



4 August 2020

Claude Doucet  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Via GC Key

Dear Secretary General,

**Re: Broadcasting Notices of Consultation CRTC [2019-379](#) (Ottawa, 25 November 2020), [2019-379-1](#) (Ottawa, 28 January 2020), [2019-379-2](#) (Ottawa, 8 April 2020) and [2019-379-3](#) (Ottawa, 22 June 2020) – Procedural request**

- 1 The Forum is submitting this request to ask that the CRTC amend its current procedures with respect to the applications of the Canadian Broadcasting Corporation (CBC) first published in late November 2019 in Broadcasting Notice of Consultation CRTC 2019-379.
- 2 **Briefly**, the Forum is suggesting that the CRTC terminate the CBC renewal proceeding and launch a public proceeding to consider the performance and future role of public broadcasting in Canada, with a public hearing in early 2021. After releasing its determinations on public broadcasting the CRTC could initiate a new proceeding in late 2021 to consider CBC's applications regarding its licences and the exemption orders under which it operates, with new evidence from CBC. This two-step process would enable the CRTC to exercise its regulatory responsibilities with respect to CBC, and would provide the accountability that Canadians require from CBC.
- 3 Following an overview of the current context of CBC's applications, the Forum discusses options for proceeding with CBC's applications. Our recommendations follow. An outline of our submissions is set out below, for the convenience of readers.

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## I Context of CBC's applications and the Part 1 application

### A. CRTC has reviewed CBC's performance only once in past 20 years

- 4 Renewal proceedings typically enable the CRTC to supervise and regulate broadcasters by reviewing individual licensees' compliance with their licences and the *Broadcasting Act* and by inviting public comment on the licensees' performance and plans. Put another way, Parliament made the CRTC responsible for implementing its broadcasting policy, and made licensees accountable to Canadians.
- 5 By limiting the licence renewal period to seven years Parliament attempted to ensure regular scrutiny by the CRTC, although in extraordinary circumstances it also renews licences administratively for short terms without reviewing either past performance or future plans.
- 6 Since 2000 the CRTC has reviewed CBC's performance just once – in May 2013. Then, and while the *Broadcasting Act* permits the CRTC to issue licences for up to seven years, [Broadcasting Decision CRTC 2013-263](#) renewed CBC for five years to September 2018. From 2017 to 2020 the CRTC has renewed CBC's licences administratively three times.<sup>1</sup>
- 7 Canadians care deeply about their national public broadcaster: more than ten thousand individuals and organizations intervened in February 2020. By contrast fewer than a thousand (854) parties intervened in the renewals of Canada's largest private broadcasters in 2016.<sup>2</sup>
- 8 Further delays in hearing CBC's applications leave Canada's national public broadcaster operating without the regular and substantive oversight delegated by Parliament to the CRTC. Moreover, such delays effectively ignore the concerns of thousands of people and organizations who invested time and effort to share their concerns about public broadcasting in Canada less than half a year ago. If the current 2019-279 public process is merely adjourned to a future date the CRTC will have been unable to exercise its regulatory responsibilities, and attempts to hold CBC to account for its performance under the current *Broadcasting Act* will have been stymied.
- 9 The Forum respectfully submits that the public interest would be best served by establishing a process to enable the CRTC to exercise its regulatory responsibilities, and to ensure that CBC is accountable to Canadians.

### B. CBC's failure to disclose relevant evidence has tainted current licensing process

- 10 The legality of administrative tribunals' decisions depends heavily on the evidence on which they are based. A tainted evidentiary process generally yields tainted outcomes. The current licensing process announced by Broadcasting Notice of Consultation CRTC 2019-379 consists of CBC's applications to renew its licences and to continue to operate some services without licences.<sup>3</sup> Unfortunately, critical financial information about CBC's unlicensed online services was kept from Canadians until weeks after the intervention deadline.
- 11 Financial information about CBC's exempted digital services is critical because these can only be exempted from when their licensing 'will not contribute materially' to the implementation of Parliament's broadcasting policy for Canada.<sup>4</sup> The financial 'materiality' of CBC's online services was therefore critical information for interveners commenting on CBC's applications to continue to operate some of its services under exemption orders. Yet while CBC gave the CRTC financial

information about its online services in October 2019, it filed this information in confidence<sup>5</sup> and strongly opposed a procedural request for its disclosure<sup>6</sup> before the intervention deadline.<sup>7</sup>

12 Two weeks after the intervention deadline, however, CBC finally agreed “to place additional financial information on the record of this proceeding” including “financial information regarding [its] digital activities ....”<sup>8</sup>

13 In late June 2020, more than 17 weeks after the intervention deadline,<sup>9</sup> Canadians finally learned that, while CBC had previously said it planned to spend \$189.7 million on its digital audio and audio-visual content from 2018 to 2023, it actually planned to spend five and a half times more on its digital services: \$1.05 billion.<sup>10</sup> The scale of this expenditure is significant.

14 The CRTC allowed Canadians to file a second round of comments solely about the new information published by CBC<sup>11</sup> and the Forum’s Phase 2 submission raised the issue of procedural fairness in relation to CBC’s failure to disclose the size of its digital expenditures.<sup>12</sup>

15 When CBC replied to these comments it failed to address the issue of procedural fairness. (Moreover it continued to make statements that could only mislead the general public.<sup>13</sup>)

16 CBC’s astonishing decision to withhold relevant evidence from Canadians until four months after the intervention deadline means that interveners had no opportunity to address the implications of this evidence for CBC’s applications, or to hold CBC to account with respect to its unlicensed online services. We say CBC’s decision was ‘astonishing’ because, as Canada’s oldest broadcaster, CBC must certainly be aware of the CRTC’s *Rules*: among other things they require that applications “contain a clear and concise statement of the relevant facts”.<sup>14</sup> The level of resources allocated to CBC’s currently exempted services is a relevant fact.

17 This denial of due process by providing relevant evidence well after the applications were purportedly ‘complete’ and also after the deadline for commenting on the entirety of CBC’s applications has arguably tainted the entire 2019-379 licensing process: the hundreds of pages of CBC’s applications<sup>15</sup> and first two rounds of answers to deficiency questions<sup>16</sup> lacked important, relevant evidence.

18 The Forum respectfully submits that the CRTC’s responsibilities and the public interest in accountability would best be served by ending the current 2019-379 proceeding and its tainted record, and initiating a new renewal proceeding in which CBC’s applications would be complete when filed.

