



1 August 2018

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: **Comment on Procedural Request of the Public Interest Advocacy Centre to the CRTC, to clarify privilege for current and former employees of major telecommunications service providers with respect to *Report regarding the retail sales practices of Canada's large telecommunications carriers*, Telecom and Broadcasting Notice of Consultation CRTC 2018-246 (Ottawa, 16 July 2018), <https://crtc.gc.ca/eng/archive/2018/2018-246.htm>**

- 1 The Forum for Research and Policy in Communications (FRPC) is filing this comment in support of the request made on 17 July 2018 by the Public Interest Advocacy Centre (PIAC) to the CRTC with respect to the procedures used in the above-noted proceeding (TBNoc 2018-246), and with respect to PIAC's subsequent letter to the CRTC of 30 July 2018.
- 2 The Forum agrees with PIAC's 30 July 2018 statement that "... current and former employees' evidence is crucial to an effective inquiry and useful report and that, without a clear statement of legal privilege from the Commission that few, if any, such current or former employees will offer evidence to the Commission", and supports an amendment to TBNoc 2018-246 to provide employees with this statement.

Summary

- 3 The Forum supports PIAC's request that the CRTC amend the TBNoc 2018-246 procedures to grant former and current employees the privilege of submitting evidence (whether in writing or before the CRTC public hearing panel) on a modified absolute/public-interest basis, thereby protecting the employees from subsequent legal consequences (including, but not limited to, defamation and disciplinary action by employers).
- 4 The possibility of such legal consequences may have a chilling effect on the proceeding's evidence: if current or past employee with relevant evidence do not participate, the proceeding's record will be incomplete; if some current or past employees do participate, the proceeding's record may still be viewed as incomplete, on the assumption that employees' fear of risks led them not to participate so that relevant evidence was not submitted.

- 5 Our grounds for supporting PIAC's request that the CRTC formally amend TBNOC 2018-246 to provide past and current employees with assurances that they will not suffer as a result of their evidence, are as follows:
1. The CRTC has not yet, in fact, considered PIAC's request; PIAC's request was answered by the CRTC's staff whose decisions in this matter are not, as a matter of law, decisions of the CRTC.
 2. While implicitly denying PIAC's request to change the CRTC *Rules of Practice and Procedure* that typically apply to CRTC proceedings on the basis of "an open and transparent process", the CRTC staff's letter establishes that CRTC staff have already changed those *Rules* (without notice), by performing the role that the *Rules* assigns to parties with respect to requests for confidentiality.
 3. The CRTC staff's letter raises five new questions that flow from the *Rules*, but leaves them unanswered:
 - a. Who is designating documents as confidential?
 - b. When are confidentiality designations being made?
 - c. Who is providing reasons for the confidentiality designation?
 - d. What are the reasons for the confidentiality designation?, and
 - e. Who is providing an abridged version of confidential documents for the public record?
 4. The CRTC staff's letter also raises the question of whether the CRTC – if its staff are making decisions as to which evidence should or should not be available on the public record – will itself be deciding which evidence of a witness is relevant, and whether it is complete.
 5. Finally, the CRTC staff's letter raises the concern that it may be difficult to question CRTC staff decisions about confidentiality, due to the necessary working relationship between the CRTC's staff and its Commissioners.
- 6 The Forum therefore supports PIAC's request that the CRTC revise the procedures for the TBNOC 2018-246 proceeding, to provide current and former employees with a type of public-interest privilege so that they may bring forward the relevant and complete evidence that is necessary for the CRTC to respond to Order in Council 2018-0685.

Background

- 7 As its title indicates, TBNOC 2018-246 addresses retail sales practices of Canada's large telecommunications carriers. Concerns about telco sales practices were reported by the CBC in November 2017, when it wrote that a Bell call centre employee from Ontario said she was "forced to sell customers products they don't need, don't want, and may not understand, to it sales targets and keep her job".¹

¹ Erica Johnson, CBC News, "Bell insider reveals high-pressure sales tactics required on every single call: Bell says allegations are 'completely unfounded and untrue'", 19 November 2017 9:00 PM ET (Last updated 20 November 2017), <http://www.cbc.ca/news/business/bell-whistleblower-reveals-high-pressure-sales-1.4404088>.

