



11 January 2019

Ottawa, ON K1A 0N2

Dear Ms. Yale,

**Re: Broadcasting and Telecommunications Legislative Review, *Terms of Reference* (Ottawa, 5 June 2018), <https://www.ic.gc.ca/eic/site/110.nsf/eng/00001.html>**

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.

The Forum is pleased to have the opportunity to respond to the Panel's request for comments, and our submissions to the Panel are attached. We have, where possible, relied on empirical evidence to support our arguments and to develop our recommendations. We have made proposals for legislative change in a range of areas, to take into account the new communications environment to which Canada must adapt, while safeguarding its values.

Sincerely yours,

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Executive Director  
Forum for Research and Policy in Communications (FRPC)  
Ottawa, Ontario

Note to the reader:

In reviewing our submission we have from time to time noticed typographical errors. We have corrected the errors, and have used 'Track Changes' to notify readers of the places where changes have been made (including this Notes).



# Canadian Communications 3.0

## Moving to the future

**Answers to the Panel's questions &  
Proposals for new communications law  
to strengthen Canada's social, economic and cultural infrastructure**

Submission of the Forum for Research and Policy in Communications (FRPC)

*Call for comments on the Governor in Council's request  
for a report on future programming distribution models,*  
Broadcasting Notice of Consultation CRTC 2017-359 (Ottawa, Ottawa, 12 October 2017),  
<http://www.crtc.gc.ca/eng/archive/2017/2017-359.htm>



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## Terminology

<b>Accessibility</b>	In using this term the Forum is referring to the ability of people who are Deaf, Hard of Hearing, Blind or who have difficulties with their vision, to use Canada's broadcasting and telecommunications systems in a way that is equivalent to the ability of all other people to use those systems
<b>BBG</b>	Board of Broadcast Governors (successor of CBC in regulation; predecessor to CRTC)
<b>BDUs</b>	Broadcasting distribution undertakings (cable television, direct-to-home satellite, multipoint distribution systems)
<b>CAB</b>	Canadian Association of Broadcasters
<b>CBSC</b>	Canadian Broadcast Standards Council
<b>CBC</b>	Canadian Broadcasting Corporation (successor to CRBC)
<b>CRBC</b>	Canadian Radio Broadcast Commission (predecessor to CBC)
<b>CCTS</b>	Commissioner of Complaints for Telecommunications Services
<b>CRTC</b>	Canadian Radio-television and Telecommunications Commission
<b>FRPC</b>	Forum for Research and Policy in Communications
<b>FTE</b>	Full-time or equivalent (with respect to employment)
<b>"Legislation"</b>	Consists of statutes and subordinate legislation such as regulations, but excludes policies, guidelines and bulletins that lack precedential value
<b>Member of the CRTC</b>	CRTC Commissioners appointed by Order in Council (i.e., by Cabinet)
<b>'Simsub'</b>	Simultaneous substitution

## Executive Summary

### I Introduction

- ES1** The Forum is a federally incorporated not-for profit corporation that undertakes research and analyzes policy with respect to communications in Canada. We appear before the CRTC and both Houses of Parliament with respect to broadcasting and telecommunications matters, and advocate on behalf of the public interest in terms of Parliament's laws and objectives.
- ES2** The Forum appreciates the opportunity provided by the Broadcasting and Telecommunications Legislative Review panel (the panel) to make submissions about new Canadian legislation to govern the distribution of content that informs, enlightens or entertains, and of messages between or among individuals.
- ES3** The Forum's answers to the Panel's questions are set out at pages 2 through to 13; a synopsis of our submission is provided on page 1.
- ES4** The remainder of the Forum's submission, Parts II through to and including Part IV, set out the Forum's arguments and evidence regarding new communications legislation for Canada.

### II Why regulate communications at all?

- ES5** Communications legislation matters because such statutes protect the existence of Canada. Communications legislation enables Canadian democracy to exist. It enables Canadian telecommunications and broadcast distribution services to exist by protecting them from technical interference. It promotes and maintains Canadians' values. It protects individuals' privacy and their security. It ensures the growth of a sector worth 4% (\$78 billion) of Canada's 2017 Gross Domestic Product, which employed 51 thousand people directly in 2017, and many thousands more indirectly.
- ES6** Canada's broadcasting programming sector creates hundreds of thousands of hours of Canadian cultural content every month, including more than 5,700 hours per month of original television news. In a hypothetical worst case scenario where Canada's programming services closed overnight, this programming would vanish, and 24,000 people would be thrown out of work – a massive disruption for those whose jobs have been taken away, for their families and communities, and for the Canadian economy.
- ES7** With \$61 billion in revenues in 2017, Canada's telecommunications sector also has a massive impact on Canada's economy – enabling the distribution of unknown numbers of wireline and wireless calls, 200 billion or more text messages annually, and Internet content (including e-mail, messages, and a wide range of other types of information and service) (unknown because this information is not reported by the CRTC).

### III Successes and failures in meeting Parliament's communications objectives

- ES8** Neither amendments to Canada's current communications statutes, nor entirely new communications legislation can easily be developed without an understanding of the strengths and weaknesses of the current statutes in meeting Parliament's objectives. This performance should be measured empirically, and over time.
- ES9** Finding reliable, historical data about Canadian broadcasting and telecommunications is difficult, and at times, impossible (pages 24 and 25 summarize some of the problems with data in this area). The absence of long-term data about broadcasting and telecommunications means that very few of Parliament's objectives in these sectors can be evaluated empirically. The CRTC's annual *Monitoring Reports* have generally presented very little information about broadcast content and affordability. While 57% (193) of the 339 tables and figures in the 2017 report described the communications industry's financial performance, it provided no information about Canadian ownership and control, levels of original Canadian cultural content broadcast in radio and television, multicultural and Indigenous programming content, the portrayal of Canadian society or employment (Table 6).
- ES10** While the CRTC has, to our knowledge, never granted the public access to the program logs submitted by radio broadcasters, the CRTC has made the logs of television broadcasters available for years. The Forum's preliminary analysis of the TV log data for November 2017 found that Canada's television licensees broadcast 170 thousand hours of programming that month, of which 52% were Canadian, and 18% were original or first-run Canadian programs. Of all program hours broadcast, 37% consisted of drama – Canadian drama made up 11% of all program hours; non-Canadian drama made up 25% of all program hours (Table 4).
- ES11** Where the *Broadcasting Act* emphasizes the importance of allocating resources to Canadian programming, the CRTC does not report on radio stations' use of or expenditures on Canadian programming. As for television, since 1993 (when the CRTC began reporting annually on Canadian programming expenditures) over-the-air television services' expenditures on Canadian programming have declined in real terms since the early 1990s, where spending on non-Canadian programming grew steadily to 2010, after which it began to decline to the level of Canadian programming expenditures ([Figure 2](#)).
- ES12** Although Parliament established employment opportunities as an objective in 1991, since then employment in programming sectors has decreased by 11% (Figure 4). In 2017 ten percent of 218 discretionary television services operated without any (i.e., zero) staff, while making \$40 million in profits (Table 7). While the *Telecommunications Act* does not refer explicitly to employment opportunities in telecommunications, employment in telecommunications and broadcast distribution grew by 7% between 1993 and 2016 (Figure 5). That said, where employment in Canada's regulated content and distribution sectors grew 9.4% between 1991 and 2016, employment in all other sectors of Canada's economy grew four times as much – by 44% (Figure 6).



- ES13** As for affordability, reliable – and valid (meaning that the measures used actually measure the affordability to people of the prices they are charged, rather than just the prices charged) – data are few and far between. That said, Professor Geist’s summary of wireless price comparisons between Canada and six other similar, advanced industrialized economies shows that Canada’s wireless prices are generally higher than in those jurisdictions, and that prices in those jurisdictions are decreasing at a higher rate than in Canada (Figure 3).
- ES14** Little reliable information exists about the degree to which Canada’s communications sectors are accessible.
- ES15** What can be said is that Canada’s communications sector is financially successful, being more than twice as profitable as other sectors in Canada’s economy (Figure 1). Sales of broadcasting undertakings have generated more than \$10 billion for sellers in the past 8 years. Concentrated ownership means that the largest five communications companies in Canada have taken in \$250 billion (82%) of the entire communications sector’s revenues from 2013 to 2016.
- ES16** The Forum’s conclusion, based on its review of the data available from the CRTC and Statistics Canada is that there is little evidence to show that Parliament’s broadcasting and telecommunications policies have been, or are being, met. Responsibility for what appears to be a general failure to achieve Parliament’s objectives does not lie solely with the CRTC, however.
- ES17** Successive federal governments have not set out specific policies of their own to direct the future of Canada’s content and distribution sectors. The only federal communications policy of which the Forum is aware was issued in 1987. Its main goal - of limiting entry to protect Canada’s largest communications companies – has been implemented, but other principles, such as affordability and access for all Canadians, have not.
- ES18** Directions from Cabinet have taken the place of formal government policies, and two in particular have essentially thwarted Parliament’s broadcasting and telecommunications policies. A 1997 *Direction on the Ineligibility of Non-Canadians* means that even if the CRTC eliminates its Digital Media Exemption Order, it will remain incapable of licensing non-Canadian online programming services so that their operation in Canada contributes towards the achievement of the policy in section 3 of the *Broadcasting Act*. A 2006 *Direction on Implementation* requires the CRTC to regulate by relying to the maximum degree possible on ‘market forces’, a goal that the CRTC has accommodated by forbearing from the regulation of most telecommunications prices, and in particular from the regulation of wireless and Internet service pricing.
- ES19** Another problem is that the *Broadcasting Act* and *Telecommunications Act* use language that is unclear, have gaps, and are inconsistent with each other.
- ES20** The provision of programming that is accessible and that also reflects Indigenous people will only be provided “as resources become available for the purpose”, language that is

- unclear. Neither statute requires the CRTC to give preeminent consideration to the public interest in its decisions, and Canada’s courts have held that the “public interest” is simply one of several ‘polycentric’ purposes. Other federal statutes emphasize the role of the “public interest”, and new communications legislation for Canada should do the same.
- ES21** The current communications statutes have gaps in that they permit ‘decisions or orders’ of the Commission to be appealed to the Federal Court of Appeal, but do not *prima facie* permit appeal of the many other determinations issued by the CRTC, such as policies, guidelines, statements, regulations and bulletins.
- ES22** The *Broadcasting Act* and *Telecommunications Act* are inconsistent with each other, particularly with respect to reasons. The *Telecommunications Act* requires the CRTC to publish written reasons for approving or disallowing tariffs and permits it to delegate some of its responsibilities; the *Broadcasting Act* does not require the CRTC to give reasons in any of its determinations, and (the existence of the CBC to deal with complaints about broadcast content notwithstanding) does not permit the delegation of authority.
- ES23** Very few of the 51 objectives set out by Parliament in its broadcasting and telecommunications policies are mandatory. The language used is instead permissive, or discretionary, permitting the CRTC to decide which objectives to address, and which to ignore. Insofar as employment opportunities in broadcasting are concerned, a matter to which Parliament’s broadcasting policy refers explicitly (and which is of concern because of years of declining employment in radio and television), 67 (or 0.3%) of 22,054 decisions issued by the CRTC between 2000 and 2018 mentioned “employment opportunities”.
- ES24** Finally, Parliament’s broadcasting and telecommunications policies are themselves internally inconsistent, requiring the CRTC to choose between competing goals. The telecommunications policy says telecommunications services should be affordable – implying a level of regulation in a system characterized by highly concentrate ownership, but also says that the CRTC must “foster increased reliance on market forces”. The days when ‘market forces’ meant that prices were determined by many perfectly informed independent buyers deciding to purchase from any independent sellers, are gone, and likely never existed: after decades of ‘competition’, a handful of large telecommunications companies set telecommunications prices in Canada, to maximize shareholder value. We note that when the CRTC deregulated basic BDU rates in 1997, one of Canada’s largest BDUs increased monthly subscriber rates every year from 1997 to 2008, generating cumulatively over this period an additional \$2.3 billion in subscriber revenue (Table 8).
- IV Objective of new communications statutes**
- ES25** The Forum recommends that new communications legislation be based on the principles on which Canada is founded – the constitutional values set out in the 1982

- Charter of Rights and Freedoms*. The legislation should also mandate that the public interest be paramount in the activities of a new communications regulatory authority.
- ES26** Good public policy requires planning. Relying on random market forces and events places the interests of people in Canada at the whim of a sector whose highly concentrated and protected structure permits a small number of very large companies to impose charges that extract billions of dollars from subscribers. Nations that plan for the future avoid the harms caused by haphazard, uneven, and fitful economic growth.
- ES27** We therefore recommend that Parliament set out clear and specific goals that Canada's content and distribution systems must achieve by – say – 2035. These goals should take into account the needs of Canadian democracy, society and the people of Canada.
- ES28** Much of the future is obviously unknown. That said, statisticians forecast that the overall composition of Canada's population will have changed significantly by 2033. When Parliament first enacted the 1968 broadcasting legislation that is the basis of the 1991 *Broadcasting Act*, 56% of the population was under 30 years of age (Figure 8); by 2033, 25% of the population will be over 65 years of age (Figure 9). The income, needs and interests of older people (more likely to be living on a fixed income) differ significantly from the needs and interests of youth – Canada's communications policies should bear this in mind. Dependency ratios, the number of people under 14 and over 65 years of age, per every hundred people, will increase by half, from 45.8 in 2013, to at least 64.8 by 2033, suggesting a growing need (let alone demand) for stable and growing levels of well-paying employment – Canada's communications policies should also bear this in mind. The example of *Avengers: Infinity War* is striking: filmed in the state of Georgia, its cast and crew included more than 4,000 people. Canadian federal policy should develop and implement a long-term strategy to strengthen Canada's audio-visual sector and its production of Canadian and non-Canadian content in Canada, to promote employment and income growth.
- ES29** Today's broadcasting sector is structured around licences, originally established to minimize static and interference by granting designated Canadian broadcasters the right to use designated channels/frequencies in Canada. Tomorrow's online content sector will not be limited by channels or frequencies – but by revenues. Online programming services that exceed threshold levels of subscription and advertising income in Canada can be required to ensure that content produced by Canadians for Canadians is available on, and easy to locate in, their services.
- ES30** We recommend that Parliament build on the structure of the Canadian Broadcasting Corporation to establish a new mechanism to ensure the production and availability of Canadian news and entertainment programming. The key to ensuring the availability of this programming in 2035, is to require all those that benefit directly or indirectly from the use of the publicly owned spectrum – private broadcasters, online programming services, BDUs, ISPs and TSPs – remit a small percentage of their total revenues to a new national content fund (NCF). The NCF would finance a new national content provider in its entirety, and would also finance some or most of the programming proposals for content produced by Canadians for Canadians submitted by others – and which the

- national content provider would make available through its online programming services to people in Canada and around the world.
- ES31** Even if Parliament chooses not to revise or rewrite its communications statutes at this time, it must establish a new framework for regulatory governance based on the primacy of the public interest, 21<sup>st</sup> century standards for governance, and meaningful oversight by Parliament, the courts and Canadians. (Our submission deals with governance in some detail in Part IV, section F.) Today's framework for regulatory governance grants far too much discretion to the CRTC, the effect of which is to prevent the achievement of Parliament's express broadcasting and telecommunications policies.
- ES32** The Forum notes that much of the panel's work will be affected by details set out in the United States-Mexico-Canada Agreement (USMCA), recently signed by the three countries' heads of state but not yet ratified by their legislatures. We are seriously concerned that the 20<sup>th</sup> century language used in a 'cultural exemption' for the 21<sup>st</sup> century will, in fact, be nearly if not entirely ineffectual: USMCA may render much of the panel's work moot. The Forum recommends that USMCA be reviewed in 2019 to assess its impact more clearly.
- ES33** Finally, the Forum is concerned that the federal piecemeal and fragmented approach to new legislation – repeated start-and-come-to-a-dead-stop studies of broadcasting and telecom since 2016, while key international trade agreements supercede Parliament's desire for sovereign control over communications – now risks leaving Canada's communications sector unprepared for the future. We therefore urge Parliament, the federal government and the Forum to make legislative change in Canadian communications a high priority, preferably now, but otherwise no later than 2020. At present, Canada's communications system is unprepared for an Internet-based future in general, or for unexpected crises in particular.
- ES34** That said, the sovereignty remaining to Canada at least permits it to tackle challenges that, while currently on the horizon, will enter into force in fifteen years, or by 2033.
- ES35** In the very short term – 2019 – the Forum is recommending two interim measures.
- ES36** First, steps be taken to ensure that large foreign online programming services be addressed using current legislative tools to mitigate the worst of their effects on Canadians broadcasters and Parliament's broadcasting objectives. We have proposed that Cabinet in 2019 revise *Direction on the Ineligibility of Non-Canadians* to permit broadcasting licences to be issued to online programming services; the CRTC should grant all online programming services broadcasting licences (using non-appearing hearings). Once these services are licensed, the CRTC will be able to obtain information from them, and report to Parliament about the impact of these services on Canada's communications system.
- ES37** Second, Cabinet should issue a direction for the CRTC to ignore section 5(2) of the *Broadcasting Act*, and the *Direction on Implementation*. The section 5(2) policy and the *Direction* have worked to defeat Parliament's actual broadcasting and

telecommunications policy objectives. They have not served the public interest with respect to affordability in either broadcasting or telecommunications. They have invisibly prevented the CRTC from taking any steps to ensure that in broadcasting online programming services operating in part in Canada are regulated to ensure that they serve, rather than impair, Parliament's broadcasting policy objectives.

**ES38** The Forum's recommendations are listed below.

### **The Forum's recommendations**

- |                   |   |    |
|-------------------|---|----|
| Recommendation 1  | New communications legislation should mandate the separation of ownership of content and distribution services to promote affordability and the   | 5  |
| Recommendation 2  | After the broadcasting and legislative review panel submits its report, the federal government should develop and publish a new policy or policies for Canadian audio-visual cultural content and distribution systems for the 21 <sup>st</sup> century | 40 |
| Recommendation 3  | New communications legislation for Canada must ensure that communications services operating both in whole, or in part, in Canada, demonstrably contribute towards the achievement of Parliament's goals for Canada's communications systems for 2035   | 43 |
| Recommendation 4  | New communications legislation for Canada must ensure that the communications regulatory authority has the authority to request and obtain information relevant to its jurisdiction from all individual, corporate or other persons                     | 43 |
| Recommendation 5  | New communications legislation must be based on, and integrate the values set out in, Canada's constitutional and quasi-constitutional laws   | 51 |
| Recommendation 6  | Parliament must change Canada's communications legislation to require that decisions be made in the public interest   | 52 |
| Recommendation 7  | Parliament should set clear, quantifiable and quantified goals for Canada's content and distribution systems to meet by 2035  | 53 |
| Recommendation 8  | New communications legislation for Canada must be based on reliable statistical estimates describing Canada in or near 2035   | 56 |
| Recommendation 9  | New communications legislation must emphasize the importance of financing Canadian audio-visual programming   | 56 |
| Recommendation 10 | New communications legislation for Canada must mandate the accessibility of content and distribution systems  | 56 |
| Recommendation 11 | New federal legislation should use financial incentives to increase audio-visual content production in Canada, while ensuring that at least   |    |

half of such incentives are directed towards content produced by Canadians for Canadians	56
Recommendation 12 New communications legislation must emphasize the importance of employment in the content and distribution sectors	57
Recommendation 13 New communications legislation must mandate the affordability of communications services	57
Recommendation 14 New communications legislation must replace language such as ‘contribution’ or ‘support’ with neutral terminology such as payment	58
Recommendation 15 New communications legislation must require online programming services to include a base level of content produced by Canadians for Canadians	59
Recommendation 16 New communications legislation must require the communications regulatory authority to collect information annually on the manner in which programming distributed by on- and off-line programming services safeguards Canadian values	59
Recommendation 17 New communications legislation must require online programming services to ensure that their search engines make content produced by Canadians for Canadians easy to locate	59
Recommendation 18 New communications legislation must require online programming services to demonstrate that their search algorithms ensure that users receive results that include content produced by Canadians for Canadians	59
Recommendation 19 New communications legislation must enable Canada’s communications authority to obtain information from any communications service operating in Canada	60
Recommendation 20 New communications legislation must enable Canada’s communications authority to levy significant mandatory penalties if its requests for information from content and distribution services are not obeyed	60
Recommendation 21 New communications legislation must ensure that the customizability of audio-visual content does not override Parliament’s objectives for programming	60
Recommendation 22 New communications legislation must require content providers to submit relevant information about the programming they produce, along with the programming that they make available	60
Recommendation 23 New communications legislation must require independent measurement of online programming services’ claims regarding their scheduling of, search-engine approach to, and production of, content produced by Canadians for Canadians	60

Recommendation 24	New communications legislation must make provision for the archiving of content produced by Canadians for Canadians and made available online, to retain as part of Canada’s historical cultural heritage	61
Recommendation 25	Parliament should establish a new, national, publicly owned content provider focussed on a range of content produced by Canadians for Canadians, and available free of charge across Canada	63
Recommendation 26	A new, national content provider should be financed by a national content fund whose income obtains from a percentage of the total communications income of those using Canada’s communications spectrum to reach audiences or subscribers in Canada	65
Recommendation 27	A new communications authority should be established to determine the annual operating and capital funding for the national content provider, and to decide on applications to the national content fund from others	66
Recommendation 28	Appointments to the CRTC or communications authority must be approved by two-thirds or more of the House of Commons	68
Recommendation 29	The federal government should invite recommendations for appointments to the CRTC or communications regulatory authority from Canada’s academic and public-interest communities	68
Recommendation 30	Parliament should decide whether the Chairperson of the CRTC or a new communications regulatory authority should have the sole discretion to decide which Commissioners make decisions	68
Recommendation 31	Parliament should ensure that the decision-making procedures and internal proceedings of the CRTC or a new communications regulatory authority are transparent	69
Recommendation 32	Parliament should ensure that CRTC decisions are made by members of the CRTC, and that decisions of CRTC staff are subject to review by the members of the CRTC	69
Recommendation 33	The CRTC or communications regulatory authority should be required to ensure that the public record of its proceedings are complete at the time it invites public comment	69
Recommendation 34	The CRTC or communications regulatory authority must ensure that its procedures are reasonable	70
Recommendation 35	Parliament should ensure that the CRTC or communications regulatory authority has the financial resources required to make its public hearings fully accessible	70
Recommendation 36	Parliament should require the CRTC or communications regulatory authority to ensure that its procedures effectively provide parties requiring accessibility with the same time granted to other participants	70

Recommendation 37	All determinations of the CRTC or communications regulatory authority should be signed by the members of the CRTC or authority who made them	71
Recommendation 38	New communications legislation should use consistent terminology to refer to the determinations made by the CRTC, and to establish which determinations may be challenged before the GIC or courts	72
Recommendation 39	The CRTC or new communications regulatory authority should be required to publish its by-laws prominently on its website, and in its 'daily releases'	74
Recommendation 40	The CRTC or a new communications regulatory authority should be required to provide evidence-based reasons for its determinations or the determinations of its staff	74
Recommendation 41	New communications legislation must require the CRTC or new communications regulatory authority to use reasonable procedures to encourage informed participation in its proceedings	76
Recommendation 42	The CRTC or new communications regulatory authority should be required to issue determinations about all applications in a reasonable and non-discriminatory time	76
Recommendation 43	Parliament must require the CRTC or a new communications regulatory authority to place the public interest first in its decisions	77
Recommendation 44	Parliament should clarify the degree to which survey research calls are included in the CRTC's regulation of 'nuisance' calls	80
Recommendation 45	New communications legislation should more clearly describe what constitutes undue nuisance or annoyance in the context of telephone calls and Internet communications	80
Recommendation 46	New communications legislation should require the CRTC or a new communications regulatory authority, upon request, to issue guidance or information bulletins about its regulatory frameworks, on which parties may rely	81
Recommendation 47	Before granting the CRTC or a new communications regulatory authority the power to levy AMPs, Parliament should clarify its expectations for due process	81
Recommendation 48	Within the next year the CRTC should invite all interested parties to meet, to develop an informational framework for data collection in the public interest	83
Recommendation 49	New communications legislation should require the CRTC to issue a report on the implementation of Parliament's objectives within six months of the year described by the report	83



- Recommendation 50 Cabinet should, by order in council, establish the “CRTC Data Advisory Committee” consisting of representatives from the CRTC (1), Statistics Canada (1), the provinces and territories that wish to participate (up to 13), universities that wish to participate (up to 10), and public interest organizations that wish to participate (up to 5), to develop by 31 December 2019 a list of operational indicators to describe cultural, social and economic aspects of Canada’s communications system 84
- Recommendation 51 New communications legislation should mandate a duty to consult, along with requirements for consultation 85
- Recommendation 52 New communications legislation must require the CRTC or a new communications regulatory authority to establish a costs application process for broadcasting and telecommunications proceedings, that is administered by an external organization similar to the BPF 87
- Recommendation 53 All determinations of the CRTC must be subject to appellate review 87
- Recommendation 54 Before proceeding further in this process, the Panel or the federal government should commission a detailed legal review of the USMCA’s impact on Parliament’s discretion to legislate with respect to broadcasting, telecommunications, the Internet, radiocommunications and cultural products and services 88
- Recommendation 55 In 2019 Cabinet should direct the CRTC to disregard section 5(2) of the *Broadcasting Act*; new communications legislation should eliminate this section altogether 92
- Recommendation 56 In 2019 Cabinet should rescind the 2006 *Direction on Implementation*; new communications legislation should repair the conflict in section 7 between regulation and reliance on ‘market forces’, by eliminating the reference to market forces 92

## I. Introduction

### A. *The Forum for Research and Policy in Communications (FRPC)*

- 1 The Forum is a federally incorporated non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system, provided it serves the public interest. We define the public interest in terms of Parliament's laws, and objectives set by Parliament in its communications statutes.

### B. *Synopsis*

- 2 The three laws most frequently mentioned in connection with the Panel's review are the *Broadcasting Act*, the *Telecommunications Act* and the *Radiocommunications Act*. A comprehensive review of Canada's laws for electronic communication will, however, also involve changes to or the replacement of the *Canadian Radio-Television and Telecommunications Act (CRTC Act)* if regulatory governance is to be brought into the 21<sup>st</sup> century.<sup>1</sup>
- 3 Overall, the Forum is proposing that these communications statutes be changed, to
  - ensure that Canada's communications systems and 21st century technology serve the public interest through law based on Canada's core values
  - safeguard Canada's political, cultural and economic sovereignty
  - provide for informed oversight by Parliament and Canadians, and to
  - correct lack of clarity, inconsistencies and gaps in Canada's current communications statutes, and to
  - begin a process by which well-funded, high-quality Canadian cultural content will be available online, so that as conventional radio and television transmission shifts towards a system where content is available primarily online, people continue to have access to content produced by Canadians for Canadians.
- 4 We recommend that changes be made on both an interim and longer-term basis.
- 5 Interim changes – those steps that the federal government may take immediately – include Cabinet's revision in 2019 of the *Direction to the CRTC (Ineligibility of Non-Canadians)* so that the CRTC may finally take steps to ensure that foreign programming services delivered online serve (rather than hinder) implementation of Parliament's broadcasting policy. Cabinet should also direct the CRTC to report the types of data it collects or that it has with respect to broadcasting and telecommunications matters and to consult with the public and other Canadian government departments or agencies about the data it collects for the next several years: Parliament will be unable to take informed legislative action in the future, if it does not have the data it needs to understand content production and distribution in the 21<sup>st</sup> century.
- 6 Longer-term measures that must be taken in consultation with Parliament include statutory changes to the *Broadcasting Act*, *Telecommunications Act*, *Radiocommunications Act* and *Canadian Radio-television and Telecommunications Commission Act*, to ensure that Canada's communications systems serve the public interest first, to enable Parliament to exercise proper

oversight of the degree to which its statutory goals are being implemented, and to correct numerous inconsistencies and gaps in the statutes.

- 7 At this time the Forum is proposing separate statutes with respect to programming content and content distribution, due to our view that effective regulation in the public interest requires separate regulatory bodies for content and distribution. In our view, the shotgun marriage between federal broadcasting and until-then-provincial telecommunications regulation in 1976 has been an unhappy one, riven for more than forty years by fundamentally different goals and behaviour. Rather than maintain the fiction that content and distribution can happily coexist, the time has come for a parting of the ways so that each may flourish on its own.
- 8 The Forum is also recommending that new legislation include a mandatory requirement for Parliamentary review within ten years. A key lesson of the past thirty years must be that the era of communications statutes that stand fundamentally unchanged for decades is past: when Parliament rewrites its communications legislation, it should do so with the awareness that it must more frequently consider the impact of technological change on Canadian democracy, society and the economy, to ensure that the laws, rights and values of people in Canada are respected.
- 9 In the remainder of this section the Forum responds to the questions posed by the Panel. Parts II, III and IV then set out the basis of its answers. (The Forum's recommendations are listed in the Executive Summary.) Part II explains why the Forum believes that Canada's communications statutes must change. Part III describes the ways in which Parliament's objectives for the broadcasting and telecommunications systems have or have not been implemented, and offers reasons for failures of implementation. Part IV then discusses new communications legislation, beginning with the basic principles that the legislation must observe, and continuing with a discussion of the legislation's purpose, objectives, governance and oversight.

"...we're five minutes into a gigantic revolution and almost everything we say today will look silly in 10 years' time. ..."

Alan Rusbridger, quoted in Simon Houpt, "Former editor of The Guardian, Alan Rusbridger, and the brave news world" *Globe and Mail* (10 December 2018), <https://www.theglobeandmail.com/arts/article-former-editor-of-the-guardian-alan-rusbridger-and-the-brave-news/>

### ***C. Answers to the Panel's questions***

The Forum has addressed the Panel's questions below, but generally with some brevity as Parts II through IV in the remainder of this submission set out the Forum's arguments and evidence regarding a new framework for 21<sup>st</sup> century communications.

#### **1. Universal Access and Deployment**

***Question 1.1 Are the right legislative tools in place to further the objective of affordable high quality access for all Canadians, including those in rural, remote and Indigenous communities?***

No.

The legislative tools now in place limit the CRTC's ability to implement Parliament's broadcasting and telecommunications objectives.

Even if there were no specific limits on the CRTC, the *Broadcasting Act* and the *Telecommunications Act* grant the CRTC excessive discretion: it bears no clear, mandatory duty to ensure that access (to communications systems throughout Canada) is affordable.

### Broadcasting

Section 3(1)(t)(ii) says broadcast distribution undertakings (BDUs) “should” deliver programming “at affordable rates”, but does not mandate this requirement. Section 5(2) then also declares that regulation creates an “administrative burden”, and requires the CRTC to be “sensitive” to the burden its administration imposes on broadcasters.

The absence of a mandatory duty regarding affordability, and the requirement to treat regulation as a burden, permitted the CRTC in 1997 to deregulate basic BDU rates (until 2015, when the CRTC began again to regulate basic BDU service, by mandating a \$25/month basic tier of service). The absence of any clear reporting duties for the CRTC also permitted it to stop collecting, retaining and reporting on basic BDU rates; for nearly 20 years the CRTC has instead combined the revenues from basic and discretionary services, making it impossible to use this information as evidence with respect to the affordability of basic BDU services, so as to convince the CRTC to resume rate regulation.

Even if Parliament now gave the CRTC a clear mandatory duty to ensure the affordability of BDU services, a definitional gap in the *Broadcasting Act* makes it unclear whether this duty would extend to the affordability of online programming services. Section 10(1)(g) gives the CRTC the authority to make regulations “respecting the carriage of any foreign or other programming services by distribution undertakings” (section 10(1)(g)), but the *Act* does not clearly define “distribution undertaking” as including Internet Service Providers (ISPs).

Even if the *Broadcasting Act* were amended to create a mandatory duty for affordability and to define BDUs as including ISPs that deliver (or distribute) broadcast programming, it is unclear how the CRTC could at this time ensure the affordability of online programming services, including online programming services operating in part in Canada. First, the CRTC has exempted online programming services from regulation because twenty years ago it found that the online programming services then in existence would not be able to contribute materially to implementation of Parliament’s broadcasting policy. Changing this exemption order would presumably require the CRTC to evaluate new evidence about the impact of such services, but as Cabinet’s *Direction on the Ineligibility of Non-Canadians* prevents the CRTC from issuing licences to non-Canadian online programming services, and the *Broadcasting Act* only permits the CRTC to obtain information from broadcast undertakings that it has licensed, the CRTC cannot obtain reliable data.

The Forum is proposing that Cabinet revise its *Direction on the Ineligibility of Non-Canadians* in 2019 to permit the CRTC to begin the process needed to obtain the information needed for the CRTC to license Canadian and non-Canadian online programming services. Relying on part of the precedent established in 1968 when the CRTC exercised its new authority over Community Antenna Television systems (CATV, which became known as cable, and is now part of the broadcasting undertakings known as BDUs) by automatically granting all such systems licences, and giving them several months to contact the CRTC with information about their services, the Forum is proposing that the CRTC on its own initiative issue licences to all online programming services. The existence of such licences would permit the CRTC to collect the information needed to determine whether the exemption order should be changed, and

would also permit the CRTC to report to Parliament on the impact of online programming services operating in whole or in part in Canada.

### Telecommunications

Section 7(b) states that “affordable telecommunications services” is an objective of Canadian telecommunications policy, but does not clearly state that telecommunications services must be affordable for all Canadians, regardless of location. Even if section 7(b) established that affordability is mandatory, section 7(f) then says that telecommunications policy should “foster increased reliance on market forces for the provision of telecommunications services”. These objectives contradict each other, and permit the CRTC to ignore either or both, at its discretion.

Even if Parliament’s policy objectives made affordability mandatory, the 1997 *Direction on Implementation* tells the CRTC to “rely on market forces to the maximum extent feasible as a means of achieving the telecommunications policy objectives”. The *Direction on Implementation* enables the CRTC to ignore the issue of affordability, by assuming that affordability is provided by unidentified “market forces”.

As the CRTC bears no clear duty to collect and report data on the affordability of telecommunications services, the parties with an interest in ensuring that rates are made affordable lack the evidence they need to convince the CRTC to address affordability.

The Forum is recommending that Cabinet rescind the *Direction on Implementation*, and revise section 7 to establish that affordability is a mandatory policy objective.

### **Question 1.2 Given the importance of passive infrastructure for network deployment and the expected growth of 5G wireless, are the right provisions in place for governance of these assets?**

The Forum has no comment on this question at this time.

## **2. Competition, Innovation, and Affordability**

### **Question 2.1 Are legislative changes warranted to better promote competition, innovation, and affordability?**

The Forum respectfully disagrees with the premise of this question, which is that Canada’s current communications statutes now promote competition, innovation and affordability.

In our view affordability has not been *promoted* in Canada’s communications systems since the 1991 *Broadcasting Act* and 1993 *Telecommunications Act* were enacted. The generally unchanging level of concentrated ownership (measured by share of revenues, for example) establishes that competition is limited in both sectors. The CRTC has complicated consideration of this issue, as well, not just by failing to report annually about affordability in and across Canada (it reports consistently on prices charged, but not necessarily on affordability, which is a larger issue), but also by delegating its responsibility for dealing with complaints about affordability to the Commissioner of Complaints for Telecommunications Services (CCTS). The Forum’s point is not that affordable telecommunications do not exist – because

zero- or low-cost Internet-based messaging and audio-visual calling services such as Skype exist and are used in Canada – but that these affordable services came into existence without legislative prompting (although one might argue, that the CRTC’s decision not to attempt to regulate such services also enabled the services to exist).

Insufficient evidence exists to make specific statements about innovation – but the Forum believes that Canadians, when permitted by the current, highly concentrated ownership structures created by the CRTC in broadcasting and telecommunications, have been highly innovative: Blackberry opened the world’s doors to the idea of ‘smart’ mobile phones; *Little Mosque on the Prairie* demonstrated the most positive aspects of Canada’s multicultural society (thereby, even if idealized, promoting Canadian values).

The Forum believes that legislative changes are needed to ensure competition and affordability. Parliament should take steps to limit the harms caused by excessively concentrated ownership in Canada’s communications system, by mandating the separation of control over content and distribution, by clearly mandating the affordability of communications services, and by limiting the CRTC’s power to forbear from rate regulation in telecommunications.

When the CRTC began to allow distribution companies to acquire control over content services – beginning in the mid-1980s, when it approved Rogers’ purchase of the OMNI television services – it assured Canadians that large distribution companies like Rogers had the financial capacity to support and strengthen content services: in fact, large distributors’ control over programming services has weakened these services, with the CRTC’s express consent.

Large distributors like Rogers and Bell have not used their massive telecommunications revenues to strengthen cultural content – they have instead regularly threatened to close programming services, and in Rogers’ case, have cancelled dozens of programs, including newscasts. Rumours regularly crop up to the effect that one large distributor or another plans to terminate some or all of its programming services. Telecommunications services forcefully oppose proposals to finance the creation and production of Canadian cultural content through distribution revenues, and at times the independence of broadcast news services controlled by telecommunications companies has been compromised by that ownership.<sup>2</sup>

It does not in the Forum’s view matter whether distributors’ disregard for their commitments to strengthen programming services stems from lack of knowledge or disinterest: the CRTC’s policy to create very large communications companies that control distribution and content has not helped to achieve Parliament’s telecommunications and policy objectives, and has arguably harmed the public interest in affordability and Canadian cultural content.

**Recommendation 1      New communications legislation should mandate the separation of ownership of content and distribution services to promote affordability and the**

The Forum is also recommending (see Recommendation 13) that Canada’s communications statutes mandate the affordability of communications services available in Canada.

The Forum does not believe it is appropriate for Parliament to attempt to legislative innovation – and in any event notes that despite the inclusion of encouraging innovation in telecommunications in section

7(g), Canadian telecommunications companies confirmed in the CRTC's first *Wireless Code* hearing that they relied on non-Canadian companies for the development of innovative products.

### **3. Net Neutrality**

**Question 3.1 Are current legislative provisions well-positioned to protect net neutrality principles in the future?**

No.

The 1993 *Telecommunications Act* does not specifically mandate 'net neutrality', but refers instead to the 19<sup>th</sup> century principle of unjust discrimination. The Forum agrees that the rates charged for telecommunications services must be just – but Canada's telecommunications statute should include an express statement supporting network neutrality.

### **4. Consumer Protection, Rights, and Accessibility**

**Question 4.1 Are further improvements pertaining to consumer protection, rights, and accessibility required in legislation?**

Yes.

Canada's communications statutes should be amended to mandate

- The affordability of communications services
- The collection by the CRTC and annual reporting of empirical information about affordability in and across Canada, including numbers of complaints about affordability and the outcomes of investigations of these complaints
- The accessibility of communications services
- The collection and annual reporting of empirical information about accessibility, including numbers of complaint about accessibility and the outcomes of investigations of these complaints and
- that the CRTC publish applications it receives (including applications about consumer protection, rights and accessibility) in a reasonable time and manner, so that interested parties may comment on those applications

The statutes should not include language that permits the CRTC or a new communications regulatory authority to disregard affordability; considerati

If Parliament expressly includes an authority for the CRTC or a new communications regulatory authority to delegate its authority, such bodies should be required to serve the public interest in affordability and accessibility, and to ensure that consumer rights are reflected in the policies, procedures and decisions of these bodies.

## **5. Safety, security and privacy**

### **Question 5.1 Keeping in mind the broader legislative framework, to what extent should the concepts of safety and security be included in the Telecommunications Act/Radiocommunication Act?**

It is somewhat unclear what is meant by “broader legislative framework”.

That said, the Forum supports the inclusion of concepts of safety and security in the *Telecommunications Act* and the *Radiocommunication Act*, while acknowledging that these concepts will require clear definitions. The availability of mechanisms to promote safety and security should be mandatory across Canada – telecommunications companies that provide service in rural areas and the North, for example, should ensure that 911 service functions properly.

The Forum also notes that safety and security are issues that warrant consideration under the *Broadcasting Act*, to ensure that programming services that include news are owned and operated by Canadians, and to mandate that programming services offering news provide original local, regional and national news in times of emergency.

## **6. Effective Spectrum Regulation**

### **Question 6.1 Are the right legislative tools in place to balance the need for flexibility to rapidly introduce new wireless technologies with the need to ensure devices can be used safely, securely, and free of interference?**

The Forum has no comments on this question at this time.

## **7. Governance and Effective Administration (telecommunications)**

### **Question 7.1 Is the current allocation of responsibilities among the CRTC and other government departments appropriate in the modern context and able to support competition in the telecommunications market?**

No.

First, the Forum respectfully does not accept the underlying premise of this question, to the effect that the role of the CRTC and the government in telecommunications is “to support competition”. Demands that the CRTC and government ‘support competition’ have become, in our view, code for maintaining highly concentrated ownership structures and protecting incumbents. This position is clearly laid out in the federal Department of Communications’ 1987 *Policy Framework for telecommunications in Canada*.

Second, the Forum respectfully submits that the appropriate role for the federal government in Canada in the 21<sup>st</sup> century is to serve the interests of Canadians: have Canadians’ interests been served by Canada’s telecommunications system since 1987? We believe at least some of the available evidence (see Table 2 and Figure 3) shows that telecommunications companies’ interests are being very well served – Canadians’ interests, less so.



The problem is that the CRTC continues to meet the requirements of the 1987 *Policy Framework* and is now also bound by the 2006 *Direction on Implementation*: even if the CRTC wishes to do more for the public interest with respect to affordability, it is unclear whether it would be able to, thanks to the *Policy Framework*, the *Direction on Implementation* and the conflicting objective of section 7.

The federal government should develop a new policy for telecommunications that meets the needs of Canadians of all ages, and in all parts of Canada, in the 21<sup>st</sup> century.

**Question 7.2 Does the legislation strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?**

No.

Please see our response to Question 1, and our discussion in Part III, section B, as well as Part IV, section F.

In brief, we suggest that when Parliament establishes a new policy for telecommunications, it should remove Cabinet's authority to thwart this policy, by removing the power of general policy direction in section 8 of the *Telecommunications Act*.

**8. Broadcasting definitions**

**Question 8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?**

The Forum respectfully submits that rather than seeking to ensure that the "concept of broadcasting" remains relevant, Parliament must ensure that content produced by Canadians for Canadians is and remains available to people in Canada (and elsewhere).

Ensuring that content produced by Canadians for Canadians is available will require new sources of funding (which we discuss at Part IV, section E).

Ensuring that content (Canadian, as well as non-Canadian) is available will also require an assurance that this content can be accessed by, and is delivered to people in Canada on an affordable basis, and that it is entirely accessible.

**Question 8.2 How can legislation promote access to Canadian voices on the Internet, in both official languages, and on all platforms?**

Please see our response to Part IV, sections A, B, D and E, as well as Part V, sections A and B.

## **9. Broadcasting Policy Objectives**

**Question 9.1 How can the objectives of the Broadcasting Act be adapted to ensure that they are relevant in today's more open, global, and competitive environment?**

Please see the Forum's discussion in Parts II, III and IV.

**Question 9.2 Should certain objectives be prioritized? If so, which ones? What should be added?**

In the near term – say, for the next decade – Canada's broadcasting system should emphasize

- the financing and production of local news in radio and television
- the financing and production of Canadian drama (Category 7 television programming)
- the financing and production of Canadian music
- the financing and production of programming by, for and about Canada's Indigenous peoples
- the affordability of distribution systems
- the full accessibility of all programming content
- the availability of radio and television programming for Canada's official language communities, and for its multicultural communities, and
- the collection of more empirical information about the degree to which Parliament's broadcasting objectives are being met.

Beyond this timeframe, the same objectives should be emphasized, but in the online context.

**Question 9.3 What might a new approach to achieving the Act's policy objectives in a modern legislative context look like?**

The Forum discusses this at length in Part IV, sections E and D.

Please note that unless governance of Canada's communications system improves, new communications legislation is unlikely to result in any meaningful changes that serve the public interest.

## **10. Support for Canadian Content and Creative Industries**

**Question 10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?**

Please see Part IV.

**Question 10.2 How can the CRTC be empowered to implement and regulate according to a modernized Broadcasting Act in order to protect, support, and promote our culture in both official languages?**

Please see Part III, section B; Part IV, sections F; and Part V.

**Question 10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?**

Please see Part IV.

**11. Democracy, News, and Citizenship**

**Question 11.1 Are current legislative provisions sufficient to ensure the provision of trusted, accurate, and quality news and information?**

No.

**Question 11.2 Are there specific changes that should be made to legislation to ensure the continuing viability of local news?**

Parliament must change its communications statutes to mandate the provision of local news; it should ensure that a new national content provider is properly resourced to provide this programming.

**12. Cultural Diversity**

**Question 12.1 How can the principle of cultural diversity be addressed in a modern legislative context?**

Cultural diversity can be addressed through new communications legislation that makes the reflection of Canada's diversity in audio-visual content a mandatory requirement for those seeking financial support for, or the delivery (by the national content provider) of, their programming.

**13. National Public Broadcaster**

**Question 13.1 How should the mandate of the national public broadcaster be updated in light of the more open, global, and competitive communications environment?**

The Forum respectfully notes that it is unclear why the mandate of a national content provider must take into account a competitive communications environment, as its purpose must be to ensure the availability of content produced by Canadians for Canadians. Since 1991 the CRTC has had to go to enormous lengths to cajole, encourage and – more rarely – require private broadcasters to make any, let alone more, content produced by Canadians for Canadians available to their audiences; the CBC, on the other hand, willingly provides this content because that is its legal purpose under Parts 1 and III of the *Broadcasting Act*.

During the transition from the current, licence-based content system, the CRTC should continue to ensure that private broadcasters make content produced by Canadians for Canadians available.

Parliament should, however, now begin to establish the preconditions necessary for a new communications environment in which licences are no longer granted, and nearly all programming content is delivered online.

Licences will no longer be granted, in our view, because Canadians' values and the constitutional protections guaranteed by the *Charter* will not permit the federal government to attempt to license online programming services. That said, unless the government establishes a mechanism to ensure that content produced by Canadians for Canadians continues to be made, and continues to be available to people in Canada, Canadian cultural content will largely disappear.

It is not difficult to imagine that if Canada fails to act Canadian music and television programming will largely disappear as Canadians and the rest of the world moves online. Fans and enthusiasts will create or maintain online sites for "Cancon", but the gradual shift of today's broadcast licensees online will remove the power that Parliament has today to control their activities in the over-the-air and satellite-delivered transmitter-based world, by mandating that their schedule be predominantly Canadian, or that their spending be on predominantly Canadian resources.

Without wishing to appear simplistic, have licence renewal hearings for private radio and television services for much of the last thirty years resembled anything other than episodes of the US *Let's Make a Deal* television franchise, in which the CRTC pleads with private broadcasters not to reduce their Canadian programming commitments even more? After decades of such hearings, and after dozens of failed policies created to try to encourage private broadcasters to at least maintain their commitments to Canadian programming, the time has surely come to focus on what has demonstrably worked in the past, and is therefore likely to work in the future: an expanded and strengthened CBC – that we call a national content provider, as 'broadcasting' transforms into the provision of content and its distribution – whose core mandate is to produce, acquire and provide audio-visual content produced by Canadians for Canadians.

The mandate of the national content provider should be updated to produce, acquire and make available a wide range of original content produced by Canadians for Canadians, from a wide range of sources.

**Question 13.2 Through what mechanisms can government enhance the independence and stability of CBC/Radio-Canada?**

The independence and stability of Canada's national content provider must be assured by stable or increasing (in real terms) annual funding. The Forum is proposing that Canada adopt a model similar to that of the British Broadcasting Corporation (BBC), which provides for 5-year funding commitments.

The independence of Canada's national content provider would also be strengthened if the discretion to replace its Executive and members of its Board of Directors were transferred from Cabinet and the Minister, to the House of Commons – by requiring, for instance, that changes to the Executive and Board occur if, and only if, 2/3 of the Members of the House support such changes.

**Question 13.3 How can CBC/Radio-Canada play a role as a leader among cultural and news organizations and in showcasing Canadian content, including local news?**

As it is unlikely that private broadcasters that move online will devote more resources to content produced by Canadians for Canadians than they do now, a properly funded national content provider will become the leader in cultural and news organizations by default.

That said, the Forum is proposing (see Part IV, sections D and E) that funding for a national content provider be strengthened, so that more content produced by Canadians for Canadians can be made available than is now possible in the CBC's current financial position.

**Question 13.4 How can CBC/Radio-Canada promote Canadian culture and voices to the world, including on the Internet?**

The 'promotion' of content produced by Canadians for Canadians can only happen if a new, national content provider is granted this responsibility.

**Question 13.5 How can CBC/Radio-Canada contribute to reconciliation with Indigenous Peoples and the telling of Indigenous stories by Indigenous Peoples?**

New communications legislation must mandate the reflection of Indigenous peoples in the content made available by a new national content provider; it must also mandate specific funding for this content.

**Question 13.6 How can CBC/Radio-Canada support and protect the vitality of Canada's official languages and official language minority communities?**

New communications legislation must designate or mandate funding to ensure that Canada's official language minority communities, and multicultural communities, have the resources required to produce programming.

**14. Governance and Effective Administration (broadcasting)**

**Question 14.1 Does the *Broadcasting Act* strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?**

No.

The Forum respectfully notes first, that this question presupposes that regulatory independence now exists ("maintaining regulatory independence"). In our view, the excessive authority now granted to the Chairperson of the CRTC to decide which CRTC Commissioners hear – and therefore determine – which matters, effectively enables the government that appoints the Chairperson to ensure that CRTC determinations hew to the government's preferences.

Second, the effect of section 5(2) of the *Broadcasting Act* is to thwart Parliament's broadcasting policy in section 3(1).

Third, the Forum does not agree that the *Broadcasting Act* strikes the correct balance between policy direction and regulatory independence. The *Direction on the Ineligibility of Non-Canadians* has prevented the CRTC from licensing online programming services that operate in part in Canada, and for ensuring that these operations help to achieve Parliament's broadcasting policy objectives.

**Question 14.2 What is the appropriate level of government oversight of CRTC broadcasting licencing and policy decisions?**

Cabinet should have the authority to hear applications challenging CRTC determinations, set out in section 28. It should not have the authority as well to issue directions on matters of CRTC policy, as this power has had negative effect on the CRTC's ability to make decisions in the public interest, with respect to telecommunications.

The Forum instead recommends the removal of section 5(2) of the *Broadcasting Act*, which (similar, but not identical to, the *Direction on Implementation*) enables the CRTC to ignore Parliament's broadcasting policy objectives for Canada in section 3(1).

**Question 14.3 How can a modernized Broadcasting Act improve the functioning and efficiency of the CRTC and the regulatory framework?**

The Forum addresses this issue in Part IV, section F.

More generally, the Forum regrets that for far too long, important issues in Canadian broadcasting and telecommunications have been laid on the back burner of government, so to speak. Governments have avoided making the tough decisions for political purposes. The problem is that technology now changes so quickly (see Appendix 1) that the federal government finds itself dealing with old problems – and not the even-more-important challenges hurtling down the track – not just 5G service, but what may be the imminent collapse of conventional OTA broadcasting. It will be too late for Parliament or the government to take charge when the first two or three television transmitters are turned off, or after that trickle of closures turns into a flood. Estimates vary as to when the deluge will hit:

“When do we turn off linear and go 100 per cent digital? Some people say it's five years. I think because of the nature of the geography of Canada – and until we solve the issue of broadband penetration in remote communities – we will probably be operating linear services for much longer. However, will they be in all markets? That's really the question,” said Ms. Tait, who was appointed CEO of the public broadcaster last April. “Five to 10 years, I think is the runway. It might happen faster.”

Susan Krashinsky Robertson, “Beyond traditional TV and radio: CBC grapples with a digital future” *Globe and Mail*, 11 January 2019, <https://www.theglobeandmail.com/business/article-cbc-looks-to-a-digital-future-as-it-submits-proposals-to-review-of/>.

Canadians will need radio for years to come: for many, this is their medium of choice in times of emergencies.

But today's generation does not think first of radio, or cable TV, or newspapers – they are mobile. Checking Twitter or any other social media application is faster than turning on a radio, and hoping to catch a scheduled newscast.

Today's nearly-adult or young adult generations assume their devices will work, and that the worst that can happen is that they run out of power, or their reception is poor, or they exceed their data limits.

Governments must focus on this generational shift, and its implications for future civic engagement and community cohesiveness.

Young Canadians, and the Canadians being born now, deserve the opportunity to be able to find content produced by Canadians for Canadians, about the issues that matter to them, and the news that they need – when that news is happening. The Forum supports the launch now of a new model that will ensure the on-demand availability of this content – to ensure that the public interest of Canada, both of today and tomorrow, is served.

**Question 14.4 Are there tools that the CRTC does not have in the Broadcasting Act that it should?**

Yes.

The CRTC does not have express authority in the *Broadcasting Act* to order costs awards for public interest participants, which include the Forum, PIAC and other non-profit organizations established to focus on different aspects of communications in Canada. That said, Parliament should not simply copy the CRTC's current power to order costs under the *Telecommunications Act* into the *Broadcasting Act*, for the simple reason that the CRTC's current approach to telecommunications costs orders is working very poorly for public-interest organizations.

The system is working so poorly, in fact, that it offers the appearance of an active desire by the CRTC to discourage (by which we mean, end) informed, public-interest participation in telecommunications. (Once parties apply for telecommunications costs orders, they wait an average of 9 months for a decision; decisions have lately made retroactive changes to the costs-order policy whose effect is to reduce costs significantly; and the tariffs on which costs applications are based have not changed since 2010 so that, thanks to inflation, they are now worth 10% less in real terms than stated).

One approach would be to formalize the existence of the Broadcast Participation Fund (ensuring that its Board include at all times a preponderance of individuals with no ties to or employment history with, telecommunications or broadcasting entities), and expand it to include telecommunications: ie, the Communications Participation Fund.

A second tool that the *Broadcasting Act* does not provide is that of administrative monetary penalties (AMPs). The CRTC has been asking for this tool for some years, for reasons that are unclear. It has, after all, significant powers under the *Broadcasting Act* already – the fact that the CRTC has decided not to use these tools does not, in our view, justify the addition of yet another tool: if the CRTC has chosen not to apply the powers already set out under sections 9(1)(e), 32 and 33, why will it then use a new power for AMPs? To the extent that the CRTC may already treat broadcasters inequitably – conditions of licence that impose programming requirements likely fall far more heavily on small broadcasters, than on large ones – AMPs should not be applied in a inequitable manner.

Some argue, however, that AMPs should be added to the *Broadcasting Act*, and be used to finance content produced by Canadians for Canadians. The perverse effect of this approach, of course, is to rely on those flouting Parliament's broadcasting objectives, to achieve those objectives. (Should one hope for more regulatory misconduct whenever Parliament reduce decides to reduce financial support for Canadian cultural content?)

Finally, if the CRTC is granted the authority to issue AMPs, Parliament must ensure that the administrative procedures it uses are both fair and reasonable.

**Question 14.5 How can accountability and transparency in the availability and discovery of digital cultural content be enabled, notably with access to local content?**

The Forum assumes this question refers to the concept of discoverability, and to the authority of a new communications regulatory authority to hold unidentified parties to account with respect to the cultural content they make available.

New communications statutes would have to ensure that Canada’s communications regulatory authority has the authority to request information about the cultural content provided online,

- (a) from a range of regulated and unregulated entities, and
- (b) whether the information is requested now, based on current technical capacity to obtain such information, or in the future when technology may permit ‘deeper packet inspection’ to provide more information.

As for transparency, the Forum acknowledges that it may (with the exception of breaches of legislative requirements)

The remainder of this submission sets out the Forum’s thinking and evidence, in greater detail.

## II. Why regulate communications at all?

10 This section sets out the Forum’s reasons for legislative change. It begins by describing six reasons why nations regulate communications, and then addresses the issue of new communications media.

### A. Rationale for regulating communications remains the same

11 Reviewing the history of new media demonstrates that governments invariably assert control over communications media, and that the time between the introduction of a new medium and its regulation has decreased (see Table 1 and Appendix 4).

12 As well, few nations yield control of their communications systems to non-citizens: of 38 bilateral treaties between the United States and other nations, none permits non-Americans to own or operate its communications media, and just 13 nations permit Americans to own or control communications media in their states (Appendix 9).

**Table 1**      **Years from introduction of new communications medium until legislative control**

<b>Medium and time between introduction and legislative control</b>	
Printing	46 years
Telegraphy	18 years
Telephony	12 years
Broadcasting (radio telegraphy)	4 years
Internet	3 years



- 13 There are at least six reasons why nations retain control over and legislate with respect to communications: to limit risks to political authority, to technological functionality, to society, to individuals, to economic welfare and to culture.
- 1. Risks to political authority**
- 14 Communications permit organized dissent or protest regarding authority. Nearly five centuries ago, at the height of King Henry VIII's dispute with the Pope over divorce, the King banned all imported books. By 1554 it was an offence for anyone in England to possess "wicked and seditious books", for which the penalty was "without delaye [to] be executed for that offence according to the order of martiall law."<sup>3</sup> Political authorities in the "New World" also limited the dissemination of ideas through print; in 1671 Virginia's royal governor wrote England's Lords Commissioner of Foreign Plantations, thanking "...God there are no free schools nor printing and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy and sects into the world, and printing has divulged them, ..." <sup>4</sup>
- 15 In the 1950s in what was then the Soviet Union, the "effort and resources employed to track down each and every author of an anonymous letter or seditious graffito criticizing the Soviet system frequently exceeded those devoted in the West to a major murder enquiry".<sup>5</sup> In 2003, King Taufa'ahau Tupou IV of Tonga "banned all issues of the twice-weekly newspaper *Taimi 'o Tonga*", and prohibited his 100,000 Tonganese subjects from possessing copies of the newspaper; according to the King's government, the paper had "'ruthlessly campaigned' to overthrow the government and had incited disaffection".<sup>6</sup>
- 16 Canadian communications media have often been used to try to influence political outcomes. Beginning in 1929, the Standard News Service distributed national news stories free of charge across Canada, "with just enough of a Conservative slant to make a difference" to a federal election. The 645 weekly newspaper editors who received the news apparently did not know that service was operated by the national Conservative party.<sup>7</sup> The first Royal Commission on broadcasting (the Aird Commission, named after its Chair, Sir John Aird, President of the Canadian Bank of Commerce) was triggered by a decision to withdraw a broadcaster's licence when its radio service broadcast views critical of the then-government.<sup>8</sup>
- 17 Canada's communications law today requires the broadcasting system to "safeguard, enrich and strengthen" Canada's political fabric, and the CRTC has interpreted that to mean that during election periods licensees must allocate time for partisan political programming or advertisements equitably to all accredited candidates.<sup>9</sup> It has in effect delegated responsibility for complaints about political bias to the Canadian Broadcast Standards Council (CBSC).<sup>10</sup>
- 18 Governments have regularly assumed control over communications systems during war, to limit access to information. The Canadian government terminated all non-official use of radiotelegraphy before World War I, a ban that lasted until May 1919;<sup>11</sup> the British government disabled most of its connections to underseas telegraph lines to keep the medium from falling into enemy hands.<sup>12</sup> During World War One, the French news agency Havas censored information: when the war began, the owner of the *La Nacion*, one of Argentina's most influential newspapers, asked Havas "... for the official German war communiqués. ... in the interests of balanced reporting, he wanted to make sure he received news from both sides during he war." Havas denied his request, saying "Nous sommes Français".<sup>13</sup>

- 19 Before World War II the owner of the *Daily Express*, Lord Beaverbrook (Max Aitken), launched "... [British] Ministry of Information and asked [Reuters'<sup>14</sup> Managing Director] to be chief executive as well as Director of Propaganda".<sup>15</sup> He accepted, and operated "a service of some 10,000 words a day .... taking a profit on each word of propaganda transmitted by his own, supposedly independent news agency. ..." <sup>16</sup> Before and during the war all British newsreel films were censored during and after production.<sup>17</sup> In 1950 CBS refused to broadcast a taped television report sent by Ed Murrow from Korea which "raised serious questions about the American military's management of that] war; CBS' founder and president agreed with the decision not to air the report because he accepted "the government's restricted rules on coverage of the conflict".<sup>18</sup>
- 20 Communications systems are also controlled outside of wartime, for political purposes. The Canadian government began licensing household radios in 1922 "... to give the government a measure of control if it were needed. The authorities believed they could refuse to grant a licence for a household receiver to anyone who was suspected of subversive activities."<sup>19</sup> In 1927 the leader of the Conservative Party of Canada, Robert Bennett (who would be elected Prime Minister in ) helped to arrange loans of \$190 thousand to the *Regina Daily Star*, "a seemingly independent newspaper ... which by its own choice would support the Conservative cause in the coming election."<sup>20</sup>
- 21 Following the destruction and deaths in the US on 11 September 2001, the US government asked news media not to print full transcripts of statements by Osama bin Laden; the head of News Corp. agreed, saying "We'll do whatever is our patriotic duty".<sup>21</sup> After the US invaded Iraq in 2003, US TV network news audiences were "six times more likely to see a pro-war source as one who as anti-war."<sup>22</sup>
- 22 Canada's current *Broadcasting Act* permits the government to order broadcasters to carry urgent messages,<sup>23</sup> presumably during times of national crisis.
- 23 Canada also viewed control over radio frequencies as part of its sovereignty as a nation, considering that it had the right to assign radio channels to broadcasting stations in its jurisdiction.<sup>24</sup> Permitting non-Canadians to control broadcast content threatened Canadian sovereignty; in 1928 one Member of Parliament warned that it would be  
... only a comparatively short time before [Canada's] small broadcasting stations will be bought up by big American companies. I may be afraid of handing power to any one government, but I would rather trust our own Canadian government with the control of broadcasting than trust those highly organized commercial companies in the United States.<sup>25</sup>
- 24 Such fears were only confirmed in 1930 (and again in 1988<sup>26</sup>), when the President of the National Broadcasting Company (NBC) said that  
[t]here was a deliberate effort by American broadcasters to serve Canada ... [He] pointed out that the provision of service from the United States to Canada had the effect of making the boundary between the two countries invisible or non-existent. The American broadcasters were laying claim to Canada, by network connections to Canadian stations and by direct broadcasts, as an area for them to serve. ... The [Federal Radio] Commission informed Congress that American stations were serving Canada. It informed Canadian officials that Canada did not need broadcasting stations to relay U.S. network programs when the programs could be received direct from U.S. stations.<sup>27</sup>
- 25 The US limits direct and indirect foreign ownership,<sup>28</sup> however, and the US Federal Communications Commission (FCC) "has consistently declined" to grant applications allowing

non-Americans to own more than 25% of a broadcast licensee’s holding company.<sup>29</sup> In 2002 the FCC dismissed licence applications to operate mobile earth stations and to provide a mobile data service because they were filed by a wholly-owned subsidiary of a Canadian corporation.<sup>30</sup>

26 Despite its limits on foreign communications ownership, the US supports the reduction or elimination of barriers to foreign ownership of other nations’ communications systems. The same year that the FCC denied a Canadian-owned corporation’s mobile earth station application on the basis of its foreign ownership, the US Trade Representative said that “American security depends on more than the old language of power: It rests ultimately on the promotion of shared values.”<sup>31</sup> For the US, therefore, negotiations on the General Agreement on Trade in Services represented “... an unparalleled opportunity to shape the post-Cold War, globally integrated world to promote our values and our interests – while safeguarding our sovereignty.”<sup>32</sup>

27 Canada’s long history with its southern neighbour helps to explain Cabinet’s many orders to the CRTC to prohibit foreign ownership and control of Canadian broadcasting services. Order in Council 1997-486<sup>33</sup> is merely the latest in a long line of attempts to maintain Canadian ownership and control in broadcasting. As the CRTC does not publish data about foreign ownership or control in broadcasting, it is unclear how much foreign ownership now exists in Canada’s broadcasting system. That said, in 1998 the Federal Court (Trial Division) held that what matters in Canadians’ control of their broadcasting system is not the number of foreign-owned services, but the Canadian character and control of the entire system.<sup>34</sup>

28 In telecommunications, however, foreign owners are welcome, provided they start small (they may only buy telecommunications carriers with 10% or less of Canadian telecommunications revenue).

29 Political institutions must also concern themselves with the quality of information available to the public either to protect the integrity, or to control the outcomes, of electoral systems. While fears that news reports are ‘fake’ or ‘false’ have become prominent in the last few years, governments have always tried to control the information available or given to their populations (see Appendix 1, which provides several examples). Canadian broadcasters are prohibited from broadcasting false news, and must ensure that political coverage is balanced during elections. At the beginning of 2019 the Democratic Republic of the Congo cut off access to the Internet, following a presidential election.<sup>35</sup>

<p><i>Radio Regulations, 1986 (SOR/86-982)</i>          3 A licensee shall not broadcast ...          (d) any false or misleading news ....</p> <p><i>Television Broadcasting Regulations, 1987 (SOR/87-49)</i>          5 (1) A licensee shall not broadcast...          (d) any false or misleading news ....</p> <p><i>Discretionary Services Regulations (SOR/2017-159)</i>          3 A licensee shall not broadcast programming that contains          (c) any false or misleading news.</p> <p><i>Broadcasting Distribution Regulations (SOR/97-555)</i>          8 (1) No licensee shall distribute a programming service that the licensee originates and that contains ...          (d) any false or misleading news.</p>
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## 2. Risks to functionality

30 Regulatory control also addresses problems related to functionality. In the early 20<sup>th</sup> century usable broadcasting frequencies were scarce:<sup>36</sup> one high-powered station in an area simply drowned out any other stations nearby.<sup>37</sup> To maximize spectrum use, the Canadian government

strictly controlled broadcasting licences, requiring some stations to share the same channels.<sup>38</sup> In fact, spectrum scarcity was an international problem (despite agreements reached at several international conferences,<sup>39</sup> radio frequencies assigned to Canada by international treaty were being appropriated by other countries<sup>40</sup>). Today's *Broadcasting Act* makes broadcasting without a licence – which ensures that other licensed services face no interference – a summary conviction offence;<sup>41</sup> the *Telecommunications Act* similarly makes the distribution, sale or lease of unregistered telecommunications apparatus a summary conviction offence.<sup>42</sup>

- 31 Even if the Internet is today replacing some types of broadcasting and telecommunications service, its use is not unlimited. In 2009, after 'earnestly hoping' that "citizens will have full access" to computer communications rapid and uncontrolled innovation,<sup>43</sup> the CRTC established a policy framework to govern carriers' management of Internet traffic to deal with network congestion.<sup>44</sup>

### **3. Risks to society**

- 32 Governments also control communications to protect public safety. Wireless telegraphy (radio) played an important role in navigational safety, for instance,<sup>45</sup> and the first international convention to govern radio was held in part to respond to the role that unregulated communications played in the April 1912 sinking of the *RMS Titanic*.<sup>46</sup> In 2017 the CRTC noted that "[e]ffective and timely access to emergency services in Canada is critical to the health and safety of Canadians, and is an important part of ensuring that Canadians have access to a world-class communication system."<sup>47</sup>
- 33 Broadcasting can also affect society, and the CRTC's regulations attempt to limit specific social harms. Section 3 of the CRTC's *Radio Regulations, 1986*, for instance, prohibits licensees from broadcasting abusive comment, obscene or profane language, or false or misleading news. Similar provisions exist in the CRTC's regulations for television, specialty services, pay television services,<sup>48</sup> all of which are responsible for controlling the content they disseminate, and for broadcast distribution services with respect to the content they themselves produce and distribute. The CRTC has also established policies encouraging programming content to reflect Canada's multicultural character and its Indigenous peoples.
- 34 The CRTC has largely ignored advertising, however, since the late 1980s. Advertisements are a form of speech, and people in Canada have a constitutionally protected right to freedom of speech. In the 2000s, however, US researchers found that 90% of several hundred newscasts broadcast by ABC, CBS, NBC and Fox in early 2004 "included at least one instance of stealth advertising", in which news content is provided to promote specific products or services.<sup>49</sup> The issue is not that advertising should be prohibited – but that advertising disguised as something else weakens society's interest in informed decision-making.

### **4. Risks to individuals**

- 35 Governments also regulate communications to limit harm to individuals, by harming their reputation, threatening physical injury, or breaching their privacy. In Babylon at around 2500 BCE, for instance, it was an offence to slander another's reputation,<sup>50</sup> ancient Egypt's government made it an offence to commit perjury or make false statements and accusations,<sup>51</sup> and by 450 Rome's punishment for defamation was death.<sup>52</sup> The US Congress in 1873 made it a criminal offence to use the mail system to send an "obscene, lewd or lascivious book or other publication of indecent character",<sup>53</sup> and in 1883 a U.S. court upheld an Ohio telephone

company's decision to terminate service to one of its subscribers because he had used "improper or vulgar" language on the telephone.<sup>54</sup> Canada's *Criminal Code* currently makes it an offence if a person, "with intent to injure or alarm a person", uses telecommunications to convey false information or indecent communications, or to harass people.<sup>55</sup>

36 Individuals can also be harmed by a breach of their privacy, and as the many stories reported by news media over the past several years have demonstrated, Internet-based companies and governments are still coming to terms with the degree to which individuals' privacy rights are being breached – either with or without informed consent. Concerns about privacy pre-date the Internet, of course. From World War II to 1954 it was legal for agents of the federal Crown to open mail received by people in Canada, provided national security was stake; opening mail subsequently continued without legal authority until 1977 to protect national security and to enforce drug control laws.<sup>56</sup>

37 China introduced a social-credit system in 2014, allegedly to "improve governance and create order in a country that often has to combat fraud":

Based on online search requests, shopping history, education, criminal record, social media behavior and many other factors, every citizen is to be evaluated according to a point system. If the three-digit score is too low, there are far-reaching consequences. Some jobs will be blocked for you, your children will not be able to attend good schools, travel will be denied, and you'll also be unable to get a loan.<sup>57</sup>

## **5. Risks to economic welfare**

38 Fifth, governments have established regulatory frameworks for communications to maintain or improve economic wellbeing. Regulating the first movable-type printing presses, for instance, may have helped to limit its effects on employment in the then-current technology of hand copying. Throughout the 1400s some ten thousand scribes were employed copying materials by hand just in the areas surrounding Paris and Orleans,<sup>58</sup> their replacement by movable-type printing presses would have raised unemployment levels and concerns for law and order.

39 Concerns over job losses help to explain why a scriveners' fraternity in England<sup>59</sup> welcomed the royal charter<sup>60</sup> it was granted in 1557 to regulate and control the nation's printing industry.<sup>61</sup> The Stationers' Company issued regulations that, among other things, restricted ownership of presses to their members and regulated the number of books published.<sup>62</sup> The British government balanced the introduction of a printing oligopoly with a price-control mechanism to limit excessive price increases,<sup>63</sup> ensuring that while the country's domestic printing industry benefited from any additional employment and revenue, individual consumers were also protected to a limited degree from price gouging.

40 Broadcast media were also regulated to maintain the economic strength of the communication sector as a whole. By the end of World War II, roughly three hundred thousand people worked in the U.S. radio industry, a level of employment unlikely to be maintained following the war's end. The government therefore encouraged the new medium of television – then still in its infancy – to develop into "one of the first industries ... to serve as a cushion against unemployment and depression"<sup>64</sup> once the war ended. In the late 1940s the Canadian government also welcomed the opportunity that television presented to raise employment levels in the country's electronics industry.<sup>65</sup> Regulatory requirements for minimum levels of

Canadian content in radio and television broadcasting still benefit Canada’s domestic economy, both directly (Table 3) and indirectly.<sup>66</sup>

- 41 Some ‘new’ broadcast media have been used to support the economic well-being of other communications sectors.<sup>67</sup> For several decades, for instance, the CRTC required that broadcast programming distributors, such as cable systems, ensure that Canadian services predominate in overall numbers, compared to non-Canadian services.<sup>68</sup> This guaranteed Canadian television and radio services access to Canadian audiences, stabilizing their revenues. In early 2015, however, the CRTC changed its approach by permitting subscribers, with the exception of a basic tier of services consisting of local over-the-air television programming services, to choose the television services they wish to receive.<sup>69</sup>
- 42 The regulatory device of simultaneous substitution also protects Canadian television broadcasters. Under this regime, Canadian conventional<sup>70</sup> television services that air an episode (or a comparable episode) of a program carried in the same period in which the program is aired by a non-Canadian television service, may have BDUs use their signal instead of the non-Canadian services’ signals. Adding their own audience to the audience from the other non-Canadian service increases the overall audience tuned into the Canadian television service and helps them maintain or increase their advertising revenues.<sup>71</sup>
- 43 In 2017 Canada’s telecommunications and broadcasting sectors generated \$78 billion in revenues, representing 4.1% of Canada’s Gross Domestic Product (see Table 2).

