwick and Centre for Economic Policy Research) and Ali Yurukoglu (Graduate School of Business, Stanford University), (April, 2011). The article’s abstract summarizes its results:

We measure how the bundling of television channels affects short-run social welfare. We estimate an industry model of viewership, demand, pricing, bundling, and input market bargaining using data on ratings, purchases, prices, bundle composition, and aggregate input costs. We conduct counterfactual simulations of à la carte policies that require distributors to offer individual channels for sale to consumers. We estimate that negotiated input costs rise by 103.0% in equilibrium under à la carte. These are passed on as higher prices, offsetting consumer surplus benefits from purchasing individual channels. Mean consumer and total surplus change by an estimated -5.4% to 0.2% and -1.7% to 6.0%, respectively. Any implementation or marketing costs would reduce both, and would likely make à la carte welfare-decreasing.

¹⁰⁹ *Ibid.*, at 29.

¹¹⁰ *Ibid.*, at 31.

vertically integrated programming services leaves the Forum unable to support the adoption of pick-and-pay in Canada, except in discretionary tiers (which is the practice of some BDUs systems in Canada already).

- 212 We believe that limited rate regulation and regulation of the size of basic BDU packages, will go a long way to reducing Canadians' dissatisfaction with BDU prices.
- 213 The Forum therefore strongly opposes the implementation of a pure pick-and-pay model. We agree, however, that subscribers should have more freedom to unbundle the packages offered to them by BDUs. In keeping with the findings of the *Consumer Choicer in Linear Television Services* report, BDUs should also improve the information they make available to subscribers: subscribers who cannot easily learn the difference in prices between stand-alone services and packaged services, will be unable to make informed choices.

Recommendation 17 After the basic cable package has been assembled, and made available to subscribers at low cost or free of charge, subscribers should be free to choose as many individual Canadian services they like. For every foreign service, however, subscribers would choose at least one Canadian service.

- 214 BNoC 2014-190 asks whether "there is a need to maintain the requirement that each subscriber receives a preponderance of Canadian services" (Q11).
- 215 The Forum's brief answer to this question is "Yes."
- 216 BDUs now regulated by the CRTC have ample channel capacity to carry as many foreign services as they like, without compromising their ability to carry as many, if not more, Canadian programming services
- 217 In our view, a careful balance must be maintained between increased consumer choice, the availability of quality Canadian programming and ensuring the viability of the broadcasting system as well as the production industry that feeds it.
- 218 The American programs currently available to Canadians are appealing because of high production values and the experience of U.S. show-runners to write and deliver compelling stories. There are successful Canadian series, but they must compete in terms of money on the screen unless U.S. and international sales are assured.
- 219 While Canadians like to watch their own stories and expect high value in return for subscribing to programming services, this has been achieved mainly through regulation and sustained financial support from public and private sources. Any

- change in the current system must be done in steps, therefore, to avoid affecting the balance of, and creating unfavourable conditions for, the production of Canadian content.
- 220 The CRTC notes that the creation of compelling and diverse programming with high creative values is key to the success of the Canadian broadcasting system. However, it does not elaborate on the types of productions that best convey those values.
- 221 Special attention should be given to the types of productions that may need continued regulatory and financial support: drama, documentaries, variety/performing arts, and children’s programming). Flexibility should be given to popular productions that are less costly to produce, such as many reality-based, instructional programs, which can more readily compete with non-Canadian programming.
- 222 The danger in eliminating either preponderance or exhibition requirements across the board for broadcasting services is that, in the race to remain competitive and financially viable, some services may opt for that type of less costly, though popular, programming. This would harm not only on the production industry but also the members of creators’ guilds.
- 223 The CRTC notes that BDU revenues are flat due to the explosion of new platforms and that pick-and-pay consumer options may lead to the demise of some Canadian services as consumers seek to subscribe only to what they prefer. As Canadian services receive less revenue, their contribution into the system of support will decrease. Increasing the number of competitors by allowing unfettered access by non-Canadian services into Canada could further erode the viability of Canadian services and their financial support for Canadian programming.
- 224 Alternatives exist: if the CRTC considers existing services’ programming to be of low-quality, it could reinstate applicants’ right to apply for existing licences, to spur existing licensees’ achievement of the *Broadcasting Act* policy’s objectives.
- 225 Care must also be taken as to when and how to allow greater penetration by non-Canadian services into the Canadian market, to avoid turning Canadian producers into mere service providers for those foreign services. Federal and provincial production services tax credits (PSTC – for non-Canadian content) are accessible by non-Canadians. Some of those productions may be done under the CRTC’s co-venture model that allows, in return for minimal Canadian content (6/10 points), full copyright ownership in non-Canadian hands and 100% time credits on Canadian stations. Will Canadians support the use of Canadian tax

dollars by non-Canadian television services, when Canadians do not benefit from employment and intellectual property rights?

- 226 While throwing the doors open to foreign programming channels offers the superficial appearance of ending limits on Canadians' viewing choices, its counterintuitive effect would be to reduce choice even further. Large, well-funded foreign channels would effectively dump their programming in the Canadian market – and smaller, more poorly funded Canadian programming services would be unable to survive this unfair competition. How long will non-Canadian programmers make their programs' rights available to the Canadian market – if they can simply sell those rights to large foreign services? Without attractive foreign programming to support the production of Canadian programming, how long will Canada's production industry survive?
- 227 The Forum respectfully submits that it may fall outside the CRTC's jurisdiction to permit BDUs to import all the foreign channels they want – when the CRTC's mandate is to ensure that the Canadian broadcasting system is “effectively owned and controlled by Canadians”.¹¹¹

Recommendation 18 Dropping the current requirement that Canadian programming services predominate in Canada's broadcasting system is contrary to the *Broadcasting Act* and the CRTC's mandate to enforce the *Broadcasting Act*

2 *More support for Canadian program production*

- 228 The Forum supports BNoC 2014-190's goals of ensuring the availability of high-quality Canadian programming, for Canadian audiences. We submit that the CRTC could strengthen Canada's television system, increase Canadian audiences' viewing choices and create new employment opportunities by gradually increasing the level of support for Canadian programming from regulated and now-exempted distribution services.

a Reviewing the New Media exemption order

- 229 When the CRTC issued its first policy for cable television, whose operations threatened the existence of conventional television stations because they allowed Canadians to watch American television, 40% of Canadian households subscribed to cable. BDUs took in 42% of the television system's revenues.

¹¹¹ S. 3(1)(a).

- 230 When the CRTC exempted New Media in 1999, it evaluated broadcasting undertakings that use the Internet to determine whether New Media broadcasters' compliance with regulatory requirements would "contribute in material manner" to achieving the *Broadcasting Act's* broadcasting policy.¹¹²
- 231 The CRTC asserted, without providing evidence in support of its reasons, that
- ... most [New Media] revenues are currently derived from advertising and transactions, while subscription-based models have so far rarely proven to be successful.
- ...
- The Commission agrees with most participants that there is currently no evidence that the Internet has had a negative impact on the advertising revenues of regulated broadcasters as a result of the growth in on-line advertising. ...
- ... data from annual financial returns for the television industry indicates a steady growth in advertising revenues over the past two decades with minor slowdowns during the recessions of the early 1980s and 90s. Accordingly, there does not appear to be any obvious impact of the growth of Internet advertising on advertising dollars committed to the television industry.¹¹³
- 232 As the revenues of Canadian conventional television stations began to falter around 2006, the CRTC heard repeated calls to revisit its exemption order for New Media.
- 233 The CRTC did not revisit the exemption order, but recognized in 2010 that it lacked standard metrics, definitions and measurement tools. It therefore established a New Media Reporting Working Group (NMRWG).
- 234 The NMRWG consisted of 20 broadcasters and non-broadcast groups,¹¹⁴ and met for the first time on 15 October 2010.¹¹⁵ It also met on 9 December 2010.¹¹⁶

¹¹² Call for comments on a proposed exemption order for new media broadcasting undertakings, Public Notice CRTC 1999-118 (Ottawa, 19 July 1999) <http://www.crtc.gc.ca/eng/archive/1999/PB99-118.htm>, at ¶¶3-5.

¹¹³ *New Media*, Broadcasting Public Notice CRTC 1999-84, Telecom Public Notice CRTC 99-14 (Ottawa, 17 May 1999), <http://www.crtc.gc.ca/eng/archive/1999/PB99-84.htm>, at ¶¶98 and 109-110.

¹¹⁴ ACTRA, Astral, Bell, Canwest, CBC, Canadian Independent Media Association, ComScore, Canadian Media Production Association, CTVglobemedia, CACTUS, Directors' Guild of Canada, Documentary Organization of Canada, Eastlink, IAB Canada, Quebecor, Ontario Media Development

By its third meeting, on 26 January 2012,¹¹⁷ the NMRWG had agreed on “the components to include in the definitions of revenues and expenditures of [New Media Broadcasting Undertakings] NMBUs, in order to establish a baseline report.”¹¹⁸

235 On 14 August 2012 responses from NMRWG members made the CRTC decide to continue to collect information about digital media broadcasting, but that there remained a lack of definitions. The CRTC ended the NMRWG. It told the group that the CRTC would not ask for

... availability data from DMBUs as part of the annual digital media broadcasting survey. However, we will continue the annual collection of information regarding revenues and expenditures relating to broadcasting in digital media. We recognize that at this time there is a lack of definitions and standards for measuring the availability and consumption of content in digital media and we encourage the industry to work together to develop standards in this increasingly important area.

The CRTC will continue to monitor industry developments in digital media measurement.¹¹⁹

236 The CRTC collected and reported on New Media broadcasting undertakings’ revenues in its 2012 *Communications Monitoring Report*, for 2010 and 2011:¹²⁰

Revenues (\$ millions)	2010	2011	% change
From subscriptions	\$31.6	\$43.6	38.0%
From downloading, streaming, app sales	\$1.9	\$3.2	68.4%
From advertising	\$68.9	\$76.9	11.6%
Subtotal	\$102.4	\$123.7	20.8%

Corporation, SOCAN, Rogers, ZoomerMedia and Writers’ Guild of Canada. CRTC, Response to *Access to Information Act A-2014-00005*, at p. 000027.

¹¹⁵ CRTC, Response to *Access to Information Act A-2014-00005*, at p. 000030.

¹¹⁶ *Ibid.*, at p. 000012.

¹¹⁷ *Ibid.*, at p. 000010.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, at p. 000004.