- 8 On 8 January 2018 PIAC asked the CRTC to inquire into certain sales practices by Canadian communication service providers, described as “aggressive, inappropriate and potentially misleading.”²
- 9 The CBC then reported on 14 January 2018 that “dozens” of Rogers employees said they were under “‘extreme pressure’ to hit sales targets or risk termination,³ and on 18 January that “more than two dozen past and present workers from call centres” dealing with Rogers customers said their work environments were “geared to make a sale with every customer”.⁴
- 10 By 23 January the CBC said it had “heard from more than 200 past and present employees – mostly working for Bell and Rogers Communications – describing intense pressure to mislead, lie and trick consumers in order to hit unrealistic sales targets.”⁵
- 11 On 12 February the CRTC’s Chairperson, while neither explicitly denying nor granting PIAC’s request, wrote PIAC that “Canadians already have a variety of options available to them to seek redress depending on the nature of the issue.”⁶
- 12 Additional news stories about misleading sales practices followed for the next several months.⁷
- 13 On 6 June 2018 the federal Cabinet ordered the CRTC to submit a report on retail sales practices of Canada’s large telecommunications carriers and the actual or possible harm of such practices to consumers,⁸ and expressly required the CRTC to consider the views of the carriers’ employees. The preamble in Order in Council 2018-0685 includes the following

² Ian Scott, CRTC Chairperson, Telecom Commission Letter addressed to John Lawford (Public Interest Advocacy Centre), (Ottawa, 12 February 2018), <https://crtc.gc.ca/eng/archive/2018/lt180212.htm>, at ¶1.

³ Erica Johnston, CBC News, “Rogers employees say managers turn a blind eye so call centre workers can lie and cheat customers”, (14 January 2018), <http://www.cbc.ca/news/business/rogers-employees-pressure-to-sell-1.4481128>

⁴ Erica Johnston, CBC News, “More Rogers employees come forward, revealing how they say they’re coached to upsell you: Telecommunication giant says there is ‘no tolerance... for unethical practices’” (18 January 2018, 5:00 AM ET Last Updated 19 January 2018), <http://www.cbc.ca/news/business/rogers-employees-reveal-pressure-sales-tactics-1.4491926>

⁵ Erica Johnston, CBC News “CBC investigation into sales practices at major telcos prompts growing calls for public inquiry: Consumer protection organizations and telecom customers say sales tactics must be examined”, (23 January 2018, last updated 23 January), <https://www.cbc.ca/news/business/crtc-public-inquiry-telecom-high-pressure-sales-1.4498973>.

⁶ Ian Scott, CRTC Chairperson, Telecom Commission Letter addressed to John Lawford (Public Interest Advocacy Centre), (Ottawa, 12 February 2018), <https://crtc.gc.ca/eng/archive/2018/lt180212.htm>.

⁷ See *e.g.*, Erica Johnson, CBC Go Public, “‘I wasn’t telling them the whole truth’: former sales rep for Bell says he was trained to mislead”, CBC News (28 February 2018), <http://www.cbc.ca/news/business/door-to-door-sales-rep-for-bell-goes-public-pressure-to-sell-1.4554105>; Erica Johnson, Luke Denne and Jenny Cowley, “CBC hidden camera investigation captures misleading sales tactics for Bell: Door-to-door sales reps repeatedly misled potential customers on price and internet speed”, CBC News (2 March 2018), <https://www.cbc.ca/news/business/hidden-camera-reveals-misleading-sales-tactics-for-bell-1.4556536>; Canada News Media, “Customer takes Bell to court and wins, as judge agrees telecom giant can’t promise a price, then change it”, <http://canadanewsmedia.ca/2018/04/30/customer-takes-bell-to-court-and-wins-as-judge-agrees-telecom-giant-cant-promise-a-price-then-change-it/>.

⁸ Order in Council 2018-0685 (6 June 2018; webpage last modified 31 April 2017).

statement: "... the Governor in Council considers the views of ... the employees of Canada's large telecommunications carriers ... to be among the important sources of information to be considered in evaluating the retail sales practices of those carriers"⁹

- 14 Order in Council 2018-0685 also identifies evidence from employees about misleading or aggressive telecommunications sales practices as being relevant and material to the CRTC inquiry. It asks the CRTC to consider whether large telcos – through their own employees or through third parties – engage in misleading or aggressive sales practices. Specifically, Order in Council 2018-0685 states

... that it is material to the inquiry that the Commission consider the following:

(a) **whether the large telecommunications carriers offer their telecommunications services for sale by engaging, either through their employees or third parties, in misleading or aggressive sales practices**, such as providing consumers with incomplete, unclear or misleading information regarding service terms and conditions or selling them telecommunications services that are unsuitable for them, and, if so, the prevalence of those practices

[bold font added]

- 15 Order in Council 2018-0685 also says that it is material to the sales-practices inquiry that the CRTC consider the steps that large telcos take with respect to the risk of misleading or aggressive sales practices:

... it is material to the inquiry that the Commission consider ...:

(b) the measures or controls that those carriers have in place to monitor, identify and mitigate the risks that consumers are subject to misleading or aggressive sales practices;

...