**Table 2                      Communications revenue and Canadian GDP in 2017**

44 As for distribution, connectivity strengthens economic performance. Canada’s federal Infrastructure Minister commented in 2017 that broadband internet “can be transformative for businesses, giving them reliable access to the outside world.” <sup>72</sup>	<b>2017</b>	<b>Millions</b>	<b>%</b>
	Revenues		
	Telecom	\$60,918.3	3.2%
	Private TV	\$1,608.3	0.1%
	CBC TV	\$ 943.9	0.0%
	Private radio	\$1,519.8	0.1%
	CBC radio	\$ 295.3	0.0%
	Discretionary TV	\$4,365.2	0.2%
	BDUs	\$8,537.6	0.5%
	Total communications	\$78,188.5	4.1%
	GDP	\$1,893,024.0	100.0%

Source: Statistics Canada (Table 36-10-0434-03); CRTC

**6.        Risks to cultural identity**

- 45 Finally, establishing legislative frameworks for culture limit nations’ risk of losing their cultural identity. In introducing Canada’s first broadcasting legislation<sup>73</sup> Prime Minister R.B. Bennett set out principles for radio broadcasting to serve the Canadian people, the first of which involved Canadian control of Canadian broadcasting:

... First of all, this country must be assured of complete Canadian control of broadcasting from Canadian sources, free from foreign interference or influence. Without such control, radio broadcasting can never be come a great agency for the communication of matters of national concern and for the diffusion of national thought and ideals, and without such control it can never be the agency by which national consciousness may be fostered and strengthened. ...<sup>74</sup>

- 46 The Prime Minister went on to say that commissioners of a new Canadian Radio Broadcasting Commission to license, regulate and control broadcasting in Canada,
- ... should be men with an excellent appreciation and understanding of the value of broadcasting to the nation, and should have some understanding of what is pleasing to the major part of the people of this country in the form of programs.
- ...
- But at any rate they should be good average Canadians with a knowledge of their country and understanding – shall I say? – of music, art and literature from the standpoint of being able to offer to their fellow citizens programs that would be in keeping with the general hopes and aspirations and ideals of the average Canadian family.<sup>75</sup>
- 47 From its earliest days, therefore, broadcasting was thought to affect communication on matters of national concern, national thought and ideals, national consciousness, and Canadians’ general hopes, aspirations and ideals – in brief, aspects of national culture.
- 48 Clear definitions of culture are rare. The *Cambridge Dictionary* says that culture is “the way of life, especially the general customs and beliefs, of a particular group of people at a particular time”.<sup>76</sup> Others have said that “...no one is quite sure what culture is. Not only is it an essentially contested concept, like democracy, religion, simplicity, or social justice; it is a multiply defined one, multiply employed, ineradicably imprecise ....”<sup>77</sup>
- 49 Despite its ephemeral, even amorphous nature, loss of culture has very serious effects. Despite this, “[e]arly theories of [social] development considered culture and the associated traditions as an obstacle to social and economic welfare”.<sup>78</sup>
- 50 Canada has experience with a real-world example of the impact of policies designed to address the ‘obstacle’ of culture by erasing it. The “Sixties Scoop” resulted from a 1965 agreement between Canada and Ontario to “make available to the Indians in the province the full range of provincial welfare programs”.<sup>79</sup> In Ontario, thousands of Indigenous children
- ... were ... removed from their families by provincial child welfare authorities over the course of the ... period – from 1965 to 1984 – and were placed in non-aboriginal foster homes or adopted by non-aboriginal parents.
- There is also no dispute about the fact that great harm was done. The “scooped” children lost contact with their families. They lost their aboriginal language, culture and identity. ...<sup>80</sup>
- 51 The impact of the “Sixties Scoop”
- ... on the removed aboriginal children has been described as “horrendous, destructive, devastating and tragic.” The uncontroverted evidence of the plaintiff’s experts is that the loss of their aboriginal identity left the children fundamentally disoriented, with a reduced ability to lead healthy and fulfilling lives. The loss of aboriginal identity resulted in psychiatric disorders, substance abuse, unemployment, violence and numerous suicides.<sup>81</sup>
- 52 Loss of culture matters to individuals, because it is associated with unhealthy and unfulfilling lives, mental illness, substance abuse, self-harm, violence against others, and unemployment. For society, loss of culture was associated with the costs of treating mental illness, self-harm and victims of violence, and of providing employment insurance for those unable to work.
- 53 Loss of culture may also affect political decision-making. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO) “... cultures frame people’s

relationship to others in their society and the world around them, including the natural environment, and condition their behaviours. ...<sup>82</sup> It points out that

... the cultural resources of a community can be converted into economic wealth by promoting the unique identity, traditions, and cultural products and services of a region, towards generating jobs and revenue. Investing in the conservation of cultural assets, promoting cultural activities and traditional knowledge and skills developed by humans over very long periods of adaptation to the environment, moreover, are also very effective means to strengthen environmental sustainability and the social capital of communities.<sup>83</sup>

54 As a result, a country's failure to safeguard its culture means more than just the absence of cultural performers and creators from its economy. A country without its own culture risks the loss of its ability to make decisions about its future based on the values and aspirations of its citizens. If its decisions are not based on the values of its citizens, on whose values are the decisions based?

55 To summarize, nations regulate communications systems to minimize risks to political authority, technological functionality, society, economic welfare, and culture.

### ***B. New types of content and distribution***

56 The introduction and growth of new media like the Internet have led some to argue that regulation, if not legislative frameworks, must be abandoned in whole or in large part. In 1996 the Electronic Frontier Foundation hired John Perry Barrow, who famously made an impassioned plea against regulation. He addressed the

[g]overnments of the Industrial World ... I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather. .... I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear.

Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions.

...<sup>84</sup>

57 For the six reasons just discussed, Barlow's plea was doomed before it was made. Governments were already regulating the Internet at that time, continued to do so, and will keep regulating the Internet, not only to protect their existence as institutions and their economies, but to protect individuals and society from acts that are crimes just as much as they are crimes in the 'real' world, including but not limited to defamation, harassment, threats and fraud.

58 More recently arguments have been made that the Internet should not be regulated, on the basis of differences alleged to exist between it and earlier forms of electronic communications: its non-centralized distribution systems, its non-centralized ownership, its interactivity and malleability for users, and the fact that its content "is beyond the capacity of any one jurisdiction to effectively regulate."<sup>85</sup>

59 None of these arguments is entirely true.



- 60 Every Canadian radio and television station operated independently, without centralized distribution, for decades. Until the early 21<sup>st</sup> century broadcast transmission equipment required local control, the absence of recording technology in the early 20<sup>th</sup> century mandated live programming,<sup>86</sup> and the absence of centralcasting technology effectively required individual broadcasting stations to distribute and schedule their content using their own transmitters.
- 61 Ownership of broadcasting and telecommunications did not become centralized in Canada until the 1990s, when the CRTC began to permit mergers that consolidated control in both sectors.
- 62 As for the interactivity of the internet, individual communications users also obtained content and interacted with each other in many different ways before it emerged. High installation costs meant that the earliest telephone exchanges in the 1870s and 1880s had “party-line” service, which permitted as many as 20 separate parties to use a single telephone line – typically interacting with each other.<sup>87</sup> Telephony even included pick-and-pay audio-visual content: in 1909 telephone subscribers in Wilmington, Delaware could ask the Tel-music pay-per-play phonograph company to play specific musical selections to them over their telephone lines;<sup>88</sup> in 1915 people in Stockholm, Sweden, could call their local telephone exchange to hear a summary of “all the latest news that is not carried in the evening newspapers”.<sup>89</sup>
- 63 Nor is true that the Internet cannot be regulated. The CRTC asserted jurisdiction over online broadcasting in 1999.<sup>90</sup> The anti-piracy proceeding in early 2018 clearly established that Internet Service Providers (ISPs) are able to block Canadians’ access to Internet website and that Canada’s largest communications companies would like ISPs to block Canadians’ access to Internet websites so as to protect the companies’ financial programming interests. While no single jurisdiction is able to regulate the entire Internet, individual jurisdictions already regulate the Internet within their borders.<sup>91</sup>
- 64 In other words, while the Internet is different and new, it is not as different and no longer as new as often argued. Nor is the Internet the first new medium to be used to support demands for legislative or regulatory intervention. Television threatened radio’s existence; cable’s arrival in 1952 led the CBC to ask for such systems to be licensed;<sup>92</sup> and the Soviet Union’s launch of the Sputnik I satellite in 1957<sup>93</sup> was followed in Canada by years of debate about ‘deathstars’ and the role of satellite in broadcasting.<sup>94</sup>
- 65 Finally, arguments are now being made that decades-old approaches that use broadcast distribution to cross-subsidize broadcast programming cannot be applied to the Internet because it serves many more purposes than to distribute programming content. In reality, broadcasters also use their licensed distribution systems to serve many more purposes than program distribution: cable BDUs must remit a percentage of their broadcast revenues to funds that finance the production of Canadian programming – but this percentage is not based on the income their cable systems also earn from non-broadcast services that are exempted from broadcast regulation, such as security and alarm services.
- 66 Arguments about whether to regulate the Internet distract attention from the real problems of by Canada’s communications system, which are that *laissez-faire* ideology has triumphed over Parliament’s objectives for broadcasting and telecommunications. Faced with orders-in-council that have effectively eliminated its regulatory independence, the CRTC operates with a 19<sup>th</sup> century non-transparent governance structure, the legal discretion to ignore most of Parliament’s broadcasting and telecommunications objectives, and the absence of meaningful

Parliamentary, appellate and public oversight. Regulatory governance in Canada’s communications systems must change, if Canada’s communications systems are to serve the public interest.

67 Failure to act in the short- and longer term imperils Canada’s sovereignty. ‘Peril’ doubtless seems extreme, particularly in the context of systems that have existed for more than a century.

68 Yet nothing currently prevents Canadian broadcasters from closing radio or television programming services, or from dismissing so many staff that basic broadcast functions no longer exist.<sup>95</sup> Following the example of Netflix, CBS launched its own programming service, and Disney and WarnerMedia have also announced their own plans for online programming services.<sup>96</sup>

**Table 3 Broadcast employment in 2017**

FTE jobs in 2017	
CBC radio	1,921
CBC TV	3,886
Private radio	8,638
Private TV	4,939
Discretionary TV	4,984
BDUs	26,575
<b>Total</b>	<b>50,944</b>
<i>Source: CRTC, Statistical and Financial Summaries, 2017</i>	

69 Apart from the loss of hundreds of thousands of hours of Canadian programming content,<sup>97</sup> including more than 5,700 hours/month of original television news, closure of Canadian programming services would put some 24,000 people out of work, with ‘spin-off’ losses of twice that level or more.<sup>98</sup> Neither Canadians nor Canada can afford such massive disruption – and under current Canadian law, this could happen.

70 The Forum argues in this submission that Parliament need not change Canada’s communications laws to adopt to the Internet that, after all, has been integrated into the communications system for twenty years.

71 It must change the laws to ensure that the Canadian public interest is given primacy, to set clear objectives for Canada’s communications systems, to correct inconsistencies and gaps in the current legislation, to bring governance of the communications systems into the 21<sup>st</sup> century, and to ensure that Parliament – rather than its regulatory delegate or those it regulates – retains primacy over the nation’s communications systems.

### III. Successes and failures in meeting Parliament’s communications objectives

72 Deciding whether to change Canada’s communications statutes requires that Parliament know, first and foremost, where problems do or do not exist. In the Forum’s view, questions about the success or failures of Canada’s communications statutes in meeting Parliament’s objectives are, for the most part, best answered on an empirical, or objective basis.

73 Parties considering legislative review should be able to work from a common set of facts, even if their conclusions about the best response to those facts are based on subjective criteria such as political ideology.

74 Yet objective evaluation of the overall successes and failures of Canada’s communications statutes is difficult because neither the CRTC nor Statistics Canada publishes relevant data about broadcasting and telecommunications on a regular or consistent basis.

75 In this section the Forum addresses two overarching questions: whether Parliament's objectives for Canada's broadcasting and telecommunications systems have been met, and if not, why.

**A. *Have Parliament's communications objectives been met?***

**1. A data problem**

76 The relevant data to evaluate the effects of Canada's communications statutes include historical information. Determining whether the objectives are being met, requires performance to be measured over time.

77 Finding original historical information about the two Canadian sectors involved in information's creation and dissemination is enormously frustrating, and at times impossible:

- the CRTC's website does not have a 'site plan'; users need to know what they are looking for to use its A to Z index efficiently
- none of the CRTC's annual reports to Parliament about its operations, policies, decisions and legal battles, published from 1969 to 1993, is available online
- the CRTC's website does not include any of its materials from 1968 to 1983, meaning that the announcements, policies, decisions and orders it made in that period are effectively invisible, and the CRTC without fanfare around 2010 ended public access and reduced the collection held by its until-then publicly accessible library, that had held all these materials and more
- unless specifically prompted the CRTC's search engine tends to return materials from the late 1990s to the present (see Appendix 3)
- transcripts of CRTC proceedings from before 1998 are not available online (and no information is provided to indicate whether they are available elsewhere)
- the CRTC posts its *Departmental Results Reports* online, but only for the past five years of the annual *Statistical and Financial Summaries* it has published for broadcasting (but not telecommunications) for some 40 years, the CRTC makes only the last three available online
- CRTC ownership data describe most but not all broadcasters and telecommunications companies in several hundred separate PDF charts (i.e., no data sets)
- When asked (via access to information) for data on foreign ownership in broadcasting and telecommunications, the CRTC explained that it does not track this information,<sup>99</sup> and
- the broadcasting station files that might have this and other information were (as of 2010 when inquiries on this point were made) routinely destroyed after fifteen years (unless their historical value merited retention).

78 As for empirical information about the effects of the CRTC's policies or decisions, neither the CRTC nor Statistics Canada has regularly published annual data about programming content or the affordability of Canada's distribution systems since Parliament enacted its broadcasting policy in 1991 and its telecommunications policy in 1993.

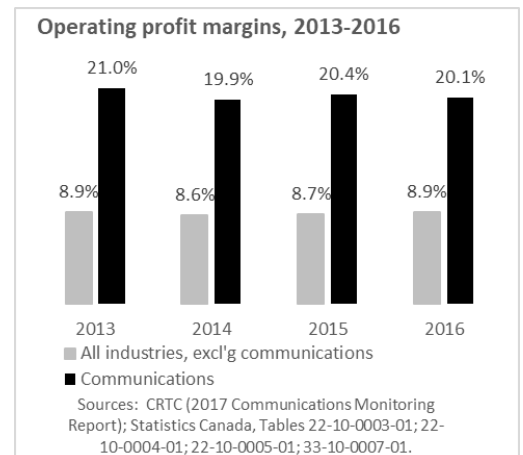
79 The overall absence of defined, consistently presented and regularly reported historical data about broadcasting and telecommunications in an era of global data-gathering is, to say the very least, puzzling. To the extent that the CRTC consciously decides against publishing historical data about the effects of its policies and decision and now publishes key documents as non-PDF, unpaginated, “digital-only, interactive” reports,<sup>100</sup> it either lives in the moment,<sup>101</sup> or is successfully avoiding objective evaluation of its performance in meeting Parliament’s objectives.



80 The overall effect of the lack of longer-term data about broadcasting and telecommunications is, in the Forum’s view, that very few of Parliament’s objectives in these sectors can be evaluated.

81 As the 1965 *Report of the Committee on Broadcasting (Fowler II)* is often quoted: “in broadcasting all that matters is program content; all the rest of housekeeping.” While there is a dearth of programming-related data available from the CRTC, it has collected a wealth of financial data about broadcasting and telecommunications.<sup>102</sup> These data establish that the CRTC’s policies have safeguarded the financial wellbeing of Canada’s broadcasting and telecommunications companies. Even with the losses generated by Canada’s conventional private television sector for the past decade, Canada’s communications sector is successful overall, being more than twice as profitable as other sectors of the economy (Figure 1).

**Figure 1** Operating Profit margins of Canada’s communications sector, and all other industries, 2013-2016



82 The CRTC’s approval of highly concentrated ownership in the communications sector has also been successful, in permitting enormous wealth and power to be transferred and concentrated among a handful of very large companies. Sales of broadcasting undertakings have generated more than \$10 billion in income for sellers in the past eight years alone, with five sellers accounting for 93% of this amount, or \$9.4 billion (Appendix 2).<sup>103</sup> Of the companies remaining in Canada’s communications sector, the largest five have taken in 82% (\$250 billion) of the entire sector’s revenues from 2013 to 2016 (Appendix 2).

## 2. What we know about achievement of Parliament’s objectives

83 While the CRTC has safeguarded the financial viability of Canada’s largest communications companies, it is difficult to say overall whether its supervision of Canadian broadcasting and telecommunications has ensured the implementation of each of Parliament’s 49 policy paragraphs in the *Broadcasting Act* and *Telecommunications Act* (Appendix 15).

84 This is due in part to the data problem noted above, but also because Parliament’s regulatory delegate, the CRTC, does not often refer to specific objectives of its enabling statutes in its policies and determinations, and does not publish any data organized in terms of the statutes’ policies. The 339 tables, charts and figures in its 2017 *Communications Monitoring Report*, for example, are generally organized in terms of a system-level overview, by technological medium:

broadcasting, telecommunications and the Internet. The Forum therefore reviewed these tables, charts and figures (in terms of their titles) to see what specific legislative sections in the *Broadcasting Act* and *Telecommunications Act* they might describe; results of our review are set out in Appendix 6, and summarized below.

85 Briefly, the 2017 report provides a great deal of information about audience tuning and pricing, but little about broadcast content and affordability. It provides no information about Canadian ownership and control, multicultural programming content, or the portrayal of Canadian society. It is silent about privacy. (The CRTC’s 2018 edition of the annual monitoring reports issued for the communications sector since 2008, and for the broadcasting and telecommunications sectors separately since the late 1990s), remains incomplete at the time of writing, has been issued in sections, lacks a table of contents and in some instances appears to re-report data previously presented in the 2017 report.)

*a) Little is known about content*

86 As for the core of Parliament’s broadcasting policy – the content it broadcasts – the CRTC collects information about radio and television programming every month from broadcasters. These program logs describe broadcast programming in terms of variables set out in the CRTC’s broadcasting regulations. These do not describe “programming that reflects the aboriginal culture of Canada”.<sup>104</sup> The effect of the CRTC’s regulation in this area on programming is therefore nearly impossible<sup>105</sup> to evaluate using broadcast logs.

87 There are gaps in the availability of log-based information about programming. The CRTC does not publish any information about the level, or number of hours, of Canadian content transmitted by Canadian programming or distribution undertakings, although it collects or could collect this information. While the CRTC posts the programming logs it receives from individual television services online,<sup>106</sup> it does not even post the programming logs it receives from radio services – the lack of any data about Canada tends to silence the role of radio, and its critical role in news, local reflection and Canadian music. **Throughout the remainder of this document the Forum’s recommendations with respect to content should always be understood as including both audio, and audio-visual, programming content.**

88 The Forum analyzed the November 2017 program logs for television services, to gain a better understanding of the quantity and type of programming broadcast by licensed and non-exempted television programming services; our preliminary results<sup>107</sup> are summarized in Appendix 7. Among other things, our preliminary analysis found that the Canadian television services included in the CRTC’s television program logs for November 2017 broadcast 169,518 hours of programming, of which 87,441 (51.6%) were Canadian, and 30,142 (17.8%) were original (first-run) Canadian programs

**Table 4 Program hours broadcast by Canadian television services in November 2017**

Types of programming content	Hours (Nov 2017)	%
Programming		
Canadian programs	87,441	52%
Non-Canadian programs	82,076	48%
Original, first-run programs	47,430	28%
Canadian	30,142	18%
Non-Canadian	17,288	10%

Types of programming content	Hours (Nov 2017)	%
News	22,115	13%
Local station news	12,992	8%
Original, first-run station news	5,744	3%
Drama (drama and comedy)	62,248	37%
Canadian drama	19,287	11%
Non-Canadian drama	42,961	25%
Original, first-run drama	8,373	5%
Canadian	1,923	1%
Non-Canadian	6,451	4%
Total broadcast hours	169,517	100%

Source: Television program logs, November 2017

89 We also found that,

- 22 conventional CBC TV stations broadcast 8.9% of all television program hours; 58.8% of CBC’s programming was original;<sup>108</sup> 81.2% of its programming was Canadian; it broadcast 14% of all Canadian programming hours, and 24.6% of all original Canadian programming hours broadcast in November 2017 were aired by the CBC’s conventional television services.
- The remaining, conventional private TV services broadcast 31.7% of all program hours, 68.9% of their programming was original; 57.6% of their programming hours was Canadian, and they aired 72.3% of all original Canadian programming hours broadcast in November 2017.
- 132 discretionary non-news television services broadcast 51% all program hours, 11.1% of their programming was original; 95.5% of their programming was Canadian, and they aired 2% (591) of the all original Canadian programming hours broadcast in November 2017.

90 In November 2017 these services exceeded the CRTC’s current regulatory requirements for Canadian TV content (~~Table 5~~ **Table 5**), but – after encouragement by the CRTC for 50 years to strengthen and increase Canadian drama (being drama and comedy) programming, Canadian drama made up 11% of all programming hours with non-Canadian drama making up 25% of that time.

91 As for telecommunications, the CRTC’s *2017 Communications Monitoring Report* reported that Canadians sent and received 200 billion text messages in 2016.<sup>110</sup>

**Table 5 Minimum Canadian content requirements**

Minimum Canadian content required each 126-hour broadcasting week <sup>109</sup>		
Programming service	2014	2019
Radio - private	35%	35%
Radio - CBC	30%	30%
Radio - discretionary	varied	35%
OTA TV - CBC	55%	20%
OTA TV - private	55%	17%
TV – discretionary	varied	35%
BDUs (audio & video)	(post 2015 only) 51% of channels with maximum of 35% Canadian content	

**b) Financial resources**

92 Although the largest number (193 or 57%) of the 339 tables, charts and figures in the 2017 *Communications Monitoring Report* provide financial information about broadcasting and telecommunications, the *Broadcasting Act* itself does not use the terms, “finance”, “finances” or “financial” (see Table 6).

93 That said, the *Broadcasting Act* may refer indirectly to financial resources in section 3(1)(f). As it happens, evidence about the financial resources devoted to Canadian broadcast content is also incomplete. The CRTC publishes no data about Canadian content expenditures for radio, for instance. Though it publishes data about BDUs’ local expression expenditures and payments to programming funds,<sup>111</sup> its *Statistical and Financial Summaries* do not publish data about their affiliation payments to Canadian and non-Canadian programming services.

*Broadcasting Act*, 3(1)(f): **each broadcasting undertaking shall 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;

**Table 6 CRTC’s 2017 Communications Monitoring Report – tables, figures and charts**

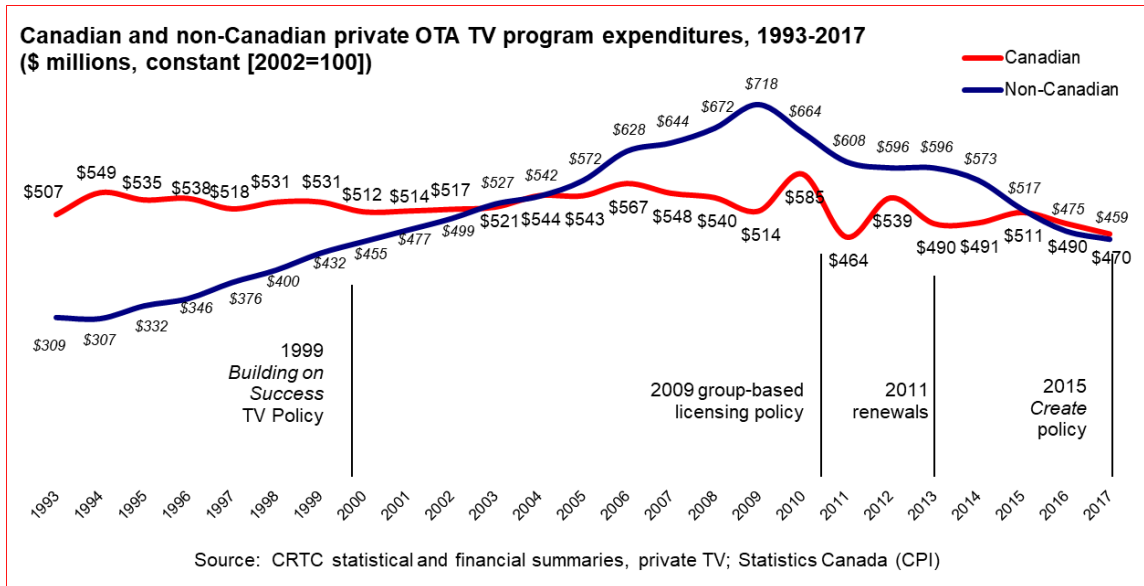
General topic	Type of information	Broadcast Act	Broadcast & telecom acts	Telecom Act	#	%
Audience	Audience	5			5	1%
	Audience - Active users	1			1	0%
	Audience - hours tuned or % of hours	20			20	6%
	<b>Total</b>	<b>26</b>			<b>26</b>	<b>8%</b>
Device adoption	Devices	1		5	6	2%
	Types of telephones			1	1	0%
	Computers and Internet use by 9(1)(H)			1	1	0%
	<b>Total</b>	<b>1</b>		<b>7</b>	<b>8</b>	<b>2%</b>
Complaints/comments	Contacts/complaints	9	1	3	13	3%
	Dispute resolution case	1			1	0%
	<b>Total</b>	<b>10</b>	<b>1</b>	<b>3</b>	<b>14</b>	<b>4%</b>
Financial performance	Expenditures	24		1	25	7%
	Prices	2		25	27	8%
	Profits	10	1		11	3%
	Revenues	44	12	68	124	37%
	Internet data use			1	1	0%
	Telephone revenues			5	5	1%
<b>Total</b>	<b>80</b>	<b>13</b>	<b>100</b>	<b>193</b>	<b>57%</b>	
Household spending	Household spending		3		3	1%
	<b>Total</b>		<b>3</b>		<b>3</b>	<b>1%</b>
Infrastructure	Infrastructure			21	21	6%
	Download speed			2	2	1%
	WiFi hotspots - number			1	1	0%
	Telecom plant			1	1	0%
	Telecom capital expenditure			1	1	0%
	Devices - unlocked			1	1	0%
	Internet smartphone activities			1	1	0%
	Internet data use			5	5	1%
	Broadcast stations/services	7			7	2%
	Broadcast programming sources	1			1	0%
Fibre optic - homes passed			2	2	1%	

General topic	Type of information	Broadcast Act	Broadcast & telecom acts	Telecom Act	#	%
	Telephone lines			3	3	1%
	Roaming voice and data traffic			1	1	0%
	<b>Total</b>	<b>8</b>		<b>39</b>	<b>47</b>	<b>14%</b>
Official language minorities	Official language minorities as %	1			1	0%
	Official language minorities' location	1			1	0%
	Official language minorities' access to services	1			1	0%
	<b>Total</b>	<b>3</b>			<b>3</b>	<b>1%</b>
Ownership	Ownership	8			8	2%
	<b>Total</b>	<b>8</b>			<b>8</b>	<b>2%</b>
Subscriptions	Subscriptions	6	1	27	34	10%
	Data			1	1	0%
	<b>Total</b>	<b>6</b>	<b>1</b>	<b>28</b>	<b>35</b>	<b>10%</b>
Texts/data	Texts/data			2	2	1%
	<b>Total</b>			<b>2</b>	<b>2</b>	<b>1%</b>
<b>Total</b>		<b>142</b>	<b>18</b>	<b>179</b>	<b>339</b>	<b>100%</b>

Source: CRTC, *Communications Monitoring Report 2017*, table of contents

94 The television data that the CRTC does publish, again, are for five-year periods, and very few of the CRTC’s many years of financial summaries are available online. The CRTC published Canadian programming expenditure data for discretionary services beginning in 1988, but did not publish Canadian programming expenditures for conventional private television until the early 1990s; it did not publish these data for the CBC until around 2009. As Figure 2 shows, private TV stations’ expenditures on Canadian programming have declined in real terms since the early 1990s.

**Figure 2 Canadian and non-Canadian over-the-air television programming expenditures as % of revenues, 1993-2017**



95 The impact of the CRTC ‘tangible benefits policy’ on the production of Canadian broadcast content, expenditures on such content or employment with respect to such content, is

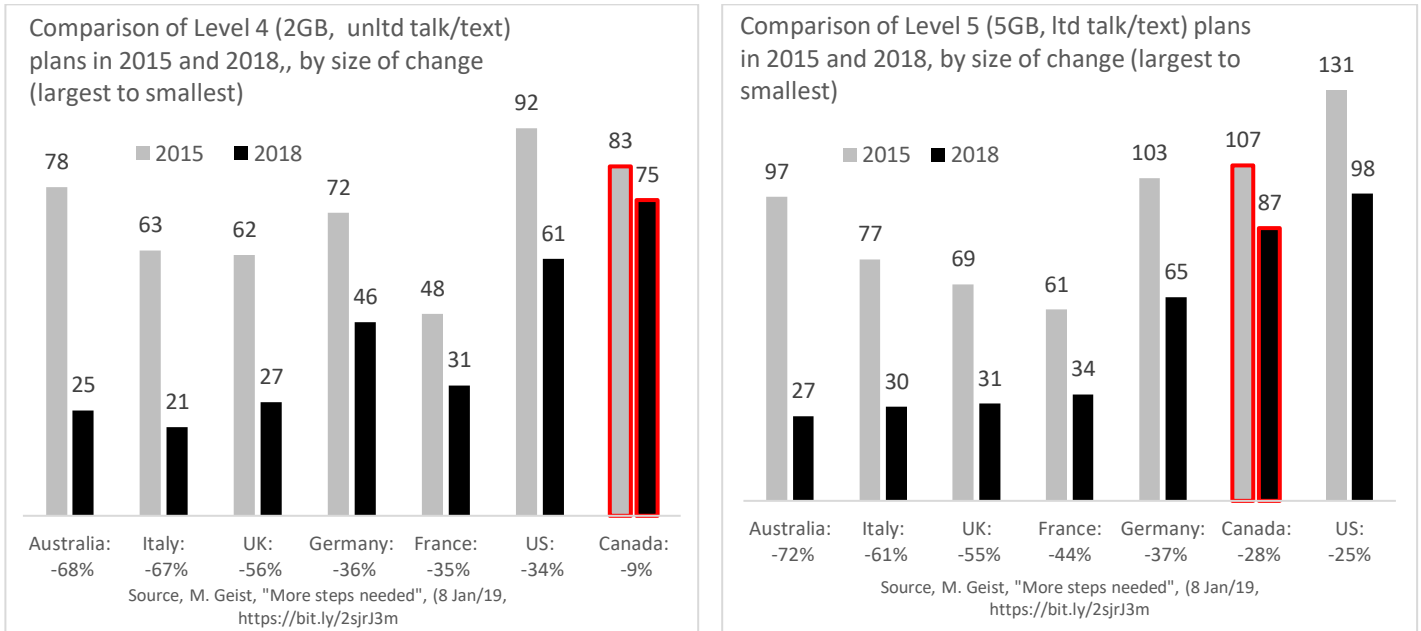


unknown. The *CRTC's Conventional Television Statistical and Financial Summaries, 2013-2017* show (literally) zero "Ownership transfer tangible benefits" in the "Amounts included in Total Canadian Programs Telecast" (p. 19 of the spreadsheet). The absence of such data makes it difficult, if not impossible, to determine whether the purpose of this policy – to compensate Canadians, as the owners of the communications spectrum licensed to private use, when ownership of licensed broadcasters changed – has been met.

**c) Affordability**

- 96 While parliament set affordability as an objective for BDUs and telephony in the early 1990s, the CRTC has published few data on this issue, and at times its comments on this point are confusing. For instance, in its latest 2018 *Communication Monitoring Report*, it presents household expenditure data involving communications, and comments that these data "do not reflect consumption of free services, such as the over-the-air television and radio services, that remain valuable to many Canadians."<sup>112</sup>
- 97 This CRTC comment is both an oversimplification and a misrepresentation. First, it does not explain that even if Canadians use 'free' over-the-air radio and television services, the latter's income derives in part from advertising, so that, in fact, all Canadians pay indirectly for Canadian advertisers' expenditures in radio and television whenever they buy a good or service advertised by broadcasters. Second, because expenditures of Canadians who choose not to subscribe to BDU services are included in Statistics Canada's expenditures data, the household expenditure data referred to by the CRTC do in fact reflect households' use of over-the-air television.<sup>113</sup> Our point is not to nitpick about sloppy language – but to highlight the absence of care by Parliament's delegate in reporting how Parliament's objectives are being met.
- 98 The CRTC's failure to address affordability in broadcasting became prominent when it decided to stop publishing<sup>114</sup> information about the average rates for basic BDU service in 2002.<sup>115</sup> While the CRTC collects data from BDUs about subscriber levels and revenues<sup>116</sup> it stopped reporting average rates for basic BDU service in 2002. Its 2017 *Statistical and Financial summaries* for BDUs report subscriptions and subscription revenues, but for all services combined (in other words, not just for basic tiers of service).<sup>117</sup> The Commission stopped reporting BDU penetration rates – a preferred indicator of affordability in telecommunications<sup>118</sup> – in the 1990s.
- 99 As for telecommunications, a comparison of Canada with comparable (advanced industrial economies) nations in terms of changes in prices paid for wireless telecommunications services shows that Canada's prices remain high overall, and to the extent that they are declining, are declining more slowly than in other countries.

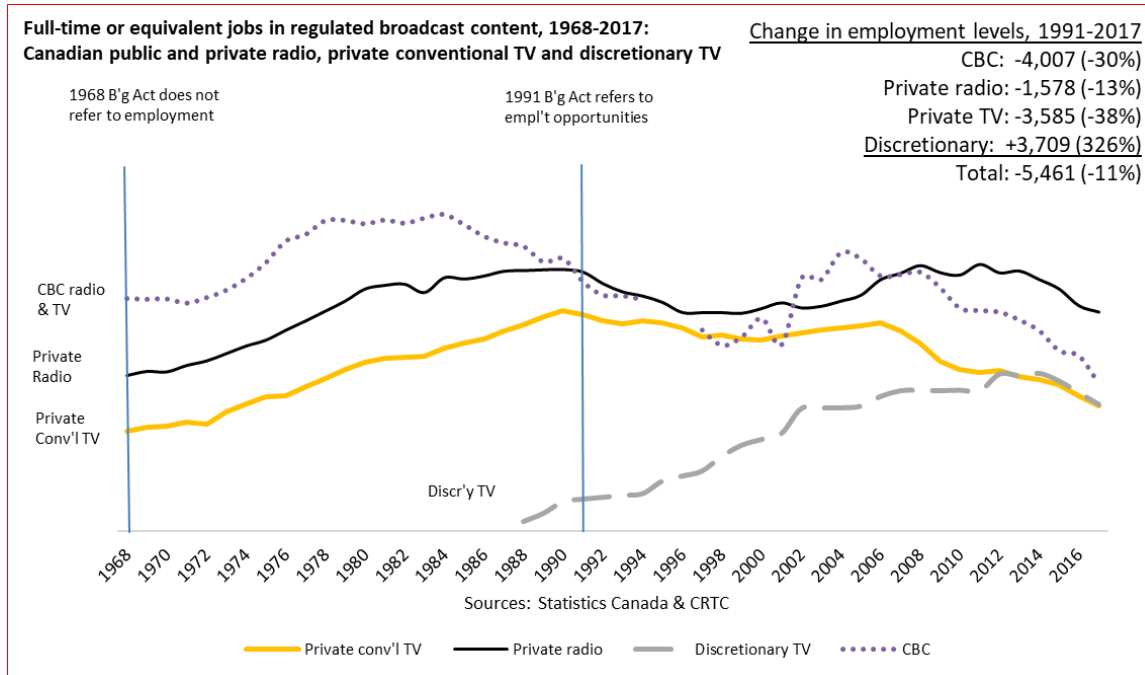
**Figure 3 Comparisons of wireless pricing, 2015 vs 2018**



**d) Employment**

100 The CRTC does publish information about broadcast employment, which Parliament first mentioned in the 1991 *Broadcasting Act*, and these data show that Canadians have fewer employment opportunities than in 1991. Between 1991 and 2017 full-time employment in Canada’s regulated content sector decreased 11%, or by 5,461 jobs (see Figure 4).

**Figure 4 FTE jobs in regulated content sector, 1968-2017**



- 101 The CRTC does not publish data about individual programming service' employment, but does publish this information for individual *Statistical and Financial Summaries*.
- 102 Of 218 discretionary television services listed in the 2017 *Summaries*, 20 reported in 2017 that they operated without any staff at all. While the absence of any staff would be easy to understand if the services were unprofitable, the 20 services that operated without any staff earned \$205 million in revenues in 2017, and \$40 million in profits before interest and taxes.

**Table 7 Staff levels at Canada's discretionary television programming services, 2017**

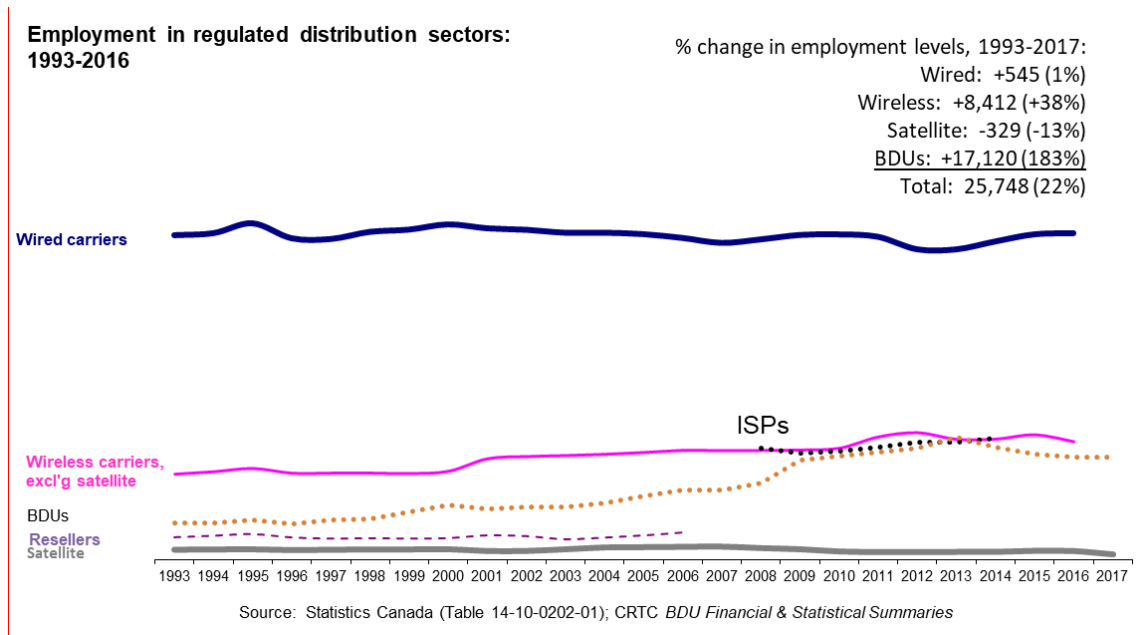
2017 Numbers of staff reported	Total revenues in 2017	Total staff	Profit before interest and taxes (PBIT)	Number of services
Zero staff	\$ 204,973,648	0	\$ 39,870,694	20
0.1-.9	\$6,993,990	0.8	-\$88,912	2
1-1.99	\$ 56,317,673	8.9	\$ 29,887,982	7
2-2.9	\$ 132,727,061	19.4	\$ 56,252,179	9
3-4.9	\$ 162,563,067	41.4	\$ 21,446,270	10
5-9	\$ 333,698,127	74.5	\$ 75,448,342	10
10-19	\$ 497,038,728	216.2	\$140,882,160	16
20-29	\$ 285,003,242	259.6	\$112,570,619	10
30-39	\$ 135,167,375	101.0	\$ 28,953,770	3
40-49	\$ 235,653,619	217.0	\$ 78,469,469	5
50-99	\$ 510,552,546	948.0	\$ 93,408,893	14
100-199	\$ 256,246,161	488.0	\$ 34,685,784	3
200-299	\$ 485,455,517	488.0	\$118,291,884	2
300-399	\$ 53,292,813	357.7	-\$ 2,802,214	1
400-499	\$ 658,273,030	933.2	\$110,653,165	2
No data	\$ 285,735,017	No data	No data	104

2017 Numbers of staff reported	Total revenues in 2017	Total staff	Profit before interest and taxes (PBIT)	Number of services
Total	\$4,299,691,614	4,153.6	\$937,930,085	218

Source, *Statistical and Financial Summaries, Individual discretionary services, 2013-2017*

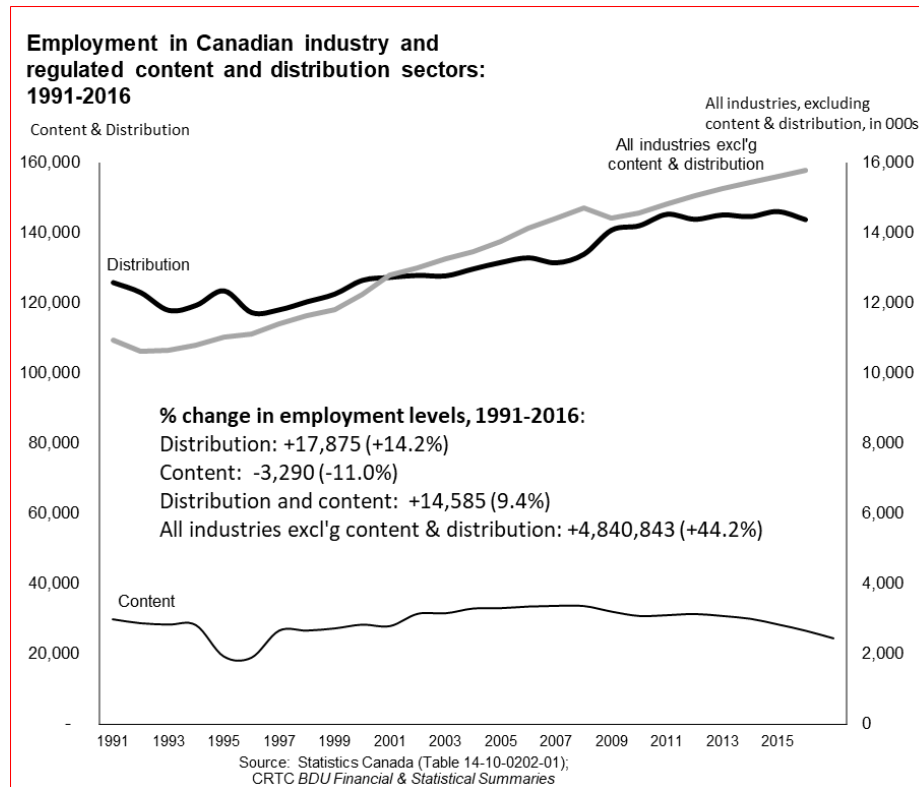
- 103 As for affordability, no long-term historical data are available to evaluate the affordability of Canadian content distribution and telecommunications services. After deregulating basic cable rates in 1997,<sup>119</sup> the CRTC stopped reporting average basic cable rates in its financial and statistical summaries in the early 2000s.
- 104 In telecommunications, where affordability has been a central point of concern for more than a century,<sup>120</sup> the CRTC first ordered TSPs to report regularly on affordability in 1996,<sup>121</sup> then eliminated the reporting requirement in 2009.<sup>122</sup>
- 105 Employment in telecommunications, as reported by Statistics Canada, grew by 7% (or 7,792 jobs) between 1993 and 2016 (see Figure 5).

**Figure 5 Full-time or equivalent jobs in regulated distribution sectors, 1993-2016**



- 106 To put changes in employment in Canada’s regulated content and distribution sectors into context, employment in these sectors grew 9.4% from 1991 to 2016. Over the same period employment in all other industrial sectors of the economy grew by 44.2% (or 4,840,843 jobs) (see Figure 6).
- 107 If employment in the regulated content and distribution sectors had grown at only half the rate at which employment grew in the rest of the economy (*i.e.*, by 22.1%), they would now employ an additional 19,838 people.

**Figure 6 FTE jobs in Canadian industry, and the regulated content and distribution sectors, 1991-2016**



108 To conclude, the Forum’s view is that insufficient evidence exists to prove that Parliament’s broadcasting and telecommunications objectives have been met, and in our view many of its objectives – particularly with respect to programming content, accessibility and affordability, and employment – have not been met.

**e) Accessibility**

109 Little reliable information exists about the degree to which Canada’s communications services are accessible. The CRTC’s 2017 *Communications Monitoring Report* refers to accessibility four times: 3 times in the context of comments or complaints to the CRTC about accessibility, and once in the context of telecommunications:

The Commission established regulatory measures to address issues related to accessibility for persons with disabilities and to enhance consumer empowerment. The effects of this policy will be reflected in future editions of the *Communications Monitoring Report*.<sup>123</sup>

110 It is difficult to know what the CRTC says about accessibility in its current, 2018 *Communications Monitoring Report*, as the report was issued

- in different sections at different times, and
- without tables of contents, figures or tables.

111 That said, we were unable to find references to accessibility in the five sections of this report available at the time of writing.<sup>124</sup>

## **B. What accounts for the failure to implement Parliament's communications policies?**

- 112 Parliament uses several devices to describe the reasons or purposes of statutes, and courts in turn consider such purposes in their decisions about matters involving those laws. Among hundreds<sup>125</sup> of Canadian federal statutes, 184 include 'preambles', for example, and nine mention "Objectives".<sup>126</sup>
- 113 But few present specific policies and objectives laid down by Parliament. The *Broadcasting Act* is one of only two that set out a specific "Policy for Canada"<sup>127</sup> and the *Telecommunications Act* is one of only two that list Parliament's specific "objectives".<sup>128</sup> (Neither the *Radiocommunication Act* nor the *Canadian Radio-television and Telecommunications Commission Act* includes statements regarding purpose). The rarity of 'policies for Canada' and 'policy objectives' imply that these statutes have a special character.
- 114 The *Broadcasting Act* establishes "that the objectives of the broadcasting policy ... can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority",<sup>129</sup> and that the CRTC shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).<sup>130</sup>
- 115 As for the telecom objectives, the *Canadian Radio-television Telecommunications Act* grants the CRTC the authority to regulate telecommunications, without referring to the CRTC's responsibility to meet specific regulatory principles:
- The full-time members of the Commission and the Chairperson shall exercise the powers and perform the duties vested in the Commission and the Chairperson, respectively, by the *Telecommunications Act* or any special Act, as defined in subsection 2(1) of that Act, or by 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.<sup>131</sup>
- 116 In theory, all failures to implement Parliament's broadcasting and telecommunications policies rest on the CRTC's shoulders.
- 117 In the Forum's view it may be somewhat unfair to attribute failures to meet Parliament's 1991 and 1993 objectives to past and current members of the Commission, when federal government policy, Cabinet *Directions* that appear to be based on that policy, and a range of statutory drafting problems are also responsible for these failures.

### **1. Department of Communications 1987 Policy Framework for Telecommunications in Canada**

- 118 As Roger Bird explains in *Documents of Canadian Broadcasting*<sup>132</sup> technological changes were threatening Canada's 1968 *Broadcasting Act* within the first few years of its existence. Technological change gave Canadians greater access to the world outside Canadian borders:
- ... Broadcasters now used not only the telephone companies' land lines and microwave towers, but satellites, computers, videotext software, and coaxial and laser cable ...<sup>133</sup>

- 119 Caught between competing desires – the desire to provide Canadians with content produced by Canadians for Canadians, and the desire to ensure that Canadians had access to a communications system that connected them with the world – the CRTC began an uneasy balancing act.
- 120 Overall, the federal government provided very little public guidance. Its only clear statement of principles for communications since 1987 has been *A Policy Framework for Telecommunications in Canada* (the *1987 Policy*), published by the Department of Communications in July 1987. Since the *1987 Policy* the federal government has published many reports, but no other policy statements; in theory, it remains in force, never having been rescinded, withdrawn, denied or rewritten.
- 121 The *1987 Policy* set out six principles:
- The future development of the telecommunications industry in Canada presents uniquely Canadian challenges, and will require uniquely Canadian answers.
  - Canadians must continue to have universal access to basic telephone service at affordable prices.
  - Policies must maintain the international competitiveness of the Canadian telecommunications sector and the industries it serves.
  - Policies must ensure that all Canadians benefit from the introduction of new technology.
  - A Canadian telecommunications policy must reinforce the goal of fair and balanced regional development, and respond to the interests of all concerned governments.
  - Telecommunications policies should be established by governments and not by regulatory bodies or by the courts.<sup>134</sup>
- 122 It added that government policies should first, allow open entry and exit for service and equipment suppliers and second, “foster an efficient network infrastructure that permits economic and cost-effective delivery of these products to end users”.<sup>135</sup> It added that the second goal
- ... can best be achieved through policies which acknowledge the role and status of Canada’s existing telecommunications carriers and which respect the principal economic characteristics of the telecommunications carriage industry.<sup>136</sup>
- 123 The *1987 Policy* then explained that “the government considers it appropriate to establish a framework for policy and legislation” to protect existing facilities-based carriers from competition, by limiting new entry, requiring national interconnection and providing “for corporate ownership arrangements which will ensure Canadian control of network planning and development.”<sup>137</sup> In brief, whatever the 1993 *Telecommunications Act* says about competition in telecommunications, the federal government’s policy – still unchanged – has since 1987 been to limit competition so as to protect the dominance of Canada’s largest telecommunications companies.
- 124 Apart from the absence of a parallel document for broadcasting, the *1987 Policy* is problematic because it raises the fear that today’s regulation of telecommunications – and, to a large extent, broadcasting, thanks to the ownership of much of the broadcasting system by telecommunications companies – is based on a 30-year old policy statement. A second problem is that while the *1987 Policy* largely succeeded in protecting large facilities-based carriers from

new entrants and in maintaining a few large companies’ dominance in the telecommunications sector, the *quid pro quo* for Canadians has been abandoned. The policy committed to “universal access to basic telephone service at affordable prices”: though wireline telecommunications service is somewhat affordable, neither wireless nor Internet service prices in Canada are regulated, and no evidence shows that these services are ‘affordable’.

125 The negative effects of the *1987 Policy* also appear in broadcast distribution. The CRTC in 1997 stopped regulating rates for broadcast distribution systems, saying that the introduction of competition from direct-to-home or radiocommunication systems made regulation unnecessary.<sup>138</sup>

126 Yet competition has not constrained BDU rate increases. We reviewed Shaw Communications Inc.’s annual reports describe the company’s decisions to increase rates charged for cable service in each year from 1997 to 2008, including increase of at least \$1 or more per subscriber per month, in 1999, 2002 and 2004 (Appendix 14). As the company did not mention rate decreases, it appears that these increases remained in its BDU price base; if this is the case, these annual increases generated a cumulative total of \$2.3 billion for Shaw over the 11-year period.

**Table 8 Cumulative impact of cable rate increases, 1997-2008**

\$ M	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
1997	\$11	\$11	\$ 11	\$11	\$11	\$11	\$11	\$11	\$11	\$11	\$11	\$ 11
1998		\$8.5	\$ 19	\$19	\$19	\$19	\$19	\$19	\$19	\$19	\$19	\$ 19
1999			\$ 4	\$24	\$24	\$24	\$24	\$24	\$24	\$24	\$24	\$ 24
2000				\$29	\$29	\$24	\$24	\$24	\$24	\$24	\$24	\$ 24
2001					\$9	\$11	\$11	\$11	\$11	\$11	\$11	\$ 11
2002						\$123	\$123	\$123	\$123	\$123	\$123	\$ 123
2003							\$14	\$36	\$36	\$36	\$36	\$ 36
2004								\$8	\$18	\$18	\$18	\$ 18
2005									\$24	\$24	\$24	\$ 24
2006										\$46	\$46	\$ 46
2007											\$30	\$60
Total	\$11	\$19	\$34	\$83	\$92	\$212	\$226	\$256	\$290	\$336	\$366	\$ 396
<b>1997-07</b>	\$11	\$30	\$64	\$147	\$239	\$452	\$678	\$934	\$1,224	\$1,560	\$1,925	<b>\$ 2,321</b>

127 The *1987 Policy* provides context for the statement by a senior member of the Commission in 1993, who acknowledged that, “Generally speaking, we support a free market approach .... And given the nature of this new medium [of the Internet], it may well be that we conclude at the end of this process that content regulation is not required.”<sup>139</sup>

128 Apart from concerns raised about affordability in a system where competition is very limited and a few large companies are able to set prices, a subtle corollary of regulation based on a “free market” approach (that discourages new entrants) is that it entirely dispenses with policy *planning*. A decision to leave all outcomes to a “market” (that in theory functions best when the independent decisions of many buyers to buy the goods and services of many sellers, moves prices to their appropriate level) removes any role for government – as well as responsibility.



129 Regulating on the basis of a ‘free market’ effectively overrides Parliament’s stated objectives for Canada’s broadcast and telecommunications systems. The Forum submits once the government and Canadians have had the chance to read and consider the Panel’s report, the federal government should publish its policy or policies for Canadian audio-visual cultural content, and for distribution systems, for the 21<sup>st</sup> century.

**Recommendation 2 After the broadcasting and legislative review panel submits its report, the federal government should develop and publish a new policy or policies for Canadian audio-visual cultural content and distribution systems for the 21<sup>st</sup> century**

**2. Cabinet’s Directions override Parliament’s authority**

130 The Governor in Council (the Prime Minister and his or her cabinet) has the authority to issue directions to the CRTC on broad policy matters with respect to “the Canadian telecommunications policy objectives”,<sup>140</sup> and in broadcasting, with respect to “any of the objectives of the broadcasting policy” or “any of the objectives of the regulatory policy”.<sup>141</sup> (The *Broadcasting Act* limits direct political interference in broadcast licensing by preventing directions from being issued about specific licences.<sup>142</sup>)

131 In the Forum’s view, *Directions* from Cabinet have invisibly welded outdated economic theory to the CRTC’s decision-making structure, creating an omnipresent straightjacket from which the CRTC is unlikely able to escape. Two directions in particular have thwarted the CRTC’s ability to meet Parliament’s objectives. Cabinet’s direction on foreign ownership in broadcasting prevents the CRTC from dealing with Internet-based programming services; its direction on implementing the telecommunications policy objectives prevents the CRTC from regulating telecommunications rates in the public interest.

**a) *Broadcasting - foreign ownership and online programming services***

132 While Canada’s 1958 *Broadcasting Act* discouraged foreign ownership of Canadian broadcasting,<sup>143</sup> it did not prevent it.<sup>144</sup> by 1967 non-Canadians owned and operated at least 5 television stations, 2 radio stations and several cable and newspaper undertakings in Canada:

- UK-based English Electric owned CFCF-TV Montreal
- US-based Famous Players owned CFCM-TV Quebec, held shares in “several FM and AM” stations, and cable systems<sup>145</sup> as well as CHAN-TV Vancouver,<sup>146</sup> CKMI-TV Montreal and CKCO-TV Kitchener, and was “feared” to be “gaining a near monopoly of cable television”,<sup>147</sup>
- RKO US owned and controlled CKEZ-FM, CKLW, and CKLW-TV Windsor;<sup>148</sup>
- at least three cable BDUs operated in Canada with headends in the US;<sup>149</sup> and
- the *Liverpool Post and Echo* owned the *Red Deer Advocate*.<sup>150</sup>

133 In this context it is perhaps unsurprising that when Parliament debated the 1968 *Broadcasting Act*, the government emphasized the importance of Canadian control over broadcasting. The new legislation did not define

1968 *Broadcasting Act*, 16&17 Eliz. 2, c. 25  
 2. It is hereby declared that  
 ...  
 (b) the Canadian broadcasting system should be effectively owned and controlled by communications so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;  
 ....

'Canadian control', however. The Minister responsible for broadcasting explained this was to preserve flexibility:

... It is simple enough to say that a single person owning or controlling a broadcasting undertaking must be a Canadian citizen, but the problem becomes much more difficult when we attempt to arrive at a statutory definition of what is meant by the effective ownership or control of a corporation. In practice, it has been found in other contexts that a statutory definition invariably opens the door to evasion. Consequently, in order to retain flexibility, and as forecast in the white paper, parliament is now being asked to reserve to the government the power to give directions to the commission aimed at preventing foreign control of Canadian broadcasting facilities. These directions will, of course, be made public and will thus be available for scrutiny by parliament.<sup>151</sup>

(Cabinet later issued its first direction to define what it meant by Canadian ownership in October 1968;<sup>152</sup> non-Canadians continued to operate broadcasting services in Canada until the 1970s.<sup>153</sup>)

134 By 1970 amendments to the *Broadcasting Act* had defined "broadcasting undertaking" to include undertakings "located in whole or in part within Canada or on a ship or aircraft registered in Canada."<sup>154</sup>

135 In 1991 when Parliament rewrote its broadcasting legislation, it clarified the extent of its authority over broadcasting undertakings operating in whole or in part in Canada.

This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

(a) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(b) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; or

(c) any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

136 The CRTC subsequently asserted its jurisdiction over online broadcasting in 1999, but exempted online broadcasters from licensing and regulation as it believed such services could not then help to implement Parliament's broadcasting policy.<sup>155</sup> The 1991 *Broadcasting Act* therefore applies to online broadcasting services that operate wholly in Canada, or only partly in Canada.

137 It is somewhat unclear how many non-Canadian services operate in part in Canada in total – i.e., including online services – or how they contribute to the implementation of Parliament’s broadcasting policy. In November 2018 the CRTC had authorized Canadian BDUs to distribute 294 non-Canadian programming services,<sup>156</sup> but the CRTC’s BDU *Statistical and Financial Summaries* do not provide any information on payments to non-Canadian programming services.

138 Aggregated financial summaries for individual companies from 2008 to 2013 included information about payments to non-Canadians, however, and in 2008 Canada’s six largest BDUs made \$257.3 million in payments to non-Canadians. By way of comparison, in 2009 (the only data available to the Forum at the time of writing) BDUs made \$180 million in “Contributions” to the Canadian Television Fund (the CMF’s predecessor).<sup>157</sup>

BDU payments to non-residents		
Ownership group	Medium	2008 (\$ millions current)
BCE	Cable	48.1
	DTH	
	Total	48.1
Bragg	Cable	12.2
	Total	12.2
Cogeco	Cable	16.3
	Total	16.3
Quebecor	Cable	
	Total	
Rogers	Cable	78.1
	Total	78.1
Shaw	Cable	80.2
	DTH	22.5
	Total	102.7
Total		\$257.3
Source: Aggregated financial summaries, 2008		

139 Online broadcasting undertakings that now operate in part in Canada include Netflix, a non-Canadian company, estimated to have more than 6 million subscribers in Canada, who presumably pay Netflix for this service directly, or indirectly through their Canadian BDU subscriptions. (Both CBS and Disney recently announced plans to stream their services directly to subscribers,<sup>158</sup> presumably also contemplating subscription revenue from subscribers outside of the US.)

140 Netflix is able to contribute to the achievements of Canada’s broadcasting policy,<sup>159</sup> but remains exempted from regulation and licensing. The CRTC has refused to consider applications made as recently as 2018 that it reconsider its Digital Media exemption order, to exercise control over online programming services that operate in part in Canada and can contribute towards Parliament’s broadcasting policy. In 2018 it said that

... the Commission is an independent administrative tribunal that has the mandate, *inter alia*, to supervise and regulate the Canadian broadcasting system. In furtherance of its objects, the Commission has the discretion to determine the appropriate moment to undertake a review of one of its policies. Under the circumstances, the Commission considers that it is not appropriate to initiate a separate public proceeding to consider the application.<sup>160</sup>

141 What the CRTC has not said publicly, to our knowledge, is that even if it reconsiders its Digital Media exemption order, Cabinet’s current 1997 *Direction on the Ineligibility of Non-Canadians*<sup>161</sup> forbids it from issuing broadcasting licences to non-Canadians operating in part in Canada, such as Netflix. The result is that the CRTC is only able to regulate and license Canadian online programming services.

142 By prohibiting the licensing of non-Canadian programming services, the current ownership *Direction* prevents the CRTC from implementing section 4(2) of the *Broadcasting Act* regarding broadcasting undertakings operating in part in Canada. The counter-intuitive effect of the

prohibition is to reduce Canadians' effective control of their broadcasting system, by allowing non-Canadian services to operate in Canada without restraint.

- 143 The Forum's view is that unless the *Direction* prohibiting the licensing of non-Canadians is changed or replaced to ensure that all services operating in Canada (in whole or in part) contribute to Parliament's objectives, Canada will lose control of its broadcasting system.

**Recommendation 3 New communications legislation for Canada must ensure that communications services operating both in whole, or in part, in Canada, demonstrably contribute towards the achievement of Parliament's goals for Canada's communications systems for 2035**

- 144 Moreover, as the *Broadcasting Act* limits the CRTC's authority to obtain information about broadcasting services to those it licenses<sup>162</sup> the CRTC cannot obtain the information needed to determine whether the impact of foreign Internet broadcasters' operations in Canada has a material impact on Parliament's objectives for the broadcasting system.

**Recommendation 4 New communications legislation for Canada must ensure that the communications regulatory authority has the authority to request and obtain information relevant to its jurisdiction from all individual, corporate or other persons**

**b) Telecommunications: laissez-faire regulation**

- 145 Many people in Canada believe that they pay too much for telephone service. In 2016 the annual reports commissioned by the CRTC to compare wireless telephone prices in Canada with prices in several other jurisdictions tend to support their beliefs.
- 146 Canadians and public-interest organizations regularly set out such concerns about excessive telephone prices to the CRTC, based on Parliament's telecommunications policy stipulating that "the Canadian telecommunications policy has as its objectives ... to render ... affordable telecommunications services of high quality ... in both urban and rural areas in all regions of Canada".<sup>163</sup> It has dismissed these concerns, claiming that no evidence supports them (but generally not providing evidence to support its own conclusions that pricing is affordable).
- 147 The Forum believes that the 2006 *Direction on Implementation*<sup>164</sup> now overrides Parliament's telecommunications policy objectives, based on the view that social protection is unnecessary and, indeed, harmful. This *Direction* orders the CRTC to apply 11 criteria:
- Maximum reliance on market forces
  - Efficient and proportionate regulation that minimally interferes with competitive market forces
  - Demonstration that regulation complies with the order
  - Non-deterrence of competitive entry
  - Symmetrical application of non-economic measures
  - Technological and competitive neutrality for structure
  - Minimally intrusive tariff mechanisms
  - Phasing out of mandated access to non-essential wholesale services
  - Publication and maintenance of performance standards, and
  - Continued exploration of new streamlining approaches.

148 Faced with this explicit and detailed direction, large communications companies' propensity for challenging the CRTC before the courts, and its apparent incapacity to collect relevant empirical data, it is little wonder that the CRTC has in effect, given up on all rate regulation.<sup>165</sup>

149 The problem, of course, is that competition in facilities-based telecommunications service will remain limited for the foreseeable future due to the costs of building such facilities. Non-facilities based competition is unlikely in the foreseeable future due to the *Direction*.

150 The Forum's view is that Parliament's objective for affordable telecommunications service cannot be implemented unless Cabinet rescinds this *Direction*.

### **3. Current statutes are unclear, have gaps and are inconsistent**

151 In an ideal world, every comma and every word in every statute would be both perfect, and perfectly placed. No one lives in that world. As a result, Canadian statutes are from time to time unclear, have gaps, or are inconsistent with each other.

#### **a) *Lack of clarity***

152 Parliament's broadcasting policy includes objectives related to extending "a range of broadcasting services in English and in French ... to all Canadians", reflecting "the aboriginal cultures of Canada", and providing "programming accessible by disabled persons" – "as resources become available for the purpose".

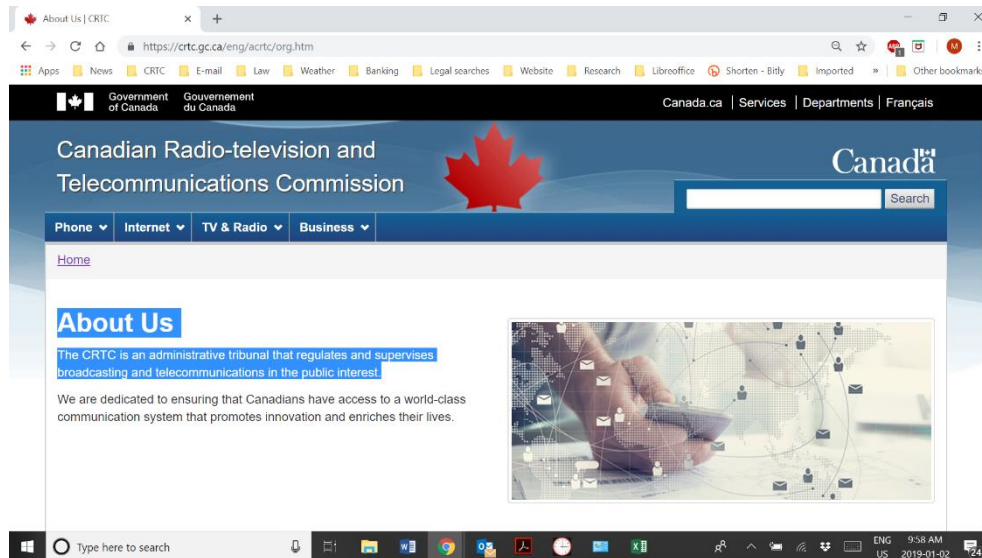
153 The last phrase – as resources become available for the purpose – is key to the CRTC's authority to implement these objectives, because it implies that unless resources exist, such programming need not be provided. Unfortunately, Parliament has not defined "resources" in the *Broadcasting Act*; "resources" could mean more than money, because Parliament also refers to "creative and other resources" in section 3(1)(f). Parliament also does not specify whose resources are at stake, does not explain what constitutes their 'availability', and does not clearly identify who will decide that the resources are for "the purpose".

#### **b) *Gaps***

154 Legislative gaps – lacunae caused by a divergence between Parliament's statement of legislative purpose and the effects of applying the legislation<sup>166</sup> – exist in Canada's communications statutes. Combined with the principle of consistent expression used in statutory interpretation (to the effect that the same words have the same meaning, while different words have different meanings<sup>167</sup>), these gaps limit oversight of the regulator.

155 The most important of these gaps is that, contrary to the CRTC's own statements, there is no duty for the Commission to perform its role "in the public interest" (see Figure 7).

**Figure 7** The CRTC and the public interest



156 In reality, neither the *Broadcasting Act* nor the *Telecommunications Act* requires Parliament’s delegated regulatory authority to place the public interest first when it makes decisions. Each sets limits on the CRTC by requiring it to regulate in a deregulatory manner. The *Broadcasting Act* requires the CRTC to regulate and supervise the broadcasting system “in a *flexible* manner that”

- (a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
- (b) takes into account regional needs and concerns;
- (c) is readily adaptable to scientific and technological change;
- (d) facilitates the provision of broadcasting to Canadians;
- (e) facilitates the provision of Canadian programs to Canadians;
- (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
- (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.<sup>168</sup>

157 The *Telecommunications Act* requires the CRTC to ... exercise its powers and perform its duties under this Act and any special Act

- (a) with a view to implementing the Canadian telecommunications policy objectives and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27; and
- (b) in accordance with any orders made by the Governor in Council under section 8 or any standards prescribed by the Minister under section 15.<sup>169</sup>

158 Courts have described the CRTC’s purposes in broadcasting and telecommunications as ‘polycentric’:

The “decision” to be made by the Commission [under the *Broadcasting Act*] is in the nature of a policy “decision”, which calls for the exercise of considerable discretion and the consideration of multiple polycentric factors. This is not the kind of decision that typically attracts a high level of procedural fairness.<sup>170</sup>

An analysis of these nine policy objectives found in section 7 of the [*Telecommunications Act*] raises policy issues, which are polycentric in nature in that they involve the weighing of a large number of interlocking and interacting interests and considerations.<sup>171</sup>

159 Polycentric purposes establish the “public interest” as merely one of many competing interests. In 1998 the Supreme Court explained that

A “polycentric issue is one which involves a large number of interlocking and interacting interests and considerations”. While judicial procedure is premised on a bipolar opposition of parties, interests, and factual discovery, some problems require the consideration of numerous interests simultaneously, and the promulgation of solutions which concurrently balance benefits and costs for many different parties. Where an administrative structure more closely resembles this model, courts will exercise restraint. The polycentricity principle is a helpful way of understanding the variety of criteria developed under the rubric of the “statutory purpose”.<sup>172</sup>

160 The absence of a requirement to place the public interest first means that the public interest is merely one of many competing interests that the CRTC may consider when making decisions. What this means in practical terms is that the CRTC treats the public interest like any other ‘interested party’ before it – demanding evidence and argument to support requests that the CRTC serve the public interest.

161 As “the public” and public interest organizations do not have the financial, technical and legal resources of Canada’s broadcasting and telecommunications companies, the public interest is often disserved. The public’s perception that its interest is not being served brings the administration of justice into disrepute, and reduces trust in Canada’s political institutions. In a national survey that the Forum undertook in March 2018, for example, more than half (63.8%) of Canadians and nearly three-quarters (73.4%) of those between 18 and 24 years of age believed a risk exists that, if the CRTC approved website-blocking to deal with alleged copyright infringement, the blocking would expand to other issues. The point raised by this finding is not whether website blocking would (if approved) ever expand beyond copyright infringement, but that a majority of Canadians believe that their government would expand censorship of the Internet.

162 Regardless of the statements made by the CRTC, courts have held that it does not bear a duty to give the public interest preeminent consideration in any of its decisions. Neither the *Broadcasting Act* and *Telecommunications Act* establishes any duty for the CRTC to serve the public interest.

163 Other statutes expressly state the importance of the public interest. The *Mackenzie Valley Resource Management Act*,<sup>173</sup> for example, establishes that planning boards created by the statute

... are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley.<sup>174</sup>

164 Similarly, the *Nunavut Planning and Project Assessment Act*<sup>175</sup> says that its Board

... must exercise its powers and perform its duties and functions in accordance with the following primary objectives:

(a) to protect and promote the existing and future well-being of the residents and communities of the designated area; and

(b) to protect the ecosystemic integrity of the designated area.<sup>176</sup>

165 In an era where highly concentrated ownership encouraged both by the CRTC and the structural peculiarities of technology (i.e., the ability of Facebook, Amazon, Netflix and Google [FANG] to dominate the world in Internet based communications, sales, programming and search), Parliament must provide the public not just with remedies when after-the-fact problems arise, but with a rebalancing of the current inequalities in resources so that policies and decisions in communications expressly serve the public interest.

166 Parliament should change its communications statutes to ensure that regulatory authorities place the public interest first, among all other interests.

