



16 May 2020

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments – Regulations to be made under the Accessible Canada Act, Telecom and Broadcasting Notice of Consultation CRTC 2020-124 (Ottawa, 14 April 2020)*, <https://crtc.gc.ca/eng/archive/2020/2020-124.htm> - Comments of the Forum for Research and Policy in Communications (FRPC)

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 respectfully requests that the Commission permit the Forum's response to Telecom and Broadcasting Notice of Consultation CRTC 2020-124 to be added to the public record of the proceeding; an error in our calendaring system led us to mistake the deadline. We do not believe any party will be disadvantaged by our two-day delay in filing.

Sincerely yours,

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Access and accessibility for all

Phase I response of the Forum for Research and Policy in Communications (FRPC)

Call for comments – Regulations to be made under the Accessible Canada Act, Telecom and Broadcasting Notice of Consultation CRTC 2020-124 (Ottawa, 14 April 2020), <https://crtc.gc.ca/eng/archive/2020/2020-124.htm>



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Summary

- ES1** The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to provide research and policy analysis about communications, including broadcasting.
- ES2** This submission has been filed with respect to TNoC/BNoC 2020-124, which seeks comments on the regulations that the *Accessible Canada Act* requires the CRTC to make using its authority under the *Broadcasting Act* and *Telecommunications Act*.
- ES3** The Forum has serious concerns about the lack of response by the CRTC to procedural requests filed by six public-interest organizations from the day after TNoC/BNoC 2020-124 was issued, through to 7 May 2020.

Accessible Canada Act: Context

- ES4** Statistics Canada reports that at least 17% of people in Canada had one or more disabilities in July 2017. The number of people with disabilities increases with age: nearly half (47.4%) of those over 75 years of age have disabilities. Of the 6.25 million people over 15 years of age who have disabilities, however, 68.4% are between the ages of 15 and 64.
- ES5** People in Canada have had the right to equal benefit of the law without discrimination based on disability since 1982, when the *Charter of Rights and Freedoms* was enacted.
- ES6** Despite Canada's constitutional prohibition of discrimination based on disability, it has taken the CRTC decades to require broadcasters to provide programming services that are more accessible. Closed captioning was first demonstrated in 1971 (three years after Parliament established the CRTC); the CRTC first required television broadcasters to caption all of their programming, 24 hours/day, in 2009 – 38 years after the technology was first demonstrated. Described video (descriptive audio) was used by PBS in the United States in 1985, and the CRTC currently requires television broadcasters to provide described video for programs broadcast from 7pm to 11 pm each day (in other words, 22% of the broadcast week).
- ES7** After Canada ratified the United Nations *Convention on the Rights of Persons with Disabilities* in 2010, the Federal government moved relatively quickly to enact new legislation to protect and strengthen rights related to accessibility. Following consultations in 2016 the government introduced Bill C-81 to the House of Commons in mid-2018 the *Accessible Canada Act* received Royal Assent in mid-2019.

The Forum's comments on the CRTC's questions

- ES8** The Forum has commented on 17 of the 23 questions posed by the CRTC.
- ES9** We are concerned in particular by two aspects of the approach proposed by the CRTC in broadcasting.
- ES10** Our first concern has to do with timing. As our review of the historical context of regulation with respect to accessibility in broadcasting shows, progress to ensure that all Canadians – regardless of their abilities or disabilities – are able to access Canada's broadcasting system has taken and is taking decades: 38 years to caption all television programs, and 35 years to describe just 22% of television programming. Deaf, hard-of-hearing, blind and visually-limited Canadians should not have had to wait this long for the CRTC to protect their constitutional rights to equality – and they should not now have to wait *years* for broadcasters to prepare and publish their plans and reports. Considering that the *Accessible Canada Act* was first proposed two years ago, broadcasters have had ample warning that change was on the horizon – and should devote the resources required to meet their requirements within twelve months rather than 24 or 36 months.
- ES11** Our second main concern has to do with the 'accessibility plan template' proposed by the CRTC. It does not define what the terms 'input' and 'feedback' mean. It does not clearly and consistently require regulated entities to set out plans that will eliminate barriers. Moreover, the template tacitly accepts that regulated entities may choose not to accept the 'input' and/or 'feedback' they received about their plans and reports, and appears to suggest that the entities may do so without explanation, without evidence and without stating when and under what circumstances.



I. Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system, provided it serves the public interest. We define the public interest in terms of the legislative objectives set by Parliament for Canadian communications.
- 2 In the remainder of this section we address a serious procedural matter. Part II then provides context for the *Accessible Canada Act* and its requirement that the CRTC enact regulations governing accessibility in broadcasting. Part III of this comment then responds to the CRTC's questions about timing, publication, alternative formats and certain 'general' questions.
- 3 The CRTC published Telecom and Broadcasting Notice of Consultation CRTC 2020-124 (TNoC/BNoC 2020-124) in mid-April 2020. It said it was seeking "input on regulations to be made under the ACA [*Accessible Canada Act*]"¹. The Commission gave the public 22 weekdays to review the notice, consult with others, undertake research and draft answers to more than 24 questions.
- 4 A highly unusual aspect of this call for comments was the CRTC's warning to public-interest participants that they may be unable to ask to be compensated for their work in answering the CRTC's questions. TNoC/BNoC 2020-124 said that the CRTC may lack the authority to consider – let alone grant – participation costs as the proceeding is being conducted under the *Accessible Canada Act*:

46. The Commission has the jurisdiction to award costs for participation in proceedings under the Telecommunications Act. Parties may also claim costs for participation in proceedings relating to the Broadcasting Act from the Broadcasting Participation Fund. The Commission is conducting the current proceeding under the ACA, which does not include a mechanism for awarding costs to participants. Parties should be aware that there may be no authority for the Commission to consider costs for participation in this proceeding.