¹²⁰ Table 4.5.1, “Digital media revenues for a subset of digital media broadcasting undertakings (\$ millions)”, at 104.

Source: 2012 *Communications Monitoring Report*, at Table 4.5.1

237 The CRTC's 2013 *Communications Monitoring Report* does not include more recent data about New Media broadcasting undertakings revenues, or their expenditures.

238 The Internet is now used in more than 80% of Canadian households. "Netflix, Apple iTunes, YouTube, NHL GameCenter. and Google Play, among many other Internet services, provide alternatives to over-the-air and conventional BDU transmission."¹²¹ In late 2013 14% of Canadians said they were somewhat or very likely to drop their cable or satellite service, in favour of less-expensive alternatives.¹²² In January 2014, Deloitte estimated that 2.5 million Canadian households would pay for a traditional BDU provider and at least one other online TV service by the end of 2014.¹²³

239 Canadians will continue to use a variety of devices to access audio-visual content.

240 As they become more popular, however, program providers that use the Internet to distribute programming will not meet the objectives under the *Broadcasting Act*, including support for Canadian program production and access to Canadian programming services, unless they are included within the appropriate regulatory framework.

Broadcasting Act

9(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

241 There is no reason why, 15 years after the CRTC first addressed the regulation of New Media Canadians should still lack basic information

¹²¹ \$39 digital media player that fits into older TV sets that have HDMI sockets and permits users to watch online content through their TV. Raju Mdharr, "Google Chromecast is coming to Canada" *The Star* (18 March 2014).

¹²² Michael Oliveira, "Cord-Cutting Nation? 1 in 4 Canadians Not Paying For TV" *The Canadian Press* (13 February 2014) <>.

¹²³ The Canadian Press, "Forget cord-cutting: Canadians happy to pay for extra TV" (14 January 2014)

about the number, ownership, control and financial performance of New Media distribution and programming services.

- 242 The Forum therefore recommends that over the next decade the CRTC begin to measure the size and scale of larger non-conventional distribution and programming services in Canada. The CRTC should focus on professional, profit-oriented corporations, not users who generate content for their own interest.

Recommendation 19 The CRTC should require currently exempted, large, New Media programming and distribution undertakings to submit elementary financial information to enable the CRTC to determine whether the original grounds of its New Media exemption order continue to exist, and the CRTC should publish these data in its annual statistical and financial summaries for BDUs and pay and specialty services

- 243 The CRTC should collect New Media broadcasting data with a view to ensuring that the largest of these services begin to support Canadian television program production by 2016. Gradual incorporation of these services into Canada's television system meets Parliament's objectives for technologically neutral regulation.

Recommendation 20 Large non-conventional distribution services should be required to provide financial support for Canadian television program production by September 2016

- 244 Walled-garden, conventional BDUs – the largest of which are also Canada's largest television broadcasters – may ask the CRTC to deal with the threat of New Media BDUs by deregulating many broadcasting services. Of course, deregulation that verges on exemption from regulation would be contrary to the *Broadcasting Act*.

b Program expenditures

- 245 BNoC 2014-190 asks whether Canadian programming expenditure requirements (CPE) should be broadened to include television broadcasters' spending on online Canadian programming. The CRTC has not provided clear guidance as to the impact of this change on overall CPE, or Canadian program production levels.
- 246 The Forum's main concern with CPE is not with online program production.
- 247 We are more concerned about the inequity that continues to exist between television programming and distribution services.
- 248 This inequity was initially based on the 'infant' industry status of cable systems when they were first regulated under the *Broadcasting Act*, in 1968. At that time, they earned a quarter (24%) of the revenues in Canada's television system.

Last year BDUs took in more than half (59%) of the system's revenues (Appendix 16).

- 249 An important reason for not imposing the CPE obligations of programming services was that distribution services once bore heavy capital investment obligations, as they began to wire Canada.
- 250 However, even when broadcasters are compared in terms of operating income – in other words, excluding the impact of different operating and capital investment decisions – BDUs still obtained more than half (62%) of the television system's operating profits in 2013 (Appendix 16).
- 251 Meanwhile Canadian television providers are responsible for most of the financial support provided for Canadian program production. In 2013, television services generated 83% of Canadian programming expenditures (CPE); BDUs' community television expenditures and contributions to the Canadian Media fund and other independent programming funds amounted to 17% of CPE.
- 252 The Forum submits that program production is at the heart of Canada's broadcasting legislation. The 1991 Act still reflects the half-century old comment of the Fowler committee – that "The only thing that really matters in broadcasting is program content - all the rest is housekeeping". In fact, more than half of the paragraphs in section 3 focus on programming (see Appendix 16).
- 253 Large-scale broadcasting enterprises now exist with the resources to fund higher-quality Canadian programming.
- 254 The CRTC can ensure that Canadians have more choices, and meet Parliament's objectives for the broadcasting system, by equalizing the benefits and responsibilities of being a broadcaster in Canada.
- 255 The Forum is therefore recommending that the CRTC increase the proportion of large BDUs' gross broadcasting revenues to be allocated to Canadian programming expenditures, in graduated steps over the next decade. The CRTC currently requires that 5.4% of BDUs' gross broadcasting revenues be allocated to community television or Canadian programming funds. We recommend that the CRTC gradually increase this level, to 10% in 2025.
- 256 Based on BDUs' 2013 financial results, allocating 10% of their gross broadcasting revenues would reduce their overall operating margin from 26.1% to 16.1% (see Appendix 15, Table 1. We believe, however, that BDUs will also develop new income streams.

- 257 Over time, and if the CRTC reviews and amends its New Media exemption order to include large New Media program distribution services as we later propose, total funding for Canadian program production would increase commensurately.

Recommendation 21 The CRTC should raise BDUs' financial support for Canadian program production from 5.4% in 2014, to 10% in 2025

- 258 The Forum respectfully submits, however, that the CRTC's television policy for the next decade should not be based on assumptions that extra-regulatory support systems will remain the same, or that they will even continue to exist.
- 259 How would the policy be affected, for example, if provincial or federal tax credits suddenly decrease or disappear? Quebec just reduced its tax credits by 20%. The television system's ability to adapt quickly to such changes is limited - CMF broadcaster envelopes, tax credits and private funds have sustained Canadian production at a level that would not be possible for broadcasters to replicate unless they change their business model.
- 260 In fact, licence fees are low today precisely because broadcasters have relied on other sources of funds to subsidize the productions they licence. If they had to fund a greater share of the cost of production, through increased licensing or equity ownership of productions, it is very likely that they would ask for more rights from independent producers, through more copyright ownership, territories and/or back-end participation. These changes would in turn affect producers' rights and revenue sources, and ability to participate in Canada's broadcasting system.
- 261 The Forum therefore recommends that the regulatory framework in this proceeding be developed to be independent of other support mechanisms in the broadcasting system.

Recommendation 22 A new regulatory framework for Canadian television must be independent of other support mechanisms for private and public television

3 *Set-top boxes and privacy*

- 262 BNoC 2014-190 asks a number of questions about establishing a system to govern the use of set-top boxes in BDU subscribers' homes and offices in Canada. It mentions, but does not provide a link to, a report by the Vice-Chair of Broadcasting on set-top boxes.

- 263 The Forum has serious concerns about the extraction of information about households' television viewing habits, in relation to individuals' right to privacy. Other countries, such as Belgium, share these concerns.¹²⁴
- 264 Revelations over the past year about the widespread intrusion of privacy around the world from warrantless telecommunications services cast into doubt any guarantees about how set-top box data will be used. The United States Supreme Court recently denied warrantless searches of wireless telephones, tablets and laptop computers, pointing out that the fact that people can now carry detailed information about their lives in their hands "does not make the information any less worthy of the protection for which the [US] founders fought."¹²⁵
- 265 The CRTC should not authorize the general use of set-top boxes without publishing its report on these devices for public comment, and if there are risks that the data could be misused by those collecting and storing the data.

Recommendation 23 Neither BDUs nor the manufacturers of set-top boxes should be permitted to collect data about households' viewing, until Canadians have had an opportunity to review and comment on the CRTC's internal set-top boxes report

B The future of content in Canada's television system – higher quality

- 266 While BNoC 2014-190 has generally presented itself as a discussion about the future of Canadian television programming, the Forum respectfully submits that approval of many of the proposals in the notice will convey unwarranted power and benefits to BDUs, while striking at the financial existence of many Canadian programming services.
- 267 The suggestions in BNoC 2014-190 about Canadian programming services are especially perplexing, given the 2012 statement from the Supreme Court affirming that that the *Broadcasting Act's* section 3 policy objectives include "the cultural enrichment of Canada, the promotion of Canadian content, establishing a high standard for original programming, and ensuring that programming is diverse."¹²⁶

¹²⁴ Robert Briel, "Belgium to investigate privacy of smart TVs" (Europe, 18 January 2014) <http://www.broadbandtvnews.com/2014/01/28/belgium-to-investigate-privacy-of-smart-tvs/>.

¹²⁵ http://www.nytimes.com/2014/06/26/us/supreme-court-cellphones-search-privacy.html?emc=edit_th_20140626&nl=todaysheadlines&nid=25351636&_r=0

¹²⁶ *Reference re Broadcasting Act*, 2012 SCC 4, [2012] 1 S.C.R. 142, at ¶14 [*ISP Reference*].

268 Adopting even a few of the BNoC 2014-190 suggestions about Canadian programming services will not strengthen Canada’s broadcasting system, but bring it to the point of collapse.

1 Predominantly Canadian in prime time

269 Although the *Broadcasting Act* has never explicitly required that a majority of the broadcast time of Canadian programming services be devoted to Canadian programs, Canada’s television regulations have always required that a majority of the program hours broadcast by conventional television stations be Canadian.

270 BNoC 2014-190 asks whether the CRTC’s current requirements for minimum levels of Canadian programming should be dropped, except for some local programming content, to “ensure the presence of compelling Canadian programs on multiple platforms in the future”.¹²⁷

271 The rationale for dropping Canadian exhibition requirements is unclear. The case might be different if the CRTC had typically found year-over-year increases in the hours of Canadian programming broadcast by private television broadcasters. BNoC 2014-190 does not state that this is the case: what, therefore, supports the idea that dropping Canadian programming requirements will ensure its existence?