167 A second gap that requires change involves appellate oversight. The *Broadcasting Act* and *Telecommunications Act* each permit appellate review; the former, of “decisions or orders”;<sup>177</sup> the latter of decisions.<sup>178</sup> Yet the *Broadcasting Act* also permits the CRTC to issue “guidelines”, “statements”, regulations, licences, decisions, orders and mandatory orders,<sup>179</sup> while the *Telecommunications Act* permits it to issue “guidelines”,<sup>180</sup> “statements”, requirements to provide service or discontinue service, orders, rules, and regulations.<sup>181</sup> The CRTC these days also issues ‘Frequently Asked Questions’ (or FAQs), having to do with its administration of its responsibilities.<sup>182</sup>

168 The statutes’ use of many different terms for what are arguably all ‘determinations’ matters because courts assume that when Parliament writes statutes, the same words mean the same thing, and different words mean different things. The CRTC itself treats these determinations as different: it has said, for example, implied that bulletins are determinative with respect to filing requirements,<sup>183</sup> that ‘guidelines’ are not binding<sup>184</sup> and are not decisions.<sup>185</sup> Unfortunately, it has then also said that procedures in information bulletins “must” be followed,<sup>186</sup> and that requirements in information bulletins are, in effect, substitutes for conditions of licence.<sup>187</sup>

169 The gaps between the effects of the statutes’ application (through the CRTC’s exercise of its powers) and the Parliament’s actual statements about appellate review, create uncertainty about the status of the CRTC’s various determinations, and the degree to which they are subject to appellate oversight.

170 The Forum believes that new legislation could, and ought to, correct such gaps.

### c) **Inconsistencies**

171 A second problem arises from Canada’s communications statutes because the broadcasting and telecommunications statutes do not address the same matters in the same ways.

172 While one might assume that the CRTC provides reasons for each of its decisions or determinations, this is not the case. The courts have held, however, that reasons are needed to “satisfy the criteria of ‘justification, transparency and intelligibility’”, “to permit the parties to understand why the tribunal made the decision and to enable judicial review of that decision.”<sup>188</sup> For example, the *Telecommunications Act* requires the CRTC to publish written



reasons for approving or disallowing tariffs;<sup>189</sup> the *Broadcasting Act* does not require the CRTC to give reasons in any of its determinations. After the 1991 *Broadcasting Act* entered into force, for instance, the CRTC announced new classes of broadcasting undertakings; its notice described these new classes, but provided no reasons to explain the CRTC's decision.<sup>190</sup>

173 A similar problem arises concerning delegation. The *Telecommunications Act* expressly permits the CRTC to delegate certain powers regarding the national do-not-call list<sup>191</sup> and network numbering,<sup>192</sup> to "any person". The *Broadcasting Act*, though, is silent with respect to delegation: it does not permit the CRTC to delegate any of its powers elsewhere. Since 1991, however, the CRTC has since 1991 referred "complaints from members of the public about programming matters that are within the Council's mandate to the CBSC for its consideration and resolution".<sup>193</sup> Regardless of the legality of this delegation,<sup>194</sup> one result of this delegation is that, to the best of our knowledge, the CRTC does not consider complaints sent to the CBSC about individual licensees, when they apply to renew or amend their broadcasting licences. The result is that the CRTC generally renews broadcasters' licences in the absence of evidence relevant to the degree to which their programming is of high standard. Is this what Parliament intended?

174 Finally, inconsistencies appear in the English-language and French-language texts in section 3 of the *Broadcasting Act*. For instance,

- section 3(1)(k) says in English that a range of broadcasting services in English and French will be "extended", and in French that they will be "progressivement offerte" (which has a slightly different meaning)
- section 3(1)(o) says in English that programming for Indigenous peoples in Canada will be provided "within" the Canadian broadcasting system; it says in French that such programming will be provided by the system
- section 3(1)(p) says in English that programming for disabled persons will be "provided within" the system, and in French that it will be provided by the system
- section 3(1)(r)(v) says that alternative television programming services should be provided on a cost-efficient basis, and in French that provision should be "la plus rentable" => although in our view this section is no longer necessary, nor has it ever been used by the CRTC
- section 3(1)(s) refers to programming and public demand using two subsections in English, while the French version has no subsections.

175 The equal authenticity rule of means that both versions of Parliament's statutes are official, original and authoritative<sup>195</sup> - and require courts (as well as appellants and respondents) to devote time (and in the case of legal fees, money) to trying to determine the true, shared meaning of such inconsistent terminology.

176 The Forum believes that new legislation could and ought to ensure that Canada's content and distribution law is coherent rather than inconsistent.

**d) Objectives and discretion**

177 Finally, Parliament has granted its delegate a level of discretion that, when combined with decades-old government policy, Cabinet *Directions* and other inconsistencies, tends to render most of Parliament's objectives meaningless.

**178** The reason is that faced between mandatory and discretionary requirements, the CRTC will generally be bound to follow mandatory requirements, but may ignore discretionary ones. It is therefore striking that none of Parliament’s requirements for its telecommunications policy is mandatory, for example, and just 5 of the 42 requirements in its broadcasting policy are mandatory.

**Table 9 Discretionary and mandatory requirements in Parliament’s policies for broadcasting and telecommunications**

Policy requirements	<i>Broadcasting Act</i>	<i>Telecommunications Act</i>
Total ‘requirements’: 51	42	9
Declaratory statements	4: (b) frequencies are public property and broadcasting system provides essential public service (c) different conditions and requirements for English and French broadcasting (h) responsibility (j) educational programming is integral part of Canadian broadcasting 5(2) (g) ... the administrative burden [of regulation and supervision, imposed on broadcasting undertakings]	7: ... telecommunications performs an essential role in the maintenance of Canada’s identity and sovereignty ...
Mandatory requirements	5: (a) effective Canadian ownership and control (e) contribute in appropriate manner to Canadian programming creation and presentation (f) each undertaking to make at least predominant use of Canadian resources to create and present programming (k) extend to all Canadians (n) resolve conflicts between CBC and other broadcasters in public interest	0
Discretionary requirements	33	

**179** Making so few of the *Broadcasting Act*’s objectives mandatory effectively permits the CRTC to decide whether to implement any of them at all. For instance, Parliament says that Canada’s “broadcasting system should ... through ... the employment opportunities arising out of its operations, serve the needs and interests” of Canadians.<sup>196</sup> The CRTC rarely raises this concept in its broadcasting decisions: of 22,054 CRTC “decisions” in broadcasting (from 2000 to 2018); a fifth (4,265 or 19%) referred to “employment” at all, and just 67, or 0.3% of all 22 thousand decisions referred to “employment opportunities”.

**180** Another problem with Parliament’s current broadcasting and telecommunications policies is that some objectives conflict with others, effectively requiring the regulator to choose between competing goals. Section 7(b) of the *Telecommunications Act* requires telecommunications services to be “affordable”, while 7(f) calls on the CRTC to “foster increased reliance on market forces”. Even if these sections did not conflict with each other, Cabinet’s 2006 *Telecommunications Policy Direction*<sup>197</sup> also orders the CRTC to “rely on market forces to the maximum extent possible”. The CRTC is therefore arguably required to give pre-eminent consideration to ‘market forces’.

181 The Forum’s recommendations in Part IV, below, are made on the premise that Parliament will provide its regulatory delegate with clear, mandatory requirements about the objectives it wants Canada’s communications system to meet – and by when. To describe our recommendations in another way, Parliament must set a destination for Canada’s communications systems.

## IV. Objectives of new communications statutes – and their destination

182 The Forum has a number of recommendations for new communications legislation. Overall, we propose that new legislation be based on the principles on which Canada is founded, namely the constitutional values set out in the 1982 *Charter of Rights and Freedoms*.

183 We then recommend that Parliament set out clear and specific goals that Canada’s content and distribution systems must achieve by – say – 2035. We recommend that Parliament build on the structure of the Canadian Broadcasting Corporation to establish a new mechanism to ensure the production and availability of Canadian news and entertainment programming. Finally, we recommend that Parliament establish a new framework for regulatory governance based on the primacy of the public interest, 21<sup>st</sup> century standards for governance, and meaningful oversight by Parliament, the courts and Canadians.

### A. Foundational principles

184 New communications legislation should be based not just on the needs and wants of Canadians and Canadian communications companies, but on the principles that help to make Canada unique. These include the values set out in Canada’s constitutional and quasi-constitutional laws, “because these rights ... embody key Canadian values”,<sup>198</sup> and the requirement for Canadian federal policy to place the public interest first.

#### 1. Canada’s Constitutional values

185 The *Charter* emphasizes the rule of law,<sup>199</sup> rights and freedoms subject to reasonable and lawful limits, and democracy. Among other things, it establishes

- freedom of expression<sup>200</sup>
- the right to the just administration of law according to the principles of fundamental justice, and
- the right of access for the deaf to interpreters’ assistance in government proceedings.<sup>201</sup>

186 The *Charter* also sets out the federal government’s commitment to provide “essential public services of reasonable quality to all Canadians”.<sup>202</sup> It permits the federal government to undertake programs or activities that improve conditions of those disadvantaged by race, ethnic origin, or disability,<sup>203</sup> and establishes that the *Charter* must “be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.”

187 Other statutes are not part of Canada’s *Constitution*, but have been accorded quasi-constitutional status by Canada’s courts. These include human rights legislation, the *Official Languages Act* the *Privacy Act*, and access-to-information legislation.<sup>204</sup> Along with the values protected by the *Charter*, these statutes

- Protect personal information held by government institutions

- Provide individuals with a right to access personal information about themselves

188 The Forum recommends that new communications legislation must integrate the key ideas of Canada’s constitutional and quasi-constitutional laws into communications legislation for the 21<sup>st</sup> century.

**Recommendation 5 New communications legislation must be based on, and integrate the values set out in, Canada’s constitutional and quasi-constitutional laws**

**2. The public interest in Canada**

189 The Forum is also recommending that new communications legislation specifically require that decision-making with respect to content and distribution place the public interest first.<sup>205</sup> At present neither the *Broadcasting Act* nor the *Telecommunications Act* does so, despite the special character of these sectors, which is that companies may only operate if they are granted access to spectrum that, in Canada, is owned by the public and licensed on a temporary basis for others to use. We are reminded of the comments by the 1949 Royal Commission on National Development in the Arts, Letters and Sciences (Massey Commission):

Broadcasting in Canada, in our view, is a public service directed and controlled in the public interest by a body responsible to Parliament.<sup>206</sup>

190 The Massey Commission’s comments were echoed in 1955 by another Royal Commission, to examine broadcasting. The Fowler Commission acknowledged that the high financial costs of program production would make private broadcasters “predominantly dependent on imported radio and television content that was largely American. The Commission said

... if the less costly method is always chosen, is it possible to have a Canadian nation at all? The Canadian answer, irrespective of party or race, has been uniformly the same for nearly a century. We are prepared, by measures of assistance, financial aid and a conscious stimulation, to compensate for our disabilities of geography, sparse populations and vast distances, and we have accepted this as a legitimate role of the government in Canada.<sup>207</sup>

191 Finally, we would like to repeat a comment made by the CRTC in 1971, about the uneasy relationship between programming content and distribution systems: “broadcasting cannot survive by technology alone. The most perfect electromagnetic signal into every Canadian home is without value unless it bears a message.”<sup>208</sup> Distribution systems matter – as does cultural content.

192 As in the past, however, financial arguments tend to dominate discussions and debates about Canada’s audio-visual cultural sector. One reason for the dominance of finance is that revenues and expenditures are easy to measure. Concepts in broadcast policy that – from the perspective of the safeguarding of Canada’s sovereignty, its democracy and its society – are invaluable and often beyond easy measure are overshadowed and crowded out by dollars and cents. The absence of widely accepted, easy-to-use and readily available measures of “culture”, “values”, “portrayal”, “balance”, “reflection” and “privacy” means that these aspects of audio-visual content tend to be felt and missed most, when lost.

193 The Forum argues that the public interest in Canada requires that the public policies for the communications sector must safeguard the public interest in culture, values, portrayal, balance, reflection and privacy. We argue that the CRTC or a new communications regulatory authority must place these issues – encapsulated by the phrase, “the public interest”, must be at the core

of new communications legislation, and must be served by policies and decisions that result from that legislation.

194 The current absence of a stated duty for the CRTC to place the public interest first in its decisions has permitted Cabinet and the CRTC to override Parliament’s broadcast and telecommunications objectives without fear of legal challenge. Canada’s courts have confirmed that the interests of Canadians are just one interest of several ‘polycentric’ interests. In 2009 the Supreme Court held that the *Telecommunications Act* not only grants “the CRTC the ability to balance the interests of carriers, consumers and competitors in the broader context of the Canadian telecommunications industry”,<sup>209</sup> but creates the conditions for “a more deferential standard of review”.<sup>210</sup> In dismissing an appeal of the CRTC’s 2015 ‘simultaneous substitution’ broadcasting policy (on the ground of prematurity) the Federal Court of Appeal in 2016 also commented that CRTC broadcast policy ‘decisions’ call “for the exercise of considerable discretion and the consideration of multiple polycentric factors” and, as well, are not the “kind of decision that typically attracts a high level of procedural fairness.”<sup>211</sup>

195 Yet more than one hundred federal statutes include references to “the public interest” (Appendix 10), and provincial statutes also set out public interest considerations, sometimes (though not always) in the context of decision-making. Courts take references to the public interest seriously. In the 1977 case of *Union Gas Ltd. v. Township of Dawn Tecumseh Gas Storage Ltd. v. Township of Dawn*, for example, the Court carefully reviewed Ontario’s energy legislation, concluding that it required the general public interest to be served; one section stipulated that the Ontario Energy Board could only grant construction applications if “after the hearing the Board is of the opinion that the construction of the proposed line or station is in the public interest”:

These are all matters that are to be considered in the light of the general public interest and not local or parochial interests. The words “in the public interest” which appear, for example, in s. 40(8), ... which I have quoted, would seem to leave no room for doubt that it is the broad public interest that must be served.<sup>212</sup>

196 Apart from the disingenuous nature of claims that the CRTC makes decisions in the public interest (without any legal support for these claims, and while the CRTC itself withholds or chooses not to collect data necessary to evaluate such claims), claims that the CRTC serves the public interest are dangerously misleading. They imply that when CRTC decisions do not serve the public interest, they can be challenged. In reality, the absence of any legal duty to place the public interest first entitles the CRTC to ignore the public interest in favour of any other interest it considers more compelling, armed as it is with the foreknowledge that Canada’s courts agree with that interpretation.

**Recommendation 6 Parliament must change Canada’s communications legislation to require that decisions be made in the public interest**

### ***B. Good public policy requires planning***

197 Apart from reflecting Canadian’s fundamental principles, new communications legislation must set out a clear and specific destination. The current regulatory approach has left the CRTC on the one hand with an unclear duty somehow to meet dozens of largely optional objectives, and with the mandatory constraint, on the other hand, of achieving these objectives by encouraging specific behaviours in an otherwise atomistic and directionless marketplace. Direction- and

objective-free activity in Canada’s communications systems places billions of dollars in revenues, hundreds of thousands of direct and indirect jobs; hundreds of thousands of hours of radio and television programming that inform and entertain, as well as opportunities to reflect Canada to Canadians, at risk.

- 198 By contrast - before market-oriented economic theory began to hold sway in the 1970s, governments considered the impact of sectoral failure on their societies. In 1942, in contemplation of the impact of the end of World War II on the radio industry – where national defence spending had raised employment by 1200-1500% (to 300,000 workers) – the Chairman of the FCC writes that he thinks “it quite likely that during the post-war period television will be one of the first industries arising to serve as a cushion against unemployment and depression”<sup>213</sup>
- 199 Countries such as Ireland, meanwhile, have launched plans for their future, on the pragmatic basis that “[w]ithout proper planning, growth will be haphazard and uneven. Without the required infrastructure, our potential for economic growth will stall.”<sup>214</sup>
- 200 The Forum therefore recommends that new communications legislation set clear, quantifiable and quantified goals for Canada’s content and distribution systems to achieve by 2035. These objectives should take into account well-established concerns in Canadian communication that deal with different interests –of society, of the nation, and of individuals.

**Recommendation 7 Parliament should set clear, quantifiable and quantified goals for Canada’s content and distribution systems to meet by 2035**

***C. Planning for Canada in 2033***

- 201 Planning so that the needs of society, Canada and Canadians are met by Canada’s communications system requires some understanding of the future, and of the context in which Canada’s communications legislation will be operating – not now, or in (say) 2023, but beyond that – in the 2030s.<sup>215</sup>
- 202 For example, the federal government has developed projections about the numbers of job openings and people seeking jobs from 2017 to 2026 (Table 10).<sup>216</sup> It anticipates shortages of workers in the natural and applied sciences and health care, and in the arts and cultural sector, in graphic design.

**Table 10 Occupations forecast to be in demand in Canada from 2017 to 2026**

Table 4: Occupations Projected to be in Shortage Conditions by NOC Skill Type over the Period 2017-2026	
Skill Types	Occupations in Shortage
Natural and Applied Sciences and Related Occupations	2146* - Aerospace engineers & Other professional engineers, n.e.c., 2161 - Mathematicians, statisticians and actuaries, 2171 - Information systems analysts and consultants, 2172 - Database analysts and data administrators, 2173 - Software engineers and designers, 2174 - Computer programmers and interactive media developers, 2232 - Mechanical engineering technologists and technicians, 2233 - Industrial engineering and manufacturing technologists and technician, 2270 - Transportation officers and controllers
Health Occupations	<b>3012 - Registered nurses and registered psychiatric nurses</b> , 3111 - Specialist physicians, <b>3112 - General practitioners and family physicians</b> , 3113 – Dentists, <b>3120 - Optometrists, chiropractors and other health diagnosing and treating professionals</b> , <b>3141 - Audiologists and speech-language pathologists</b> , <b>3142 – Physiotherapists</b> , <b>3143* - Occupational therapists &amp; Other professional occupations in therapy and assessment</b> , <b>3214* - Respiratory therapists, clinical perfusionists and cardiopulmonary technologists &amp; Medical radiation technologists &amp; Medical sonographers</b> , <b>3231 – Opticians</b> , <b>3232* - Practitioners of</b>

Table 4: Occupations Projected to be in Shortage Conditions by NOC Skill Type over the Period 2017-2026

Skill Types	Occupations in Shortage
	natural healing, Massage therapists & Other technical occs. in therapy and assessment, 3233 - Licensed practical nurses
Occupations in Social Science, Education, Government Service and Religion	<b>4151 - Psychologists</b>
Occupations in art, culture, recreation and sport	5241 - Graphic designers and illustrators, <b>5242 - Interior designers and interior decorators</b>
Trades Transport and Equipment Operators and Related Occupations	7511 - Transport truck drivers

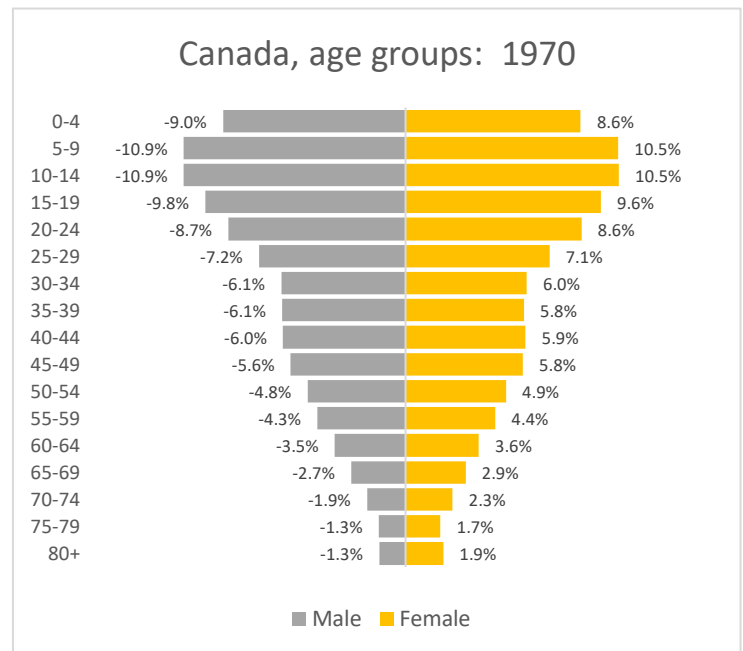
**Note 1:** Occupations with a star are groupings of 4-digit occupations (including 3-digit occupations which are considered as groups of 4-digit occupations).

**Note 2:** Occupations in bold are those where at least 50% of their workers were women in 2016.

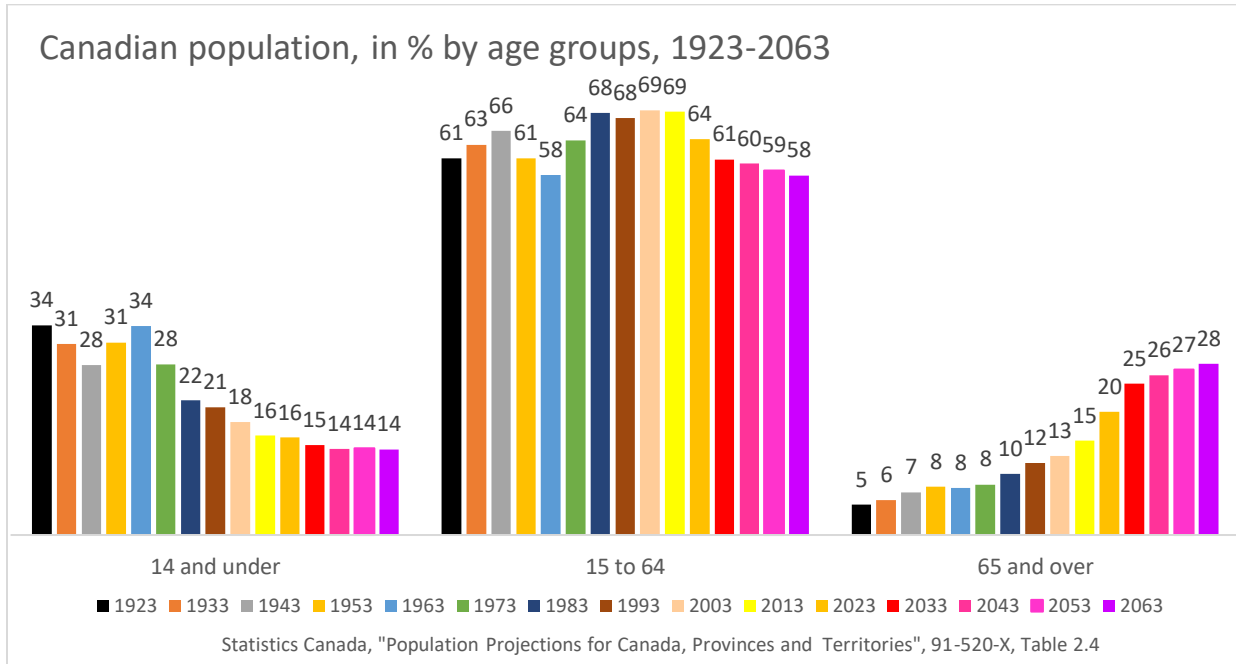
**Source:** ESDC 2017 COPS Projections.

Figure 8 Age groups in Canada, 1970

- 203 We also know that by 2033 Canada’s population will be quite different from the Canadian population in 1968, when Parliament wrote its first version of today’s *Broadcasting Act*.
- 204 Just after the 1968 Act’s introduction, Canada was, as a whole, younger: more than half (56%) of the population was under 30 years of age; 8% were over 65 (represented by the upside-down pyramid to the right).
- 205 Canada’s birth rate is declining, however, and the people who were young fifty years ago, are now older. Data from Statistics Canada describe these changes. It forecasts that the number of people over 65 years as a percentage of the population will increase from 15% in 2013, to 25% in 2033:

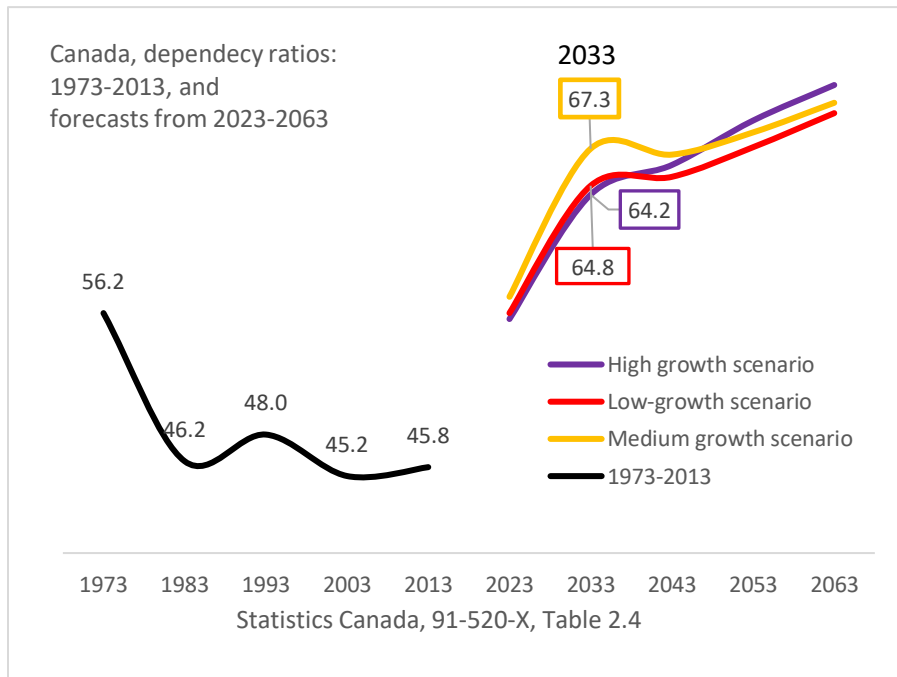


**Figure 9** Age groups in Canada, 1923 to 2063



206 Statistics Canada also forecasts that Canada’s demographic dependency ratio – the total number of people aged 14 years and under and 65 years and over, per every 100 persons aged 15 to 64 years of age – will increase by roughly half, from 45.8 in 2013 to at least 64.8 by 2033.

**Figure 10** Canada, dependency ratios, 1973-2063





- 207 Canada's changing demography has important implications for the nation's public policies. Rather than facing a crisis in 2030, Canada's should plan now, for the future.

**Recommendation 8 New communications legislation for Canada must be based on reliable statistical estimates describing Canada in or near 2035**

- 208 One consequence of Canada's aging population which may be beneficial for Canada's audio-visual sector is that Canadians who have retired may (if they do not need to take on jobs to supplement their fixed income) have more time to devote to audio-visual content, suggesting that demand for high-quality programming content will only grow over the next decade. What content will they seek, and who will they pay to obtain it? If Canada's communications sector lacks high-quality domestic audio-visual content, more and more money that could have been spent in Canada will be sent outside our borders, and more jobs will be lost in Canada.

**Recommendation 9 New communications legislation must emphasize the importance of financing Canadian audio-visual programming**

- 209 Aging affects more than free time – it affects individuals' physical capacity to see and hear. As a matter of human rights, Canada's communications system must be accessible to all; as a practical matter, the percentage of the population over 65 years of age and more likely to require accessibility assistance will increase from 15% in 2013 to 25% in 2033.

**Recommendation 10 New communications legislation for Canada must mandate the accessibility of content and distribution systems**

- 210 Another consequence of Canada's changing demographic structure is that, if dependency levels grow as forecast, Canadians between 15 and 64 years of age will need higher average incomes to support their dependents: "good-paying" jobs will no longer be simply desirable, but necessary, if Canada wants to maintain or raise its living standard. Canada's content and distribution sectors offer a means of providing Canadians with meaningful and well-paid employment – particularly in light of what is likely to be continuing interest around the world for well-produced programming content.

- 211 The US state of Georgia offers one example of the impact of cultural content, because it has in recent years been the world leader<sup>217</sup> in feature film production.<sup>218</sup> In 2017 455 film and television productions were shot in the state, whose economic impact was described as \$9.5 billion in the state's most recent fiscal year.<sup>219</sup> *Avengers: Infinity War* and *Black Panther*, two of the largest film releases in 2018, were filmed in Georgia and earned over \$3 billion worldwide<sup>220</sup> - the *Avengers'* cast and crew included more than 4,000 people.<sup>221</sup>

- 212 We are not suggesting that Canada shift its communications sector entirely towards 'industrial content' – audio-visual content without Canadian values. We are suggesting that federal policy develop and implement a long-term strategy to encourage the production of Canadian and non-Canadian audio-visual content in Canada, to promote growth in employment and incomes.

**Recommendation 11 New federal legislation should use financial incentives to increase audio-visual content production in Canada, while ensuring that at least half of such incentives are directed towards content produced by Canadians for Canadians**

- 213 Canadian federal policy should set growing employment as a goal in new communications legislation.

**Recommendation 12 New communications legislation must emphasize the importance of employment in the content and distribution sectors**

214 Finally, Canada’s changing demography creates new pressure with respect to affordability. By 2033 40% of the population will either be under 14 years of age or over 65– either earning little income or living on fixed incomes. If communications prices continue at that time to be set by marketplace caprice, they may be unaffordable for nearly half the population. Apart from risks to individuals cut off from family, friends and society, what are the implications for Canada’s political structure if large swathes of the population lack access to a range of news and information about matters of public concern in Canada?

**Recommendation 13 New communications legislation must mandate the affordability of communications services**

*D. The needs that Canadian communications legislation must meet*

215 One way to consider Canada’s needs with respect to communications content and distribution is to distinguish between the types of interests that content and distribution legislation must meet. In the late 1960s, concerns existed that attempts to regulate broadcasting would limit Canadians’ access to programming they wanted to see and hear and it was not unusual for the CRTC to be accused of attempting to give Canadians what it believed they needed, rather than what they wanted.

216 Online programming services now offer Canadians nearly anything they want, and for the most part Canadian law is able to limit serious harms.<sup>222</sup> The pressing issue for Parliament is to ensure that Canada’s communications systems remain able to provide Canadians with services they also need, and that services operating in whole or in part in Canada also help to meet Parliament’s goals. Access to news, to audio-visual content that expresses Canadian values, and to the communications system, are core to the public interest of Canada. As noted previously, the Forum is recommending that the public interest come first – but we recognize that at times, Canadian security will require a national interest to predominate, as well as individuals’ interests in matters such as privacy.

217 As indicated below, the Forum believes that Canada’s national and social interests, as well as the interests of individuals, must be addressed, and thereby protected, by communications legislation.

**Table 11 Mechanisms through which different interests can be served by Canada’s communications legislation**

Type of interest	Content	Distribution
<b>National interest</b>	Domestic program production Employment levels, income National security (Canadian values; emergent events)	National security (protection of government information and means of communications) Access by all parts of Canada to advanced telecommunications Non-interference by distribution media (i.e., with other media and other industries reliant on spectrum and radio frequencies)
<b>Societal interest</b>	Content produced by Canadians, for Canadians, reflecting Canada and its values Balance of programming (range)	Equal access to reliable distribution systems Limits to nuisance calls

Type of interest	Content	Distribution
	Availability of news and information Balance in electoral news and information (prohibition of false news) Accessibility (DHHDB)	
<b>Individual interests</b>	Access to content produced by Canadians for Canadians Affordability Employment income Privacy	
<b>Business interests</b>	Access to advertisers, audiences and subscribers	Access to subscribers

218 In the past, some of these concerns – such as the availability of programming content –received short shrift. Others – such as affordability – are endlessly raised, but ignored.

219 When it was not actively derided, cultural content was often dismissed as less important than the construction and operation of fixed assets such as telecommunications and BDU infrastructure. Value-laden language introduced and reinforced subtle disparagement: distribution companies ‘compete’ – while content companies are ‘subsidized’; financial support for telecommunications is an ‘investment’ – while financial support or culture is a ‘cost’. The *Broadcasting Act’s* description of funding for content produced by Canadians for Canadians as “contributions” – a type of payment more typically made to charities – was unhelpful in establishing programming content as an important part of Canada’s communications system.

**Recommendation 14 New communications legislation must replace language such as ‘contribution’ or ‘support’ with neutral terminology such as payment**

220 The practical reality is that Canadians support many types of business, through the deductibility of certain expenses under the *Income Tax Act*. To the extent that culture is ‘subsidized’, distribution services are also subsidized, or when they benefit from high capital cost allowances designed to encourage capital investment. To the extent that Canada’s audio-visual cultural sector receives preferential treatment in the broadcasting system, Canada’s telecommunications companies also receive a degree of preferential treatment when they are granted the right to access municipal roadworks to install their wires and lines.

221 Since the early 1990s, moreover, new evidence about the impact of culture has come to light. It is now recognized that the loss of culture has serious, ongoing and disturbing effects on those affected. The harms caused by the Sixties Scoop have led to compensatory costs in the tens of thousands for thousands of individuals,<sup>223</sup> with the realization that in reality, “ ‘no amount of money can ever fix the damage [that was done] .... no amount of money can give people back their sense of belonging.’ ”<sup>224</sup> The courts’ decisions about the Sixties Scoop establish that cultural identity matters.<sup>225</sup>

222 As noted earlier, assuming that new communications legislation continues to require it, there will be no easy answers to the question of how Canadian socio-cultural values are to be safeguarded. In the past, however, licensed programming services described their programming to the CRTC as part of their licensing applications, at least permitting public debate on the issue. (Other countries have different approaches.<sup>226</sup>)

223 Today's licensed radio and television programming undertakings tend to operate on a linear basis, making it possible to require that each service include a specific level of content produced by Canadians for Canadians, sometimes at specific times of the day (evenings, for conventional over-the-air television programming services).

224 Online programming services instead make programming available to subscribers. An obvious point, however, is that if no Canadian programs are made available, subscribers will have no access to them. Permitting online programming services to profit from their use of Canada's communications systems without any form of compensation to Canadians effectively grants non-Canadians a level of control over Canada's communications systems. Parliament must protect Canadians' interest in the nation's spectrum, by requiring online programming services that operate in whole or in part in Canada, to make a base level of content produced by Canadians for Canadians available in the services to which Canadians subscribe.

**Recommendation 15**      **New communications legislation must require online programming services to include a base level of content produced by Canadians for Canadians**

225 Requiring programming services to describe the ways in which their Canadian programming safeguards Canadian values would be one way of obtaining information about the safeguarding of these values.

**Recommendation 16**      **New communications legislation must require the communications regulatory authority to collect information annually on the manner in which programming distributed by on- and off-line programming services safeguards Canadian values**

226 Content that is difficult to find, will (obviously) be difficult to access. Online programming services that obtain subscription and advertising income in Canada, must ensure that content produced by Canadians for Canadians is not only easy to locate through their search engines and platforms, but receives preferential treatment by search algorithms.

**Recommendation 17**      **New communications legislation must require online programming services to ensure that their search engines make content produced by Canadians for Canadians easy to locate**

**Recommendation 18**      **New communications legislation must require online programming services to demonstrate that their search algorithms ensure that users receive results that include content produced by Canadians for Canadians**

227 As an organization focussed on empirical research, the Forum submits that collection of data will be not just necessary, but essential, to the success and evaluation of new communications legislation. Merely collecting data can affect behaviour; in November 2018 it was learned that the *Financial Times* "is automatically warning its journalists if their articles quote too many men, in an attempt to force writers to look for expert women to include" in their articles.<sup>227</sup> At present, of course, the *Direction on the non-eligibility of Canadians* does not prevent the CRTC from asking non-Canadian online programming services for information about their operations – but also allows these services to ignore such requests.

228 Distribution and content services operating in Canada should be required to provide information to Canada's communications authority, when it makes such requests, or face the imposition of significant administrative monetary penalties.

**Recommendation 19**      **New communications legislation must enable Canada’s communications authority to obtain information from any communications service operating in Canada**

**Recommendation 20**      **New communications legislation must enable Canada’s communications authority to levy significant mandatory penalties if its requests for information from content and distribution services are not obeyed**

229      Individual radio and television stations once operated live, on the basis of paper-based schedules. Broadcast content was ephemeral, because it could not be recorded. As technology advanced, broadcasters recorded their content not just for re-use, but because the federal regulator required such recordings in case it received complaints about the stations’ broadcasts. In 1999, facing the growth of on-demand television services, the CRTC clarified its view that such programming is transmitted “for reception by the public”, even if end-users are the ones deciding when to watch the programs.<sup>228</sup> It added, however, that customizable content likely fell outside of the *Broadcasting Act*:

The Commission considers, however, that some Internet services involve a high degree of "customizable" content. This allows end-users to have an individual one-on-one experience through the creation of their own uniquely tailored content. In the Commission's view, this content, created by the end-user, would not be transmitted for reception by the public. The Commission therefore considers that content that is "customizable" to a significant degree does not properly fall within the definition of "broadcasting" set out in the Broadcasting Act.<sup>229</sup>

230      If this argument remains in place, new Parliamentary policies for communications would be easy to evade, by including mechanisms that enable content to be tailored to the user. The Forum submits that Parliament must take steps to ensure that technological creativity sleight of hand does not override its objectives.

**Recommendation 21**      **New communications legislation must ensure that the customizability of audio-visual content does not override Parliament’s objectives for programming**

231      As for regulatory ‘supervision’, that we address in greater detail below, the Forum is recommending that Parliament ensure that a new communications authority be empowered to obtain information as required. In the specific case of programming, the Forum is recommending that independent monitoring be used to verify claims by Internet-based content providers that they are in fact making content produced by Canadians for Canadians available, and that their algorithms’ search results yield Canadian results.

**Recommendation 22**      **New communications legislation must require content providers to submit relevant information about the programming they produce, along with the programming that they make available**

**Recommendation 23**      **New communications legislation must require independent measurement of online programming services’ claims regarding their scheduling of, search-engine approach to, and production of, content produced by Canadians for Canadians**

232      Canada risks the loss of new cultural content, if it is not, at some point, archived for later generations’ review and study.

**Recommendation 24**      **New communications legislation must make provision for the archiving of content produced by Canadians for Canadians and made available online, to retain as part of Canada’s historical cultural heritage**

***E.      Canadians’ access to communications systems that are Canadian: re-establishing and strengthening a national content provider***

**1.      The public and private elements in broadcasting**

- 233      Nearly all of the last century of Canadian broadcasting has been marked by the uneasy co-existence of Canada’s private and public broadcasters. Until the 1929 Depression, Canada’s radio stations were privately owned,<sup>230</sup> with the first ‘public’ broadcaster being operated by Manitoba’s government in 1923.<sup>231</sup> Growing levels of technical interference, American ownership and control of radio stations in Canada, and confusion about the future of radio in Canada led the federal government in 1928 (and said to favour nationalization of the broadcasting system) to appoint the Aird Commission to study broadcasting.<sup>232</sup>
- 234      After public hearings across Canada the Aird Commission concluded that “[t]here has been unanimity on one fundamental question – Canadian radio listeners want Canadian broadcasting.” It recommended a system in which one national company would operate all broadcasting stations, with time made available for “firms or others” to broadcast programming with advertising.<sup>233</sup> The Canadian Association of Broadcasters (CAB) expressed “no opinion” about nationalizing radio ownership – “[r]eports of that time said the reason was that broadcasting was not a profitable business and many owners would have been glad to sell out to the government.”<sup>234</sup>
- 235      Following a federal election in 1930 the Conservatives came to power, and (after the resolution of legal challenges of federal authority over broadcasting<sup>235</sup>), the federal government in 1932 created the Canadian Radio Broadcasting Commission (CRBC) to operate, regulate and control broadcasting in Canada.<sup>236</sup> Complaints about the CRBC’s performance led in 1936 to new legislation, the *Canadian Broadcasting Act*, which for the first time created a national public broadcaster for Canada – the CBC – also making it responsible for making recommendations about all broadcasting applications.<sup>237</sup>
- 236      The introduction of television in the 1950s led again to concerns about broadcasting, and the 1957 Fowler Royal Commission was established; it concluded set out a fundamental dichotomy between public and private broadcasting:
- [w]e cannot choose between a Canadian broadcasting system controlled by the state and a Canadian competitive system in private hands. The choice is between a Canadian state-controlled system with some Canadian content and the development of a Canadian sense of identity, at a substantial public cost, and a privately owned system which the forces of economics will necessarily make predominantly dependent on imported American radio and television programs.
- ...
- We are satisfied that the volume of advertising revenue available in Canada is not, in itself, sufficient to pay for a Canadian broadcasting system which would substantially cover all of Canada, provide some amount of Canadian programmes and contribute to the development of a Canadian consciousness and sense of identity. To have such a system we must pay for it in other ways. If we are unwilling or unable to provide quite substantial amounts from public funds for such a

broadcasting system there is little point in having any public agency engaged in the broadcasting and distribution of radio and television programmes, and individual private stations will necessarily become outlets for American networks and programmes. ... from economic pressures on the private operator which make it easy and inexpensive to import American programmes and difficult and costly to produce any substantial volume of Canadian programmes.<sup>238</sup>

237 Parliament's new, 1958 *Broadcasting Act*<sup>239</sup> created a new regulatory agency – the Board of Broadcast Governors (BBG) – responsible for making recommendations about licensing to the Minister of Transport<sup>240</sup> and of otherwise regulating broadcasting<sup>241</sup> in Canada. New conflicts between the CBC, the BBG and the private sector<sup>242</sup> led to new legislation in 1968 – the foundation of and precursor to the 1991 *Broadcasting Act*.

## **2. The rise of subscription revenues**

238 From the 1960s to the 1990s, advertising revenues were generally stable, fluctuating in line with economic growth or recession. By the early 1990s, BDU subscriber revenue offered far more certainty, while the growing numbers of television services offered by BDUs simultaneously began to reduce advertising revenues (due to audience fragmentation).

239 The impact of the distribution system and its wealth in comparison to that of programming services, led to concerns that Canadian program production would falter, without a source of revenue other than advertising. The CRTC began to encourage concentrated and cross-media ownership, on the theory that a handful of very large, financially solid companies could provide and fund content produced by Canadians for Canadians, particularly if they had access to subscriber revenues. It also began to approve the establishment of television programming funds that help to finance content produced by Canadians for Canadians; money for these funds came from a percentage of the broadcast revenues earned by cable BDUs.

240 Our point in setting out this legislative history is to provide context for the Forum's conclusions (and recommendations) about Canadians' access to and the production of content made by Canadians for Canadians, over the next several decades – it is the central policy problem that has dogged Canada and Parliament since the 1920s, being core to concepts of identity and sovereignty.

## **3. Content produced by Canadians for Canadians**

241 The Internet enables Canadians to subscribe to new programming services, while sidestepping licensed Canadian BDUs – and in the process, is beginning to lead to decreases in BDU subscription levels. It is not difficult to imagine that these decreases will continue, and that, equally, Canada's licensed broadcasting services will continue to lose audiences to online programming services.

### ***a) Why not license online programming services?***

242 A simplistic answer to this problem would be to replace the current broadcast licensing regime, with a regime that licenses ISPs or online programming services.

243 Parliament should not go in this direction. First, it is highly unlikely that most, many or even some Canadians will support widespread control of Internet programming services (beyond that now in place to limit or eliminate child pornography, for example), particularly in light of the implications this might have for freedom of expression. Second, a licensing regime will stifle innovation. Third, although it would be possible to incrementally licence thousands, hundreds

of thousands or even more, online programming services (after all – Canada’s provinces issue millions of drivers’ licences), this regime would be too complex and expensive for any benefits it might deliver.

**b) An easier way, to achieve more**

- 244 All that said, the Internet and online programming services do offer Canada a new opportunity to approach this problem, if Parliament begins to tackle this problem over time and incrementally.
- 245 We begin with our discussion on this point by considering the types of Canadian programming that must be available to Canadians: news and entertainment. Losing Canadian entertainment programming threatens Canadians’ cultural identity; losing Canadian news programming threatens Canadian democracy and its cultural identity. Not many of today’s broadcasters, however, have produced, purchased or provided Canadian news and entertainment programming without any regulatory pressure whatsoever – the exception being the CBC, with a legal duty under the *Broadcasting Act*, to provide people in Canada with a range of content produced by Canadians for Canadians, and with a significant annual operating grant from Parliament to do so.
- 246 The Forum proposes that Parliament focus its requirements for producing, purchasing and providing content produced by Canadians for Canadians in the form of the CBC – establishing it as a new national content provider that, over time, will move its operations fully online (bearing in mind the necessity for production capacity), while maintaining for reasons of national security and jurisdiction, an over-the-air transmission system (until technology renders that fully obsolete), and a system in place to allow emergency communications in case of other terrestrial, satellite or satellite failure, or catastrophe). We envisage, ultimately, an online programming service with a wide range of content for different ages, tastes and languages that is largely (if not entirely) available to Canadians free of charge.

**Recommendation 25 Parliament should establish a new, national, publicly owned content provider focussed on a range of content produced by Canadians for Canadians, and available free of charge across Canada**

- 247 The Forum is recommending that development for this initiative begin now, even though over-the-air transmission continues to operate, and – in the case of radio – may well continue for many more decades than television. The reason for launching a new national content framework now, is that major programs such as this require significant financial resources and time.
- 248 In thinking about a 21st ‘cultural highway’, located on the 1995 ‘information highway’, it may be useful to recall that Windsor, Ontario’s first car assembly plant was built in 1904.<sup>243</sup> In four years 2131 cars were registered in Canada.<sup>244</sup> By 1911 roads that could handle horse-drawn traffic were breaking down under the weight of heavy trucks, leading farmers (required to provide free labour to repair the roads) to demand ‘good roads’.<sup>245</sup> It took 5 years to complete a concrete highway from Toronto to Hamilton,<sup>246</sup> and it took 27 years to complete the Trans-Canada Highway – first proposed in 1935.<sup>247</sup> Planning for the future is the most efficient means of achieving Canada’s national purposes.



#### 4. Financing a centralized programming fund

249 Concerns have been raised for the past several years that the Internet will be used as a kind of cash cow, because of a misguided belief that the Internet is a replacement for the broadcasting systems:

The report on the future of program distribution, which will surely influence the newly established government panel reviewing Canada's telecommunications and broadcasting laws, envisions new fees attached to virtually anything related to the internet: internet service providers, internet video services and internet audio services (wherever located) to name a few.

With the remarkable popularity of services such as Netflix and YouTube, there is a widely held view that the internet has largely replaced the conventional broadcast system. Industry data suggests the business of broadcasters and broadcast distributors such as cable and satellite companies won't end anytime soon, but it is undeniable that a growing number of Canadians access broadcast content through the internet.<sup>248</sup>

250 The Internet is not a replacement of the broadcasting system, any more than telephone system was a replacement of the telegraphy system, or radio a replacement of either telephony or telegraphy. It is a different medium of communications – but it is still a medium of communications that operates in whole or in part in Canada: to the extent that the Internet or ISPs rely on communications spectrum, the Internet makes use of a public good; to the extent that it earns advertising revenues from its access to Canadian audiences, it makes use of Canadians' resources in terms of their time and attention; and to the extent that it earns subscription revenues from Canadians, it operates a business in Canada.

251 Thinking of the CRTC's 1990s Information-Highway metaphor for the Internet, the Forum respectfully notes that accepting that the Internet should be exempt from enabling Parliament to achieve its communications objectives, is similar to saying that car owners should have been forever exempt from paying taxes collected and used to build Canada's national highway system, because horse-and-buggy owners did not pay such taxes (relying instead in many cases on free labour from farmers and others to build town and county roads).

252 Canada must begin to develop a new approach to its communications systems that incorporates the Internet, while safeguarding Parliament's main goals for the distribution and content of the communications system. The Forum therefore recommends that financial support for this new system should come from a new Canadian content fund, financed – as the CRTC suggested last year<sup>249</sup> – primarily by those benefitting from using the spectrum owned by the public, which in our view includes:

- BDUs
- ISPs
- TSPs
- Private broadcasting services, and
- Online programming services

that operate in whole or in part in Canada.

253 The Forum notes that the *Telecommunications Act* already provides the CRTC with the express authority to expand the scope of its authority beyond strict legal boundaries. Under section 33,

the CRTC may consider the earnings of a company as well as its affiliates, when deciding whether the company's rates are just and reasonable:

33. Where a Canadian carrier provides a basic telecommunications service and, in the opinion of the Commission,

(a) an activity of an affiliate of the carrier is integral to the provision of the service by the carrier, and

(b) the Commission's other powers under this Act are not sufficient for the purpose of ensuring that the rates charged by the carrier for telecommunications services are just and reasonable,

the Commission may, for that purpose, treat some or all of the earnings of the affiliate from the activity as if they were earnings of the carrier.

254 The CRTC has also authorized broadcast licensees to combine their operations when this could strengthen their financial performance. In 2002, for example, the CRTC eliminated conditions of licence that required Shaw to operate its newly acquired satellite relay distribution undertaking separately from its direct-to-home satellite undertaking.<sup>250</sup> Shaw had argued that this

... would allow Cancom and Star Choice to integrate their technical operations and their human resources, legal, administrative, investor relations, and accounting departments. ... The applicants considered that these changes would bring efficiencies that would, in turn, improve the cost effectiveness and competitiveness of Cancom and Star Choice, help sustain their growth, and facilitate investment and innovation.<sup>251</sup>

255 If it is desirable to permit broadcasters' subsidiaries to combine for broadcasters' financial benefit, and it is already possible for telecommunications companies to be evaluated on the basis of their own and subsidiary resources, it should be as desirable and possible to establish a legislative framework that encompasses all communications services and the beneficial impact they can have on Canada's communications systems. The Forum therefore recommends that all services engaged in providing communications services in Canada remit a percentage of their total annual income from communications activities to a national content fund that would finance the national content provider in its entirety, and that would finance some or most of the proposals for programming made by others. The 'tangible benefits' now allocated to Canadian program funds (including funds to support Canadian music) should also be redirected to this fund.

**Recommendation 26**      **A new, national content provider should be financed by a national content fund whose income obtains from a percentage of the total communications income of those using Canada's communications spectrum to reach audiences or subscribers in Canada**

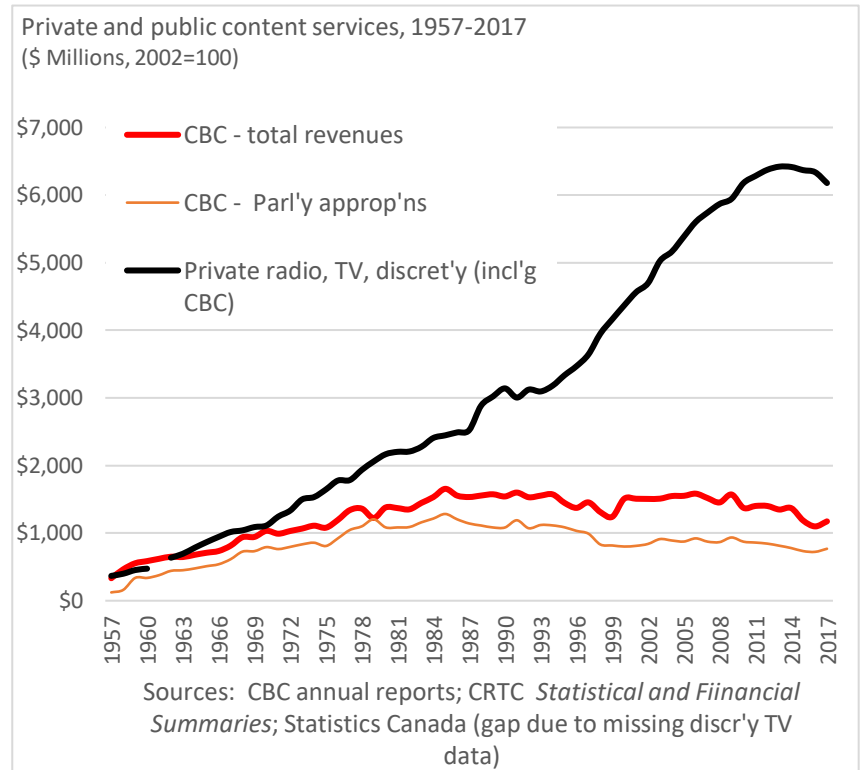
**5.      Administering a centralized programming fund**

256 A new communications authority would be responsible for determining the amount necessary for the national content fund's annual operations, the percentage of income required from the beneficiaries of Canadian spectrum to generate this amount, as well as the parties to whom the fund would allocate financial support (or, in the case of the national content provider, its annual operating and capital income). This authority would also evaluate applicants' requests going forward, initially on the basis of contractual commitments, and subsequently on the basis of prior performance.

257 In brief, the Forum is proposing a system that combines elements of the approach now used in the United Kingdom for the British Broadcasting Corporation, and Canada’s current approach to funding audio-visual content – supported by broadcasters and taxpayers.

**Figure 11 Revenues of Canada’s private and content programming services, 1957-2017**

258 Our proposal moves away from the notion that taxpayers should alone bear responsibility for funding the national content provider. In our view, electronic culture should be funded by those benefitting from Canada’s communications spectrum and from their access to subscribers and audiences in Canada. The Forum also notes that throughout its history, Parliament has found it difficult, and at times impossible, to ensure that the Corporation’s budget kept pace with inflation, its responsibilities or its competitors (for advertising revenue) in the private sector.



259 It is entirely possible that some programming services controlled by Canadians and operating in Canada will want to continue to operate, to provide the communities they serve with locally produced programming or content produced by Canadians for Canadians. These services should also be able to apply to the national content fund for financial support and, if or when they terminate use of their own transmission systems, for carriage of their programming.

**Recommendation 27 A new communications authority should be established to determine the annual operating and capital funding for the national content provider, and to decide on applications to the national content fund from others**

260 New communications legislation should take into account the current quantitative outputs of Canada’s current communications system, as a way of setting clear goals for the interim future and for the national content provider in the longer term. For example, in November 2017 Canada’s television programming services broadcast 30,142 hours of first-run, original Canadian programming. Assuming that in a year those service generated at least roughly 10 times as many hours of hours of original Canadian television programming (i.e., 301,420 hours), how much of this should a national content provider provide in the future, and what resources will be required to produce it? Similar calculations would have to be performed for radio, to ensure that Canada’s music sector is strengthened.

261 In essence, the Forum is proposing that over the next several decades, Canada adapt its programming system to suit a new, 21<sup>st</sup> century environment that safeguards Canadian culture, Canadian society and Canada's political system.

## ***F. Good governance***

262 In addition to recommending new communications legislation to provide for new funding for Canadian programming content, and a 21<sup>st</sup> upgrade of the CBC, the Forum is proposing changes to bring regulatory governance of Canada's broadcasting and telecommunications sectors from the 19<sup>th</sup> into the 21<sup>st</sup> century.

263 To this end, the Forum has recommendations in eight areas related to a new communications authority: the sovereignty of Parliament, the structure of a new authority, the transparency with which it operates, its duties and powers, penalties, funding and oversight.

264 Whether the Panel adopts any of the Forum's preceding recommendations, our position is that the CRTC as it is now constituted is no longer fit for purpose. The excessive discretion with which it has been imbued permits it to override Parliament's express wishes, its lack of transparency makes its alleged interest in evidence disingenuous, and its general disinterest in enabling a reasonable level of public oversight all combine to make it impossible to know whether it has achieved any of the objectives with which Parliament has entrusted it.

265 Amending or revising Canada's communications statutes without bringing regulatory governance into the 21<sup>st</sup> century will not ensure that Parliament's objectives are met.

### **1. Parliamentary sovereignty**

266 Although the *Broadcasting Act* and *Telecommunications Act* each provides the CRTC with the authority to issue 'statements' and 'guidelines', Parliament did not give the CRTC express authority to develop or implement regulatory policies.

267 Courts have for some time, however, concluded that CRTC policies are useful in its regulatory activities, because these provide guidance to those it regulates.

268 If Parliament agrees that a communications authority should issue regulatory policies, it should include this in its communications statutes, must ensure that policies are subject to appellate review, and must also ensure that it receives sufficient information to provide ongoing, informed oversight.

### **2. Structure**

#### ***a) Appointments***

269 When it was originally established in 1968, the CRTC had many more full-time and part-time members (also known as Commissioners). The role for part-time members having been eliminated in 2010, the CRTC now consists of up to 13 full-time members;<sup>252</sup> it currently has 8 members.

270 All CRTC Commissioners are selected and appointed by the Governor in Council, or Cabinet, without Parliamentary review. Research undertaken by the Forum in March 2016 found that from 1968 to 2016, three-quarters (74%) of the people appointed as CRTC Commissioners were men, 98% were white and three-quarters (77%) had backgrounds in management, finance,

government or law. Few, if any, CRTC Commissioners had a strong background in Canadian broadcast or telecommunications guilds, associations, unions or public interest organizations. Since then, however, the federal government has appointed more women (of 8 CRTC Commissioners, five are women).

271 The Forum's concern is that even though the current federal government has changed the composition of the CRTC, another federal government may return to the past. This is because GIC appointments permit the party holding a majority of votes in the House of Commons, to make appointments to the CRTC, without any requirement to consult in a meaningful way with Canadians, or their representatives in Parliament.

272 The Forum recommends that appointments to the CRTC or communications authority require approval by no less than two-thirds of the House of Commons.

**Recommendation 28 Appointments to the CRTC or communications authority must be approved by two-thirds or more of the House of Commons**

273 The Forum notes that the federal government posts advertisements for the position of CRTC Commissioners. We recommend that in addition to advertising, the federal government actively solicit recommendations for appointments to the CRTC from Canada's academic and public interest communities.

**Recommendation 29 The federal government should invite recommendations for appointments to the CRTC or communications regulatory authority from Canada's academic and public-interest communities**

**b) Decision-making**

274 As described in the Forum's June 2018 research note (<http://frpc.net/frpc-june-2018-crtc-decisions/>) it is unclear who makes decisions at the CRTC, or who decides the matters that the CRTC will or will not consider. Our review of 231 CRTC hearing transcripts found that CRTC Commissioners do not have an equal chance of being part of CRTC hearing panels – implying that the CRTC's Chairpersons have exercised their authority in an unknown but purposeful manner.

275 The simple fact is that while the *Charter* led to the CRTC's current decision-making system, in which 'those who hear, decide', the *Broadcasting Act* and the *Canadian Radio-television Telecommunications Act* have in turn led to a system in which 'the one who decides who hears and decides, decides'. Did Parliament intend that the CRTC's Chair should have the power to determine all outcomes, by being able to decide who hears CRTC matters?

**Recommendation 30 Parliament should decide whether the Chairperson of the CRTC or a new communications regulatory authority should have the sole discretion to decide which Commissioners make decisions**

276 As for other CRTC matters, even less transparency exists. The CRTC's "Broadcasting Committee" established by [By-Law No. 26](#)<sup>253</sup> decides which broadcasting matters the CRTC will or will not consider. While it consists of all CRTC Commissioners it needs only 3 Commissioners to meet.<sup>254</sup> Assuming the committee functions using the majority vote principle, only 2 CRTC Commissioners are required to decide which matters are considered by the CRTC.

277 At some point in its history the CRTC's Commissioners established a Telecommunications Committee under section 12 of the *Canadian Radio-television and Telecommunications Commission*. CRTC [By-Law 9](#) defines the Telecommunications Committee as consisting of all the members of the CRTC,<sup>255</sup> although this Committee can also hold meetings with as few as three Commissioners.<sup>256</sup>

278 Overall, the operations of the CRTC's Broadcasting and Telecommunications Committees are not transparent. It is unclear which Commissioners are part of these committees, which Commissioners attended meetings which decisions were made, when the meetings take place, or whether minutes are taken. The lack of transparency also means that it is unclear what remedies are available to parties affected by the Committee's decisions, or if decisions not to make decisions (by postponing the consideration of specific issues indefinitely, for instance).

**Recommendation 31 Parliament should ensure that the decision-making procedures and internal proceedings of the CRTC or a new communications regulatory authority are transparent**

279 Finally, the Forum is aware that many people do not clearly distinguish between the CRTC as a federal agency, the Commission being the members appointed to the CRTC, and the staff employed by the agency.

280 One result is that decisions by CRTC staff are often treated as if they are decisions of the CRTC. Unless the CRTC has delegated responsibility to its staff to make decisions on its behalf, CRTC staff decisions are not decisions of the CRTC. What is rarely, if ever, clarified by CRTC staff decisions is that parties may ask the CRTC to review and alter the decisions.

**Recommendation 32 Parliament should ensure that CRTC decisions are made by members of the CRTC, and that decisions of CRTC staff are subject to review by the members of the CRTC**

**c) Process**

281 Procedural rules offer predictability and fairness. In the last fifty years the CRTC has issued two sets of such rules. To our knowledge the first set, in 1979, set out rules for telecommunications proceedings; the second, in 2010, set out rules for both broadcasting and telecommunications.

282 In many cases the CRTC's 2010 *Rules of Practice and Procedure* provide a reasonable operating framework. In some cases, however, they do not.

283 The CRTC often places information on the public record near the end or even after intervention deadlines, for example. (For example, contracts related to Canwest's acquisition of Alliance Atlantis were only posted online after the intervention deadline.) Placing evidence on the public record after the deadline for public comment has passed leaves the impression that the CRTC is indifferent to the public's comments.

**Recommendation 33 The CRTC or communications regulatory authority should be required to ensure that the public record of its proceedings are complete at the time it invites public comment**

284 The CRTC's deadlines are also sometimes too short. On 9 November 2018, for example, the CRTC invited comment on a mandatory code for Internet services,<sup>257</sup> with a deadline of 19 December. Several parties asked the CRTC to extend this deadline, given its overlap with the Panel's deadline of 11 January 2019. The CRTC denied these requests, though it later granted extensions to individual organizations. Our concern is not with this specific proceeding, but with the CRTC's repeated statement that it granted the public 40 days to review, consult on, draft,

revise and submit comments: this period consisted of every calendar day between 9 November and 19 December – even while the CRTC’s *Rules* define Saturdays as a holiday.<sup>258</sup>

**Recommendation 34 The CRTC or communications regulatory authority must ensure that its procedures are reasonable**

- 285 The CRTC does not accommodate the Deaf and Hard of Hearing communities in its public hearings. While the CRTC provides English-language and French-language simultaneous interpretation free of charge, it is our understanding that organizations representing the Deaf and Hard of Hearing are required to organize and pay for signing interpreters when they appear before the CRTC; while these organizations may apply after the fact to be reimbursed for interpreters’ costs, full payment of these costs is not assured.
- 286 If the Deaf and Hard of Hearing wish to follow the remaining proceeding in any detail, they must wait until each day’s transcript is published online (often, but not always, the next day; it sometimes is only published after weekends).
- 287 It is not clear to us why the CRTC does not have the financial resources to ensure that all Canadians are able to participate in its public hearings to the same degree.

**Recommendation 35 Parliament should ensure that the CRTC or communications regulatory authority has the financial resources required to make its public hearings fully accessible**

- 288 The Forum also notes that the CRTC does not automatically accommodate people from Canada’s DHHDB communities by granting them additional time during in-person presentations for simultaneous interpretation. These communities are required to request additional time from the CRTC, without any certainty about the outcome of such requests.

**Recommendation 36 Parliament should require the CRTC or communications regulatory authority to ensure that its procedures effectively provide parties requiring accessibility with the same time granted to other participants**

**3. Transparency**

- 289 One of the key changes in the 21<sup>st</sup> century towards governance is a new and growing commitment to transparency, defined as including clarity about decision-making processes and implementation.<sup>259</sup>

- 290 Today’s CRTC is not transparent.

**a) *Decision makers***

- 291 Until the early 1990s, panels of Commissioners who ‘heard’ broadcasting and telecommunications matters, made recommendations to the ‘full Commission’ that in turn issued determinations on behalf of the CRTC. The 1982 repatriation of Canada’s *Constitution* changed the CRTC’s decision-making structure, due to the establishment of rights to fundamental justice (section 7) and to be heard by independent and impartial tribunals (section 11).

- 292 The 1991 *Broadcasting Act* established that members of hearing panels (appointed by the CRTC’s Chairperson)<sup>260</sup> may “deal with, hear and determine any matter on behalf of the Commission”,<sup>261</sup> although it is not clear how members are chosen for hearing panels. The panels need only “consult” with their Commissioner colleagues, “for the purpose of ensuring a

consistency of interpretation” with Parliament’s broadcasting and regulatory policies, and the CRTC’s regulations.<sup>262</sup>

293 Neither the *Telecommunications Act* nor the *Canadian Radio-television and Telecommunications Act* establishes clearly who makes decisions in telecommunications matters. The *Canadian Radio-television and Telecommunications Act* says that “[t]he full-time members of the Commission and the Chairperson shall exercise the powers and perform the duties vested in the Commission and the Chairperson, respectively, by the *Telecommunications Act*” (as well as CASL and other special statutes). The *Telecommunications Act* then says that only two members of the CRTC are required for a quorum in telecommunications matters, and only one member in “uncontested matters”. Telecommunications decisions may therefore be made by as few as one or two Commissioners, and it is unclear how these Commissioners are selected.

294 Permitting the CRTC’s Chairperson – appointed by the federal government for five-year terms – to decide which Commissioners hear and decide which matters recreates by stealth the decision that was taken 90 years ago to create an *independent* regulatory authority. An independent agency was needed to ensure that decisions were not made for purely political reasons:

... We have made up our minds that a change must be made in the broadcasting situation in Canada. We have reached a point where it is impossible for a member of the government or for the government itself to exercise the discretionary power which is given by the law and by the regulations as they stand to-day, for the very reason that the moment the minister in charge exercises his discretion, the matter becomes a political football and a political issue all over Canada. This is not desirable .... We should change that situation and take radio broadcasting away from the influences of all sorts which are brought to bear by all shades of political parties. This will avoid much trouble for the minister and for the government, and I think will result in greater satisfaction to the public at large.<sup>263</sup>

295 The impact of the Chair’s power to appoint the members of the hearing panels that ‘hear’ matters is obscured by the fact that the CRTC’s determinations are never signed (except in dissent). While the CRTC’s Secretary General issues CRTC decisions and policies, his (or her) signature is in fact somewhat misleading, suggesting that the full Commission rendered outcomes on a collegial and cooperative basis, when authority lies with hearing panels. Not knowing which Commissioners make which decisions may not matter to some, but others may wish to know who has decided what at the CRTC, to allay any concerns about apprehension of bias.<sup>264</sup>

296 The lack of clarity about who makes what decisions at the CRTC (explored in yet more detail by the Forum in “Who decides what? Transparency in CRTC decision-making” (Ottawa, June 2018), <http://frpc.net/wp-content/uploads/2018/06/FRPC-June-2018-CRTC-decisions.pdf>) could and ought to be clarified by new communications legislation.

297 The Forum recommends that the members of the panels that determined a matter should ‘sign’ the determination that results from their consideration.

**Recommendation 37 All determinations of the CRTC or communications regulatory authority should be signed by the members of the CRTC or authority who made them**

**b) Decisions, orders, guidelines and more .....**

298 If from a certain light the CRTC’s main job consists of making decisions, the concept of ‘decision’ is poorly defined. Parliament requires the CRTC to perform dozens of activities that do not



necessarily result in ‘decisions’. The *Broadcasting Act* and *Telecommunications Act* generally only allow decisions or orders to be heard, however.

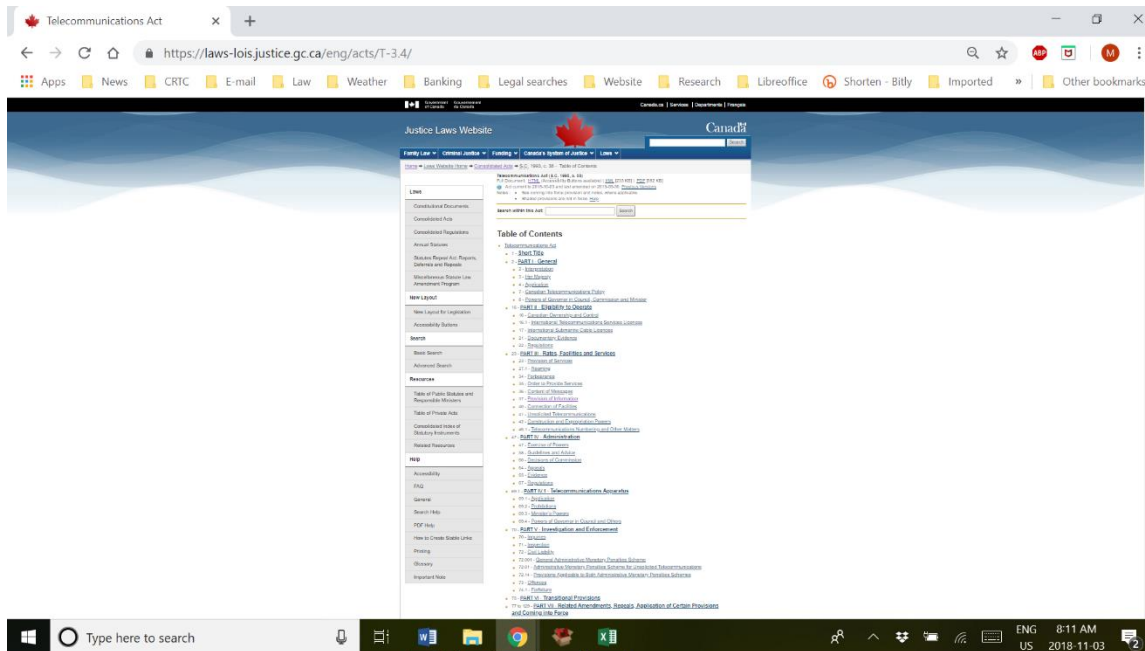
299 When the Forum reviewed CRTC decision-making in 2018,<sup>265</sup> we found dozens of activities that involve decision-making by the CRTC, but do not necessarily result in ‘decisions’. At times, the CRTC makes decisions administratively, releasing them later through information bulletins; in one case the CRTC granted an application to change ownership of many of the radio stations in British Columbia – and announced the changes weeks after its approval. The issue this raises has to do with appellate review – supposing a party wished to challenge a ‘decision’, on what date is the decision held to have been made: the date the CRTC made, but did not publish it, or the date it is merely set out in an information bulletin?

300 Meanwhile, only CRTC decisions and orders are subject to appellate review, rendering ‘guidelines’, ‘regulatory policies’ and other documents *prima facie* ineligible for this review.

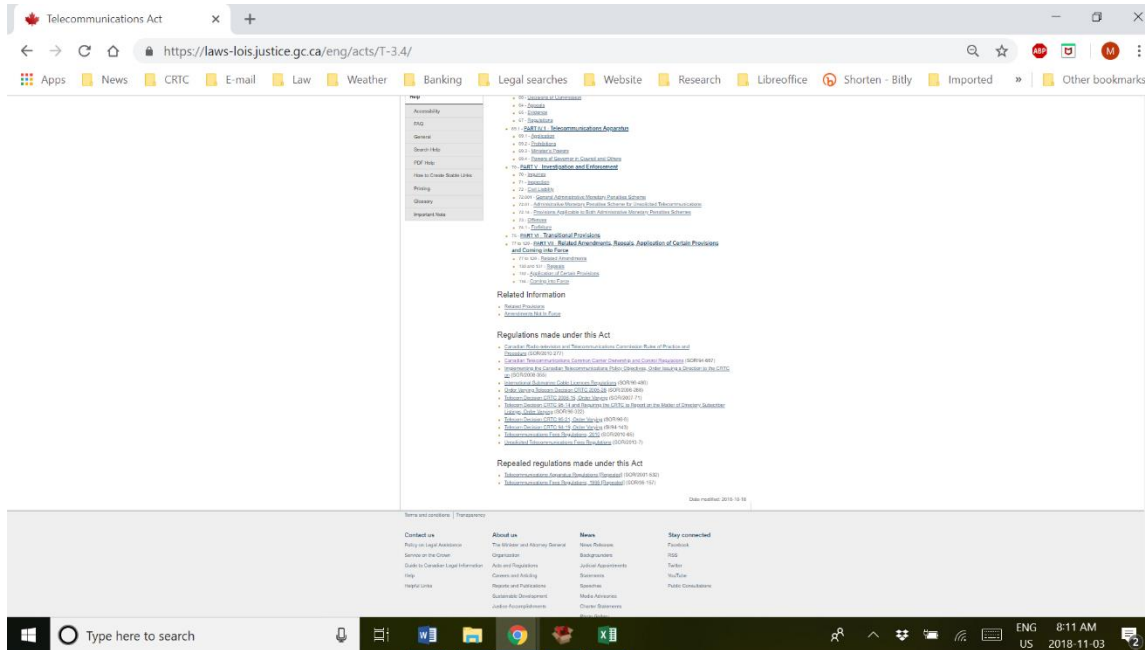
**Recommendation 38** New communications legislation should use consistent terminology to refer to the determinations made by the CRTC, and to establish which determinations may be challenged before the GIC or courts

301 In some cases, finding CRTC materials requires the pedigree of a detective. For instance, the CRTC regulates unsolicited telecommunications, its *Unsolicited Telecommunications Rules* are presumably part of its regulations. Why does the federal Department of Justice website make no mention of the *Unsolicited Telecommunications Rules* on its website?