[underlining added]

- 5 Six public-interest organizations, including the Forum, wrote to the CRTC from 15 April 2020 to 7 May 2020 asking it to reconsider its preliminary position that it is

¹ Para. 19.

unable to consider and is therefore also unable to grant applications for costs, and/or to grant an extension to the current 14 May 2020 deadline in this proceeding:

Public Interest Advocacy Centre (PIAC), on 15 April 2020
Forum for Research and Policy in Communications (FRPC), on 16 April 2020
Deaf Wireless Canada Committee, on 17 April 2020
CNIB Foundation, on 4 May 2020
Media Access Canada, on 6 May 2020, and
CAD-ASC *et al*, on 7 May 2020.

- 6 On 12 May 2020 Bell Canada proposed that \$125,000 from the telecommunications deferral account funds be used to fund public-interest group costs, “contingent on the Commission determining the level of the cost awards (and eligibility) ...”.²
- 7 The CRTC subsequently accepted Bell Canada’s proposal on 4 June 2020,³ although it did not change the deadline in the proceeding. The delay in responding to Bell Canada’s proposal and the absence of an extended deadline may have had the unfortunate effect of limiting participating in this phase of the accessibility proceeding: in the absence of this decision parties that might otherwise have relied on the CRTC’s telecom cost process or the cost application process of the Broadcast Participation Fund (BPF) would have had to assume that their time and work would not be remunerated. The Forum also notes that the CRTC did not address our concern about the implications of the CRTC’s ‘lack of jurisdiction’ argument regarding costs with respect to the BPF.

II. The Accessible Canada Act – context

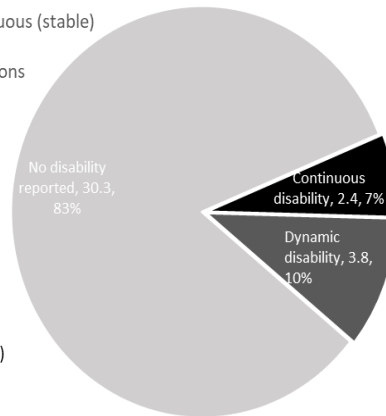
- 8 According to Statistics Canada, at least 17% of people in Canada had one or more disabilities in July 2017:⁴

² Assistant General Counsel, Bell Canada, Telecom and Broadcasting Notice of Consultation CRTC 2020-124 - Call for comments – Regulations to be made under the Accessible Canada Act, (TBNC 2020-124) – Procedural Request re: Costs, (12 May 2020), at para. 5: “5. Specifically, we propose that the Commission permit us to assign \$125K of the deferral account funds, to fund the costs of public-interest groups that participate in this Proceeding....”.

³

⁴ Statistics Canada, *Disability in Canada: Initial findings from the Canadian Survey on Disability*, (Ottawa, December 2013), <https://www150.statcan.gc.ca/n1/en/pub/89-654-x/89-654-x2013002-eng.pdf?st=tblPGLZ>.

2017: persons with continuous (stable) or dynamic (changing) disabilities in Canada (millions)



Source: Statistics Canada, Cat. 89-654-X and Table 17-10-0009-01 (3rd quarter)

9 The percentage of the population with disabilities increases as people grow older. While more than one in ten younger people (15-24 years of age) have disabilities, close to 2 million people over 75 years of age – nearly half (47.4%) of this group – have disabilities: Table 1. That said, of the 6.25 million people over 15 years of age who have a disability or disabilities, more than two thirds – 4.27 million, or 68.4% of Canada’s accessibility community are between the ages of 15 and 64.

Table 1: Disabilities by age group, in 2017

Disabilities by age group	Total Population	Persons with disabilities	Prevalence of disability
	Number		Percentage of total population
15 to 24 years	4,155,440	546,410	13.1%
25 to 44 years	8,940,410	1,368,270	15.3%
45 to 64 years	9,695,840	2,359,650	24.3%
65 to 74 years	3,241,250	1,036,580	32.0%
75 years and over	1,975,920	935,730	47.4%
Total - aged 15 years and over	28,008,860	6,246,640	22.3%
25 to 64 years	18,636,250	3,727,920	20.0%
65 years and over	5,217,160	1,972,310	37.8%

Source: S. Morris, et al., "A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017", Canadian Survey on Disability Reports, Cat. 89-654-X, <https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>, Table 1.

10 These millions of Canadians are entitled to the same level of access to Canada’s broadcasting system as everyone else in the country – to participate in, to learn about and to enjoy daily life.