### **C. CBC’s applications no longer reflect reality**

19 As noted above the legality of administrative tribunals’ decisions rests heavily on the quality of evidence before them. The global pandemic that was first announced by the World Health Organization in early March 2020<sup>17</sup> has knocked the world off kilter. Even if CBC had not tainted its applications by hiding significant information about its digital services from the public until weeks after the intervention deadline, a number of interveners and the CBC agree that the Covid-19 pandemic will have a significant effect on CBC’s financial situation.<sup>18</sup>

20 While the CRTC has postponed CBC's renewal hearing to January 2021, and presumably could invite CBC to supplement its applications with Covid-19 updates, CBC in late July 2020 'strongly rejected' the idea that it "provide pandemic-updated financials",<sup>19</sup> adding that it

... cannot provide any meaningful predictions regarding its future financial circumstances. **No clarity for projections is likely before at least 18 to 24 months.** And even then, any economic and financial projections will be tentative, at best. Consequently, **we strongly reject the suggestion that the CBC/Radio-Canada should be required to provide pandemic-updated financials.** Such information would be highly speculative given the unpredictability in the course of the COVID-19 pandemic, and likely will be outdated as soon as it published [sic].<sup>20</sup>

[bold font added]

21 The evidence now before the CRTC about CBC's applications therefore entirely ignores the effect of Covid-19 on CBC's advertising revenues, audience levels and Parliamentary appropriations, as these applications were written and submitted to the CRTC months before the pandemic was declared. The financial evidence they offer for the four years from 2019-20 to 2022-23 is necessarily unreliable, making it difficult – to say the least – for the CRTC to exercise its responsibilities properly.

22 The *Broadcasting Act* gives the CRTC the authority not only to order CBC to produce documents but also to enter and inspect CBC's offices.<sup>21</sup> Yet this does not solve the CRTC's problem: CBC is not refusing to provide new projections – it says it cannot make such projections at all.

23 If the CRTC continues with the 2019-379 process, hears CBC's applications in January 2021 and issues a decision one or two months later, that decision will be open to challenge because it will have been made based on entirely outdated forecasts that now have a very tenuous relationship with reality.

24 The Forum respectfully submits that the interest of the public and of the CRTC itself would best be served by ending the current 2019-379 proceeding and its outdated record, and initiating a new renewal proceeding in which CBC's applications more accurately reflect reality and – as importantly – are based on a clear regulatory framework for public broadcasting in Canada.

## II Procedural options for the CRTC

25 The CRTC's *Rules of Practice and Procedure* give the CRTC complete flexibility to deal with the challenges raised by Canada's national public broadcaster by allowing it to vary its *Rules*.<sup>22</sup>

26 With this in mind, the Forum suggests that the CRTC has three options for exercising its responsibilities at the present time with respect to CBC and its applications:

- a. continue with the 2019-379 proceeding.
- b. end the 2019-379 proceeding and review public broadcasting in Canada, or
- c. adjourn or suspend the 2019-379 proceeding until January or July 2022 when CBC may (or may not) be able to provide more accurate financial projections and programming plans for its next licence term.

- 27 Of these three options, only one – Option B – enables the CRTC
- To exercise its responsibilities by reviewing CBC's performance and considering the views of the more than 10,000 interveners who commented on CBC's performance, thereby holding CBC to account
  - To assist Parliament when it considers new communications legislation by gathering and reviewing evidence about the contemporary role and performance of the public broadcasting sector in Canada in the 21<sup>st</sup> century, and
  - To develop an evidence-based regulatory framework for all public broadcasting services in Canada, to guide the growth of national and provincial public broadcasters in this country, and to meet the Commission's responsibilities as the sole regulatory authority charged with supervising broadcasting in Canada.
- A. Continue with 2019-379 renewal process that began May 2019**
- 28 One option for the CRTC is to continue with the current 2019-379 renewal process.
- 29 Unfortunately, CBC's 23 July 2020 statement that it will be unable to provide “any meaningful predictions regarding its future financial circumstances .... [for] at least 18 to 24 months ....” essentially prevents the CRTC from exercising its responsibilities for implementing Parliament's broadcasting policy for Canada, and prevents Canadians from holding CBC to account for its performance and plans. Continuing with the 2019-379 process would place the CRTC in the position of having to base its decision(s) on CBC's 2019 financial projections, all of which have been knocked askew by the Covid-19 pandemic and its effects on program production, audience levels, advertising revenues and Parliament's budget(s).
- 30 Hypothetically,<sup>23</sup> the Commission could require CBC to develop and submit revised applications based on three financial scenarios for the future:
- a. Assuming its net position is worse than that filed in 2019
  - b. Assuming its net position is the same as that filed in 2019, and
  - c. Assuming its net position is better than that filed in 2019.
- 31 Unfortunately, continuing with the 2019-379 process based on such scenarios raises major problems.
- 32 First, if CBC declines to provide the information needed for the three scenarios, the CRTC's only recourse would be to order CBC to comply<sup>24</sup> – but such an order would require the CRTC to first hold a public hearing into CBC's non-compliant response,<sup>25</sup> likely delaying the submission of the required information, and in turn delaying the 2019-379 process still further.
- 33 Second, the procedural fairness of the 2019-379 process has already been significantly weakened by CBC's June 2020 submission of relevant and significant evidence about its unlicensed activities weeks after interveners made their submissions to the CRTC. It is unclear how the Commission can responsibly remedy this significant defect: the second intervention

phase clearly established that interveners considered themselves misled by CBC's previous evidence. To what degree will interveners have confidence in CBC's scenarios, assuming it actually provides these? What can be altered about this process to change these concerns?

- 34 Third, the absence of any detailed evidence about the past, current and future circumstances of CBC's unlicensed services makes it impossible for the CRTC to determine whether their activities could contribute to Canadian culture,<sup>26</sup> Parliament's test for regulating or not regulating broadcasting services. Of the several dozen exemption orders issued by the CRTC (Appendix 3), two affect CBC in particular: the exemption with respect to non-programming (print) services, and the exemption for online programming services. To the best of our knowledge the CRTC has in the past twenty years neither reviewed its exemption of non-programming services offered by programming services<sup>27</sup> nor held a public hearing to consider its exemption of online programming services. Meanwhile, CBC's June 2020 evidence shows that its unlicensed activities may materially affect its ability to meet Parliament's broadcasting policy for Canada – meaning that, under the current *Broadcasting Act* if the CRTC considers that the now-exempted services could actually contribute materially to the implementation of Parliament's broadcasting policy for Canada, CBC's now-unlicensed services must be licensed.<sup>28</sup> CBC's June 2020 evidence shows that Canadians – and the CRTC – need clear plans for all of CBC's services that are not part of the current 2019-379 process. Without this information it will be impossible for the Corporation to be held accountable for a significant part of its activities, and for the CRTC to fulfill its responsibilities.
- 35 In the event that the 2019-379 process were to be somehow supplemented with new financial projections from CBC, steps that re-establish procedural fairness, and details about CBC's past and planned unlicensed activities, the Forum would remain concerned that a decision based on such a complex and often contradictory public record could be subject to near-immediate legal challenge either by CBC (with respect to any regulatory action taken with respect to its unlicensed services) or other parties (with respect to requirements, if any, for CBC's licensed and unlicensed activities).
- 36 It is for all these reasons that the Forum opposes continuation of the 2019-379 process, and recommends that it be ended (rather than postponed or suspended).
- 37 That said, the Forum believes an opportunity remains for the Commission to exercise its responsibility to review CBC's performance and for the thousands of interveners who made submissions in good faith to have their views taken into account.
- B. End 2019-379 renewal process and review public broadcasting in Canada**
- 38 Parliament has given the CRTC the explicit authority to undertake research and report on any matter within its jurisdiction:

14 (1) The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada.