272 Previous CRTC experiments have already found that when requirements for certain types of television programming were dropped, the programming was either not maintained, or disappeared. The most recent example involved television news: the CRTC dropped weekly requirements for local television news in the early 1990s, on the assumption that competition among broadcasters would ensure its availability. Beginning in 2006 conventional television broadcasters threatened to shutter local television stations or eliminate local television programming, including local news, claiming that their revenues were inadequate to support local television programming.

273 Faced with strong public concern, the CRTC mandated minimum levels of local programming for over-the-air television stations, and established the Local Programming Improvement Fund. (The LPIF ends this August, however.) The CRTC set no requirements for establishing evidence of local community

¹²⁷ BNoC 2 If these broadcasters have become too big to regulate, the solution is to increase ownership diversity, perhaps through competitive licence renewals and the denial of any further ownership acquisitions by these large companies.014-190, at ¶177.

reflection, however, such as the numbers of reporters hired or news bureaux established to serve local areas.

- 274 The local television programming experience raises a serious concern that eliminating overall Canadian programming exhibition requirements will similarly lead to the loss of Canadian programming, with detrimental effects for audience choice, employment opportunities and independent production.
- 275 The Forum would like to add that CRTC must consider not simply whether evidence has been presented demonstrating whether broadcasters *will* reduce Canadian programming exhibition, as the Forum believes. It must also consider the evidence from broadcasters that they will *not* reduce Canadian programming exhibition. In other words, broadcasters that argue that they will continue to ensure that their schedules are predominantly Canadian, should be asked whether they would accept regulations (not conditions of licence) to that effect.¹²⁸
- 276 Whatever they may have told the CRTC in its “Choicebook”, Canadians do not generally support the idea of reducing or dropping Canadian exhibition requirements. When faced with the idea this month, 35% of Canadians approved of the idea of reducing or dropping Canadian programming exhibition requirements, but 52% disapproved.

Table 2 June 2014 survey - % of those who disapproved of dropping Canadian content requirements

277	Disapproval levels were especially high among women (55%), Francophones (64%), for those with children (53%), and among people in Quebec (62%) and Atlantic Canada (59%). Disapproval also increased with age.	Age group	% disapproving of dropping Canadian content require’t
		< 34 yrs	53%
		35-44 yrs	50%
		45-54 yrs	50%
		55-64 yrs	53%
278	We respectfully submit that the CRTC should respect Canadians’ clear disapproval of the proposal to reduce or drop Canadian exhibition requirements.	> 65 yrs	53%
		Total	52%

¹²⁸ Any broadcaster can apply for amendments to the conditions of its licence; regulations are significantly more time-consuming to amend.

- 279 What Canada’s television system actually needs is a clear target from the CRTC. Let us finally forgo the nearly annual discussions about whether Canadian programming needs regulatory support, or which type of programming should be supported. The CRTC knows, broadcasters know and Canadians know that the single most popular programming on Canadian television is drama. Other types of programming are important: children’s programming and documentaries. But most people in the viewing audience spend the largest share of their time with drama.
- 280 The result of two major policy initiatives since 1998 to increase the amount of television that ‘Canadians want to watch’, has been a near-catastrophic decrease in Canadian drama productions.
- 281 Some have said that the CRTC’s TV regulations for private television stations force broadcasters to produce quantity – not quality. It is time to put the quality-vs-quantity theory to the test, before Canada’s television system is opened wide to foreign programming or even ownership, due to international trade agreements.
- 282 The Forum therefore recommends that the CRTC test whether a temporary reduction in Canadian programming exhibition requirements will yield more hours of original Canadian programming in other high-demand program categories. We propose that the current Canadian content regulations be amended in 2016 to require 35% of the broadcast week from 8 pm to 11 pm consist of Canadian drama.
- 283 This change should be adopted in conjunction with the gradual elimination of the CRTC’s simultaneous substitution requirements. Mandating Canadian program production, with an increase in financial support from BDUs, will provide Canadian private broadcasters with the resources they need to produce the Canadian *Game of Thrones*.

Recommendation 24 The CRTC should replace its current 55% requirement for Canadian content on private television stations with a 35% Canadian drama requirement from 8 pm to 11 pm each broadcast week

- 284 Another question raised by the CRTC’s proposal involves international comparisons. Australia – another English-language speaking country with a relatively small population – has also struggled to strengthen its television programming industry. Rather than reducing or eliminating its domestic content

requirements the Australian Communications and Media Authority (ACMA) has maintained them – and publishes annual results about its major television broadcasters’ performance.¹²⁹

285 Instead of eliminating Canadian content exhibition requirements, the CRTC should analyze the results of broadcasters’ television program logs, and publish the levels of Canadian programming exhibited by broadcast ownership groups and their programming services, for each year since 2000, and for each year going forward.

Recommendation 25 The CRTC should publish Canadian exhibition levels for individual broadcast ownership groups and their individual programming services for each broadcast year since 2000, and for each broadcast year going forward

2 Local service, for local communities

286 BNoC 2014-190 asks whether the CRTC should drop requirements for Canadian programming exhibition, but retain requirements for local television programming.

287 The Forum has proposed that the CRTC retain requirements for Canadian drama (above), and also agrees that local television services that want to benefit from local advertising, continue to be required to provide local, original programming. We note, however, that in 2013 local advertising revenues did not cover broadcasters’ local programming expenditures in half of Canada:

2013 \$ millions	Local ad revenues	Local news expenditures	Local programming expenditures	Local ads minus local news	Local ads minus local programming
Atlantic	\$23.09	\$16.22	\$16.85	\$6.87	\$6.23
Quebec	\$87.67	\$51.92	\$61.17	\$35.74	\$26.49
Ontario	\$100.99	\$121.54	\$137.77	-\$20.55	-\$36.78
Prairies	\$84.20	\$85.54	\$94.53	-\$1.34	-\$10.33
BC & terr.	\$55.28	\$65.24	\$70.40	-\$9.96	-\$15.12
Canada	\$351.23	\$340.46	\$380.73	\$10.77	-\$29.50
Canada exl'g Que	\$263.56	\$288.54	\$319.56	-\$24.98	-\$56.00

Source: CRTC statistical and financial summaries for commercial television, 2009-2013

288 Our concern, shared by the CBC’s President,¹³⁰ is that private broadcasters will not continue to support local television stations without financial support.

¹²⁹ <http://www.acma.gov.au/~media/Content%20Monitoring%20and%20Review/Research/pdf/20032012%20ACS%20and%20CTS%20comparison%20pdf.pdf>

Without financial support conditions of licence mandating local programming will produce low-quality local content – but not the high quality, original and innovative local programming that Canadian communities want, need and deserve.

289 We recommend instead the CRTC gradually increase local programming requirements by up to two hours each broadcast week, to provide local communities with local reflection of the events in their towns and cities – news and public affairs, certainly, but also of their communities’ cultural lives. Specifically, in 2016 the CRTC should require Canada’s largest and wealthiest broadcasters to expand their local programming schedule to include weekly variety or performing arts programs, beginning with an hour in addition to local news, and moving to two hours by the end of the licence term.

290 This new, original and incremental programming should be supported by a revised local programming fund, as we previously discussed.

3 **Simultaneous substitution**

291 BNoC 2014-190 also asks whether the CRTC should eliminate its current simultaneous substitution rules. The notice explains that the evidence it has about the value of simultaneous substitution to broadcasters is outdated, and in any event represents \$200 million – a relatively small fraction of the television system’s total revenues.¹³¹

292 To the extent that simultaneous substitution was once necessary for Canadian television services, it was a necessary evil. In our view, simultaneous substitution tacked Canadian broadcasters’ schedules to the whims of American broadcasters, limiting their ability to develop and schedule innovative Canadian programming.

130 Hubert Lacroix, *Notes d’allocution d’Hubert T. Lacroix, président-directeur général, CBC/Radio-Canada, au Cercle canadien de Montréal*, (Montréal, 5 May 2014), <http://www.cbc.radio-canada.ca/fr/centre-de-presse/2014/05/5a/>:

L’information et la télévision locale sont aussi en changement. La télévision locale est particulièrement menacée à cause de l’élimination par le CRTC du Fonds pour l’amélioration de la programmation locale (FAPL). Dans de nombreux cas, il n’y a simplement pas de modèle économique viable pour le soutenir. Pour ces raisons, nous ne croyons pas que les radiodiffuseurs privés continueront à s’investir dans les régions, à l’exception peut-être des plus grandes villes canadiennes.

131 BNoC 2014-190, at ¶159.

- 293 The Forum therefore supports the graduated elimination of simultaneous substitution. Specifically, we suggest that simultaneous substitution be eliminated in stages: first for the period from 9 pm to 11 pm, next for the hour from 8 pm to 9 pm, and then for the period from 7 pm to 8 pm.

Recommendation 26 The CRTC should gradually eliminate simultaneous substitution provisions, over time

4 Community television services

- 294 The Forum believes that community television remains a critical component of the Canadian broadcasting system, but in order to thrive, it must be more innovative, higher-quality, and aggressively local.
- 295 Every minute, over 100 hours of video are uploaded to online video sharing site YouTube. Some will argue that media production and distribution have become so inexpensive that community broadcasting is no longer necessary. But Canadians need community broadcasting for the same reasons that they still need commercial and public broadcasting: quality, consistency, trustworthiness, and accountability.
- 296 Consistent, high quality programming is beyond the means and mandate of user-created content sites like YouTube, and they are no replacement for community television. Access to thousands of media choices is meaningless if the choices themselves are not relevant. Only well-resourced community media institutions can produce and support consistently high quality local content.
- 297 The Forum notes that in the media release accompanying the announcement of the CRTC's community television policy in 2010, then CRTC Vice-Chairman of Broadcasting Michel Arpin stated that
- [c]ommunity channels give Canadians the unique ability to see themselves and their neighbourhoods, towns and cities reflected on television... This can only be achieved through equal partnerships between cable companies and the communities they serve.
- 298 Bringing this vision of equal partnerships between communities and BDUs to life, requires a funding channel that will support the independent production of high quality local and regional community-oriented video programming that will be broadcast on BDU community channels. Such a funding channel will be of benefit to all elements of the community television system by fostering new, innovative and relevant community programming.

