



Bill C-11

*An Act to amend the Broadcasting Act
and to
make related and consequential
amendments to other Acts*

**Practical and Necessary Changes
To ensure that the *Online Streaming Act*
achieves Parliament's goals**

Submission to the
Senate Standing Committee on Transportation

By the

Forum for Research and Policy in Communications (FRPC)

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Acronyms

AQPM	Association Quebecoise des producteurs indépendants
BAR	CRTC's ' Broadcasting Applications Report '
BPF	Broadcasting Participation Fund
CAB	Canadian Association of Broadcasters
CBSC	Canadian Broadcast Standards Council
CCTS	Commissioner of Complaints for Telecommunications and television Services
CHPC	House of Commons Standing Committee on Canadian Heritage
CMPA	Canadian Media Producers Association
CoL	CRTC condition of licence
CPE	Canadian programming expenditures (used only in television)
CRTC	Canadian Radio-television and Telecommunications Commission
DMEO	CRTC's 2012 Digital Media Exemption Order
FCA	Federal Court of Appeal
FRPC	Forum for Research and Policy in Communications (FRPC)
GIC	Governor in Council (Cabinet)
PIAC	Public Interest Advocacy Centre
SCC	Supreme Court of Canada

Executive Summary

- ES 1 FRPC supports the enactment of Bill C-11, and is making suggestions to ensure that Parliament's key objectives for the new *Broadcasting Act* are met, to ensure transparency and accountability on the part of the CRTC, and to maintain regulation and supervision of the broadcasting system by an independent regulatory authority operating at arms' length from the government.
- ES 2 FRPC has proposed amendments to Bill C-11, the most important of which are, in order of priority:
- a. Remove proposed subsection 7(7) as it transfers authority over the CRTC's regulations, orders and conditions to Cabinet thereby a second tier of regulation taking place behind closed doors, and as this transfer effectively eliminates meaningful appellate review as currently provided in the *Broadcasting Act*;
 - b. Set clearer priorities for the CRTC in the Broadcasting Policy for Canada by replacing the word "should" in proposed subsections 3(1)(o) and (p) and (p.1) with "shall";
 - c. Remove proposed sections 4.1 to 4.2, as these do not clarify but confuse the scope of the CRTC's jurisdiction concerning user-uploaded programs;
 - d. Mandate greater transparency from the CRTC by requiring that all decisions be signed by the CRTC Commissioners empowered to make them;
 - e. Require annual reports to Parliament from the CRTC through the Minister regarding the CRTC's implementation of the Broadcasting Policy for Canada and the *Broadcasting Act*'s requirements for due process, based on objective evidence, and
 - f. Ensure the definition of 'decision' accords with the definition of the same word in the *Telecommunications Act*.
- ES 3 FRPC also respectfully recommends— as the CRTC itself has not been specifically reviewed in its 54 years of operation – that the Senate evaluate the CRTC's performance using objective measures to assess its implementation of Parliament's Broadcasting Policy for Canada, and adherence to 21st century requirements for transparency and accountability; this study would set a baseline for future reviews.
- ES 4 Appendix 6 of FRPC's submission sets out its recommendations for amendments to Bill C-11, clause by clause.
- ES 5 The Forum's submission does not address either subsections 3(1)(l), (m) and (n), or Part III of the current *Broadcasting Act*, as these relate to the Canadian Broadcasting Corporation which we understand will be addressed in future legislation.

I. Introduction

A. Who we are

1. The Forum for Research and Policy in Communications (FRPC or the Forum) has undertaken original research, policy and legal analysis of issues related to broadcasting and telecommunications since 2013. A federally-incorporated not-for-profit corporation, FRPC does not solicit donations and does not receive any funding from government. It applies to the [Broadcasting Participation Fund](#) (BPF), a non-governmental organization, for remuneration of some of its costs for participating in certain CRTC regulatory proceedings.¹ Decisions about FRPC's work are made by its [six-member Board of Directors](#); the Forum's [submissions](#) and [research](#) are available on its website (www.frpc.net) and it uses @FRPC_FRPC in Twitter.