**FRPC Figure 1** Unsolicited Telecom Rules not provided on DOJ Telecom Act page (part 1 of 2)

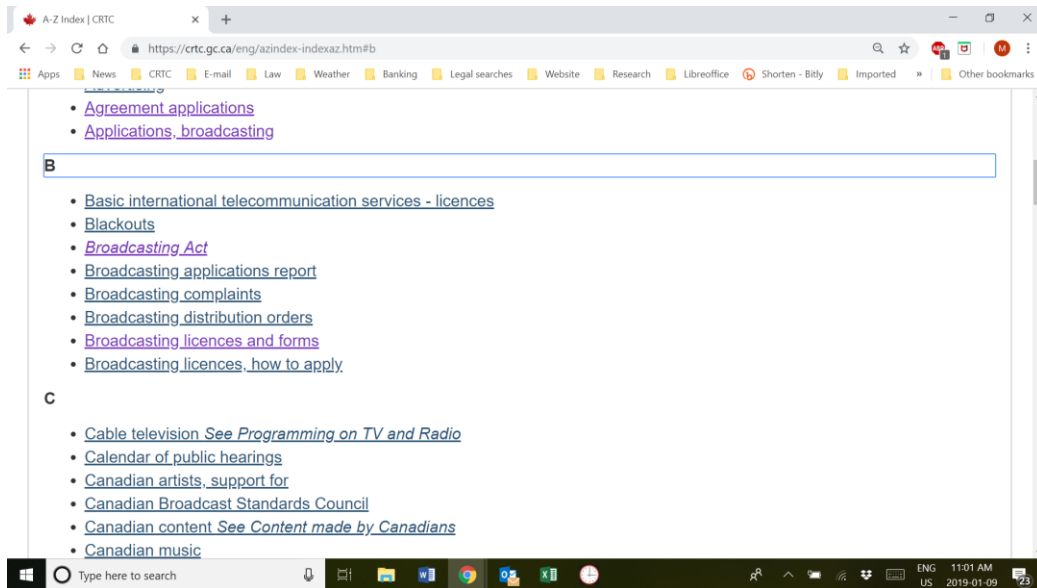


**FRPC Figure 2 Unsolicited Telecom Rules not provided on DoJ Telecom Act page (part 2 of 2)**



302 The CRTC is clearly not responsible for the Department of Justice’ website – but our point is that the CRTC (or a new communications regulatory authority) may require financial resources to ensure that, going forward, its work is not just transparent, but easier to find.

303 In particular, the Forum notes that if the CRTC or a new communications regulatory authority makes or revises by-laws that describe its operations, it ought to publish these as part of its ‘daily releases’, and in an easy-to-locate place on its website. The CRTC’s by-laws are not currently listed in its “A-Z” search index:



**Recommendation 39** The CRTC or new communications regulatory authority should be required to publish its by-laws prominently on its website, and in its 'daily releases'

**c) Reasons**

304 One of the main grounds for challenging CRTC broadcast determinations is that they often appear disconnected from the evidence that has been presented to the CRTC. The absence of reasons makes the CRTC's decisions difficult to understand. It is impossible to prove the existence of this disconnection, however, because the *Broadcasting Act* does not require the CRTC to provide reasons for any of its determinations.

305 The *Telecommunications Act*, on the other hand, requires reasons for several types of decisions. It must, for instance, give licensees written reasons for suspending or revoking international telecommunications service licences (16.4(1)), and must publish written reasons for not approving or disallowing tariffs within 45 business days after they are filed by Canadian carriers (26(c)).

**Recommendation 40** The CRTC or a new communications regulatory authority should be required to provide evidence-based reasons for its determinations or the determinations of its staff

**d) Behind-the-scenes advocacy**

306 Courts have granted the CRTC deference in part because of its expertise in broadcasting and telecommunications, an expertise presumably founded on the experience of the CRTC itself and of its members. That said, the CRTC's *Rules* and at times, its Notices of Consultation also emphasize the importance of evidence for interveners' submissions. Public-interest organizations have heard all too frequently in the past several decades that, despite the submission of reams of data and expert materials, their submissions lacked sufficient evidence for the CRTC to grant or approve them.

307 While the Forum is aware that the CRTC does not operate judicially, but quasi-judicially, we are concerned about the level and impact of *ex parte* communications between the CRTC's members and staff, and those that the CRTC purports to regulate.

- 308 We reviewed meetings registered with the Commissioner of Lobbying involving the CRTC from 2008 through to and including September 2018. Of 788 meetings, 492 (62%) involved a member of the CRTC or the CRTC's staff, and companies that the CRTC regulates; another 110 (14%) involved an association of the companies regulated by the CRTC, and a CRTC member or CRTC staff. In the incomplete year of 2018, out of 73 reported meetings, regulated companies met with the CRTC 36 times, or once every ten calendar days on average. Public interest organizations (Friends of Canadian Broadcasting; Open Media Engagement Network; Quebec Community Groups Network; The Canadian Hearing Society / la société Canadienne de l'ouïe; Open Media Engagement Network) reported 4 meetings with the CRTC in 2018, or an average of one meeting every 91 days.
- 309 The data available from the Commissioner of Lobbying about meetings with the CRTC may be incomplete, however, in that they only describe meetings reported by registered lobbyists, and those who meet with the CRTC do not always meet the definition of registered lobbyist.<sup>266</sup>, however.
- 310 The CRTC does not publicize its closed-door meetings with non-CRTC parties, and does not publish minutes of these meetings. Only an access to information request disclosed that before the CRTC published the Fairplay Coalition's anti-piracy application in January 2018, members of the Coalition met with and made presentations to the CRTC about anti-piracy matters on a number of separate occasions.
- 311 The Forum's point is that the absence of public and enforced rules about *ex parte* communications between Canada's communications regulatory authority and those it regulates raises questions about the integrity of the CRTC, and the degree to which its members rely on evidence they have been given in and also outside of CRTC proceedings.
- 312 In our view meetings between the CRTC and those it regulates should be limited, if not prohibited, because it raises concerns about the types of information and commitments being exchanged. If Canadians would object to judges meeting with defendants or plaintiffs behind closed doors, before adjudication begins, why would they accept regular private meetings between the CRTC and those it regulates daily?
- 313 At a minimum, however, the CRTC should publish monthly reports of the meetings it has had with non-CRTC representatives, and a brief summary of the meeting's purpose (beyond the standard but taciturn one-word descriptions used in many of the Commissioner for Lobbying monthly reports: "broadcasting" ... "telecommunications").

#### **4. Duties**

- 314 The Forum argues that Parliament must clarify the level of discretion it wants the CRTC to exercise. Maintaining the current level of discretion granted to the CRTC, or expanding this discretion, yields Parliament's sovereignty to unelected officials with no duty to serve the Canadian public interest, and such limited accountability in law as to render the concept of accountability meaningless.

##### **a) Consultation**

- 315 The CRTC has a long history of asking people in Canada for their views about some of its activities. Based on its experience with the CRTC's public process, the Forum submits that the CRTC's expectations with respect to the timing of participation have become unreasonable.

- 316 While the CRTC's telecom proceedings typically set out procedures (including deadlines) in telecom notices of consultation, it happens all too often in broadcasting proceedings (especially those involving hearings) that the CRTC on the last day of the hearing, suddenly announces a reply phase. Such last-minute announcements disadvantage parties that were unaware that a new round of submissions might be required, and who did not schedule this time.
- 317 Presuming that everyone who participates in CRTC broadcast proceedings ought to know its informal practice, effectively denies fair process to all, because not everyone participates in CRTC broadcast proceedings; it also unfairly advantages broadcasters, the largest of which have the resources to employ regulatory staff full time, compared to public-interest and other parties, that are unable to employ staff who are dedicated to CRTC matters.
- 318 As for the CRTC's proceedings in general, the mere fact that interested parties are able to access some (but not all, as some documents are posted late, or not at all) CRTC materials online (rather than visiting CRTC offices in person, as was required to the mid-1990s), does not mean that parties need less time to submit comments. CRTC matters have generally become more complex over time, not simpler. Public interest organizations and others (guilds, unions, associations etc.) also require time to review relevant materials, develop proposals, consult their membership, and to draft and revise submissions.
- 319 Parliament should emphasize that the CRTC or a new communications regulatory authority bears a responsibility to adhere to fair and reasonable procedures.

**Recommendation 41**      **New communications legislation must require the CRTC or new communications regulatory authority to use reasonable procedures to encourage informed participation in its proceedings**

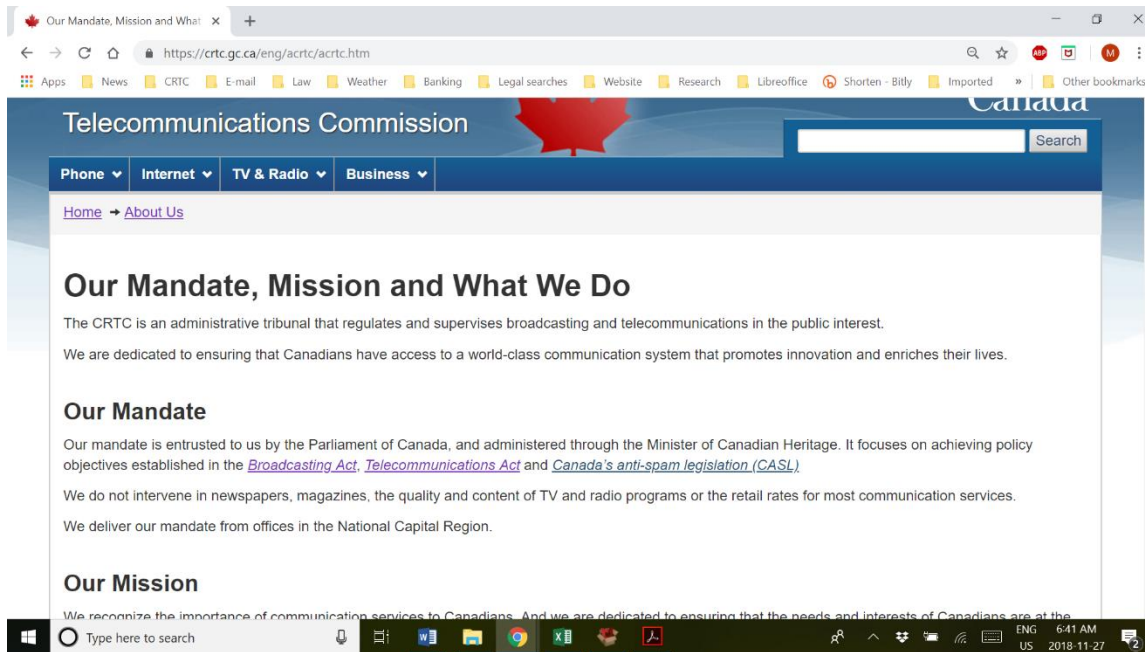
***b) Decision-making timeliness***

- 320 Discretion involves not just the decisions that the CRTC makes, but the time it takes to make decisions. At present there is no requirement for the CRTC to issue a determination about the applications it receives from applicants for licences, or from anyone else, and the impression one receives in reviewing applications and decisions in the broadcasting sector is that Canada's largest communications companies tend to receive expeditious, if not expedited, responses, while small or as-yet-unlicensed applicants wait months for a response. The CRTC should not, in our view, be permitted to delay action on the applications it receives until the applications are rendered moot.

**Recommendation 42**      **The CRTC or new communications regulatory authority should be required to issue determinations about all applications in a reasonable and non-discriminatory time**

***c) Placing the public interest first***

- 321 The CRTC constantly, currently, and misleadingly, claims that it exists to serve the public interest:



- 322 Neither the *Broadcasting Act*, the *Telecommunications Act* nor the *Canadian Radio-television Telecommunications Act* directs the CRTC to serve the public interest when it makes decisions, however.
- 323 The *Broadcasting Act* requires the CRTC to consider the public interest only when thinking about conflicts between the CBC and other broadcasters (section 3(1)(n)), and whether to hold certain types of hearings (sections 18(2) and (3)). The *Telecommunications Act* requires the CRTC to consider disclosing certain information (sections 39(4) and (5)), and permits the assignment of legal counsel from the Department of Justice when matters of particular importance affecting the public interest arise in CRTC proceedings (section 53).
- 324 (the Forum notes that the comment in section 3(2) of the *Broadcasting Act* – establishing a “single, independent public authority” to regulate the broadcasting system – may be misunderstood as a duty to serve the public interest. As section 2(1) of the *Telecommunications Act* establishes, however, a “public authority” simply refers to the Crown or the CRTC, not to the manner in which the CRTC performs its responsibilities.)
- 325 Parliament should also clarify that its regulatory authority for communications bears an express duty to place the public interest first. Canada’s communications statutes exist to protect the public interest, while enabling private businesses to operate. Safeguarding the second goal, while paying lipservice to the first, effectively transforms Canada’s communications systems into protected revenue streams for a few, very large companies. This cannot continue.

**Recommendation 43 Parliament must require the CRTC or a new communications regulatory authority to place the public interest first in its decisions**

## 5. Powers

- 326 The CRTC today has four main powers: to authorize activities, to obtain information, to punish activities and to exempt activities from its oversight.

**a) Authorization: moving away from licensing**

- 327 The key power available to the CRTC and the government was for decades their ability to facilitate or complicate Canadians' access to Canadian broadcasting and telecommunications services.
- 328 The CRTC facilitated Canadians' access to these services by issuing broadcasting licences for services that provided and distributed programming (radio, TV, BDUs), by making unlicensed transmission of content in Canada unlawful, and by approving telecommunications tariffs for Canadians' personal communications. The CRTC and the government complicated access by denying Canadians access to non-Canadian telecommunications and satellite distribution services, over time making such access illegal. Private programming companies realized they could increase revenues by selling subscriptions as well as advertising, and moved to encrypt their signals, limiting distribution of access devices and keys to paying subscribers.
- 329 Canadians were still able to access non-Canadian broadcast content if they lived near the border, used specialized antennae, or had shortwave radio sets, and/or if they took the risk of using unauthorized satellite decryption systems to access more non-Canadian programming services.
- 330 The Internet is changing the necessity for broadcast licences. It is foreseeable that in the longer term, programming services will (with few exceptions) be distributed online. Broadcasting licences will become passé. Even if one wanted to – and the Forum does not – the Internet barn door is opening more widely every day – and can not be closed.
- 331 The issue with which programming come to terms, is the financing of cultural content produced by and for Canadians. As argued above, Canada should move from a licensing system that imposes programming performance requirements, to a funding system that directs funding towards a national content provider and other funding applicants. In this framework, the CRTC or a new communications regulatory authority would establish an administrative framework for the financing of a funding system by Canadian and non-Canadian communications services operating in whole or in part in Canada, would evaluate applications by Canadians for funding, and would subsequently verify adherence to application commitments. Parties whose programming is distributed entirely online and that do not want or need financial support, need not apply to the CRTC or communications regulatory authority for any kind of approval, but would register with Canada's income tax authorities to remit taxes on advertising, subscription and other revenues over a threshold amount.<sup>267</sup> Some or all of these revenues should be directed towards the cultural programming fund.
- 332 The situation is different in Canada's telecommunications sector. As its role as a vital public utility remains unchanged, Parliament's key roles in ensuring that Canadians telecommunications are affordable for Canadians, and that telecommunications services are available on a non-discriminatory basis, are also unchanged. These responsibilities should be delegated to an expert authority, that would not necessarily also be responsible for the new programming fund we have proposed.
- 333 In our view, the regulatory functions of ensuring the availability of high-quality content and ensuring that distributions services are affordable and offered on a non-discriminatory basis, do not overlap. The enormous difference in scale between the two sectors – with telecom and BDUs earning roughly \$70 billion annually, and radio and television content services earning

roughly a tenth as much – raises serious concerns that, as now, content service providers will be treated as the lesser and less-important sector.

**b) Information**

334 Obtaining information is vital for the CRTC’s supervision of broadcasting and telecommunications. The *Broadcasting Act* permits the CRTC to obtain information from broadcast licensees (sections 10 and 11), and to investigate and inquire into different matters. (*Broadcasting Act* 10, 11). This power (and its parallel in telecommunications) must be retained; Parliament should consider enabling a new communications regulatory authority to obtain information from a range of entities (in other words, in the current context, not just from licensees).

**c) Sanctions: towards AMPs**

335 The CRTC currently has the authority to punish regulatory non-compliance through prosecution, licensing decisions and AMPs.

336 What do we know about regulatory non-compliance? From 1968 to 2005, 68% of licensed commercial, community and student broadcast radio stations breached CRTC regulations or their conditions of licence at least once, and 39% breached twice or more times.<sup>268</sup> In telecommunications, telcos’ breaches appear relatively rare (at least in comparison to broadcasting), but from 2009 to 2015 the CRTC identified hundreds of breaches of its *Unsolicited Telecommunications Rules (UTRs)* and of *CASL*.

**(1) Prosecution**

337 The *Broadcasting Act* and *Telecommunications Act* each permit prosecution of certain breaches, but compared to the number of applications considered each year by the CRTC, relatively few breaches of its enabling statutes have been brought before Canada’s courts.<sup>269</sup>

338 (In some cases charges may have instead been laid under the *Radiocommunication Act* : In 2011 the British Columbia Supreme Court noted that “... since 2002 there have been 200 separate prosecutions pursued under s. 10(1)(b) of the *Radiocommunication Act*. There are currently more than 40 active prosecutions.”<sup>270</sup>)

339 Broadcasting without a licence, contravening orders and regulations, and breaching conditions of licence are all summary conviction offences. The first two acts are liable to fines (for corporations) of up to \$200,000/day; breaches of conditions of licence are – under section 787 of the *Criminal Code* – liable to fines of up to \$5,000, or 6 months’ imprisonment.

340 Despite hundreds of instances where the CRTC has found that broadcasters have breached its regulations or their conditions of licence, very few of these offences have been prosecuted. (In at least two cases the CRTC found that a broadcaster had breached a mandatory order – and simply issued a new mandatory order.) Should Parliament retain a summary-conviction offence with respect to broadcast offences, if the CRTC or a new communications regulatory authority is unwilling to use it?

**(2) Applications**

341 Rather than prosecuting broadcasters that have breached its regulations or their conditions of licence, the CRTC almost always tries to use licensing decisions to impose indirect costs on



broadcasters by denying or only partially granting their applications. On rare occasions it has denied renewal applications; decisions to revoke (outside a renewal hearing) are even more rare.

342 It is unclear whether the CRTC believes that its licensing decisions deter regulatory non-compliance. After all, the business costs imposed on broadcasters by having to re-apply for licence renewals twice in seven years, rather than once, are transferred to the public because these costs are deductible from their taxable income. Reputational costs seem low; the fact that the CBSC requires broadcasters to broadcast announcements of their failures to meet various broadcast standards has scarcely caused a dent in any station's ability to operate effectively.

343 Even if CRTC licensing decisions had an impact on regulatory non-compliance, it is not clear whether it is either aware of, or considers, all regulatory non-compliance – as many, if not most complaints about broadcasting (which may touch on the CRTC's regulations or conditions of licence) are directed instead to the CBSC, and to our knowledge, not considered by the CRTC.

### (3) *Administrative Monetary Penalties (AMPs)*

344 Parliament has given the CRTC the authority to under section 72.001 of the *Telecommunications Act* to issue AMPs for contraventions of many of the CRTC's telecommunications regulations or decisions, with the exception of contraventions of requirements for international cable submarine licences (section 17) and the registration of telecommunications apparatus (section 69.2). AMPs for breaching the CRTC's *Unsolicited Telecommunications Rules* (UTRs) established under section 41 are dealt with separately by section 72.01 (section 72.001).

345 Parliament set out a series of exemptions with respect to unsolicited telecommunications, under section 41.7(1). These exemptions provide that CRTC orders prohibiting nuisance calls do "not apply in respect of a telecommunication ... made for the sole purpose of collecting a survey of members of the public" or on behalf of political parties or candidates.

346 The CRTC's UTRs apply to all telecommunications, however, including calls made for survey research, and the CRTC has levied fines totalling \$XXXX for automated (or interactive voice response, IVR) calls made to conduct surveys, including calls made on behalf of political parties.

347 As society and decision-making grow more complex, survey research grows more important to understand Canadians' views. Telephone calls made using IVR technology are key to ensuring that statistical results from these calls are representative of the population.

348 The Forum does not argue that survey research calls should be exempt from any limits, but does recommend that Parliament provide more clarify for the CRTC – and Canadians – about what is and is not covered by its many exemptions.

**Recommendation 44** **Parliament should clarify the degree to which survey research calls are included in the CRTC's regulation of 'nuisance' calls**

**Recommendation 45** **New communications legislation should more clearly describe what constitutes undue nuisance or annoyance in the context of telephone calls and Internet communications**

349 Insofar as AMPs are themselves concerned, the Forum is concerned that the CRTC routinely sets a very high threshold for those accused of regulatory breaches to establish their non-culpability. Part VII of the CRTC's UTRs sets out criteria for a due diligence defence, but it is noteworthy

that, to our knowledge, the CRTC has never issued an information bulletin clarifying what might be described as ‘best practices’ with respect to the retention of records to demonstrate due diligence. Those governed by the CRTC’s rules in this area – by and large neither telecommunications experts nor telecommunications lawyers – lack the information they need to govern their behaviour.

**Recommendation 46**      **New communications legislation should require the CRTC or a new communications regulatory authority, upon request, to issue guidance or information bulletins about its regulatory frameworks, on which parties may rely**

- 350      A second concern with AMPs is that the *Telecommunications Act* does not clearly establish the process for AMPs, raising concerns about arbitrariness.
- 351      Suppose – hypothetically – a company is accused of breaching the CRTC’s UTRs. The CRTC currently claims it exhausts all other remedies before resorting to AMPs: what evidence establishes that this is how the CRTC proceeds?
- 352      Suppose the CRTC makes mistakes in its findings?: does it then formally withdraw its allegations or let the matter quietly fade away in silence?
- 353      Supposing the CRTC permits a matter to drop without any resolution, in what position does this leave a party that the CRTC has accused of regulatory misconduct? Are such accusations formally withdrawn? Or do they remain, Damocles-like, hanging over parties for years?

**Recommendation 47**      **Before granting the CRTC or a new communications regulatory authority the power to levy AMPs, Parliament should clarify its expectations for due process**

**6.      Funding**

- 354      The CRTC is currently funded by licensee fees paid by broadcasters and telecommunications companies, based on a formula established by the CRTC itself, some years ago.
- 355      Our concern is that the Commission may view those who pay its bills – as those who pay its bills, and not as licensees or companies that it must regulate in the public interest.
- 356      Regulatory fees should be determined and administered by the federal government, to sever any perception that the CRTC is, in fact, beholden to those it purports to regulate.

**7.      Public oversight**

- 357      Oversight requires data, professional reporting, and the safeguarding of public participation. As our submission has suggested throughout, oversight of the CRTC’s performance in implementing Parliament’s objectives for broadcasting and telecommunications is essentially thwarted by the absence of data and professional reporting; in recent years the CRTC’s approach to applications for public-participation costs has also become unpredictable.

**a) *Parliamentary supremacy requires informed oversight***

- 358      One of the most basic challenges in evaluating the impact of the *Broadcasting, Telecommunications and Radiocommunication Acts* is that Canadians generally lack access to important objective data about the sectors governed by these laws.
- 359      For example, while Parliament mandated effective Canadian ownership and control of Canada’s broadcasting system, and requires each broadcast undertaking to ensure that content produced

by Canadians predominates in the schedule of each undertaking, the CRTC does not publish information about levels of non-Canadian ownership of the system's undertakings or the levels of Canadian programming scheduled by individual undertakings. The CRTC also does not publish any data describing foreign ownership in Canada's telecommunications system. It is therefore impossible to evaluate the impact of foreign ownership limits on communications in Canada.

360 The CRTC's approach to publishing data is, at best, amateurish, and at the worst, incompetent. Examples abound:

- its decision since the 1980s to publish broadcasting data in five-year snapshots, despite its authority since 1991 to issue seven-year licence terms
- the absence of any CRTC-published data about telecommunications, from 1993 to 2000 (after which Cabinet ordered the CRTC to submit annual reports<sup>271</sup>)
- the absence on the CRTC's website (and on the federal Open Data portal) of all CRTC statistical and financial summaries in broadcasting which it published before 2012
- the CRTC's failure since 2002, when for the first time more than half of Canadian households subscribed to the Internet,<sup>272</sup> to post its data online in historical data sets (so that users need not cut and paste data sets together for longer-term analysis)
- the CRTC's failure, since it began posting broadcast ownership charts online, to publish historical ownership charts for the purpose of comparison, and to publish all ownership charts (at the time writing of this submission began [October 2018], the CRTC did not, for example, post ownership charts for Crossroads Television System, which controls CITS-DT, CKCS-DT and CKES-DT; for 9329994 Canada Inc., which is owned by Corus and controls 3 Disney channels).
- the CRTC's continuing failure to post aggregated financial summaries for 14 large broadcast ownership groups in machine-readable formats (rather than in PDFs), for more than one year at a time
- the CRTC's decisions in 2014 to stop reporting non-programming data for BDUs, making comparisons with prior years impossible,
- the CRTC's frequent, random changes in presentation in its annual *Statistical and Financial Summaries* without any prior announcement to or consultation with the public (see Appendix 12 when the CRTC in 2014 stopped publishing profits before interest and taxes [PBIT] for BDUs, making it more difficult to compare broadcasting sectors [as PBIT removes the effects of borrowing due to different broadcasting sectors different capital and operating costs])
- The CRTC's unexplained decision to not publish any of its radio program logs, or results of its analyses of these logs
- The CRTC's unexplained decision to publish TV program logs public but not to explain their interpretation, and not to publish its analyses of the logs
- The CRTC's unexplained decision in 2018, and for the first time since 1997, to not issue a complete a complete monitoring report for broadcasting and telecommunication; instead, it issued sections of its 2018 Monitoring Report, the first few of which were HTML only (rather than PDF), making printing difficult, particularly since it also decided not to include tables of contents, figures and tables in the report or individual sections,<sup>273</sup> and
- The very limited, and inconsistently presented information in the 2018 Communications Monitoring Report about pricing: bar charts comparing telecommunications service

provide for Canada’s provinces and territories, for example, do not include numeric values [Figures 2.1, 2.2, 2.3]; its bar chart [Figure 2.4] showing average prices of basic BDU television service show prices by city.

361 New legislation should require the regulator to consult with the public with respect to the publication of data required for policy evaluation.

**Recommendation 48 Within the next year the CRTC should invite all interested parties to meet, to develop an informational framework for data collection in the public interest**

362 Parliament should also require a level of timeliness from the CRTC (or a new communications regulatory authority) for annual reporting. The CRTC’s *Communications Monitoring Reports* have usually been issued some 6 to 11 months after the year the reports describe, but the report for 2018 – on which many parties including the Forum had hoped to rely for this submission to the Panel – has still not been issued in full. It was initially in HTML only, and while sections issued since the beginning of November have been issued in PDF format, they do not have tables of contents, figures or tables.

Year of CRTC Monitoring Report	When published
2008	July 2008
2009	August 2009
2010	July 2010
2011	July 2011
2012	September 2012
2013	Sept 2013
2014	October 2014
2015	Oct 2015
2016	Oct 2016
2017	Nov 2017
2018	Nov 2018 ... to present

**Recommendation 49 New communications legislation should require the CRTC to issue a report on the implementation of Parliament’s objectives within six months of the year described by the report**

363 Until the late 1980s the CRTC often published solid and professional research. It no longer does so – a problem because in recent years it has been undertaking more survey research. Unfortunately, some of these surveys are online only – making it difficult to know whether each person in the final sample of respondents had an equal chance of participating in the survey. This ‘equal chance’ concept is core to modern inferential statistical theory: if all individuals in a given population do not have an equal chance of participating the survey, its results– quite simply – cannot be inferred to the larger population. Any empirical estimates calculated on the basis of unrepresentative samples are error-laden.

364 The CRTC’s reliance on unreliable online survey data makes decisions based on those data suspect, to say the least.

365 At times the design of CRTC surveys is also questionable. In one 2016 contract, the CRTC survey asked this question:

3. If I told you that the CRTC carries out activities related to: accessing 9-1-1 services, warnings of emergencies on TV and radio, Canada’s anti-spam legislation, protection against unwanted or telemarketing calls, a code of conduct for wireless service providers, and protection against misleading calls during federal elections. Would you say that you strongly agree, somewhat agree, somewhat disagree or strongly disagree that the CRTC is taking measures to enhance the safety and protection of Canadians in the communication system?<sup>274</sup>

366 Even if respondents understood the 47-word preface to the CRTC’s question, the preface appears designed to elicit a positive response. Biased surveys by the CRTC bring its administration of regulatory responsibilities into disrepute.

367 The Forum notes that twenty years ago Statistics Canada consulted with a “Vital Statistics Council of Canada”, which was established by order in council. The Council consisted of “representatives from all jurisdictions and Statistics Canada who oversee policy and operational matters.”<sup>275</sup>

368 The CRTC needs professional help to design its empirical research. The Forum recommends either that it establish a similar ‘vital communications research council’ or that Cabinet order it to do so.

**Recommendation 50      Cabinet should, by order in council, establish the “CRTC Data Advisory Committee” consisting of representatives from the CRTC (1), Statistics Canada (1), the provinces and territories that wish to participate (up to 13), universities that wish to participate (up to 10), and public interest organizations that wish to participate (up to 5), to develop by 31 December 2019 a list of operational indicators to describe cultural, social and economic aspects of Canada’s communications system**

***b)      Public interest requires public participation on a level playing field***

369 While the Forum has argued that the CRTC should place the public interest first, we have not said that the CRTC should make its decisions solely based on the public interest. Where decisions made solely in the public interest would tie the CRTC’s hands and limit its jurisdiction - ensuring that of all interests, the CRTC gives the public interest primary consideration still permits the CRTC to make decisions based on factors considered in addition to the public interest (provided these decisions can be justified based on the evidence it has heard).

370 The CRTC has from the outset encouraged public participation in its proceedings, but for its first few years – a time without satellite, wireless cellphones or the Internet – it did not have a process to encourage the participation of public interest organizations.

371 Both the *Broadcasting Act* and the *Telecommunications Act* set requirements for the CRTC to consult, at times through the requirement to hold hearings (a requirement the CRTC has to some extent circumvented, by holding “non-appearing” hearings) but provide no clear guidance as to process. The 2014 *Northwest Territories Act* provides such guidance:

3 Wherever in this Act a reference is made, in relation to any matter, to a duty to consult, that duty must be exercised

(a) by providing the person to be consulted with the following:

- (i) notice of the matter in sufficient form and detail to allow the person to prepare their views on the matter,
- (ii) a reasonable period for the person to prepare those views, and

- (iii) an opportunity to present those views to the person having that duty; and
- (b) by considering, fully and impartially, any views so presented.

372 The *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52, similarly clarifies the steps that the Canadian Environmental must take in providing information to the public:

Posting of description of designated project and public notice on Internet site

9 When the Agency is satisfied that the description of the designated project includes all of the required information, it must post the following on the Internet site:

- (a) a summary of the description;
- (b) an indication of how a copy of the description may be obtained; and
- (c) a notice that indicates that the designated project is the subject of a screening, invites the public to provide comments respecting the designated project within 20 days after the posting of the notice and indicates the address for filing those comments.

**Recommendation 51      New communications legislation should mandate a duty to consult, along with requirements for consultation**

373 When Parliament transferred responsibility for telecommunications from the Canadian Transport Commission (CTC) to the CRTC in 1976, it also transferred the power to exercise its discretion to grant costs. The *National Transportation Act*<sup>276</sup> already permitted costs to be awarded in the CTC's proceedings:

73. (1) The costs of and incidental to any proceeding before the Commission, except as herein otherwise provided, are in the discretion of the Commission, and may be fixed in any case at a sum certain, or may be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid, and by whom they are to be taxed and allowed.

(3) The Commission may prescribe a scale under which such costs shall be taxed.

374 The CRTC first set out a costs-application process for telecommunications proceedings in 1978. It said that its telecommunications proceedings were often complex and important, that informed participation by the public required expertise, that in turn required payment:

The Commission has concluded that if the objective of informed participation in public hearings is to be met, some form of financial assistance must be made available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interests of a substantial number or class of subscribers. The complexity and importance of the issues which come before the Commission often demand that expert resources be available for their adequate treatment. Such resources are employed by the regulated companies. In the Commission's view, it is critical to, and part of the necessary cost of, the regulatory process that such resources also be available to responsible representative interveners.<sup>277</sup>

375 The Forum agrees that informed participation is vital to defending Canadians' legal rights: as a quasi-judicial body, the CRTC routinely asks participants to submit argument based on evidence, and it is generally assumed that informed participants are aware of the CRTC's legal duties and obligations under the *Broadcasting Act*, *Telecommunications Act*, *CASL*, and *Canadian Radio-television Telecommunications Act*.

- 376 In 1993 Parliament gave the CRTC the express discretion to establish a regulatory process for costs awards in telecommunications. The Forum's concern – as a past recipient of and current applicant for costs in several telecommunications proceedings – is that the CRTC's process has become so unpredictable as to cause major financial problems for public interest organizations.
- 377 The CRTC's unpredictability flows in part from the growing time it is taking the CRTC to issue decisions on costs applications (for details, see: <http://frpc.net/wp-content/uploads/2017/11/CRTC-cost-orders-Nov-2017-Final-1.pdf>, and more recently, <http://frpc.net/wp-content/uploads/2018/12/CRTC-cost-orders-Nov-2018.pdf>).
- 378 In 2013 the CRTC published its decisions on cost order applications in an average of 3.7 months after receiving the applications – in 2018, it took the CRTC just over nine and a half (9.6) months. It is unclear why, on the one hand, the CRTC regularly emphasizes the importance of streamlining and timeliness for those it regulates, while it takes three quarters of a year (and sometimes full years) to reach decisions on costs applications.
- 379 The CRTC's telecom costs process is also unpredictable because of the CRTC's tendency in recent years to apply procedural changes retroactively in its decisions – without issuing regulatory guidelines, policies or bulletins to publicize these changes. As the CRTC has a policy for costs orders, changes to the policy should be made through public consultation; changes should not be announced in decisions and applied retroactively. After all, the Commission explained in August 2018, in the context of its reconsideration of the television renewals of Canada's large broadcasters,
- The Commission must regulate with certainty and predictability so that licensees are able to operate in a stable regulatory environment. Making ... amended conditions of licence effective as of ... September 2017 would not be conducive to fostering such an environment. ....<sup>278</sup>
- 380 One might be tempted to conclude from the lack of timeliness in the CRTC's telecom costs-order process, its unannounced retroactive changes to that process, and its failure to maintain funding for the BPF, that there is either a hope that informed public participation will decrease, or a feeling that the CRTC has nothing to learn from such participants. If so, the comments of the Ontario Superior Court in 2017 are apposite:
- Canada argues that even if it had consulted with the Indian bands, as it was obliged to do under section 2(2), there is no evidence that any of the Indian bands would have provided any ideas or advice that could have prevented the Indian children who had been removed and placed in non-aboriginal foster or adoptive homes from losing their aboriginal identity. Counsel for Canada put it this way: "[W]ould life have been different had they been consulted?"
- This is an odd and, frankly, insulting submission. Canada appears to be saying that even if the extension of child welfare services to their reserves had been fully explained to the Indian Bands and if each Band had been genuinely consulted about their concerns in this regard, that no meaningful advice or ideas would have been forthcoming.<sup>279</sup>
- 381 Some parties in CRTC proceedings may not care for the informed participation of public-interest organizations – but to conclude that the public has nothing new to offer in terms of ideas, would be incorrect, and based on a flawed understanding of the function of CRTC public proceedings.
- 382 The Forum also note that the CRTC's current practice is to invite telecommunications companies to comment on costs applications, while providing no right of reply to costs applicants. (Applicants sometimes respond, but must hope that their response, if timely, is accepted by the

CRTC.) Moreover, while telecommunications companies often submit comments, and presumably pay their staff to make such submissions, applicants' costs in responding to these comments are not compensated.

383 As for broadcasting, the CRTC established a costs process through the device of a one-time payment from a tangible benefit in an ownership transaction; the CRTC has never topped up this amount. The Broadcast Participation Fund (BPF) announced some months ago that its funding was nearly depleted. The Forum notes, however, having also been a recipient of BPF awards, that while it bases its decisions on the same forms used by the CRTC, its process is significantly faster.

**Recommendation 52**      **New communications legislation must require the CRTC or a new communications regulatory authority to establish a costs application process for broadcasting and telecommunications proceedings, that is administered by an external organization similar to the BPF**

**c)      *Rule of law requires appellate oversight***

384 Finally, while it likely need not be said, the Forum would like to reiterate its support for an appellate review process of determinations by the CRTC or a new communications regulatory authority.

385 As mentioned earlier, the *Telecommunications Act* and *Broadcasting Act* each essentially limits appellate review to "decisions" and "orders" – even though the CRTC under each statute issues many more kinds of determinations. While section 31 of the *Broadcasting Act* prevents the CRTC from reviewing its decisions and orders, which are final, the *Telecommunications Act* permits the CRTC to review and vary some of its own decisions, as well as the decisions of its staff.

386 New communications legislation must ensure that all determinations by the CRTC or a new communications regulatory authority may be reviewed either by the Federal Court of Appeal or the Governor in Council.

**Recommendation 53**      **All determinations of the CRTC must be subject to appellate review**

## V. Interim measures

387 The Forum has throughout this submission argued that Canada' needs new communications legislation so that, by 2023 it can begin to prepare to implement a new communications framework to safeguard Canadian cultural content, and to ensure the security of Canada's distribution infrastructure. The Panel's report is due in early 2020, and we have assumed that if the government then in office agrees to change Canada's communications statutes, at least three years would be needed: to draft a new statute (or extensively revise existing statutes), debate the drafts in the House of Commons, have the drafts reviewed by the House of Commons Standing committees for culture, and for industry, be addressed again in the House of Commons, and if passed by the House of Commons, be reviewed and possibly amended by the Senate. Three years will be tight.

388 That said, the federal government has the power to take action of its own accord, immediately.



## A. USMCA

389 First and foremost, the Forum suggests that the Panel or the federal government commission a detailed legal analysis of the impact of the United States-Mexico-Canada Agreement (USMCA), to determine how this Agreement, if approved by all three parties, affects Canada's ability to regulate its own and foreign programming services, as well as its own and foreign telecommunications services.

390 If the *USMCA* places restrictions on Canada's discretion to act in the broadcasting, telecommunications Internet and cultural sectors, Parliament should know before it begins to review its communications legislation.

**Recommendation 54 Before proceeding further in this process, the Panel or the federal government should commission a detailed legal review of the USMCA's impact on Parliament's discretion to legislate with respect to broadcasting, telecommunications, the Internet, radiocommunications and cultural products and services**

## B. Direction on the Ineligibility of Non-Canadians and new direction on the exemption of digital media

391 As estimates of subscribers in Canada to Netflix grow, the CRTC has been asked periodically to revise its current *Digital Media Exemption Order*,<sup>280</sup> (made pursuant to sections 7 and 8 of the *Broadcasting Act*). It exempts undertakings that provide broadcasting services that are delivered and accessed over the Internet or received by mobile devices, from compliance with Part II of the *Broadcasting Act*, and applicable regulations made thereunder". In 2011 the federal government told the British Columbia Supreme Court in 2011 that

[252] Canada acknowledges that the current unlimited and unrestricted access by Canadian residents to the internet results from a temporary exemption to the requirement to satisfy the Canadian content requirements found in Part II of the *Broadcasting Act*. The first exemption was issued in 1999 and then amended on October 22, 2009: Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14; Public Notice CRTC 1999-118; Public Notice CRTC 1999-197; and Broadcasting Order CRTC 2009-660.

[253] According to Canada, the exemption is issued at the discretion of the CRTC to "see where it [internet broadcasting] goes" and may be amended or revoked at any time. Paragraph 15 of Broadcasting Order CRTC 2009-660 states:

The Commission notes that, pursuant to subsection 9(4) of the [Broadcast] Act, it can impose such terms and conditions on exempt broadcasting undertakings as it determines appropriate.<sup>281</sup>

392 The assumption behind the request to revise the exemption is that if foreign online programming services like Netflix are subject to the *Broadcasting Act* – no longer exempted from its requirements – they will then have to comply with CRTC decisions or orders, and such determinations could include a require to remit a higher contribution to Canadian programming than it has so far agreed to provide (\$100 million / year over five years).

393 More importantly, however, if the federal government and Parliament wish to revise their communications statutes, they will need more, and more relevant, data than they now have, about non-Canadian programming services.

394 Unfortunately, the *Broadcasting Act* as currently written does not readily allow the CRTC to demand data from just anyone. (In the remainder of this section, numbers in superscript following “s.” refer to sections of the *Broadcasting Act*.)

**1. No power to compel production of data from non-licensees**

395 The *Broadcasting Act* does not *prima facie* permit the CRTC to demand information from anyone but licensees. The CRTC has the authority under Part II to make regulations “requiring **licensees** to submit ... such information regarding their programs and financial affairs ... as the regulations may specify”<sup>s.10(1)(i)</sup>. It may hold an inquiry if a person fails to comply with a regulation<sup>s.12(1)</sup> and issue<sup>s.12(2)</sup> and enforce<sup>s.13</sup> mandatory orders to produce data – but again, only licensees would be covered by a regulation regarding information. The CRTC has the authority to undertake research, but must use information from the CBC, federal departments or federal agencies.<sup>s.14(1)</sup>

396 If Cabinet orders it to hold hearings, the CRTC has the powers of a superior court of record with respect to the production and inspection for documents,<sup>s.16</sup> but it is unclear how far this power could be applied to compel the production of programming and financial information of non-Canadian online programming services with offices in a different jurisdiction.

397 It would seem easier to license foreign online programming services.

**2. Non-Canadian programming services**

398 Unfortunately, Cabinet’s foreign ownership direction prohibits the CRTC from licensing non-Canadian broadcasters.

399 Cabinet could, and the Forum thinks it should, revise the *Direction* to permit non-Canadian online programming services to be licensed, while prohibiting foreign ownership of Canadian radio programming, television programming and programming distribution services.

**3. Licensing non-Canadian online programming services**

400 Even if the *Direction* on foreign ownership is changed to permit non-Canadian online programming services to be licensed, they would not suddenly become licensees – they would merely be subject to the consequences of operating a broadcasting undertaking in part in Canada – an activity that is subject to the *Broadcasting Act*.<sup>s.4(2)</sup> ‘Broadcasting undertakings’ include programming undertakings,<sup>s.2</sup> which includes online programming services.

401 In our view, Cabinet would have to issue a new *Direction* to the CRTC<sup>s.26(1)(c)</sup> requiring that it

(a) create a new class of licensee consisting of foreign-owned broadcast services that make programming available to Canadians via the Internet, for or without charge (“non-Canadian online programming undertakings”)

(b) create a second, new class of licensee consisting of Canadian-owned broadcast services that make programming available to Canadians via the Internet, for or without charge.

402 The existence of these classes of licence enable the CRTC to set different requirements, if necessary, for Canadian and non-Canadian programming services.

403 The *Broadcasting Act* then requires the CRTC to hold a public hearing to issue a licence.<sup>282</sup> It does not, however, specifically require an application for it to grant a licence: a “licence” is not defined as the result of an application submitted to and granted by the CRTC, but

(tautologically) as “a licence to carry on a broadcasting undertaking issued by the Commission under this Act”.<sup>s.2</sup>

- 404 The Act does not specify a process for licence applications, but permits the CRTC to make rules for “the procedure for making applications for licences”.<sup>s.21</sup>
- 405 The CRTC’s current Rules enable matters to be brought before the CRTC by its own motion.<sup>R.3</sup> They also permit the CRTC to exercise any of its powers under its Rules on its own initiative,<sup>R. 5(1)</sup> and enable the CRTC to “dispense with or vary” its Rules “If the Commission is of the opinion that consideration of public interest or fairness permit”.<sup>R. 7</sup>
- 406 Hypothetically, the CRTC could set out criteria it planned to use to issue licences for all foreign and Canadian online programming services, as long as (since the matter arises from its own motion) it posts a notice of consultation on its website.<sup>R. 21</sup> It could then hold a non-appearing hearing, following which (and after considering any interventions received) it could then “approve the whole or any part of an application or grant any relief in addition to or in substitution for the relief applied for”.<sup>R. 11 283</sup>
- 407 A precedent exists when cable systems were transferred to the jurisdiction of the CRTC in 1968. It may have granted automatic licences to cable television systems, which then had 90 days to apply to the CRTC for a licence;<sup>284</sup> the CRTC then considered cable applications from “existing Department of Transport licences” before licensing other applicants.<sup>285</sup>
- 408 Once the CRTC has licensed non-Canadian online programming services, Cabinet should direct the CRTC to request programming and financial information from them, and to report this information on an aggregated basis by, say, 20 December 2019. The services would be able to apply for confidential treatment of this information.

**4. CRTC’s ability to persuade Netflix to apply for a licence**

- 409 Non-Canadian online programming services could challenge a CRTC decision to license them without their express consent, by going to Court or to Cabinet.
- 410 The difficulty for a foreign online programming services operating in part in Canada is that it is an offence to carry on a broadcasting undertaking in Canada without a licence;<sup>s. 32(1)</sup> corporations convicted of this offence are liable to fines of up to \$200,000 per day that the offence continues.
- 411 That said, these fines may not be consequential for some foreign online programming services. Supposing that Netflix has 6 million subscribers (as indicated earlier), and that each subscriber paid \$10 per month, Netflix would earn approximately \$60 million per month, or \$720 million per year, from Canada:

<b>Netflix</b>		<b>\$/month</b>	<b>Revenue/month</b>	<b>Revenue/year</b>
Estimated subscribers	6,000,000	10	\$60,000,000	\$ 720,000,000
Fine for broadcasting without a licence	\$ 200,000	Days	Total fine	As % of est'd annual revenues
		1	\$ 200,000	0.03%
		10	\$2,000,000	0.28%
		20	\$4,000,000	0.56%
		30	\$6,000,000	0.83%
		60	\$12,000,000	1.67%
	120	\$24,000,000	3.33%	

<b>Netflix</b>	<b>\$/month</b>	<b>Revenue/month</b>	<b>Revenue/year</b>
	364	\$72,800,000	10.11%

412 A fine levied for one day would amount to less than half a percent of Netflix’ estimated revenues; if levied for four months, it would amount to 3.3%. If levied for a year, the fine would amount to just over 10% of Netflix’ revenues – and this might persuade it to consider applying for a licence. Would the Crown be able to convince a Court, however, that the appropriate penalty for a first offence of broadcasting without a licence, should be \$72.8 million?

413 (Parliament should also give reconsider the quantum of penalties applicable to those who breach Canada’s current communications statutes – rather than a range or flat daily rate, for example, perhaps it could introduce a system of sanctions based on percentages of parent corporations’ total income.)

### C. *Eliminate s. 5(2) of Broadcasting Act and the Direction*

414 Section 5(2) of the *Broadcasting Act* effectively permits the CRTC to override Parliament’s objectives in its broadcasting policy, thanks to the inclusion of a declaration that regulation creates an administrative burden:

5(1) Subject to this Act and the Radiocommunication Act and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

- (a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
- (b) takes into account regional needs and concerns;
- (c) is readily adaptable to scientific and technological change;
- (d) facilitates the provision of broadcasting to Canadians;
- (e) facilitates the provision of Canadian programs to Canadians;
- (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
- (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

415 The problem with the unilateral declaration that regulation creates a burden for licensees, is that the declaration ignores the benefits that regulation can (and once upon a time did) deliver to people in Canada as well as the fact that Canada’s income tax legislation permits licensees (as businesses) to use many of their business expenses to reduce their taxable income.

416 The 2006 *Direction on Implementation* does the same thing in telecommunications.

417 These policy directions have worked to defeat Parliament’s actual broadcasting and telecommunications policy objectives. They have not served the public interest with respect to affordability in either broadcasting or telecommunications. They have invisibly prevented the CRTC from taking any steps to ensure that in broadcasting online programming services

operating in part in Canada are regulated to ensure that they serve, rather than impair, Parliament's broadcasting policy objectives.

- 418 The Forum believes the public interest would be better served if Cabinet directed the CRTC to disregard section 5(2) in its broadcasting decisions and policies, and rescinded the 2006 *Direction on Implementation*. New communications legislation should focus on the public interest, by mandating the affordability of communications services for people in Canada.

**Recommendation 55** In 2019 Cabinet should direct the CRTC to disregard section 5(2) of the *Broadcasting Act*; new communications legislation should eliminate this section altogether

**Recommendation 56** In 2019 Cabinet should rescind the 2006 *Direction on Implementation*; new communications legislation should repair the conflict in section 7 between regulation and reliance on 'market forces', by eliminating the reference to market forces

\* \* End of text (Appendices and Endnotes follow) \* \*

## Endnotes

- <sup>1</sup> Statutes such as the *Canada Elections Act* and *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* (CASL) may also require consequential changes, though we have not addressed those in our comments.
- <sup>2</sup> CTV's president ordered the CTV news department not to report on announcements by the CRTC in 2015 (see Appendix 1, 2015).
- <sup>3</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 92.
- <sup>4</sup> Lawrence C. Wroth, *A History of Printing in Colonial Maryland, 1686-1776*, (Typothetae of Baltimore: Baltimore, 1922) at 1.
- <sup>5</sup> Christopher Andrew, "Intelligence and the Cold War" in Hiram Morgan, *Information, Media and Power Through the Ages*, (Dublin: University College Dublin Press, 2001) 272 at 280.
- <sup>6</sup> Concerns over the importation of printed ideas continue in the 21<sup>st</sup> century. . "Tonga's king 'bans newspaper'" online: news.com.au (11 March 2003) <<http://www.news.com.au/common/printpage/0,6093,6111004,00.html>>.
- <sup>7</sup> Allan Levine, *Scrum Wars: The Prime Ministers and the media*, (Toronto: Dundurn Press, 1993) at 158. During the 1950s, Quebec's Premier Duplessis is said to have awarded valuable printing and advertising contracts to newspapers that supported his party, which in return received favourable print coverage. *Ibid.*, at 266.
- <sup>8</sup> The licence was held by a group known as the 'Bible Students', who were Jehovah's witnesses. It was claimed that they had condemned other religions; declared that the laws were different for the poor and the wealthy; opposed military service, and had "an insane desire to be continually broadcasting religious matter and the public got thoroughly fed up with this class of material when handed out in large doses". *Debates of the House of Commons* (31 May 1928), at 3620-3621 (Mr. Woodsworth).
- <sup>9</sup> See e.g. s. 8, *Television Broadcasting Regulations, 1987*.
- <sup>10</sup> See e.g. *Suspension of the conditions of licence set out in Broadcasting Decision 2004-503 relating to the licensee's obligations to adhere to a Statement of Principles and Practices and to create a Monitoring Committee*, Broadcasting Decision CRTC 2009-161 (Ottawa, 27 March 2009), <https://crtc.gc.ca/eng/archive/2009/2009-161.htm>.
- <sup>11</sup> <http://earlyradiohistory.us/sec012.htm>.
- <sup>12</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), "Some Milestones in Communications Technology" at 148.
- <sup>13</sup> John Lawrenson and Lionel Barber, *The Price of Truth: The story of the Reuters millions*, (London: Sphere Book Limited, 1986) at 36.
- <sup>14</sup> Established in 1848, Reuters' service began by translating and distributing commercial news in Europe by carrier pigeons and telegraph. Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 73. By 1883, Reuters was using transmitting stories by telegraph to London newspapers in a format that allowed their editors to simply cut and paste stories from the Reuters' material. *Global Communication*, at 146.
- <sup>15</sup> John Lawrenson and Lionel Barber, *The Price of Truth: The story of the Reuters millions*, (London: Sphere Book Limited, 1986) at 34.
- <sup>16</sup> *Ibid.*, at 45. The managing director was knighted the following year.

<sup>17</sup> Philip M. H. Bell, "Government Strategies on Influencing Public Opinion : Assessment, Censorship, Propagande", in *Mélanges de l'Ecole française de Rome. Italie et Méditerranée*, tome 108, n°1. 1996. pp. 65-71, at 67; [https://www.persee.fr/docAsPDF/mefr\\_1123-9891\\_1996\\_num\\_108\\_1\\_4423.pdf](https://www.persee.fr/docAsPDF/mefr_1123-9891_1996_num_108_1_4423.pdf)

<sup>18</sup> Lewis J. Paper, *Empire: William s. Paley and the Making of CBS* (New York: St. Martin's Press, 1987) at 158-159.

<sup>19</sup> Frank Foster, *Broadcasting Policy Development*, (Frank Foster Communications, Ltd.: Ottawa, 1982) at 7.

<sup>20</sup> Allan Levine, *Scrum Wars: The Prime Ministers and the media*, (Toronto: Dundurn Press, 1993) at 155. The newspaper did not do well, and "the prime minister himself had to cover the staff's payroll on more than one occasion." *Ibid.*, see also Royal Commission on Newspapers, *Report* (Minister of Supply and Services Canada, 1981) at 137

<sup>21</sup> Peter Hart and Seth Ackerman, "Patriotism & Censorship: Some journalists are silenced, while others seem happy to muzzle themselves" *Extra! magazine* (FAIR), (December 2001).

<sup>22</sup> Steve Rendall and Tara Broughel, *Amplifying Officials, Squelching Dissent: FAIR study finds democracy poorly served by war coverage* <<http://www.fair.org>> (May/June 2003).

<sup>23</sup> S. 26(2).

<sup>24</sup> Frank Foster, *Broadcasting Policy Development*, at 25.

<sup>25</sup> *House of Commons Debates* (31 May 1928) at 3622 (Mr. Woodsworth).

<sup>26</sup> In December 1988 the *New Republic* editorialized that Canada should become the 51<sup>st</sup> of the United States:

Canada needs us. Indeed it's hard not to suspect that in briefly threatening to reject this obviously sensible treaty, Canada-as is so often the case with stagy suicide attempts-was simply trying to draw attention to itself. The entire election was a cry for help. . . . it doesn't take a Ph.D. in psychology to realize that Canadians' mock horror at the thought of becoming part of the United States actually masks a deep desire to do precisely that. They protest too much. Their lips say "no, no," but their eyes say " yes, yes." Anyone who has ever conversed with Canadians will have witnessed their psychological torment. . . . There is only one cure for this complex neurosis. We must purge it once and for all by giving Canadians what they secretly want. We must embrace them, adopt them, love them, annex them. In short, we must make Canada the 51st state

[author unknown] "Come to Uncle" *New Republic* (12 December 1988) at 4.

<sup>27</sup> Frank Foster, *Broadcasting Policy Development*, at 25.

<sup>28</sup> *Communications Act of 1934*, S. 310(b)(3)

<sup>29</sup> *Notice of Proposed Rulemaking in the matter of: Market Entry and Regulation of Foreign-affiliated Entities*, RM-8355 RM 8392 IB Docket No. 95-22 § 100 (adopted 7 February 1995; released 17 February 1995).

<sup>30</sup> FCC Memorandum Opinion and Order DA 02-1509, *In the Matter of Glentel Corp. For Blanket Authorization to operate up to 50,000 mobile satellite earth terminals through Canadian-licensed satellite MSAT-1 at 106.5 degrees W.L. in frequency bands 1530-1559 MHz and 163.5-1660.5 MHz throughout the Continental United States, United States Territories, Alaska, and Hawaii* (28 June 2002) at para. 3.

<sup>31</sup> R.B. Zoellick, U.S. Trade Representative, "Do Europeans and Americans Share an Enlightened Self-Interest?" (Remarks to the First Annual Bundestag Forum on the United States, Berlin, Germany, 6 June 2002) online: US Trade Representative home page <[http://www.ustr.gov/speech.test/zoellick/zoellick\\_23-self-interest.pdf](http://www.ustr.gov/speech.test/zoellick/zoellick_23-self-interest.pdf)>

<sup>32</sup> See R.B. Zoellick, "A Time to Choose: Trade & the American Nation" (Speech to the Heritage Foundation, Washington, DC, 29 June 2001).

<sup>33</sup> S.C. 2000, c. B-9.01. Section 22.(1)(a) prohibits the Commission from issuing, amending or renewing a licence in contravention of a direction to the Commission issued by the Governor in Council (made under s. 26(1) of the 1991 *Broadcasting Act*), while s. 2 of the *Direction to the CRTC (Ineligibility of Non-Canadians)* 8 April 1997 directs the CRTC "that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian" (P.C. 1997-486, C. Gaz. 1997.II.1222, as amended by P.C. 1998-1268, C. Gaz. 1998.II.2186).

Cabinet first issued directions to the CRTC about the licensing of non-Canadians in 1968.

<sup>34</sup> In *Rogers Communications Inc. v. Canada (AG)* (1998), 145 F.T.R. 79 (F.C.T.D.) the Court held that while the *Direction on non-Eligibility of Canadians* allowed subsidiaries of foreign-owned B.C. Telecom to hold a licence, it was not *ultra vires* the *Broadcasting Act* – because “Having two companies not ‘effectively owned and controlled by Canadians’ out of thousands involved in the industry does not alter the Canadian character and control of the system as a whole.” This was also the argument made, incidentally, by Canada’s Attorney General during the case.

<sup>35</sup> James Griffiths, “Democratic Republic of Congo internet shutdown shows how Chinese censorship tactics are spreading” *CNN* (2 January 2019), <https://www.cnn.com/2019/01/02/africa/congo-internet-shutdown-china-intl/index.html>.

<sup>36</sup> In 1929, the Manager of the Trans-Canada Broadcasting Company “complained that sardines had a better time in a tin than most broadcasters had in Canada’s share of the broadcast band. Seventy-four Canadian stations were jammed on seventeen channels, eleven of which were shared with the United States.” Frank Foster *Broadcasting Policy Development*, at 25.

<sup>37</sup> In 1928 the Minister responsible for broadcasting told the House of Commons that he had one of Marconi’s latest radio receiving sets, but could often only hear a high-powered American service. *House of Commons Debates* (31 May 1928) at 3626 (Mr. Cardin).

<sup>38</sup> In March 2018, for example, 3 stations in Toronto shared one frequency, 2 stations shared a second frequency, while only 1 station had a single frequency to itself. *Ibid.* at 3623 and 3627.

<sup>39</sup> Radio conferences took place in 1903 and 1906, but the first to deal with ‘radio’ as we now know it was in 1912; the first to deal with new uses of spectrum was in 1927. Frank Foster, *Broadcasting Policy Development* at 1, 3 and 21.

<sup>40</sup> In the 1920s Canadian radio channels were subject to continual appropriation by better financed and more powerful US channels. Ambiguity in the American *Wireless Telegraph Act* left U.S. authorities powerless to deny licence applications or to assign specific channels to individual radio stations: “U.S. stations were free to occupy other Canadian ‘clear’ channels – which they did.” David Ellis, *Evolution of the Canadian Broadcasting System: Objectives and Realities, 1928-1968* (Ottawa: Department of Communications, 1979) at 1-2 and 14.

In 1937 Canada organized the Havana Conference whose attendees (including the US, Mexico, Cuba and other countries in the Americas) agreed to allocate radio frequencies to reduce interference. Yet by 1938 US broadcasters unable to secure US wave lengths “simply moved over to Mexico and established high-power stations there using exclusive Canadian channels.” None of the six channels allotted to Canada was free from interference from Mexican sources. *House of Commons Debates* (8 February 1938) at 246 (Mr. Howe).

<sup>41</sup> S. 32(1).

<sup>42</sup> S. 73(2).

<sup>43</sup> *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy 2009-657 (Ottawa, 21 October 2009), <https://crtc.gc.ca/eng/archive/2009/2009-657.htm>, at para. 5.

<sup>44</sup> *Ibid.*, at preface and para. 9.

<sup>45</sup> *Report of the Deputy Minister of Marine and Fisheries*, Appendix 11, “Marconi wireless telegraph system”, *Sessional Papers* No. 21 (1<sup>st</sup> session, 10<sup>th</sup> Parliament) 12 December 1904, 114-115: “In many instances vessels have been in communication with shore stations when enveloped in thick fog, and have found the Marconi [wireless radio] system an invaluable supplementary aid to the fog signal service already existing.”

<sup>46</sup> A nearby ship had tried for hours to warn the *Titanic* of looming icebergs by radio, but the latter’s radio operator “was unwilling to break off his connection” with a race in Newfoundland. “The conference was determined to end such irregularities and amateurism.” Roger Bird, *Documents of Canadian Broadcasting*, “Document 6” (Carleton University Press, Ottawa: 1988) at 20.

<sup>47</sup> *Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians*, Telecom Regulatory Policy 2017-182 (Ottawa, 1 June 2017), <https://crtc.gc.ca/eng/archive/2017/2017-182.htm>, at para. 1.

<sup>48</sup> *Television Broadcasting Regulations*, SOR/87-49, s. 5; *Specialty Services Regulations*, SOR/90-106, s. 3; *Pay Television Regulations*, SOR/90-105, s. 3(2).



<sup>49</sup> University of Oregon, “Stealth advertising” sliding under radar into TV newscasts: Small market newscasts often include segments that benefit advertisers, say UO researchers” (Eugene, Oregon: 10 July 2007).

<sup>50</sup> In Bablylon, Law 3 of the *Code of Hammurabi* dealt with false reports: “If anyone bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offence charged, be put to death”. Law 127 dealt with slander: “If anyone point the finger (Slander) at a sister of a god or the wife of anyone and cannot prove it, this man shall be taken before the judges and his brow shall be marked (by cutting the skin, or perhaps hair).” Online <<http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALAW/>> [“Media Law History”].

<sup>51</sup> See Wolfgang Boochs, *Strafrechtliche Aspekte im altägyptischen Recht*, (Sank Augustin: Academia Verlag, 1993).

<sup>52</sup> “Media Law History”, Online <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALAW/>.

<sup>53</sup> Kyla Ward, “Timeline of Censorship” <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALAW/> .

<sup>54</sup> Carolyn Marvin, *When Old Technologies were New: Thinking About Electric Communication in the Late Nineteenth Century*, (New York: Oxford University Press, 1988) at 89.

<sup>55</sup> The *Criminal Code* makes it an offence to convey information known to be false “by any means of telecommunication” (s. 372(1)); to make “an indecent communication to that person or to any other person by a means of telecommunication” (s. 372(2)), or “without lawful excuse and with intent to harass a person” to ] repeatedly communicate or cause repeated communications to be made using “a means of telecommunication” (s. 372(3)).

<sup>56</sup> “The practice ceased in 1977 when the Department of Justice stated in an opinion to the [RCMP] that it was illegal for anyone to open and examine mail with or without the cooperation of postal authorities at any time after posting and before delivery.” Department of Justice, Canada, *THE POSITION OF THE ATTORNEY GENERAL OF CANADA ON CERTAIN RECOMMENDATIONS OF THE McDONALD COMMISSION*, (Canada, August 19830, <https://www.ncjrs.gov/pdffiles1/Digitization/94371NCJRS.pdf>, at 12.

<sup>57</sup> Anna Seidel, “Understanding China’s Social Credit System and What it Means for Consumers”, *Branding Asia* (2 January 2019) <https://brandinginasia.com/understanding-chinas-social-credit-system/>.

<sup>58</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 4. Where a scribe produced two volumes of text per year, a printer could produce a volume of text a day (at 4-5).

<sup>59</sup> “The Cambridge History of English and American Literature in 18 Volumes”, online: Bartleby <<http://www.bartleby.com/214/1801.html>> [“Cambridge History”]

<sup>60</sup> *Ibid.*

<sup>61</sup> International Federation of Reproduction Rights Organizations, “IFRRO General Papers”, [http://www.ifrro.org/papers/collect\\_adm.html](http://www.ifrro.org/papers/collect_adm.html)

<sup>62</sup> J. Hagan, *Printers and Politics*, (Australian National University Press: Canberra, 1966) at 6.

<sup>63</sup> S. III of the *Act for Printers and binders of Books*, Henry VIII, c. 15 1533 provided that ... if any of the said Printers or Sellers of printed Books, inhabited within this Realm, at any Time hereafter happen in such wise to inhance or increase the Prices of any such printed Books, in Sale or Binding, at too high and unreasonable Prices, in such wise as Complaint may be made thereof unto the King’s Highness, or unto the Lord Chancellor, .... then the same Lord Chancellor, ... shall have Power and Authority to enquire thereof, as well by the Oaths of twelve honest and discreet Persons, [and] shall have Power and Authority to reform and redress such inhancing of the Prices of printed Books from Time to Time by their discretion, and to limit Prices as well of the Books as for the Binding of them ...

<sup>64</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 111, citing a letter written by the chairman of the FCC in 1942.

<sup>65</sup> Frank Foster, *Broadcasting Policy Development*, at 120: “A further advantage of development [of television] at the present time will arise from the large new outlet which will be provided for the electronics industry. Television will help to maintain and materially increase the contribution of this important industry to our national life.”

<sup>66</sup> “... in the rapidly globalizing media industries, Canadian broadcasters remain the most important outlet for Canadian television programs made by domestic independent producers.” Canadian Film and Television Production Association, *The Canadian Film and Television Production Industry Profile 2002* (Ottawa: 2002) at 11. The film and television production industry alone (i.e., not the music industry, or the broadcasters themselves) accounted for 51,700 direct jobs in 2001. *Ibid* at 31.

<sup>67</sup> Similarly, some government institutions are also used to maintain and support the well-being of their national economies and component economic sectors. A simple example is a state’s criminal prosecution of theft (rather than civil action for conversion): in 1971 American John Draper learned that that a whistle distributed in cereal boxes reproduced a 2600 Mhz tone, the same used by US telephone systems, and enables free long distance telephone calls (giving birth to a relatively short-lived phenomenon named “Phreaking”. AT&T estimated that approximately \$20 millions worth of free telephone calls were made before security upgrades ended the practice *Spirit of the Web* at 112.). Draper (aka “Cap’n Crunch”) was subsequently convicted under Title 18, Section 1343: Fraud by wire, and served time (<http://www.webcrunchers.com/crunch/story.html>).

Alternatively, governments are invited to entry into lucrative areas of business. In 1996, U.S. telecommunications companies asked Congress to ban Internet telephones (Robert H’obbes’ Zakon “Hobbes’ Internet Timeline v6.0” online: H’obbes <<http://www.zakon.org/robert/internet/timeline/#1990s>>) [“Hobbes’ Internet Timeline”].

<sup>68</sup> Section 6.(1) of the CRTC’s *Broadcasting Distribution Regulations* states that  
“6. (1) For the purposes of this section, each pay television service, television pay-per-view service, DTH pay-per-view service and video-on-demand service shall be counted as a single video channel.  
(2) Except as otherwise provided under a condition of its licence, a licensee shall ensure that a majority of the video channels and a majority of the audio channels received by a subscriber are devoted to the distribution of Canadian programming services, other than the programming distributed on program repeat channels.  
(3) Except as otherwise provided under a condition of its licence, this section does not apply to a Class 3 licensee of a cable distribution undertaking that only distributes programming services on the basic band.”

<sup>69</sup> *Let’s Talk TV: A World of Choice - A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96 (Ottawa, 19 March 2015), <https://crtc.gc.ca/eng/archive/2015/2015-96.htm>, at paras. 58-60: “Accordingly, beginning March 2016, BDUs will be required to offer more Canadian than non-Canadian services. However, subscribers will ultimately choose how many and what Canadian or non-Canadian discretionary channels they wish to receive beyond the entry-level service offering.”

<sup>70</sup> Over-the-air services, rather than specialty or satellite-based broadcast services.

<sup>71</sup> Section 30.(2) of the *Broadcasting Distribution Regulations* states that  
“Except as otherwise provided under a condition of its licence, and subject to subsection (5), a Class 1 [broadcasting distribution service] licensee  
(a) shall delete the programming service of a television station and substitute the programming service of a local television station or a regional television station or, with the agreement of the broadcaster operating the local television station or regional television station, shall have that broadcaster carry out the deletion and substitution  
....”

<sup>72</sup> Canadian Press, “Liberals Want Infrastructure Bank To Help Fund Rural Broadband Internet”, *Huffington Post* (31 December 2018 12:03 EST, Updated 31 December 2018 13:01 EST), [https://www.huffingtonpost.ca/2018/12/31/liberals-infrastructure-bank-rural-internet\\_a\\_23630694/?utm\\_hp\\_ref=ca-homepage](https://www.huffingtonpost.ca/2018/12/31/liberals-infrastructure-bank-rural-internet_a_23630694/?utm_hp_ref=ca-homepage).

<sup>73</sup> *An Act Respecting Radio Broadcasting*, 22&23 Geo. 5, c. 51.

<sup>74</sup> Right Hon. R.B. Bennett, *Debates* (18 May 1932), House of Commons, at 3035 (“Radio Broadcasting”).

<sup>75</sup> *Ibid.*, at 3040 (“Radio Broadcasting”).

<sup>76</sup> Cambridge Dictionary, online: <https://dictionary.cambridge.org/dictionary/english/culture>.