- 299 Canadian community radio has benefited greatly from the kind of partnership of which Vice-Chairman Arpin spoke, which is embodied by the Community Radio Fund of Canada (CRFC). Governed independently with the participation of the community radio sector and its funders, the CRFC has distributed more than \$4 million to 103 campus and community radio stations since it was founded in 2007. CRFC support is dedicated solely to community news and access programming.
- 300 The CRFC has been a critical driver of the increased vitality of community radio. There are now over 170 community and campus broadcasters employing more than 800 Canadians; in 2013 approximately 10,000 volunteers produced nearly 1 million hours of original local programming. The community radio sector continues to see unprecedented growth in every region of the country.
- 301 BDUs now direct approximately \$125 million to community television programming, and bear the responsibilities for engaging community involvement and producing community programming. Creating an effective balance between BDU-produced and independent community production cannot happen overnight, or without unnecessary turmoil—but it can be achieved over time.
- 302 The Forum recommends that the Commission develop a policy for community television to ensure that independent production of community television programming represents the majority of community television programming by 2025.
- 303 We further recommend that the CRTC launch a separate proceeding to consider the means and methods to establish an independent community television funding mechanism, and evaluate the progress of this plan in five years.
- 304 Finally, the Forum recommends that this independent funding be focused primarily on the production of local news, public affairs, arts, and community access programming.
- 305 The 1991 *Broadcasting Act* clearly mandates a significant role for community broadcasting. The CRTC has taken important steps to support community radio; community television merits the same care.

Recommendation 27 The CRTC should launch a proceeding to consider the establishment and support of an independent community television funding mechanism that is focused primarily on the production of local news, public affairs, arts, and community access programming, with the objective of independently produced community television programming representing the majority of community television programming by 2025.

V Conclusion: how do we get from here, to there?

A walled garden refers to a limited set of technology or media information provided to users with the intention of creating a monopoly or secure information system

...

In the realm of open and free Internet, the term walled garden refers to a browsing environment where users are restricted to certain content on a website and allowed to navigate only particular areas of the website. The main purpose of creating a walled garden is to shield users from certain kinds of information. This method is often used by an Internet service provider (ISP) to restrict users from accessing some websites.

Techopedia, <http://www.techopedia.com/definition/2541/walled-garden-technology>

306 Canada's regulated distribution services today resemble a walled garden – Canadians' access to programming content within the regulated system is limited by their access to over-the-air television signals, cable systems, multi-point distributions systems and direct-to-home satellite services.

307 The walls are crumbling, though, thanks to digital technology. The replacement due to Canadians' interest in innovative technologies that let them access programming provided by their local television stations and programming distribution services that use the Internet.

308 Adopting the proposals in BNoC 2014-190 would inappropriately re-cement BDUs' walled gardens – and restrict Canadians' choices.

A Opening the walled garden that protects licensees

309 The CRTC should therefore not adopt proposals that benefit broadcasters at the expense of Canadian audiences and Canada's production community.

310 In our view, broadcasters have derived many benefits from years of protection, stability and predictability by Canadian regulatory frameworks for television. First, licensing systems that have limited entry into the broadcasting industry have protected incumbents such as Shaw and Rogers. Second, regulation by a non-partisan, expert tribunal has provided a generally stable operating environment in which broadcasters can adapt to regulatory change. Third, limits on the numbers of competitors combined with a stable regulatory environment have provided broadcasters with certainty, reducing their operating risks and making it easier to attract investors.

311 It is time for the public to derive as many benefits from the broadcasting system as broadcasters.

- 312 We have asked for change – but not radical change. Our country’s current television system is the result of careful balancing of the interests and roles of many companies, agencies and organizations. The law of unintended consequences means that one hard shove in any direction – such as the elimination of local or national predominance requirements, or genre protections – can very quickly affect thirty-five million peoples’ access to programming from and about Canada, hundreds of millions of investment dollars, and the livelihood of tens of thousands of people.
- 313 We say instead that the CRTC should set clear, long-term targets, and implement these targets gradually over the next ten years. Gradual implementation will give the CRTC the opportunity to monitor and evaluate the impact of its changes.
- 314 Finally, the Forum believes that the best way to open the Canadian television systems’ walled garden is to distribute resources so that Canadians can easily access, produce and distribute high-quality local and Canadian television programming.
- 315 If this does not happen, the CRTC will have lost what might be its last, best chance to finally meet its own original concept of Canadian television:

Canadian television programming must attract, engage and entertain. It must also inform, educate and enrich our cultural experience. For it Canadians do not use what is one of the world’s most extensive and sophisticated communications sytem to speak to themselves – if it serves only for the importation of foreign programs – there is a real and legitimate concern that the country will ultimately lose the means of expressing its identity. ...¹³²

B Putting Canadian audiences first

- 316 Canada’s private broadcasters have been subject to Canadian Content regulations since 1960 – for 54 years. The regulations were meant to open shelf-space for Canadian programming. By and large the regulations have been effective – in delivering programs that satisfied the minimum regulatory requirements.

¹³² *Policy Statement on Canadian Content in Television*, Notice CRTC 83-18 (Ottawa, 31 January 1983) at 5.

317 However the regulations have not been as effective as the regulator hoped for in producing large quantities of programs of high quality that would attract large Canadian audiences.

318 Now the Commission has asked the legitimate question: is there another approach that would more effectively produce a better result? Could a requirement model be replaced by a supply model?

2nd reading of Bill C-40, which became the 1991 *Broadcasting Act*:
 Parliamentary Secretary to the Minister of Communications (Jim Edwards):
 ...
 There is no wish on the part of the government to unduly rush this bill. There is a genuine commitment on the part of the minister and the government to make sure that this time we do it right.
 There was a wag who suggested at a conference no long ago on the future of broadcasting in Canada that what we ought to do is pass again the bill of 968 and add a rider at the end, "This time we mean it". This time we sincerely mean it. ...¹³³

319 Abandoning any or all shelf-space requirements before the supply model is in place, is (and forgive the simile) like getting rid of a corset before one's body has been trained at the gym. And even once trained, it would be advisable to loosen the laces gradually.

320 The CBC's recent announcements make it even more important that means be found to increase or maintain the private sector's support for Canadian programming. There is no question in our mind that the CBC is willing to produce high quality and relevant programming that interests Canadians, no matter what the technologies are for distributing or accessing its services. But it will be enormously difficult for the CBC to be able to provide this critical service to Canadians with the means it now has.

321 The CRTC must do its part to help ensure the strength of Canadian broadcasting – by acting on the evidence and recommendations in our comments. It is no exaggeration to say that the future of Canadian programming is at stake.

322 Assuming that the Commission agrees to demand a greater financial contribution from the BDU sector (which is by now reaping extraordinary rewards without a commensurate responsibility to the system), it will take time for the structures already in place, such as the CMF, or new structures such as the proposed funding body for community TV, to adapt to their new situation, and to manage

¹³³ *House of Commons Debates*, 34th Parl., 2nd sess. (3 November 1989), Jim Edwards (Parliamentary Secretary to the Minister of Communications), 2nd reading of Bill C-40, An Act respecting broadcasting and to amend certain Acts in relation thereto and in relation to radiocommunications.

their additional or new work. As a general rule most contracts in the television production system have a two-year span from signing to actual broadcast: a new regulatory approach to television will require new contracts to be negotiated and signed; new terms of financing will have to be arranged; the independent production arena will need to review the new regulatory approach to television to adapt to its opportunities.

- 323 It is unlikely that the transition to an incentive model can occur overnight. Even a modest move toward such a model will cause a shock to the system.
- 324 The Forum suggests that in removing or loosening the corset of regulation, the Commission proceed with caution, with a staged approach, so that all aspects of the exercise can proceed gradually without great disruption.
- 325 The benefit for the Commission is that if there are problems at any stage, it can intervene if necessary and suspend the process until the difficulties have been dealt with.

Table 3 Summary of the Forum's proposals for simultaneous substitution, local and national programming and BDU financial support

Summary of the Forum's proposals				
Year	Simultaneous substitution	Local station origination	Canadian content (8 pm – 11 pm)	BDU financial support - % of broadcasting revenues to CPE
2014			Approx. 20%	5.4%
2016			21%	6.5%
2018	Drop – 9pm-11pm	Add 30 mins	24%	7.0%
2020	Drop – 8pm-9pm	Add 30 mins	27%	7.5%
2022	Drop – 7pm-8pm	Add 30 mins	29%	8.0%
2024	Drop – remaining	Add 30 mins	32%	9.0%
2025	Eliminated		34%	10.0%
Long-term objective	Elimination	2 more original hours/broadcast week	36% (10 hrs) will be Canadian drama	Parity with programming services

- 326 There is, however, one aspect that requires attention. How will the Commission assess its success in this regard after the period of transition is concluded?
- 327 The Forum suggests the Commission take detailed stock of the current situation, set out the targets it is aiming to achieve by the end of the transition period, and, at the end of the period, compare the actual results with its targets on the grounds that “if you don’t know what you want, you can’t tell whether you’ve

got it". This was the approach used by the CRTC when it renewed the CBC's licences in 1989.¹³⁴

328 Distinguishing more clearly between local and national Canadian television services would increase viewers' programming choices, raise employment and reduce the dependency of Canada's television system on foreign programming as simultaneous substitution is brought to an end.

329 Providing every household in Canada with free or low-cost access to an all-Canadian basic BDU service would maximize viewers' access to local and national Canadian programming, and give them the choice of deciding whether to purchase additional programming services.

VI Summary of recommendations

330 The changes that the Forum recommends would affect BDUs, programming distribution services that use the Internet, local TV stations, discretionary television programming services, and community television services.

331 Our goal is to equalize responsibilities among these three types of broadcaster by 2025. The most significant of these would be to

- Gradually raise the level of support provided by BDUs and large new media services, to the Canadian Media Fund
- Slowly raise local programming requirements for local TV stations that receive subscriber fees (because they are now distributed by BDUs), and increase demand for local TV station advertising by reducing advertising limits on discretionary services
- to maintain Canadians' ability to access local television services, regulate BDU rates charged for basic service and ensure the all-Canadian basic tier costs only the amounts charged for local and mandatory discretionary services (i.e., approximately \$2 per month), and
- raise demand for Canadian programming by phasing out simultaneous substitution for local TV stations.

¹³⁴ Canadian Broadcasting Corporation/Société Radio-Canada Applications for the Renewal of the English and French Television Network Licences, Decision CRTC 87-140 (Ottawa, 23 February 1987), <http://www.crtc.gc.ca/eng/archive/1987/DB87-140.htm>.

