



17 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 – CBC reply

- 1 The Forum is in receipt of a copy of CBC's reply to the Forum's 4 August 2020 procedural request regarding the above-noted proceeding. We respectfully wish to make four points in response to CBC's reply.
1. **The Forum's procedural request is not an intervention and is therefore not subject to the intervention deadlines in the 2019-379 proceeding**
- 2 First, while CBC acknowledges that the Forum has filed a procedural request, CBC then argues that it "should not be considered as part of the public process" because it was filed after the deadline for Phase 2 interventions in the 2019-379 proceeding (CBC reply, para. 2).
- 3 Having accepted that the Forum filed a procedural request, CBC has not explained why it believes the Forum's procedural request is actually an intervention that should have been filed to meet the Phase 2 intervention deadline of 13 July 2020.
- 4 The Forum submits that CBC is incorrect. As pointed out in the subject line and first paragraph of the Forum's 4 August 2020 submission to the CRTC, and also acknowledged by CBC, FRPC has made a "Procedural request" to the CRTC about the 2020-379 proceeding, which asked "that the CRTC amend its current procedures with respect to the application of the Canadian Broadcasting Corporation"
- 5 The Forum submits that as its procedural request is not an intervention, the Forum was not subject to the deadline set for Phase 2 interventions. The CRTC should therefore ignore this argument of CBC's reply.

2. The Forum did not file its procedural request after the deadline for filing procedural requests had passed because there are no deadlines in the CRTC's Rules for procedural requests

6 Second, although CBC has implied that procedural requests are subject to deadlines, it has not supported this implication by referring to the deadline for filing procedural requests in the CRTC's *Rules of Practice and Procedure*, for the simple reason that it cannot do so: the Rules do not set any deadlines for filing procedural requests.

7 The law regarding the process that the CRTC may adopt for adjudicating a matter is that its authority over the process it follows in that matter only ends when its authority in the matter ends: "In the context of an administrative tribunal, once it has reached a final legally binding decision in respect of the matter that is before it in accordance with its enabling statute, that decision generally cannot be revisited." (Broadcasting Regulatory Policy CRTC 2009-560 (Ottawa, 4 September 2009), at paragraph 8; see also *Avouampo v. Canada (Citizenship and Immigration)*, 2014 FC 1239 (CanLII), at paragraph 21).

8 Nor, incidentally, has CBC explained how the Forum could have made the procedural request since key evidence – CBC's resolute decision not to provide the Federal authority responsible for licensing broadcasting services with vital, updated information about its renewal applications – was only made available to the public on 23 July 2020, ten days after the intervention deadline.

9 The Forum submits that the CRTC may consider requests about the procedures it follows to issue decisions in matters it adjudicates – such as a decision on CBC's applications to renew its licences and to continue to be subject to the CRTC's Digital Media exemption order – up to the date on which it issues a decision about the matter or until it closes the matter (as section 8 of the *Rules* permits).

3. CBC has not disputed any of the Forum's grounds or evidence for asking the CRTC to amend its procedures in the 2019-379 proceeding

10 Third, the Forum notes that CBC has not challenged any of the facts or grounds set out in the Forum's procedural request. Specifically, CBC did not disagree that its failure to provide relevant evidence about its unlicensed services tainted the 2019-379 process, that its applications no longer reflect the Covid-19 reality or that it has refused to update its now-outdated forecasts in its original applications.

11 Nor did CBC disagree with the Forum's proposal that – in light of the taint caused by CBC's failure to disclose relevant evidence and its refusal to update its applications – the CRTC consider closing the 2019-379 proceeding so as to consider instead the role that has been and should be played by public broadcasting in Canada.

12 The Forum submits that CBC's failure to reply to the Forum's procedural request with any meaningful arguments or evidence means the CRTC can now give full consideration to that request.

13 Lastly, the Forum respectfully submits that accepting CBC's evidence-free position that procedural requests must adhere to intervention deadlines may seriously limit fairness towards all parties in future CRTC broadcast matters: any requests focussed solely on procedure would henceforward be foreclosed by the intervention deadlines in any broadcasting matter

adjudicated by the CRTC. Parties would then no longer bring forward concerns about procedural fairness raised by – say – new evidence filed by applicants.

- 14 It is unfortunate that Canada’s national public broadcaster, in replying to the Forum’s procedural request, has ignored the serious problem that CBC’s own recalcitrance has created for the CRTC: by refusing to update its applications CBC has left the CRTC without the evidence it requires for its renewal decision and the continuation of relevant exemption orders. CBC may, of course, simply be hoping that the CRTC will grant it several more administrative renewals on top of the three one-year administrative renewals it has already issued (in July 2017, October 2018 and in June 2020). The CRTC has just denied one broadcaster’s request for a three-year administrative licence renewal:¹ would it reasonable for the Commission to grant this apparent hope, by allowing CBC to continue without any regulatory scrutiny whatsoever for several more years?
- 15 The Forum’s solution – a review of public broadcasting policy – would enable the CRTC to review the performance and future role of all public broadcasters in Canada, evading the trap of an ever-lengthening licence term for CBC’s services without any regulatory oversight whatsoever. This solution also complies with the CRTC’s *Rules*, which require gaps to be addressed by the Federal Courts’ *Rules*.² The *Rules* of the Federal Courts require that their *Rules* be interpreted and applied to ensure just outcomes:

3 These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

- 16 The Forum submits that granting its procedural request will ensure the most just, expeditious and least expensive outcome for the 2019-379 proceeding. Failing to grant the request will, by contrast, deny a just, expeditious and meaningful outcome for all parties – including CBC.

Sincerely,



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¹ OMNI conventional television stations – Administrative renewals, [Broadcasting Decision CRTC 2020-254](#) (Ottawa, 11 August 2020), at para. 3:

While acknowledging that there is a strong link between the OMNI television stations and OMNI Regional, **the Commission does not consider that it is in the public interest to renew the licences of these stations for a three-year period on an administrative basis.** The Commission is of the view that an administrative renewal of one year is appropriate in this case to allow Rogers to submit an application for the renewal of these licences, which currently expire 31 August 2020.

² *Rules*, s. 5(2): The Commission may provide for any matter of practice and procedure not provided for in these Rules by analogy to these Rules or by reference to the *Federal Courts Rules* and the rules of other tribunals to which the subject matter of the proceeding most closely relates.