Why we should be concerned about access to TV viewing for people with disabilities and older people? TV is one of the major sources of information and entertainment for the majority of the US population (Frey, Benesch, & Stutzer, 2005), and ensuring and maintaining access for people with disabilities and older people is essential to allowing them to participate in and enjoy day to day life. It may be argued that the free market and technological change will ensure access for people with disabilities. However as Greg Vanderheiden noted in his (1990) paper "Thirty something million—should they be exceptions?" history

has repeatedly shown that accessibility issues tend not be solved by market forces or technological change.

Robert Pedlow, "How Will the Changeover to Digital Broadcasting in 2009 Influence the Accessibility of TV for Americans With Disabilities?" *Disability Studies Quarterly*, Fall 2008, Volume 28, No.4 <www.dsqu-sds.org>

- 11 Indeed, people in Canada have had the right to equal benefit of the law without discrimination based on disability for nearly 40 years, due to the 1982 *Charter of Rights and Freedoms*.⁵
- 12 Efforts to promote accessibility in Canada predate the *Charter* by at least 150 years, however: the first school for deaf students opened in Quebec City in 1831.⁶ Canada was somewhat ahead of the curve: France officially adopted a system for Braille in 1854, and the first international conference on blindness took place in 1873.⁷ Alexander Graham Bell developed key components of the telephone in Brantford, Ontario in the late 1870s,⁸ and it is sometimes claimed that his telecommunications research flowed in part from an interest in helping the deaf to communicate.
- 13 Despite the *Charter's* clear prohibition of laws discriminating on the basis of ability/disability, however, it has taken Canada's broadcast regulator a very long time to require broadcasters to provide more accessible programming.
 - A. **Captioning: 38 years to reach 100%**
- 14 Closed captioning of television programming was first demonstrated in 1971 in Tennessee, three years after the CRTC was established.⁹ By 1976 – eight years after the CRTC's establishment – the United States Federal Communications

⁵ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11:

"15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

⁶ The Canadian Encyclopedia, "Deaf Culture: History of Deaf Culture"

<<http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0011170>>.

⁷ In Vienna. World Blind Union, "About us: A universal voice"

[http://www.worldblindunion.org/English/resources/publications/Documents/a universal voice.doc](http://www.worldblindunion.org/English/resources/publications/Documents/a%20universal%20voice.doc), at 2 and 8.

⁸ David Hochfelder, "Alexander Graham Bell", <https://www.britannica.com/biography/Alexander-Graham-Bell>.

⁹ It was demonstrated at the First National Conference on Television for the Hearing Impaired in Nashville, Tennessee in 1971: Mary Bellis, "Closed Captioning" online: about.com "Inventors" <<http://inventors.about.com/library/inventors/blclosedcaptioning.htm>> (accessed 22 November 2010).

- Commission designated audio line 21 for the use of closed captioning in that country.¹⁰
- 15 It took the CRTC three more years to recognize the existence of technology for ‘hidden captions’: in 1979 it told the Canadian Broadcasting Corporation that it “should examine the possibility of providing this service ... to permit the many thousands of Canadians to enjoy more fully the programming to which they are entitled”, but refused to “direct the Corporation to undertake such an activity unless specific monies can be obtained for that purpose.”¹¹
- 16 It was not until the ‘International Year of the Disabled Person’ in 1981 – a decade after the first demonstration of closed captioning in the US – that deaf Canadians were given access to five hours of captioned television programming, on CBC’s English-language and French-language television networks;¹² five hours/week amounted to 4% of the regulated 126-hour long broadcast week. In 1987 the CRTC finally decided that the CBC should, over the longer term, closed caption the entire schedules of its English-language and French-language television services.¹³
- 17 In 1995, nearly a quarter of a century after the first demonstration of closed captions, the CRTC decided that English-language television broadcasters earning more than \$10 million/year from advertising and network payments should caption at least 90% of their schedules – by 2001.¹⁴ It ‘expected’ and ‘encouraged’ all other television broadcasters to do more; under the *Broadcasting Act*, however, a broadcaster’s failure to meet CRTC encouragements and expectations is not an offence and attracts no penalty.
- 18 By 2001 the CRTC decided to require private English-language television broadcasters “to caption 90% of all programming that they broadcast, including

¹⁰ Mary Bellis, “Closed Captioning” online: about.com “Inventors” <<http://inventors.about.com/library/inventors/blclosedcaptioning.htm>> (accessed 22 November 2010).

¹¹ *Renewal of the Canadian Broadcasting Corporation’s television and radio network licences*, Decision CRTC 79-320 (Ottawa, 30 April 1979) at 40.

¹² *Canadian Broadcasting Corporation/Société Radio-Canada Applications for the Renewal of the English and French Television Network Licences*, Decision CRTC 87-140 (Ottawa, 23 February 1987).

¹³ *Canadian Broadcasting Corporation/Société Radio-Canada Applications for the Renewal of the English and French Television Network Licences*, Decision CRTC 87-140 (Ottawa, 23 February 1987).