...

18(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the

Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

- 39 In the past, the CRTC has issued dozens of policies regarding private radio, private television and distribution services (see Appendix 1, listing major policies only).
- 40 To the best of our knowledge, however, the CRTC has never held a public process to evaluate and consider the role of the public broadcasting sector in Canada. While the CRTC held a public hearing in 1968 about CBC's broadcast of *Air of Death* and in 1977 formed a Committee of Inquiry into the National Broadcasting Service to consider whether the CBC's English- and French-language services were meeting their mandates, neither process addressed the performance and role of public broadcasting in Canada in general. This is not to say that CBC has been ignored - Appendix 2 lists dozens of studies of the Corporation – but rather that the expert tribunal charged with the responsibility for regulating and supervising broadcasting in Canada has never reviewed the role of public broadcasting and the national public broadcaster in Canada's broadcasting system.
- 41 With five months of the Covid-19 global pandemic behind us, it is unfortunately very likely that the Canadian broadcasting system as we know it may be significantly changed going forward. The role of public broadcasting and its contemporary public interest service is therefore a matter of urgent concern.
- 42 As the sole authority responsible for regulating and supervising broadcasting in Canada – defined by the *Act* as consisting of public, private and community elements – an examination of public broadcasting's performance, contributions to Canadian programming and future role falls squarely within the CRTC's jurisdiction. The information it now has about public broadcasting in its annual *Statistical and Financial Summaries*, the reports it has undertaken or commissioned about public broadcasting and the thousands of interventions filed in the 2019-379 proceeding provide a solid foundation for it to launch a public process to evaluate Canadian public broadcasters' performance, especially in light of the changes technology is imposing on Canada's broadcasting system, the structure of the broadcasting system and potential constraints on future public financing.
- 43 Reviewing public broadcasting at this critical time would enable Canadians and the Commission to hold public broadcasters such as CBC to account by examining their past performance. It would also facilitate consideration of the role that public broadcasting can or should perform at a time when cuts to and closures of news media across the country limit Canadians' access to news about their communities, their regions and the country, whether this role is performed by conventional broadcast means or online services. This information will be critical to Parliament's anticipated review of Canada's broadcasting legislation.
- 44 In terms of process the Forum notes that the CRTC's *Rules* enable it to vary its procedures in the public interest, and permit the Commission to "close the file" when applications are no longer adequate.<sup>29</sup> The CRTC could invite new comments for this process and could also incorporate the interventions it has already received in the 2019-379 proceeding into a new proceeding, while granting (in a Broadcasting Notice of Consultation) these interveners the opportunity to supplement or change their previous comments.

45 Finally, the Forum acknowledges that a public policy review would not enable the CRTC to issue decisions about CBC's past and future performance in Spring 2021 – although a Regulatory Policy based, for instance, on a public hearing in January 2021, could set out important evidence about these matters as early as June or July 2021. However, as noted above in discussing the possibility of continuing with the 2019-379 proceeding, it will be difficult for the Commission to issue any decisions about CBC until after January or July 2022 given the impact of the pandemic, CBC's stated inability to provide new evidence for such decisions until early or mid-2022 and the fact that the evidence in CBC's current applications address only the next three years, to 2023.<sup>30</sup>

**C. Suspend 2019-379 proceeding until 2022**

46 The third option open to the CRTC is to simply adjourn or suspend the current proceeding until it believes CBC is able to provide reliable financial projections for a new licence term.

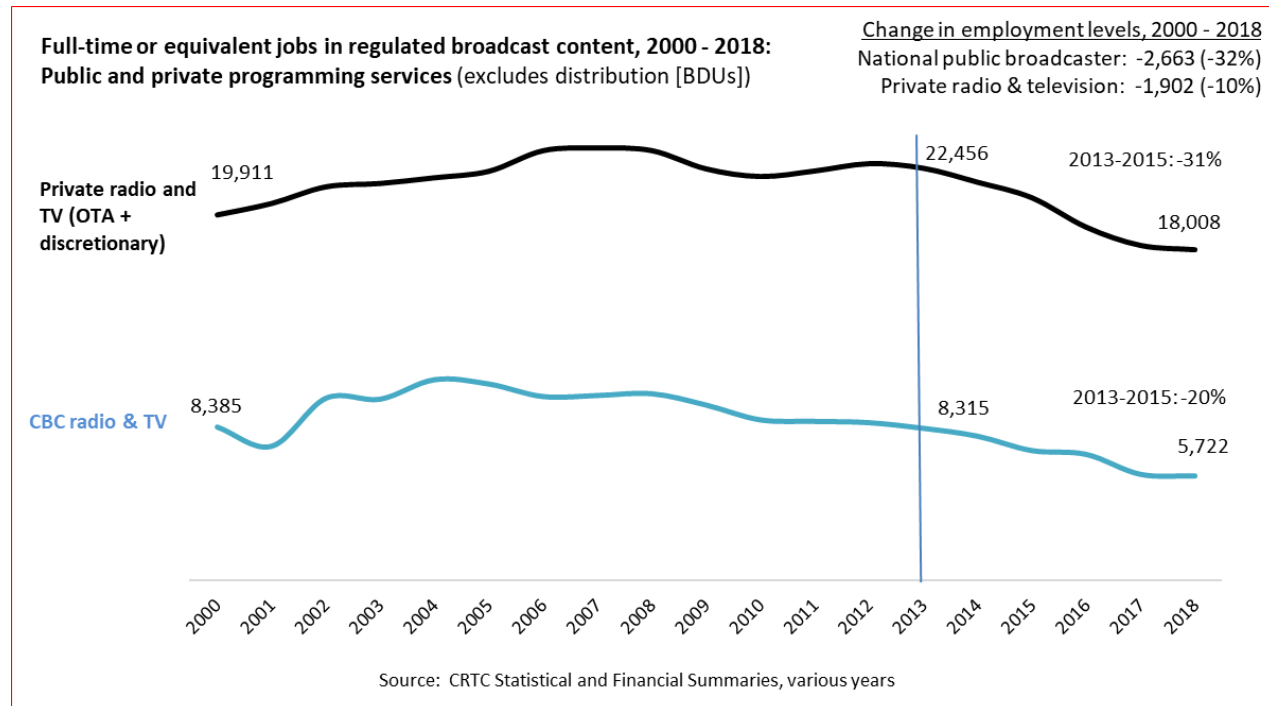
47 Assuming, as it said in July 2020, that CBC can provide such projections by January 2022, the CRTC could 'un-suspend' the 2019-379 proceeding in late 2021 or early 2022, place CBC's new evidence on the record, invite public comment on the new evidence and issue its decisions by the end of 2022.