[bold font added]

- 16 And, Order in Council 2018-0685 says that it is material to the sales-practices inquiry for the CRTC to consider

(d) the most feasible and effective ways to strengthen or expand the scope of existing consumer protections such as those contained in the Commission's codes of conduct, or to create new consumer protections, including codes of conduct relating to new subjects, in order to further empower consumers to make informed decisions with respect to their telecommunications services and to further promote the fair treatment of consumers in their relationships with telecommunications carriers.

[bold font added]

- 17 On 16 July 2018 – five and a half weeks after the government issued Order in Council 2018-0685 – the CRTC announced a public proceeding to investigate telecommunications sales

⁹ *ibid.* at page 4.

- practices, including a public hearing in Gatineau, Quebec, in October 2018.¹⁰ TBNOC 2018-246 invites “... comments from communications on their personal experiences with [misleading or aggressive] sales] practices, including comments”¹¹ from “[c]urrent and former employees of service providers.”¹² The Notice includes 22 questions, including four directed specifically at service providers’ employees (past and present).
- 18 On 17 July 2018 PIAC wrote the Commission (via the Secretary General) to express the concern that evidence of current or former employees which is submitted to the TBNOC 2018-246 proceeding may not be “protected from potential legal repercussions, such as actions for breach of confidence and breach of contract in relation to confidentiality agreements with the TSPs.”¹³ PIAC noted that it did not see how the CRTC’s confidentiality process would apply to employees, and pointed out that evidence presented *in camera* “would not promote an open and fair hearing”, and should instead be given in public.¹⁴ PIAC asked the CRTC to grant current and former employees privilege to enable them to testify without have to fear legal or related proceedings and consequences.¹⁵
- 19 CRTC staff answered PIAC’s letter ten days later, saying that they were reviewing submissions filed with respect to TBNOC 2018-246 “to identify confidentiality or related issues”, and that the CRTC could hold some of its public-hearing proceedings *in camera*:

Commission staff notes that Commission proceedings allow parties, including members of the public, to provide input so that the Commission can make better, more informed decisions. To ensure an open and transparent process, information submitted to the Commission in its proceedings is generally made public.

Submissions in response to the Notice are being reviewed on an ongoing basis by Commission staff in order to identify confidentiality or related issues facing those employees who wish to participate in this proceeding. Other measures are also available to the Commission, such as ordering that a public hearing be held in part in camera. These measures are available, if required, to address any party’s specific concern arising from submitting information on the public record of this proceeding.¹⁶

¹⁰ Report regarding the retail sales practices of Canada’s large telecommunications carriers, Telecom and Broadcasting Notice of Consultation 2018-246 (Ottawa, 16 July 2018), <https://crtc.gc.ca/eng/archive/2018/2018-246.htm>.

¹¹ *Ibid.*, at ¶13.

¹² *Ibid.*, Appendix 2 at ¶4 (“Current and former employees of service providers”).

¹³ John Lawford, Executive Director, PIAC, *Re: Telecom and Broadcasting Notice of Consultation CRTC 2018-246, Notice of Hearing, Report regarding the retail sales practices of Canada’s large telecommunications carriers, Procedural Request of the Public Interest Advocacy Centre to clarify privilege for current and former employees of Major TSPs*, Letter to the Secretary General (Ottawa, 17 July 2018) at page 1 (para. 2).

¹⁴ *Ibid.*

¹⁵ *Ibid.*, at page 2 (paras 3-4).