¹⁴ *Introduction To Decisions Renewing the Licences of Privately-Owned English-Language Television Stations*, Public Notice CRTC 1995-48 (Ottawa, 24 March 1995), “IV. SOCIAL ISSUES”.

- all news (category 1) programming, beginning 1 September 2001”, by imposing conditions of licence.¹⁵
- 19 As for French-language television broadcasters, the CRTC in 1999 decided that they should meet requirement similar to those of English-language broadcasters.¹⁶
- 20 In 2007 – 36 years after closed captioning was first demonstrated – the CRTC introduced *A new policy with respect to closed captioning*¹⁷ and required television broadcasters to caption all programs broadcast from 6 am to midnight (the broadcast day). That said, by 2009 the CRTC was directing “television broadcasters to improve and control the quality of closed captioning, including in digital formats” and said it would “impose conditions of licence in these areas” at their licence renewals.¹⁸
- 21 In 2009 the CRTC finally required the captioning of all programming, throughout the entire 24-hour day, by the end of each television broadcaster’s licence.¹⁹
- 22 To summarize, closed captioning was first demonstrated in 1971, and the CRTC notified television broadcasters of the requirement to caption all of their programming in 2009 – 38 years later.
- B. Described video: 35 years to reach 22%**
- 23 The idea of describing television programming aloud was first developed in 1974.²⁰ Described video began in the United States in 1985, when its Public Broadcasting Service (PBS) began to provide it.²¹

¹⁵ *Licence renewals for the television stations controlled by Global*, Broadcasting Decision CRTC 2001-458 (2 August 2001), at para. 62.

¹⁶ *Building on Success - A policy framework for Canadian television*, Public Notice CRTC 1999-97 (Ottawa, 11 June 1999), para. 130.

¹⁷ Broadcasting Public Notice CRTC 2007-54 (Ottawa, 17 May 2007).

¹⁸ *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430 (Ottawa, 21 July 2009).

¹⁹ *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430 (Ottawa, 21 July 2009), at para. 75.

²⁰ Audio Description Coalition, “A Brief History of Audio Description in the U.S.”

<http://www.audiodescriptioncoalition.org/briefhistory.htm>: “While working on his broadcasting master's thesis in “television for the blind,” Gregory Frazier develops the concepts underlying audio description”.

²¹ Industry Canada, “Assistive Technology Links: Described Video”, online: Industry Canada “2. History” <<http://www.at-links.gc.ca/guide/zx33005e.asp#two>> (accessed 22 November 2010).

- 24 By 1995 – ten years after PBS began to provide descriptive video – the CRTC was ‘encouraging’ its programming licensees “to effect the gradual implementation of DVS”.²² (As mentioned previously, however, a broadcaster’s failure to meet an ‘encouragement’ does not constitute an offence under the *Broadcasting Act*: offences under the *Broadcasting Act* include broadcasting without a licence and without an exemption to hold a licence, breach of a condition or conditions of licence, and breach of regulations.)
- 25 By 2001 the CRTC began to impose conditions of licence for minimum levels of described programming on major English-language conventional television services. The licensee of Global television stations committed to provide at least two hours per week of described, original Canadian priority programs – by 2006.²³ The CRTC commended “Global on this significant commitment.”²⁴
- 26 By 2009 the CRTC found that audio description was not being provided in all cases, and was in many cases inadequate when it was being provided, even in the case of news broadcasts.²⁵ The CRTC agreed that audiences should be able to know which television programs include described video, through audio announcements and logos, but again merely expected broadcasters to take this step.²⁶ That said, it indicated it would impose conditions of licence requiring major television broadcasters to implement audio description, by 2010 and 2011.²⁷
- 27 In 2015 the CRTC used conditions of licence to require broadcasters already subject to described video requirements to provide 28 hours of described video

²² *Building on Success – A policy framework for Canadian television*, Public Notice CRTC 1999-97 (Ottawa, 11 June 1999), at para. 130.

²³ *Licence renewals for the television stations controlled by Global*, Broadcasting Decision CRTC 2001-458 (2 August 2001)

70. Global also committed to a ramp up of the amount of described programming. As they are upgraded, stations will provide two hours a week of described Canadian priority programming within the first two years of the licence term. This minimum level will increase to three hours per week in the third year, and to four hours per week in year five. At least 50% of the described video programming aired each week will be original, with the remainder consisting of program repeats. The Commission commends Global on this significant commitment.

²⁴ *Ibid.*

²⁵ *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430 (Ottawa, 21 July 2009), at para. 126.

²⁶ *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430 (Ottawa, 21 July 2009), at paras. 121-122.

²⁷ *Ibid.*, at para. 127.

each week (from 7 pm to 11 pm), by 1 September 2019.²⁸ Later, in 2019 the CRTC approved the application by Bell, Corus and Rogers to be allowed to broadcast programming without described video if this programming was non-Canadian, was received without embedded described video, and was received fewer than 72 hours before broadcast.²⁹

- 28 To summarize, described video programming was first used in the United States in 1985 and now, 35 years later, the CRTC requires 22% of broadcasters' television schedules to be described unless foreign programming is received without described video within 72 hours of broadcast.