48 Yet this option would leave Canada's largest and most vital cultural institution without any regulatory oversight or guidance for at least nine years, from 2013 to 2022. Neither Canadians nor the Commission would be able to hold CBC to account for its performance from 2013 to 2022. This is surely not what Parliament intended when it limited the maximum licence term for all broadcasters, including CBC, to seven years. Acknowledging the 13-year gap from 2000 to 2013 in the CRTC's consideration of CBC renewal applications, the Forum submits that this timing should not be repeated especially given the very strong concerns about the CBC's recent performance set out just five months ago in February 2020 by thousands of people.

49 The Forum also notes that a lengthy gap in the CRTC's consideration of the performance and direction of Canada's national public broadcaster is especially undesirable because the conventional media landscape is effectively under siege, with frequent announcements of newspaper closures and regular rounds of staff reductions in the electronic media. The CRTC's data show that staffing levels in private radio, over-the-air television and discretionary television services decreased by 10% between 2000 and 2018, and by 31% between 2013 and 2018 (see Figure 1).

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**Figure 1: Full-time or equivalent employment levels in public and private broadcasting, 2000-2018**

50 Private broadcasters that are also hit hard by the pandemic may well be forced to reduce staff, Canadian programming expenditures and in particular, local news. How will Parliament's broadcasting policy for Canada be enforced, let alone implemented, if the CBC renewal process is in suspension and private broadcasters that must soon file their own renewal applications with the CRTC take the steps they deem necessary for their survival?

51 A detailed and thorough review by the CRTC of the CBC in the context of public broadcasting would meet the Commission's responsibilities under the *Broadcasting Act* and ensure that CBC remains accountable to Canadians. It could help to ensure that going forward, Canadians are well-served by the country's only national public broadcaster at the local, provincial and national levels, especially with its news and public affairs programming. Leaving CBC's renewal applications and consideration of its plans for the future in suspension until 2022 will not serve the public interest in the national public broadcaster, the interest of Parliament in a well-regulated communications system or the necessity for CBC to be accountable to Canadians, to the CRTC and to Parliament.

### III Recommendation: end 2019-379 process and review public broadcasting

52 The Forum asks that the Commission end the current 2019-379 renewal process with respect to CBC, and initiate a public proceeding (including a public hearing) to consider the performance of the public broadcasting sector in Canada, and how it may best serve the information and entertainment needs of Canadians in the 21<sup>st</sup> century.

53 As the CRTC has already renewed CBC's licences to August 2021, a proceeding of this kind would enable the Commission to review the performance of all public broadcasters operating in

Canada, including Canada's national public broadcaster, based in part on the 10,000+ interventions now on the record with respect to CBC, on the public-broadcasting study already conducted for the CRTC, and on any new comments filed by interested members of the public about public broadcasting in Canada.

- 54 The outcome of this proceeding would provide the Corporation and other public broadcasters with clear, forward-looking guidance as to the CRTC's expectations of the public broadcasting element of Canada's broadcasting system. It would also enable the Commission to gather and publish evidence about the performance of all public broadcasters in the broadcasting system – evidence will be highly relevant to Parliament's review of the *Broadcasting Act*.
- 55 More succinctly: the outcome of this proposed policy review would give the Corporation and other public broadcasters much-needed guidance concerning the Commission's expectations of the public element of Canadian broadcasting.
- 56 The CRTC could re-launch its consideration of CBC's applications, expressly incorporating new evidence about CBC's online programming and non-programming services, in late 2021 (in a new proceeding). CBC could file new applications that provide detail about its conventional and online services, take into account the impact of the Covid-19 pandemic, and meet the CRTC's newly announced regulatory policy for public broadcasting. The CRTC could, should it so wish, incorporate the 2019-379 interventions into the new proceeding, while also inviting interventions for this new proceeding.
- 57 The Forum submits that our recommendation to terminate the 2019-379 proceeding and to review the regulatory framework for public broadcasting in Canada meets three critical objectives. It permits a thorough review of CBC's past performance, including its response to Covid-19; it ensures that the views of the more than 10,000 interveners in the 2019-379 proceeding can be considered in a timely manner, and it enables the CRTC to publish a regulatory framework for public broadcasting to guide the development of Canada's national public broadcaster and its provincial broadcasters.

The Forum appreciates the CRTC's consideration of this procedural request. Should the CRTC or its staff have any questions, we would be pleased to respond.

We look forward to the Commission's response.

Sincerely yours,



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**Appendix 1: Major CRTC policy reviews**

	<b>Telecom</b>	<b>Programming</b>	<b>Audio services</b>	<b>Audio-visual services</b>	<b>Distribution services</b>	<b>Public broadcasting</b>
1968						CBC's information programming standards ("Air of Death")
1969					CRTC, <i>On the Licensing of Cable Television Systems</i> , Public Announcement (Ottawa, 10 July 1969) - 7 public hearings	
1975			<i>FM Radio in Canada</i> , CRTC Policy (Ottawa, 20 January 1975)			
1977						<i>Report of the Committee of inquiry into manner in which CBC is fulfilling its mandate as Canada's national broadcasting service</i>
1979			<i>Implementation of the FM Policy</i> , Public Announcement CRTC (Ottawa, 20 April 1979)		<i>A Review of Certain Cable Television Programming Issues</i> , CRTC Public Announcement, (Ottawa, 26 March 1979) <i>Non-Programming Services by Cable Television Licensees</i> , CRTC Public Announcement (Ottawa, 26 March 1979)	
1984			<i>Review of Radio – Simplification of the FM Policy</i> , Public Notice CRTC 1984-151 (Ottawa, 18 June 1984)			
1985					<i>Review of Non-Programming Services and Cable Advertising</i> Public Notice CRTC 1985-175 (Ottawa, 2 August 1985)	
1986		<i>Policy on Sex-Role Stereotyping in the</i>	<i>French-language vocal music</i> , Public Notice			