- <sup>77</sup> Clifford Geertz, cited in Gayle Broad, Stephanie Boyer and Cynthia Chataway, “We Are Still the Anishnaabe Nation: Embracing Culture and Identity in Batchewana First Nation”, *Canadian Journal of Communications*, Vol 31:1 (2006), <https://www.cjc-online.ca/index.php/journal/article/view/1627/1774>.
- <sup>78</sup> UNESCO, *Culture and Development*, “The Future We Want: The Role of Culture”, <http://www.unesco.org/new/en/culture/themes/culture-and-development/the-future-we-want-the-role-of-culture/one-size-does-not-fit-all/>.
- <sup>79</sup> *Brown v. Canada (Attorney General)*, 2017 ONSC 251 (CanLII), <<http://canlii.ca/t/gxgqw>>, at para. 15.
- <sup>80</sup> *Ibid.*, at paras 5-7.
- <sup>81</sup> *Ibid.*, at paras 5-7.
- <sup>82</sup> UNESCO, *Culture and Development*, “Culture and Sustainable Development: the Key Ideas”, <http://www.unesco.org/new/en/culture/themes/culture-and-development/the-future-we-want-the-role-of-culture/the-key-ideas/>.
- <sup>83</sup> UNESCO, *Culture and Development*, “Culture for Sustainable Development”, <http://www.unesco.org/new/en/culture/themes/culture-and-development/the-future-we-want-the-role-of-culture/culture-enables-and-drives-development/>.
- <sup>84</sup> John Perry Barlow, “A Declaration of the Independence of Cyberspace”, Paper commissioned by the Electronic Frontier Foundation (8 February 1996, Davos), available at: <https://www.eff.org/cyberspace-independence>.
- <sup>85</sup> Jeff Miller, “Net-Neutrality Regulation in Canada: Assessing the CRTC’s Statutory Competency to Regulate the Internet”, *Appeal: Review of Current Law and Law Reform* (2012: 17:47) 47-62, at 47; *Ibid.* at footnote 2, citing Craig McTaggart, “Net Neutrality and Canada’s Telecommunications Act” (Paper prepared for the Fourteenth Biennial National Conference on New Developments in Communications Law and Policy, Law Society of Upper Canada, Ottawa, 25-26 April 2008) [unpublished] at 10-7).
- <sup>86</sup> Motion picture film was first transmitted using transatlantic cable in June 1959, when a minute of news footage was transmitted frame by frame, showing Queen Elizabeth II’s departure from England to Canada. AT&T, *Events in Telephone History*, [file:///D:/Documents/Chron/Historical%20documents/att\\_events\\_in\\_telephone\\_history\\_1974\\_ocr\\_r.pdf](file:///D:/Documents/Chron/Historical%20documents/att_events_in_telephone_history_1974_ocr_r.pdf), at 48.
- <sup>87</sup> *Ibid.*, at 13, points out that by 1891, “The earliest [telephone] exchanges all had party-line service – once in a while as many as 20 to a line.”
- <sup>88</sup> Thomas White “Early Radio History” online <<http://earlyradiohistory.us/sec003.htm>>
- <sup>89</sup> *Ibid.* <https://earlyradiohistory.us/sec003.htm>
- <sup>90</sup> *Report on New Media*, Broadcasting Public Notice CRTC 1999-84 and Telecom PN CRTC 99-14, (Ottawa, 17 May 1999), <https://crtc.gc.ca/eng/archive/1999/pb99-84.htm>, at paras. 38-46.
- <sup>91</sup> Chris Hoffman, “How the ‘Great Firewall of China’ Works to Censor China’s Internet” (22 September 2016), <https://www.howtogeek.com/162092/htg-explains-how-the-great-firewall-of-china-works/>, described as – Chinese authorities’ regulation of the Internet and their ability to block much of the access by users in China to IP addresses, through China’s Golden Shield project.
- <sup>92</sup> Department of Transport, *Community Antenna Television System (C.A.T.V.): Background Summary Regarding the Licensing of Community Antenna Television System (C.A.T.V.)* (7 November 1962) at ¶1.1; the *Radio Act* was amended in early 1953 to require “private receiving stations operated for gain” to hold commercial broadcasting licences.
- <sup>93</sup> NASA, “Sputnik: the fiftieth anniversary: Sputnik and The Dawn of the Space Age”, <https://history.nasa.gov/sputnik/>.
- <sup>94</sup> In March 1968 the Federal government released a White Paper outlining the need for a domestic satellite system: *A Domestic Satellite Communication System for Canada*; the CRTC in January 1980 formed the Committee Extension of Service to Northern and Remote Communities (Therrien committee) based on the use of satellites; and 1993 the CRTC asserted jurisdiction over foreign Direct-to-Home distributors offering their services in whole or in part in Canada (Public Notice CRTC 1993-74).

<sup>95</sup> *Change in the effective control of TQS inc. and licence renewals of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network*, Broadcasting Decision CRTC 2008-129 (Ottawa, 26 June 2008), <https://crtc.gc.ca/eng/archive/2008/db2008-129.htm>:

8. In its licence renewal applications, TQS also filed applications to amend its current licences. These applications provided very few details regarding its programming strategy. The principal amendments proposed involved eliminating newscasts on all TQS stations and on the TQS network and a downward revision to its priority program requirements.

<sup>96</sup> Associated Press, “Netflix and chill no more – streaming is getting complicated: Disney, WarnerMedia launching streaming services in 2019 to challenge Netflix’s dominance” CBC online (5 January 2019 11:55 AM), <https://www.cbc.ca/news/entertainment/streaming-more-complicated-1.4967344>.

<sup>97</sup> In November 2017 Canada’s licensed and non-exempted television programming services broadcast 30,142 hours of original Canadian programming; see

<sup>98</sup> According to the 2018 *Profile* report of the Canadian Media Producers Association (CMPA), “[t]he total employment impact (including direct and spin-off impacts) of film and television production in Canada” was 171,700 full-time jobs in 2016/17 (at 22).

<sup>99</sup> The CRTC provided this answer in response to an access to information request; the request and the CRTC’s answer are, unfortunately, in storage.

<sup>99</sup>

<sup>99</sup> S. 3(1)(d)(iii).

<sup>99</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355.

<sup>100</sup> Emily Jackson, “Netflix doing booming business in Canada, industry research reports suggest” *Financial Post*, 17 April 2018, 626 PM EDT), <https://business.financialpost.com/telecom/media/netflix-doing-booming-business-in-canada-industry-research-reports-suggest>.

<sup>101</sup> S. 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).

<sup>102</sup> Order-in-council

1968-1809, *Canada Gazette*, Part 1

<sup>104</sup> S. 3(1)(o) of the *Broadcasting Act*: “programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose”.

<sup>105</sup> Coding individual program titles based on their titles (“Mohawk girls”) or information available online about programming, might provide a measure, albeit imprecise, of this programming.

<sup>106</sup> From 1999 to 2015: <ftp://support.crtc.gc.ca/logs>; from 2014 to the present: <https://open.canada.ca/data/en/dataset/800106c1-0b08-401e-8be2-ac45d62e662e?wbdisable=true>.

<sup>107</sup> *Telecommunications Act*, s. 47.

<sup>107</sup> *Bell Canada v. Canada (Attorney General)*, 2016 FCA 217 (CanLII), <http://canlii.ca/t/gvl22>, at para. 37.

<sup>107</sup> *Allstream Corp. v.*

*fqs6*” <http://canlii.ca/t/1fqs6>, per Bastarache J. for the majority, at para. 36, citation omitted.

<sup>108</sup> S.C. 1998, c. 25

*Bell Canada*, 2005 FCA 247 (CanLII), <http://canlii.ca/t/1l7dd>, at para. 29.

<sup>109</sup> *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, 1998 CanLII 778 (SCC), HYPERLINK “<http://canlii.ca/t/1>

- <sup>110</sup> At 300, Figure 5.5.4 (“Total and daily number of SMS and MMS messages”).
- <sup>111</sup> S. 101.1(1).
- <sup>111</sup> S.C. 2013, c. 14, s. 2.
- <sup>111</sup> S. 23(1).
- <sup>111</sup> S. 31(2).
- <sup>111</sup> S.
- <sup>112</sup> “Communications Services in Canadian Households: Subscriptions and Expenditures 2012-2016”, no page number.
- <sup>113</sup> The Forum notes that most BDUs also distribute local over-the-air radio services, but has no data as to Canadians’ use of these services.
- <sup>114</sup> The CRTC continued to collect data from BDUs in their annual licence fee reports, which provided figures showing their total income from basic services, and their total number of basic subscribers. When asked (via the *Access to Information Act*) for these data, the CRTC answered that once it had input this data to collect BDUs’ annual licence fees, it destroyed the data.
- <sup>115</sup> When asked under the *Access to Information Act* who made this decision, the CRTC said that its staff had made this decision.
- <sup>116</sup> See ss. 6, 9(1)(a) and (b); 12(1)(a); 12(2).
- <sup>117</sup> See ss. 35, 40(2), 41(1), 41.2(c), 42(1), 44(a) and (b), 45, 51, 57 and 58.
- <sup>117</sup> See e.g. *Frequently Asked Questions about Canada’s Anti-Spam Legislation*, at <https://crtc.gc.ca/eng/com500/faq500.htm>.
- <sup>117</sup> *CKMN-FM Rimouski/Mont-Joli – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2018-468 and Broadcasting Orders CRTC 2018-469, 2018-470, 2018-471, 2018-472, 2018-473 and 2018-474, (Ottawa, 14 December 2018), <https://crtc.gc.ca/eng/archive/2018/2018-468.htm>, at para. 9: “The specific filing requirements, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795.”
- <sup>118</sup> In *Requests that Rogers Media Inc. reinstate local third-language newscasts on its OMNI stations*, Decision CRTC 2016-8, (Ottawa, 12 January 2016), <https://crtc.gc.ca/eng/archive/2016/2016-8.htm>, at para. 32, it said that policies such as its *Ethnic Broadcasting Policy* “are non-binding; in other words, they create no obligation in and of themselves. More specifically, section 6 of the Act provides that the Commission may issue policy statements or guidelines, but that these are not binding on the Commission.”
- <sup>118</sup> *Canadian Institute of Public and Private Real Estate Co. v. Bell Canada*, 2004 FCA 243 (CanLII), <http://canlii.ca/t/1hfg5>, at para. 4.
- <sup>118</sup> *CKYR-FM Calgary – Licence renewal*, Broadcasting Information Bulletin 2018-328 (Ottawa, 29 August 2018), <https://crtc.gc.ca/eng/archive/2018/2018-328.htm>, at para. 3:  
As noted in Broadcasting Information Bulletin 2011-795 (the Bulletin), when submitting documentation for CCD expenditures relating to organizations other than FACTOR or MUSICACTION, licensees must provide sufficient details to clearly show how a particular initiative contributes to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists, as well as how the initiative meets the criteria for an eligible initiative set out in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy). As indicated in the Bulletin, documentation must demonstrate the eligibility of the initiative and must show the desired purpose of the funds and how the funds are actually used, as well as include proof of payment.
- <sup>120</sup> *CKFG-FM Toronto – Licence renewal and amendment*, [Decision CRTC 2018-325](#) (Ottawa, 28 August 2018), at para 16  
Radio station licensees typically do not have conditions of licence relating to the broadcast of montages. Rather, Broadcasting Information Bulletin 2011-728 sets out the Commission’s objectives and expectations relating to the broadcast of montages. Specifically, any broadcaster that would devote more than 10% of its programming over the broadcast week to montages would have failed to meet the objectives of the regulatory framework and the intent of the policy on montages. As set out in that information bulletin, it is necessary to supervise the broadcast of montages

on radio stations to ensure that licensees respect the objectives of the regulatory framework relating to French-language vocal music (FVM) and Canadian content. The Commission added that when examining a station's musical programming, it looks at all components.

<sup>123</sup> 2017 *Monitoring Report*, at page 211.

<sup>124</sup> "Telecommunications Overview", "Retail Fixed Internet Sector and Broadband Availability", "Retail Mobile Sector", "Communications Services in Canadian Households: Subscriptions and Expenditures 2012-2016", "2017 Communications Services Pricing in Canada".

<sup>125</sup> A search of the Department of Justice website of the word, "act", among its consolidated acts, brought up 799 results (28 December 2018).

<sup>126</sup> See Appendix 10.

<sup>127</sup> The second is the *Youth Criminal Justice Act*, S.C. 2002, c. 1. The *Canada Multiculturalism Act* also sets out a "Policy of Canada".

<sup>128</sup> The *Physical Activity and Sport Act* also does so.

<sup>129</sup> S. 3(2).

<sup>130</sup> S. 5(1).

<sup>131</sup> S. 12(2).

<sup>132</sup> (Carleton University Press: Ottawa, 1988), at 547.

<sup>133</sup> Bird, at 547.

<sup>134</sup> Department of Communications, *A Policy Framework for Telecommunications in Canada* (Ottawa, July 1987), at 4.

<sup>135</sup> *Ibid.*, at 6.

<sup>136</sup> *Ibid.*, at 7.

<sup>137</sup> *Ibid.*, at 7.

<sup>138</sup> In Public Notice CRTC 1997-25 the CRTC announced that new BDU entrants would not have any of their rates regulated, and that existing large (Class 1) cable BDUs would not be deregulated once a licensed DTH or terrestrial service became available to 30% of the cable system's households and the cable BDU's subscription level had decreased by 5%.

<sup>139</sup> Canoe "David Colville Chat" (16 October 1998) <<http://efc.C.A./pages/media/canoe.16oct98.html>>

<sup>140</sup> *Telecommunications Act*, s. 8.

<sup>141</sup> S. 7(1).

<sup>142</sup> S. 7(2).

<sup>143</sup> It is unclear, however, whether the statute prohibits the licensing of individual non- Canadian stations, of networks, or of both:

14.(1) The Board shall not recommend [to the Minister of Transport] the issue of a licence or grant permission to operate a network of broadcasting stations unless the applicant therefor is

(a) a Canadian citizen, or

(b) a corporation incorporated under the laws of Canada or any province, the chairman or other presiding officer and at least two-thirds of the directors of which are Canadian citizens and at least three-fourths of the shares of which (having full voting rights under all circumstances) belong to

(i) Canadian citizens, or

(Internet programming service) a corporation other than a corporation controlled directly or indirectly by citizens or subjects of a country other than Canada.

The *Broadcasting Act* established a grandparenting mechanism:

14(2) The Governor in Council may exempt from the operation of this section, upon such terms and conditions as the Governor in Council may prescribe, any person who, at the time of the coming into force of this Act, was the holder of a licence and was not a person described in paragraph (a) or (b) of subsection [14] (1).

<sup>144</sup> Apart from the grandparenting provision in section 14(2) of the 1958 Act, "[n]either the Minister's regulations nor the *Broadcasting Act* provided for control over methods of American investment in Canadian

broadcast. ABC made its investment in CFTO-TV Toronto in the form of debentures which had no stated method of redemption.” (Foster, at 195).

<sup>145</sup> *Ibid.*, at 261

<sup>146</sup> *Ibid.*, at 263.

<sup>147</sup> *Ibid.*, at 239.

<sup>148</sup> In May 1959 a Special Committee of the House of Commons addressed the issue that “CKLW and CKLW-TV Windsor ... were operated as if they were American stations in Detroit.” Frank Foster, *Broadcasting Policy in Canada*, at 183-185.

<sup>149</sup> Foster identified systems serving St Stephen NB, Fort Frances ON and Sault Ste-Marie On.

<sup>150</sup> *Ibid.*, at 183-185.

<sup>151</sup> Hon. Judy V. Lamarsh, *House of Commons Debates*, 27<sup>th</sup> Parl., 2<sup>nd</sup> Sess, Vol. 4 (1 November 1967) at 3747.

<sup>152</sup> Order-in-council 1968-1809, *Canada Gazette*, Part 1.

In the 1960s the “... BBG had proposed to the [1961 special Committee of the House of Commons on Broadcasting] that Parliament should amend the Broadcasting Act to grant the Board control over studios in Canada operating as part of American broadcasting stations. No action was taken possibly because Parliament had no mechanism for dealing with such requests or recommendations.” Frank Foster, at 191.

<sup>153</sup> In *R. v. Acadian Telecommunications Co. Ltd.* (New Brunswick Provincial Court, May 15, 1970), the Court found that Acadian operated a cable system in New Brunswick without a CRTC licence, with its head-end antenna located in Calais, Maine; in *Regina v. Continental Cablevision Inc. et al.*, 1974 CanLII 431 (ON SC), *aff'd* by *Regina v. Maahs and Teleprompter Cable Communications Corp.* (1975), 6 O.R. (2d) 774, the Court found that Continental operated a cable system in Sault Ste. Marie, Ontario, with a head-end in Sault Ste. Marie, Michigan.

<sup>154</sup> *Broadcasting Act*, RSC 1970, c. /b-11, as am. in RSC 1970, C. 16 (1<sup>st</sup> Supp.), s. 42(2), and RSC 1970, c. 10 (2<sup>nd</sup> Supp.), s. 75.

<sup>155</sup> S. 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).

*New Media*, Broadcasting Public Notice CRTC 99-84 and Telecom Public Notice CRTC 99-14 (Ottawa, 17 May 1999),

<https://crtc.gc.ca/eng/archive/1999/pb99-84.htm>:

49. Furthermore, the Commission considers that to impose licensing on new media would not contribute in any way to its development or to the benefits that it has brought to Canadian users, consumers and businesses.

50. In light of the foregoing, the Commission is satisfied that compliance with Part II of the Act, and any applicable regulations made thereunder, by persons carrying on new media broadcasting undertakings will not contribute in a material manner to the implementation of the policy objectives set out in section 3(1) of the Act.

<sup>156</sup> See CRTC, Revised list of non-Canadian programming services and stations authorized for distribution,

<https://crtc.gc.ca/eng/publications/satlist.htm#bm1>, cate modified: 2018-11-05.

<sup>157</sup> *Statistical and Financial Summaries*, BDUs, 2007-2011, at 27.

<sup>158</sup> Emily Jackson, “Netflix doing booming business in Canada, industry research reports suggest” *Financial Post*, 17 April 2018, 626 PM EDT), <https://business.financialpost.com/telecom/media/netflix-doing-booming-business-in-canada-industry-research-reports-suggest>.

<sup>159</sup> Daniel Leblanc, “Netflix deal the centrepiece of cultural policy”, *Globe and Mail*, (27 September 2017), <https://beta.theglobeandmail.com/news/politics/ottawa-to-unveil-500-million-netflix-deal-as-part-of-cultural-policy-overhaul/article36414401/?ref=http://www.theglobeandmail.com&>: Netflix agreed to spend \$100 million or more per year for five years on “the production and distribution of Canadian movies and TV shows as part of a landmark agreement that will be at the centre of Ottawa’s new cultural policy ....”.

A news release stated that under the agreement Netflix would “create Netflix Canada – a first of its kind production company for Netflix outside of the United States – and invest a minimum of CAD \$500 million in original productions in Canada over the next five years.” Heritage Canada, “Launch of Netflix Canada: a recognition of Canada’s creative talent and its strong track record in creating films and television” ((Ottawa, 28

September 2017), [https://www.canada.ca/en/canadian-heritage/news/2017/09/launch\\_of\\_netflixcanadaarecognitionofcanadascreativetalentandits.html](https://www.canada.ca/en/canadian-heritage/news/2017/09/launch_of_netflixcanadaarecognitionofcanadascreativetalentandits.html).

<sup>160</sup> Secretary General, CRTC, *RE: Request for process of Part 1 application - Review of the Exemption order for digital media broadcasting undertakings*, Broadcasting Procedural Letter Addressed to SCFP – Québec (Ottawa, 20 April 2018), <https://crtc.gc.ca/eng/archive/2018/lb180420.htm>.

<sup>161</sup> *Direction to the CRTC (Ineligibility of Non-Canadians)*, Order in Council 1997-486 (8 April 1997), as amended by Order in Council 1998-1268 (15 July 1998).

<sup>162</sup> *Broadcasting Act*, ss. 10(1)(i) and (j).

<sup>163</sup> S. 7(b).

<sup>164</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355.

<sup>165</sup> CRTC, *Transcript* (Gatineau, 25 April 2016), <https://crtc.gc.ca/eng/transcripts/2016/tt0425.htm>:

15804 **COMMISSIONER MENZIES: Your original submission spoke quite a bit, expressed a lot of concern for the people on the downside of Canada's advantages. And we've seen -- had considerable submissions on those points too.**

15805 **But aren't those matters of poverty best addressed by provincial and territorial social service agencies** whose job it is to do that? As I put it to those other folks, we're not social workers, we're not childcare workers, in terms of assessing people's basic needs like that. **Should we not leave that to the people who have not only the constitutional responsibility to provide it directly through Social Services, but also most important in a sense the expertise?**

...

15866 **COMMISSIONER MENZIES: But the barrier right now to the -- getting access to the last 10 percent -- and, you know, a lot of small entrepreneurs, you know, in -- at the end of the large telco road, have done a very good job of building out and building out, but then we've kind of got to the end of that and so we're down to the last 10 percent.** 15867 **And the reason they have -- people aren't spending to connect is because there is no economic case to do so; right? And it's not just the build but there's no revenue to be had at the end of it.**

15868 **It's economically -- and that doesn't mean that it doesn't have social purpose, but economically, in terms of the role that the private sector can play, it's -- they're not there because there's nothing there in terms of -- in terms of a return and that's what I'm trying to get to.**

15869 **Is not that the role where government should finance, as opposed to just reducing telcos' profitability?**

15870 MS. AUER: So on the one hand for recent telco ---

15871 **COMMISSIONER MENZIES: Which is likely to come out of jobs and less service elsewhere.**

15872 MS. AUER: Well in terms of reducing telcos' profitability, the idea is that you trade-off some expenditures from telcos' for improved service for the rest of Canadians who presumably would benefit.

15873 So there might be well more jobs coming out of that benefit from that slight reduction and it doesn't -- it's not a permanent reduction. I can't imagine it would be permanent.

15874 **As for the notion that there is no revenue to be obtained from the last 10 percent, I think there is revenue to be obtained. It may not be of sufficient scale, it may not be in the 25 to 30 percent area, but there may well be revenue to cover costs.**

15875 **And so the issue becomes at what point do we say all right now you're operating in a loss and we're happy as a government, whether it's a municipal, provincial, or federal, or territorial government, whatever, to perhaps compensate you for that cost. Either through the Income Tax Act or through other means perhaps the high cost service areas ---**

15876 **COMMISSIONER MENZIES: Right, but that's not how publicly traded companies work. They don't ---**

15877 MS. AUER: Well Bell Canada has been working that way for many years.

15878 **COMMISSIONER MENZIES: If you -- if you've reduced their profitability they have to get it back, because that's why -- that's ---**

15879 **I'm not defending it; I'm just saying that's how it works; right?**

15880 **So if you reduce their profitability by making them to do -- forcing them to do things that are uneconomic without subsidy of some kind, they will reduce service levels elsewhere, or reduce jobs, or increase prices, more than likely.**

15881 **So those are all not outcomes that most people would be looking for, so I'm just trying to understand how your proposal makes a better telecommunications infrastructure for most Canadians.**



- 15882 MS. AUER: I think **Canadians interests are better served when everyone in Canada has access to 21st century communications technology.**
- 15883 And if that can be achieved by requiring telcos, incumbents, for instance, to expend money on the last 10 percent, I think that's a worthwhile endeavor.
- 15884 And certainly other countries such as Finland and Australia are attempting to do precisely that.
- 15885 COMMISSIONER MENZIES: With a great deal of government investment, that's what I was trying to get at.
- 15886 MS. AUER: **The idea that companies can never lose -- I mean are we really saying that their profitability must be guaranteed?**
- 15887 COMMISSIONER MENZIES: Yes, when you work at one that's how it works.**
- 15888 MS. AUER: But do -- does ---
- (LAUGHTER)
- 15889 COMMISSIONER MENZIES: That's just -- that's just how the world works.
- 15890 MS. AUER: But we don't work at one and ----
- 15891 COMMISSIONER MENZIES: I'm not saying it's right or anything.
- 15892 MS. AUER: Okay but ---
- 15893 COMMISSIONER MENZIES: But it is just how the world works.
- 15894 MS. AUER: All right, but the CRTC is not a company and that's not its role, to defend the profit structures of companies. Its role is to implement the objectives --
- 15895 COMMISSIONER MENZIES: No, but it is -- it is its role to understand reality.
- 15896 MS. AUER: -- of parliament.
- 15897 COMMISSIONER MENZIES: Right? And try to deal with that. So that's -- I don't think we're -- we have different desired outcomes. It's just -- I'm just trying to understand how your path leads to the best outcome.
- 15898 MS. AUER: I think it leads to a better outcome for more people.
- 15899 COMMISSIONER MENZIES: Okay, thanks. Those are my questions.
- <sup>166</sup> *Sullivan and Driedger on the Construction of Statutes*, (Fourth ed.) at 134.
- <sup>167</sup> *Barreau du Québec v. Québec (Attorney General)*, [2017] 2 SCR 488, 2017 SCC 56 (CanLII), <http://canlii.ca/t/hn9jp>, at para 77.
- <sup>168</sup> *Broadcasting Act*, s. 5(2), italics added. The CRTC is bound to regulate based on section 5(2), because of s. 5(1) that provides as follows:
- Subject to this Act and the Radiocommunication Act and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2)."
- <sup>169</sup> *Telecommunications Act*, s. 47.
- <sup>170</sup> *Bell Canada v. Canada (Attorney General)*, 2016 FCA 217 (CanLII), <http://canlii.ca/t/gvl22>, at para. 37.
- <sup>171</sup> *Allstream Corp. v. Bell Canada*, 2005 FCA 247 (CanLII), <http://canlii.ca/t/17dd>, at para. 29.
- <sup>172</sup> *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, 1998 CanLII 778 (SCC), <http://canlii.ca/t/1fqs6>, per Bastarache J. for the majority, at para. 36, citation omitted.
- <sup>173</sup> S.C. 1998, c. 25.
- <sup>174</sup> S. 101.1(1).
- <sup>175</sup> S.C. 2013, c. 14, s. 2.
- <sup>176</sup> S. 23(1).
- <sup>177</sup> S. 31(2).
- <sup>178</sup> S. 64(1).
- <sup>179</sup> See ss. 6, 9(1)(a) and (b); 12(1)(a); 12(2).
- <sup>180</sup> In footnote 8 of *Toronto Breeze Air Duct Cleaning Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2018-482 (Ottawa, 19 December 2018), <https://crtc.gc.ca/eng/archive/2018/2018-482.htm>, the CRTC described Telecom Information Bulletin 2011-214 as having been issued "pursuant to the *Canadian Radio television [sic] and Telecommunications Commission Rules of Practice and Procedure*", implying that information bulletins in telecom are subordinate to the CRTC's regulations.
- <sup>181</sup> See ss. 35, 40(2), 41(1), 41.2(c), 42(1), 44(a) and (b), 45, 51, 57 and 58.

<sup>182</sup> See e.g. *Frequently Asked Questions about Canada's Anti-Spam Legislation*, at <https://crtc.gc.ca/eng/com500/faq500.htm>.

<sup>183</sup> *CKMN-FM Rimouski/Mont-Joli – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2018-468 and Broadcasting Orders CRTC 2018-469, 2018-470, 2018-471, 2018-472, 2018-473 and 2018-474, (Ottawa, 14 December 2018), <https://crtc.gc.ca/eng/archive/2018/2018-468.htm>, at para. 9: “The specific filing requirements, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795.”

<sup>184</sup> In *Requests that Rogers Media Inc. reinstate local third-language newscasts on its OMNI stations*, Decision CRTC 2016-8, (Ottawa, 12 January 2016), <https://crtc.gc.ca/eng/archive/2016/2016-8.htm>, at para. 32, it said that policies such as its *Ethnic Broadcasting Policy* “are non-binding; in other words, they create no obligation in and of themselves. More specifically, section 6 of the Act provides that the Commission may issue policy statements or guidelines, but that these are not binding on the Commission.”

<sup>185</sup> *Canadian Institute of Public and Private Real Estate Co. v. Bell Canada*, 2004 FCA 243 (CanLII), <http://canlii.ca/t/1hfg5>, at para. 4.

<sup>186</sup> *CKYR-FM Calgary – Licence renewal*, Broadcasting Information Bulletin 2018-328 (Ottawa, 29 August 2018), <https://crtc.gc.ca/eng/archive/2018/2018-328.htm>, at para. 3:

As noted in Broadcasting Information Bulletin 2011-795 (the Bulletin), when submitting documentation for CCD expenditures relating to organizations other than FACTOR or MUSICACTION, licensees must provide sufficient details to clearly show how a particular initiative contributes to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists, as well as how the initiative meets the criteria for an eligible initiative set out in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy). As indicated in the Bulletin, documentation must demonstrate the eligibility of the initiative and must show the desired purpose of the funds and how the funds are actually used, as well as include proof of payment.

<sup>187</sup> *CKFG-FM Toronto – Licence renewal and amendment*, Decision CRTC 2018-325 (Ottawa, 28 August 2018), <https://crtc.gc.ca/eng/archive/2018/2018-325.htm>, at para 16:

Radio station licensees typically do not have conditions of licence relating to the broadcast of montages. Rather, Broadcasting Information Bulletin 2011-728 sets out the Commission’s objectives and expectations relating to the broadcast of montages. Specifically, any broadcaster that would devote more than 10% of its programming over the broadcast week to montages would have failed to meet the objectives of the regulatory framework and the intent of the policy on montages. As set out in that information bulletin, it is necessary to supervise the broadcast of montages on radio stations to ensure that licensees respect the objectives of the regulatory framework relating to French-language vocal music (FVM) and Canadian content. The Commission added that when examining a station’s musical programming, it looks at all components of that programming.

<sup>188</sup> *Springfield Capital Inc v Grande Prairie* (Subdivision and Development Appeal Board), 2016 ABCA 136 (CanLII), <http://canlii.ca/t/gr5kf>, at para. 29.

<sup>189</sup> S. 26(c).

<sup>190</sup> *New Broadcasting Act - Amendments to Classes of Licence*, [Public Notice CRTC 1991-63](#) (Ottawa, 19 June 1991).

<sup>191</sup> S. 41.3(1).

<sup>192</sup> S. 46.2.

<sup>193</sup> *Canadian Broadcast Standards Council*, Public Notice CRTC 1991-90 (Ottawa, 30 August 1991), <https://crtc.gc.ca/eng/archive/1991/pb91-90.htm>.

In 2013 the CRTC decided to consider a complaint about a radio station since the station was not part of the CBSC, implying that it tends not to address complaints about broadcasters that are part of the CBSC. *CIRR-FM Toronto – Licence renewal and complaint concerning explicit programming*, Broadcasting Decision CRTC 2013-458, (Ottawa, 29 August 2013), <https://crtc.gc.ca/eng/archive/2013/2013-458.htm>, footnote 1: “CIRR-FM is not a member of the CBSC and, as such, is not bound by the Code. For this reason, the complaint is being addressed by the Commission.”

<sup>194</sup> *Therrien (Re)*, [2001] 2 S.C.R. 3, 2001 SCC 35 (CanLII), at para 93: “It is settled law that a body to which a power is assigned under its enabling legislation must exercise that power itself and may not delegate it to one of

its members or to a minority of those members without the express or implicit authority of the legislation, in accordance with the maxim hallowed by long use in the courts, *delegatus non potest delegare*" [citation omitted].

Note, however, that in 2008 Evans J.A. of the Federal Court of Appeal held on behalf of the Court in *Law Society of Upper Canada v. Canada (Minister of Citizenship and Immigration)*, [2009] 2 FCR 466, 2008 FCA 243 (CanLII), <<http://canlii.ca/t/1zrrn>>, at para 74, that "... the presumption against subdelegation of a statutory power is no more than that, and it may be inferred from the statutory context and objects that subdelegation is impliedly authorized by the enabling provision"

<sup>195</sup> See e.g. *C.P.R. v. Robinson*, (1891) 19 S.C.R. 292, rev'd on other grounds [1892] A.C. 481.

<sup>196</sup> S. 3(1)(d)(iii).

<sup>197</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355.

<sup>204</sup> See e.g. *C.P.R. v. Robinson*, (1891) 19 S.C.R. 292, rev'd on other grounds [1892] A.C. 481.

<sup>205</sup> *ibid.*, at para. 24. <http://canlii.ca/t/1ptlg>

<sup>205</sup> *ibid.*, at para. 38.

[53] Unlike ATCO, in the case before us, the CRTC's rate-setting authority and its ability to establish deferral accounts for this purpose are at the very core of its competence. The CRTC is statutorily authorized to adopt any method of determining just and reasonable rates. Furthermore, it is required to consider the statutory objectives in the exercise of its authority, in contrast to the permissive, free-floating direction to consider the public interest that existed in ATCO.

<sup>206</sup> *Report*, (Ottawa: King's Printer, 1951), at 283.

<sup>207</sup> *Report*, (Ottawa: Queen's Printer, 1957), at 10.

<sup>208</sup> CRTC, *Policy Statement on Cable Television: Canadian Broadcasting, "A Single System"*, (Ottawa, 16 July 1971), at 36.

<sup>209</sup> *Bell Canada v. Bell Aliant Regional Communications*, [2009] 2 SCR 764, 2009 SCC 40 (CanLII), at para. 53.

<sup>210</sup> *ibid.*, at para. 38.

<sup>211</sup> *Bell Canada v. Canada (Attorney General)*, 2016 FCA 217 (CanLII), <<http://canlii.ca/t/gv122>>, at para 37; the FCA subsequently again upheld the CRTC's simsub policy once prematurity was resolved, in *Bell Canada v. Canada (Attorney General)*, 2017 FCA 249 (CanLII), <<http://canlii.ca/t/hpgf1>>

<sup>212</sup> 1977 CanLII 1042 (ON SC), per Keith J.

<sup>213</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 111.

<sup>214</sup> Government of Ireland, *Project Ireland 2040*, <https://www.gov.ie/en/campaigns/09022006-project-ireland-2040/>: "Project Ireland 2040 is the Government's overarching policy initiative to make Ireland a better country for all of us, a country that reflects the best of who we are and what we aspire to be... The objective of Project Ireland 2040 is to provide a comprehensive social, economic and cultural infrastructure for all our people to flourish, so that together we can create a better society."

<sup>215</sup> Once the Broadcasting and Telecommunications Legislative Review panel submits its report in January 2020, the federal government may decide to revise its communications legislation. If it does, and assuming the relevant House of Commons Standing Committees take 24 months to hear witnesses and consider the draft legislation, Parliament may enact new communications law in 2023.

<sup>216</sup> Employment and Social Development Canada, Economic Policy Directorate, *Canadian Occupational Projection System (COPS): Imbalances Between Labour Demand and Supply (2017-2026)*, (Date modified: 2017-10-03), <http://occupations.esdc.gc.ca/sppc-cops/l.3bd.2t.1ilshhtml@-eng.jsp?lid=16&fid=1&lang=en>.

<sup>217</sup> Although India may disagree.

218 Jennifer Brett, “Georgia tops California in feature film production, study finds” *Atlanta Buzz* (24 May 2017), <https://www.ajc.com/blog/buzz/georgia-tops-california-feature-film-production-study-finds/o8maHs7OAswfEFNAphmE2O/>.

219 *Ibid.*

220 *Ibid.*

221 See IMDB, “Marvel Studios Avengers Infinity War: Full cast and crew”, <https://www.imdb.com/title/tt4154756/fullcredits>.

222 The *Criminal Code*’s provisions apply to the Internet, for example.

223 *Brown v. Canada (Attorney General)*, 2018 ONSC 3429 (CanLII), at para. 17:

The parties’ best estimate is that 22,400 Indigenous children nation-wide were “scooped” from their homes and placed with non-Indigenous foster or adoptive parents over the applicable 40-year time-period. The best estimate of a take-up rate is that just under half of the eligible claimants – or about 10,000 claimants – will apply for compensation. If this take-up estimate proves correct, then each claimant will receive the maximum of \$50,000. If there are 15,000 claimants, the individual payment will fall to \$33,333. If there are 20,000 to 30,000 claimants, the individual payment will be \$25,000. Class counsel believe that the individual payment will most likely be in the range of \$25,000 to \$50,000

224 *Ibid.*, at para. 19.

225 *Ibid.*, at para. 20:

[20] On the Sixties Scoop Website, one finds an exchange that goes to the very heart of the matter. The key question is posed as follows: “What about \$25,000 - \$50,000? That doesn’t seem very much for someone who lost their cultural identity?” The answer, provided by lead class counsel Jeffery Wilson, was astute and unassailable: And while this settlement cannot give you back what you deserve or what you have lost, it can make a very big difference. It is symbolic and shows that cultural identity will now be something that courts have to consider, and measure in all cases from this point forward. Because of you, the law must now recognize that “saving the child” means keeping him or her with family, or extended family or her or his community. Loss of cultural identity is a collective loss. That means we have to consider the total of what we have achieved, and not simply the amount per claimant.

226 In 2016 Netflix objected to a shareholder proposal that it “issue a public report by October 1, 2016, ... describing how company management identifies, analyzes, and oversees reputational risk related to offensive and inaccurate portrayals of Native Americans, American Indians, and other Indigenous Peoples, how it mitigates those risks and how the company incorporates these risk assessment results into company policies and decision-making.”

Netflix argued that “these matters are more appropriately addressed by management and the board of directors as part of the day-to-day operations of a company.”

See, Netflix, *Re: Netflix, Inc. Stockholder Proposal Submitted by Calvert U.S. Large Cap Core Responsible Index Fund, Calvert VP S&P 500 Index Portfolio and Mercy Investment Services, Inc. Securities Exchange Act of 1934- Rule 14a-8*, (5 February 2016), at 16 of 41, <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/calvertmercy031416-14a8.pdf>. The US Securities and Exchange Commission apparently agreed (see page 2 of 41, 14 March 2016).

227 Jim Waterson, “Financial Times tool warns if articles quote too many men: Paper develops bot in attempt to force writers to look include more expert women in pieces”, *the Guardian* (14 November 2018 11:54 GMT).

228 Public Notice CRTC 1999-84, at para. 44:

In the Commission's view, there is no explicit or implicit statutory requirement that broadcasting involve scheduled or simultaneous transmissions of programs. The Commission notes that the legislator could have, but did not, expressly exclude on-demand programs from the Act. As noted by one party, the mere ability of an end-user to select content on-demand does not by itself remove such content from the definition of broadcasting. The Commission considers that programs that are transmitted to members of the public on-demand are transmitted “for reception by the public”.

229 *Ibid.*, at para. 45.

- <sup>230</sup> The Department of Marine and Fisheries (responsible beginning in 1922 for broadcasting) created a “private commercial broadcasting station licence”, an “amateur broadcasting station licence” and a “private receiving station licence”. Frank Foster, at 6.
- <sup>231</sup> Frank Foster, at 9. Though unidentified by Foster, this was at the time likely CKY-AM (which later closed and was re-born under a new licence held by the private sector).
- <sup>232</sup> *Ibid.*, at 31.
- <sup>233</sup> *Ibid.*, at 31.
- <sup>234</sup> Foster, at 31.
- <sup>235</sup> Ultimately resolved in 1932 in the *Radio Reference*.
- <sup>236</sup> Foster, at 46-47.
- <sup>237</sup> *Ibid.*, at 62-63.
- <sup>238</sup> Royal Commission on Broadcasting, *Report*, (Ottawa, 15 March 1957), Vol. 1, Chapter 1.
- <sup>239</sup> 7 Eliz. 2, c. 22.
- <sup>240</sup> S. 12.
- <sup>241</sup> Ss. 10-11.
- <sup>242</sup> Involving at one point the BBG’s hotly contested decision in 1962 to order the CBC to carry CTV’s Grey Cup program, because CBC could reach more Canadians than CTV. Foster, 196-205.
- <sup>243</sup> The Canadian Encyclopedia, “Roads and Highways”, <https://www.thecanadianencyclopedia.ca/en/article/roads-and-highways> (Accessed 2018-10-20).
- <sup>244</sup> *Ibid.*
- <sup>245</sup> David W. Monaghan, “Canada’s ‘New Main Street’: The Trans-Canada Highway as Idea and Reality, 1912-1956”, MA thesis (University of Ottawa: 1996), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 11-12.
- <sup>246</sup> The Canadian Encyclopedia, “Roads and Highways”, <https://www.thecanadianencyclopedia.ca/en/article/roads-and-highways> (Accessed 2018-10-20).
- <sup>247</sup> David W. Monaghan, “Canada’s ‘New Main Street’: The Trans-Canada Highway as Idea and Reality, 1912-1956”, MA thesis (University of Ottawa: 1996), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 2.
- <sup>248</sup> Michael Geist, “The CRTC’s fundamental mistake: It thinks it can regulate the internet”, *Globe and Mail* (7 June 2018, updated 8 June 2018), <https://www.theglobeandmail.com/business/commentary/article-the-crtcs-fundamental-mistake-broadcasting-is-the-internet-but-the/>.
- <sup>249</sup> CRTC, *Harnessing Change*.
- <sup>250</sup> *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, (Ottawa, 12 April 2002), <https://crtc.gc.ca/eng/archive/2002/db2002-84.htm>.
- <sup>251</sup> *Ibid.*, at paras. 7-8.
- <sup>252</sup> S.C. 2010, c. 12, ss. 1700-1709.
- <sup>253</sup> Pursuant to s. 11 of the *Canadian Radio-television and Telecommunications Commission*. The By-law itself is undated; its website page shows: Date modified: 2011-12-28.
- <sup>254</sup> By-Law 26(d): “a quorum for meetings of the Broadcasting Committee shall be any three members thereof and notice that such a meeting will be held shall be provided electronically at least two hours in advance”.
- <sup>255</sup> By-Law 9(b).
- <sup>256</sup> By-Law 9(d): “A quorum for meetings of the Telecommunications Committee shall be any three members thereof and notice that such a meeting will be held shall be provided electronically at least two hours in advance”.
- <sup>257</sup> *Call for comments – Proceeding to establish a mandatory code for internet services*, Telecom Notice of Consultation 2018-422 (Ottawa, 9 November 2018), [https://crtc.gc.ca/eng/archive/2018/2018-422.htm?\\_ga=2.8982262.2127987109.1545948403-18065054.1505399347](https://crtc.gc.ca/eng/archive/2018/2018-422.htm?_ga=2.8982262.2127987109.1545948403-18065054.1505399347).
- <sup>258</sup> S. 12(1).

<sup>259</sup> The United Nations has said that “good governance is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. Furthermore, it seeks to ensure that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive both to the present and future needs of society.”

UN Chronicle, “Global and National Leadership in Good Governance”, <https://unchronicle.un.org/article/global-and-national-leadership-good-governance>.

<sup>260</sup> S. 20(1).

<sup>261</sup> S. 20(1).

<sup>262</sup> S. 20(4).

<sup>263</sup> Debates, House of Commons, 1 June 1928 [Mr. Cardin’.

<sup>264</sup> The SCC pointed out in *Tremblay v. Quebec (Commission des affaires sociales)*, [1992] 1 SCR 952, 1992 CanLII 1135 (SCC), <http://canlii.ca/t/1fscv> that even if “by its very nature administrative law encompasses a wide variety of types of decision-making .... they should not ... create an apprehension of bias in the minds of litigants.”

<sup>265</sup> <http://frpc.net/who-decides-what-transparency-in-crtc-decision-making/>.

<sup>266</sup> An interpretation bulletin from the office of the Commissioner of Lobbying clarifies that “the threshold after which lobbying represents a significant part of one’s duties has been established at 20% or more of overall duties”, meaning that persons who do not meet this threshold need not register and need not report their meetings.

The Commissioner of Lobbying also explains that some lobbying activities need not be registered:

...

- Volunteers are not required to register as they are not paid to communicate with public office holders.
- Citizens may communicate with government officials on their own behalf without being required to register.
- Certain communications with public office holders, such as a request for information, the interpretation of a Canadian law, and an oral or a written submission to a parliamentary committee, do not require a registration.
- Certain individuals, such as members of other levels of government, members of an aboriginal government or band council, and diplomatic officials, are exempted from registration.

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/00403.html>

<sup>267</sup> At \$4 million/year, the GST would be \$520,000 – an amount that today is significant.

<sup>268</sup> ML Auer, “CRTC’s enforcement of Canada’s broadcasting legislation : “Concern”, “Serious Concern”, and “Grave Concern”, *Canadian Journal of Law and Technology*, Vol. 5 No. 3, (November 2006), <https://ojs.library.dal.ca/CJLT/article/view/6051/5378> pg. 115-151, at 123 – 125.

<sup>269</sup> Cases involving telecommunications breaches include *Bell Expressvu v. Rex et al*, 2000 BCCA 493 (CanLII), <<http://canlii.ca/t/1fnhv>>, retrieved on 2019-01-09.

<sup>270</sup> *Dish Network L.L.C. v. Rex*, 2011 BCSC 1105 (CanLII), <http://canlii.ca/t/fmmln>, at para. 126.

<sup>271</sup> Order in Council P.C. 2000-1053, 26 June 2000:

Order requiring the CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION to report to the Governor in Council, once a year for the next five years, on the status of competition in Canadian telecommunications markets and on the deployment and accessibility of advanced telecommunications infrastructure and services in urban and rural areas in all regions of Canada, and to submit its first report no later than September 28, 2001.

<sup>272</sup> CRTC, *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets – Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, (Ottawa, November 2003) at ii: “By the end of 2002, more Canadian households had Internet subscriptions (51%) than those that did not.”

- <sup>273</sup> Message for CRTC via Twitter (21 December 2018, 11:09 AM):  
Replying to @FRPC\_FRPC  
Hi! Unfortunately, there are no tables of content in the PDFs, but rather bookmarks. You may also want to see open data for complete data sets.
- <sup>274</sup> Reference Number: C-2016-2017-Q3-00020, Procurement Identification Number: 17-0188, Contract Date: 2016-11-07, Contract Period Start Date: 2016-11-07, Contract Period End Date or Delivery Date: 2017-08-31, Contract Value: \$10,000.50, Organization: Canadian Radio-television and Telecommunications Commission.
- <sup>275</sup> Statistics Canada, *Births, 1999*, Cat. No. 84F0210XPB (May 2002), at vi.
- <sup>276</sup> R.S.C. 1970, c. N-17.
- <sup>277</sup> *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4, (Ottawa, May 1978). [Note: CRTC notices and decisions are available from its website from 1984 on.]
- <sup>278</sup> *Reconsideration of licence renewal decisions for the television services of large English-language private ownership groups*, Broadcasting Decision CRTC 2018-335 (Ottawa, 30 August 2018), <https://crtc.gc.ca/eng/archive/2018/2018-335.htm>, at para. 18.
- <sup>279</sup> *Brown v. Canada (Attorney General)*, 2017 ONSC 251 (CanLII), <<http://canlii.ca/t/gxgqw>>, retrieved on 2019-01-01, at paras. 41-42.
- <sup>280</sup> *Exemption Order for Digital Media Broadcasting Undertakings*, Appendix to Broadcasting Order CRTC 2012-409 (Ottawa, 26 July 2012), amending *Amended Exemption order for new media broadcasting undertakings* (Appendix A to *Exemption order for new media broadcasting undertakings*, Public Notice CRTC 1999-197, 17 December 1999), <https://crtc.gc.ca/eng/archive/2009/2009-660.htm>.
- <sup>281</sup> *Dish Network L.L.C. v. Rex*, 2011 BCSC 1105 (CanLII), <http://canlii.ca/t/fmmln>.
- <sup>282</sup> “Except where otherwise provided, the Commission shall hold a public hearing in connection with (a) the issuance of a licence, other than a licence to carry on a temporary network operation.” Networks exists “where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person;” (s. 2).
- One might speculate whether control over all of the programs or the program schedules of online programming services is held by ISPs, that are able to block users’ access to the programs. If so, the CRTC would not need to hold a hearing to issue licences to online programming services; it could instead issue temporary network licences naming ISPs and online programming services as part of the network(s).
- <sup>283</sup> To avoid breaching this rule on a technicality – there may be no application to approve in whole or in part – the CRTC may have to amend its *Rules* for this proceeding.
- <sup>284</sup> Frank Foster, at 240.
- <sup>285</sup> CRTC, *On the Licensing of Cable Television Systems*, Public Announcement (Ottawa, 10 July 1969), at 2; the CRTC did not necessarily permit Department of Transport licensees to retain their licences (*ibid.*).

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## Appendix 1 Noteworthy events in communications

Year	Events in communications
3000 BCE	Papyrus begins to be used as writing paper in Egypt <sup>1</sup> ; state has monopoly on its manufacture <sup>2</sup>
2500 BCE	In Bablylon, the <i>Code of Hammurabi</i> is published on clay tablets: Law 3 dealt with false reports If anyone bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offence charged, be put to death' Law 127 dealt with slander: If anyone point the finger (Slander) at a sister of a god or the wife of anyone and cannot prove it, this man shall be taken before the judges and his brow shall be marked (by cutting the skin, or perhaps hair). <sup>3</sup>
	Egypt operates a courier system <sup>4</sup> for government use only; <sup>5</sup> Assyrian merchants send a half-dozen or more clay tablets incised with cuneiform characters between towns using foot couriers; the tablets representing orders, credits and bills for goods, are “signed” with cylinder seals and are sometimes baked inside clay envelopes for security <sup>6</sup>
669 BCE	King Ashurbanipal establishes library in Assyria and censors its contents <sup>7</sup>
537 BCE	Cyrus the Great of Persia rules his empire in part through a spy system known as the “King’s Eye” that reported on each of his twenty governors <sup>8</sup> ; it used a system of horse-mounted relay messengers to deliver mail and dispatches <sup>9</sup> ; messages moved 2575 km from Susa to Sardis, in one week; <sup>10</sup> Greeks envy Persia’s well-developed road networks, because they facilitate policing and communications <sup>11</sup>
508 BCE	When Athenian democracy is created, one of its slogans is <i>isegoria</i> – equality of speech – the concept that every citizen had the right to speak in court and have his opinion heard <sup>12</sup>

<sup>1</sup> B.C. McGing, “News and Information in the Papyri from Greco-Roman Egypt” in Hiram Morgan, ed., *Information, Media and Power Through the ages* (Dublin: University College Dublin Press, 2001) 29 at 30.

<sup>2</sup> “Global Networking Timeline”, *supra* note 1.

<sup>3</sup> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALLAW/>

<sup>4</sup> *Ibid.*

<sup>5</sup> “Global Networking Timeline”, *supra* note 1.

<sup>6</sup> <http://www.nalc.org/news/precord/0101-mailmillennia1.html>

<sup>7</sup> “Ashurbanipal, the First Librarian” <<http://web.utk.edu/~jdavis41/ashurbanipal.html>>

<sup>8</sup> <<http://www.worldhistory1a.homestead.com/PERSIA.html>>:

“Cyrus now led the greatest empire the world had ever known, and to administer such a vast holding required new methods of government. The empire was divided into twenty districts, and each was placed under the supervision of a Satrap, a Persian word meaning “Protector of the Country.” These Satraps occasionally sought to ‘stretch their wings,’ so Cyrus devised a system to keep them under control. The secretary, financial officer, and military officer in each satrapy was accountable directly to Cyrus rather than the Satrap, providing a system of checks on the administrators. Additionally, Cyrus had a spy network, called the king’s eye or the king’s ear, that made a yearly inspection of each province then reported directly back to the king.”

<sup>9</sup> <http://www.lookd.com/postal/history.html>

<sup>10</sup> “The Communication of Information” online: Google cache <<http://www.google.ca/search?q=cache:UVRyGSfKgOoC:ntserver2.newtown.tased.edu.au/computingweb/resources/history/communic.htm+%2Bhistory+%2B%22company+of+venetian+couriers%22&hl=en&ie=UTF-8>>

<sup>11</sup> Sian Lewis, “Tyrants, spies and the general’s dilemma: the ideology of information in the Greek polis” in Hiram Morgan, ed., *Information, Media and Power Through the ages* (Dublin: University College Dublin Press, 2001) 13 at 15.

<sup>12</sup> Sian Lewis, “Tyrants, spies and the general’s dilemma: the ideology of information in the Greek polis” in Hiram Morgan, ed., *Information, Media and Power Through the ages* (Dublin: University College Dublin Press, 2001) 13 at 16.

Year	Events in communications
443 BCE	Roman Republic creates the office of Censor, to collect statistics <sup>13</sup> ; initially established to register citizens and their property for taxation purposes, the Censors eventually also took on the authority to punish those who committed moral offences by removing voting rights and tribal membership <sup>14</sup>
400 BCE	Athenian philosopher Protagoras' books are burned when he is charged with blasphemy <sup>15</sup>
340 BCE	Aristotle calls for the censorship of a new style of popular music in Athens because its uncontrolled rhythms excite people's emotions <sup>16</sup>
213 BCE	Ch'in Emperor Shihuang of China orders all books destroyed <sup>17</sup> ; 500 scholars are executed, thousands more are exiled <sup>18</sup>
59 BCE	Julius Caesar orders the <i>Acta Diurna</i> to be posted <sup>19</sup> , described as the first daily newspaper; <sup>20</sup> he uses military couriers known as speculators to deliver intelligence and spy along a rapid message and information transport system <sup>21</sup> ; his government postal service uses horse-drawn carts; <sup>22</sup> in <i>Bellum Gallicum</i> [according to Google translate – <i>French war</i> ] Caesar describes the use of calling posts to communicate; news is announced by loud calls across the fields and plains and can be delivered over 150 miles within twelve hours <sup>23</sup>
50 BCE	Titus Pomonius Atticus begins manufacturing books by using slaves to copy them <sup>24</sup>
8 CE	Popular Roman poet Ovid is banished from Rome to Tomi, near the mouth of the Danube <sup>25</sup> , after he publishes <i>Ars Amatoria</i> (although he writes, "two crimes, a poem and a blunder have brought me to ruin. I must keep silent.") <sup>26</sup> ; <i>Ars Amatoria</i> ("The Art of Love") is described as a "[b]rilliant treatise on the art of seduction and intrigue" and was apparently critical of Emperor August's official policy of moral reforms <sup>27</sup>
100	Roman couriers carry government mail across the nation <sup>28</sup> ; the system is reserved for use by those who have official permits <sup>29</sup> and is known as the <i>cursus publicus</i> , consisting of a state-sponsored series of post roads with relay stations set up at intervals; riders covered 170 miles in 24 hours <sup>30</sup> (~ 7 mph)

<sup>13</sup> Kyla Ward, "Timeline of Censorship" <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>>

<sup>14</sup> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALAW/>

<sup>15</sup> "History and Definitions of Censorship", <http://www.wam.umed.edu/~gjbush/history.html>

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALAW/>

<sup>19</sup> *Ibid.*

<sup>20</sup> <http://www.newspaper-industry.org/history.html>

<sup>21</sup> "Toga and Dagger: Espionage in Ancient Rome", <<http://ancienthistory.about.com/library/prm/bltogaanddagger3.htm>>

<sup>22</sup> "Global Networking Timeline", *supra* note 1.

<sup>23</sup> "Watchmen and Stentors", [http://vvv.it.kth.se/docs/early\\_net/ch-2-1.4.html](http://vvv.it.kth.se/docs/early_net/ch-2-1.4.html)

<sup>24</sup> "Global Networking Timeline", *supra* note 1.

<sup>25</sup> "Ovid's 'Ars Amatoria' (The Art of Love), 'Elegies'", <<http://www.cd.sc.edu.es/FileRoom/documents/Cases/104arsAmatoria.html>>

<sup>26</sup> Kyla Ward, "Timeline of Censorship" <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>>

<sup>27</sup> "Ovid's 'Ars Amatoria' (The Art of Love), 'Elegies'", <<http://www.cd.sc.edu.es/FileRoom/documents/Cases/104arsAmatoria.html>>

<sup>28</sup> The Media History Project, "1<sup>st</sup>-11<sup>th</sup> Centuries", <<http://www.mediahistory.umn.edu/time/1099.html>>

<sup>29</sup> Bath Postal Museum, "Roman Postal System" <<http://www.bathpostalmuseum.org/Museum/2Roman/2roman.html>>

<sup>30</sup> "Postal Services History" <<http://www.lookd.com/postal/history/html>>

Year	Events in communications
	Multi-leaved tablets of parchment begin to replace the continuous rolls of papyrus formerly used for text <sup>31</sup>
325	First banning of a book by a Christian Church: Council of Nicaea formally condemns the <i>Thalia</i> by Arius <sup>32</sup>
333	Roman emperor Constantine the Great orders burning of all books by Greek theologian Arius <sup>33</sup>
364	In Rome, the law distinguishes between written and spoken defamation; spoken defamation receives less serious penalties (paying damages, public confessions of lying [by walking about the city holding one's nose between one's fingers]) <sup>34</sup>
438	In Rome, Emperor Theodosius II orders the codification of Roman defamation law ( <i>Quatuor Constitutiones Constantini de Famosis Libellis</i> ) which becomes the foundation of western defamation law; by 450 the punishment for defamation is death <sup>35</sup>
450	In China, ink on seals is stamped paper: printing begins <sup>36</sup>
496	Pope Gelasius issues the first catalog of forbidden books <sup>37</sup>
1048	Chinese commoner Pi Sheng manufactures movable type using clay <sup>38</sup>
1086	Life in England is documented in the <i>Domesday Book</i> , first English census <sup>39</sup>
1216	During the reign of King Henry III, the offences of <i>convicium</i> and <i>carmen famosum</i> become actionable – <i>convicium</i> consists of using abusive language to another person or crowd or “inciting a crowd to mob or lay siege to a house”; <i>carmen famosum</i> consists of attacking the reputation of the ruling elite <sup>40</sup> ; the penalty was apparently a fine or imprisonment, depending on the severity of the individual offence <sup>41</sup>
1241	Metal type is used to print in China <sup>42</sup>
1300	Fourteenth century royal edicts from the French government were quickly reproduced and distributed a ‘chain letter’ technique: ten scribes at court each produced ten copies, some of which were couriered to provincial centers where other scribes did the same thing <sup>43</sup>
1400	Throughout the 15 <sup>th</sup> Century some 10,000 scribes are employed around Paris and Orleans to copy text <sup>44</sup>
1403	Movable type is produced in Korea’s royal type foundry <sup>45</sup> ; King Tha-tjong proclaims,

<sup>31</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 1.

<sup>32</sup> <http://www.lumenverum.com/apologetics/forbidden.htm>

<sup>33</sup> “History and Definitions of Censorship”, <http://www.wam.umed.edu/~gjbush/history.html>

<sup>34</sup> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALLAW/>

<sup>35</sup> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALLAW/>

<sup>36</sup> “Timeline of History of Communications Technologies”

<http://www.labyrinth.net.au/~sault/history/commun.html>

<sup>37</sup> “History and Definitions of Censorship”, <http://www.wam.umed.edu/~gjbush/history.html>

<sup>38</sup> The Media History Project, “1<sup>st</sup>-11<sup>th</sup> Centuries”, <<http://www.mediahistory.umn.edu/time/1099.html>>

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

<sup>40</sup> <http://www.ma-radio.gold.ac.uk/HISTORYOFMEDIALLAW/>

<sup>41</sup> <http://supct.law.cornell.edu/bracton/Unframed/English/v2/438.htm#FN12SRC>

<sup>42</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 4.

<sup>43</sup> Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change*, Volume 1 (Cambridge: Cambridge University Press, 1979) at 46.

<sup>44</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 4.

<sup>45</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 8.

Year	Events in communications
	"[i]t is our will and law that type shall be produced from copper and that various books be printed, so that in this way knowledge may be more widely disseminated for the countless needs of all." <sup>46</sup>
1450	Johann Gensfleisch zum Gutenberg develops the first moveable type printing press in Europe, in Mainz <sup>47</sup>
1460	Between 1460 and 1500 some forty printing presses are established in Rome; <sup>48</sup> After the Swedes capture and sack Mainz, those employed in the printing industry disperse into other parts of Germany <sup>49</sup> and spread knowledge of printing
1467	Pope Innocent VIII decrees that all books related to Christian doctrine be submitted to local Church authorities for approval before publication; the licence to publish was to be printed at the beginning of each book <sup>50</sup>
1476	William Caxton introduces the printing press to England <sup>51</sup> , in Westminster Abbey <sup>52</sup>
1486	Germany's first secular censorship office is established in Mainz <sup>53</sup> ; a special committee examines all works before they are printed and sold <sup>54</sup>
1487	Pope Innocent VIII <sup>55</sup> introduces pre-publication censorship <sup>56</sup>
1490	Emperor Frederick III of the Habsburg Empire gives Franz von Thurn und Taxis a mail monopoly to serve the empire <sup>57</sup> ; the monopoly lasts from 1512-1867 <sup>58</sup>
1497	Savonarola burns a variety of books because they are erotic, impious and tending to corrupt, including <i>Ars Amatoria</i> [see 8 CE] <sup>59</sup>
1498	A King's Printer is appointed – England's first printing monopoly <sup>60</sup>
1516	Henry VIII of England appoints a master of posts to maintain regular mail service along roads leading from London <sup>61</sup> ; until then, relaying messages by horse and courier took place only during crises <sup>62</sup>
1528	Henry VIII issues proclamation limiting the number of foreigners employed in the printing industry <sup>63</sup>

<sup>46</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 4.

<sup>47</sup> "Chronology" <http://apm.brookes.ac.uk/publishing/contexts/impact/chronol.htm>

<sup>48</sup> Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change*, Volume 1 (Cambridge: Cambridge University Press, 1979) at 398.

<sup>49</sup> David Pottinger, *Printers and Printing*, (Books for Libraries Press: Freeport, New York, 1941) at 15.

<sup>50</sup> <http://www.lumenverum.com/apologetics/forbidden.htm>

<sup>51</sup> "Britain's Regional Press – A Brief History" <http://www.newspapersoc.org.uk/facts-figures/history.html>

<sup>52</sup> "Chronology" <http://apm.brookes.ac.uk/publishing/contexts/impact/chronol.htm>

<sup>53</sup> "Trying to shut out the light by banning books", <http://www.freedomforum.org/templates/document.asp?documentID=3628>

<sup>54</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 59.

<sup>55</sup> "History and Definitions of Censorship", <http://www.wam.umed.edu/~gjbush/history.html>

<sup>56</sup> "History of Censorship" <http://mingo.info-science.uiowa.edu/mccarthy/infpol02historycensorshipclassnotes.html>

<sup>57</sup> <http://www.eurohistory.com/thurn.html>

<sup>58</sup> <http://www.lookd.com/postal/history.html>

<sup>59</sup> "Ovid's 'Ars Amatoria' (The Art of Love), 'Elegies'", <http://www.cd.sc.edu/FileRoom/documents/Cases/104arsAmatoria.html>

<sup>60</sup> "Chronology" <http://apm.brookes.ac.uk/publishing/contexts/impact/chronol.htm>

<sup>61</sup> <http://www.lookd.com/postal/history.html>

<sup>62</sup> [http://www.biffvernon.freerve.co.uk/the\\_post.htm](http://www.biffvernon.freerve.co.uk/the_post.htm)

<sup>63</sup> "Chronology" <http://apm.brookes.ac.uk/publishing/contexts/impact/chronol.htm>

Year	Events in communications
1533	King Henry VIII orders the Archbishop of Canterbury to grant him a divorce so that he could marry Anne Boleyn <sup>64</sup> ; the King imposes fines for selling books imported from abroad, so as to support the domestic bookbinding industry <sup>65</sup>
1534	An English act for <i>Prynthers and Binders of Bokes</i> restricts printing to English subjects, and strictly controls imports by foreigners <sup>66</sup> ; Henry VIII's licensing system resembles the prepublication censorship of Pope Innocent VIII <sup>67</sup>
1538	On 17 December Pope excommunicates Henry VIII, <sup>68</sup> All books in England must be approved by the Privy Council before publication <sup>69</sup>
1539	In Lyon, printers strike against long hours, poor conditions and excessive profits by their employers <sup>70</sup>
1543	In the UK legislation prohibits the use of Tyndale's <i>Bible</i> in English, or any other annotated <i>Bible</i> ; and forbade unlicensed people to read or explain the Bible to others in public <sup>71</sup>
1546	On 3 August, French printer Etienne Dolet is hanged and burned at the stake after being charged with heresy, blasphemy and sedition when he printed reformist literature <sup>72</sup> ; this leads other French printers to flee the country to the Netherlands <sup>73</sup>
1549	Edward VI grants privilege to John Oswen of Worcester to print all books to be used in churches for seven years <sup>74</sup>
1551	England's King proclaims that "no man is to spread any rumour of speak of the King or his Council on pain of punishment .... No printer to print or sell any matter in English or to import any English book printed abroad without a licence by the King or six of his Privy Council on pain of imprisonment and fine." <sup>75</sup>
1554	Several people are jailed for having and selling books imported from preachers living in Germany; legislation is enacted against printing anything against the King or Queen; the penalty for the first offence was having one's right hand severed; for the next offence, loss of property and imprisonment for life <sup>76</sup>
1555	On 6 June a Proclamation is issued that those in possession of "wicked and seditious books .... shall without delaye be executed for that offence according to the order of martiall law" <sup>77</sup>

<sup>64</sup> "Henry VIII and the English Reformation" <http://www.historylearningsite.co.uk/reformation.htm>

<sup>65</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 85.

<sup>66</sup> Caroline Davis, "Chronology" <http://apm.brookes.ac.uk/publishing/contexts/impact/chronol.htm>

<sup>67</sup> "History and Definitions of Censorship", <http://www.wam.umed.edu/~gjbush/history.html>

<sup>68</sup> <http://www.spartacus.schoolnet.co.uk/TUDhenry8.htm>

<sup>69</sup> "Chronology" <http://apm.brookes.ac.uk/publishing/contexts/impact/chronol.htm>

<sup>70</sup> *Ibid.*

<sup>71</sup> Elizabeth L. Eisenstein, *The Printing Revolution in Early Modern Europe*, (Cambridge: Cambridge University Press, 1983) at 159.

<sup>72</sup> [http://timelines.ws/countries/FRANCE00\\_1649.HTML](http://timelines.ws/countries/FRANCE00_1649.HTML)

<sup>73</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 5.

<sup>74</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 90.

<sup>75</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 91.

<sup>76</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 92.

<sup>77</sup> W. Turner Berry and H. Edmund Poole, *Annals of Printing: A chronological encyclopaedia from the earliest times to 1950*, (Blandford Press: London, 1966) at 92.

Year	Events in communications
1559	Elizabeth 1 establishes a Royal Licensing system that requires all works to be submitted to the Queen, the Queen’s Council or ecclesiastical commissioners of London, before publication <sup>78</sup> ; Elizabeth 1 grants printing monopolies for specific types of books (Richard Tottel is granted a life-time monopoly to print law books) <sup>79</sup>
1584	William Carter is convicted of high treason and is hanged, disembowelled and quartered, after printing a book, <i>A treatise of schisme</i> <sup>80</sup>
1586	Following requests from licensed monopoly printers <sup>81</sup> , all printed material in England is subject to the Star Chamber’s jurisdiction; presses are only allowed in London, Oxford and Cambridge <sup>82</sup> and books may be printed only if they are licensed by the proper civil or ecclesiastical authorities <sup>83</sup> ; the Stationers’ Company may search for unlicensed and unlawful books <sup>84</sup>
1633	A black market in Galileo’s <i>Dialogue</i> begins when “[p]riests, monks, prelates even, vie with each other in buying up copies .... The black market price of the book rises from the original half-scudo to four and six scudi [almost a hundred dollars in {1983} American money] all over Italy” <sup>85</sup>
1635	In July a Royal Proclamation announces that Britain’s Royal Posts are open to the public, although the public has been using the postal system for some time <sup>86</sup> ; mail is regularly delivered on Thursdays <sup>87</sup> ; the “Running-Post” is an official state monopoly; the penalty for using other messenger services was the displeasure of the King (imprisonment or execution) <sup>88</sup> ; armed force discourages private postal deliveries; <sup>89</sup> the government has already claimed the right to read and censor all international mail <sup>90</sup>
1649	On the eve of executing Charles I, Cromwell suppresses publication of all newsbooks <sup>91</sup>
1667	In Paris the office of the General Lieutenant of Police is established, to take charge of security, supervise customs and censor books <sup>92</sup>
1671	Sir William Berkley, the royal governor of Virginia, provides an assessment on the statement of his government to the Lords Commissioner of Foreign Plantations, and writes, “I thank God there are no free schools nor printing and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy and sects into the world, and printing has divulged them, ... God keep us from both!” <sup>93</sup>

<sup>78</sup> “Mechanisms of Censorship”, <http://apm.brookes.ac.uk/publishing/contexts/elizabet/mechanis.htm#1>

<sup>79</sup> <http://www.bartleby.com/214/1803.html>

<sup>80</sup> <http://www.bartleby.com/214/1803.html>

<sup>81</sup> *Ibid.*

<sup>82</sup> “Evolution of Technology” <http://www.electric-words.com/time/timetech1400to1700.html>

<sup>83</sup> “Mechanisms of Censorship”, <http://apm.brookes.ac.uk/publishing/contexts/elizabet/mechanis.htm#1>

<sup>84</sup> *Ibid.*

<sup>85</sup> Elizabeth L. Eisenstein, *The Printing Revolution in Early Modern Europe*, (Cambridge: Cambridge University Press, 1983) at 249.

<sup>86</sup> <http://www.civilization.ca/cpm/chrono/chs1506e.html>

<sup>87</sup> “Evolution of Technology” <http://www.electric-words.com/time/timetech1400to1700.html>

<sup>88</sup> <http://homepages.ihug.co.nz/~awoodley/Letter.html>

<sup>89</sup> <http://www.nalc.org/news/precord/0101-mailmillennia1.html>

<sup>90</sup> *Ibid.*

<sup>91</sup> <http://www.newspapersoc.org.uk/facts-figures/history.html>

<sup>92</sup> Kyla Ward, “Timeline of Censorship” <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>>

<sup>93</sup> Lawrence C. Wroth, *A History of Printing in Colonial Maryland, 1686-1776*, (Tupothetae of Baltimore: Baltimore, 1922) at 1.

Year	Events in communications
1683	The <i>Mechanick Exercises</i> , a do-it-yourself guide to building and running a printing press, is published; Mark Twain and Benjamin Franklin teach themselves how to print; <sup>94</sup> the British Crown instructs Lord Francis Howard, governor of Virginia, that ... whereas We have taken notice of the inconvenience that may arise by the Liberty of Printing in that Our Colony, you are to provide by all necessary orders and Directions that no person be permitted to use any press for printing upon any occasion whatsoever. <sup>95</sup>
1710	The <i>Revenue Act</i> introduces a tax on printed matter <sup>96</sup>
1711	The British Parliament reorganizes the nation's post office in <i>An Act for Establishing a General Post Office for All Her Majesty's Dominions</i> , 9 Anne (1710), c. 10, and gives the new post office a monopoly to handle mail, as well as fixed rates including, for the first time, postal rates for mail between London and North America <sup>97</sup>
1712	To finance the Seven Years' War, the British government is paying high rates of interest on money borrowed from the Dutch, merchant bankers, private companies and the Bank of England <sup>98</sup> ; the first <i>Stamp Act</i> is enacted in England <sup>99</sup> and imposes a tax on any printed material in England and its colonies (in 1743 selling 'unstamped' newspapers become a criminal offence <sup>100</sup> )
1721	In January Sieur Nicolas Lanouillier is granted a monopoly to establish a postal system between Montreal and Quebec <sup>101</sup>
1738	All Parliamentary reporting is suppressed in England <sup>102</sup>
1751	First printing press brought to Halifax, Canada <sup>103</sup>
1753	Concept of electric telegraph proposed in <i>Scots' Magazine</i> <sup>104</sup>
1760	The Commander-in-Chief of British forces in Canada sets rates for mail delivery between Quebec and Montreal <sup>105</sup>
1762	Charles II confers full power over domestic presses in Scotland to Royal printer Andrew Anderson <sup>106</sup>
1763	After the Treaty of Paris is signed, ceding Canada to Great Britain, British Deputy Postmasters in the British American Colonies (Benjamin Franklin and John Foxcroft) appoint the first Postmaster of Quebec on 10 June <sup>107</sup>
1765	The <i>Stamp Act</i> is passed on 22 March, and requires British colonists to pay a tax on each piece of printed paper used; <sup>108</sup> in 1766 "authorities" transfer ownership of the <i>Halifax Gazette</i> when the previous publisher prints the paper on unstamped paper. <sup>109</sup>

<sup>94</sup> Elizabeth L. Eisenstein, *The Printing Revolution in Early Modern Europe*, (Cambridge: Cambridge University Press, 1983) at 101.

<sup>95</sup> Lawrence C. Wroth, *A History of Printing in Colonial Maryland, 1686-1776*, (Typhothetae of Baltimore: Baltimore, 1922) at 2.

<sup>96</sup> <http://apm.brookes.ac.uk/publishing/contexts/18thcent/freedom.htm>

<sup>97</sup> <http://www.civilization.ca/cpm/chrono/chs1506e.html>

<sup>98</sup> <http://65.107.211.206/history/pms/grenville.html>

<sup>99</sup> <http://www.newspapersoc.org.uk/facts-figures/history.html>

<sup>100</sup> Caroline Davis, <http://apm.brookes.ac.uk/publishing/contexts/18thcent/freedom.htm>

<sup>101</sup> <http://www.civilization.ca/cpm/chrono/chs1506e.html>

<sup>102</sup> <http://www.georgianindex.net/publications/newspapers/news-dates.html>

<sup>103</sup> "Herbert Jefferie: first printer in Canada?" online: National Library of Canada <<http://www.nlc-bnc.ca/halifaxgazette/h28-2002-e.html>>

<sup>104</sup> *Spirit of the Web*, *supra* note 2. "Some Milestones in Communications Technology" and at 60.