C. The path to new legislation to protect disabled peoples' rights

- 29 In 2010 "Canada ratified the United Nations *Convention on the Rights of Persons with Disabilities*", protecting "the rights to equality and non-discrimination of persons with disabilities".³⁰
- 30 In November 2015 the Prime Minister of Canada wrote Minister of Sport and Persons with Disabilities and gave her a mandate "to ensure greater accessibility and opportunities for Canadians with disabilities."³¹ The Prime Minister expected the Minister to lead a consultative process resulting in new legislation for accessibility.³²
- 31 In Summer 2016 Minister Qualtrough "began asking Canadians all across the country, 'What does an accessible Canada mean to you?'"³³ A report on this consultation, which involved thousands of people across Canada, was issued in May 2017. It noted that

²⁸ *Let's Talk TV*, Broadcasting Regulatory Policy CRTC 2015-104 (Ottawa, 26 March 2015), at para. 43; see also *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436 (Ottawa, 2 November 2016), at para. 49.

²⁹ *Amendment proposed by Bell Media Inc., Corus Entertainment Inc. and Rogers Media Inc. to their condition of licence that requires prime time programming to be broadcast with described video*, Broadcasting Regulatory Policy CRTC 2019-392 (Ottawa, 3 December 2019).

³⁰ B. Naef & M. Perez-Leclerc, Library of Parliament, *Legislative Summary of Bill C-81: An Act to ensure a barrier-free Canada* (Ottawa, 12 December 2018).

³¹ Prime Minister of Canada, *Minister of Sport and Persons with Disabilities – Mandate Letter*, (Ottawa, 12 November 2015), <https://pm.gc.ca/en/mandate-letters/2015/11/12/archived-minister-sport-and-persons-disabilities-mandate-letter>.

³² *Ibid.*

³³ Employment and Social Development Canada, *Accessible Canada: Creating new national accessibility legislation – What we learned from Canadians*, (Ottawa, 29 May 2017), "Message from the Minister", <https://www.canada.ca/content/dam/esdc-edsc/documents/programs/planned-accessibility-legislation/reports/consultations-what-we-learned/naaw-2017-en.PDF>, at 3 [*What we learned*].

... more than 6,000 Canadians participated in-person and online. Throughout the consultation, [the Minister] held 18 in-person public meetings across the country that were supported by local leaders from the disability community. These meetings were made fully accessible for a range of disabilities and included English and French real-time captioning, American Sign Language and Langue des signes québécoise, and intervenor services for participants who are deaf-blind. In northern Canada, Inuit sign language was also provided.³⁴

- 32 The Minister’s report set out several areas requiring focus, including “information and communications”.³⁵
- 33 New legislation was developed as the result of these consultations³⁶ and introduced as Bill C-81 in the House of Commons in June 2018.³⁷ (In December 2018, as it happens, Canada also “acceded to *Optional Protocol to the Convention on the Rights of Persons with Disabilities* ... to strengthen the implementation of the 2010 United Nations Convention.) Bill C-81 received Royal Assent a year later, in June 2019.³⁸
- 34 TNoC/BNoC 2020-124 addresses requirements imposed by the CRTC by the *Accessible Canada Act*.

III. The CRTC’s questions

- 35 The Forum’s response to the five sets³⁹ of questions set out in TNoC/BNoC 2020-124 is set out below.

³⁴ Ibid.

³⁵ B. Naef & M. Perez-Leclerc, Library of Parliament, *Legislative Summary of Bill C-81: An Act to ensure a barrier-free Canada* (Ottawa, 12 December 2018). The other five areas were:

- employment;
- access to buildings and other public spaces ;
- transportation by air, train, ferry and buses;
- program and service delivery;
- ... and
- procurement of goods and services.

³⁶ *What we learned, supra*, at 4.

³⁷ B. Naef & M. Perez-Leclerc, Library of Parliament, *Legislative Summary of Bill C-81: An Act to ensure a barrier-free Canada* (Ottawa, 12 December 2018) (“1 Background”).

³⁸ *Ibid.*

³⁹ TNoC/BNoC 2020-124, at para. 20:

The Commission calls for comments on the questions set out below under the themes of (i) timing, (ii) manner of publication and form of preparation, (iii) requests for alternate formats, (iv)

36 For readers' convenience the CRTC's questions are included (in italicized bold font) and precede the Forum's answers.

A. *Timing*

Accessibility plans

21. *Comment on how much time regulated entities should be given to prepare and publish their initial plans once the regulations are finalized (e.g. 12, 18, or 24 months). When should entities that become regulated entities after the regulations come into force be required to publish their initial accessibility plans?*

37 In light of the fact that the matter of accessibility has been clearly on the government's agenda since 2015, regulated broadcasting entities should have one year (12 months) to prepare and publish their initial plans once the regulations are finalized.

38 That said, entities that are able to demonstrate their incapacity to meet this timeline may always apply to the CRTC for an extension of this period, and the Commission may then grant the application provided it is supported by evidence and provided the delay will not harm the interests of the disability communities.