	<b>Telecom</b>	<b>Programming</b>	<b>Audio services</b>	<b>Audio-visual services</b>	<b>Distribution services</b>	<b>Public broadcasting</b>
		<i>Broadcast Media</i> Public Notice CRTC 1986-351 (Ottawa, 22 December 1986)	CRTC 1986-67 (Ottawa, 19 March 1986)			
1987					<i>Regulatory policy for direct-to-home (DTH) satellite broadcasting systems, multipoint distribution systems (MDS), and subscription television (STV) systems, Public Notice CRTC 19897-254 (Ottawa, 26 November 1987)</i>	
1988			<i>Policy regarding open-line programming, Public Notice CRTC 1988-213 (Ottawa, 23 December 1988)</i>			
1990			<i>An FM Policy for the Nineties, Public Notice CRTC 1990-111 (Ottawa, 17 December 1990)</i>		<i>Cable television regulations, 1986 - changes to the regulation of subscriber fees and related matters, Public Notice CRTC 1990-53 (Ottawa, 15 May 1990)</i>	
1991	<b>1991 Broadcasting Act</b>					
			<i>Radio Market Policy, Public Notice CRTC 1991-74 (Ottawa, 23 July 1991)</i>			
1992	<i>Review of Regulatory Framework, Telecom Public Notice CRTC 92-78, 16 December 1992</i>					
1993	<b>1993 Telecom Act</b>					
		<i>Religious Broadcasting Policy, Public Notice CRTC 1993-78 (Ottawa, 3 June 1993) PH October 1992</i>				
1994	<i>Review of Regulatory</i>					

	<b>Telecom</b>	<b>Programming</b>	<b>Audio services</b>	<b>Audio-visual services</b>	<b>Distribution services</b>	<b>Public broadcasting</b>
	<i>Framework, Telecom Decision CRTC 94-19 (Ottawa, 16 September 1994) PH Nov-Dec 1993</i>					
1995			<i>Policy to Govern the Introduction of Digital Radio, Public Notice CRTC 1995-184 (Ottawa, 29 October 1995)</i>			
1998			<i>Commercial Radio Policy 1998 (Public Notice CRTC 1998-41) (Ottawa, 30 April 1998)</i>			
1999			1999 campus radio policy	1999 – private television		
2006			2006 <i>Commercial radio policy</i>	<i>Regulatory framework for mobile television broadcasting services, Broadcasting Public Notice CRTC 2006-47 (Ottawa, 12 April 2006)</i>		
2008					<i>Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, Broadcasting Public Notice CRTC 2008-100 (Ottawa, 30 October 2008),</i>	
2009				LPIF, Broadcasting Regulatory Policy CRTC 2009-406 (6 July 2009)		
	<i>Accessibility of telecommunications and broadcasting services, Broadcasting Regulatory Policy CRTC 2009-430 (Ottawa, 21 July 2009)</i>					
			<i>Review of broadcasting in new media, Broadcasting Regulatory Policy CRTC 2009-329 (Ottawa, 4 June 2009)</i>			
2010			<i>Campus and</i>	<i>A group-based approach</i>		

	<b>Telecom</b>	<b>Programming</b>	<b>Audio services</b>	<b>Audio-visual services</b>	<b>Distribution services</b>	<b>Public broadcasting</b>
			<i>community radio policy, Broadcasting Regulatory Policy CRTC 2010-499 (Ottawa, 22 July 2010)</i>	<i>to the licensing of private television services, Broadcasting Regulatory Policy CRTC 2010-16 (Ottawa, 22 March 2010)</i> <i>Community television policy, Broadcasting Regulatory Policy CRTC 2010-622 (Ottawa, 26 August 2010)</i> <i>Issues related to the digital television transition, Broadcasting Regulatory Policy CRTC 2010-485 (Ottawa, 16 July 2010)</i>		
2011	<i>Review of the Commissioner for Complaints for Telecommunications Services, Telecom Regulatory Policy CRTC 2011-46 (Ottawa, 26 January 2011)</i> <i>Obligation to serve and other matters, Telecom Regulatory Policy CRTC 2011-291 (Ottawa, 3 May 2011)</i>	<i>Regulatory framework relating to vertical integration, Broadcasting Regulatory Policy CRTC 2011-601 (Ottawa, 21 September 2011)</i>				
2012				<i>Review of the Local Programming Improvement Fund, Broadcasting Regulatory Policy CRTC 2012-385 (Ottawa, 18 July 2012)</i>		
2013	<i>The Wireless Code, Telecom Regulatory</i>					

	<b>Telecom</b>	<b>Programming</b>	<b>Audio services</b>	<b>Audio-visual services</b>	<b>Distribution services</b>	<b>Public broadcasting</b>
	Policy CRTC 2013-271 (Ottawa, 3 June 2013)					
2014	Review of the Unsolicited Telecommunications Rules, Compliance and Enforcement Policy CRTC 2014-155 (Ottawa, 31 March 2014)		<i>A targeted policy review of the commercial radio sector</i> , Broadcasting Regulatory Policy CRTC 2014-554 (Ottawa, 28 October 2014)			
		<i>Simplified approach to tangible benefits and determining the value of the transaction</i> , Broadcasting Regulatory Policy CRTC 2014-459 (Ottawa, 5 September 2014)				
2015	<i>Regulatory framework for wholesale mobile wireless services</i> , Telecom Regulatory Policy CRTC 2015-177 (Ottawa, 5 May 2015)			<i>Let's Talk TV – Navigating the Road Ahead</i> Broadcasting Regulatory Policy CRTC 2015-104 (Ottawa, 26 March 2015) - <i>A World of Choice</i> Broadcasting Regulatory Policy CRTC 2015-96 (Ottawa, 19 March 2015) - <i>The way forward</i> , Broadcasting Regulatory Policy CRTC 2015-86 (Ottawa, 12 March 2015) <i>Over-the-air transmission of television signals and local programming</i> , Broadcasting Regulatory Policy CRTC 2015-24 (Ottawa, 29 January 2015)	<i>The Wholesale Code</i> , Broadcasting Regulatory Policy CRTC 2015-438 (Ottawa, 24 September 2015)	
2016	<i>Review of the structure and</i>	<i>Policy framework for Certified</i>		<i>Policy framework for local and community</i>		

	<b>Telecom</b>	<b>Programming</b>	<b>Audio services</b>	<b>Audio-visual services</b>	<b>Distribution services</b>	<b>Public broadcasting</b>
	<p><i>mandate of the Commissioner for Complaints for Telecommunications Services Inc.</i>, Broadcasting Telecom Regulatory Policy CRTC 2016-102 (Ottawa, 17 March 2016)</p> <p><i>Modern telecommunications services – The path forward for Canada’s digital economy</i>, Telecom Regulatory Policy CRTC 2016-496 (Ottawa, 21 December 2016)</p>	<p><i>Independent Production Funds</i>, Broadcasting Regulatory Policy CRTC 2016-343 (Ottawa, 25 August 2016)</p>		<p><i>television</i>, Broadcasting Regulatory Policy CRTC 2016-224 (Ottawa, 15 June 2016)</p>		
2017	<p><i>Review of the Wireless Code</i>, Telecom Regulatory Policy CRTC 2017-200 (Ottawa, 15 June 2017)</p>					
2018						
2019	<p><i>The Internet Code</i>, Telecom Regulatory Policy 2019-354 (Ottawa, 24 October 2019)</p>					
2020	<p><i>Review of the price cap and local forbearance regimes</i>, Telecom Regulatory Policy CRTC 2020-40 (Ottawa, 4 February 2020)</p>					