<sup>105</sup> <http://www.civilization.ca/cpm/chrono/chs1760e.html>

<sup>106</sup> <http://www.svtc.org.uk/resources/history/parliament/workshop3.html>

<sup>107</sup> <http://www.civilization.ca/cpm/chrono/chs1760e.html>

<sup>108</sup> <http://www.virtualology.com/virtualmuseumofhistory/hallofusa/thestampact/>

<sup>109</sup> <http://www.littletechshoppe.com/ns1625/news01.html>

Year	Events in communications
1788	A single Deputy Postmaster General of the Province of Canada, Nova Scotia and New Brunswick is appointed, to coordinate mail service among the provinces <sup>110</sup>
1789	Crowds in France attack the Bastille, where over 800 authors, printers and book dealers had been incarcerated in previous years <sup>111</sup>
1791	U.S. Congress passes 1 <sup>st</sup> Amendment: it shall make no laws that abridge the exercise of freedom of speech or freedom of the press <sup>112</sup>
1793	Claude Chappe conducts the first experiment of visual telegraphy, a mechanical system that used two semaphore arms moved with ropes and pulleys, for long-distance communications; when messages are passed successfully in both directions, the device is “hailed as miraculous”, <sup>113</sup> Messages using the semaphore telegraph apparently took 20 minutes to cover 525 miles <sup>114</sup> (1575 miles/hour)
1794	In Canada, the commander-in-chief of Nova Scotia, Prince Edward (Victoria’s father), organises “a system of flags, wickerwork balls and drums for signalling by day, and lanterns by night. Telegraph posts were built near Chebucto Head, at York Redoubt and on Citadel Hill in Halifax, and at the Naval Dockyard”, as well as behind the house of his mistress <sup>115</sup>
1798	The U.S. Federal government passes the <i>Sedition Act</i> , making it a criminal offence to “write, print, utter or publish ... any false, scandalous, and malicious” statements against the government, Congress or president of the United States; several newspaper editors and owners are arrested under the legislation <sup>116</sup>
1799	British government passes the <i>Seditious Societies Act</i> that requires registration of all presses and printing types <sup>117</sup> The visual telegraph is installed from Annapolis Valley through to Quebec City <sup>118</sup>
1814	Britain and U.S. have been at war since 1812; Over 2,000 soldiers die in the Battle of New Orleans; unbeknownst to their officers, a treaty had been signed between the US and the UK two weeks earlier <sup>119</sup>
1825	In the United States, lawyer Jonathan Grout establishes the country’s first visual telegraph to carry news of arriving ships <sup>120</sup>
1830	Baron Schilling develops a working electromagnetic telegraph in St. Petersburg and demonstrates it to Czar Nicholas; the Czar forbids “any mention of the device in the Russian press or scientific literature for the duration of his reign ....” <sup>121</sup>
1835	A professor of arts and design at NYU, Samuel Morse, proves that signals can be transmitted by wire, using pulses of current to deflect an electromagnet that moves a marker and produces written codes on a strip of paper <sup>122</sup>

<sup>110</sup> <http://www.civilization.ca/cpm/chrono/chs1760e.html>

<sup>111</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 5.

<sup>112</sup> “History of Censorship” <http://mingo.info-science.uiowa.edu/mccarthy/infpol02historycensorshipclassnotes.html>

<sup>113</sup> *Spirit of the Web*, *supra* note 2. at 42-43.

<sup>114</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 24.

<sup>115</sup> *Ibid.* at 46.

<sup>116</sup> <http://www.freedomforum.org/templates/document.asp?documentID=15746>

<sup>117</sup> <http://apm.brookes.ac.uk/publishing/contexts/18thcent/freedom.htm>

<sup>118</sup> *Spirit of the Web*, *supra* note 2. at 47.

<sup>119</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 35.

<sup>120</sup> *Ibid.* at 47.

<sup>121</sup> *Spirit of the Web*, *supra* note 2. at 61.

<sup>122</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>



Year	Events in communications
1837	U.S. House of Representatives asks the Secretary of the Treasury to report on establishing a system of telegraphs for the U.S.; <sup>123</sup> a five-needle telegraph is patented in England; <sup>124</sup> the French government enacts legislation to establish a government monopoly in long-distance communications systems <sup>125</sup>
1838	The U.S. Congress declares that railway lines are postal routes and must carry the mail wherever necessary or possible <sup>126</sup>
1841	The Province of Canada is created by re-uniting Upper and Lower Canada, through <i>An Act to Re-unite the Provinces of Upper and Lower Canada and for the Government of Canada</i> , Grt. Brit. 3 & 4 Vic (1840), c.35 <sup>127</sup>
1842	U.S. Congress allocates \$30,000 to build an experimental telegraph line over the 40 miles from Washington to Baltimore <sup>128</sup>
1843	Facsimile transmission is invented by Alexander Bain, a Scots physicist <sup>129</sup>
1844	On 24 May Samuel Morse officially <sup>130</sup> sends his first public message over a telegraph line between Washington and Baltimore <sup>131</sup> : "What hath God wrought?"; <sup>132</sup> telegraphs carry messages 300,000 km/second; <sup>133</sup> the New York <i>Herald</i> writes that the telegraph "is not only an era in the transmission of intelligence, but it has originated in the mind ... a new species of consciousness" <sup>134</sup>
1846	The first telegraph company in Canada begins operations (Toronto, Hamilton & Niagara Electric Telegraph Co.) <sup>135</sup>
1848	Nova Scotia legislature passes <i>Electric Telegraph Act</i> ; s. 24: "It shall not be lawful for any person, body politic, corporate, community or company whatsoever, directly or indirectly, to make and complete any electric telegraphs, stations and appurtenances in any part of this province, unless by the previous sanction, and under the authority, of the legislature of this province." <sup>136</sup>
1849	Beginning in January continuous telegraph service is available from Saint John, NB to New York City; continuous telegraph service from Halifax to New York becomes available in November <sup>137</sup>

<sup>123</sup> *Spirit of the Web*, *supra* note 2. at 63.

<sup>124</sup> [http://members.tripod.com/morse\\_telegraph\\_club/images/newpage1.htm](http://members.tripod.com/morse_telegraph_club/images/newpage1.htm)

<sup>125</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 21.

<sup>126</sup> <http://www.civilization.ca/cpm/chrono/chs1760e.html>

<sup>127</sup> <http://www.civilization.ca/cpm/chrono/chs1760e.html>

<sup>128</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>129</sup> William von Alven, Manager, FCC "Bill's 200-Year Condensed History of Telecommunications"

Communication Certification Laboratory <<http://www.cclab.com/billhist.htm>>

<sup>130</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>131</sup> ITU, "ITU Overview – History" ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>>

date accessed (20 February 2003)

<sup>132</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>133</sup> "The Communication of Information" online: Google cache <<http://www.google.ca/search?q=cache:UVRyGSfKgOoC:ntserver2.newtown.tased.edu.au/computingweb/resources/history/communic.htm+%2Bhistory+%2B%22company+of+venetian+couriers%22&hl=en&ie=UTF-8>>

<sup>134</sup> Cited in *Spirit of the Web*, *supra* note 2. at 55 note 27.

<sup>135</sup> [http://members.tripod.com/morse\\_telegraph\\_club/images/newpage1.htm](http://members.tripod.com/morse_telegraph_club/images/newpage1.htm)

<sup>136</sup> "History of Nova Scotia" <http://alts.net/ns1625/nshist08.html>

<sup>137</sup> "Nova Scotia Pony Express, 1849: History of the Halifax Express a.k.a, Nova Scotia Pony Express" <<http://www.newscotland1398.net/ponyexpress/ponyexclx.html>> (date accessed 24 February 2003):

In 1849 it was possible to transmit a message only 200 kilometres or so by electric telegraph. That was the limit of the technology available at that time. For longer distances, such as Saint John to New York, a message was sent by the Saint John operator and copied by the telegraph operator

Year	Events in communications
1852	Telegraph used in Crimean war <sup>138</sup>
1855	<i>Stamp Act</i> is repealed in England; <sup>139</sup> postage for newspapers is abolished in the province of Canada <sup>140</sup>
1859	Postage rates for newspapers are introduced in the province of Canada <sup>141</sup>
1860	US Civil War begins (and ends in 1865); in 1861 battles around Washington lead the U.S. government to seize control of commercial telegraph systems around the city <sup>142</sup>
1865	On 17 May, after two and a half months of negotiations, the first International Telegraph convention is signed in Paris by 20 founding members, <sup>143</sup> until now, “each country used a different system, messages had to be transcribed, translated and handed over at frontiers, then re-transmitted over the telegraph network of the neighbouring country.” <sup>144</sup>
1866	North America and Europe are connected by ocean cable, from Newfoundland to Ireland <sup>145</sup>
1866	<i>An Act for the Regulation of the Postal Service</i> , SC31 Vic. (1867), c. 10 becomes effective 1 April, and provides for a uniform postal system through the Dominion of Canada <sup>146</sup>
1873	U.S. Congress passes the <i>Comstock Act</i> and criminalizes the use of the U.S. mail system to send “obscene, lewd or lascivious book or other publication of indecent character” <sup>147</sup>
1875	Alexander Graham Bell hears a clock spring twanging when he uses the technique of the ‘harmonic telegraph’: when he hears sound transmitted by a wire, telephone begins development
1878	Canada’s first telephone switching system (the 2 <sup>nd</sup> in the world) is established in Hamilton, Ontario <sup>148</sup>
1880	Bell Telephone Company of Canada incorporates on 29 April; <sup>149</sup> newspapers and periodicals printed and published in Canada are granted free transmission by mail within the Dominion; <sup>150</sup> in the U.S. almost 50,000 telephones have been installed, even though reliability is poor <sup>151</sup>

at the far end, say Calais. Then the Calais operator would resend the message to Bangor. Bangor would copy the message, and resend it to Portland. Portland would send it to Boston. And so on until it reached New York. It was this need for repeated copying and resending that accounted for the three to four hours minimum required to get an AP message — usually about 3,000 words (15,000 characters) from Saint John (later from Halifax) to New York.

<sup>138</sup> “Caslon Analytics Media & communications timeline” (December 2002)

<http://www.caslon.com.au/timeline2.htm>

<sup>139</sup> <http://www.georgianindex.net/publications/newspapers/news-dates.html>

<sup>140</sup> <http://www.civilization.ca/cpm/chrono/chs1841e.html>

<sup>141</sup> <http://www.civilization.ca/cpm/chrono/chs1841e.html>

<sup>142</sup> <http://www.civilwarhome.com/telegraph.htm>

<sup>143</sup> ITU, “ITU Overview – History” ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

<sup>144</sup> *Ibid.*

<sup>145</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>

<sup>146</sup> <http://www.civilization.ca/cpm/chrono/chs1868e.html>

<sup>147</sup> Kyla Ward, “Timeline of Censorship” <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>>

<sup>148</sup> <http://www.poinc.net/pages/history.html>

<sup>149</sup> <http://alts.net/ns1625/telephone.html>

<sup>150</sup> <http://www.civilization.ca/cpm/chrono/chs1868e.html>

<sup>151</sup> “The Communication of Information” online: Google cache <<http://www.google.ca/search?q=cache:UVRyGSfKgOoC:ntserver2.newtown.tased.edu.au/computingweb/resources/history/communic.htm+%2Bhistory+%2B%22company+of+venetian+couriers%22&hl=en&ie=UTF-8>>

Year	Events in communications
	In England, <i>Attorney General vs. Edison Telephone Company of London Ltd.</i> - Law Report 6 Q B D244 holds that a telephone is a telegraph, and that a telephone conversation was a telegram within the meaning of s. 4 of the 1869 <i>Telegraph Act</i> : Independent telephone companies were thereupon obliged to obtain 31-year licences to operate from the Postmaster-General, the Post Office taking 10 per cent of gross income and having the option to purchase a telephone undertaking at the end of ten, 17 or 24 years. It was Post Office policy to issue licences for the few existing telephone systems, restricting these systems to areas in which they were operating, and to undertake the general development of the telephone itself. As a result of this court judgement the Postmaster-General was to continue providing the telephone service under the provisions of the various telegraph acts until the Telephone Act 1951. This Act was the first statutory recognition of the telephone separate from the telegraph, 75 years after the telephone was invented. <sup>152</sup>
1881	The president of the French Republic likes theatrophones so much that he begins a series of telephonic soirées from the Opéra, the Théâtre Français and the Odéon Theatre, to the Élysée Palace <sup>153</sup>
1883	A judge upholds an Ohio telephone company's rules against "improper or vulgar" language in telephone communications: [t]he telephone reaches into many family circles .... All communications should be in proper language. Moreover, in many cases the operators in the exchanges are refined ladies and, even beyond this, all operators should be protected from insult. <sup>154</sup>
1885	International Telegraph Union begins to draw up international legislation governing telephony <sup>155</sup>
1886	First all-Canadian mail service is established; <sup>156</sup> Heinrich Hertz demonstrates that rapid variations of electric current can be projected into space, similar to those of light and heat: radiowaves are conceived <sup>157</sup>
1887	U.S. Congress gives the Interstate Commerce Commission authority to require telegraph companies to interconnect their lines to provide more public service and to cover wireless telegraph <sup>158</sup>
1889	A Kansas City undertaker (Almon Strowger) invents the rotary telephone dial; <sup>159</sup> British postal officials reprimand a telephone subscriber for using his telephone to notify firefighters of a nearby conflagration; his contract directed him to use his telephone for "his own business and private affairs" <sup>160</sup>
1890	A vice-president of AT&T describes plans for "providing music on tap at certain times every day; especially at meal times. The scheme is to have a fine band perform the choicest music, gather up the sound waves, and distribute them to any number of subscribers." <sup>161</sup>

<sup>152</sup> "UK Telephone History" <http://web.ukonline.co.uk/freshwater/histuk.htm>

<sup>153</sup> Carolyn Marvin, *When Old Technologies were New: Thinking About Electric Communication in the Late Nineteenth Century*, (New York: Oxford University Press, 1988) at 209.

<sup>154</sup> *Ibid.* at 89.

<sup>155</sup> ITU, "ITU Overview – History" ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

<sup>156</sup> <http://www.civilization.ca/cpm/chrono/chs1868e.html>

<sup>157</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>158</sup> *Ibid.*

<sup>159</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>160</sup> Carolyn Marvin, *When Old Technologies were New: Thinking About Electric Communication in the Late Nineteenth Century*, (New York: Oxford University Press, 1988) at 102.

<sup>161</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), "Some Milestones in Communications Technology" (np.) at 102.

Year	Events in communications
1891	American critic W.J. Stillman accuses the telegraph of transforming journalism “into an agency for collecting, condensing, and assimilating the trivialities of the entire human existence”, <sup>162</sup> the Queen has special telephone lines from her sitting room to the Foreign Office, the Home Office, the Board of Green Cloth and Marlborough House <sup>163</sup>
1894	Thomas Edison invents the kinoscope, a device to display ‘moving’ images <sup>164</sup>
1895	In Italy, Guglielmo Marconi sends and receives first radio signal; <sup>165</sup> he apparently sees radio as a ‘niche product’ for ship-to-shore communication <sup>166</sup>
1896	Marconi patents wireless telegraph in England, <sup>167</sup> in Britain, the General Post Office takes over privately-owned telephone companies <sup>168</sup>
1900	On 23 December Canadian Reginald Fessenden speaks to an assistant fifteen kilometres away and says, “One, two, three, four. Is it snowing where you are Mr. Thiessen? If so, telegraph back and let me know.” <sup>169</sup>
1901	After his Cape Cod, Massachusetts and Poldhu, Cornwall antenna arrays are destroyed by storms, Marconi moves to Newfoundland, the closest point in North America to the Cornwall station; Prime Minister Sir Robert Bond gives him an abandoned military hospital to use, located on Signal Hill 600 feet above St. John’s harbour; <sup>170</sup> on December 12 <sup>th</sup> , Guglielmo Marconi transmits the letter “s” using Morse code from a station in Poldhu, Cornwall, to one on Signal Hill, Newfoundland; <sup>171</sup> the Canadian government orders two Marconi telegraph sets to use at coastal points along the Strait of Belle Isle <sup>172</sup>  Until now the United States Navy has signalled ships using visual methods and homing pigeons; it now adopts a wireless radio system <sup>173</sup>
1902	Based in part on a \$75,000 grant from the federal government, the Table Head, Nova Scotia wireless station is in routine communication with Poldhu, Cornwall - -the world’s first regular transatlantic radio link <sup>174</sup>  A Marconi station’s refusal to forward a message from Prince Henry of Prussia (the brother of Kaiser Wilhelm of Germany) to President Roosevelt following the Prince’s visit to the U.S., because the Prince’s ship did not use Marconi equipment, prompts the German government in 1903 to convene an International Convention for regulating radio telegraphy between ships and

<sup>162</sup> Cited in Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999) at 82.

<sup>163</sup> Carolyn Marvin, *When Old Technologies were New: Thinking About Electric Communication in the Late Nineteenth Century*, (New York: Oxford University Press, 1988) at 210

<sup>164</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 76.

<sup>165</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>

<sup>166</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999) at 59.

<sup>167</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” (np.) at 120.

<sup>168</sup> <http://www.bt.com/archives/history.htm>

<sup>169</sup> [http://www.ucalgary.ca/applied\\_history/tutor/popculture/PsevenR.html](http://www.ucalgary.ca/applied_history/tutor/popculture/PsevenR.html)

<sup>170</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” (np.) at 121.

<sup>171</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” (np.) at 122.

<sup>172</sup> <http://www.si.edu/lemelson/dig/radioana/#timeline>

<sup>173</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>

<sup>174</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” (np.) at 125.

Year	Events in communications
	shore, to counter the Marconi company's efforts to monopolize the transmission of messages and news by radio <sup>175</sup> Sir Wilfrid Laurier's government passes legislation requiring Bell Canada to provide service to any person within its monopoly territory "with all reasonable dispatch", and forbids rate changes without government approval <sup>176</sup>
1903	Regular commercial radio-telegraphed messages between North America and Europe begin on 30 March; <sup>177</sup> preliminary international wireless conference held in Berlin to consider ship-to-shore regulation, including common distress signals to be used in radiotelegraphy for ships <sup>178</sup>
1904	The UK introduces the <i>Wireless Telegraphy Act</i> about the telegraph. The aims of the proposed act were comprehensive: to regulate all wireless communication in Great Britain; to enable the government to enforce international agreements; to ensure the whole spectrum of wireless was developed for the public good; to license all wireless stations (those of Marconi for eight years); and to allow 'Marconigrams' (telegraph messages to and from ships) to be relayed via the GPO's inland cable system. <sup>179</sup> The <i>Act</i> required that although radio wireless communication was in the hands of the private sector, all sets must be licensed by the Post Office, to give authorities the ability to "prevent unauthorized information from leaving the country, to prevent interference with naval communications and to enforce any international wireless agreements Britain might make" <sup>180</sup>
1905	Canada enacts the <i>Wireless Telegraph Act</i> , legislation that closely parallels that of Great Britain
1906	<i>An Act to Amend The Railway Act, 1903</i> , S.C. 1906, c. 42, ss. 29-35, gives jurisdiction over telecommunications to the Board of Railway Commissioners <i>Equality</i> 315. All such tolls shall always, under substantially similar circumstances and conditions, <i>in respect of all traffic of the same description, and carried in or upon the like kind of cars, passing over the same portion of the line of railway</i> , be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise. 2. No reduction or advance of any such tolls shall be made, either directly or indirectly, in favour of or against any particular person or company travelling upon or using the railway. Reginald Fessenden broadcasts human voices and music from Massachusetts, to ships at sea <sup>181</sup> First International Radiotelegraph convention held in Berlin; first International Radiotelegraph convention signed; annex contains the first regulations for wireless telegraphy (known now as the <i>Radio Regulations</i> ) <sup>182</sup>

<sup>175</sup> <http://www.angelfire.com/nc2/whitetho/1963hw07.htm#7footnote>

<sup>176</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), "Some Milestones in Communications Technology" (np.) at 114.

<sup>177</sup> Frank Foster at 2.

<sup>178</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>179</sup> <http://www.marconicalling.com/museum/html/events/events-i=40-s=0.html>

<sup>180</sup> <<http://cri.histart.umontreal.ca/phonotheque/Hist-radio-anglo/CFCF-Early-Years.html>>, citing Vipond 1992 at 7.

<sup>181</sup> Media Awareness "radio in Canada: a timeline" <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>182</sup> ITU, "ITU Overview – History" ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

Year	Events in communications
1907	2131 cars are registered in Canada <sup>183</sup>
1908	Marconi stations in Canada and England open to provide radio telegraph service across the Atlantic <sup>184</sup>
1909	British Board of Film Censors is established, <sup>185</sup> in Wilmington, Delaware, the Tel-music company provides a pay-per-play phonograph service, from which residential and commercial subscribers could request tunes to be played back over their telephone lines <sup>186</sup>
1910	<p>Canada – the pre-highway era:</p> <p>11: “As farmers motorized, they pressured local and county governments to provide them with ‘good roads.’ However, highways suitable for motoring were an expensive commodity, beyond the limited financial and administrative means of municipal or county governments. Improved earth or gravel roads capable of handling regular horse-drawn traffic broke down under the shearing force of motor vehicle wheels travelling in excess of 28 kmpg (18 mph). Moreover, the cost of constructing improved roads was made even more daunting by the growing reluctance of local governments to call on farmers to provide free labour for roadwork (under the statute labour laws), or the farmers to [12] volunteer it.</p> <p>“... In Ontario, the Public Roads and Highways Commission Report of 1914 (which led to the establishment of a Provincial Highways Department in 1917) rested ‘the case for good roads upon the farmer’s economic importance in the Province.’ It said that, ‘Good roads will enable him to increase his output, and the entire community will be benefited.’”<sup>187</sup></p> <p>During hearings to consider regulation of wireless telegraphy, members of a subcommittee of the U.S. Committee on Naval Affairs of the House of Representatives hear that thanks to radio, the “air was full of vituperations, obscenity, and unnecessary transmissions.”<sup>188</sup></p> <p>In the U.S., the <i>Mann Elkins Act</i> allows the government to regulate the accounting practices of wire communication carriers; the <i>Wireless Ship Act</i> requires installation of wireless apparatus and its operators on ships with more than 50 passengers and travelling between ports 200 or more miles apart<sup>189</sup></p>
1912	To comply with its international treaty obligations, the U.S. enacts the <i>Radio Act</i> , that country’s first domestic law to control radio communications <sup>190</sup> ; licences now required to operate radio stations; <sup>191</sup> foreigners may not hold licences; <sup>192</sup> the federal government has the authority to take over radio communications <sup>193</sup>

<sup>183</sup> The Canadian Encyclopedia, “Roads and Highways”, <https://www.thecanadianencyclopedia.ca/en/article/roads-and-highways> (Accessed 2018-10-20).

<sup>184</sup> <http://www.si.edu/lemelson/dig/radioana/#timeline>

<sup>185</sup> Kyla Ward, “Timeline of Censorship” <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>>

<sup>186</sup> Thomas White “Early Radio History” online <<http://earlyradiohistory.us/sec003.htm>>

<sup>187</sup> David W. Monaghan, “Canada’s ‘New Main Street’: The Trans-Canada Highway as Idea and Reality, 1912-1956”, MA thesis (University of Ottawa: 1996), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 11-12.

<sup>188</sup> <http://earlyradiohistory.us/1963hw12.htm#12sec1>

<sup>189</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>

<sup>190</sup> *Ibid.*

<sup>191</sup> <http://www.ipass.net/~whitetho/specInd1.htm>

<sup>192</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” at 158.

<sup>193</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 77.

Year	Events in communications
	In the UK the Post Office becomes monopoly supplier of all telephone services <sup>194</sup>
1913	Canada enacts the <i>Radiotelegraph Act</i> ; s. (b) states that “Radiotelegraph includes any wireless system for conveying electric signals or messages including radio-telephones” <sup>195</sup>
1914	On 5 August U.S. president issues executive order to the Navy Department to censor all international telegraph messages sent and received by radio firms; <sup>196</sup> when war breaks out, Britain disables most of the global undersea telegraph to keep it from falling into enemy hands; <sup>197</sup> the Canadian government terminates non-official use of radiotelegraphy from August 1914, to 1 May 1919; <sup>198</sup> on 3 September parties to the conflict agree that they may use telegraph to send coded messages <sup>199</sup>
1917	On 7 April U.S. declares war on Germany; it enacts the <i>Espionage Act</i> and limits press freedom; <sup>200</sup> U.S. takes over all radio transmitters <sup>201</sup> ; the penalty for not complying is imprisonment in an internment camp; <sup>202</sup> from 3 April to 11 November 1918 U.S. Naval radio operators monitor all radio broadcasts; all unknown transmissions are traced to their origin <sup>203</sup>
1918	The Canadian Department of Naval Service grants an experimental broadcast licence to XWA, a radio station in Montreal owned by G. Marconi <sup>204</sup>  In the U.S., the socialist journal, <i>The Masses</i> , is prosecuted under the <i>Espionage Act</i> for publishing articles that undermine America’s war effort, and subsequently closes <sup>205</sup>  The British Air Force uses 20,000 homing pigeons to communicate <sup>206</sup>
1919	In Canada, the Union government passes the <i>Canada Highways Act</i> , but until 1928 anyone wanting to drive across Canada had to detour south of the Great Lakes to do so <sup>207</sup>
	On 15 April the U.S. government lifts the ban on private listening to radio; <sup>208</sup> mid-year the U.S. government applies pressure to the British Marconi Company, owner of over half of American radio stations, to sell to domestic interests <sup>209</sup> ; the government expropriates the company due to the view that, as a matter of national importance, radio ought to be locally controlled <sup>210</sup>

<sup>194</sup> <http://www.bt.com/archives/history.htm>.

<sup>195</sup> <<http://cri.histart.umontreal.ca/phonotheque/Hist-radio-anglo/CFCF-Early-Years.html>>, citing Vipond 1992 at 9-10.

<sup>196</sup> <http://www.ipass.net/~whitetho/part2.htm>

<sup>197</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” (np.) at 148.

<sup>198</sup> <http://earlyradiohistory.us/sec012.htm>

<sup>199</sup> <http://www.ipass.net/~whitetho/part2.htm>

<sup>200</sup> <http://www.bartleby.com/65/pr/press-fr.html>

<sup>201</sup> <http://www.ipass.net/~whitetho/specInd1.htm>

<sup>202</sup> <http://www.angelfire.com/nc/whitetho/1919spy.htm>

<sup>203</sup> <http://www.angelfire.com/nc/whitetho/1919spy.htm>

<sup>204</sup> Media Awareness “radio in Canada: a timeline” <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>205</sup> <http://www.spartacus.schoolnet.co.uk/FWWespionage.htm>

<sup>206</sup> The Early History of Data Networks, “How It Began” <[http://vww.it.kth.se/docs/early\\_net/ch-2-1.1.html](http://vww.it.kth.se/docs/early_net/ch-2-1.1.html)>

<sup>207</sup> David W. Monaghan, “Canada’s ‘New Main Street’: The Trans-Canada Highway as Idea and Reality, 1912-1956”, MA thesis (University of Ottawa: 1996),

<http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 19 and 22.

<sup>208</sup> <http://www.ipass.net/~whitetho/part2.htm>

<sup>209</sup> *Ibid.*

<sup>210</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 77.

Year	Events in communications
	By 31 March the Radio Branch of Canada's Department of Naval Service had issued 2 licences for radio stations for experimental purposes <sup>211</sup>
1920	XWA Montreal broadcasts world's first scheduled radio program (a concert) to a meeting of the Royal Society of Canada in Ottawa; <sup>212</sup> Following interference with aircraft communications, the British Post Office bans radio transmissions <sup>213</sup> In the U.S., the <i>Transportation Act</i> directs the Interstate Commerce Commission to ensure that the charges levied by telephone and telegraph companies are reasonable <sup>214</sup>
1921	In Canada, "... Direct revenue from licences and gasoline tax, the latter an Oregon innovation adopted by a majority of the provinces between 1922 and 1928, increased from \$8.3 million in 1921 to over \$46 million in 1933. By that date motor vehicle revenues represented 30 percent, the single largest source, of provincial net general revenues in Canada. These new sources of revenue permitted the traditional tax base, property taxes, to remain relatively stable even as provincial government expenditures rose." <sup>215</sup>  Under US Commerce Department regulations, beginning 1 December all American radio stations are required to hold licences <sup>216</sup>
1922	On 14 November, the BBC begins transmission, using equipment from a licensed oligopoly of manufacturers of radio sets and transmitters; newspapers prevent the BBC from carrying news unless it is purchased from a news agency <sup>217</sup> The agricultural term "broadcasting", meaning to sow seeds, is first applied to the new communications medium of radio <sup>218</sup> In the U.S. department stores use the radio stations they own to advertise their goods; newspapers launch radio stations for cross-promotional purposes <sup>219</sup>
1923	CNR installs radio transmitters and receivers on trains as part of a marketing campaign to attract passengers <sup>220</sup>  On February 8, Canada's first hockey program is broadcast <sup>221</sup>  A photograph is transmitted from Washington to Baltimore over wire <sup>222</sup>

<sup>211</sup> Foster at 5.

<sup>212</sup> Media Awareness "radio in Canada: a timeline" <<http://www.media-awareness.ca/eng/index/radio/timeline.htm#1800s>> (24 February 2003).

<sup>213</sup> [http://www.vaxxine.com/master-control/BBC/chapters/Bbc\\_form.html](http://www.vaxxine.com/master-control/BBC/chapters/Bbc_form.html)

<sup>214</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>215</sup> David W. Monaghan, "Canada's 'New Main Street': The Trans-Canada Highway as Idea and Reality, 1912-1956", MA thesis (University of Ottawa: 1996), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 17.

<sup>216</sup> <http://www.ipass.net/~whitetho/specInd1.htm>

<sup>217</sup> [http://www.vaxxine.com/master-control/BBC/chapters/Bbc\\_form.html](http://www.vaxxine.com/master-control/BBC/chapters/Bbc_form.html)

<sup>218</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 77.

<sup>219</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), "Some Milestones in Communications Technology" at 161.

<sup>220</sup> Media Awareness "radio in Canada: a timeline" <<http://www.media-awareness.ca/eng/index/radio/timeline.htm#1800s>> (24 February 2003).

<sup>221</sup> *Ibid.*

<sup>222</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>



Year	Events in communications
	First experimental wireless television transmissions take place between Anacostia and Washington <sup>223</sup>
1925	<p>Teleprinter machines come into use in the U.S.<sup>224</sup></p> <p>First commercial radio broadcasts take place in Canada when General Motors sponsors hockey games<sup>225</sup></p> <p>To raise broadcast revenues, networking is used to connect Canadian radio stations with the CBC or American radio networks<sup>226</sup></p> <p>In the United States “radiovision” is demonstrated (48 lines/inch and synchronizec sound over 5 miles) between Anacostia and Washington, to members of the U.S. Navy and Commerce Departments<sup>227</sup></p>
1926	In Chicago, Federal Court Judge J.H. Wilkerson finds that the Zenith Radio Corporation’s appropriation of a radio frequency assigned to Canadian use was not illegal, because the U.S. Federal legislation governing radio use was ambiguous; broadcasting stations in the U.S. were therefore free to occupy any channel they wished <sup>228</sup>
1927	<p>International Radiotelegraph Conference allocates frequency bands to various radio services: fixed, maritime, aeronautical mobile, broadcasting, amateur, experimental<sup>229</sup></p> <p>The U.S. passes the Dill-White <i>Radio Act</i>, creating a Federal Radio Commission to regulate radio and to deal with the problem of unlicensed broadcasters using the airwaves;<sup>230</sup> Bell Telephone Laboratories undertakes the first long-distance television transmission, from Washington to New York City<sup>231</sup></p>
1928	<p>Minister of Marine and Fisheries (15 November 1928): <i>Report</i></p> <p>In <i>Olmstead v. United States</i> in a 5-4 ruling the U.S. Supreme holds that wiretapping does not constitute unreasonable search and seizure since no physical trespass onto Olmstead’s premises had taken place, and Olmstead was not entitled to privacy since by using a telephone he had intended to project his voice to those outside the room where he was speaking</p> <p>On 11 May regular television broadcasting began in Schenectady, New York; over 15 television stations are licensed in the U.S. by the end of the year<sup>232</sup></p>
1929	Royal Commission on Radio Broadcasting, <i>Report</i> (Ottawa, 1929), <a href="http://publications.gc.ca/collections/collection_2014/bcp-pco/CP32-104-1929-eng.pdf">http://publications.gc.ca/collections/collection_2014/bcp-pco/CP32-104-1929-eng.pdf</a>

<sup>223</sup> “History of Television” online: History of TV <<http://history.acusd.edu/gen/recording/television1.html>>

<sup>224</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>

<sup>225</sup> Media Awareness “radio in Canada: a timeline” <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>226</sup> Media Awareness “radio in Canada: a timeline” <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>227</sup> “History of Television” online: History of TV <<http://history.acusd.edu/gen/recording/television1.html>>

<sup>228</sup> Frank Foster at 14.

<sup>229</sup> ITU, “ITU Overview – History” ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

<sup>230</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 81.

<sup>231</sup> <http://www.lucent.com/news/history.html>

<sup>232</sup> “History of Television” online: History of TV <<http://history.acusd.edu/gen/recording/television1.html>>

Year	Events in communications
	<p>Canadian Radio Broadcasting Commission – “All programs were live. There were no recording facilities until the mid 1930s, when the Electrical Transcription process was introduced but it was not technically perfected for stations recording, and playback use was slowly expanded across Canada. Not all programs were heard across the country due to time zone differences. Shows originated in the West were not always heard in the East and vice-versa.”<sup>233</sup></p> <p>BBC undertakes first experiments in television<sup>234</sup></p> <p>The US stock market crashes, triggering a world-wide recession. In Canada the changes were dramatic. Between 1929 and 1933 the country’s Gross National Expenditure [overall public and private spending] fell by 42%. By 1933, 30% of the labour force was out of work, and one in five Canadians had become dependent upon government relief for survival. The unemployment rate would remain above 12% until the start of the Second World War in 1939.<sup>1</sup></p> <p>NBC cancels radio programs that might “undermine the public confidence”<sup>235</sup></p> <p>“... by 1930 provincial capital and operating expenditures for highways exceeded \$76,000,000 against provincial motor vehicle and gas tax receipts of \$42,826,000. Even in Canada’s wealthiest province, Ontario, motor vehicle revenues in 1938 fell short of net annual highway expenses by almost 20 percent.”<sup>236</sup></p> <p>The federal Liberal power decided not to fund highway construction, on the basis of jurisdiction. “Seizing an opportunity, the Conservative opposition championed the cause of highway assistance by introducing federal highway bills to Parliament in 1929 and 1930. During the 1930 election the Conservative Party called for the construction of a TransCanada Highway as part of a national employment scheme. A party advertisement during the campaign combined nationalism, tourism and public investment, all inherent in highway construction, in addressing the unemployment problem created by the financial collapse of 1929: What Canada needs is a policy to provide jobs. A policy that will build a national highway across Canada instead of forcing motorists to use American roads to get past the Great Lakes, with the result that they now leave in the United States the money which they spend by the way instead of spending it for supplies in Canada, as they would if Canada had a through road, and thus solve the unemployment situation</p>
1932	Privy Council’s Judicial Committee determines that Parliament’s jurisdiction over broadcasting extends to both transmission and reception of signals in the <i>Radio Reference</i> , [1932] AC 302

<sup>233</sup> J. Lyman Potts, CRBC Programming (Canadian Radio Broadcasting Commission) (1933-1936)” (January, 2000) <[http://www.broadcasting-history.ca/networks/networks\\_CRBC\\_Programming.html](http://www.broadcasting-history.ca/networks/networks_CRBC_Programming.html)>.

<sup>234</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” (np.)

<sup>235</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” at 170.

<sup>236</sup> David W. Monaghan, “Canada’s ‘New Main Street’: The Trans-Canada Highway as Idea and Reality, 1912-1956”, MA thesis (University of Ottawa: 1996), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 24.

Year	Events in communications
	<i>Canadian Radio Broadcasting Act</i> is passed, creating the Canadian Radio Broadcasting Commission as the nation's first broadcast regulator, responsible for allocating frequencies, call signs and levels of Canadian programming <sup>237</sup> To fund the establishment of two national radio networks and pay for the cost of regulation, radio owners must pay a \$2 annual licence fee <sup>238</sup>
1934	In the U.S., the <i>Communications Act</i> becomes effective, creating a Federal Communications Commission to regulate all interstate and foreign communications by wire and radio, telegraphy, telephone and broadcast media <sup>239</sup>  The Hays Code is introduced by the head of the American Motion Picture Producers and Directors Association; its clauses are to be applied before films are produced <sup>240</sup>
1935	Electrical transmission process permits radio programming to be recorded <sup>241</sup>  Canada passes the <i>Trans-Canada Highway Act</i> , which remains incomplete until September 3, 1962 <sup>242</sup>  First telephone call made around the world, using a combination of wire and radio circuitry <sup>243</sup>
1936	The <i>Canadian Radio Broadcasting Act</i> is amended to create the Canadian Broadcasting Corporation <sup>244</sup>
1938	Select Standing Committee to review the policies of the CBC
1939	From this point on to 1953, computers are invented <sup>245</sup> In the U.S. the number of telephone calls made, exceeds the number of letters mailed <sup>246</sup>
1941	The CBC establishes its first news bureaux <sup>247</sup> The FCC licenses ten commercial television stations <sup>248</sup>
1942	In March, the U.S. Defense Communications Board begins to take over shortwave communications; <sup>249</sup> on 1 November, U.S. government leases all of the time on stations in Latin American owned by CBS, NBC, ABC and others on an annual basis <sup>250</sup>

<sup>237</sup> Media Awareness "radio in Canada: a timeline" <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>238</sup> Media Awareness "radio in Canada: a timeline" <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>239</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>240</sup> Kyla Ward, "Timeline of Censorship" <<http://www.tabula-rasa.info/DarkAges/CensorshipTimeline.html>>

<sup>241</sup> J. Lyman Potts, CRBC Programming (Canadian Radio Broadcasting Commission) (1933-1936)" (January, 2000) <[http://www.broadcasting-history.ca/networks/networks\\_CRBC\\_Programming.html](http://www.broadcasting-history.ca/networks/networks_CRBC_Programming.html)>.

<sup>242</sup> David W. Monaghan, "Canada's 'New Main Street': The Trans-Canada Highway as Idea and Reality, 1912-1956", MA thesis (University of Ottawa: 1996), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp04/mq20980.pdf>, at 1.

<sup>243</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>244</sup> Media Awareness "radio in Canada: a timeline" <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>245</sup> "History of Telecommunications Industry" <<http://www.telecomresearch.com/history.html>>

<sup>246</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 9.

<sup>247</sup> [http://www.ucalgary.ca/applied\\_history/tutor/popculture/PsevenR.html](http://www.ucalgary.ca/applied_history/tutor/popculture/PsevenR.html)

<sup>248</sup> "Network TV" online: Network TV <<http://history.acusd.edu/gen/recording/television5.html>>

<sup>249</sup> [http://www.sit.wisc.edu/~rarabe/ww2.htm#\\_edn5](http://www.sit.wisc.edu/~rarabe/ww2.htm#_edn5)

<sup>250</sup> [http://www.sit.wisc.edu/~rarabe/ww2.htm#\\_edn5](http://www.sit.wisc.edu/~rarabe/ww2.htm#_edn5)

Year	Events in communications
	In considering the impact of the end of war on the radio industry where national defence spending had raised employment by 1200-1500% (to 300,000 workers), the Chairman of the FCC writes that he thinks "it quite likely that during the post-war period television will be one of the first industries arising to serve as a cushion against unemployment and depression" <sup>251</sup>
1943	On 1 July, U.S. reallocates all radio spectrum available to it, merging the NBC and CBS radio services into a single service (that later became the "Voice of America") <sup>252</sup>
1945	Western Union establishes the first microwave beam system in the U.S., connecting New York and Philadelphia <sup>253</sup>  ENIAC is working by November <sup>254</sup>
1946	AT&T develops a coaxial cable that carries a television signal from New York to Washington <sup>255</sup>
1948	The last Index of Forbidden Books is issued by the Pope <sup>256</sup>  United Nations General Assembly adopts the <i>Universal Declaration of Human Rights</i> ; Article 19 provides that "Everyone has the right to freedom of ... expression; this right includes freedom ... to seek, receive, and impart information and ideas through any media and regardless of frontiers"; finally ratified in 1977 <sup>257</sup>  First fully electronic stored program computer is built – the Baby Mark I, in Manchester, England <sup>258</sup>
1949	A large antenna is erected on a mountain near Astoria, Oregon, to capture the television signals of a station 125 miles away, and distribute them through a cable running to the television sets in the houses below
1951	Royal Commission on National Development in the Arts, Letters and Sciences, Special Committee on Radio Broadcasting, <a href="https://www.collectionscanada.gc.ca/massey/h5-400-e.html">https://www.collectionscanada.gc.ca/massey/h5-400-e.html</a>
1952	CBC launches television in Canada; In London, Ontario Mr. E.R. Jarman builds a special rhombic antenna to capture distant signals from Cleveland, and distribute them to 15 subscribers
1953	Canada's <i>Radio Act</i> is amended to include "private, commercial receiving stations" (cable television systems)
1956	First transatlantic telephone cable connecting Newfoundland with England opens <sup>259</sup>  First digital telephone transmission is recorded by Bell Labs: packets of binary information are interleaved in the interstices between wave samplings and pauses in conversations <sup>260</sup>

<sup>251</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 111.

<sup>252</sup> [http://www.sit.wisc.edu/~rarabe/ww2.htm#\\_edn5](http://www.sit.wisc.edu/~rarabe/ww2.htm#_edn5)

<sup>253</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>254</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 178.

<sup>255</sup> "Network TV" online: Network TV <<http://history.acusd.edu/gen/recording/television5.html>>

<sup>256</sup> "History and Definitions of Censorship", <http://www.wam.umed.edu/~gjbush/history.html>

<sup>257</sup> Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age*, (Cambridge: Harvard University Press, 1990) at 108-109.

<sup>258</sup> Brian Winston, *Media Technology and Society A history: from the telegraph to the Internet*, (London: Routledge, 1998) at 182.

<sup>259</sup> FCC, "May 1993: History of Wire and Broadcast Communication", <<http://www.fcc.gov/cgb/evol.html>>

<sup>260</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), "Some Milestones in Communications Technology" (np.) at 106.

Year	Events in communications
1957	<p>First artificial satellite launched (Sputnik-1)<sup>261</sup></p> <p>U.S. forms the Advanced Research Projects Agency (ARPA) inside the Department of Defense<sup>262</sup> (It becomes known as DARPA.)</p> <p>Royal Commission on Broadcasting, <i>Report</i> (Ottawa, 15 March 1957),  <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-37-1-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-37-1-eng.pdf</a> [Fowler Report]            (Chapters 1-6)  <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-37-2-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-37-2-eng.pdf</a>            (Chapters 7 – 12)  <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-37-3-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-37-3-eng.pdf</a>            (appendices 1-13)  <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-38-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1955-38-eng.pdf</a>            (Appendices 14)</p>
1958	The Federal government establishes the Board of Broadcast Governors to regulate broadcasting <sup>263</sup>
1959	Western Union inaugurates TELEX, a service in which subscribers dialled each other directly <sup>264</sup>
1960	Glassco: Royal Commission on Government Organization Board of Broadcast Governors, <i>Royal Commission on Activities of Station CHEK-TV, Victoria, B.C.: Report</i> , Report in response to OIC 1960-1211 (8 September 1960), <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1960-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1960-eng.pdf</a>
1963	<p>First geostationary communications satellite (Syncom-1) launched into orbit<sup>265</sup></p> <p>Extraordinary Administrative Conference for space communications held in Geneva, to allocate frequencies for space services<sup>266</sup></p>
1965	Fowler: Advisory Committee on Broadcasting
1966	White Paper on Broadcasting – formed the basis of the 1968 <i>Broadcasting Act</i>
1968	Canada enacts new <i>Broadcasting Act</i> , 1968-68, c. 25
1970	Special Senate Committee on Mass Media, Report [Davey committee] First CD-rom is patented <sup>267</sup>
1971	Indigenous and Northern Affairs Canada. Department of Indian Affairs and Northern Development, <i>Arctic co-operative radio broadcasts</i> , (Ottawa, 1971) <a href="http://publications.gc.ca/collections/collection_2017/aanc-inac/R74-35-1971-eng.pdf">http://publications.gc.ca/collections/collection_2017/aanc-inac/R74-35-1971-eng.pdf</a>

<sup>261</sup> ITU, “ITU Overview – History” ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

<sup>262</sup> <http://www.davesite.com/webstation/net-history.shtml>

<sup>263</sup> Media Awareness “radio in Canada: a timeline” <<http://www.media-awareness.ca/eng/indux/radio/timeline.htm#1800s>> (24 February 2003).

<sup>264</sup> FCC, “May 1993: History of Wire and Broadcast Communication”, <<http://www.fcc.gov/cgb/evol.html>>

<sup>265</sup> ITU, “ITU Overview – History” ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

<sup>266</sup> ITU, “ITU Overview – History” ITU homepage. <<http://www.itu.int/aboutitu/overview/hsitory.html>> date accessed (20 February 2003)

<sup>267</sup> National Academy of Engineering, “Electronics Timeline” <<http://www.greatachievements.org/?id=3956>>.

Year	Events in communications
	Canada's railway mail service ends <sup>268</sup> First e-mail message is sent <sup>269</sup>
1973	In March, 1973 the federal government issued a Green Paper titled, <i>Proposals for a Communications Policy for Canada</i> 75% of the traffic on ARPANET – built in 1969, to link the Universities of California, Stanford and Utah <sup>270</sup> - consists of e-mail <sup>271</sup> Cell phones are invented; the first call is made in April from Motorola, to its rival, Bell Labs <sup>2</sup>
1974	<i>Canadian Radio-television and Telecommunications Commission Act</i> , (Bill C-5), 1974-75-76, c. 49, and is promulgated by Order-in-Council on 1 April 1975; it stipulates that the CRTC “shall exercise the powers and perform the duties and functions in relation to telecommunications ... vested ... in the Canadian Transport Commission” (l, s. 14(2))  Canadian Capital Cost Allowance (CCA) under <i>Income Tax Act</i> changed to permit “to write-off their investment in a film project against other income, thereby reducing taxes owed to government. At one point the writeoff was 100 per cent: investors could claim their entire investment amount in the year of the investment. Thus the CCA provided a very effective way for private individuals to shelter income from government taxation by investing in film projects.” <sup>272</sup>  TCP/IP released to the public <sup>273</sup>
1976	Canadian government changes advertising deductibility rules in <i>Income Tax Act</i> . CRTC assumes jurisdiction over telecommunications; at the time 850 independent telecommunications companies are in operation <sup>274</sup>
1977	Section 13.(1) of the <i>Canadian Human Rights Act</i> prohibits the telephonic communication of  ... any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that person or those persons are identifiable on the basis of a prohibited ground of discrimination. (2) Subsection (1) does not apply in respect of any matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking. (3) For the purposes of this section, no owner or operator of a telecommunications undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunications undertaking owned or operated by that person are used by other persons for the transmission of that matter.
1979	Clyne committee <i>Report of the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty</i>

<sup>268</sup> <http://www.civilization.ca/cpm/chrono/chs1841e.html>

<sup>269</sup> “The History of Email” [http://www.swynk.com/friends/janssen/Articles/History\\_Of\\_Email.asp](http://www.swynk.com/friends/janssen/Articles/History_Of_Email.asp)

<sup>270</sup> <http://www.davesite.com/webstation/net-history.shtml>

<sup>271</sup> <http://www.davesite.com/webstation/net-history.shtml>

<sup>272</sup> Office of the Chief Audit and Evaluation Executive, Evaluation Services Directorate, Canadian Heritage, *Summative Evaluation of the Canadian Film or Video Production Tax Credit (CPTC)*, (Ottawa, September 2008), at 13 (3.1.2 History), [http://publications.gc.ca/collections/collection\\_2016/pch/CH7-53-2008-eng.pdf](http://publications.gc.ca/collections/collection_2016/pch/CH7-53-2008-eng.pdf)

<sup>273</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” at 304.

<sup>274</sup> CRTC, *Canadian Telecommunications Policy Review : Discussion paper*, (Ottawa, 17 August 2005)

<<http://publications.gc.ca/collections/Collection/BC92-58-2005E.pdf>>.

at para. 21.

Year	Events in communications
1980	The OECD releases <i>Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data</i> <sup>275</sup>
1980-1982	Applebaum-Hebert: Federal Cultural Policy Review Committee
1981	Kent: Royal Commission on Newspapers In the U.S., IBM launches the “personal computer”, a stand-alone machine with its own CPU, storage, memory, utilities and software <sup>276</sup> Lockheed engineers use homing pigeons to transmit negatives to test stations 25 miles away (the birds work for birdseed and are far cheaper than a car) <sup>277</sup>
1983	Department of Communications, “Towards a New National Broadcasting Policy” On 1 January TCP/IP begins running in the U.S. <sup>278</sup> French embassy in Moscow discovers that “bugs in its teleprinters had been relaying all incoming and outgoing telegrams to the KGB for the past six years.” <sup>279</sup>
1983	Department of Communications, “Building for the Future: Towards a Distinctive CBC”
1984	Department of Communications, <i>From Gutenberg to Telidon</i> , (Ottawa, 1984)
1985	Neilsen report: Federal Task Force on Program Review published its recommendations on culture and communications
1985	Film Industry Task Force, <i>Canadian Cinema – A Solid Base: Report</i> , (Ottawa, 1985) [Raymond-Roth]
1986	Task Force on the Non-Theatrical Film Industry, <i>Report</i> , (Ottawa, 1986) [Jensen-Macerola] Task Force on Broadcasting Policy, <i>Report</i> , (Ottawa, 1986) [Caplan-Sauvageau] Federal-Provincial Committee on the Future of French-Language Television issued its report In U.S. the <i>Electronic Communications Privacy Act</i> and <i>Computer Abuse and Fraud Act</i> come into effect <ul style="list-style-type: none"> <li>• The <i>Electronic Communications Privacy Act</i> outlaws the unauthorized interception of digital communications</li> <li>• The <i>Computer Abuse and Fraud Act</i> makes it a felony to gain unauthorized access to “federal interest” computers, a misdemeanor to undertake the unauthorized trafficking of computer passwords, a felony to cause “malicious damage” by altering information in or preventing use of a federal interest computer<sup>280</sup></li> </ul>
1987	House of Commons Standing Committee on Communications and Culture: Sixth Report Department of Communications, <i>Communications for the Twenty-First Century: Media and Messages in the Information Age</i> (Ottawa, 1987) Department of Communications, <i>A Policy Framework for Telecommunications in Canada</i> (Ottawa, 1987)

<sup>275</sup> Valerie Steeves, “Censorship and Privacy Issues as Communications become Increasingly Digital” Canadian Telecommunications Policy Conference: Adapting to New Realities 133 at 156.

<sup>276</sup> <http://www.discovery.com/area/technology/hackers/golden.html>

<sup>277</sup> The Early History of Data Networks, “How It Began” <[http://vww.it.kth.se/docs/early\\_net/ch-2-1.1.html](http://vww.it.kth.se/docs/early_net/ch-2-1.1.html)>

<sup>278</sup> Wade Rowland, *Spirit of the Web: The Age of Information from Telegraph to Internet*, (Toronto: Key Porter Books, 1999), “Some Milestones in Communications Technology” at 301.

<sup>279</sup> Christopher Andrew, “Intelligence and the Cold War” in Hiram Morgan, *Information, Media and Power Through the Ages*, (Dublin: University College Dublin Press, 2001) 272 at 277-278

<sup>280</sup> Jones International “Computer Fraud: Overview”

<<http://www.google.ca/search?q=cache:XdBLNruZ320C:www.digitalcentury.com/encyclo/update/comfraud.html+%22computer+fraud+and+abuse+act%22&hl=en&ie=UTF-8>>

Year	Events in communications
1988	On 19 October UK government introduces ban on broadcasting of statements by eleven Irish organizations the government links to terrorist activity <sup>281</sup>
1991	Girard-Peters Task Force: <i>Report on the Economic Status of Television</i>
	Royal Commission on Electoral Reform and Party Financing, <i>Reforming Electoral Democracy</i> , Vol 1 (Ottawa, Minister of Supply and Services Canada: 1991), <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1989-2-1-1991-1-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1989-2-1-1991-1-eng.pdf</a>
	Marion G. Wrobel, Library of Parliament, <i>Telecommunications: the demise of natural monopoly and its implications for regulation</i> , Backgrounder (Ottawa, 1991)
1992	Royal Commission on Electoral Reform and Party Financing, <i>Reforming Electoral Democracy</i> , Vol. 1 <a href="http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1989-2-1-1991-1-eng.pdf">http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1989-2-1-1991-1-eng.pdf</a>
	Industry Canada. <i>Communications for the Twenty-First Century: Media and Messages in the Information Age</i> . Ottawa, 1992.
	Communications Canada, <i>A spectrum policy framework for Canada</i> (Ottawa, 1992)
	Communications Canada, <i>Telecommunications in Canada: an overview of the carriage industry</i> , (Ottawa, 1992)
	Communications Canada, <i>Telecommunications privacy principles</i> , (Ottawa, 1992)
	Standing Committee on Communications and Culture, <i>The Ties that Bind</i> , (Ottawa, 1992)
1993	Task Force on the Introduction of Digital Radio, Communications Canada, <i>Digital radio, the sound of the future: the Canadian vision</i> , (Ottawa, 1993)
	Federal working group to “review the CBC’s funding situation”
1994	Communications Development and Planning Branch, Industry Canada, <i>Privacy and the Canadian information highway: building Canada’s information and communications infrastructure</i> , (Ottawa, 1994)
	Parliamentary Standing Committee on Canadian Heritage: “role of the [CBC] .. potential sources of new revenues”
1995	Working Group on Canadian Programming and Private Television: <i>Report on the Future of Canadian Programming and the Role of Private Television: Keeping Canada on the Information Highway</i> .
	Standing Committee on Canadian Heritage, <i>The Future of the Canadian Broadcasting Corporation in the Multi-Channel Universe</i>
	Information Highway Advisory Council. <i>Connection, Community and Content: The Challenge of the Information Highway</i> . Supply and Services Canada, Ottawa, Canada, September 1995.
	CRTC, <i>Competition and culture on Canada’s information highway: managing the realities of transition</i> , (Ottawa, 19 May 1995),
	Information Highway Advisory Council, <i>Connection, Community, Content: The Challenge of the Information Highway</i> , (Ottawa, 27 September 1995)
	Government of Canada, <i>Building the Information Society: Moving Canada into the 21<sup>st</sup> Century</i> .
1996	Mandate Review Committee of the CBC, NFB and Telefilm Canada, <i>Making Our Voices Heard</i> , Report (Ottawa, 1996) [ Juneau Committee’
	Research Branch, Library of Parliament, <i>Privacy issues in telecommunications</i> , Current issue reviews (Ottawa, 1993, revised January 1996)
	Daniel J. Shaw, Research Branch, Library of Parliament, <i>Telecommunications and Canadian industrial policy</i> , (Ottawa, 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp430-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp430-e.pdf</a>
	Tom Gorman, Services, Science and Technology Division, Statistics Canada, <i>Television: Glorious Past, Uncertain Future</i> , 63F0002XPZB No. 6 (Ottawa, January 1996), <a href="http://publications.gc.ca/collections/Collection/Statcan/63F0002XIE/63F0002XIB1995006.pdf">http://publications.gc.ca/collections/Collection/Statcan/63F0002XIE/63F0002XIB1995006.pdf</a>



Year	Events in communications
	<p>Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>THE DEREGULATORY FRAMEWORK FOR TELECOMMUNICATIONS AND BROADCAST DISTRIBUTION</i> (Ottawa, November 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp432-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp432-e.pdf</a></p> <p>Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>THE INFORMATION HIGHWAY: THE CONVERGENCE OF TELECOMMUNICATIONS, BROADCAST DISTRIBUTION AND MICROPROCESSING</i>, (Ottawa, June 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp420-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp420-e.pdf</a></p> <p>Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>The information revolution and international telecommunications</i>, (Ottawa, July 1996), <a href="http://publications.gc.ca/collections/Collection-R/LoPBdP/BP-e/bp421-e.pdf">http://publications.gc.ca/collections/Collection-R/LoPBdP/BP-e/bp421-e.pdf</a></p> <p>Human Resources Canada, <i>Human resources study of the Canadian telecommunications industry: detailed report</i>, (Ottawa, 1996)</p> <p>Peter Howitt, Industry Canada, Implications of knowledge-based growth for micro-economic policies, cat. Id53-11/6-1996E (Ottawa, 1996)</p> <p>Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>Telecommunication services and pricing: from monopoly to competition</i>, (Ottawa, 1995, revised September 1996)</p> <p>Élisabeth Lefebvre &amp; Louis A. Lefebvre, <i>Information and telecommunication technologies: the impact of their adoption on small and medium-sized enterprises</i>, (Ottawa, September 1996), <a href="http://publications.gc.ca/collections/collection_2012/crdi-idrc/E97-48-1996-eng.pdf">http://publications.gc.ca/collections/collection_2012/crdi-idrc/E97-48-1996-eng.pdf</a></p> <p>Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>CANADIAN COMPETITIVENESS IN TELECOMMUNICATIONS AND BROADCAST DISTRIBUTION</i>, (Ottawa, November 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp427-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp427-e.pdf</a></p> <p>Task Force on the Future of the Canadian Music Industry, <i>A Time for action: report</i>, (Ottawa, 1996)</p> <p>Industry Canada, <i>Convergence Policy Statement</i>, Policy (Ottawa, 1996), <a href="https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05265.html">https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05265.html</a></p>
1999	<p>Canadian Heritage, <i>The Road to Feature Film Success: Report of the Feature Film Advisory Committee</i>, (Ottawa, 1999)</p> <p>Standing Committee on Canadian Heritage, <i>A Sense of Place, A Sense of Being: The evolving role of the Federal government in support of culture in Canada</i>, Ninth Report (Ottawa, June 1999), <a href="http://www.ourcommons.ca/DocumentViewer/en/36-1/CHER/report-9/">http://www.ourcommons.ca/DocumentViewer/en/36-1/CHER/report-9/</a></p> <p>The Cultural Industries Sectoral Advisory Group on International Trade, <i>New Strategies for Culture and Trade Canadian Culture in a Global World</i>, (February 1999), <a href="http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/ip-pi/canculture.aspx?lang=en">http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/ip-pi/canculture.aspx?lang=en</a></p>
2000	<p>Canadian Heritage, <i>From Script to Screen: New Policy Directors for Canadian Feature Film</i>, (Ottawa, 2000), <a href="http://publications.gc.ca/collections/Collection/CH44-11-2000E.pdf">http://publications.gc.ca/collections/Collection/CH44-11-2000E.pdf</a></p>
2001	<p>A Framework for Copyright Reform, (Ottawa, 2001)</p> <p>Intellectual Property Policy Directorate, Industry Canada, Consultation Paper on the Application of the Copyright Act's Compulsory Retransmission Licence to the Internet, (Ottawa, 2001),</p> <p>Consultation Paper on Digital Copyright Issues, (Ottawa, 2001)</p> <p>National Broadband Task Force, <i>The New National Dream: Networking the Nation for Broadband Access</i>, (Ottawa, 2001), <a href="http://publications.gc.ca/collections/Collection/C2-574-2001E.pdf">http://publications.gc.ca/collections/Collection/C2-574-2001E.pdf</a></p> <p>Federal government announces the <i>Tomorrow Starts Today</i> cultural policy, to foster arts and culture, maximize Canadians' access to arts and culture, and develop partnerships</p>

Year	Events in communications
2002	Department of Canadian Heritage, <i>Canadian Content for the 21<sup>st</sup> Century</i> , Discussion Paper (Ottawa, March 2002), <a href="http://publications.gc.ca/collections/Collection/CH44-29-2002E.pdf">http://publications.gc.ca/collections/Collection/CH44-29-2002E.pdf</a>
2002	Department of Canadian Heritage, <i>From Creators to Audience: New Policy Directions for Canadian Sound Recording</i> , (Ottawa, 2002), Policy, <a href="http://publications.gc.ca/collections/Collection/CH44-31-2002E.pdf">http://publications.gc.ca/collections/Collection/CH44-31-2002E.pdf</a>
2003	Standing Committee on Industry, Science and Technology, <i>Opening Canadian Communications to the World</i> , Report, (Ottawa, April 2003), <a href="https://www.ourcommons.ca/DocumentViewer/en/37-2/INST/report-3/">https://www.ourcommons.ca/DocumentViewer/en/37-2/INST/report-3/</a> .
2003	Canadian Heritage, <i>Northern Native Broadcast Access Program (NNBAP) &amp; Northern Distribution Program (NDP) Evaluation: Final Report</i> (25 June 2003), <a href="http://publications.gc.ca/collections/Collection/CH44-90-2003E.pdf">http://publications.gc.ca/collections/Collection/CH44-90-2003E.pdf</a>
2003	Department of Canadian Heritage, <i>Canadian Content in the 21<sup>st</sup> Century in Film and Television Productions: A Matter of Cultural Identity</i> , (Ottawa, 2003) [Macerola Report]
2003	Lincoln report: <i>Our Cultural Sovereignty: The Second Century of Canadian Broadcasting</i> , Report of the House of Commons Standing Committee on Canadian Heritage, (Ottawa, 11 June 2003) <a href="http://publications.gc.ca/collections/Collection/CH44-48-2005E.pdf">http://publications.gc.ca/collections/Collection/CH44-48-2005E.pdf</a>
2005	UNESCO adopts <i>Convention on the Protection and Promotion of the Diversity of Cultural Expressions</i> , supported by Canada and France – Canada is the first country to accept the <i>Convention</i> and it entered into force in March 2007
2005	Canadian Heritage, Corporate Review Branch, Evaluation Services, <i>Summative Evaluation of the Canadian Feature Film Policy</i> , (Ottawa, September 2005)
2005	Standing Committee on Canadian Heritage, <i>Scripts, Screens and Audiences: A New Feature Film Policy for the 21<sup>st</sup> Century</i> , Report (Ottawa, November 2005), <a href="http://www.ourcommons.ca/DocumentViewer/en/38-1/CHPC/report-19/">http://www.ourcommons.ca/DocumentViewer/en/38-1/CHPC/report-19/</a>
2006	Standing Senate Committee on Transport and Communications, <i>Final Report on the Canadian News Media</i> (2 volumes)
2006	House of Commons Standing Committee on Industry, Science and Technology, Sixth Report, (Ottawa, 30 March 2007), 39 <sup>th</sup> Parl, 1 <sup>st</sup> Sess, <a href="https://www.ourcommons.ca/DocumentViewer/en/39-1/INDU/report-6/">https://www.ourcommons.ca/DocumentViewer/en/39-1/INDU/report-6/</a> :  “Pursuant to Standing Order 108(2), the Committee has studied the deregulation of telecommunications and recommends that the Minister of Industry withdraw the order varying Telecom Decision CRTC 2006-15 and table in Parliament a comprehensive package of policy, statutory and regulatory reforms to modernize the telecommunications services industry.”
2006	CRTC, <i>The Future Environment Facing the Canadian Broadcasting System: a report prepared pursuant to section 15 of the Broadcasting Act</i> (Ottawa, 14 December 2006), <a href="http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf">http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf</a>
2006	March 22, 2006: Telecommunications Policy Review Panel, <i>Final Report</i> , (Ottawa, March 2006), <a href="https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\$FILE/tprp-final-report-2006.pdf">https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\$FILE/tprp-final-report-2006.pdf</a>
2007	Department of Industry, <i>Spectrum Policy Framework for Canada</i> , Gazette Notice No. DGTP-001-07 (Ottawa, June 2007), <a href="http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html">http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html</a>
2007	Standing Committee on Canadian Heritage, <i>The Funding Crisis of the Canadian Television Fund: Report</i> , (Ottawa, March 2007), 39 <sup>th</sup> Parl., 1 <sup>st</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/39-1/CHPC/report-17/">http://www.ourcommons.ca/DocumentViewer/en/39-1/CHPC/report-17/</a>
2007	L. Dunbar & C. Leblanc, <i>REVIEW OF THE REGULATORY FRAMEWORK FOR BROADCASTING SERVICES IN CANADA</i> (Ottawa, 31 August 2007), <a href="http://publications.gc.ca/collections/collection_2008/crtc/BC92-62-2007E.pdf">http://publications.gc.ca/collections/collection_2008/crtc/BC92-62-2007E.pdf</a>

Year	Events in communications
2008	Standing Committee on Canadian Heritage, <i>CB/Radio-Canada: Defining Distinctiveness in the Changing Media Landscape: Report</i> , (Ottawa, February 2008) 39 <sup>th</sup> Parl., 2 <sup>nd</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/39-2/CHPC/report-6/">http://www.ourcommons.ca/DocumentViewer/en/39-2/CHPC/report-6/</a>
2008	CRTC, <i>Perspectives on Canadian Broadcasting in New Media - a compilation of research and stakeholder views</i> (Ottawa, May 2008) Revised June 2008, <a href="http://publications.gc.ca/collections/collection_2009/crtc/BC92-65-2008E.pdf">http://publications.gc.ca/collections/collection_2009/crtc/BC92-65-2008E.pdf</a>
2008	Competition Policy Review Panel, <i>Compete to Win: Final Report</i> , (Ottawa, June 2008), <a href="https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h_00040.html">https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h_00040.html</a>
2008	Office of the Chief Audit and Evaluation Executive, Evaluation Services Directorate, Canadian Heritage, <i>Summative Evaluation of the Canadian Film or Video Production Tax Credit (CPTC)</i> , (Ottawa, September 2008), <a href="http://publications.gc.ca/collections/collection_2016/pch/CH7-53-2008-eng.pdf">http://publications.gc.ca/collections/collection_2016/pch/CH7-53-2008-eng.pdf</a>
2010	Convergence Policy, Policy Development and Research, CRTC, <i>Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications</i> , (Ottawa, February 2010), <a href="https://crtc.gc.ca/eng/publications/reports/rp1002.htm">https://crtc.gc.ca/eng/publications/reports/rp1002.htm</a>
2010	Report of the Standing Committee on Industry, Science and Technology <i>CANADA'S FOREIGN OWNERSHIP RULES AND REGULATIONS IN THE TELECOMMUNICATIONS SECTOR</i> , (Ottawa, JUNE 2010) <a href="https://www.ourcommons.ca/DocumentViewer/en/40-3/INDU/report-5/">https://www.ourcommons.ca/DocumentViewer/en/40-3/INDU/report-5/</a> , 40 <sup>th</sup> Parl., 3 <sup>rd</sup> Sess.
2011	CRTC, <i>Navigating Convergence II: Charting Canadian Communications Change and Regulatory Implications</i> , (Ottawa, 2011), <a href="http://publications.gc.ca/site/eng/9.694893/publication.html">http://publications.gc.ca/site/eng/9.694893/publication.html</a>
2011	Standing Committee on Canadian Heritage, <i>Emerging and Digital Media: Opportunities and Challenges</i> , Report (Ottawa, February 2011), 40 <sup>th</sup> Parl. 3 <sup>rd</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-7/">http://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-7/</a>
2011	Standing Committee on Canadian Heritage, <i>Impacts of Private Television Ownership Changes and the Move Towards New Viewing Platforms: Report</i> , (Ottawa, March 2011) 40 <sup>th</sup> Parl. 3 <sup>rd</sup> Sess., <a href="https://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-9/">https://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-9/</a>
2012	Report of the Standing Committee on Industry, Science and Technology, <i>E-COMMERCE IN CANADA: PURSUING THE PROMISE</i> , (Ottawa, May 2012) 41 <sup>st</sup> Parl., 1 <sup>st</sup> Sess., <a href="https://www.ourcommons.ca/DocumentViewer/en/41-1/INDU/report-1/page-5">https://www.ourcommons.ca/DocumentViewer/en/41-1/INDU/report-1/page-5</a>
2014	Standing Committee on Canadian Heritage, <i>Review of the Feature Film Industry in Canada: Report</i> , (Ottawa, June 2014), 41 <sup>st</sup> st Parl., 2 <sup>nd</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/41-2/CHPC/report-14/">http://www.ourcommons.ca/DocumentViewer/en/41-2/CHPC/report-14/</a>
2014	Michael Dewing, legal and Social Affairs Division, Parliamentary Information and Research Service, <i>Canadian Broadcasting Policy</i> , Pub. No. 2011-9-E (Ottawa, 23 June 2011), revised 6 Aug 2014, <a href="http://publications.gc.ca/collections/collection_2014/bdp-lop/bp/2011-39-2-eng.pdf">http://publications.gc.ca/collections/collection_2014/bdp-lop/bp/2011-39-2-eng.pdf</a>
2015	Standing Committee on Canadian Heritage, <i>Review of the Feature Film Industry in Canada: Report</i> , (Ottawa, June 2015), 41 <sup>st</sup> Parl., 2 <sup>nd</sup> Sess., <a href="http://publications.gc.ca/collections/collection_2015/parl/x61-1/XC61-1-1-412-14-eng.pdf">http://publications.gc.ca/collections/collection_2015/parl/x61-1/XC61-1-1-412-14-eng.pdf</a> . “Crull had decreed last Thursday that no interviews or footage of Canadian Radiotelevision and Telecommunications Commission chair Jean-Pierre Blais air on CTV, shortly after Blais made an appearance on BNN, a business news station that is also owned by Bell Media, a source told the Star. The source said Crull was furious at the CRTC’s decision to unbundle cable packages, which could prove to be painful for BCE Inc., Bell Media’s parent company. <sup>3</sup>
2015	Standing Senate Committee on Transport and Communications, <i>Time for change: the CBC/Radio-Canada in the twenty-first century</i> , Report, (Ottawa, 2015), <a href="http://publications.gc.ca/site/eng/9.802332/publication.html">http://publications.gc.ca/site/eng/9.802332/publication.html</a>
2016	House of Commons Standing Committee on Canadian Heritage, <i>INTERIM REPORT ON MEDIA STUDY: The Impact of Digital Technology</i> , Report 3, Presented to the House: December 8, 2016



Year	Events in communications
2017	Standing Committee on Canadian Heritage, <i>Disruption: Change and churning in Canada's media landscape</i> (Ottawa, 15 June 2017), <a href="http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6/">http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6/</a>
2018	Canadian Heritage, <i>Creative Canada – A Vision for Canada's Creative Industries</i> , (Ottawa, 28 September 2017), <a href="https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html">https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html</a>

**Appendix 2    Changes in broadcast ownership, 1990-2018**

<b>Partial listing of CRTC decisions announcing changes in ownership (largely missing decisions from 2015-2018)</b>			
<b>CRTC Decision</b>	<b>Total price</b>	<b>CRTC decision</b>	<b>Total price</b>
85-1146	\$131.0	2004-503	\$34.5
86-586	\$4.0	2004-557	\$12.6
86-642	\$106.5	2005-207	\$13.0
87-123	\$16.0	2006-309	\$685.2
87-284	\$4.3	2007-165	\$1,365.0
87-62	\$134.1	2007-360	\$375.0
88-275	\$85.0	2008-130	\$9.9
88-276	\$50.0	2009-269	\$1.0
89-121	\$11.9	2009-537	\$0.0
89-766	\$616.2	2009-699	\$0.0
89-769	\$190.0	2009-383	\$0.2
89-821	\$627.2	2009-536	\$0.0
90-1059	\$11.9	2010-193	\$25.0
90-1073	\$79.8	2010-782	\$1,201.0
90-1074	\$72.5	2010-792	\$10.0
90-631	\$12.0	2010-953	\$16.0
91-80	\$140.0	2010-964	\$27.0
92-821	\$45.0	2010-965	\$0.0
94-923	\$3,100.0	2011-163	\$3,200.0
96-251	\$0.0	2012-108	\$5.0
97-85	\$4.9	2012-339	\$3.0
98-503	\$5.8	2012-443	\$1,320.0
99-471	\$92.9	2012-577	\$31.5
2000-221	\$692.0	2012-639	\$8.0
2000-222	\$314.0	2012-697	\$10.3
2000-5	\$224.1	2013-207	\$132.8
2000-747	\$2,300.0	2013-310	\$3,000.0
2000-87	\$107.5	2013-345	\$0.0
2001-384	\$6,000.0	2013-433	\$0.0
2001-460	\$33.0	2013-737	\$249.0
2001-604	\$121.5	2013-738	\$138.6
2001-647	\$125.0	2014-115	\$0.8
2001-665	\$10.5	2014-129	\$112.0
2001-765	\$73.9	2014-388	\$173.1
2002-91	\$385.4	2014-465	\$22.9
2004-502	\$219.0	2018-404	\$393.9
<b>Total, all decisions</b>			<b>\$28,723.1</b>

### Appendix 3 CRTC search engine results for documents from before 2000

Searches that identify specific years – in this case, 1994 – bring up results from 1993 to the present. The “Refine by year” tool on the left of the screen, however, does not refer to any years from before 2000.