22. *Is the three-year default period for publishing updated plans appropriate, or should the regulations prescribe a different interval?*

39 Given the time it has to date taken the CRTC to propose, to implement and to enforce the very limited accessibility requirements that currently exist for broadcasting, the Forum recommends that the regulations require updated plans to be published within 12 rather than 36 months.

23. *Should the timing of publication be consistent with that required under any other federal laws, such as the Employment Equity Act?*^{Footnote 5}

40 The Forum has no comment on the question posed in CRTC paragraph 23 at this time.

24. *Should all regulated entities be required to publish their initial accessibility plans and updated accessibility plans on the same date?*

41 While a single date for publishing initial and updated accessibility plans has some appeal, the sudden dissemination of what could be dozens of plans may

overwhelm the capacity of accessibility and other public-interest organizations to analyze and comment on the documents in a timely manner.

- 42 At a minimum, however, all subsidiary or related companies of a regulated entity should have to publish their initial accessibility plans and updated accessibility plans on the same date.

25. Should all regulated entities be required to publish initial and updated accessibility plans separately for each brand offered in the retail market, such as ‘flanker’ brands?

- 43 Yes – and the plans’ first pages should identify not only the individual brand for which information is being provided, but the parent corporation of the brand.

Progress reports

26. Comment on when the first progress reports related to the accessibility plan should be published. When should entities that become regulated entities after the regulations come into force be required to publish their first progress reports?

27. How frequently should progress reports be required thereafter (e.g. every year, every two years, or every three years)?

28. Should all regulated entities be required to publish progress reports separately for each brand offered in the retail market, such as ‘flanker’ brands?

- 44 Regulated entities should publish their first report related to their accessibility plan within 12 months of the regulations’ coming into force, and be updated each year thereafter.

- 45 Plans should be published for each brand offered by a regulated entity (as it is unlikely that all Canadians are aware that the same companies may operate many different services under entirely different brand names).

Feedback processes

29. Comment on whether a description of the feedback process should be published on the same date as the initial accessibility plan. When should entities that become regulated entities after the regulations come into force be required to publish such a description?

30. How frequently should an updated description be required thereafter (e.g. every year, every two years, or every three years)?

- 46 Regulated entities should be required to publish descriptions of the ‘feedback’ process on the same date as the initial accessibility plan, and should be required to update descriptions of this process each year and also when their plans or process changes.

B. Manner of publication and form of preparation

31. Comment on what the publication requirements should be. For example:

o Should the initial and updated accessibility plans, progress reports, and feedback process descriptions be published in a prominent location, such as on a website, mobile website, or mobile application? In what other ways can the publication requirements ensure that relevant accessible information can be easily found by the public?

- 47 The Forum disagrees that “a prominent location” consists solely of Internet-based pages or applications. Broadcast advertisements and billing inserts could and should also be used to disseminate information about accessibility plans and progress reports.

o Should a telephone number, email address, and a telephone number for TTY/IP Relay be provided, to enable persons with disabilities to contact regulated entities regarding the publications?

o Should the Commission prescribe additional formal specifications, such as font size, file type, or others? For example, should electronic publications be required to adhere to generally accepted accessibility guidelines, such as those published by the World Wide Web Consortium?

- 48 The Forum has no comment on these parts of CRTC paragraph 31, at this time.

32. Comment on when and how regulated entities should be required to notify the CRTC of the publication of a document. Should it be on the same day the document is published, by providing the URL and link?

- 49 Regulated entities should notify the CRTC of the publication of a document on the same date it is published, not only by providing its URL and link but also by providing an electronic copy of the document to the CRTC.

33. Comment on whether alternative or additional forms of publication, other than on a website or mobile application, should be required (e.g. for a regulated entity without a website). If so, what would be acceptable alternative or additional methods of publishing a document?

- 50 Regulated entities could be invited to contact local organizations that work with people with disabilities and/or advocate on behalf of accessibility issues, for their recommendations for people with whom the regulated entities could consult, and for making documents public as well as accessible.

C. *Requests for alternate formats*

34. *Comment on what, if any, rules should apply to how a person can request that a document be provided in an alternate format.*

- 51 The Forum has no comments on TNoC/BNoC 2020-124 paragraph 34 at this time.

35. *Comment on whether the Commission should prescribe specific alternate formats that must be provided upon request (e.g. formats that are compatible with adaptive technologies, audio formats, visual formats, etc.).*

- 52 While the CRTC should prescribe the requirement to make alternate formats available, the Forum (at this time) recommends that highly specific formats not be defined as tools and technologies constantly change.

- 53 36. *Comment on how much time a regulated entity should be given to provide a document in an alternate format.***

- 54 The Forum has no comments on TNoC/BNoC 2020-124 paragraph 36 at this time.

Substance of the feedback process

37. *Comment on what steps a regulated entity's feedback process should include to help ensure that persons with disabilities have an opportunity to provide regulated entities with meaningful feedback on their accessibility plans and on the barriers that they have encountered.*

38. *When regulated entities receive feedback, how should they respond, and within what time period? Should regulated entities be able to respond collectively to a common concern? Appendix 3 to this notice sets out additional considerations with respect to the feedback process.*

- 55 The Forum has no comments on TNoC/BNoC 2020-124 paragraphs 37 and 38 at this time.