**Appendix 2: Reviews of or involving CBC, 1968-2020**

Year	Review
1968	1. Standing Committee on Broadcasting, Films and Assistance to the Arts holds meetings to consider the information programming carried by CBC's French-language service
	2. CRTC holds hearing to consider CBC's information programming standards related to broadcast of "Air of Death"
1970	3. Davey committee: <i>Special Senate Committee on Mass Media</i>
1974	4. CRTC holds public hearing to consider renewal of CBC's radio and television licences (Decision CRTC 74-70)
1977	5. CRTC Committee of Inquiry into manner in which CBC is fulfilling its mandate as Canada's national broadcasting service
1978	6. CRTC holds public hearing to renew CBC radio licences
1979	7. Clyne committee <i>Report of the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty</i>
1982	8. Applebaum-Hebert: Federal Cultural Policy Review Committee
1983	9. Federal government: new <i>Broadcasting Strategy for Canada</i>
	10. DOC: <i>Building for the Future: Towards a Distinctive CBC</i>
1984	11. Federal-Provincial Committee on the Future of French-language Television issued report
	12. Neilsen report: Federal Task Force on Program Review published its recommendations on culture and communications
1986	13. Caplan-Sauvageau: <i>Task Force on Broadcasting Policy</i>
1987	14. CRTC holds public hearing about the licence renewals of CBC's television networks (Decision CRTC 87-140)
	15. House of Commons Standing Committee on Communications and Culture releases Fifth Report (27 April) and Sixth Report (4 May 1987)
	16. CRTC holds public hearing about the licence renewals of CBC's radio networks (Decision CRTC 88-181)
1988	17. CRTC holds public hearings about the licence renewals of CBC's owned-and-operated television stations
1991	18. Girard-Peters Task Force: <i>Report on the Economic Status of Television</i>
	19. June — CRTC approves CBC's decisions, in response to budget reductions, to close eleven originating television stations
1992	20. CRTC holds public hearing to consider the licence renewal of CBC's radio networks (Decision CRTC 93-95)
1994	21. March 1994 — CRTC licence renewal hearing for television network licences
1995	22. Parliamentary Standing Committee on Canadian Heritage: <i>The Future of the Canadian Broadcasting Corporation in the Multi-Channel Universe</i> .
1996	23. Juneau Committee: Mandate Review Committee of the CBC, NFB and Telefilm Canada
1999	24. Parliamentary Standing Committee on Canadian Heritage: "The Committee recognizes the CBC's position at the very heart of cultural expression in Canada." (p. 53)

Year	Review
	CRTC holds public hearing and regional consultations to consider the licence renewal of CBC's networks and stations
2000	25. CRTC renews CBC's English-language and French-language radio and television services
2003	26. Parliamentary Standing Committee on Canadian Heritage issues a report on the state of Canada's broadcasting system
2012	CRTC holds public hearing to consider renewal of CBC's licences
2013	27. CRTC renews CBC's network licences
2017	28. Canadian Heritage, <i>Creative Canada: A Vision for Canada's Creative Industries in the Digital Age</i>
2020	29. Broadcasting and Telecommunications Legislative Review Panel, <i>Canada's Communications Future: Time to Act – Policy Framework</i>

**Appendix 3: Exemption orders and reviews**

<b>Topic</b>	<b>Year</b>	<b>Process</b>	<b>Subject</b>
Radio	* 1991	PN 1991-105	Order Exempting Certain Shortwave Broadcasting Undertakings
Radio	* 1991	PN 1991-93	Canadian Broadcasting Corporation radio licences
Online services	1999	PN 1999-197	Exemption order for new media broadcasting undertakings
Radio	* 2000	PN 2000-10	Exemption order respecting low-power radio: Temporary resource development distribution undertakings
Radio	* 2000	PN 2000-10	Exemption order respecting low-power radio: Limited duration special event facilitating undertakings
Radio	* 2000	PN 2000-10	Exemption order respecting low-power radio: Ultra low power announcement service (LPAS) undertakings
Radio	* 2000	PN 2000-10	Exemption order respecting carrier current undertakings whose services are not carried on distribution undertakings
Distribution	* 2000	PN 2000-10	Exemption order respecting distribution undertaking temporary network special event type 2 undertakings
Distribution	* 2000	PN 2000-10	Exemption order respecting resource development installations
Distribution	* 2000	PN 2000-10	Exemption order respecting still image programming service undertakings
Distribution	* 2000	PN 2000-10	Exemption order respecting community programming network undertakings
Radio	* 2000	PN 2000-11	Exemption order respecting public emergency radio undertakings
Distribution	* 2002	PN 2002-35	Amendment to the exemption criteria for master antenna television systems (MATV)
TV	* 2003	PN 2003-11	Review of exemption orders respecting experimental video-on-demand programming undertakings, video games programming service undertakings and teleshopping programming service undertakings
TV	* 2003	PN 2003-35	Exemption orders respecting certain classes of low-power and very low-power programming undertakings
TV	* 2006	PN 2006-132	Amendment to the Exemption order respecting closed circuit video programming undertakings
Radio	* 2006	PN 2006-143	Exemption order respecting certain network operations
TV	* 2006	PN 2006-143	Exemption order respecting certain network operations
Online services	2007	PN 2007-13	Exemption order for mobile television broadcasting undertakings
Online services	2009	BO 2009-660	Amendments to the Exemption order for new media broadcasting undertakings (Appendix A to Public Notice CRTC 1999-197); Revocation of the Exemption order for mobile television broadcasting undertakings
Radio	* 2009	BO 2009-182	Amendment to Exemption order respecting radio and television temporary network special event type 1 undertakings
TV	* 2009	BO 2009-182	Amendment to Exemption order respecting radio and television temporary network special event type 1 undertakings