332 These proposals are compared with the CRTC's proposals in Appendix 17.

Summary of recommendations

- Recommendation 1 The CRTC must change its approach to public policy proceedings by providing a more detailed public record, along with clear notice to the public when additions are made to the public record
- Recommendation 2 Each determination from the BNoC 2014-190 proceeding must be supported by reasons based on evidence
- Recommendation 3 The CRTC should establish a consultative committee to report on the information and data that it should collect and publish about Canada's broadcasting system to enable Parliament and Canadians to know how Canada's broadcasting policy is being implemented
- Recommendation 4 By 2025, 100% of the television programs broadcast in Canada's regulated broadcast system must be fully accessible to those who are blind, have limited sight, are deaf or have limited hearing
- Recommendation 5 By 2025, 55% of people in Canada's larger cities will be immigrants or the children of immigrants; the CRTC should hold a separate and well-publicized policy hearing and issue a new ethnic broadcasting policy with enforceable targets for the availability of news and entertainment programming over the air and from other distribution platforms
- Recommendation 6 The CRTC should report annually on the hours of original and total Canadian and foreign programming broadcast by Canadian television services, by service and ownership group
- Recommendation 7 The CRTC should undertake decennial content analyses of the programming broadcast by Canadian television and radio services to evaluate the degree to which they are meeting the *Broadcasting Act's* objectives regarding the reflection and portrayal of Canada's men and women, multicultural communities and Indigenous peoples
- Recommendation 8 The CRTC should collect basic financial information about exempted television programming and distribution services,

including total revenues, expenditures on Canadian programming, total expenditures and employment opportunities

- Recommendation 9 The CRTC should modify its data collection system to be able to determine the level of non-Canadian ownership for individual broadcasting licensees, and for the Canadian broadcasting system as a whole
- Recommendation 10 Determinations about a new regulatory framework for Canadian television must require the four largest broadcasting companies in Canada – that controlled 83% of the television system’s revenues in 2013 - to increase their support for and broadcast of Canadian programming.
- Recommendation 11 The CRTC should monitor and report on employment levels in Canada's television system, by occupation and source of employment (within regulated broadcasting services, and if possible, in the independent production sector on an aggregated level)
- Recommendation 12 If only 270,000 more households subscribed to BDUs because over-the-air transmission is discontinued, and basic cable rates averaged \$30/month, BDU subscriber revenue would increase by \$97 million; meanwhile allocating 100% of *all* ‘technical’ expenses to local programming would increase local expenditures by a maximum of \$80 million. As the costs to Canadians outweigh the benefits, the CRTC should retain over-the-air TV transmission
- Recommendation 13 Create a modified local programming fund to support local non-news programming, with governance divided between broadcasters, the public and employees
- Recommendation 14 The CRTC should mandate the provision of an all-Canadian basic tier, at no charge, or for CRTC-approved subscriber rates
- Recommendation 15 The CRTC must resume the collection and publication of basic rate information for BDU services, along with information such as penetration and subscription levels
- Recommendation 16 The CRTC should regulate the rates charged for the all-Canadian basic tier of BDU services proposed in BNoC 2014-

190 (and which the Forum supports provided certain qualifications are met) to ensure that these rates are affordable for all Canadians

- Recommendation 17 After the basic cable package has been assembled, and made available to subscribers at low cost or free of charge, subscribers should be free to choose as many individual Canadian services they like. For every foreign service, however, subscribers would choose at least one Canadian service.
- Recommendation 18 Dropping the current requirement that Canadian programming services predominate in Canada's broadcasting system is contrary to the *Broadcasting Act* and the CRTC's mandate to enforce the *Broadcasting Act*
- Recommendation 19 The CRTC should require currently exempted, large, New Media programming and distribution undertakings to submit elementary financial information to enable the CRTC to determine whether the original grounds of its New Media exemption order continue to exist, and the CRTC should publish these data in its annual statistical and financial summaries for BDUs and pay and specialty services
- Recommendation 20 Large non-conventional distribution services should be required to provide financial support for Canadian television program production by September 2016
- Recommendation 21 The CRTC should raise BDUs' financial support for Canadian program production from 5.4% in 2014, to 10% in 2025
- Recommendation 22 A new regulatory framework for Canadian television must be independent of other support mechanisms for private and public television
- Recommendation 23 Neither BDUs nor the manufacturers of set-top boxes should be permitted to collect data about households' viewing, until Canadians have had an opportunity to review and comment on the CRTC's internal set-top boxes report
- Recommendation 24 The CRTC should replace its current 55% requirement for Canadian content on private television stations with a 35% Canadian drama requirement from 8 pm to 11 pm each broadcast week

- Recommendation 25 The CRTC should publish Canadian exhibition levels for individual broadcast ownership groups and their individual programming services for each broadcast year since 2000, and for each broadcast year going forward
- Recommendation 26 The CRTC should gradually eliminate simultaneous substitution provisions, over time
- Recommendation 27 The CRTC should launch a proceeding to consider the establishment and support of an independent community television funding mechanism that is focused primarily on the production of local news, public affairs, arts, and community access programming, with the objective of independently produced community television programming representing the majority of community television programming by 2025.

Appendix 1

(Appendices 2-21 in Volume 2)

Appendix 1: Answers to CRTC questions

Questions in BNoC 2014-190	FRPC response
<p>Part I: A Canadian television system that fosters choice and flexibility in selecting programming services</p>	
<p>Q1. What are the potential effects, both positive and negative, of the proposed approach set out in paragraphs 40 to 48 above on different elements of the broadcasting system, including consumers, discretionary services, BDUs, the production sector, OLMCs and ethnic broadcasters?</p> <p>Small basic service local Canadian television stations; 9(1)(h) services: Aboriginal Peoples Television Network (APTN): Réseau de l'information (RDI) (in anglophone markets) CBC News Network TVA (outside of Quebec) The Weather Network/Météomédia: Cable Public Affairs Channel (CPAC): AMI-audio, formerly VoicePrint AMI-tv, formerly The Accessible Channel Canal M (in francophone markets): Avis de recherche (solely in Quebec): provincial educational services if available in some cases, the community channel and the provincial legislature programming service</p> <p>Discretionary services – singles or in a package All non-local Canadian stations All exempt programming services All other Canadian services All non-Canadian services</p> <p>No requirement for Canadian services to predominate</p>	<p><u>Potential positive effects</u></p> <p>The Forum does not see any positive effects of this model for the public</p> <p>Potential positive effects for BDUs include increased basic subscription revenues because BDUs (and perhaps the Internet) will be the only way for people to access their local television services; and increased discretionary subscription revenues because BDUs will now be able to sell the US 4+1 services as a discretionary tier package</p> <p><u>Potential negative effects</u></p> <p>If TV transmitters are turned off, all TV viewers would have to subscribe to BDUs (or the Internet, if local TV station programming is available there) to obtain access they can now have at no charge</p> <p>Forcing people to subscribe to BDUs may drive more TV viewers away from the regulated broadcast system to now-unregulated distribution services that use the Internet</p> <p>Even if the CRTC regulated the issue through conditions of licence or regulations, it will be impossible to ensure that money saved from turning off TV transmitters will be directed to programming, or to local news</p> <p>People interested in ethnic programming outside of Vancouver, Calgary/Edmonton, Toronto and Montréal would now have to subscribe to a discretionary tier to obtain access to local ethnic television services</p> <p>People interested in US programming would now have to subscribe to a discretionary tier to obtain US TV services they now receive as part of the basic tier; if the US 4+1 signals are still distributed by over-the-air transmitter, some viewers may opt out of the regulated system</p> <p>BDUs may charge a fee to receive TV signals for</p>

Questions in BNoC 2014-190	FRPC response
	<p>subsequent distribution, and it will be impossible for the CRTC to monitor such charges</p> <p>If Canadian services do not predominate in Canada’s television system – non-Canadian television services will: who then, will Canada’s TV system be serving? Canadians, or non-Canadian television services?</p> <p>The Forum oppose the approach suggested in BNoC 2014-190, at paras. 40-48</p>
<p>Q2. Should this approach apply differently to different types of BDUs (e.g., exempt BDUs and DTH BDUs)?</p>	<p>No</p> <p>The Forum opposes the approach suggested in BNoC 2014-190, at paras. 40-48</p>
<p>Q3. Which local television stations should be included in the small basic service offered by DTH BDUs?</p>	<p>All local stations</p> <p>If no local stations serve a location, CBC regional stations should be offered</p> <p>All local ethnic TV stations should be distributed as part of the basic tier</p>
<p>Q4. What effect would this approach have on the affordability of television services?</p>	<p>Television services will become less affordable, and for some unaffordable, unless subscriber fees for basic service are regulated</p>
<p>Is there a particular impact on the affordability of sports services, for example?</p>	<p>Yes – companies that have invested heavily in sports (such as Rogers) will be highly motivated to charge as much as possible for sports programming</p> <p>The long-term effect of this shift will be to create two-tiered access to programming that most Canadians enjoy</p> <p>The Forum respectfully notes that no sound public policy reason exists to deny lower-income Canadians access to programming they enjoy as much as higher-income Canadians</p>
<p>Q5. What effect would this approach have on the cost of program acquisition?</p>	<p>Costs will increase for Canadian rights to foreign programming services</p>
<p>Q6. Should the Commission establish any requirements regarding the size of the various packages that consumers may choose to build (build-your-own-package options)?</p>	<p>Yes</p> <p>Non-vertically integrated discretionary Canadian television services should be able to seek a ‘declaration’ from the CRTC that the rates they are proposing for BDU carriage are reasonable</p> <p>Non-vertically integrated discretionary Canadian services should, at their request, be carried</p>