The screenshot shows a web browser window with the URL <https://crtc.gc.ca/recherche-search/?q=1994+competition&n=e&d=crtc&m=#>. The search bar contains the text "1994 competition" and the results are filtered to "All Fields".

On the left side, there are three filter sections:

- REFINE BY TYPE** (7): Orders (522), Decisions (266), Notices of consultation (86), Regulatory policies (49), Commission letters (12).
- REFINE BY SUBJECT** (642): Telecommunications (770), Ex parte applications (284), Interim approval (282), CRTC Telecommunications Rules of Procedure (177), Bell Canada (144).
- REFINE BY YEAR** (18): 2019 (1), 2018 (20), 2017 (7), 2016 (2), 2015 (4), 2014 (5), 2013 (15), 2012 (17), 2011 (15), 2010 (23), 2009 (32), 2008 (49), 2007 (113), 2006 (36), 2005 (37), 2004 (32), 2003 (35), 2002 (20), 2001 (16), 2000 (18).

The main results area shows several entries, many of which are archived:

- ARCHIVED - Telecom Decision CRTC 93-12 I CRTC
- ARCHIVED - Bell Canada - Revenue requirements for 1993 and 1994
- ARCHIVED - Telecom Decision CRTC 94-B I CRTC
- ARCHIVED - The Island Telephone Company Limited - Revenue requirement for 1994
- ARCHIVED - Telecom Decision CRTC 93-18 I CRTC
- ARCHIVED - AGT Limited - Revenue requirements for 1993 and 1994
- ARCHIVED - Telecom Decision CRTC 94-1 I CRTC
- ARCHIVED - BC Tel - Revenue requirements for 1993 and 1994
- Telecom Decision CRTC 94-19 I CRTC
- Review of regulatory framework
- ARCHIVED - Telecom Decision CRTC 94-9 I CRTC
- ARCHIVED - Maritime Telegraph and Telephone Company Limited - Revenue requirement for 1994
- Telecom Decision CRTC 2006-15 - consolidated version I CRTC
- Forbearance from the regulation of retail local exchange services
- Telecom Decision CRTC 2006-15 I CRTC
- Forbearance from the regulation of retail local exchange services
- Telecom Decision CRTC 97-19 I CRTC
- Forbearance - regulation of bus services provided by incumbent telephone companies
- Decision CRTC 2000-746 I CRTC
- Long-distance competition and improved service for Northwestel customers
- ARCHIVED - Telecom Decision CRTC 2003-69 I CRTC
- ARCHIVED - TELUS' application for forbearance from regulation of single-line inside wire services

At the bottom of the results list, there is a pagination link: "1 2 3 4 5 6 7 8 9 10 Next".

Appendix 4    Time until governments regulate new media: 2500 BCE to 1997

Government	Year communications medium introduced	Year government control established	Time between introduction and control
<b>Printing</b>			
Middle East	2500 BCE: scrolled hides used as writing surfaces	669 BCE: King Ashurbanipal censors library in Assyria	1,831 years
Mainz, Germany	1450: mechanical printing press introduced	1486: government censorship office opens	36 years
England	1476: mechanical printing press introduced	1533: Henry VIII bans some books	57 years
American colonies	1638: mechanical printing press introduced in Virginia	1683: prohibition on printing presses in Virginia	45 years
Average (excluding Middle East)			46 years
<b>Telegraphy</b>			
England	1838: first electric telegraphy begins commercial service	1863: <i>Telegraph Act</i>	25 years
U.S.	1844: First telegraph sent in the U.S.	1866: <i>Post Roads Act</i>	22 years
Canada	1846: Toronto, Hamilton & Niagara Electric Telegraph Co begins operations	1852: <i>Telegraph Act</i>	6 years
Average			18 years
<b>Telephony</b>			
U.S.	1876: Bell patents telephone	1887: <i>Interstate Commerce Act</i> governs wireless telegraph	11 years
England	1878: Telephones introduced	1896: Post Office assumes control over telephone co.s	18 years
Canada	1880: Bell Telephone Company of Canada incorporates	1888: Parliament regulates Bell Canada	8 years
Average			12 years
<b>Broadcasting (radio telegraphy)</b>			
England	1906: Fessenden broadcasts human voice and music from Massachusetts to ships at sea	1904: <i>Wireless Telegraphy Act</i>	Pre-existing legislation
U.S.		1912: <i>Radio Act</i>	6 year
Canada		1913: <i>Radio Telegraph Act</i>	7 years
Average			4.3 years
<b>Internet</b>			
U.S.	1993: Universal addressing system for Internet – World Wide Web - launches 1994: Banner ads begin to be posted online 1997: domain name sales become lucrative ('business.com' sells for US\$150K in 1997 and for US\$7.5M in 1999 )	1986: <i>Electronic Communications Privacy</i> (bans unauthorized interception of digital communications) 1986: <i>Computer Abuse and Fraud Acts</i> (makes unauthorized access to "federal interest" computer a felony; makes unauthorized trafficking of computer passwords a misdemeanor, makes "malicious damage" by altering information in or preventing use of a	- 7 years

Government	Year communications medium introduced	Year government control established	Time between introduction and control
		federal interest computer a felony) <sup>282</sup> 1987 <i>Computer Security Act</i> (requires US federal agencies to take measures to prevent unauthorized access to computers holding sensitive information) <sup>283</sup>	
Canada		2001: <i>Personal Information and Privacy in Electronic Documents Act</i>	8 years
England		2000: <i>Regulation of Investigatory Powers Act</i>	7 years
Average			2.7 years

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<sup>282</sup> Jones International “Computer Fraud: Overview”  
 <<http://www.google.ca/search?q=cache:XdBLNruZ320C:www.digitalcentury.com/encyclo/update/comfraud.html+%22computer+fraud+and+abuse+act%22&hl=en&ie=UTF-8>>.

<sup>283</sup> *Ibid.*



**Appendix 5** Legislative sections and objects that CRTC' 2017 *Communications Monitoring Report* may describe

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
3(1)(a)	Ownership & control	Table 4.1.20 Number of radio service transactions, value of those transactions and corresponding tangible benefits for the period from 1 January 2012 to 31 December 2016 (\$ millions)	1			1
		Table 4.2.30 Value of television ownership transactions and corresponding tangible benefits for the period from 1 January 2012 to 31 December 2016	1			1
		Table 4.2.35 BCE – Controlling ownership interest in discretionary and on demand services, 2016	1			1
		Table 4.2.36 CBC - Controlling ownership interest in discretionary and on demand services, 2016	1			1
		Table 4.2.37 Cogeco - Controlling ownership interest in discretionary and on demand services, 2016	1			1
		Table 4.2.38 Corus - Controlling ownership interest in discretionary and on demand services, 2016	1			1
		Table 4.2.39 Quebecor - Controlling ownership interest in discretionary and on demand services, 2016	1			1
		Table 4.2.40 Rogers - Controlling ownership interest in discretionary and on demand services, 2016	1			1
		Table 4.2.41 Shaw - Controlling ownership interest in discretionary services, 2016	1			1
3(1)(d)(iii)	Linguistic duality	Map 2.1.1 Locations of official language minority communities in Canada	1			1
		Table 2.1.1 Official language minority population as a percentage of the total population, by province and territory, 2016	1			1
		Table 2.1.2 Percentage of official language minority community households having access to communications services in their official language, by type of service, for the provinces/territories and all of Canada, 2013	1			1
	Serve Canadians' needs	Figure 4.1.17 Radio tuning by station type in diary markets, 2016	1			1
		Figure 4.2.15 Percentage of Canadians who viewed television and Internet video services and programming in the past month, by language and platform, 2016	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 4.2.16 Average number of hours Canadians watched traditional television (2011-2012 through 2015-2016 broadcast years) and Internet television (2010 to 2016)	1			1
		Table 4.1.10 Radio tuning share (%) in an average week for English- and French-language AM and FM stations	1			1
		Table 4.1.11 Average weekly hours (millions of hours) of radio tuned by listener for English- and French-language AM and FM stations	1			1
		Table 4.1.12 Tuning (millions of hours) and tuning share (%) achieved by the largest English-language private commercial radio operators in Canada in an average week	1			1
		Table 4.1.13 Tuning (millions of hours) and tuning share (%) achieved by the largest French-language private commercial radio operators in Canada in an average week	1			1
		Table 4.1.14 Fall radio tuning shares - English-language radio station formats, 2016	1			1
		Table 4.1.15 Fall radio tuning shares - French-language radio station formats, 2016	1			1
		Table 4.1.9 Average weekly hours of radio tuned per capita by age group for all Canada	1			1
		Table 4.2.11 Average number of hours Canadians watched traditional television each week, by age group	1			1
		Table 4.2.12 Viewing share of Canadian and non-Canadian television services, by language and type of service, for all of Canada, excluding the Quebec francophone market	1			1
		Table 4.2.13 Viewing share of Canadian and non-Canadian television services, by language and type of service, in the Quebec francophone market	1			1
		Table 4.2.14 Average weekly viewing hours (millions) for Canadian programs broadcast by Canadian television services, by language market, program origin, and program category	1			1
		Table 4.2.15 Average weekly viewing hours for Canadian programs broadcast by CBC conventional television services, by language market, program origin and program category	1			1
		Table 4.2.16 Average weekly viewing hours for Canadian programs broadcast by private conventional services, by language market, program origin, and program category	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Table 4.2.17 Average weekly viewing hours for Canadian programs broadcast by discretionary services, by language market, program origin, and program category	1			1
		Table 4.2.18 Viewing share of English- and French-language Canadian services, by ownership group in all of Canada, excluding the Quebec francophone market	1			1
		Table 4.2.19 Viewing share of English- and French-language Canadian services, by ownership group in the Quebec francophone market	1			1
		Table 4.2.20 Total viewing hours (millions) by market	1			1
3(1)(d)(iv)	Ready adapt'n to tech'l change	Figure 4.1.15 Percentage of Canadians accessing online streamed audio services monthly, by language group	1			1
		Figure 4.1.16 Satellite radio subscriptions, by language group	1			1
		Figure 4.2.10 Estimated AVOD revenues of Facebook and YouTube in Canada (\$ millions)	1			1
		Figure 4.3.5 Percentage of Canadians who watch TV exclusively online, nationally and by language	1			1
		Figure 4.3.6 Percentage of Canadians who watch TV exclusively online, nationally, by age group	1			1
		Figure 4.3.7 Percentage of Canadians who subscribe to Netflix, by region	1			1
		Figure 4.3.8 Percentage of Canadians who subscribe to Netflix, by age group	1			1
		Table 3.0.4 Industry convergence – Cable vs. telecommunications		1		1
		Table 4.2.5 Estimated revenues of Internet-based video services in Canada by type of service (\$ millions)	1			1
		Table 4.2.6 Estimated revenues of top 5 TVOD services in Canada (\$ millions)	1			1
		Table 4.2.7 Estimated revenues of AVOD services by platform in Canada (\$ millions)	1			1
		Table 4.2.8 Estimated Canadian Youtube and Facebook monthly active users (millions)	1			1
3(1)(f)	Predominantly Canadian	Chart 4.1.1 Radio CCD contributions structure	1			1
		Figure 4.1.18 CCD contributions by regulatory measure (\$ millions)	1			1
		Figure 4.1.19 CCD contributions by regulatory measure (percentage)	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 4.2.18 Television programming expenditures (\$4.3 billion total), PNI vs. Canadian vs. non-Canadian, 2016	1			1
		Figure 4.2.19 Programming expenditures per revenue dollar	1			1
		Figure 4.2.20 Distribution of CPE for private conventional television services, by program category, 2016	1			1
		Figure 4.3.10 Contributions to Canadian programming by type (millions)	1			1
		Figure 4.3.11 BDU contributions to Canadian programming by recipient	1			1
		Table 4.1.16 Summary of annual CCD contributions reported by radio station licensees (\$ thousands)	1			1
		Table 4.1.17 Annual CCD contributions reported by new radio station licensees during the first licence term (\$ thousands)	1			1
		Table 4.1.18 Annual CCD contributions reported by radio licensees in the context of licence renewals (\$ thousands)	1			1
		Table 4.1.19 Annual CCD contributions reported by radio licensees in the context of changes in ownership and/or control (\$ thousands)	1			1
		Table 4.2.21 PNI expenditures by type of service and program category (\$ millions)	1			1
		Table 4.2.22 PNI expenditures by CBC and large private ownership groups, by program category (\$ millions)	1			1
		Table 4.2.23 CPE for CBC English and French-language conventional television, by program category (\$ thousands)	1			1
		Table 4.2.24 CPE for private conventional television, by program category (\$ thousands)	1			1
		Table 4.2.25 Expenditures on non-Canadian programming by private conventional television services, by program category (\$ thousands)	1			1
		Table 4.2.26 Expenditures on non-Canadian programming by private and CBC conventional television services, by program category and linguistic market (\$ thousands)	1			1
		Table 4.2.27 CPE and expenditures on non-Canadian programming reported by specialty services, by language of broadcast and program category (\$ thousands) (Part 1 of 2)	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Table 4.2.28 CPE and expenditures on non-Canadian programming reported by specialty services, by language of broadcast and program category (\$ thousands) (Part 2 of 2)	1			1
		Table 4.2.29 CPE reported by PPV and VOD services (\$ thousands)	1			1
	programming resources	Figure 4.2.17 CPE on television, by type of service, 2016 (\$ millions)	1			1
3(1)(g)	High standard	Table 4.1.21 Number of radio-related contacts received by the CRTC, by type of issue	1			1
		Table 4.1.22 Number of radio complaints by subject matter	1			1
		Table 4.1.23 Radio complaints handled by the CBSC in 2016 by language and national origin	1			1
		Table 4.1.24 Complaints handled by the ASC	1			1
		Table 4.2.31 Number of television-related contacts received by the CRTC, by type of issue	1			1
		Table 4.2.32 Television programming complaints received by the Commission and referred to the Canadian Broadcast Standards Council, by sector and issue	1			1
		Table 4.2.33 Television-related complaints handled by the CBSC, by language of broadcast and origin of the program (2015-2016)	1			1
		Table 4.2.34 Complaints relating to digital advertising and advertising on television, handled by the ASC	1			1
		Table 4.3.8 Number of BDU-related contacts received by the CRTC's client services	1			1
3(1)(m)v)	Equivalent quality in Eng/French	Table 4.2.2 CBC conventional television revenues (\$ millions)	1			1
3(1)(o)	Aboriginal programming	Table 4.1.5 Financial summary (\$ thousands) of native, community, and campus radio stations	1			1
3(1)(s)	Available resources	Figure 4.0.1 Percent of total broadcasting revenues, by ownership groups	1			1
		Figure 4.0.2 Percentage of total commercial radio revenues by broadcaster, 2016	1			1
		Figure 4.0.3 Percentage of television revenues by broadcaster, 2016	1			1
		Figure 4.0.4 Total broadcasting revenues by type of service (\$ billion)	1			1
		Figure 4.0.5 PBIT/EBITDA margins by type of service (%)	1			1
		Figure 4.1.1 Revenues (\$ millions) of ethnic commercial radio stations, by province	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
			<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
Section	Object					
		Figure 4.1.10 Average annual revenues and PBIT per station of French-language private commercial radio stations	1			1
		Figure 4.1.11 PBIT and PBIT margins of French-language private commercial radio stations	1			1
		Figure 4.1.12 Average per-station annual revenues and PBIT of Ethnic private commercial radio stations	1			1
		Figure 4.1.13 PBIT and PBIT margin – Ethnic private commercial radio stations	1			1
		Figure 4.1.2 Revenues of private commercial radio stations and number of reporting undertakings	1			1
		Figure 4.1.3 Revenues of English-language private commercial radio stations and number of reporting undertakings	1			1
		Figure 4.1.4 Revenues of French-language private commercial radio stations and number of reporting undertakings	1			1
		Figure 4.1.6 Average per-station annual revenues and PBIT of private commercial radio stations	1			1
		Figure 4.1.7 PBIT and PBIT margins of private commercial radio stations	1			1
		Figure 4.1.8 Average annual revenues and PBIT per station of English-language private commercial radio stations	1			1
		Figure 4.1.9 PBIT and PBIT margins of English-language private commercial radio stations	1			1
		Figure 4.2.1 Television services revenues, by type of service (\$ millions)	1			1
		Figure 4.2.11 Aggregate PBIT margins for private conventional television and discretionary services	1			1
		Figure 4.2.12 Aggregate PBIT margins for English-language private conventional television and discretionary services	1			1
		Figure 4.2.13 Aggregate PBIT margins for French-language private conventional television and discretionary services	1			1
		Figure 4.2.14 Aggregate PBIT margins for ethnic and third-language discretionary services	1			1
		Figure 4.2.2 Private conventional television revenue sources (%), 2016	1			1
		Figure 4.2.3 Advertising revenues of conventional television stations owned and operated by the CBC	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 4.2.4 Ranking by revenue of individual discretionary services, in descending order, 2016	1			1
		Figure 4.2.5 Revenues of English-language private conventional television and discretionary services	1			1
		Figure 4.2.6 Revenues of French-language private conventional television and discretionary services	1			1
		Figure 4.2.7 Revenues of ethnic and third-language discretionary services	1			1
		Figure 4.2.8 Collective revenues of top three English-language private conventional television ownership groups	1			1
		Figure 4.2.9 Collective revenues of top two owners of French-language private conventional stations	1			1
		Table 4.0.1 Broadcasting revenues (\$ millions)	1			1
		Table 4.0.2 Broadcasting revenue distribution by region (\$ billions)	1			1
		Table 4.0.3 Percentage of broadcasting revenues generated by companies operating in multiple sectors	1			1
		Table 4.1.1 Revenues (\$ millions) of private commercial radio stations, by language of broadcast and frequency band	1			1
		Table 4.1.25 English-language and French-language radio revenues and number of undertakings reporting for the largest commercial radio operators in Canada	1			1
		Table 4.1.3 Revenues of CBC/SRC radio stations summary, by type of revenue (\$ thousands)	1			1
		Table 4.1.4 Revenues (\$ millions) of commercial radio stations, by radio market type.	1			1
		Table 4.2.1 Revenues of television services, by type of service (\$ millions)	1			1
		Table 4.2.3 Advertising and other revenues: private conventional television stations, by language of broadcast	1			1
		Table 4.2.4 Revenues of discretionary services, by language of broadcast	1			1
	financial resources available	Chart 4.2.2 Canadian programming funding ecosystem	1			1
3(1)(s)(i)	Sign't contr'n to Cancon	Table 4.3.10 Affiliation payments made to Canadian and non-Canadian discretionary services reported by BDUs (\$ millions)	1			1
		Table 4.3.11 Affiliation payments received by Canadian and non-Canadian discretionary services reported by BDUs (\$ millions)	1			1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
3(1)(t)(ii)	Affordability	Figure 3.0.7 EBITDA margins achieved by cable-based carriers, incumbent TSPs, and other service providers		1		1
		Figure 4.3.1 EBITDA margins achieved by BDUs - Basic and non-basic services	1			1
		Figure 4.3.2 BDU basic service prices by major centre, 2016	1			1
		Figure 4.3.3 BDU basic service prices by province in urban centres and rural communities, 2016	1			1
		Figure 4.3.4 Percentage of revenues and subscribers by type of distribution platform, 2016.	1			1
		Figure 4.3.9 Likelihood of Canadians “cutting the cord” on their current traditional TV subscription in the next 12 months (percentage)	1			1
		Table 4.3.1 Revenues (\$ millions) of broadcasting distribution undertakings (BDU) – Basic and non-basic services	1			1
		Table 4.3.2 Percentage of broadcasting distribution undertaking revenues (%) - Basic and non-basic services	1			1
		Table 4.3.3 Broadcasting distribution undertakings subscriber (thousands) numbers – Basic and non-basic services	1			1
		Table 4.3.4 Percentage of broadcasting distribution undertakings subscriber (%) – Basic and non-basic services	1			1
		Table 4.3.5 Number of subscribers for the largest Canadian BDUs (thousands)	1			1
		Table 4.3.6 Percentage of households subscribing to BDUs	1			1
		Table 4.3.7 Monthly revenues per subscriber, by type of BDUs	1			1
3(1)(t)(ii); 7(b)	Affordability	Figure 2.0.2 Monthly household expenditures, by service and by age of reference person (\$/month/household), 2015		1		1
		Table 2.0.3 Monthly household spending on communications services, by service and by income quintile (\$/month/household)		1		1
		Table 2.0.4 Household spending on communications services, by income quintile, 2015		1		1
3(1)(t)(iii)	Reasonable terms	Table 4.3.12 Number of dispute resolution cases per type and year	1			1
7(a)	Orderly development thruout Canada	Figure 3.0.1 Annual communications revenue growth rates		1		1
		Figure 5.1.8 Subsidy paid to local exchange carriers (LECs) and the revenue-percent charge.			1	1
		Figure 5.2.6 Local lines by type of line, (%), 2016			1	1
		Figure 5.5.31 Number of WiFi hotspot locations			1	1



Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 5.5.9 Mobile device penetration, by region, 2016			1	1
		Figure 5.6.3 Wholesale high-speed access (HSA) based subscriptions across Canada, 2015 vs. 2016			1	1
		Table 3.0.1 Communications revenues (\$ billions)		1		1
		Table 3.0.2 Communications revenues by region (\$ billions)		1		1
		Table 3.0.3 Communications revenues, by type of service provider (\$ billions)		1		1
		Table 5.3.10 Residential Internet service upload speed (Kbps) by advertised download speed and average advertised download speed			1	1
		Table 5.3.9 Weighted-average upload/download limits (GBs) of residential Internet service plans, by advertised download speed			1	1
		Table 5.5.11 Number of subscribers with a data plan, by province and territory			1	1
		Table 5.5.15 Wireless coverage, penetration, and average revenue per user (ARPU) by province and territory, 2016			1	1
	System	Figure 5.6.1 Wholesale telecommunications revenues, by market sector			1	1
		Figure 5.6.2 Percentage distribution of wholesale telecommunications revenues, by market sector (2012 vs. 2016)			1	1
		Table 5.3.1 Retail Internet service revenues (\$ millions)			1	1
		Table 5.6.1 Wholesale telecommunications revenues (\$ billions)			1	1
		Table 5.6.11 Local and access lines, by type of TSP (thousands)			1	1
		Table 5.6.2 Wholesale telecommunications revenues by market sector (\$ millions)			1	1
		Table 5.6.3 Local wholesale telecommunications revenues, by major component (\$ millions)			1	1
		Table 5.6.4 Local wholesale telecommunications revenues, by province (\$ millions)			1	1
		Table 5.6.5 Internet-related wholesale revenues by type of service (\$ millions)			1	1
7(b)	Accessible to all Canadians	Figure 2.0.10 Residential broadband service availability (5 Mbps or higher download speed), by province/territory (% of households), 2016			1	1
		Figure 5.3.12 Residential Internet access service subscriptions by access technology, 2012 vs. 2016 (%)			1	1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 5.3.14 Broadband service availability vs. subscriptions by province/territory, 2016			1	1
		Figure 5.3.15 Broadband service, 5 Mbps availability (% of households)			1	1
		Figure 5.3.16 Broadband service availability by speed (% of households)			1	1
		Figure 5.3.17 Broadband service availability – Urban vs. rural (% of households), 2016			1	1
		Map 5.5.1 Wireless service availability by number of facilities-based WSPs, 2016			1	1
		Map 5.5.2 Wireless HSPA+ service availability by incumbent and new-entrant facilities-based WSPs, 2010 and 2016			1	1
		Map 5.5.3 Wireless LTE service availability between 2013 and 2016			1	1
		Map 5.5.4 Wireless LTE-Advanced service availability, 2016			1	1
		Table 2.0.5 Canadian wireline and mobile wireless service subscribers per 100 households			1	1
		Table 2.0.6 Wireline and mobile wireless service subscribers per 100 households, by province, 2015			1	1
		Table 2.0.7 Canadian wireline and mobile wireless service subscribers per 100 households, by income quintile			1	1
		Table 2.0.9 Residential Internet service subscriptions by advertised download speed per 100 households			1	1
		Table 5.3.14 Key telecommunications availability indicators (% of households)			1	1
		Table 5.3.15 Broadband service availability in rural areas, by download speed and number of platforms (% of households), 2016			1	1
		Table 5.3.16 Broadband service availability, by speed and province/territory (% of households), 2016			1	1
		Table 5.5.4 Number of wireless subscriptions (thousands)			1	1
	Affordability	Figure 2.0.14 Percentage of Canadians experiencing bill shock and filing complaints			1	1
		Figure 2.0.3 Price indices for telephone services, BDU services, and Internet services compared to the CPI			1	1
		Figure 2.0.4 Broadband, wireline, and wireless pricing comparison in rural communities, per province/territory, 2016			1	1
		Figure 2.0.5 Broadband, wireline, and wireless service pricing comparison in urban communities, per province/territory, 2016			1	1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 2.0.6 Price differences between primary and flanker brand phone plans, Canada, February 2017			1	1
		Figure 2.0.7 Primary vs. flanker brand wireless pricing, baskets 1 and 2, by province and territory, February 2017			1	1
		Figure 2.0.8 Primary vs. flanker brand wireless pricing, baskets 3 and 4, by province and territory, February 2017			1	1
		Figure 5.2.3 Price of basic local telephone service (\$/month) and number of companies providing this service in major urban centres, 2016			1	1
		Figure 5.2.4 Price of basic local telephone service (\$/month) and number of companies providing this service in urban and rural communities, by province and territory, 2016.			1	1
		Figure 5.3.3 Price of residential broadband (5/1 Mbps) Internet access service and number of companies providing this service in urban centres, 2016			1	1
		Figure 5.3.4 Price of residential broadband (25/3 Mbps, 100 GB/month) Internet access service and number of companies providing this service in urban centres, 2016			1	1
		Figure 5.3.5 Price of residential broadband (50/10 Mbps, unlimited GB/month) Internet access service and number of companies providing this service in urban centres, 2016			1	1
		Figure 5.3.6 Price comparison of residential broadband (5/1 Mbps) Internet access service and number of companies providing this service in urban and rural communities, 2016 Source: CRTC data collection			1	1
		Figure 5.3.7 Price comparison of residential broadband (25/3 Mbps, 100 GB/month) Internet access service and number of companies providing this service in urban and rural communities, 2016			1	1
		Figure 5.3.8 Price comparison of residential broadband (50/10 Mbps, unlimited GB/month) Internet access service and number of companies providing this service in urban and rural communities, 2016			1	1
		Figure 5.5.13 Percentage of mobile wireless subscribers with data plans by size of plan, 2016			1	1
		Figure 5.5.14 Percentage of mobile wireless subscribers with voice plans, by size of voice plan, 2016			1	1



Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 5.5.15 Percentage of mobile wireless subscribers with SMS plans by size of plan, 2016.			1	1
		Figure 5.5.18 Price of a Level 1 basket wireless service (\$/month) and number of companies providing the service in a number of select cities, 2016			1	1
		Figure 5.5.19 Price of a Level 2 basket wireless service (\$/month) and number of companies providing the service in a number of select cities, 2016			1	1
		Figure 5.5.2 Roaming revenues by type and destination, 2016			1	1
		Figure 5.5.20 Price of a Level 3 basket wireless service (\$/month) and number of companies providing the service in a number of select cities, 2016			1	1
		Figure 5.5.21 Price of a Level 4 basket wireless service (\$/month) and number of companies providing the service in a number of select cities, 2016			1	1
		Figure 5.5.22 Price of a Level 1 basket wireless service (\$/month) and number of companies providing the service in urban centres and rural communities, 2016			1	1
		Figure 5.5.23 Price of a Level 2 basket wireless service (\$/month) and number of companies providing the service in urban centres and rural communities, 2016			1	1
		Figure 5.5.24 Price of a Level 3 basket wireless service (\$/month) and number of companies providing the service in urban centres and rural communities, 2016			1	1
		Figure 5.5.25 Price of a Level 4 basket wireless service (\$/month) and number of companies providing the service in urban centres and rural communities, 2016			1	1
		Figure 5.5.26 Average prices for mobile services, 2013-2015			1	1
		Figure 5.5.27 Average urban prices for mobile services, 2013-2015			1	1
		Figure 5.5.28 Average rural prices for mobile services, 2013-2015			1	1
		Figure 5.5.29 Roaming voice and data traffic by destination, 2016			1	1
		Figure 5.5.32 Number of free and pay-for-use WiFi hotspot locations in Canada, 2016			1	1
		Table 2.0.10 Internet data consumption, per service			1	1
		Table 2.0.2 Number of subscriptions with bundled services (millions)		1		1
		Table 5.2.13 Large incumbent TSPs' payphone quantities			1	1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Table 5.3.17 Adoption of various video technologies in Canada (% of households)			1	1
		Table 5.3.7 Residential Internet access service average revenue per user per month (ARPU), (\$)			1	1
		Table 5.3.8 Residential Internet service one-month average revenue, by advertised download speed (\$)			1	1
		Table 5.5.13 Average wireless service revenue per subscriber			1	1
		Table 5.5.14 Average wireless service revenues per subscriber, by province and territory (excluding paging) (\$)			1	1
		Table 5.5.5 Postpaid wireless service subscribers as a percentage of total wireless service subscribers (%)			1	1
		Table 5.5.9 Average monthly churn rates (%)			1	1
	High quality?	Table 5.1.4 Number of telecommunications-related contacts received by the CRTC by type of issue and subject, 2016			1	1
		Table 5.1.5 Summary of issues raised in telecommunications complaints handled by the CCTS (2015-2016)			1	1
	Reliable service	Figure 5.0.5 Telecommunications capital expenditures as a percentage of revenues, by type of TSP			1	1
		Table 5.0.5 Telecommunications investments made in plant and equipment, by type of provider of telecommunications service (\$ billions)			1	1
7(c)	Competitiveness	Figure 5.0.3 Telecommunications revenues and EBITDA margins			1	1
		Figure 5.0.4 Percentage of total revenues by size of entity and their respective EBITDA margins, 2016			1	1
		Figure 5.1.1 Telecommunications wireline and wireless retail revenues			1	1
		Figure 5.1.2 Distribution of telecommunications retail revenues, by market sector			1	1
		Figure 5.1.7 Total retail telecommunications revenue market share by type of service provider, 2016			1	1
		Figure 5.3.1 Residential Internet service subscriber market share by type of service provider (%)			1	1
		Figure 5.3.10 Internet access service revenue shares, by market and type of service provider, 2016 (%)			1	1
		Figure 5.3.9 Residential broadband subscriptions – Incumbent TSPs vs. cable-based carriers (millions)			1	1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 5.5.30 Established carriers' coverage and penetration vs. new entrants' coverage and penetration (% of population), 2016			1	1
		Figure 5.5.5 TSPs' wireless subscriber market share			1	1
		Table 5.0.1 Telecommunications revenues (retail and wholesale) (\$ billions)			1	1
		Table 5.0.2 Telecommunications revenue distribution by region (\$ billions)			1	1
		Table 5.0.4 Total telecommunications revenues by type of service provider (\$ millions)			1	1
		Table 5.1.1 Telecommunications retail revenues, by market sector (\$ billions)			1	1
		Table 5.1.2 Number and percentage of retail telecommunications revenues generated by companies operating in multiple sectors			1	1
		Table 5.1.3 Wireline telecommunications revenue market share (%) by type of service provider, 2016			1	1
		Table 5.2.11 Large incumbent TSPs' retail long distance revenue market share (%), by region			1	1
		Table 5.2.12 Large incumbent TSPs' payphone revenues			1	1
		Table 5.3.2 Residential Internet access service revenues by type of service provider (\$ millions)			1	1
		Table 5.3.3 Business Internet access and transport service revenues, by type of service (\$ millions)			1	1
		Table 5.3.4 Residential Internet service subscribers, by type of service provider (thousands)			1	1
		Table 5.5.16 Percentage of population covered by number of different wireless networks, by province and territory, (%), 2016			1	1
		Table 5.5.8 Wireless service subscriber market share by province and territory (2016) (%)			1	1
7(g)	Encourage innovation	Figure 5.1.3 Annual revenue change for newer and legacy telecommunications services, by technology			1	1
		Figure 5.1.4 Residential IP-based service revenues			1	1
		Figure 5.3.13 Data usage (GB) per hour of streaming, per bit rate range			1	1
		Figure 5.3.2 High-speed residential Internet service subscribers, by transfer (upload/download) capacity (GB) included in subscriptions			1	1
	High standard	Table 3.0.6 Number of communications-related contacts received by the CRTC, by type of issue		1		1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
	Innovation	Figure 5.1.5 Homes passed by fibre-optic cable (millions), 2016			1	1
		Figure 5.1.6 Percentage of homes using fibre-optic cable provided by large incumbent TSPs			1	1
		Figure 5.2.5 Alternative service providers' (including cable-based carriers) local retail lines, by type of facility			1	1
		Figure 5.5.8 Mobile device penetration			1	1
		Table 2.0.8 Home computer ownership and Internet use from home per 100 households, by income quintile			1	1
7(h)	Respond to users' requirements	Figure 5.5.16 Popular Internet and mobile activities performed by Canadians on their smartphone, 2016			1	1
		Figure 5.5.17 Popular Internet and mobile activities performed by Canadians on their tablet, 2016			1	1
		Table 2.0.11 Aggregate data released on the number of devices unlocked and revenues from unlocking			1	1
	Users' economic req'ts	Figure 5.3.11 Business Internet access service revenues by access technology, 2012 vs. 2016 (%)			1	1
		Figure 5.4.1 Breakdown of newer data service revenues, by protocol used			1	1
		Figure 5.4.2 Retail data and private line revenue market share (%), by type of TSP			1	1
		Figure 5.4.3 Retail data service revenue market share (%), by type of TSP			1	1
		Figure 5.5.1 Wireless service revenue and subscriber growth rates (excluding paging)			1	1
		Table 5.3.11 Residential Internet service one-month revenue distribution (%), by advertised download speed			1	1
		Table 5.3.5 Business Internet access subscriptions by type of service provider (thousands)			1	1
		Table 5.4.1 Data and private line retail revenues (\$ millions)			1	1
		Table 5.4.2 Retail data service revenues by classification of data protocol used (\$ millions)			1	1
		Table 5.4.3 Private line retail revenues by type of service provider (\$ millions)			1	1
		Table 5.4.4 Retail data service revenue market share (%), by type of service provider and classification of data protocol used			1	1
		Table 5.4.5 Retail private line revenue market share (%)			1	1
		Table 5.5.1 Retail wireless and paging service revenues (\$ millions)			1	1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Table 5.5.2 Retail wireless and paging service revenue components (\$ millions)			1	1
		Table 5.5.3 Prepaid and postpaid retail wireless service revenues (basic voice, long distance, and data) (\$ millions)			1	1
	Users' social req'ts	Figure 2.0.11 Low Internet GB consumption, per service, per month			1	1
		Figure 2.0.12 Medium Internet GB consumption, per service, per month			1	1
		Figure 2.0.13 High Internet GB consumption, per service, per month			1	1
		Table 5.3.18 Adoption of various video technologies in Canada, by age group (%), 2016.			1	1
	Users' economic requirements	Figure 2.0.9 Cellphone and landline ownership rates			1	1
	Users' requirements	Figure 2.0.15 Percentage of wireless service plans with contracts, by duration			1	1
		Figure 5.5.10 Mobile data-only plan revenues and subscribers by data plan capacity, 2016			1	1
		Figure 5.5.4 Total and daily number of SMS and MMS messages			1	1
		Figure 5.6.4 Wholesale HSA-enabled subscriptions by service speed in Mbps (thousands)			1	1
		Table 5.3.12 Residential Internet service one-month subscriber distribution (%), by advertised download speed			1	1
		Table 5.3.13 List of ranges for data usage measurement calculations			1	1
		Table 5.3.6 Weighted-average upload and download usage (GBs) of residential high-speed Internet subscribers			1	1
		Table 5.5.10 Mobile device penetration, by linguistic group (%)			1	1
		Table 5.5.12 Mobile broadband subscribers by type of plan			1	1
		Table 5.5.6 Average monthly SMS/MMS (messages/month) and data (MB/month) usage			1	1
3(1)(e)	appropriate contribution	Figure 3.0.3 Communications revenues by type of provider, 2016		1		1
		Table 2.0.1 Annual communications service industry revenues (\$ billions)		1		1
	elements in broadcasting	Chart 4.2.1 Programming sources and platforms	1			1
3(1)(e); 7(f)	appropriate contribution; market forces	Figure 2.0.1 Percentage of total combined revenues, by broadcasting and telecommunications ownership groups		1		1



Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 3.0.4 Broadcasting and telecommunications revenues		1		1
		Figure 3.0.5 Cable-based carriers' revenues, by service type	1			1
		Figure 3.0.6 Canadian communications revenue composition for a select number of large service providers, 2016		1		1
		Table 3.0.5 Percentage of broadcasting and telecommunications revenues generated by companies operating in multiple sectors		1		1
3(1)(s); 7(a)	; telecommunications system	Figure 3.0.2 Percentage of total combined revenues, by broadcasting and telecommunications ownership groups		1		1
7(k)	range in both languages	Figure 4.1.14 Types of radio and audio services authorized to broadcast in Canada, as a percentage of all such services, 2016	1			1
		Table 4.1.2 Number of private commercial radio stations reporting financial results, by language of broadcast and frequency band	1			1
		Table 4.1.6 Number and type of radio and audio services authorized to broadcast in Canada, by language of broadcast	1			1
		Table 4.1.7 Number of public/community-based and private radio services authorized to broadcast over-the-air, by province and language of broadcast, 2016	1			1
3(1)(k)	range in both languages	Table 4.1.8 Number of new over-the-air radio stations licensed categorized by language, licence category, type and licensing process	1			1
		Table 4.2.10 Number of Canadian public/community/educational and private conventional television services authorized to broadcast, by province and language of broadcast, 2016	1			1
		Table 4.2.9 Type and number of television services authorized to broadcast in Canada, by language of broadcast	1			1
		Table 4.3.9 Adoption rates (%) of various video technologies in Canada by language market	1			1
7(f)	Competitiveness	Figure 5.5.11 Percentage of mobile revenues from voice vs. voice and data vs. data-only plans, 2016			1	1
		Figure 5.5.12 Percentage of mobile wireless subscribers with a data plan			1	1
		Figure 5.5.6 TSPs' wireless service revenue market share			1	1
		Figure 5.5.7 Percentage of revenues and subscribers derived via primary brands, flanker brands, and resellers/rebillers			1	1
		Figure 5.6.5 Wholesale telecommunications service revenues, by type of tariff, 2016 (%)			1	1

Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Figure 5.6.6 Wholesale wireline telecommunications service revenues by type of service, 2016 (%)			1	1
		Table 5.5.7 Average revenue per 1 GB data/month (\$)			1	1
		Table 5.6.10 Wholesale mobile wireless revenues, by type of service (\$ millions)			1	1
		Table 5.6.12 Wireline wholesale telecommunications revenue market share, by type of TSP (%)			1	1
		Table 5.6.13 Local and access revenues, by type of TSP (\$ millions)			1	1
		Table 5.6.6 Wholesale HSA revenues by service component (\$ millions)			1	1
		Table 5.6.7 DSL and cable wholesale HSA service subscriptions by type of service (thousands)			1	1
		Table 5.6.8 DSL and cable wholesale HSA monthly revenue per enabled subscription (\$)			1	1
		Table 5.6.9 Data protocol wholesale revenues, by service category (\$ millions)			1	1
	Market forces	Figure 5.0.1 Distribution of telecommunications revenues, by type of TSP, 2016			1	1
		Figure 5.0.2 Percentage of total combined telecommunications revenues by ownership group			1	1
		Figure 5.2.1 Retail VoIP local lines, access-dependent and access-independent, by market			1	1
		Figure 5.2.2 Long distance retail monthly revenues (\$), per line			1	1
		Figure 5.5.3 Percentage of wireless service plans with contracts, by duration			1	1
		Figure 5.6.7 Inter-provider expenses per revenue dollar for wireline services			1	1
		Table 5.0.3 Percentage of telecommunications revenues generated by forborne services			1	1
		Table 5.2.1 Local and long distance retail revenues (\$ millions)			1	1
		Table 5.2.10 Long distance retail revenues (\$) per minute, by type of TSP			1	1
		Table 5.2.2 Residential local telephone and long distance service retail revenues by type of TSP (\$ millions)			1	1
		Table 5.2.3 Business local telephone and long distance retail revenues by type of TSP (\$ millions)			1	1



Legislative section and description of object		CRTC Tables and figures	Statute			
Section	Object		<i>Broadcasting</i>	<i>Broadcasting and Telecommunications</i>	<i>Telecommunications</i>	Total
		Table 5.2.4 Long distance retail revenues by type and size of provider (\$ millions)			1	1
		Table 5.2.5 Number of retail managed and non-managed local telephone lines (thousands)			1	1
		Table 5.2.6 Residential and business local telephone lines by type of TSP (thousands)			1	1
		Table 5.2.7 Local and long distance retail monthly revenues (\$), per line			1	1
		Table 5.2.8 Long distance retail monthly revenues (\$), per line			1	1
		Table 5.2.9 Local telephone retail service monthly revenues (\$) per line, by type of TSP			1	1
		Table 5.6.14 Wholesale long distance revenues by type of TSP (\$ millions)			1	1
		Table 5.6.15 Percentage of wholesale telecommunications revenues generated by forborne services (%)			1	1
Grand Total			142	18	179	339

Appendix 6 Summary of Tables, Figures and Charts in the 2017 Communications Monitoring Report

Section	Object	Broadcasting	Broadcasting & Telecommunications	Telecommunications	Total
3(1)(a)	Canadian ownership & control	9			9
3(1)(b)	National identity and cultural sovereignty				
3(1)(c)	English and French broadcasting				
3(1)(d)(i)	Cultural, political, social and economic fabric				
3(1)(d)(ii)	Range of programming including entertainment, information and analysis				
3(1)(d)(iii)	Linguistic duality	3			3
	Serve Canadians' needs	20			20
3(1)(d)(iv)	Ready adapt'n to tech'l change	11	1		12
3(1)(e)	Appropriate contribution		2		2
	Elements in broadcasting	1			1
3(1)(e); 7(f)	Appropriate contribution; market forces	1	4		5
3(1)(f)	Predominantly Canadian	21			21
	Programming resources	1			1
3(1)(g)	High standard	9			9
3(1)(h)	Responsibility				
3(1)(i)	Broadcasting by system				
3(1)(i)(i)	Information, enlightenment, and entertainment				
3(1)(i)(ii)	Local, regional and national sources				
3(1)(i)(iii)	Educational and community programs				
3(1)(i)(iv)	Reasonable opportunity for exposure of differing views on matters of public concern	CONCENTRATE D MEDIA OWNERSHIP?			
3(1)(i)(v)	Independent production				
3(1)(j)	Educational programming				
3(1)(k)	range in both languages	8			8
3(1)(l)	<b>National public broadcaster</b>				
3(1)(m)v)	Equivalent quality in Eng/French	1			1
3(1)(n)	Conflict between national public broadcaster and other undertakings				
3(1)(o)	Aboriginal programming	1			1
3(1)(p)	Accessible programming				
3(1)(q)	Alternative programming services				
3(1)(r)	Alternative programming services				
3(1)(s)	Available resources	40			40
	financial resources available	1			1
3(1)(s)(i)	Sign't contr'n to Cancon	2			2
3(1)(s); 7(a)	Sign't contr'n to Cancon consistent with available resources; telecommunications system		1		1
3(1)(t)(ii)	Affordability	12	1		13
3(1)(t)(ii); 7(b)	Affordability		3		3
3(1)(t)(iii)	Reasonable terms	1			1
7(a)	Orderly development thruout Canada		4	9	13
	System			9	9
7(b)	Accessible to all Canadians			18	18
	Affordability		1	41	42
	High quality?			2	2

Section	Object	Broadcasting	Broadcasting & Telecommunications	Telecommunications	Total
	Reliable service			2	2
7(c)	Competitiveness			23	23
7(d)	Canadian ownership				
7(e)	Use of Canadian transmission facilities				
7(f)	Competitiveness			14	14
	Market forces			19	19
7(g)	Encourage innovation			4	4
	High standard		1		1
	Innovation			5	5
7(h)	Respond to users' requirements			3	3
	Users' economic req'ts			15	15
	Users' social req'ts			4	4
	Users' economic requirements			1	1
	Users' requirements			10	10
7(i)	Privacy				
Total: All tables, figures, charts		142	18	179	339

Appendix 7 Analysis of television program logs for November 2017

Log Summaries (Nov 2017)	OTA national public broadcaster	TVO	OTA private broadcaster	Discretionary news	Discretionary non-news	PPV or VOD	All TV services (PPV/VOD = 3)
# stations	22	1	90	4	132	3 services, 14 channels	252
<b>Total program hours</b>	15,084.9	721.0	53,808.6	3,466.1	86,536.2	9,900.7	169,517.5
As % of all services	8.9%	0.4%	31.7%	2.0%	51.0%	5.8%	100.0%
<b>Total original program hours</b>	8,876.0	82.3	37,068.2	385.9	1,017.4		47,429.8
As % of total hours	<b>58.8%</b>	11.4%	68.9%	11.1%	1.2%	0.0%	28.0%
As % of all services	<b>8.9%</b>	0.4%	31.7%	2.0%	51.0%	5.8%	100.0%
<b>Total Canadian hours</b>	12,249.5	453.5	30,990.6	3,309.3	37,731.4	2,707.1	87,441.4
% of all program hours - regulation	20%		17%	35%	35%		
% of all program hours	<b>81.2%</b>	62.9%	57.6%	95.5%	43.6%	27.3%	51.6%
As % of total	14.0%	0.5%	35.4%	3.8%	43.2%	3.1%	100.0%
<b>Total original Canadian hours</b>	7,403.0	56.4	21,783.6	308.1	590.8		30,141.9
As % of all program hours	49.1%	7.8%	40.5%	8.9%	0.7%		17.8%
As % of all original hours	83.4%	68.4%	58.8%	79.8%	58.1%		63.6%
As % of all services	24.6%	0.2%	72.3%	1.0%	2.0%		100.0%
<b>Total foreign hours</b>	2,835.4	267.5	22,818.0	156.8	48,804.8	7,193.6	82,076.1
As % of all program hours	18.8%	37.1%	42.4%	4.5%	56.4%	72.7%	48.4%
As % of all services	3.5%	0.3%	27.8%	0.2%	59.5%	8.8%	100.0%
<b>Total original foreign hours</b>	1,472.9	26.0	15,284.6	77.8	426.5		17,287.9
As % of all program hours	9.8%	3.6%	28.4%	2.2%	0.5%		10.2%
As % of all original hours	16.6%	31.6%	41.2%	20.2%	41.9%		36.4%
As % of all services	8.5%	0.2%	88.4%	0.5%	2.5%		100.0%
<b>Hours of drama</b>	5,030.3	203.0	14,704.2	222.5	35,935.9	6,152.0	62,248.0
As % of all program hours	33.3%	28.1%	27.3%	6.4%	41.5%	62.1%	36.7%
As % of all services	8.1%	0.3%	23.6%	0.4%	57.7%	9.9%	100.0%
<b>Hours of Canadian drama</b>	3,367.7	146.0	3,378.7	166.3	10,359.2	1,868.5	<b>19,286.5</b>
As % of all program hours	22.3%	20.3%	6.3%	4.8%	12.0%	18.9%	11.4%
As % of all Canadian hours	27.5%	32.2%	10.9%	5.0%	27.5%	69.0%	<b>22.1%</b>
As % of all drama	66.9%	72.0%	23.0%	74.7%	28.8%	30.4%	31.0%
As % of all services	17.5%	0.8%	17.5%	0.9%	53.7%	9.7%	100.0%
<b>Hours of foreign drama</b>	1,662.6	56.9	11,325.5	56.2	25,576.7	4,283.5	<b>42,961.5</b>
As % of all program hours	11.0%	7.9%	21.0%	1.6%	29.6%	43.3%	25.3%
As % of all foreign hours	58.6%	21.3%	49.6%	35.8%	52.4%	59.5%	<b>52.3%</b>
As % of all drama	33.1%	28.0%	77.0%	25.3%	71.2%	69.6%	69.0%
As % of all services	3.9%	0.1%	26.4%	0.1%	59.5%	10.0%	100.0%



Log Summaries (Nov 2017)	OTA national public broadcaster	TVO	OTA private broadcaster	Discretionary news	Discretionary non-news	PPV or VOD	All TV services (PPV/VOD = 3)
<b>Original hours of drama</b>	1,443.4	25.4	6,630.6	45.1	228.2		8,372.7
As % of all program hours	9.6%	3.5%	12.3%	1.3%	0.3%	0.0%	4.9%
As % of all drama	28.7%	12.5%	45.1%	20.3%	0.6%	0.0%	13.5%
As % of all services	17.2%	0.3%	79.2%	0.5%	2.7%	0.0%	100.0%
<b>Hours of original Canadian drama</b>	721.8	17.0	1,101.1	25.1	57.7		1,922.7
As % of all program hours	4.8%	2.4%	2.0%	0.7%	0.1%		1.1%
As % of all original Canadian hours	9.7%	30.2%	5.1%	8.1%	9.8%		6.4%
As % of all drama	14.3%	8.4%	7.5%	11.3%	0.2%		3.1%
As % of original drama	50.0%	67.0%	16.6%	55.6%	25.3%		23.0%
As % of all services	37.5%	0.9%	57.3%	1.3%	3.0%		100.0%
<b>Hours of original foreign drama</b>	721.6	8.4	5,529.6	20.0	170.5		6,450.1
As % of all program hours	4.8%	1.2%	10.3%	0.6%	0.2%		3.8%
As % of all original foreign hours	49.0%	32.3%	36.2%	25.7%	40.0%		37.3%
As % of all drama	14.3%	4.1%	37.6%	9.0%	0.5%		10.4%
As % of original drama	50.0%	33.0%	83.4%	44.4%	74.7%		77.0%
As % of all services	11.2%	0.1%	85.7%	0.3%	2.6%		100.0%
<b>Hours of news</b>	2,507.8		11,271.0	2,536.5	5,799.4		22,114.7
as % of all program hours	16.6%		20.9%	73.2%	6.7%		13.0%
As % of all services	11.3%		51.0%	11.5%	26.2%		100.0%
<b>Hours of original news</b>	2,507.7		9,495.4	110.7	129.4		12,243.1
% of all programming	16.6%		17.6%	3.2%	0.1%		7.2%
% of all news	100.0%		84.2%	4.4%	2.2%		55%
As % of all services	20.5%		77.6%	0.9%	1.1%		100.0%
<b>Hours of local news</b>	578.2		6,375.8	1,668.9	3,845.8		12,468.7
% of all programming	3.8%		11.8%	48.1%	4.4%		7.4%
% of all news	23.1%		56.6%	65.8%	66.3%		56.4%
As % of all services	4.6%		51.1%	13.4%	30.8%		100.0%
<b>Hours of original local news</b>	578.0		5,127.8		37.8		5,743.6
% of all programming	16.6%		17.6%	3.2%	0.1%		7.2%
% of all news	23.0%		45.5%		0.7%		26.0%
As % of all services	10.1%		89.3%	0.0%	0.7%		100.0%

## Appendix 8 CRTC financial summaries over time

### CRTC's 2009-2013 BDU summary

CANADA										
(\$000)	2009	2010	Var %	2011	Var %	2012	Var %	2013	Var %	CAGR (%)
<b>Revenue</b>										
Subscription	8,716,726	9,609,063	10.24	10,304,923	7.24	10,973,534	6.49	11,668,362	6.33	7.6
Connection	31,214	28,972	-7.18	32,200	11.14	32,088	-0.35	32,726	1.99	1.2
Community Channel Sponsorship & Facilities Rental	6,598	5,420	-17.85	5,256	-3.04	5,457	3.84	4,321	-20.82	-10.0
Other	470,134	495,501	5.40	662,281	33.66	628,774	-5.06	640,153	1.81	8.0
<b>Total Revenue</b>	<b>9,224,671</b>	<b>10,138,955</b>	<b>9.91</b>	<b>11,004,660</b>	<b>8.54</b>	<b>11,639,854</b>	<b>5.77</b>	<b>12,345,562</b>	<b>6.06</b>	<b>7.6</b>
<b>Expenses</b>										
Community Programming	136,506	124,115	-9.08	112,483	-9.37	122,162	8.60	126,654	3.68	-1.9
Affiliation Payments	1,725,177	1,932,087	11.99	2,126,588	10.07	2,218,062	4.30	2,334,684	5.26	7.9
Technical	1,342,891	1,466,157	9.18	1,711,073	16.70	1,786,487	4.41	1,936,573	8.40	9.6
Sales and Promotion	593,784	660,031	11.16	702,577	6.45	767,599	9.25	746,827	-2.71	5.9
Administration and General	1,266,976	1,352,997	6.79	1,495,456	10.53	1,688,562	12.91	1,771,973	4.94	8.8
<b>Total Expenses</b>	<b>5,065,334</b>	<b>5,535,388</b>	<b>9.28</b>	<b>6,148,176</b>	<b>11.07</b>	<b>6,582,871</b>	<b>7.07</b>	<b>6,916,712</b>	<b>5.07</b>	<b>8.1</b>
Operating Income	4,159,337	4,603,567		4,856,483		5,056,983		5,428,850		
Depreciation	1,844,826	1,975,939	7.11	2,243,104	13.52	2,563,795	14.30	2,721,319	6.14	10.2
Local Programming Improvement Fund (LPIF)		67,857		70,793	4.33	73,845	4.31	50,234	-31.97	n/a
<b>P.B.I.T.</b>	<b>2,314,510</b>	<b>2,559,771</b>		<b>2,542,586</b>		<b>2,419,343</b>		<b>2,657,297</b>		
Interest Expense	644,632	623,974	-3.20	553,895	-11.23	330,189	-40.39	353,640	7.10	
Adjustments - Gain(Loss)	17,997	-12,392		488,576		173,590		88,475		
<b>Pre-tax Profit</b>	<b>1,687,875</b>	<b>1,923,406</b>		<b>2,477,267</b>		<b>2,262,743</b>		<b>2,392,131</b>		
<b>Subscribers (Basic and Non-Basic)</b>	<b>8,094,058</b>	<b>8,293,963</b>	<b>2.47</b>	<b>8,519,561</b>	<b>2.72</b>	<b>8,688,757</b>	<b>1.99</b>	<b>8,815,628</b>	<b>1.46</b>	<b>2.2</b>
<b>Staff</b>										
Total Salaries	1,647,444	1,817,404	10.32	2,009,079	10.55	2,205,207	9.76	2,454,964	11.33	10.5
Average Staff Count	22,716	24,183	6.46	25,462	5.29	26,659	4.70	29,714	11.46	
Average Salary (\$)	72,522	75,152	3.63	78,906	5.00	82,719	4.83	82,619	-0.12	3.3
<b>Fixed Assets</b>										
Gross Fixed Assets	21,364,242	23,202,449	8.60	25,838,646	11.36	28,543,511	10.47	32,776,140	14.83	
Net Fixed Assets	8,114,066	8,285,746	2.12	8,957,517	8.11	9,733,378	8.66	10,379,117	6.63	
<b>Profitability (%)</b>										
Operating Margin	45.1	45.4		44.1		43.4		44.0		
P.B.I.T. Margin	25.1	25.2		23.1		20.8		21.5		
Pre-tax Margin	18.3	19.0		22.5		19.4		19.4		

CAGR = Compound Annual Growth Rate.

### CRTC's 2010-2014 BDU summary

CANADA										
(\$000)	2010	2011	Var %	2012	Var %	2013	Var %	2014	Var %	CAGR (%)
<b>Revenue</b>										5 yr
Subscription	7,593,179	8,005,385	5.43	8,061,784	0.70	8,288,838	2.82	8,408,631	1.45	2.6
Connection	27,950	29,789	6.58	30,107	1.07	22,467	25.38	19,708	-12.28	-8.4
Community Channel Sponsorship & Facilities Rental	5,420	5,256	-3.04	5,457	3.84	4,321	20.82	3,780	-12.52	-8.6
Other	368,803	418,631	13.51	463,430	10.70	478,289	3.21	490,265	2.50	7.4
<b>Total Revenue</b>	<b>7,995,353</b>	<b>8,459,060</b>	<b>5.80</b>	<b>8,560,779</b>	<b>1.20</b>	<b>8,793,915</b>	<b>2.72</b>	<b>8,922,384</b>	<b>1.46</b>	<b>2.8</b>
<b>Expenses</b>										
Community Programming	124,115	112,483	-9.37	122,174	8.62	138,571	13.42	151,621	9.42	5.1
Affiliation Payments	2,770,368	2,888,066	4.25	3,007,235	4.13	3,103,720	3.21	3,300,239	6.33	4.5
Technical	1,278,230	1,469,629	14.97	1,504,720	2.39	1,560,914	3.73	1,604,761	2.81	5.9
Sales and Promotion	533,919	602,513	12.85	587,380	-2.51	583,498	-0.66	622,409	6.67	3.9
Administration and General	1,283,445	1,432,230	11.59	1,360,646	-5.00	1,323,614	-2.72	1,412,550	6.72	2.4
<b>Total Expenses</b>	<b>5,990,078</b>	<b>6,504,920</b>	<b>8.59</b>	<b>6,582,155</b>	<b>5.41</b>	<b>6,710,316</b>	<b>1.95</b>	<b>7,091,579</b>	<b>5.68</b>	<b>4.3</b>
<b>Operating Income</b>	<b>2,005,275</b>	<b>1,954,141</b>		<b>1,978,624</b>		<b>2,083,599</b>		<b>1,830,805</b>		
Local Programming Improvement Fund (LPIF)	100,676	108,238	7.51	111,818	3.31	75,157	32.79	39,928	-46.87	-20.6
<b>Staff</b>										
Total Remuneration	2,050,126	2,231,191	8.83	2,396,298	7.40	2,397,579	0.05	2,499,268	4.24	5.1
Total Staff Count	26,887	27,940	3.91	28,793	3.05	28,825	0.11	29,028	0.70	
Avg Remuneration (\$)	76,250	79,858	4.73	83,225	4.22	83,177	-0.06	86,099	3.51	3.1
<b>Subscribers</b>	<b>11,156,039</b>	<b>11,396,984</b>		<b>11,528,860</b>		<b>11,506,405</b>		<b>11,392,410</b>		
<b>Profitability (%)</b>										
Operating Margin	25.1	23.1		23.1		23.7		20.5		

CAGR = Compound Annual Growth Rate.



Appendix 9 US bilateral investment treaties and communications exemptions

Bilateral Investment Treaty with	Signed / Entered into force / Terminates	Exemptions for non-US signatory's broadcasting or communications operations
Albania	1995 / 1998	None (para 4)
Argentina	1991 / 1994	None (Protocol, para. 5)
Armenia	1992 / 1996	"...ownership and operation of broadcast or common carrier radio and television stations;..." (Annex)
Azerbaijan	1997 / 2001	"ownership or control of television and radio broadcasting and other forms of mass media" (Annex, para. 4)
Bahrain	1999/ 2001	"ownership or control of television and radio broadcasting and other forms of mass media;" (Annex, para. 3)
Bangladesh	1986 / 1989	"... telecommunication (common carrier services); ... communication satellite; ...." (under section dealing with reservations)
Bolivia	1998 / 2001 / 2012	None – Bolivia terminated the Treat on 10 June 2011, but it continues to apply to 2022 to investments at the time of termination
Bulgaria	1992 / 1994	"provision of telephone and telegraph services; ... ownership and operation of broadcast or common carrier radio and television stations; ...." (Annex, para 3.)
Cameroon	1986 / 1989	radio and television, ownership of shares in INTELAM, provision of common carrier telephone and telegraph service,... (Annex)
Democratic Republic of the Congo	1984 / 1989	"telecommunications and other communications" (Annex, para. 7)
Croatia	1996 / 2001	"ownership and operation of broadcast or common carrier radio and television stations; the provision of common carrier telephone and telegraph services; the provision of submarine cable services" (Annex, para. 4)
Czech Republic	1991 / 1992	None (Annex)
Ecuador	1993 / 1997 / 2018	"... ownership and operation of broadcast radio and television stations." (Protocol, para. 4)
Egypt	1986 / 1992	Treat ceases to have effect for all covered investments as of May 2028 "... mail, telecommunication, telegraph services and other public services which are state monopolies; ...commercial activity such as distribution, wholesaling, retailing, import and export activities; ... radio, television, and the issuance of newspapers and magazines." (Annex)
Estonia	1994/ 1997	None
Georgia	1994 / 1997	ownership of broadcast, common carrier, or aeronautical radio stations; communications satellites; ..." (Annex)
Grenada	1986 / 1989	None
Honduras	1995 / 2001	"ownership, operation and editorial control of broadcast radio and television; ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras" (Annex, para 4)
Jamaica	1994 / 1997	"... communications (including postal and telegraph services and broadcasting);..." (Annex)
Jordan	1997 / 2003	"...ownership of companies engaged in telecommunications systems operations, but not including activities such as maintenance, equipment production, equipment and spare parts sales, or other telecommunications related services" (Annex, para. 3)
Kazakhstan	1992 / 1994	"...ownership or control of television and radio broadcasting; ...." (Annex)
Kyrgyzstan	1993 / 1994	None (Annex, para. 3)

Bilateral Investment Treaty with	Signed / Entered into force / Terminates	Exemptions for non-US signatory's broadcasting or communications operations
Latvia	1995 / 1996	"...control of newspapers, television and radio broadcasting stations, or news agencies;..." (Annex)
Moldova	1993 / 1994	None
Mongolia	1994 / 1997	None
Morocco	1985 / 1991	None <sup>284</sup>
Panama	1982 / 1991	"Communications ...." (Annex)
Poland	1990 / 1994	ownership and operation of broadcast or common carrier radio and television stations; the provision of postal, telephone, telegraph and other telecommunications services; "" (Annex, para. 4)
Romania	1992 / 1994	ownership and operation of broadcast or common carrier radio and television stations; ... public utilities; railways; telecommunications; ... (Annex, para. 3)
Rwanda	2008 / 2012	"... telecommunications ..." (Annex II – Rwanda – 2)
Senegal	1983 / 1990	None (Annex)
Sri Lanka	1991 / 1993	"...ownership and operation of broadcast or common carrier radio and television stations; post and telecommunications including sub-marine cable services; publishing of newspapers and periodicals ...." (Annex, para. 3)
Trinidad and Tobago	1994 / 1996	"telecommunications" (Annex, para. 3)
Tunisia	1990 / 1993	None, although "the treaty with Tunisia differs from the model BIT. It provides for MFN treatment and, "within the framework of existing laws and regulations," national treatment for incoming investment. In addition, Article X.2 authorizes a Party to require establishment in accordance with the terms and conditions set forth in its legislation, provided such formalities "do not impair any right set forth in this Treaty." Tunisia, thus, is permitted to favor its own nationals with respect to the establishment of investment." ("The U.S.-Tunisia Treaty")
Turkey	1985 / 1990	the establishment, operation and broadcasting of radio and television programs; ... postal, telephone, telegraph, and telecommunications services; .... (Protocol, para. 1(b))
Ukraine	1994 / 1996	"... privatization of those educational, sports, medical and scientific facilities financed by the national budget; ... ownership and operation of television and radio broadcasting stations; ..." (Annex)
Uruguay	2005 / 2006	None
Total	37 Treaties	25 nations set limits on foreign ownership of broadcasting, telecommunications, and/or newsmedia

<sup>284</sup> Morocco did not declare specific exemptions from NT, but the treaty notes the following: "Only if it is consistent with 'existing laws and regulations' is national treatment on entry required. The Moroccan negotiators insisted on qualifying national treatment on entry because of the ownership provisions contained in their 1973 investment law. The effect of this qualification is to provide for MFN treatment for establishing new investments, but the better of national or MEFN treatment for all investments once established. This formulation was also used in the BIT with Turkey. Like our other BITs, the Morocco treaty specifically requires the more favorable of national or MFN treatment for investments of the other Party, once established .... This conforms to the U.S. model text. As with our other BITs, the treaty ... permits limited exceptions to the national treatment standard on an MFN basis for specified economic sectors and activities. These exceptions are set out in paragraph 2 of the Protocol and include those for which U.S. law will not permit extending national treatment to foreign investors. Although analogous to the Annex in the model text, the Moroccan Protocol has no provision for subsequent modifications to the exceptions list. (This is similar to the approach provided in the BIT with Turkey.) .... any changes in the exceptions list in the Moroccan BIT would have to be made through amendment to the treaty under Article X, paragraph 5."