Topic	Year	Process	Subject
Distribution	* 2009	BO 2009-638	Amendments to the Exemption order respecting terrestrial relay distribution network undertakings
Distribution	* 2012	BO 2012-349	Amendments to the Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order – new provision relating to emergencies
Radio	* 2012	BO 2012-409	Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)
Distribution	* 2012	BO 2012-409	Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)
TV	* 2012	BO 2012-409	Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)
Radio	* 2012	BO 2012-673	Revised exemption order for radiocommunication distribution undertakings
Distribution	* 2012	BO 2012-673	Revised exemption order for radiocommunication distribution undertakings
Radio	* 2013	BO 2013-621	Exemption order for low-power radio stations that provide programming from houses of worship
Radio	* 2014	BO 2014-447	Terms and conditions of the exemption order for low-power tourist information related radio programming undertakings
Radio	* 2014	BO 2014-448	Exemption order respecting certain native radio undertakings
Distribution	* 2015	BO 2015-356	Terms and conditions of the exemption order for video-on-demand undertakings
TV	* 2015	BO 2015-356	Terms and conditions of the exemption order for video-on-demand undertakings
Distribution	* 2015	BO 2015-544	Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers
TV	* 2015	BO 2015-88	Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers
Distribution	* 2017	BO 2017-320	Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers
Radio	* 2018	BRP 2018-137	Exemption order for low-power tourist information related radio programming undertakings
Radio	* 2018	BRP 2018-137	Exemption order for low-power radio programming undertakings providing programming that is derived solely from houses of worship
Radio	* 2018	BRP 2018-137	Exemption order respecting certain Indigenous radio undertakings
Radio	* 2018	BRP 2018-137	Exemption order respecting radio and television temporary network special event type 1 undertakings
Radio	* 2018	BRP 2018-137	Exemption order respecting low-power radio: Limited duration special event facilitating undertakings

<b>Topic</b>	<b>Year</b>	<b>Process</b>	<b>Subject</b>
Radio	* 2018	BRP 2018-137	Exemption order respecting low-power radio: Ultra low power announcement service (LPAS) undertakings
Radio	* 2018	BRP 2018-137	Exemption order respecting carrier current undertakings whose services are not carried on distribution undertakings
Distribution	* 2020	BO 2020-193	Revised Exemption Order Respecting Teleshopping Programming Service Undertakings

\* From CRTC, "Broadcasting Exemption Orders", [https://crtc.gc.ca/eng/forms/form\\_206.htm?\\_ga=2.126231693.1662492374.1596109728-1211976415.1582553073](https://crtc.gc.ca/eng/forms/form_206.htm?_ga=2.126231693.1662492374.1596109728-1211976415.1582553073) (accessed 31 July 2020)

## Endnotes

<sup>1</sup> In July 2017 due to vacancies on CBC's Board of Directors and because the term of CBC's President was ending in December 2017 – renewal to August 2019; in October 2018 because the term of CBC's new president began in July 2018 – renewal to August 2020, and in June 2020 because of the Covid-19 pandemic declared in mid-March 2020– renewal to August 2021.

<sup>2</sup> Broadcasting Notice of Consultation CRTC 2016-225, see <https://services.crtc.gc.ca/pub/ListeInterventionList/Default-Default.aspx?en=2016-225&dt=i&lang=e&S=C&PA=b&PT=nc&PST=a>.

<sup>3</sup> DM#3720734, at paras. 6 and 7:

In the absence of these legislative changes, we believe it is necessary to continue with the regulatory approach currently in place under the Broadcasting Act: that is, the continued licensing of traditional services and the exemption of digital services under the Digital Media Exemption Order (DMEO).

...

... CBC/Radio-Canada is a prominent player in the online video and audio space ....

<sup>4</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>5</sup> DM#3733713, CBC, *Applications 2019-0280-0, 2019-0279-2, 2019-0282-5 and 2019-0281-7: Designation of information as confidential*, (17 October 2019).

<sup>6</sup> DM#3791911 Forum for Research and Policy in Communications (FRPC), *Notice of hearing, Broadcasting Notice of Consultation CRTC 2019-379 (Ottawa, 25 November 2019) – Procedural*, (Ottawa, 232 January 2020).

<sup>7</sup> DM#3798325, CBC, *Notice of hearing, Broadcasting Notice of Consultation CRTC 2019-379 (Ottawa, 25 November 2019) – Procedural request by the Forum for Research and Policy in Communications (FRPC)*, (3 February 2020).

<sup>8</sup> CBC, *Reply to Interventions*, (6 March 2020), at para. 14.

<sup>9</sup> CBC committed “to place additional financial information” on the record”, including that of its digital activities, by 17 April 2020: CBC, *Reply to Interventions*, (6 March 2020), at para. 14.

On 4 May 2020 the CRTC e-mailed CBC, noting that it had not yet filed the additional information promised on 6 March 2020. It asked CBC to state by 11 May 2020 when it would file the information: CRTC, *Applications# 2019-0280-0, 2019-0279-2, 2019-0282-5 and 2019-0281-7: Request for information - Filing of additional financial information regarding the CBC/SRC's digital activities*, e-mailed letter (Ottawa, 4 May 2020).

On 12 June 2020 CBC filed the additional information it had committed to provide in response to the CRTC's 6 May 2020 request: CBC, *Response from CBC/Radio-Canada to the Request for information - Filing of additional financial information regarding the CBC/SRC's digital activities Applications # 2019-0280-0, 2019-0279-2, 2019-0282-5 and 2019-0281-7* (12 June 2020).

On 22 June 2020 the CRTC published the information CBC was adding to the public record, in Broadcasting Notice of Consultation CRTC 2019-379-3.

<sup>10</sup> Forum for Research and Policy in Communications (FRPC), *Renewal application of the Canadian Broadcasting Corporation – Notice of hearing*, Broadcasting Notices of Consultation CRTC 2019-379 (Ottawa, 25 November 2019), 2019-379-1 (Ottawa, 28 January 2020), 2019-379-2 (Ottawa, 8 April 2020) and 2019-379-3 (Ottawa, 22 June 2020) – response to “Additional information added to the public record” (Ottawa, 13 July 2020), at 8, Table 2.

<sup>11</sup> Broadcasting Notice of Consultation CRTC 2019-379-3 (Ottawa, 22 June 2020), <https://crtc.gc.ca/eng/archive/2019/2019-379-3.htm>; comments were to respond to “the new information only” (paras. 5-6).

<sup>12</sup> Forum for Research and Policy in Communications (FRPC), *Renewal application of the Canadian Broadcasting Corporation – Notice of hearing, Broadcasting Notices of Consultation CRTC 2019-379 (Ottawa, 25 November 2019), 2019-379-1 (Ottawa, 28 January 2020), 2019-379-2 (Ottawa, 8 April 2020) and 2019-379-3 (Ottawa, 22 June 2020) – response to “Additional information added to the public record”*, (Ottawa, 13 July 2020), at para. 36:

The Forum’s concern is that CBC’s failure from August 2019 to February 2020 to disclose the scale of its expenditures on digital exempted programming and non-programming services made it impossible for Canadians to comment in a fully-informed manner about CBC’s programming plans going forward.

<sup>13</sup> CBC said that it “filed extensive and comprehensive information regarding its licence renewal proposals” in its original application and subsequent deficiency responses, that the CRTC “did not request any additional information” and that CBC “[n]onetheless ... offered to provide additional financial information regarding its digital activities in order to provide parties with a broader perspective as to the Corporation’s operations” (23 July 2020 reply, at para. 4).