Questions in BNoC 2014-190	FRPC response
	separately, and as part of packages
<p>Q7. What role, if any, should the Commission or others play in ensuring that a small basic service and packaging options are available and well-promoted to all consumers?</p>	<p>The CRTC should require all conventional (ie, not New Media) BDUs to provide subscribers with a complete written list of the programming services available to them, in terms of the packages being offered</p>
<p>Q8. What role, if any, should the Commission play regarding penetration-based pricing agreements?</p>	<p>The CRTC should permit local and national Canadian television programming services to seek a declaration that the rates they are seeking are, in the Commission’s expert opinion, reasonable</p>
<p>Q9 (a) What customer-care system upgrades would be required?</p>	<p>The Forum reserves comment on these questions</p>
<p>Q9 (b) How long would they take to implement?</p>	
<p>Q9 (c) What would be the cost?</p>	
<p>Q10 (a) Are there barriers to implementing the Commission’s proposed approach?</p>	<p>Yes – the security and predictability of the walled garden provides a tempting alternative to any change that would strengthen and safeguard Canadians’ access to high-quality local and national programming produced in Canada, by and for Canadians</p>
<p>Q10 (b) What is the earliest feasible timeframe to implement this approach, in light of all the possible implications?</p>	<p>Any new framework must be adopted by increments, to enable periodic evaluation of the impact of the policy, with a goal of being completely in place by 2025</p>
<p>Q11 (a) How can BDUs continue to give priority to the carriage of Canadian programming services?</p>	<p>This question confuses what BDUs are able to do, with what they are required to do by law</p> <p>BDUs can do whatever is possible through technology, and can therefore give priority to Canadian programming services as they now do</p> <p>BDUs may do whatever they like, subject to law</p> <p>Corporate law requires BDU managers to serve the interests of the owners and shareholders of BDUs – they will eliminate Canadian services if this increases revenues and/or reduces expenses</p> <p>Broadcast law exists to ensure the predominance of Canadian programming and Canadian services in Canada’s television system</p> <p>As Parliament’s agent in enforcing Canada’s broadcast law, the CRTC must require BDUs to</p>

Questions in BNoC 2014-190	FRPC response
	give Canadian programming services priority carriage
<p>Q11 (b) Is there a need to maintain the requirement that each subscriber receives a preponderance of Canadian services?</p>	<p>Yes</p> <p>BDUs now regulated by the CRTC have ample channel capacity to carry as many foreign services as they like, without compromising their ability to carry as many, if not more, Canadian programming services</p>
<p>Q12. How should the Commission and Canadians measure the success of the Commission's approach with respect to ensuring choice and flexibility in the selection of programming services?</p>	<p>Publication of annual reports on which BDUs carry which services</p>
<p><i>Access to non-Canadian programming services</i></p>	
<p>53. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>	
<p>Q13. Is there a way to remove barriers to the entry of more non-Canadian programming services into Canada without an undue negative impact on the Canadian television system?</p>	<p>No</p> <p>Given the absence of demand or need, the Forum opposes this proposal</p>
<p>Q14. What are the possible approaches to authorizing non-Canadian services for distribution in Canada, particularly in the absence of genre requirements for Canadian services?</p>	<p>The Forum reserves comment on this issue</p>
<p>Q15. Should the Commission choose to adopt a test such as that proposed in paragraph 52 above, what evidence should parties be required to provide?</p>	
<p>Q16. How should the Commission and Canadians measure success and determine whether the Commission's approach is providing access to non-Canadian programming services without any undue negative impact on the Canadian television system?</p>	
<p><i>Simultaneous substitution</i></p>	
<p>Q17 (a) Should simultaneous substitution be maintained?</p>	<p>No</p>
<p>Q17 (b) If so, why is it still beneficial and</p>	<p>The Forum reserves comment on this issue</p>

Questions in BNoC 2014-190	FRPC response								
<p>necessary, and why do its benefits outweigh its costs and other drawbacks?</p>									
<p>Q18 (a) What is the current and prospective value of simultaneous substitution to broadcasters?</p>									
<p>Q19 (a) Are there alternatives to simultaneous substitution, such as non-simultaneous substitution (the replacement of the same program regardless of when it is broadcast), that could fulfill the public policy objectives that simultaneous substitution was implemented to fulfill?</p>	<p>No</p>								
<p>Q19 (b) If so, what would these alternatives be, why are they necessary, and how could they be implemented?</p>	<p>The Forum reserves comment on this issue</p>								
<p>Q20. If the Commission were to decide to eliminate simultaneous substitution, how, and in what timeframe, should this change be implemented?</p>	<p>The CRTC should eliminate simultaneous substitution in stages, based on the time of day in which simultaneously substituted programming is carried:</p> <table data-bbox="846 1031 1219 1157"> <tr> <td>6 am – 6 pm</td> <td>Drop by 2018</td> </tr> <tr> <td>6 pm – 7 pm</td> <td>Drop by 2020</td> </tr> <tr> <td>8 pm – 10 pm</td> <td>Drop by 2022</td> </tr> <tr> <td>10 pm – mdnt</td> <td>Drop by 2024</td> </tr> </table>	6 am – 6 pm	Drop by 2018	6 pm – 7 pm	Drop by 2020	8 pm – 10 pm	Drop by 2022	10 pm – mdnt	Drop by 2024
6 am – 6 pm	Drop by 2018								
6 pm – 7 pm	Drop by 2020								
8 pm – 10 pm	Drop by 2022								
10 pm – mdnt	Drop by 2024								
<p>Q21. Would the elimination of simultaneous substitution have unintended consequences for French-language television services?</p>	<p>It's very likely</p>								
<p>Q22. How should the Commission and Canadians measure success and determine whether the Commission's new approach is achieving its objectives?</p>	<p>Measuring success is relatively easy once 'success' is defined – but success has not been defined</p> <p>If eliminating simultaneous substitution is supposed to replace the 6 pm – midnight schedule with more Canadian programming, success will exist when the level of foreign content in this period decreases to 0%</p>								
<p><i>II. A Canadian television system that encourages the creation of compelling and diverse Canadian programming</i></p>									
<p>69. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>									
<p>Q23 (a) Are there alternative ways of fostering local programming?</p>	<p>Yes – community television that is funded, but not controlled, by BDUs</p>								
<p>Q23 (b) What role, if any, should the</p>	<p>Regulations and conditions of licence for local</p>								

Questions in BNoC 2014-190	FRPC response
<p>Commission play to ensure the presence of local programming?</p>	<p>television programming services</p> <p>A new policy framework for community TV</p>
<p>Q23 (c) What measures could be put in place?</p>	<p>Conditions of licence requiring minimum and increasing levels of original local news and other local programming</p>
<p>Q24 (a) Is regulatory intervention necessary to maintain access to local television stations and, if so, how could this best be achieved?</p>	<p>Yes: by regulation</p>
<p>Q24 (b) Given that the vast majority of Canadians receive television services through a cable or satellite subscription, are there compelling reasons to maintain and support OTA transmission?</p>	<p>Yes: maintaining over-the-air transmission gives Canadians the option of watching TV free, over the air</p> <p>FRPC respectfully notes that Canadians have already supported private television stations over-the-air transmission through the <i>Income Tax Act</i> (reduction in taxes available to companies that make capital and operating expenditures in relation to OTA transmission)</p> <p>BNoC 2014-190 does not explain why anyone other than the licensees who acquired, own and operate their transmitters require additional support from Canadians</p>
<p>Q24 (c) Would the discontinuation of OTA transmission allow local television stations to devote more resources to programming?</p>	<p>Yes, but they will not unless the CRTC mandates minimum levels of local television expenditures for commercial local television programming services</p>
<p>Q24 (d) If the Commission determines that OTA transmission should no longer be required, under what timeframe should this be implemented?</p>	<p>The Forum opposes the termination of over-the-air transmission – we support mandatory over-the-air transmission and optional BDU transmission*</p> <p>The change we propose should happen relatively quickly – by 2016</p> <p>* to limit disadvantage to non-vertically integrated commercial TV programming stations, they should be granted BDU transmission whenever a vertically integrated local commercial TV programming service in the same area is transmitted by BDU</p>
<p>Q25. What role, if any, should the Commission play to preserve the diversity of local television stations in the French-language market?</p>	<p>The CRTC should announce that it will not accept any applications for transfers of ownership or control of local television stations which involve any of four largest television ownership groups,</p>

Questions in BNoC 2014-190	FRPC response
	beginning 1 May 2015
Should measures be adopted specifically for this linguistic market?	The Forum reserves comment on this issue
Q26 (a) Is a different approach needed for independent local television stations?	
Q26 (b) What measures, if any, could be put in place?	
Q27. How should the Commission and Canadians measure success in fostering local programming and allowing broadcasters to revitalize their business models?	<p>Success could be measured by</p> <ul style="list-style-type: none"> Increasing hours tuned to local TV programming Increases in local advertising sales Increases in local programming expenditures Increasing hours of original local TV programming
<i>Financing and promoting compelling Canadian programming</i>	
80. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.	
Q28. How will programs be delivered in the future (i.e. in five years and 10 years from now) and who will be the future aggregators and curators of programming?	<p>The answer to this question depends on the CRTC policies that emerge from this proceeding</p> <p>The CRTC should set policies that</p> <ul style="list-style-type: none"> Separate program production from BDU distribution Increase access of non-vertically integrated programming services to Canadian audiences
Q29. Do funding mechanisms for Canadian programming need to be modified to take into account changes in the way Canadian programming is watched?	No
Q30 (a) Are any regulatory measures required to encourage the production, promotion or presentation of new, compelling and innovative Canadian programming?	<p>Yes.</p> <p>The CRTC should gradually increase the level of financial support from BDUs for Canadian program production</p> <p>By 2025 all television programming services should exhibit the same level of Canadian content</p>
Q30 (b) If so, what would those measures look like?	Conventional television stations should be permitted to reduce the level of Canadian content they carry from 55% now, to 35% by 2025 – on the theory that making more money available for program production, and requiring

Questions in BNoC 2014-190	FRPC response
	<p>less ‘tonnage’ to meet Canadian exhibition quotas, will give broadcasters the flexibility to develop innovative, popular and successful programming</p> <p>The Forum proposes that TV stations be required (in addition to current but gradually increased local programming hours) to ensure that they broadcast specified levels of Canadian drama from 8 pm to 11 pm each broadcast week:</p> <p>2014 20.0% 2016 21.0% 2018 24.0% 2020 27.0% 2022 29.0% 2024 32.0% 2025 34.0%</p> <p>It would be critical, however, for the CRTC to monitor the impact of this change in exhibition requirements, especially with respect to employment: a national television system in which a nation’s people have no employment opportunities belongs to another country</p>
<p>Q31. Would these measures affect the purchase of program rights and licence fees paid to independent producers?</p>	<p>Yes. Program rights and licence fees should increase</p>
<p>Q32 (a) Should the Commission encourage the production of certain types of programs as it has done in the past?</p>	<p>Yes</p> <p>The CRTC should require local television services to provide original local programming, including local news, to the local communities they are licensed to serve, by gradually increasing the amount of original non-news local programming hours by 2 more hours, by 2025</p>
<p>Q32 (b) If so, which types of programs should be supported?</p>	<p>Local news</p> <p>Drama</p> <p>Children’s progra</p>
<p>Q33 (a) What form should incentives take?</p>	<p>Funding support and priority scheduling requirements</p>
<p>Q33 (b) Would eliminating certain requirements, for example, exhibition requirements, be an effective and appropriate incentive for producing Canadian programming or programming of certain types?</p>	<p>Yes – the CRTC should eliminate all exhibition requirement for sports programming</p>