<b>Bilateral Investment Treaty with</b>	<b>Signed / Entered into force / Terminates</b>	<b>Exemptions for non-US signatory's broadcasting or communications operations</b>
Source: US Department of State, "United States Bilateral Investment Treaties" , <a href="https://www.state.gov/e/eb/afd/bit/117402.htm">https://www.state.gov/e/eb/afd/bit/117402.htm</a> ; note, treaty text unavailable for Belarus, El Salvador, Haiti, Nicaragua, Russia and Uzbekistan, pending exchange of instruments of ratification by either or both parties		

## Appendix 10 Federal statutes with references to “the public interest” (as of January 2019)

Title (and number of references with the statute to “the public interest”)

1. Access to Information Act (2)
2. Aeronautics Act (9)
3. Agriculture and Agri-Food Administrative Monetary Penalties Act (1)
4. An Act respecting the National Battlefields at Quebec (1)
5. 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 (1)
6. Antarctic Environmental Protection Act (6)
7. Anti-Personnel Mines Convention Implementation Act (2)
8. Atlantic Fisheries Restructuring Act (1)
9. Bank Act (21)
10. Bank of Canada Act (1)
11. Bankruptcy and Insolvency Act (4)
12. Bridge To Strengthen Trade Act (1)
13. Broadcasting Act (2)
14. Canada Business Corporations Act (1)
15. Canada Consumer Product Safety Act (1)
16. Canada Cooperatives Act (1)
17. Canada Deposit Insurance Corporation Act (6)
18. Canada Elections Act (7)
19. Canada Evidence Act (3)
20. Canada Grain Act (5)
21. Canada Infrastructure Bank Act (1)
22. Canada Labour Code (4)
23. Canada Marine Act (1)
24. Canada Not-for-profit Corporations Act (2)
25. Canada Oil and Gas Operations Act (5)
26. Canada Petroleum Resources Act (2)
27. Canada Shipping Act, 2001 (9)
28. Canada Transportation Act (9)
29. Canada Wildlife Act (1)
30. Canada–Newfoundland and Labrador Atlantic Accord Implementation Act (6)
31. Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act (6)
32. Canadian Air Transport Security Authority Act (1)
33. Canadian Association of Former Parliamentarians Act (1)
34. Canadian Environmental Assessment Act, 2012 (3)
35. Canadian Environmental Protection Act, 1999 (9)
36. Canadian Human Rights Act (1)
37. Canadian International Trade Tribunal Act (1)
38. Canadian Payments Act (3)
39. Canadian Security Intelligence Service Act (4)
40. Canadian Transportation Accident Investigation and Safety Board Act (2)
41. Cannabis Act (3)
42. Citizenship Act (1)
43. Civil International Space Station Agreement Implementation Act (2)
44. Civil Marriage Act (1)

45. Companies' Creditors Arrangement Act (2)
46. Competition Act (8)
47. Comprehensive Nuclear Test-Ban Treaty Implementation Act (2)
48. Conflict of Interest Act (2)
49. Consumer Packaging and Labelling Act (1)
50. Controlled Drugs and Substances Act (2)
51. Cooperative Credit Associations Act (6)
52. Copyright Act (3)
53. Corrections and Conditional Release Act (2)
54. Criminal Code (36)
55. Customs Act (2)
56. Defence Production Act (1)
57. Defence Services Pension Continuation Act (1)
58. Department of Employment and Social Development Act (2)
59. Department of Public Works and Government Services Act (1)
60. Department of the Environment Act (1)
61. Divorce Act (1)
62. Dominion Water Power Act (1)
63. Dry Docks Subsidies Act (1)
64. Electoral Boundaries Readjustment Act (1)
65. Employment Insurance Act (2)
66. Energy Administration Act (2)
67. Energy Monitoring Act (3)
68. Energy Supplies Emergency Act (2)
69. Excise Act (2)
70. Excise Act, 2001 (1)
71. Excise Tax Act (1)
72. Experimental Farm Stations Act (1)
73. Export and Import of Rough Diamonds Act (1)
74. Expropriation Act (2)
75. Extradition Act (1)
76. Farm Products Agencies Act (1)
77. Federal Public Sector Labour Relations Act (18)
78. Financial Administration Act (2)
79. Fisheries Act (2)
80. Food and Drugs Act (1)
81. Fort-Falls Bridge Authority Act (1)
82. Greenhouse Gas Pollution Pricing Act (3)
83. Human Pathogens and Toxins Act (2)
84. Immigration and Refugee Protection Act (2)
85. Income Tax Act (2)
86. Indian Act (1)
87. Industrial Design Act (1)
88. Insurance Companies Act (14)
89. International Boundary Waters Treaty Act (2)
90. International Bridges and Tunnels Act (1)
91. International River Improvements Act (2)
92. Investment Canada Act (1)
93. Judges Act (1)
94. Justice for Victims of Terrorism Act (1)
95. Lobbying Act (2)
96. Mackenzie Valley Resource Management Act (4)

97. Marine Transportation Security Act (3)
98. Marine War Risks Act (1)
99. Migratory Birds Convention Act, 1994 (2)
100. Motor Vehicle Fuel Consumption Standards Act (1)
101. Motor Vehicle Safety Act (2)
102. Motor Vehicle Transport Act (1)
103. Mutual Legal Assistance in Criminal Matters Act (1)
104. National Defence Act (10)
105. National Energy Board Act (14)
106. Navigation Protection Act (6)
107. New Bridge for the St. Lawrence Act (1)
108. Nuclear Fuel Waste Act (1)
109. Nuclear Liability and Compensation Act (1)
110. Nuclear Safety and Control Act (1)
111. Nunavut Planning and Project Assessment Act (2)
112. Nunavut Waters and Nunavut Surface Rights Tribunal Act (4)
113. Official Languages Act (1)
114. Patent Act (5)
115. Payment Clearing and Settlement Act (2)
116. Personal Information Protection and Electronic Documents Act (1)
117. Pest Control Products Act (3)
118. Pilotage Act (3)
119. Plant Breeders' Rights Act (1)
120. Postal Services Resumption and Continuation Act (1)
121. Privacy Act (1)
122. Proceeds of Crime (Money Laundering) and Terrorist Financing Act (3)
123. Public Servants Disclosure Protection Act (6)
124. Railway Safety Act (6)
125. Referendum Act (2)
126. Remote Sensing Space Systems Act (1)
127. Royal Canadian Mounted Police Act (6)
128. Royal Canadian Mounted Police Pension Continuation Act (1)
129. Safe Containers Convention Act (1)
130. Safe Food for Canadians Act (1)
131. Security of Information Act (1)
132. Sex Offender Information Registration Act (1)
133. Soldier Settlement Act (1)
134. Special Import Measures Act (1)
135. Species at Risk Act (2)
136. Statistics Act (1)
137. Statutory Instruments Act (2)
138. Telecommunications Act (2)
139. Trade-marks Act (2)
140. Transportation Appeal Tribunal of Canada Act (1)
141. Transportation of Dangerous Goods Act, 1992 (2)
142. Trust and Loan Companies Act (7)
143. Veterans Review and Appeal Board Act (2)
144. Veterans' Land Act (2)
145. Youth Criminal Justice Act (11)

**Appendix 11 Revenues and profits in Canada's communications system, 2013-2016**

\$ millions (current)	2013	2014	2015	2016	2013-16
<b>Revenues</b>					
Private TV	\$ 1,958.0	\$ 1,816.2	\$ 1,886.5	\$ 1,784.7	\$ 7,445.4
Discretionary TV	4,163.8	4,250.8	4,255.4	4,345.8	17,015.7
Radio	2,000.4	1,967.9	1,950.9	1,916.3	7,835.5
Cable	8,793.9	8,930.0	8,918.7	8,739.8	35,382.4
Telecom	57,333.4	58,842.5	60,298.2	60,918.3	237,392.4
<b>Subtotal, communications</b>	<b>\$74,249.5</b>	<b>\$ 75,807.4</b>	<b>\$ 77,309.7</b>	<b>\$ 77,704.9</b>	<b>\$ 305,071.5</b>
<b>Top 5 companies</b>					
% of communications revenues	81%	82%	82%	83%	82%
Share of communications revenues	\$60,142.1	\$ 62,162.1	\$63,393.9	\$ 64,495.1	\$ 250,193.2
<b>Operating profits</b>					
Private TV	-\$24.1	-\$ 160.2	-\$ 155.7	-\$ 119.3	-\$ 459.3
Discretionary TV	994.5	932.3	760.5	773.2	\$3,460.6
Radio	314.7	266.0	272.9	272.2	\$1,125.8
Cable	2,081.4	1,803.9	1,580.3	1,400.9	\$6,866.5
Telecom	12,230.8	12,246.4	13,286.9	13,271.2	51,035.3
<b>Subtotal, communications</b>	<b>\$15,597.3</b>	<b>\$15,088.5</b>	<b>\$15,744.9</b>	<b>\$15,598.2</b>	<b>\$ 62,028.9</b>
<b>Operating profit margin</b>	<b>21.0%</b>	<b>19.9%</b>	<b>20.4%</b>	<b>20.1%</b>	<b>20.3%</b>
<b>Top 5 companies</b>					
Assuming same share as communications revenues	81%	82%	82%	83%	82%
Share of communications operating profits	\$ 12,633.8	\$12,372.5	\$12,910.8	\$12,946.5	\$50,863.7
Sources: CRTC, <i>Communications Monitoring Reports</i> (2016, at 44; 2017, at 44); CRTC, <i>Broadcasting Distribution Statistical and Financial Summaries, 2013-2017</i> , at 1; Statistics Canada, Table 22-10-0004-01 (Television broadcasting industry); Table 22-10-0005-01 (Radio broadcasting industry); Table 22-10-0003-01 (Telecommunications statistics)					

## Appendix 12 CRTC changes to data presentation

1996 presentation: from CRTC, Industry Statistics & Analysis, Broadcast Analysis Branch, *Cable Television: Statistical and Financial Summaries, 1991-1996*, at 17

Cable Television 1991-1996.pdf - Adobe Acrobat Pro DC

Home Tools Tel, Int, Mobile 201... Cable Television 19... Broadcast Distribut... 93.2%

Find Tools

CANADA - TOTAL	CABLE TELEVISION SUMMARY - ALL SERVICES										
	1996	1995	1994	1993	1992	1991	Percent Change.....			Avg.	
REPORTING UNITS :	789	822	848	836	816	809	96/95	95/94	94/93	93/92	Grth Rate
SELECTION # 00554 CABLE											
<b>Revenue:</b>											
Subscription	2518134,510	2373787,835	2171610,840	1996673,929	1803549,945	1664139,031	6.1	9.3	8.8	10.7	8.6
Connection	60,827,733	60,770,274	64,608,632	64,757,153	62,892,980	58,301,824	-2	-5.9	-2	3.0	.8
Comm.Prog.Sponsor	2,216,245	1,955,226	1,754,059	1,467,319	1,671,236	1,502,633	13.4	11.5	5.2	-2	8.0
Other	102,115,345	102,587,545	98,447,008	93,856,065	83,192,359	67,516,686	-5	-4.2	4.9	12.9	8.6
<b>Total revenue</b>	<b>2683093,833</b>	<b>2539100,880</b>	<b>2336420,549</b>	<b>2156994,466</b>	<b>1951306,520</b>	<b>1791460,224</b>	<b>5.7</b>	<b>8.7</b>	<b>8.3</b>	<b>10.5</b>	<b>8.3</b>
<b>Expense:</b>											
Programming	84,677,970	85,240,182	80,155,381	75,893,177	68,736,549	64,191,565	-7	-6.3	5.6	10.4	5.7
Affiliation Pmts.	573,585,043	513,021,076	414,067,353	374,755,014	309,097,501	288,854,162	11.8	23.9	10.5	21.2	14.7
Technical	478,958,263	468,967,425	446,826,509	432,866,481	415,623,562	387,800,192	2.1	5.0	3.2	4.2	4.3
Sales	92,137,267	79,974,215	70,771,156	64,580,715	60,248,840	55,227,674	15.2	13.0	9.6	7.2	9.6
Admin/General	445,794,190	440,277,334	398,839,853	381,681,657	352,298,334	320,181,749	1.3	10.4	4.5	8.3	6.8
<b>Total Expense</b>	<b>1675152,733</b>	<b>1587480,232</b>	<b>1410660,252</b>	<b>1329779,044</b>	<b>1206004,786</b>	<b>1119255,339</b>	<b>5.5</b>	<b>12.5</b>	<b>6.1</b>	<b>10.3</b>	<b>8.3</b>
<b>Operating Income</b>	<b>1007941,100</b>	<b>951,620,648</b>	<b>925,760,297</b>	<b>827,215,422</b>	<b>745,301,734</b>	<b>672,204,885</b>	<b>5.9</b>	<b>2.8</b>	<b>11.9</b>	<b>11.0</b>	<b>8.4</b>
Depreciation	461,509,080	408,731,844	369,309,672	339,449,117	307,141,114	285,524,673	12.9	10.7	8.8	10.5	10.1
P.B.I.T	546,432,020	542,888,804	556,450,625	487,766,305	438,160,620	386,680,212	-7	2.4	14.1	11.3	7.2
<b>Interest</b>	<b>669,263,285</b>	<b>436,689,911</b>	<b>289,520,838</b>	<b>284,033,493</b>	<b>136,730,016</b>	<b>157,944,710</b>	<b>53.3</b>	<b>50.8</b>	<b>1.9</b>	<b>107.7</b>	<b>33.5</b>
<b>Ajustments</b>	<b>119,565,015</b>	<b>-234,446,034</b>	<b>-55,509,466</b>	<b>-11,578,062</b>	<b>-7,635,475</b>	<b>-3,822,979</b>	<b>-49.0</b>	<b>-322.4</b>	<b>379.4</b>	<b>51.6</b>	<b>99.1</b>
<b>Profit Pre Tax</b>	<b>3,266,250</b>	<b>-340,644,927</b>	<b>322,439,253</b>	<b>215,310,874</b>	<b>309,066,279</b>	<b>232,558,481</b>	<b>101.0</b>	<b>-5.7</b>	<b>49.8</b>	<b>30.3</b>	<b>-</b>
Subscribers(basic)	7,850,189	7,793,340	7,843,496	7,649,955	7,444,391	7,277,235	-7	-6	2.5	2.5	1.5
Subscribers(non-bas)	5,998,499	5,539,102	5,500,225	5,373,384	4,565,156	2,488,248	8.3	-7	2.4	17.7	19.3
Salaries	409,206,983	405,996,653	386,739,530	384,553,159	370,699,577	356,173,550	-8	5.0	-6	3.7	2.7
Staff	9,267	10,126	9,544	9,355	9,287	9,732	8.5	-6.1	2.0	-7	1.0
Salaries/Staff	44,155	40,093	40,523	41,105	39,977	36,596	10.1	1.1	-1.4	-3.0	3.8
<b>Gross Assets</b>	<b>5990704,336</b>	<b>5219151,418</b>	<b>4671418,145</b>	<b>4222628,718</b>	<b>3859158,134</b>	<b>3572852,697</b>	<b>14.8</b>	<b>11.7</b>	<b>10.6</b>	<b>9.4</b>	<b>10.9</b>
<b>Net Assets</b>	<b>2525188,348</b>	<b>2146471,185</b>	<b>1936851,665</b>	<b>1727358,679</b>	<b>1711017,757</b>	<b>1731210,766</b>	<b>17.6</b>	<b>10.8</b>	<b>7.8</b>	<b>5.1</b>	<b>7.8</b>

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2017 presentation: from CRTC, Consumer Affairs and Strategic Policy, Broadcasting Distribution – Cable, Internet Protocol Television (IPTV) and Direct-to-Home (DTH): Statistical and Financial Summaries, 2013-2017, at 1.

BDU 2017 no change.xlsx - Excel

Community Channel Sponsorship & Facilities Rental

**CRTC - FINANCIAL SUMMARY - BDU BASIC AND NON BASIC SERVICES - CABLE, IPTV AND DTH**

	(\$000)	2013	2014	Var %	2015	Var %	2016	Var %	2017	Var %	CAGR (%)
<b>Revenue</b>											
Subscription		8,288,898	8,034,366	-3.07	8,014,888	-0.24	7,797,750	-2.71	7,529,895	-3.41	-2.4
Contribution		22,467	41,130	83.07	46,646	13.41	55,901	19.54	53,548	-4.21	24.3
Community Channel Sponsorship & Facilities Rental		4,301	3,780	-12.10	3,819	1.03	2,591	-29.41	3,398	30.40	-22.1
Set-top Box - Rental			728,882	n/a	754,940	4.90	794,074	5.30	874,553	10.21	
Set-top Box - Net Sales			55,890	n/a	39,303	-29.60	38,004	-0.76	37,215	-2.01	
Other Revenue		479,289	45,730	n/a	49,541	-24.95	49,562	0.48	50,736	2.30	
<b>Total Revenue</b>		<b>8,793,916</b>	<b>8,929,915</b>	<b>1.56</b>	<b>8,918,743</b>	<b>-0.12</b>	<b>8,728,786</b>	<b>-2.01</b>	<b>8,527,986</b>	<b>-2.31</b>	<b>-0.7</b>
<b>Expenses</b>											
Community Programming		149,780	151,703	7.70	152,620	0.60	150,823	-1.11	148,144	-1.78	1.5
Attrition Payments		3,103,720	3,304,771	6.48	3,424,532	3.62	3,479,729	1.61	3,503,811	0.69	3.1
Technical		1,569,914	1,628,584	3.69	1,643,007	2.16	1,522,687	-7.36	1,315,200	-13.66	-4.3
Sales and Promotion		563,498	637,950	13.20	606,945	-5.00	615,116	1.30	627,806	14.20	-2.5
Administration and General		1,323,614	1,423,007	7.51	1,511,629	6.22	1,570,441	3.89	1,488,551	-5.21	3.0
<b>Total Expenses</b>		<b>6,712,821</b>	<b>7,128,015</b>	<b>6.18</b>	<b>7,208,428</b>	<b>1.20</b>	<b>7,238,890</b>	<b>0.41</b>	<b>6,979,326</b>	<b>-3.50</b>	<b>1.0</b>
<b>Operating Income</b>		<b>2,081,095</b>	<b>1,801,900</b>	<b>-13.46</b>	<b>1,710,315</b>	<b>-5.08</b>	<b>1,490,896</b>	<b>-12.86</b>	<b>1,548,660</b>	<b>3.91</b>	
Local Programming Improvement Fund		75,157	39,928	-46.83							
<b>Staff</b>											
Total Remuneration		2,404,717	2,501,460	4.11	2,309,861	-7.72	2,401,007	4.06	2,248,871	-6.44	-1.7
Total Staff Count		28,894	28,983	0.30	27,243	-6.20	26,411	-2.90	26,374	-0.14	0.4
Avg Remuneration (\$)		83,225	86,670	3.42	84,784	-1.90	90,767	7.06	84,920	-6.71	0.4
Avg Remuneration excl. Fringe Benefits (\$)		71,646	73,580	2.72	72,312	-1.74	76,843	6.46	72,429	-5.51	0.3
<b>Subscribers</b>											
Direct Subscribers		10,951,637	10,805,678	-1.33	10,652,889	-1.41	10,427,417	-2.12	10,251,727	-1.62	-1.67
Indirect Subscribers		488,764	490,242	0.30	493,624	0.69	479,840	-2.77	484,823	3.10	-1.25
<b>Total Subscribers</b>		<b>11,440,401</b>	<b>11,295,920</b>	<b>-1.34</b>	<b>11,146,513</b>	<b>-1.32</b>	<b>10,907,257</b>	<b>-2.18</b>	<b>10,736,550</b>	<b>-1.60</b>	<b>-1.7</b>
<b>Profitability (%)</b>											
Operating Margin		23.7	20.2	-14.8	17.7	-17.6	16.9	-1.1	18.3	9.5	

CA2017 - Composite Annual Growth Rates

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Appendix 13 FRPC's report on the results of its March 2018 survey regarding website blocking



# Blocking access to Internet sites

Results from a survey commissioned by the  
Forum for Research and Policy in Communications (FRPC)

29 March 2018

Contact information:

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## Highlights

A national interactive voice response survey of 829 adults (18 years or over) across Canada was conducted by Access Research on behalf of the Forum for Research and Policy in Communications (FRPC) on the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> of March 2018. The results have a margin of error of plus or minus 3.5%, 19 times out of 20.

The purpose of the survey was to learn about Canadians' experience with visiting Internet sites by accident, their views on the potential for websites to be blocked incorrectly, and their views on the possibility that either the CRTC or the federal government might, at some point, expand Internet blocking beyond copyright infringement. These issues have arisen in the context of the CRTC's consideration of application 8663-A182-201800467, submitted to the CRTC at the end of January 2018.

The survey found that in the ten provinces,

- 91.2% of Canadians subscribed to or paid for the Internet
- 94.7% of Canadians have used the Internet in the past year
- 70.3% of Canadians believe it is possible to visit Internet sites by accident, although this figure declines with age, with 77.6% of those between 18 and 24 years of age, and 59.6% of those over 65 years of age, believing in the possibility of accidental visits to websites
- 70.4% of those who thought it was possible to visit websites by accident or who were unsure whether this was possible, said they had visited a website by accident in the previous year; 84.2% of those between 18 and 24 years of age, and 56% of those over 65 years of age, said they had visited websites by accident in the previous year
- 75.6% of Canadians, including 90% of those between 25 and 44 years of age, and 55.1% of those over 65 years of age, said they or someone in their household had accessed audio-visual content online in the past year
- 57.7% of Canadians thought there is a risk that the CRTC will block websites that are not infringing copyright, with 69.3% of those 18 to 24 years of age sharing this view, and
- 63.8% of Canadians thought there is a risk that, over time, the federal government will block Canadians' access to online sites for reasons other than copyright infringement, with 73.4% of those 18 to 24 years of age sharing this view.

## I. Purpose of the research

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 telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.

This report summarizes results from a survey undertaken on behalf of the Forum in March 2018 about adult Canadians' experiences with Internet sites, their views on the chances that Internet sites could be blocked in error, and their views about the likelihood that the CRTC or the federal government might at some point expand Internet blocking to address matters other than copyright infringement. The survey was undertaken as part of the Forum's research with respect to application 8663-A182-201800467, submitted to the CRTC on 29 January 2018, and posted by the CRTC on its website on 30 January 2018.

Relatively little survey research has been published with respect to Canadians' views on website blocking. In 2007 a survey by Leger Marketing on behalf of eBay Canada, studying Canadians' views on network neutrality, found that sixty percent of Canadians (three in five) agreed "that Internet providers should be required to treat all content, sites and platforms equally."<sup>1</sup>

The survey results described in this report focus on three issues raised by application 8663-A182-201800467: the incidence of accidental visits to websites, the risk that an 'anti-piracy' initiative will block online sites in error, and the risk that over time the reasons for blocking online sites may expand beyond copyright infringement concerns.

Part II, which follows, briefly describes the survey results.

- a. Subscription to the Internet
- b. Use of the Internet in the past year
- c. Beliefs about and experience with accidental visits to Internet sites
- d. Household access to online audio-visual content
- e. Perceived risk that if the CRTC blocks access to Internet sites and services because of copyright concerns, it will block some sites or services that have done nothing wrong, and
- f. Perceived risk that the federal government may, over time, block access to Internet sites and services because of reasons other than copyright concerns.

We analyze the results in Part III, while the survey method and questionnaires are set out in Part IV.

---

<sup>1</sup> "76% of Canadians believe government should pass a law to protect consumers' right to access online content of their choice" Canada News Wire (1 October 2007),

## II. Analysis of survey results

Access Research conducted an interactive-voice-response survey of 829 people over 18 years of age in Canada, in the first two weeks of March 2018, using an English-language and French-language questionnaire designed by the Forum. Access Research weighted the survey responses by age, gender, and region, using data from Statistics Canada.<sup>2</sup> The survey's results have a margin of error of plus or minus 3.49%, 19 times out of 20.

The survey asked respondents about their

- Use of the Internet
- Use of the Internet to access music, movies or TV shows
- Expectations about accidental visits to Internet sites
- Personal experience with accidental visits to Internet sites
- Perception of the risk that if the CRTC blocks access to Internet sites and services because of copyright concerns, it will block some sites or services that have done nothing wrong, and
- Perception of the risk that over time, the federal government might block access to Internet sites and services because of reasons other than copyright infringement.

We analyzed these concepts in terms of demographics: language, gender, age, region (in which respondents live), education and income. Responses suggesting uncertainty ("Not sure") were generally included in the analysis.

Tests of statistical significance measure were used to measure the probability that a specific association between variables was or was not likely to have occurred by chance.<sup>3</sup> Results were considered statistically significant when their probability of occurring by chance – using the Pearson's chi-square test<sup>4</sup>– was equal to or lower than five times out of a hundred (*i.e.*, the 5%, or .05 level that is generally used in the social sciences). Statistically significant results can be generalized to the population being described,<sup>5</sup> whom we describe in the remainder of this report as 'Canadians'.<sup>6</sup>

Associations between concepts that were not statistically significant may have occurred by chance, and for that reason are not reported. Results that are not statistically significant also convey meaning, however: results showing no statistically significant differences by gender establish that men, women and others (who chose not to identify as male or female) held the same general views.

---

<sup>2</sup> The Forum notes, however, that only one (1) response was received from the territories.

<sup>3</sup> In other words, a statistically significant result from these tests does not imply that the results are important (a significant finding), but that the results were unlikely to have occurred by chance.

<sup>4</sup> Two-sided asymptotic significance levels.

<sup>5</sup> Results that are not statistically significant may have occurred by chance.

<sup>6</sup> As the survey did not ask respondents about their citizenship or nationality, non-Canadians resident in Canada with Canadian telephone numbers may also be included in the results.

## A. Subscription to the Internet

The survey found that 91.2% of Canadians or their households subscribe to or paid for the Internet. Rates of subscription were lower for those between 18 and 24 years of age (79.6%), for those with an annual income below \$20,000 (69.9%), for those who did not complete university (80.1%) and for those over 65 years of age. Subscription levels rose markedly with household income, with nearly all (99.2%) of those earning \$80,000 or more per year subscribing to the Internet.

No statistically significant differences in Internet subscription were found based on gender ( $p=0.155$  – ie, the results could have occurred by chance 15.5 times out of a hundred), language ( $p=0.999$ ) and region (0.942).

### Survey result 1 Subscription to the Internet

Q2. Do you or anyone in your household subscribe to or pay for the Internet?	Yes	No	Not sure
TOTAL (N=829)	91.2%	7.7%	6.1%
Age ( $p=.000$ )			
18 – 24 years of age (born 1994 or after)	79.6%	<b>14.3%</b>	6.1%
25 – 44 (born 1974 to 1993)	95.5%	4.5%	0.0%
45 – 64 (born 1954 to 1973)	93.7%	5.4%	0.9%
65 years of age or older (born before 1953)	86.2%	<b>12.4%</b>	1.3%
Income ( $p=.000$ )			
Less than \$20,000	69.9%	25.8%	4.3%
\$20,000 to \$39,000	87.1%	12.1%	0.7%
\$40,000 to \$59,000	91.5%	7.7%	0.7%
\$60,000 to \$79,000	97.5%	2.5%	0.0%
\$80,000 or more	99.2%	0.8%	0.0%
Education ( $p=.0000$ )			
Secondary school or less	80.1%	18.4%	1.5%
College or university	94.6%	4.6%	0.8%
Post graduate studies	95.7%	3.5%	0.9%

## B. Use of Internet in past year

Based on the survey 94.7% of Canadians had used the Internet in the past year, with the lowest use reported by those over 64 years of age (86.7%), those with an income of less than \$20,000 (81.7%), and those with secondary education or less (87.8%).

No statistically significant differences in Internet use in the past year were found based on gender ( $p=.141$ ), language ( $p=.195$ ) and region ( $p=.241$ ).



**Survey result 2 Use of the Internet in the past year**

<b>Q2. Do you use the Internet or have you used it in the past year?</b>	<b>Yes</b>	<b>No</b>	<b>Not sure</b>
TOTAL (N=785)	94.7%	5.3%	6.1%
Age (p=.000)			
18 – 24 years of age (born 1994 or after)	95.9%	4.1%	Excludes missing data
25 – 44 (born 1974 to 1993)	98.6%	1.4%	
45 – 64 (born 1954 to 1973)	97.5%	2.5%	
65 years of age or older (born before 1953)	86.7%	13.3%	
Income (p=.000)			
Less than \$20,000	81.7%	18.3%	
\$20,000 to \$39,000	90.7%	9.3%	
\$40,000 to \$59,000	94.4%	5.6%	
\$60,000 to \$79,000	98.8%	1.2%	
\$80,000 or more	100.0%	0.0%	
Education (p=.000)			
Secondary school or less	87.8%	12.2%	
College or university	96.6%	3.4%	
Post graduate studies	98.3%	1.7%	

**C. Visiting websites accidentally – belief and experience**

More than two-thirds (70.3%) of Canadians believed it is possible to visit Internet sites by accident, with slightly more men than women (74.5% vs 65.5%) sharing this belief. Disbelief in the possibility of accidental website visits grows with age: one in ten (10.2%) of those between the ages of 18 and 24 years of age does not believe that websites can be visited accidentally, compared to one in five (23.1%) of those aged 65 years or more. Disbelief in the possibility of accidental Internet site visits decreases with income: nearly a third (30.1%) of those with an annual household income of \$20,000 or less do not believe that Internet websites can be visited accidentally, while only 13.4% of those with an annual household income of \$80,000 or more share this view.

Differences based on language and region were not statistically significant (p=.788 and p=.940, respectively).

**Survey result 3 Belief in the possibility of accidental website visits**

<b>Q3. Do you believe it is possible to visit Internet websites by accident?</b>	<b>Yes</b>	<b>No</b>	<b>Not sure</b>
TOTAL (N=785)	70.3%	17.5%	12.2%
Gender (p=.014)			
Male	74.5%	15.3%	10.2%
Female	65.5%	19.8%	14.7%
Other	50.0%	41.7%	8.3%

<b>Q3. Do you believe it is possible to visit Internet websites by accident?</b>	<b>Yes</b>	<b>No</b>	<b>Not sure</b>
Age (p=.000)			
18 – 24 years of age (born 1994 or after)	77.6%	10.2%	12.2%
25 – 44 (born 1974 to 1993)	80.0%	14.5%	5.5%
45 – 64 (born 1954 to 1973)	71.5%	16.1%	12.3%
65 years of age or older (born before 1953)	59.6%	23.1%	17.3%
Gender (p=.007)			
Male	74.5%	15.3%	10.2%
Female	65.5%	19.8%	14.7%
Other (n=12)	50.0%	41.7%	8.3%
Income (p=.000)			
Less than \$20,000	54.8%	30.1%	15.1%
\$20,000 to \$39,000	56.4%	23.6%	20.0%
\$40,000 to \$59,000	72.5%	14.8%	12.7%
\$60,000 to \$79,000	79.0%	16.0%	4.9%
\$80,000 or more	80.8%	13.4%	5.7%
Education (p=.000)			
Secondary school or less	59.7%	28.1%	12.2%
College or university	73.5%	14.7%	11.8%
Post graduate studies	80.0%	10.4%	9.6%

As noted above, more than two thirds (70.3%) of Canadians considered it possible to visit websites by accident; 12.2% were unsure whether this is possible, and 17.5% considered it impossible to visit websites by accident.

More than two thirds (70.4% of Canadians who thought it possible to visit websites by accident, or who were unsure whether this is possible, said they had visited a website accidentally in the past year. Four-fifths (84.2%) of those aged 18 to 24 years of age had visited sites accidentally, while just over half (56.4%) of those aged 65 years or older said they had done so. Proportionately higher levels of accidental visits (73.8%) were also reported by those with college or higher levels of education.

No statistically significant differences were found between Canadians based on their language (p=.610), region (p=.714) and income (p=.244).

**Survey result 4 Personal experience in the past year with accidental website visits**

<b>Q4 Have you visited a website by accident in the past year?</b>	<b>Yes</b>	<b>No</b>	<b>Not sure</b>
TOTAL (N=583)	70.4%	24.3%	5.3%
Gender (p=.014)			
Male	71.8%	24.5%	3.6%
Female	68.9%	24.1%	7.0%
Other	50.0%	16.7%	33.3%
Age (p=.000)			

<b>Q4 Have you visited a website by accident in the past year?</b>	<b>Yes</b>	<b>No</b>	<b>Not sure</b>
18 – 24 years of age (born 1994 or after)	84.2%	13.2%	2.6%
25 – 44 (born 1974 to 1993)	79.5%	17.6%	2.8%
45 – 64 (born 1954 to 1973)	70.4%	25.2%	4.4%
65 years of age or older (born before 1953)	56.0%	33.6%	10.4%
Education (p=.000)			
Secondary school or less	56.4%	36.8%	6.8%
College or university	73.8%	22.1%	4.1%
Post graduate studies	78.3%	16.3%	5.4%

## D. Accessing audio-visual content online

Three-quarters (75.6%) of Canadians reported that they, or someone in their household, had accessed music, movies or television programming online in the past year, with such access decreasing by those with lower levels of completed education (56.6%), those with incomes under \$39,000 per year (69.3% or less), and those over 65 years of age (55.1%).

No statistically significant differences were found based on language (p=.699) or region (p=.298).

### Survey result 5 Household access in past year to audio-visual content online

<b>Q5 Have you or has anyone in your household accessed music, movies or TV shows using the Internet in the last year?</b>	<b>Yes</b>	<b>No</b>	<b>Not sure</b>
TOTAL (N=829)	75.6%	21.8%	2.5%
Gender (p=.006)			
Male	79.7%	17.6%	2.7%
Female	70.4%	27.9%	1.7%
Other	66.7%	25.0%	8.3%
Age (p=.000)			
18 – 24 years of age (born 1994 or after)	87.8%	12.2%	0.0%
25 – 44 (born 1974 to 1993)	90.0%	8.6%	1.4%
45 – 64 (born 1954 to 1973)	78.8%	17.4%	3.8%
65 years of age or older (born before 1953)	55.1%	42.2%	2.7%
Education (p=.000)			
Secondary school or less	56.6%	39.3%	4.1%
College or university	81.3%	16.3%	2.4%
Post graduate studies	81.7%	17.4%	0.9%
Income (p=.000)			
Less than \$20,000	64.5%	33.3%	2.2%
\$20,000 to \$39,000	69.3%	29.3%	1.4%
\$40,000 to \$59,000	75.4%	23.2%	1.4%
\$60,000 to \$79,000	82.7%	14.8%	2.5%
\$80,000 or more	84.3%	12.6%	3.1%

### E. Risk that CRTC may block Internet sites by mistake

The survey asked about the risk that the CRTC might, if it begins to block access to websites that make audio-visual content available without copyright owners' permission, block sites that have not done anything wrong. The question distinguished between no risk, a slight risk, a 50-50 risk, a risk that is more likely than not, and virtual certainty.

More than half (57.7%) of Canadians, and 69.3% of those from 18 to 24 years of age thought there is a slight or higher risk that the CRTC will block websites by accident.

No statistically significant differences occurred on the basis of region ( $p=.179$ ), education ( $p=.304$ ) and income ( $p=.061$ ).

#### Survey result 6 Risk that CRTC may block websites that have done nothing wrong

<b>Q6 The CRTC, the federal board that regulates telecommunications in Canada, is being asked to block Canadians' access to sites and online services that make music, movies or TV shows available without the copyright owners' permission. Do you think there is any risk that, if the CRTC begins to block access to sites and online services because of copyright issues, it will block some Internet sites or online services that have done nothing wrong?</b>	<b>No risk</b>	<b>Slight risk</b>	<b>50-50 chance</b>	<b>More likely than not</b>	<b>Virtually certain</b>	<b>Not sure</b>
TOTAL (N=829)	32.8%	26.8%	12.9%	8.6%	9.4%	9.5%
	32.8%	57.7%				9.5%
Gender (p=.000)						
Male	31.8%	24.6%	11.5%	11.7%	13.3%	7.0%
Female	35.6%	29.6%	14.9%	4.3%	3.4%	12.1%
Other	8.3%	33.3%	8.3%	8.3%	33.3%	8.3%
Age (p=.000)						
18 – 24 years of age (born 1994 or after)	28.6%	18.4%	26.5%	12.2%	12.2%	2.0%
		69.3%				
25 – 44 (born 1974 to 1993)	35.5%	26.4%	10.0%	8.2%	15.5%	4.5%
		60.1%				
45 – 64 (born 1954 to 1973)	34.8%	23.4%	12.7%	8.9%	8.5%	11.7%
		53.5%				
65 years of age or older (born before 1953)	28.9%	34.7%	12.4%	8.0%	4.4%	11.6%
		59.5%				
Belief that it is possible to visit Internet sites by accident (p=.000)						
Yes (ie, accidental visits are possible)	31.2%	29.7%	10.8%	10.6%	13.4%	4.3%
No (ie, accidental visits are not possible)	33.8%	35.2%	8.3%	6.9%	10.3%	5.5%
Not sure	16.8%	22.8%	21.8%	13.9%	5.9%	18.8%
Experience with visiting Internet sites by accident in past year (p=.000)						
Yes (ie, has visited sites accidentally)	33.0%	26.7%	10.9%	10.7%	11.4%	7.3%
No (ie, has not visited sites accidentally)	44.3%	24.3%	4.3%	5.0%	10.0%	12.1%
Not sure	22.6%	12.9%	35.5%	9.7%	9.7%	9.7%
Household accessed audio-visual content online in past year (p=.000)						

<b>Q6 The CRTC, the federal board that regulates telecommunications in Canada, is being asked to block Canadians' access to sites and online services that make music, movies or TV shows available without the copyright owners' permission. Do you think there is any risk that, if the CRTC begins to block access to sites and online services because of copyright issues, it will block some Internet sites or online services that have done nothing wrong?</b>	<b>No risk</b>	<b>Slight risk</b>	<b>50-50 chance</b>	<b>More likely than not</b>	<b>Virtually certain</b>	<b>Not sure</b>
Yes	34.4%	25.7%	12.1%	9.3%	10.7%	7.8%
No	30.4%	33.1%	11.0%	5.5%	5.0%	14.9%
Not sure	4.8%	4.8%	52.4%	14.3%	9.5%	14.3%

## F. Risk that federal government may block internet sites for reasons other than copyright infringement

The survey then asked about the risk that, over time, the federal government might block Internet sites for reasons other than copyright infringement.

More than half (63.8%) of Canadians, and nearly three-quarters (73.4%) of those aged 18 to 24 years thought there is a risk that website blocking will expand to address issues other than alleged copyright infringement.

No differences were observed by region ( $p=.402$ ) or by income ( $p=.110$ ).

### Survey result 7 Risk that government may block sites for reasons other than copyright

<b>Q7 Do you think there is any risk that, over time, the federal government will block Canadians' access to Internet sites or services for reasons other than concerns over copyright?</b>	<b>No risk</b>	<b>Slight risk</b>	<b>50-50 chance</b>	<b>More likely than not</b>	<b>Virtually certain</b>	<b>Not sure</b>
TOTAL (N=829)	29.9%	29.8%	11.7%	10.4%	11.9%	6.3%
	29.9%	63.8%				6.3%
Language ( $p=.014$ )						
English	28.2%	28.5%	12.0%	11.6%	13.4%	6.3%
French	36.1%	34.4%	10.6%	6.1%	6.7%	6.1%
Gender ( $p=.000$ )						
Male	30.7%	25.1%	10.8%	13.8%	15.3%	4.3%
Female	31.3%	36.2%	12.6%	5.2%	6.0%	8.6%
Other	8.3%	25.0%	16.7%	16.7%	33.3%	0.0%
Age ( $p=.000$ )						
18 – 24 years of age (born 1994 or after)	24.5%	30.6%	16.3%	10.2%	16.3%	2.0%
	24.5%	73.4%				
25 – 44 (born 1974 to 1993)	26.8%	29.1%	10.0%	12.7%	19.1%	2.3%
	26.8%	70.95				
45 – 64 (born 1954 to 1973)	31.6%	25.0%	11.4%	11.7%	11.7%	8.5%
	31.6%	59.8%				
65 years of age or older (born before 1953)	31.6%	37.3%	13.3%	6.2%	4.4%	7.1%
	31.6%	61.2%				

<b>Q7 Do you think there is any risk that, over time, the federal government will block Canadians' access to Internet sites or services for reasons other than concerns over copyright?</b>	<b>No risk</b>	<b>Slight risk</b>	<b>50-50 chance</b>	<b>More likely than not</b>	<b>Virtually certain</b>	<b>Not sure</b>
Education (p=.001)						
Secondary school or less	35.7%	25.0%	15.3%	6.6%	6.6%	10.7%
College or university	27.5%	31.1%	10.8%	12.0%	13.1%	5.4%
Post graduate studies	32.2%	32.2%	10.4%	7.8%	15.7%	1.7%
Belief that it is possible to visit Internet sites by accident (p=.005)						
Yes (ie, accidental visits are possible)	31.3%	26.7%	11.2%	12.1%	14.6%	4.1%
No (ie, accidental visits are not possible)	34.3%	37.9%	5.7%	7.1%	10.7%	4.3%
Not sure	16.1%	32.3%	29.0%	6.5%	9.7%	6.5%
Accessed audio-visual content online in past year (p=.000)						
Yes	30.6%	26.6%	12.6%	12.4%	13.4%	4.3%
No	28.2%	41.4%	8.8%	2.2%	7.2%	12.2%
Not sure	23.8%	23.8%	9.5%	19.0%	95%	14.3%

### III. Research method

#### A. Survey

A survey of 829 adults (18 years or over) across Canada (yielding results with a margin of error of plus or minus 3.5%, 19 times out of 20) who use the Internet or have used it in the past year, was conducted in English and in French by Access Research using interactive voice response technology on behalf of the Forum for Research and Policy in Communications (FRPC) on the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> of March 2018. Pers

Copies of the English-language and French-language surveys are attached. The survey was discontinued (see question 2) if respondents were not sure if they use the Internet, or have used it in the past year. Respondents who do not believe it is possible to visit websites by accident were not asked if they had visited websites by accident in the previous year (see question 4).

The purpose of the survey was to learn about Canadians' experience with visiting Internet sites by accident, their views on the potential for websites to be blocked incorrectly, and their views on the possibility that either the CRTC or the federal government might, at some point, expand Internet blocking beyond copyright infringement. These issues arose in the context of the CRTC's consideration of application 8663-A182-201800467.

Analysis of the results found one (1) response from the territories, and 67 responses from the Atlantic provinces. Rather than analyze the data using the original values for the residence variable, we collapsed these into four larger categories: West (and the single northern response); Ontario; Quebec and the Atlantic provinces.

#### Q10 In which province or territory do you live?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	British Columbia	104	12.5	12.5	12.5
	Alberta, Saskatchewan or Manitoba	147	17.7	17.7	30.3
	Ontario	308	37.2	37.2	67.4
	Quebec	202	24.4	24.4	91.8
	Newfoundland or New Brunswick	38	4.6	4.6	96.4
	Nova Scotia or Prince Edward Island	29	3.5	3.5	99.9
	Yukon	1	.1	.1	100.0
	Total	829	100.0	100.0	

Next, we asked respondents about their completed levels of education. Although nearly all (97.6%) answered the questions, low response levels were received with respect to grade school (25 cases), high school (40 cases) and the doctorate level (24 cases). We therefore collapsed the original education values into three categories: up to and including high school; college or bachelor's degree, and MA or doctorate.

**11 What is the highest level of education that you have completed?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Grade 8 or less	25	3.0	3.1	3.1
	Some high school	40	4.8	4.9	8.0
	High school diploma or equivalent	131	15.8	16.2	24.2
	College or CEGEP	275	33.2	34.0	58.2
	Bachelor's degree	223	26.9	27.6	85.8
	Master's degree	91	11.0	11.2	97.0
	Doctorate	24	2.9	3.0	100.0
	Total	809	97.6	100.0	
Missing	Prefer not to answer	20	2.4		
Total		829	100.0		

We also asked respondents about their household income and 86.5% of respondents provided answers. We decided to analyze the results in terms of income quintiles, and regrouped the responses into five categories: under \$20,000; \$20,000 to \$39,000, \$40,000 to \$59,000, \$60,000 to \$79,000 and \$80,000 or higher.

**12 Which of the following categories best describes your total household income, before taxes?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Under \$20,000	93	11.2	13.0	13.0
	\$20,000 to just under \$40,000	140	16.9	19.5	32.5

	\$40,000 to just under \$60,000	142	17.1	19.8	52.3
	\$60,000 to just under \$80,000	81	9.8	11.3	63.6
	\$80,000 to just under \$100,000	95	11.5	13.2	76.8
	\$100,000 to just under \$150,000	97	11.7	13.5	90.4
	\$150,000 and above	69	8.3	9.6	100.0
	Total	717	86.5	100.0	
Missing	Prefer not to answer	112	13.5		
Total		829	100.0		

Finally, we asked respondents about their age, using 10-year categories to the age of 75. We decided to regroup these categories to reflect generational experience with technology, and used the following categories: 18-24 years of age (born from 1994 or after, and having lived almost all their lives with the Internet); 25 to 44 years of age (born between 1974 to 1993, and having lived most of their lives with personal computers); 45 to 64 years of age (born between 1954 to 1973, and having lived most of their lives with mainframe or personal computers), and 65 years of age or over (born before 1953, and having experienced introduction of mainframe computers, personal computers and the Internet).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18-24 yrs (born 1994 or after)	49	5.9	6.0	6.0
	25--44 yrs (born 1974 to 1993)	220	26.5	27.2	33.2
	45-64 yrs (born 1954 to 1973)	316	38.1	39.0	72.2
	65 yrs + (born before 1953)	225	27.1	27.8	100.0
	Total	810	97.7	100.0	
Missing	No answer	19	2.3		
Total		829	100.0		



## B. Survey questionnaires

### Forum for Research and Policy in Communications Internet / Blocking Usage Survey

Forum Research Inc.

27 February 2018

#### Part A – Introduction

Hello. This is Forum Research calling on behalf of the Forum for Research and Policy in Communications. We would like to ask you some questions about the Internet. The survey will take about 4 minutes of your time. Just use the touchpad on your phone to select the correct answer when prompted. If you have any questions about this call, you can reach our firm, Access Research, at 1-855-561-3603 or at [inquiry@access-research.com](mailto:inquiry@access-research.com).

- A. First of all, are you at least 18 years of age or older?
  - a. Press 1 if Yes → CONTINUE
  - b. Press 2 if No → TERMINATE

#### Part B – Main Survey

- 1. Do you or anyone in your household subscribe to or pay for the Internet?
  - 1. Press 1 if Yes
  - 2. Press 2 if No
  - 3. Press 3 if you are not sure
  
- 2. Do you use the Internet or have you used it in the past year?
  - 1. Press 1 if Yes
  - 2. Press 2 if No
  - 3. Press 3 if you are not sure → TERMINATE
  
- 3. Do you believe it is possible to visit Internet websites by accident?
  - 1. Press 1 if Yes → CONTINUE
  - 2. Press 2 if No → SKIP TO Q5
  - 3. Press 3 if you are not sure → SKIP TO Q5
  
- 4. Have you visited a website by accident in the past year?
  - 1. Press 1 if Yes
  - 2. Press 2 if No
  - 3. Press 3 if you are not sure
  
- 5. Have you or has anyone in your household accessed music, movies or TV shows using the Internet in the last year?

1. Press 1 if Yes
  2. Press 2 if No
  3. Press 3 if you are not sure
6. The CRTC, the federal board that regulates telecommunications in Canada, is being asked to block Canadians' access to sites and online services that make music, movies or TV shows available without the copyright owners' permission.

Do you think there is any risk that, if the CRTC begins to block access to sites and online services because of copyright issues, it will block some Internet sites or online services that have done nothing wrong?

1. Press 1 if there is no risk that the CRTC will block the wrong Internet websites or services
  2. Press 2 if there is a slight risk that the CRTC will block the wrong Internet websites or services
  3. Press 3 if there is a 50-50 chance that the CRTC will block the wrong Internet websites or services
  4. Press 4 if it is more likely than not that the CRTC will block the wrong Internet websites or services
  5. Press 5 if it is virtually certain that the CRTC will block the wrong Internet websites or services
  6. Press 6 if you are not sure
7. Do you think there is any risk that, over time, the federal government will block Canadians' access to Internet sites or services for reasons other than concerns over copyright?
1. Press 1 if there is no risk
  2. Press 2 if there is a slight to moderate risk
  3. Press 3 if there is a 50-50 chance that, over time, the federal government will block Internet websites or services for reasons other than concerns over copyright
  4. Press 4 if it is more likely than not that, over time, the federal government will block Internet websites or services for reasons other than concerns over copyright
  5. Press 5 if it is virtually certain that, over time, the federal government will block Internet websites or services for reasons other than concerns over copyright
  6. Press 6 if you are not sure

### **Part C – Demographics**

- 8 The next few questions are about yourself. Your answers will be kept confidential and anonymous. Please indicate your gender.
1. Press 1 for Male
  2. Press 2 for Female
  3. Press 3 for Other
  4. Press 4 if you prefer not to say

9 How old are you?

1. Press 1 if between 18 and 24 years of age
2. Press 2 if between 25 and 34
3. Press 3 if between 35 and 44
4. Press 4 if between 45 and 54
5. Press 5 if between 55 and 64
6. Press 6 if between 65 and 74
7. Press 7 if 75 years of age or older
8. Press 8 if you prefer not to answer

10 In which province or territory do you live?

1. Press 1 if British Columbia
2. Press 2 if Alberta, Saskatchewan or Manitoba
3. Press 3 if Ontario
4. Press 4 if Quebec
5. Press 5 if Newfoundland or New Brunswick
6. Press 6 if Nova Scotia or Prince Edward Island
7. Press 7 if Northwest Territories
8. Press 8 if Nunavut
9. Press 9 if Yukon

11 What is the highest level of education that you have completed?

1. Press 1 if Grade 8 or less
2. Press 2 if Some high school
3. Press 3 if High school diploma or equivalent
4. Press 4 if College or CEGEP
5. Press 5 if Bachelor's degree
6. Press 6 if Master's degree
7. Press 7 if Doctorate
8. Press 8 if you prefer not to answer

12 Which of the following categories best describes your total household income, before taxes?

1. Press 1 if under \$20,000
2. Press 2 if \$20,000 to just under \$40,000
3. Press 3 if \$40,000 to just under \$60,000
4. Press 4 if \$60,000 to just under \$80,000
5. Press 5 if \$80,000 to just under \$100,000
6. Press 6 if \$100,000 to just under \$150,000
7. Press 7 if \$150,000 and above
8. Press 8 if you prefer not to answer

Thank you, that's all the questions I have. If you have any questions about this call, you can reach our firm, Access Research, at 1-855-561-3603 or at [inquiry@access-research.com](mailto:inquiry@access-research.com).  
Have a great day.

**Forum for Research and Policy in Communications  
Sondage sur l'utilisation d'Internet/le blocage**

Forum Research Inc.

27 février 2018

**Partie A – Introduction**

Bonjour. Bonjour, j'appelle de la part de Forum Research au nom du Forum for Research and Policy in Communications. Nous aimerions vous poser quelques questions au sujet d'Internet. Le sondage devrait prendre environ 4 minutes. Il suffit d'utiliser le clavier de votre téléphone pour sélectionner votre réponse lorsqu'on vous demandera de le faire. Si vous avez des questions au sujet de cet appel, vous pouvez appeler notre entreprise, Access Research, au 1 855 561-3603, ou écrire à [inquiry@access-research.com](mailto:inquiry@access-research.com).

- B. D'abord, êtes-vous âgé de 18 ans ou plus?
1. Appuyez sur le 1 si votre réponse est affirmative →CONTINUER
  2. Appuyez sur 2 si votre réponse est affirmative →ARRÊTER

**Partie B – Sondage principal**

1. Est-ce que vous ou quelqu'un de votre foyer êtes abonnés à Internet ou payez pour Internet?
  1. Appuyez sur le 1 si votre réponse est affirmative
  2. Appuyez sur le 2 si votre réponse est négative
  3. Appuyez sur le 3 si vous êtes indécis
2. Utilisez-vous ou avez-vous utilisé Internet au cours de la dernière année?
  1. Appuyez sur le 1 si votre réponse est affirmative
  2. Appuyez sur le 2 si votre réponse est négative
  3. Appuyez sur le 3 si vous êtes indécis → ARRÊTER
3. Croyez-vous qu'il est possible de visiter des sites Web par erreur?
  1. Appuyez sur le 1 si votre réponse est affirmative →CONTINUER
  2. Appuyez sur le 2 si votre réponse est affirmative →PASSER À Q5
  3. Appuyez sur le 3 si vous êtes indécis → PASSER À Q5
4. Avez-vous visité un site Web par erreur au cours de la dernière année?
  1. Appuyez sur le 1 si votre réponse est affirmative
  2. Appuyez sur le 2 si votre réponse est négative
  3. Appuyez sur le 3 si vous êtes indécis
5. Avez-vous ou quelqu'un dans votre foyer a-t-il eu accès à de la musique, des films ou des émissions de télévision sur Internet au cours de la dernière année?
  1. Appuyez sur le 1 si votre réponse est affirmative
  2. Appuyez sur le 2 si votre réponse est négative
  3. Appuyez sur le 3 si vous êtes indécis

6. On demande au CRTC, l'office fédéral qui réglemente les télécommunications au Canada, de bloquer l'accès des Canadiens aux sites et aux services en ligne qui rendent la musique, les films ou les émissions de télévision accessibles sans la permission des titulaires de droits d'auteur.

Pensez-vous qu'il y a un risque que, si le CRTC commence à bloquer l'accès aux sites et aux services en ligne à cause des questions de droit d'auteur, il bloque certains sites Internet ou services en ligne qui n'ont rien à se reprocher?

1. Appuyez sur le 1 s'il n'y a aucun risque que le CRTC bloque les mauvais sites Web ou services Internet.
  2. Appuyez sur le 2 s'il y a un léger risque que le CRTC bloque les mauvais sites Web ou services Internet.
  3. Appuyez sur le 3 s'il y a une chance sur deux que le CRTC bloque les mauvais sites Web ou services Internet.
  4. Appuyez sur le 4 s'il est plus probable qu'improbable que le CRTC bloquera les mauvais sites Web ou services Internet.
  5. Appuyez sur le 5 s'il est pratiquement certain que le CRTC bloquera les mauvais sites Web ou services Internet.
  6. Appuyez sur le 6 si vous êtes indécis
7. Pensez-vous qu'il y a un risque que, avec le temps, le gouvernement fédéral bloque l'accès des Canadiens aux sites ou aux services Internet pour des raisons autres que les préoccupations relatives au droit d'auteur?
1. Appuyez sur le 1 s'il n'y a aucun de risque.
  2. Appuyez sur le 2 s'il y a un risque faible à modéré.
  3. Appuyez sur le 3 s'il y a une chance sur deux que, au fil du temps, le gouvernement fédéral bloque des sites Web ou des services Internet pour des raisons autres que les préoccupations relatives au droit d'auteur.
  4. Appuyez sur le 4 s'il est plus probable qu'improbable qu'au fil du temps, le gouvernement fédéral bloquera des sites Web ou des services Internet pour des raisons autres que les préoccupations relatives au droit d'auteur.
  5. Appuyez sur le 5 s'il est pratiquement certain qu'au fil du temps, le gouvernement fédéral bloquera des sites Web ou des services Internet pour des raisons autres que les préoccupations relatives au droit d'auteur.
  6. Appuyez sur le 6 si vous êtes indécis

### **Partie C – Questions démographiques**

- 8 Les quelques prochaines questions portent sur vous. Vos réponses demeureront confidentielles et anonymes. Veuillez indiquer votre sexe.
1. Si vous êtes un homme, appuyez sur le 1
  2. Si vous êtes une femme, appuyez sur le 2
  3. Appuyez sur le 3 pour Autre
  4. Appuyez sur le 4 si vous préférez ne pas l'indiquer

9 Quel âge avez-vous?

1. Appuyez sur le 1 si vous êtes âgé de 18 à 24 ans
2. Appuyez sur le 2 si vous êtes âgé de 25 à 34 ans
3. Appuyez sur le 3 si vous êtes âgé de 35 à 44 ans
4. Appuyez sur le 4 si vous êtes âgé de 45 à 54 ans
5. Appuyez sur le 5 si vous êtes âgé de 55 à 64 ans
6. Appuyez sur le 6 si vous êtes âgé de 65 à 74 ans
7. Appuyez sur le 7 si vous êtes âgé de 75 ans ou plus.
8. Appuyez sur 8 si vous préférez ne pas répondre

10 Dans quel territoire ou quelle province résidez-vous?

1. Appuyez sur le 1 pour la Colombie-Britannique
2. Appuyez sur le 2 pour l'Alberta, la Saskatchewan ou le Manitoba
3. Appuyez sur le 3 pour l'Ontario
4. Appuyez sur le 4 pour le Québec
5. Appuyez sur le 5 pour Terre-Neuve ou le Nouveau-Brunswick
6. Appuyez sur le 6 pour la Nouvelle-Écosse ou l'Île-du-Prince-Édouard
7. Appuyez sur le 7 pour les Territoires du Nord-Ouest
8. Appuyez sur le 8 pour le Nunavut
9. Appuyez sur le 9 pour le Yukon

11 Quel est le niveau de scolarité le plus élevé que vous avez atteint?

1. Appuyez sur le 1 si vous avez atteint la 8<sup>e</sup> année ou moins
2. Appuyez sur le 2 si vous avez fréquenté l'école secondaire un certain temps.
3. Appuyez sur le 3 si vous avez obtenu un diplôme d'études secondaires
4. Appuyez sur le 4 si vous avez étudié au collégial ou au CÉGEP
5. Appuyez sur le 5 si vous avez un diplôme de baccalauréat
6. Appuyez sur le 6 si vous avez un diplôme de maîtrise
7. Appuyez sur le 7 si vous avez un diplôme de doctorat
8. Appuyez sur 8 si vous préférez ne pas répondre

12 Laquelle des catégories suivantes décrit le mieux le revenu total de votre ménage, avant impôts?

1. Appuyez sur le 1 s'il est inférieur à 20 000 \$
2. Appuyez sur le 2 s'il est supérieur à 20 000 \$, mais tout juste sous 40 000 \$
3. Appuyez sur le 3 s'il est supérieur à 40 000 \$, mais tout juste sous 60 000 \$
4. Appuyez sur le 4 s'il est supérieur à 60 000 \$, mais tout juste sous 80 000 \$
5. Appuyez sur le 5 s'il est supérieur à 80 000 \$, mais tout juste sous 100 000 \$
6. Appuyez sur le 6 s'il est supérieur à 100 000 \$, mais tout juste sous 150 000 \$
7. Appuyez sur le 7 s'il est de 150 000 \$ et plus.
8. Appuyez sur 8 si vous préférez ne pas répondre

Merci, je n'ai pas d'autres questions. Si vous avez des questions au sujet de cet appel, vous pouvez appeler notre entreprise, Access Research, au 1 855 561-3603, ou écrire à [inquiry@access-research.com](mailto:inquiry@access-research.com). Passez une bonne journée!



Appendix 14 Rate increases made by Shaw between 1997 and 2009, and the revenue they generated

Shaw Annual Report	Year rate changed	Service	Increase	Year	Subscribers	Monthly revenue	That year's revenues	Annual revenues
1999 Annual Report, at 46	01-Jul-97	Full Cable service	\$ 1.20	1998	751,000	\$901,200	\$10,814,400	\$10,814,400
	01-Jun-98	Full Cable Service	\$ 1.04	1998	751,000	\$781,040	\$4,686,240	\$9,372,480
	01-Jan-98	Basic cable	\$ 0.21	1998	1,507,589	\$316,594	\$3,799,124	\$3,799,124
2000 Annual Report, at 44	Monthly basic and extended tier rate increases implemented during the year generated approximately 20% of the increase in revenue in the 2000 fiscal year.			2000	Based on 20% of change in revenue from 1999 to 2000		\$ 28,938,600	\$28,938,600
2001 Annual Report, at 8-9	01-Jan-01	Basic cable	\$ 0.08	2001	2,135,125	\$170,810	\$1,537,290	\$2,049,720
	01-Jan-01	Tier 1	\$ 0.75		1,737,653	\$1,303,240	\$7,819,439	\$9,000,000
	01-May-02	Basic cable	\$ 2.00	2002	2,105,113	\$ 4,210,226	\$50,522,712	\$50,522,712
		Tier 1	\$ 3.00		1,708,736	\$ 5,126,208	\$61,514,496	\$61,514,496
		Tier 2	\$ 3.00		91,705	\$275,115	\$3,301,380	\$3,301,380
		Tier 3	\$ 3.00		214,685	\$644,055	\$7,728,660	\$7,728,660
2003 Annual Report, p. 26	01-Jan-03	"Effective May 1, 2003 Shaw increased its monthly charge on certain packages affecting approximately 550,000 customers which generated approximately \$1 million of additional monthly revenue."			55,000	\$ 1,000,000	\$8,000,000	\$12,000,000
	30-Jun-03	"... Effective June 30, 2003, Shaw increased its monthly charge on its unbundled basic and FCS bundled packages. This affected approximately 1.1 million customers and generated additional monthly revenue of approximately \$2 million when it was fully implemented by August 31, 2003."			1,100,000	\$ 2,000,000	\$6,000,000	\$24,000,000
2004 Annual Report, p. 30	01-Jun-04	"Commencing in February 2004, Shaw applied rate increases of \$1 to \$2 per month to most of its packages. The increases generated additional monthly revenue of approximately \$1.5 million when they were fully implemented at the end of May 2004."				\$ 1,500,000	\$7,500,000	\$18,000,000
2005 Annual Report, p. 32	2004	"Effective November 26, 2004, Shaw introduced rate increases of approximately \$1 per month on most of its packages. The increases generated additional monthly revenue of approximately \$2.0 million per month when they were fully implemented at the end of January 2005."				\$ 2,000,000	\$24,000,000	\$24,000,000
2006 Annual Report, p. 33	2005	"Commencing in October 2005, Shaw introduced rate increases on most stand-alone services, packages, and on specialty services. The increases generated additional revenue of approximately 3.8 million per month once fully implemented in November 2005."				\$ 3,800,000	\$7,600,000	\$45,600,000
Annual Report 2007, at 32	2006	"The Company implemented rate increases on most stand-alone services, packages, and on specialty services in September 2006 and				\$ 5,000,000	\$30,000,000	\$60,000,000



<b>Shaw Annual Report</b>	<b>Year rate changed</b>	<b>Service</b>	<b>Increase</b>	<b>Year</b>	<b>Subscribers</b>	<b>Monthly revenue</b>	<b>That year's revenues</b>	<b>Annual revenues</b>
		July 2007. The increases generated additional monthly revenue of approximately \$5.0 million and \$6.5 million, respectively, once fully implemented."						
2008 Annual Report, at 34		"Cable service revenue of \$2.38 billion was up 14.1% over the prior year. Customer growth and rate increases accounted for the increase. ..."						
2009 Annual Report, at 42		"Cable service revenue for the year of \$2.63 billion was up 10.8% over last year. Customer growth and rate increases accounted for the improvement."						

## Appendix 15 1991 and 1993 statutory policy objectives for content and distribution

Statute and objectives	Problems
<p><i>Broadcasting Act</i>: 3. (1) It is hereby declared as the broadcasting policy for Canada that</p> <p>1) (a) the Canadian broadcasting system <b>shall</b> be effectively owned and controlled by Canadians;</p>	While mandatory, degree of foreign ownership is unknown
<p>2) (b) 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;</p>	Declaratory Purpose of this statement is unclear
<p>3) (c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;</p>	Declaratory Grants discretion
<p>4) (d) the Canadian broadcasting system <b>should</b></p> <p>(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,</p>	Discretionary
<p>5) (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,</p>	Discretionary
<p>6) (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and 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 within that society, and</p>	Discretionary
<p>7) (iv) be readily adaptable to scientific and technological change;</p>	Discretionary
<p>8) (e) each element of the Canadian broadcasting system <b>shall</b> contribute in an appropriate manner to the creation and presentation of Canadian programming;</p>	Mandatory, but vague Permits different levels of Canadian programming public, private and community elements
<p>9) (f) each broadcasting undertaking <b>shall</b> 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</p>	While mandatory, CRTC has undermined this by repealing s. 4(6) of TV regs (req'g 55% Canadian content over broadcast year) in 2015
<p>10) (g) the programming originated by broadcasting undertakings <b>should</b> be of high standard;</p>	Discretionary
<p>11) (h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;</p>	Declaratory
<p>12) (i) the programming provided by the Canadian broadcasting system <b>should</b></p> <p>(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,</p>	Discretionary
<p>13) (ii) be drawn from local, regional, national and international sources,</p>	Discretionary
<p>14) (iii) include educational and community programs,</p>	Discretionary
<p>15) (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and</p>	Discretionary
<p>16) (v) include a significant contribution from the Canadian independent production sector;</p>	Discretionary
<p>17) (j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;</p>	Declaratory
<p>18) (k) a range of broadcasting services in English and in French <b>shall</b> be extended to all Canadians <u>as resources become available</u>;</p>	Mandator <b>Ambiguity</b>

**Statute and objectives**

*[k) une gamme de services de radiodiffusion en français et en anglais doit être progressivement offerte à tous les Canadiens, au fur et à mesure de la disponibilité des moyens;]*

**Problems**

Implementation unknown  
 Why extend to 'Canadians', rather than to Canada?  
 French-English inconsistency: 'progressivement offerte' vs 'extended'

19)	(l) the Canadian Broadcasting Corporation, as the national public broadcaster, <b>should</b> provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;	Discretionary
20)	(m) the programming provided by the Corporation <b>should</b>	Discretionary
21)	(i) be predominantly and distinctively Canadian,	Discretionary
22)	(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,	Discretionary
23)	(iii) actively contribute to the flow and exchange of cultural expression,	Discretionary
24)	(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,	Discretionary
25)	(v) strive to be of equivalent quality in English and in French,	Discretionary
26)	(vi) contribute to shared national consciousness and identity,	Discretionary
27)	(vii) be made available throughout Canada by the most appropriate and efficient means and <b>as resources become available for the purpose</b> , and <i>[(vii) être offerte partout au Canada de la manière la plus adéquate et efficace, au fur et à mesure de la disponibilité des moyens,]</i>	Discretionary
28)	(viii) reflect the multicultural and multiracial nature of Canada;	Mandatory, but unclear
29)	(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it <b>shall</b> be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it <b>shall</b> be resolved in favour of the objectives set out in paragraphs (l) and (m);	
30)	(o) programming that reflects the aboriginal cultures of Canada <b>should</b> be provided within the Canadian broadcasting system <b>as resources become available for the purpose</b> ; <i>[o) le système canadien de radiodiffusion devrait offrir une programmation qui reflète les cultures autochtones du Canada, au fur et à mesure de la disponibilité des moyens;]</i>	Discretionary <b>Ambiguity</b> Inconsistency between English & French versions: English-programming should be provided within the system; French – programming s be provided by the system
31)	(p) programming accessible by disabled persons <b>should</b> be provided within the Canadian broadcasting system <b>as resources become available for the purpose</b> ; <i>[p) le système devrait offrir une programmation adaptée aux besoins des personnes atteintes d'une déficience, au fur et à mesure de la disponibilité des moyens;]</i>	Discretionary English- provided within the system French – provided by the system <b>Ambiguity</b>
32)	(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French <b>should</b> be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;	Discretionary
33)	(r) the programming provided by alternative television programming services <b>should</b>	Discretionary <sup>23</sup>
34)	(i) be innovative and be complementary to the programming provided for mass audiences,	Discretionary
35)	(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,	Discretionary
36)	(iii) reflect Canada's regions and multicultural nature,	Discretionary
37)	(iv) <b>as far as possible</b> , be acquired rather than produced by those services, and	Discretionary
38)	(v) be made available throughout Canada <b>by the most cost-efficient means</b> ;	<b>Ambiguity</b>

**Statute and objectives**

*[(v) être offerte partout au Canada de la manière la plus rentable, compte tenu de la qualité;]*

**Problems**

- 37) (s) private networks and programming undertakings **should, to an extent consistent with the financial and other resources available to them,**  
 (i) contribute significantly to the creation and presentation of Canadian programming, and
- 38) (ii) be responsive to the evolving demands of the public; and  
*s) les réseaux et les entreprises de programmation privés devraient, dans la mesure où leurs ressources financières et autres le leur permettent, contribuer de façon notable à la création et à la présentation d'une programmation canadienne tout en demeurant réceptifs à l'évolution de la demande du public;*
- 39) (t) distribution undertakings  
 (i) **should** give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,
- 40) (ii) **should** provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,
- 41) (iii) **should**, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and
- 42) (iv) **may**, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

Whose costs?  
 Which costs are to be measured?  
 Difference between English and French versions?  
 Discretionary  
**Ambiguity-** which resources?  
 Past, present or future? Of subsidiary or parent corporations?

Discretionary  
 English and French versions of 3(1)(s) are inconsistent

Discretionary

Discretionary

Discretionary

Discretionary

*Telecommunications Act, s. 7: 7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives*  
*7 La présente loi affirme le caractère essentiel des télécommunications pour l'identité et la souveraineté canadiennes; la politique canadienne de télécommunication vise à*

- 1) (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;  
*a) favoriser le développement ordonné des télécommunications partout au Canada en un système qui contribue à sauvegarder, enrichir et renforcer la structure sociale et économique du Canada et de ses régions;*
- 2) (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;  
*b) permettre l'accès aux Canadiens dans toutes les régions — rurales ou urbaines — du Canada à des services de télécommunication sûrs, abordables et de qualité;*
- 3) (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;  
*c) accroître l'efficacité et la compétitivité, sur les plans national et international, des télécommunications canadiennes*
- 4) (d) to promote the ownership and control of Canadian carriers by Canadians;  
*d) promouvoir l'accession à la propriété des entreprises canadiennes, et à leur contrôle, par des Canadiens;*
- 5) (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;  
*e) promouvoir l'utilisation d'installations de transmission canadiennes pour les télécommunications à l'intérieur du Canada et à destination ou en provenance de l'étranger*

### Statute and objectives

### Problems

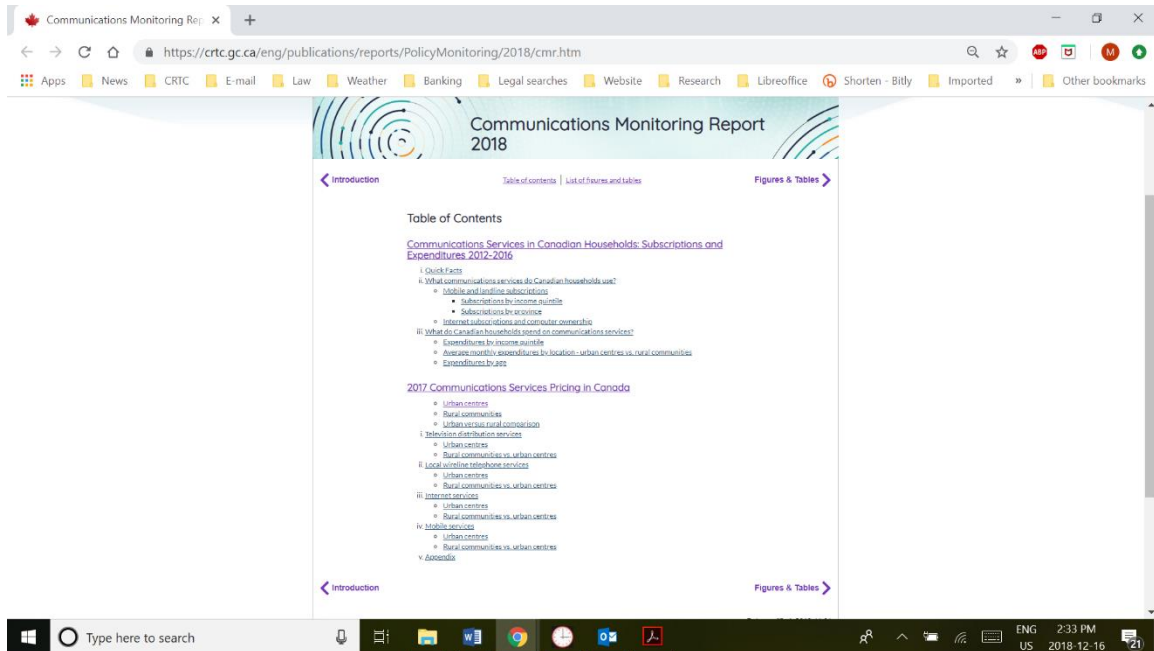
- 6) (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;  
*f) favoriser le libre jeu du marché en ce qui concerne la fourniture de services de télécommunication et assurer l'efficacité de la réglementation, dans le cas où celle-ci est nécessaire;*
- 7) (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;  
*g) stimuler la recherche et le développement au Canada dans le domaine des télécommunications ainsi que l'innovation en ce qui touche la fourniture de services dans ce domaine;*
- 8) (h) to respond to the economic and social requirements of users of telecommunications services; and  
*h) satisfaire les exigences économiques et sociales des usagers des services de télécommunication;*
- 9) (i) to contribute to the protection of the privacy of persons.  
*i) contribuer à la protection de la vie privée des personnes.*

### Radiocommunication Act

- 1) Under s. 5(1) the Minister may issue radio and spectrum licences, as well as certificates for broadcasting, radio operators and technical acceptance, "taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada"

Appendix 16 Presentation problems with the 2018 version of the *Communications Monitoring Report*

1. No date of publication (was it published on 1 Nov 2018 as shown at the bottom of the page, here <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/index.htm>, and here <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr1.htm>, and here <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr2.htm>?) or were the sections published on different dates – say on 16 August 2018,<sup>285</sup> and then 6 November 2018 for the pricing section (<https://thewirereport.ca/2018/11/06/cheaper-wireless-plans-lowered-telecom-service-prices-in-2017-crtc/>)
2. No page numbers, except in the one PDF sections, making it difficult to cite other sections.
3. No section numbers either – makes it difficult to cite.
4. The webpage that has “index” in the title (<https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/index.htm>) is not an index; according to Oxford, an index is “(in a book or set of books) an alphabetical list of names, subjects, etc. with reference to the pages on which they are mentioned” - <https://en.oxforddictionaries.com/definition/index>
5. Why does the “Introduction” of the 2018 *Communications Monitoring Report* precede its Table of Contents?



6. When first released, entirely HTML only; the “2017 Communications Services Pricing in Canada” may, however, be downloaded in a PDF version
7. The 2018 *Communications Monitoring Report* states that “Additional data on Canada’s communications industry is found in the Commission’s 2017 Communications Monitoring Report (CMR).” at (no page number) “Communications Services In Canadian Households:

<sup>285</sup> Sameer Chhabra, “Canadian households spent an average of \$92.08 per month on mobile subscriptions, says CRTC”, *The Wire Report* (16 August 2018), <https://mobilesyrup.com/2018/08/16/crtc-releases-communications-monitoring-report-2018-snapshot/>

Subscriptions and Expenditures 2012-2016”

(<https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr1.htm#s10>). Does this mean that the CRTC will not even bother trying to find new, 2018 data?

8. The section entitled, “Communications Services in Canadian Households: Subscriptions and Expenditures 2012-2016” (here <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/index.htm>) does not provide any comparative data for 2012, 2013, 2014 or 2015, and does not specifically state that the data shown are for 2016
9. What does the label, “Decline 2015-2016” mean on this page?:  
<https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/index.htm>  
Does it mean that the data are from 2016-2017, and therefore the CRTC is reporting that subscriptions have declined 7.1% since 2015/2016?
10. New PDF 1 “Canadian households continued to spend more on mobile and television services than on Internet and landline services.” - but that they are really talking about is “Television distribution” – with an icon of a TV set.
11. The report states that “The prices of communication services continue to shift in correlation with Canadians’ appetite for certain services.”? As Parliament empowered the CRTC to regulate rates for telephony and broadcast distribution – does this description imply that the CRTC’s decisions to continue to regulate some wireline rates, and to impose a monthly rate for basic television distribution have no impact on prices? Second, what are the apparently key “certain services” that are shifting in correlation with Canadians’ appetite (of which there is apparently only one?)? Third, does CRTC in fact have data to support the opposite conclusion, namely that ‘The prices of communication services are not shifting in correlation with Canadians’ appetite for certain services.’ –if not, the statement becomes meaningless: prices both shift and do not shift in tandem with Canadians’ interest in certain services, whatever they may be.
12. “Within the Canadian communications system, it is important to highlight individual service subscriptions for landline, mobile, Internet, and television distribution services.”  
(<https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr1.htm#s10>)  
Why? Because individual subscriptions are different from non-individual subscriptions? Or because landline, mobile, Internet and television distribution matter more than ... what? Or is it because we know very little about subscription-based audio-only services (similar to radio)?
13. New pdf 2: “... as made evident in this report, communication services prices were fairly uniform between rural communities and urban centres in 2017.”
14. The OpenAccess data tables are provided one at a time (with numbered titles), and are read-only

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<sup>1</sup> James Struthers, “Great Depression”, *The Canadian Encyclopedia* (11 July 2013), <https://www.thecanadianencyclopedia.ca/en/article/great-depression>.

<sup>2</sup> “Martin Cooper: Inventor of the cell phone” <[http://www.cellular.co.za/cellphone\\_inventor.htm](http://www.cellular.co.za/cellphone_inventor.htm)>.

<sup>3</sup> Jacques Gallant, “Bell Media president apologizes for interfering in CTV news coverage” *Toronto Star* (25 March 2015).