¹⁶ Noah Moser for/Scott Shortliffe, Chief Consumer Officer and Executive Director, Consumer Affairs and Strategic Policy, CRTC, *Re: Telecom and Broadcasting Notice of Consultation CRTC 2018-246, Notice of Hearing, Report regarding the retail sales practices of Canada’s large telecommunications carriers, Procedural Request of the Public Interest Advocacy Centre to clarify privilege for current and former employees of Major TSPs – Response to Procedural Request*, (Ottawa, 27 July 2018),

- 20 PIAC subsequently wrote the CRTC on 30 July 2018, noting that the CRTC staff's letter – apart from being a response from CRTC staff, rather than by the Commission via the CRTC's Secretary General – did not provide "meaningful mechanisms to eliminate the risks faced by employees who equally wish to assist the CRTC."¹⁷

The CRTC has not yet addressed PIAC's concerns

- 21 As a preliminary matter, the Forum notes, as PIAC did on 30 July 2018, that the CRTC has not yet responded to PIAC's request that it consider revising the procedures for the TBNOC 2018-246 proceeding to address the concerns that past and current employees may face repercussions by their participation in this proceeding: the CRTC's staff responded to PIAC instead.
- 22 The legal status of the CRTC staff's reply is unclear: as set out in the 2000 case of *Centre For Research-Action On Race Relations v. Canadian Radio-Television and Telecommunications Commission*,¹⁸ decisions by the CRTC's staff are not decisions of the Commission. While exceptions may exist due to statute enacted since this case was decided, they do not apply in this proceeding.
- 23 The Forum respectfully submits that it would be more appropriate for the CRTC's members (*i.e.*, Commissioners of the CRTC) to consider and decide matters that will affect the nature and quality of evidence submitted to the CRTC for the report it submits to the federal government, than to delegate this task to the CRTC's staff.

Does evidence from former or current telco employees matter?

- 24 At its core, the TBNOC 2018-246 proceeding focusses on the sales practices of large telcos. While the telcos' written policies and procedures are relevant to TBNOC 2018-246, actual evidence of sales practices is key: otherwise, the result of the proceeding will be a sterile description of the practices that are supposed to be used, along with recommendations based on what is supposed to be done.

https://crtc.gc.ca/eng/archive/2018/lt180727.htm?_ga=2.194669677.1705051977.1532962860-18065054.1505399347.

¹⁷ John Lawford, Executive Director, PIAC, *Re: Telecom and Broadcasting Notice of Consultation CRTC 2018-246, Notice of Hearing, Report regarding the retail sales practices of Canada's large telecommunications carriers, Privilege for current and former employees of major TSPs, follow-up to Commission staff decision*, (Ottawa, 30 July 2018), on CRTC telecom proceedings website.

¹⁸ 2000 CanLII 16685 (FCA), at ¶16:

... It is clear from both subsection 31(2) of the *Broadcasting Act* and paragraph 28(1)(c) of the *Federal Court Act* that the jurisdiction of this Court lies in respect of decisions of the Canadian Radio-Television and Telecommunications Commission. By subsection 3(1) of the *Canadian Radio-Television and Telecommunications Commission Act* it is equally apparent that the "Commission" consists of the full-time and part-time members thereof appointed by the Governor in Council. From the affidavit of [then-Executive Director, Broadcasting, CRTC] Mr. Blais it is obvious that his letter of August 9, 2000 was not a "decision" of the "Commission"

- 25 What Order in Council 2018-0685 establishes, however, is that the government wants actual evidence of how sales have been implemented or are being implemented in terms of sales ***practices***: evidence about practice, rather than policy, is therefore highly relevant.
- 26 The two main sources of evidence about sales practices are consumers and employees. Consumers' experiences with actual sales practices will be relevant to the proceeding – but on-the-ground experience of telcos' former and current employees, is as relevant. Consumers' experiences are relevant for identifying the justification for this proceeding; employees' experiences are relevant for identifying specific problems in telco sales practices which may have or may be happening.
- 27 The record of TBNOC 2018-246 therefore requires evidence about employees' implementation of telco sales practices. The Forum respectfully submits that the absence of an express type of public-interest privilege for former and current employees is very likely to limit the availability of this evidence.

Having already amended the rules that apply to TBNOC 2018-246, is it reasonable for the CRTC to decline to consider additional amendments?

- 28 While the CRTC staff's letter does not explicitly deny PIAC's 17 July 2018 procedural request, it also does not grant the request.
- 29 On its face, however, the letter sent to PIAC establishes that the CRTC or its staff have already amended the *Rules* that normally apply to confidential material.
- 30 The current *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*¹⁹ (*Rules*), which "apply to all proceedings before the Commission..."²⁰, direct the parties seeking confidential treatment of their submissions to
- a. designate information as confidential if they file it with the CRTC²¹
 - b. make the confidential designation at the time they submit the information with the confidential content²²

¹⁹ SOR/2010-277.