In fact,

(a) the information filed by CBC up to the 20 February 2020 intervention deadline about its licence renewal proposals was NOT comprehensive because it neglected to disclose the scale of CBC’s expenditures on its digital services, and

(b) while CBC committed on 6 March 2020 to place new information on the record, it was not until the CRTC ASKED for this information on 6 May 2020 that CBC finally submitted it in June 2020. The CRTC’s 6 May 2020 e-mail to CBC (obtained via the CRTC’s access to information program as A-2020-00017 and now available online at <https://crtc.gc.ca/fra/archive/2020/lb200504.htm>) said:

...

As part of the Canadian Broadcasting Corporation/Société Radio-Canada’s (CBC/SRC) licence renewal process, CBC/SRC filed a reply to interventions, dated 6 March 2020, in which it indicated that it was willing to place additional financial information on the record of this proceeding and that it would submit it by 17 April 2020. It added that this financial information would be in relation to its digital activities, including those “operating outside of the DMEO”

(Digital media exemption order).

However, in light of the current circumstances relating to COVID-19, CBC/SRC has not yet filed this additional information with the Commission.

In order to assist the Commission in determining whether to add this additional information to the record of this proceeding following the close of the intervention period, please provide Commission staff with the following information by 11 May 2020:

1. A new date by which CBC/SRC will file the information referred to in its 6 March 2020 reply comments;
2. Additionally, in advance of providing this additional information, a detailed description of the material that will be submitted, including:
  - Names of services/platforms for which information will be filed;
  - Whether these services/platforms are, in your view, operating outside of the DMEO and the basis for your rationale;
  - Whether the information is submitted on an aggregate or disaggregate basis
    - o per service/platform
    - o per language market
    - o per type of content (audio vs audio-visual)
  - The breadth of expense and revenue data that will be included, and whether such information will include historical, current and projections.

- Any other information not included above that you intend to file with respect to the digital activities in question.  
As set out above, a response to this request for information is to be provided no later than 11 May 2020.
- ....
- <sup>14</sup> *Rules*, s. 22(2):  
An application must be made using the appropriate form listed in Broadcasting and Telecom Information Bulletin CRTC 2010-453, as amended from time to time. If none of the forms listed in the Bulletin is appropriate, the application must  
...  
(e) contain a clear and concise statement of the relevant facts, of the grounds of the application and of the nature of the decision sought;
- ....
- <sup>15</sup> For CBC's English-language and French-language audio and audio-visual licensed programming services.
- <sup>16</sup> In response to CRTC questions CBC submitted additional information on 30 October 2019 and 15 November 2019.
- <sup>17</sup> World Health Organization, "WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020" (11 March 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>.
- <sup>18</sup> CBC, 23 July 2020 reply, at para. 12.
- <sup>19</sup> *Ibid.*
- <sup>20</sup> CBC, *Reply of CBC/SRC to the 13 July 2020 Interventions regarding CBC/SRC's 12 June 2020 filing of additional financial information; Applications # 2019-0280-0, 2019-0279-2, 2019-0282-5 and 2019-0281-7*, (23 July 2020), at para. 13.
- <sup>21</sup> *Broadcasting Act*, s. 16:  
The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record.
- <sup>22</sup> *Rules*, s. 7:  
Dispensing with or varying Rules  
7 If the Commission is of the opinion that considerations of public interest or fairness permit, it may dispense with or vary these Rules.
- <sup>23</sup> And assuming that the CRTC sets aside s. 24 of the *Rules*: "An applicant must not amend an application or file any supplementary documents related to the application with the Commission after the application has been posted on the Commission's website."
- <sup>24</sup> S. 12(2):  
The Commission may, by order, require any person to do, without delay or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do under this Part, under any regulation, licence, decision or order made or issued by the Commission under this Part or under any of sections 42 to 44 of the *Accessible Canada Act* and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part, to any such regulation, licence, decision or order, to section 34.1 or to any of sections 42 to 44 of the *Accessible Canada Act*.
- <sup>25</sup> S. 18(1)(d) requires the CRTC to hold a public hearing before issuing the orders provided for in s. 12(2).
- <sup>26</sup> S. 9(4) requires the CRTC to exempt services from licensing requirements if they are unlikely to be able to contribute materially to the achievement of s. 3 of the *Act*:



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>27</sup> While the CRTC considered non-programming services in 1985 and 1986, it appeared to refer solely to cable companies' new capacity to offer services such as "opinion polling or home banking, the use of computers involving home use", rather than services such as cbc.ca or cbc.ca/news. See *Review of Non-Programming Services and Cable Advertising*, Public Notice CRTC 1985-175 (Ottawa, 2 August 1985) <https://crtc.gc.ca/eng/archive/1985/PB85-175.htm>; see also *REGULATIONS RESPECTING BROADCASTING RECEIVING UNDERTAKINGS*, Public Notice CRTC 1986-182 (Ottawa, 1 August 1986), <https://crtc.gc.ca/eng/archive/1986/pb86-182.htm>.

In 1996 the CRTC said that it uses "the term 'non-programming services' to refer only to services that do not involve 'programs' or 'broadcasting' as those terms are defined in the *Broadcasting Act* ...", and concluded that "when a broadcasting distribution undertaking provides non-programming services, it is not engaged in 'broadcasting' and is not operating as a 'broadcasting undertaking'." *REGULATION OF BROADCASTING DISTRIBUTION UNDERTAKINGS THAT PROVIDE NON-PROGRAMMING SERVICES*, Telecom Decision CRTC 96-1 (Ottawa, 30 January 1996), [https://crtc.gc.ca/eng/archive/1996/DT96-1.htm?\\_ga=2.56350443.1951580043.1596379372-1211976415.1582553073](https://crtc.gc.ca/eng/archive/1996/DT96-1.htm?_ga=2.56350443.1951580043.1596379372-1211976415.1582553073), underlining added.

What is unknown is whether and to what degree CBC's non-programming services 'involve' either programs or broadcasting, which are defined terms in s 2 of the *Broadcasting Act*:

broadcasting means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place; (radiodiffusion)  
 program means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; (émission).

Do CBC's online non-programming services offer "sounds or visual images" or do these services "consist predominantly of alphanumeric text"? We do not know, and results from a search of CBC's applications to renew its English-language audio-visual services suggest that CBC has not clearly addressed this issue either.

<sup>28</sup> Endnote 25, *supra*.

<sup>29</sup> *Rules*, s. 8: "If an application ... does not comply with a requirement of these Rules, the Commission may return the application ... to the applicant ... so that the deficiencies may be remedied or it may close the file."

<sup>30</sup> As the Forum's 20 February 2020 intervention pointed out at paragraphs 214-215.

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