Questions in BNoC 2014-190	FRPC response														
<p>Q34. If exhibition requirements are generally reduced or eliminated, would there still be a need for specific exhibition requirements for particular types of programming, e.g. local or children’s programming?</p>	<p>Yes – to be clear, Canadians want and need this programming, but broadcasters are not highly motivated to provide it – exhibition requirements are needed to meet Canadians’ needs and interests (eliminating these requirements serves broadcasters’ needs and interests, but not those of the public)</p>														
<p>Q35 (a) Should the Commission encourage the promotion of Canadian programs, here and abroad?</p>	<p>Yes</p>														
<p>Q35 (b) If so, how?</p>	<p>By denying all licence amendment applications from the four largest television companies until they double the number of programs they are able to sell to non-affiliated companies outside Canada</p>														
<p>Q36 (a) Is the current way to calculate contributions to Canadian programming still appropriate?</p>	<p>No</p> <p>BDUs obtain 62% of the operating profits in the television system, but provide just 17% of the financial support for TV program production</p> <p>The CRTC should increase the proportion of BDUs’ gross broadcasting revenues from approximately 5% now, to 10% by 2025:</p> <table data-bbox="846 1157 1000 1381"> <tr><td>2014</td><td>5.0%</td></tr> <tr><td>2016</td><td>5.5%</td></tr> <tr><td>2018</td><td>6.5%</td></tr> <tr><td>2020</td><td>7.5%</td></tr> <tr><td>2022</td><td>8.5%</td></tr> <tr><td>2024</td><td>9.0%</td></tr> <tr><td>2025</td><td>10.0%</td></tr> </table> <p>The Forum estimates that our proposal would reduce BDUs’ operating profits from 23.8%, to 16%</p>	2014	5.0%	2016	5.5%	2018	6.5%	2020	7.5%	2022	8.5%	2024	9.0%	2025	10.0%
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2024	9.0%														
2025	10.0%														
<p>Q36 (b) For example, should the Commission update its definition of broadcasting revenues to reflect all broadcasting activities by licensees?</p>	<p>Yes, and also by including revenues from BDU broadcasting activities that are taking place online</p> <p>(The Forum is not advocating regulation of the Internet – but of the BDUs that use the Internet)</p>														
<p>Q37. Does the current funding model for community channels continue to be appropriate?</p>	<p>No</p> <p>The Forum believes that BDUs will benefit by focussing on their own operations</p> <p>A portion of the funding currently allocated to community television programming should be used to establish a new Community Television</p>														

Questions in BNoC 2014-190	FRPC response
	<p>Fund of Canada (CTFC), as a parallel to the Community Radio Fund of Canada (CRFC)</p> <p>Over the next decade the CTFC should develop the infrastructure required to create a community television system in Canada</p>
<p>Q38. How should the Commission and Canadians measure success with respect to encouraging the production of compelling Canadian programming?</p>	<p>Hours of original (first-run) Canadian programming broadcast between 8 pm and 10 pm</p> <p>Production expense per hour of original Canadian programming broadcast between 8 pm and 10 pm</p>
<p><i>Making television services available to underserved audiences</i></p>	
<p>90. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>	
<p>Q39. (a) Do OLMCs have appropriate access to a diversity of programming services in their language?</p>	<p>No</p>
<p>If not, are regulatory measures needed to achieve this objective?</p>	<p>Yes</p> <p>The CRTC must require BDUs to provide local programming services in the language of their area's official-language minority community, as part of the basic tier</p>
<p>Q40. (a) Are OLMCs adequately reflected on television?</p>	<p>Yes, but not to each other's official language community</p>
<p>If not, are regulatory measures needed to achieve this objective?</p>	<p>Yes</p> <p>The CRTC should ensure that the basic BDU service of communities whose local TV stations are unilingual, includes the nearest non-local TV station operating in the other official language – and that the CBC's local television services be provided as part of the basic tier in both official languages</p> <p>The CRTC should encourage Parliament and the federal government to increase the CBC's budget to enable it to provide service in both official languages, to meet the requirements of Canada's official languages legislation (for the importance of this issue, see <i>Canada (Commissioner of Official Languages) v. CBC/Radio-Canada</i>, 2012 FC 650)</p>
<p>Q41. (a) Is there appropriate access to a</p>	<p>No</p>

Questions in BNoC 2014-190	FRPC response
<p>diversity of programming by and for Aboriginal peoples?</p>	
<p>If not, are regulatory measures needed to achieve this objective?</p>	<p>Yes</p> <p>The CRTC must</p> <p>Measure and report the number of Indigenous people involved in the ownership and control of television services in Canada</p> <p>Measure and report on the portrayal of Indigenous people in Canadian television programming</p> <p>Modify its policy for Indigenous television to increase the level of TV service ownership/control by Indigenous people, and to increase the reflection of Indigenous people on all Canadian television programming</p>
<p>Q42. (a) Is there appropriate access to a diversity of programming by and for third-language communities?</p>	<p>No</p>
<p>(b) If not, are regulatory measures needed to achieve this objective?</p>	<p>Yes</p> <p>Measure and report on the availability of original, third-language programming in Canadian television</p> <p>Modify its policy for ethnic broadcasting, following a separate review in 2015, to increase the level of original, third-language Canadian television programming that is broadcast in Canada</p>
<p>Q43. What further actions can broadcasters take to improve the accessibility of programming for persons with disabilities, including, but not limited to the accessibility of program guides, regardless of the platform on which programming is broadcast?</p>	<p>Broadcasters can improve the accessibility for persons with disability by requiring fully accessible programming in each contract they sign for the production or acquisition of programming, and for the carriage of advertising content</p> <p>The CRTC should mandate this behaviour by incorporating it into its regulations for conventional television, discretionary television and distribution services</p>
<p>Q44. What are the technical issues and costs of increasing the amount and quality of accessible programming, more specifically described video programming,</p>	<p>The Forum reserves comment on this issue</p>

Questions in BNoC 2014-190	FRPC response
in the system?	
<p>Q45. What are the technological barriers to improving the accessibility of features—like described video—to persons with disabilities?</p>	<p>There are no technological barriers</p> <p>The only barrier to improving accessibility is the absence of regulatory requirements mandating the availability of accessibility</p>
<p>Q46. How should the Commission and Canadians measure success with respect to ensuring that television services are made available and well promoted to underserved audiences?</p>	<p>Success in accessibility program availability will exist when all audio-visual content is accessible to those who are blind, sight-limited, deaf, or hearing-limited</p> <p>Accessible programming will not need to be promoted if all programming content is accessible</p>
<i>Promoting access for non-vertically integrated programming sources</i>	
<p>97. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>	
<p>Q47. Are measures, such as imposing distribution requirements, undue preference provisions or other measures such as those set out in the VI Code, needed to ensure the availability of non-vertically integrated programming sources and BDUs in the future?</p>	<p>Yes – but measures without meaningful enforcement will be meaningless</p>
<p>Q48. How should the Commission and Canadians measure success with respect to promoting fair access for non-vertically integrated programming sources?</p>	<p>An increase in the number of and percent of revenues obtained by non-vertically integrated services, with the increase being at least equal to that of the top 4 vertically integrated companies by 2025</p>
<i>Enhanced audience measurement using set-top boxes</i>	
<p>103. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>	
<p>Q49. Should an STB-based audience measurement system be implemented in Canada?</p>	<p>No</p> <p>Concerns about the impact of this data collection on Canadians’ right to privacy about their cultural activities cannot be satisfied by any reporting system the CRTC devises</p>
<p>Q50. The Commission invites parties to propose a concrete model for the establishment of an STB-based audience measurement system that maintains the privacy of individual Canadians.</p>	<p>The Forum reserves comment on this issue</p>

Questions in BNoC 2014-190	FRPC response
Q51. What role, if any, should the Commission play in enabling a STB-based audience measurement system?	Collecting annual information Adjudicating complaints Annual reporting to Canadians Periodic review of any policy that is implemented
Q52. What data points can and should be collected?	The Forum reserves comment on these questions
Q53. What methodology should be used to collect data?	
Q54. If the Commission were to enable the collection and use of such data, what privacy protection methods should be established?	
Q55. What technical matters must be resolved to establish an STB-based audience measurement system?	
Q56. What governance model should oversee the operation of such a system?	A model that is controlled by the public – public members should predominate (ie, 75% or more) on any governance body, and should have minimum 5-year tenures BDU/TV representatives should comprise no more than 25% of the governance body, and have 3-year tenures
Q57. (a) Does the establishment of an STB-based audience measurement system have implications for resources, funding and cost recovery?	Yes
Q57 (b) If so, what are those implications?	This question is irrelevant because the CRTC has withdrawn from BDU rate regulation
<i>Ensuring that television services can be made available while reducing regulation</i>	
<i>Genre exclusivity and protections for Category A services</i>	
Q58. (a) Are regulatory measures necessary to promote programming diversity?	Yes
(b) If so, what measures can best achieve this objective?	Conditions of licence or regulations
Q59. (a) What are the implications, both positive and negative, of eliminating the genre exclusivity policy?	Positive: higher probability of selling to foreign services, and reaping immediate financial reward Negative: greater ability to drive out competitors by taking over their genres
Q59 (b) What would be the earliest feasible timeframe to implement this approach, in	2016

Questions in BNoC 2014-190	FRPC response
light of all the possible implications?	
Q60. (a) Even in the absence of genre exclusivity, should programming services be required to identify the broad genres of programming they offer to ensure that consumers get the type of programming they expect from those services?	No –if the CRTC no longer protects Canadians’ access to diversity by conditions of licence limiting programming services to the genres for which they have applied, it is irrelevant how services identify themselves at any point in time, since they may change genres the next day
Q60 (b) What should these broad genres be?	<p>This question is irrelevant to the CRTC, if it abandons protection of Canadians’ choice in terms of genre diversity</p> <p>Requiring programming services to identify their genres would also provide a very misleading sense that the CRTC still involves itself in ensuring choice for Canadians – when that would not be the case</p>
Q61. How should the Commission and Canadians measure success with respect to ensuring a diversity of programming?	<p>Numbers and financial performance of Canadian-controlled services, by genre, by year</p> <p>% of hours tuned to Canadian services, by genre</p>

Streamlined licensing

118. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.