²⁰ S. 2(1), except for Canada's anti-spam rules, see s. 2(2):

These Rules do not apply to proceedings before the Commission under sections 6 to 46 of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*.

²¹ S. 31(1):

In broadcasting matters, a party may designate information referred to in paragraphs 39(1)(a) to (c) of the Telecommunications Act as confidential if they file it with the Commission.

Note: Subsection 39(1) of the Telecommunications Act provides for the same rule in relation to telecommunications matters.

[Note is in the original *Rules*]

²² S. 31(2):

The party must make the designation at the time that they file the document that contains the information.

- c. provide “reasons, as well as any supporting documents, why the disclosure of the information would not be in the public interest, including why the specific direct harm that would be likely to result from the disclosure would outweigh the public interest”,²³
- and
- d. provide an abridged version for the public record.²⁴
- 31 The CRTC staff’s letter says, however, that in this proceeding CRTC staff have assumed the role assigned by the *Rules* to parties seeking confidentiality: “[s]ubmissions in response to the Notice are being reviewed on an ongoing basis by Commission staff in order to identify confidentiality or related issues facing those employees who wish to participate in this proceeding.”
- 32 The CRTC staff’s letter also comments that, information is generally made public in CRTC proceedings, “[t]o ensure an open and transparent process”
- 33 The Forum respectfully notes that if the CRTC staff’s letter accurately describes the CRTC’s current approach to confidentiality in the TBNOC 2018-246 proceeding, amended rules are already in force for the TBNOC 2018-246 proceeding: the *Rules* require parties to apply for confidentiality, while the letter establishes that CRTC staff are performing this function. TBNOC 2018-246 does not mention this fact, however, making the TBNOC 2018-246 process less than transparent.

Does the CRTC staff’s letter answer questions about confidentiality in the TBNOC 2018-246 proceeding

- 34 In addition to suggesting that the CRTC’s usual *Rules* for confidentiality have been modified in the TBNOC 2018-246 proceeding, the CRTC staff’s letter is silent as to the process that has now been adopted to consider evidence about telco sales practices.
- 35 The public therefore does not know
- who is designating documents as confidential (the parties seeking confidentiality, as required by section 31(1) of the *Rules*, or the CRTC’s staff?)
 - when this is happening (at the time the information is filed, as required by section 31(2) of the *Rules*, or afterwards?)
 - who is providing reasons for the confidentiality designation (the parties, as required by section 32(1) of the *Rules*, or CRTC staff?),

²³ S. 32(1):
The party that designates information as confidential must provide reasons, as well as any supporting documents, why the disclosure of the information would not be in the public interest, including why the specific direct harm that would be likely to result from the disclosure would outweigh the public interest.

²⁴ S. 32(2):
The party must either file with the Commission an abridged version, intended to be made available to the public, of the document that contains the information or provide reasons, as well as any supporting documents, why an abridged version cannot be filed.

- what the reasons are for confidentiality (required by section 32(1) of the *Rules*, but not addressed by the CRTC staff's letter), or
 - who is providing an abridged version for the public record (as required by section 32(2) of the *Rules*, or CRTC staff?).
- 36 The Forum respectfully submits that an amended process that leaves more questions unanswered than it answers, is not transparent.

Should CRTC decide what evidence will be heard in this proceeding?

- 37 Another question raised by the CRTC staff's letter is how the amended process it describes will affect the evidence heard by the CRTC with respect to the questions in TBNoC 2018-246.
- 38 Generally speaking, quasi-judicial proceedings benefit when the evidence they bring forward is relevant and complete. Considering evidence that is irrelevant misuses the resources of the quasi-judicial tribunal and others, while considering evidence that is incomplete may lead the tribunal's deliberations astray.
- 39 Organizations such as PIAC have participated in many CRTC proceedings by bringing forward witnesses to provide evidence. Interviews by its legal counsel ensure that the evidence its witnesses bring forward is not only relevant, but complete.
- 40 In this proceeding, however, the CRTC staff's letter implies that CRTC staff will decide whether certain submissions should be afforded confidentiality – but does not indicate whether CRTC staff will then also interview potential or actual witnesses to ensure that their evidence is not just relevant, but also complete. If this is the case, should the CRTC not make this process clear to all parties? The Forum respectfully submits that the absence of clarity on this point makes the TBNoC 2018-246 process less open, and less transparent.