D. *General questions*

Classes of and possible exemptions for regulated entities

- 39. Comment on whether it would be appropriate for the Commission to distinguish among different classes of regulated entities in its regulations. If so, on what basis (e.g. number of employees, level of revenues, eligibility for exemption from certain other regulatory obligations, etc.)?**
- 40. Comment on whether it would be appropriate for the Commission to issue orders exempting any regulated entity or class of regulated entities from the reporting obligations under the ACA at this time. If so, what entity or classes of entities should be exempted and on what terms? For example, should any of the broadcasting undertakings currently subject to an exemption order issued under section 9(4) of the Broadcasting Act also be exempted under the ACA? Similarly, should any of the telecommunications service providers currently falling under the scope of the exemption from the reseller registration obligation established in Telecom Regulatory Policy 2019-354 also be exempted under the ACA?**
- 56** The *Accessible Canada Act* grants the CRTC the authority to exempt certain groups from its regulatory requirements, for up to three years:⁴⁰
- 46 (1) The Canadian Radio-television and Telecommunications Commission may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 42 to 44, on any terms that the Commission considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- 57** As it happens, the CRTC has for decades provided entities subject to the *Broadcasting Act* with a degree of flexibility based on their finances. Recognizing that some broadcasters simply lack the financial means to comply with the Commission's regulations and/or possible conditions of licence, it has from time to time exempted certain broadcasters from its requirements.⁴¹

⁴⁰ It is uncertain whether the *Accessible Canada Act* would permit the CRTC to re-enact an exemption order after the first three-year period ends.

⁴¹ Note that the Forum is not referring to the CRTC's *Digital Media Exemption Order*. In our view that order exists because neither Parliament nor the Governor in Council (Cabinet) has given the CRTC jurisdiction to regulate foreign digital media. The DMEO therefore offers all Canadian digital broadcasters the opportunity to operate under the same conditions (which is to say, no conditions but for Canadian law in general) as foreign digital broadcasters.

- 58 In this case, however, the *Accessible Canada Act* exists to protect the rights of Canadians with disabilities. Laws that protects such rights are said to be ‘quasi-constitutional’. Justice Lamer (as he then was) addressed the exceptionality of such laws in 1982, in relation to fundamental human rights and the *Human Rights Code of British Columbia*:

When the subject matter of a law is said to be the comprehensive statement of the “human rights” of the people living in that jurisdiction, then there is no doubt in my mind that the people of that jurisdiction have through their legislature clearly indicated that they consider that law, and. the values it endeavours to buttress and protect, are, save their constitutional laws, more important than all others. Therefore, short of that legislature speaking to the contrary in express and unequivocal language in the Code or in some other enactment, it is intended that the Code supersede all other laws when conflict arises.

As a result, the legal proposition *generalia specialibus non derogant* cannot be applied to such a code. Indeed the Human Rights Code, when in conflict with “particular and specific legislation”, is not to be treated as another ordinary law of general application. It should be recognized for what it is, a fundamental law.

Furthermore, as it is a public and fundamental law, no one, unless clearly authorized by law to do so, may contractually agree to suspend its operation and thereby put oneself beyond the reach of its protection.⁴²

- 59 At this time the Forum’s position is that the CRTC should not exempt any broadcasters from the regulations it will be imposing to protect the right of all Canadians – whether they have or do not have disabilities – to access Canada’s broadcasting system. No evidence has been presented to establish that entities with more or fewer employees, with more or less revenue or with or without exempted status with respect to other broadcast regulatory requirements are incapable of meeting the requirements imposed on them by way of the requirements of the *Accessible Canada Act* on the CRTC.

Guidance documents

- 41. *Comment on whether it would be helpful if the Commission were to provide guidance material to assist in the implementation of planning and***

⁴² Insurance Corporation of British Columbia v. Heerspink, 1982 CanLII 27 (SCC), [1982] 2 SCR 145, <<http://canlii.ca/t/1lpcj>>, retrieved on 2020-05-12, at pp. 157-158.

reporting obligations and ensure that documents are relevant for persons with disabilities.

...

43. Comment on whether you agree with the Commission’s view that it is appropriate to provide templates to regulated entities for reporting on accessibility plans and providing progress reports. If so, provide your comments on the proposed templates for accessibility plans and progress reports, set out in Appendices 1 and 2 respectively.

....

**Appendix 1:
Accessibility plan template**

....

Plan details (the barriers being addressed)

This section would describe

- **how the regulated entity consulted with persons with disabilities to develop the plan and addressed the input it received;**
- **the feedback received and how it is addressed by the plan;**
- **how the plan has taken into account the principles of the ACA;**
- **the types of barriers the plan covers (e.g. service barriers, or barriers in a policy, program, or practice);**
- **the regulatory obligations imposed by the Commission on the regulated entity with respect to barriers (e.g. conditions of licence or exemption, conditions of service, regulations); and**
- **where each barrier is found. Relevant areas could include**
- **programs and services for persons with disabilities (including design and delivery);**
- **procurement (goods, services, facilities);**
- **information and communication technologies (IT and CT); and**
- **communications about the above areas.**

[underlining and yellow highlighting added]

- 60** The Forum agrees that it is appropriate for the CRTC to provide regulated entities with guidance material, and with templates for accessibility plans and progress reports.
- 61** That said, the CRTC should clarify whether ‘input’ and ‘feedback’ have the same or different meanings. If the two terms have the same meaning, a single term should be used, and defined. If the terms have different meanings, each should be defined.