Q62 (a) Should the current types of licences be consolidated to simplify the licensing process?	<p>Yes, but not as suggested by BNoC 2014-190, because it transforms a licensing system based on function (programming, distribution), into one based on BDU choice (how it distributes programming services)</p> <p>This conveys far too much to BDUs, and eliminates the distinction between programming and distribution services</p>
Q62 (b) Are there other ways than the approach set out in paragraph 114 above of simplifying this process?	<p>The CRTC’s licensing categories should distinguish between local and national programming services and whether they are available free over the air or as discretionary services:</p> <p>Local television programming services: licensed to serve a specific community, town or city, and available without charge over the air</p> <p>National television programming services: licensed to serve Canada, and available without charge over the air</p> <p>Community television programming services:</p>

Questions in BNoC 2014-190	FRPC response
	<p>licensed to serve specific communities, available without charge over-the-air or through BDUs, managed and staffed primarily by volunteers, and carrying programming that is produced by volunteers, other community television programming services or the National Film Board of Canada</p> <p>Discretionary television programming services: licensed to provide specialized programming, and available for a charge through BDUs</p> <p>Broadcasting distribution undertakings: licensed to distribute and/or rebroadcast programming, to any device capable of receiving audio-visual content</p>
<p>Q63. What licensing criteria would be appropriate for the consolidated types of programming services?</p>	<p>The Forum does not support consolidated programming services based on their distribution by BDUs</p> <p>The Forum supports licensing decisions that are made in the public interest</p>
<p>Q64. What licensing criteria would be appropriate for Category C national news specialty services?</p>	<p>Appropriate licensing criteria:</p> <p>80% Cat 1 news</p> <p>High levels of original Canadian content</p> <p>Minimum numbers of reporters / bureaux in all provinces and territories, reported to the CRTC in annual statistical and financial summaries</p> <p>Adherence to an updated, enforceable and enforced <i>Journalistic Code of Ethics</i></p> <p>Annual reports from CRTC on the number of hours of original national and local news broadcast by local television stations and national specialty news services</p> <p>Complaints directed to the CBSC or any other agency about Canadian discretionary news services to be included on their CRTC public file and discussed when the services' licences are renewed</p>
<p>Q65. Should the Commission revise and/or simplify existing exemption orders to take into account a new approach to licensing and, if so, in what way?</p>	<p>What is the new approach to licensing?</p>
<p>Q66. How should the Commission and</p>	<p>Numbers of hours of original and repeat</p>

Questions in BNoC 2014-190	FRPC response
<p>Canadians measure success with respect to a streamlined Commission approach to licensing and exemption?</p>	<p>Canadian programming, for exempted and non-exempted services, for services owned by BDUs and for services not owned by BDUs</p> <p>Financial and statistical performance of services owned by BDUs and services not owned by BDUs</p>
<p><i>III. A Canadian television system that empowers Canadians to make informed choices and provides recourse mechanisms in the case of disputes</i></p>	
<p>125. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>	
<p>Q67. How can Canadians best be informed of changes to the programming of services to which they subscribe and the ways in which they are packaged?</p>	<p>Notice to subscribers by means they choose (with general copy to CRTC confirming notice being made)</p> <p>Repeated notice to viewers within the services that will be changing, or whose packaging will be changing (with general copy to CRTC confirming notice being made)</p> <p>BDUs may optionally choose to copy notification to new agency)</p>
<p>Q68. Does the Commission need to intervene to ensure Canadians are better informed?</p>	<p>Yes</p>
<p>Q69. How should the Commission measure success with respect to ensuring that Canadians are adequately informed of changes to programming and how services are packaged?</p>	<p>Numbers of complaints from Canadians to CRTC and new agency about inadequate information</p>
<p><i>Enhancing safeguards and controls relating to programming content</i></p>	
<p>128. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>	
<p>Q70. Is there a need for better information and tools to provide viewers with enhanced safeguards and controls relating to programming content?</p>	<p>Yes</p>
<p>Q71. What additional program information should be available to viewers?</p>	<p>The Forum reserves comment on this issue</p>
<p>Q72. What are the technical issues and costs associated with improving the provision of program information to viewers?</p>	<p>This question is irrelevant because the CRTC has withdrawn from BDU rate regulation and because it does not regulate the program production costs of which safeguards would be an element</p>
<p>Q73. How should the Commission and</p>	

Questions in BNoC 2014-190	FRPC response									
<p>Canadians measure success with respect to enhancing safeguards and controls relating to programming content?</p>										
<p>Enabling a more dynamic market for BDUs</p>										
<p>131. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>										
<p>Q74. Are any measures needed to promote a more dynamic market for BDUs?</p>	<p>Unlimited competition within BDU and non-BDU markets</p> <p>Effective regulation of dominant BDUs to prevent disadvantage based on incumbency</p>									
<p>Q75. (a) Would measures such as broadening the BDU exemption order be effective in fostering a more dynamic marketplace?</p>	<p>Not on its own</p> <p>Its main value would be to introduce a new pro-competition approach in Canadian BDU regulation, so that additional measures can be adopted over the next decade to strengthen competition and innovation in program distribution</p>									
<p>Q75 (b) (i) What are the challenges associated with these measures</p>	<p>The current size and political influence of the four largest BDUs will withstand the entrance of significantly smaller BDUs and limit benefits to Canadians</p>									
<p>Q75 (b) (ii) and how can they be overcome?</p>	<p>By enforcing the requirements of the <i>Broadcasting Act</i> - solely in the public interest</p>									
<p>Q76. How should the Commission and Canadians measure success with respect to enabling a more dynamic market for BDUs?</p>	<p>300% increase in the % of subscribers and subscriber revenues of non-dominant (ie top 4) BDUs (ie, share of top 4 would decrease from 80% to 40%):</p> <table border="1" data-bbox="844 1365 1234 1470"> <thead> <tr> <th></th> <th>Top 4</th> <th>Others</th> </tr> </thead> <tbody> <tr> <td>Current share</td> <td>80%</td> <td>20%</td> </tr> <tr> <td>'Success'</td> <td>40%</td> <td>60%</td> </tr> </tbody> </table>		Top 4	Others	Current share	80%	20%	'Success'	40%	60%
	Top 4	Others								
Current share	80%	20%								
'Success'	40%	60%								
<p>Adopting guidelines for BDU-subscriber relationships and creating recourse mechanisms in the case of disputes</p>										
<p>136. The Commission invites parties to respond to the following questions, making reference to the English- and French-language markets as appropriate.</p>										
<p>Q77 (a) Do Canadians who wish to change service providers face challenges in making that change?</p>	<p>Yes – the four largest services do not need to compete with smaller BDUs for subscribers, and do not compete very strongly with each other</p>									
<p>Q77 (b) If so, what are these challenges?</p>	<p>Prices are virtually identical, offering little or no reason to change</p>									
<p>Q77 (c) What should be the Commission's</p>	<p>Mandate information requirements</p>									

Questions in BNoC 2014-190	FRPC response
<p>role, if any, in addressing these issues?</p> <p>Q78 (a) Should guidelines or a code of conduct addressing issues, such as early termination fees, similar to what was established in the Wireless Code^[25] be applicable to the BDU market?</p>	<p>Supervise new agency</p> <p>The Forum notes that the CRTC has previously addressed the adequacy of information provided by BDUs to subscribers:</p> <p>The Commission, therefore, requires that cable licensees clearly identify, in plain and easily-understood language, those services that are part of the basic service and those that are discretionary services, the fee for each service or package of services, and the actions a subscriber need take to subscribe to or discontinue the services. This information should be provided to all subscribers, once yearly, at a minimum, using billing inserts or appropriate notification practices. For those subscribers who pay for their subscriptions through automatic bank withdrawals, or in advance, the Commission expects operators to establish appropriate notification practices to inform subscribers of their options. In providing this information, cable operators should avoid the use of marketing terms such as "Full Cable Service", "Extended Basic Service" and "Extended Basic Tier", as such terms are easily confused with the basic service, and may leave subscribers unaware that these are discretionary services that they need not take. (Public Notice CRTC 1993-74)</p> <p>BNoC 2014-190 does not explain why the CRTC has not enforced this requirement, or why it cannot make the provision of information such as that noted above part of its BDU regulations</p> <p>The Forum believes it is preferable to provide all BDUs and Canadians with a clear and transparent standard for the provision of information, based on the CRTC's own experience in this area, rather than relying on the reinvention of the wheel by a new agency, which will take time to establish, to gain experience and to have an impact</p>
<p>Q78 (b) If so, what specifically should be included?</p>	<p>Access to a printable or printed list of services, service prices, all additional mandatory and optional charges</p> <p>Additional time for contract cancellation for those who are blind, sight-limited, deaf or hearing-limited</p>
<p>Q79 (a) Is an industry ombudsman with, for example, a mandate similar in principle to that of the Commissioner for Complaints for</p>	<p>CRTC regulation of BDUs is more necessary and desirable than a new agency</p> <p>A new agency is more necessary and desirable</p>

Questions in BNoC 2014-190	FRPC response
Telecommunications Services (CCTS) necessary or desirable?	than no CRTC regulation and no agency
Q79 (b) If so, what are the costs associated with creating and maintaining an industry ombudsman?	\$4 million (the CCTS operated with \$3.9 million in 2012/13)
Q80. How should the Commission and Canadians measure success with respect to empowering Canadians and enabling better BDU-subscriber relationships?	Annual, well-designed surveys of Canadians to measure their satisfaction with BDUs
Other Matters	
<p>137. While the Commission has identified a number of issues and a broad scope for this review, it is nevertheless open to considering other issues and concerns. Comments must be limited to matters falling within the Commission’s jurisdiction and powers under the Act. Further, parties should discuss such matters in the context of the various cultural, economic, social and technological policy objectives set out in the Act.</p>	<p>The Forum’s main comment explains our answers to these questions in greater detail.</p> <p>As our comment also explains, the Forum believes that decisions affecting Canada’s national public broadcaster should, with the exception of priority carriage*, be addressed in a separate proceeding.</p> <p>All Canadians should be able to receive the programming of the CBC at no cost over the air, and at no or a low cost in the basic tier of BDUs</p>