Do the amended TBNoC 2018-246 procedures raise concerns about partiality?

- 41 In this proceeding the CRTC's role is to consider the questions raised by Order in Council 2018-0685 and develop recommendations. In similar contexts, the CRTC has traditionally invited all parties to present evidence and arguments: it plays an impartial, adjudicative role when parties disagree about the relevance of the evidence and arguments being made.
- 42 Under the amended procedures described by the CRTC staff's letter, however, CRTC staff will be making decisions about which evidence to submit. The letter says: "*Submissions in response to the Notice are being reviewed on an ongoing basis by Commission staff in order to identify confidentiality or related issues facing those employees who wish to participate in this proceeding*" (italics added).
- 43 If parties disagree with their decisions and challenge the decisions before the CRTC itself, what process will consider these challenges? Will CRTC staff be required to defend their decisions to Commissioners? If so, would this situation raise any concerns about impartiality? Will other parties feel able to question CRTC staff decisions about confidentiality, in light of their necessary working relationship with CRTC Commissioners? The Forum respectfully submits

that the absence of clarity on these points makes the TBNoC 2018-246 process less open, and less transparent.

CRTC has the discretion to strengthen the quality of evidence in the TBNoC 2018-246 proceeding

- 44 The Forum’s primary concern with the CRTC’s current approach to first-hand evidence from former and current employees in the TBNoC 2018-246 proceeding is that the absence of some form of public-interest protection for that evidence will have a chilling effect on potential witnesses, and in turn limit the CRTC’s access to evidence necessary to address the questions raised by Order in Council 2018-0685. Reviewing the legislation and caselaw regarding employee duties to their employers, and defamation, both in and outside of Quebec, raises serious concerns about the degree to which former and current employees may be at risk if they testify in this proceeding.
- 45 If current and former employees who have relevant evidence do not come forward, the quality of the TBNoC 2018-246 proceeding could therefore later be challenged on the grounds that the proceeding’s record was incomplete (given Order in Council 2018-0685’s express interest in employee evidence).
- 46 On the other hand, even if all current and former employees actually do come forward, without concern for the possible repercussions they may face, the fact that a possibility of such repercussions exists may in turn raise questions as to whether, in fact, the TBNoC 2018-246 record is complete.
- 47 In other words, concerns about the lack of privilege available to former and current employees in the TBNoC 2018-246 proceeding are likely to have the invidious effect of rising questions about the quality of information submitted to the government with respect to Order in Council 2018-0685.
- 48 As PIAC has indicated, the CRTC has the means to solve this problem. Under the *Rules* the CRTC has the discretion to
- “exercise any of its powers under these Rules at the request of a party or interested person or on its own initiative” (s. 5(1)), and
 - “provide for any matter of practice and procedure not provided for in these Rules by analogy to these Rules or by reference to the Federal Courts Rules and the rules of other tribunals to which the subject matter of the proceeding most closely relates” (s. 5(2)).
- 49 The existence of section 5 of the *Rules* suggests that the CRTC would be fettering its discretion if it determines that it should not exercise its discretion to change its procedures in this hearing, simply because it has not done so in previous hearings. A CRTC decision to amend the rules of procedure in this proceeding, would clearly not apply to change the rules of any other proceeding. As indicated above at paragraph 31, moreover, it appears that the CRTC and/or its staff has already amended the rules for confidential information in this proceeding.

- 50 Changing the current rules for the current TBNOC 2018-246 proceeding to ensure that the 'best evidence' possible is brought forward would, however, strengthen the quality of the CRTC's final report to the government with respect to Order in Council 2018-0685, by permitting witnesses in this quasi-judicial proceeding to speak without fear. The Commission could, for instance, establish a modified form of public-interest privilege to such witnesses. A process in which former and current employees could freely provide relevant evidence, without fear of repercussions, would limit concerns about the quality of the record of the TBNOC 2018-246 proceeding.
- 51 For the reasons noted above, the Forum respectfully asks that the Commission, in lieu of its staff, provide current and former employees with a formal assurance, by way of an amendment to TBNOC 2018-246, that their evidence and testimony to the CRTC with respect to Order in Council 2018-0685 and TBNOC 2018-246 will not render them liable to subsequent legal action or employment-related discipline.

Sincerely yours,



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