- 62 The Forum also that in any event notes that ‘feedback’ may be an inappropriate concept in the context of accessibility, given that the *Accessible Canada Act* refers to “the identification and removal of barriers, and the prevention of new barriers”.⁴³ The CRTC’s guidance should emphasize this point by referring specifically to barriers and their elimination:

This section would describe

- how the regulated entity consulted with persons with disabilities to develop the plan **to eliminate barriers** and addressed the input it received;
- the feedback received, **the barriers identified by persons with disabilities** and how **these barriers will be eliminated** ~~it is addressed by~~ the plan;
- how the plan has taken into account the principles of the ACA;
- the types of barriers the plan covers (e.g. service barriers, or barriers in a policy, program, or practice); **and a list of the specific barriers within each type of barrier and the timeframe for eliminating each specific barrier**
- the regulatory obligations imposed by the Commission on the regulated entity with respect to barriers (e.g. conditions of licence or exemption, conditions of service, regulations); and
- where each barrier is found. Relevant areas could include
 - programs and services for persons with disabilities (including design and delivery);
 - procurement (goods, services, facilities);
 - information and communication technologies (IT and CT); and
 - communications about the above areas.

[italics and bold font, and strikethroughs: changes recommended by the Forum]

- 63 Second, a key issue for this entire process and the desired outcome of ensuring that Canada’s communications system is accessible, is the CRTC’s apparent premise that regulated entities may in the end NOT accept the “input” and/or “feedback” they received. The CRTC’s description of this section’s contents appears to permit regulated entities to reject the input and/or feedback they received – without having to provide any explanation, without providing evidence to support their explanation, and without stating when and under what circumstances the regulated entities will reconsider their rejection(s).

43

S. 42(1).

- 64 We also note that TNoC/BNoC 2020-124 does not clearly describe the legal process interested parties may use if they wish to challenge broadcasters' plans and reports. As the CRTC will be enacting regulations for broadcasters under the *Broadcasting Act*, will it then issue determinations ("decisions") so as to permit legal review?
- 65 Allowing regulated broadcasting entities to reject the "input" and/or "feedback" they received about their plans without further ado and without a clear legal process for appeal effectively stymies any progress that the *Accessible Canada Act* was enacted to achieve. The absence of reasons and supporting evidence will limit those consulted from challenging a broadcaster's plans or reports either before the CRTC, or (ultimately, assuming the CRTC issues a determination capable of appellate review) the courts.
- 66 As stated above by the amendments we recommend for the CRTC's 'accessibility plan template', the Forum's position is that regulated entities should be required to explain and justify (with evidence) their rejection of input/feedback from persons whom they consulted, and to state when and under what circumstances this rejection will be reconsidered. The absence of this information will make it impossible for interested parties to understand what barriers exist to removing barriers to accessibility.

Other matters within the Commission's regulation-making authority

44. Comment on whether there are any other matters within the Commission's regulation-making authority under the ACA that should be addressed in the regulations.

- 67 The Forum notes that the *Accessible Canada Act* does not confer any regulation-making authority on the CRTC. Rather, the *Accessible Canada Act* refers to the CRTC's authority to enact regulations under subsection 10(1) of the *Broadcasting Act*:

PART 4

Duties of Regulated Entities

Regulated Entities That Carry On Broadcasting Undertakings

Accessibility Plans — Requirements Under the [*Broadcasting Act*](#)

Initial accessibility plan

42 (1) **A regulated entity that carries on a broadcasting undertaking must**, before the expiry of one year after the day fixed or determined by regulations made under subsection 45(1) that apply to that regulated entity, **prepare and publish**, in accordance with this Act and regulations made under that subsection, **an accessibility plan respecting**

...

(b) the conditions of the regulated entity's licence issued under Part II of the *Broadcasting Act* that relate to the identification and removal of barriers and the prevention of new barriers;

...

(d) **the provisions of any regulations made under subsection 10(1) of that Act** that relate to the identification and removal of barriers and the prevention of new barriers and that apply to the regulated entity.

68 The *Accessible Canada Act* does not confer new regulation-making authority on the CRTC: it simply requires the CRTC to use its existing authority under the *Broadcasting Act* ("that Act", in subsection 42(1)(d), above) to implement objectives that Parliament set out in 1991. Specifically, by following the requirements imposed by the *Accessible Canada Act* on it the CRTC will not only ensure that Canada's broadcasting system provides "programming accessible by disabled persons" (subsection 3(1)(p)), but will also

"... serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children" (subsection 3(1)(d)(iii)), and

"provide a reasonable opportunity for the [entire] public to be exposed to the expression of differing views on matters of public concern" (subsection 3(1)(i)(iv)).

* * * End of document * * *