B. FRPC's interest in Bill C-11

2. The Forum's interest in new communications legislation is longstanding. It has held three national law-and-policy conferences on this issue, in 2015, 2019 and 2021 with speakers including lawyer Bram Abramson, Ryerson University professor and lawyer Doug Barrett, Internet Society of Canada Chairperson and lawyer Tim Denton, lawyer and former BTLR member Monica Song, the Hon. Konrad von Finckenstein and Dr. Michael Geist. FRPC also made detailed [submissions on new broadcasting legislation](#) to the Broadcasting and Telecommunications Legislative Review (BTLR) panel.

<i>Rebooting Canada's communications legislation</i> 22-23 May 2015, University of Ottawa
<i>Policy 3.0</i> 10-11 May 2019, University of Ottawa
<i>Bill C-10: The Legal Issues:</i> 3 November 2021 Zoom Conference held jointly with PIAC
3. The Forum [submitted comments to](#) and [appeared](#) before the House of Commons Standing Committee on Canadian Heritage (CHPC) to address Bill C-11 on [30 May 2022](#); FRPC also appeared before the Senate Committee on Transportation and Communications to discuss [amendments to Canada's communications legislation in 2018](#). The *Hill Times* and cartt.ca have published several of FRPC's commentaries on Bill C-11 this year.²

¹ The CRTC approved a proposal made to the CRTC in 2011 by the Public Interest Advocacy Centre (PIAC), asking that a portion of the 'tangible benefits' required by the Commission in large broadcast ownership transactions be allocated to the establishment of a fund to support public-interest participation in CRTC broadcasting proceedings.

Decisions about applications for costs submitted to the BPF are made by a three-member Board of Directors (one appointed by the broadcasting industry, one by the consumer/public-interest sector and one Director approved jointly by both sectors).

The BPF's costs-application process is based on the CRTC's approach to dealing with public-interest costs applications in telecommunications proceedings. (For more information, see the [joint application](#) submitted by PIAC and FRPC in April 2021 to the CRTC, asking that it stabilize the BPF's diminishing funding; in an [August 2021 letter](#) to PIAC and FRPC the CRTC chose not to consider this application.)

² [Proposed Broadcasting Act updates give cabinet too much power](#), Opinion, *The Hill Times* (3 March 2022), [Bill C-11 a step backwards for transparency, accountability in broadcasting](#), Opinion, *Hill Times* (23 March 2022) [Exceptions, gaps in C-11 could make new broadcasting legislation dysfunctional](#), Commentary, cartt.ca, (1 April 2022) and [More discretion, more power: Does C-11 delegate too much to the CRTC?](#) Commentary, cartt.ca, (11 May 2022).

D. Why FRPC supports legislative change in broadcasting

4. The Forum agrees that Canada's 31-year old *Broadcasting Act* must be updated to meet Canadians' needs in the 21st century.
5. What Canadians needed from the early 1920s to the mid-1960s was access to Canadian stations to give them Canadian news and entertainment. In broadcasting's early years high-powered American radio stations literally overpowered weaker Canadian stations' signals and even after an international agreement allocated broadcasting frequencies, other countries simply appropriated those assigned to Canada.³ The [1929 Royal Commission on Broadcasting](#) concluded that Canada was becoming a mere affiliate of the American broadcasting system.
6. Parliament set out a legislative framework to ensure Canadians' access to Canadian radio stations, and their regulation and supervision by a specialized organization. From 1932 to 1967, however, the federal government decided which broadcasters' licensing and renewal applications to grant.
7. Cable television's launch in Canada in the late 1940s began to give Canadians access to a few more distant and – importantly - static-free, TV and radio channels, including the major American television networks. By 1967 nearly one in ten Canadian households subscribed to cable,⁴ and in some cities as many as one in two (Shawinigan and London).⁵
8. Canadians' growing access to foreign services through new distribution technology focussed attention on the need for Canada's broadcasting policy to serve a national, unifying purpose – especially in the context of social upheaval around the world and in Canada in the late 1960s.
9. The 1968 *Broadcasting Act* integrated cable television into the broadcasting system so as to limit harm to Canadian broadcasters from Canadian audiences' attraction to foreign TV and music. It shifted the focus of regulation from expanding Canadians' access to Canadian radio and TV stations, to

In 1928 the Minister responsible for broadcasting told the House of Commons that "there is a lot of broadcasting of jazz from the United States that is not worth listening to, and I should be pleased to stop it if I could; but ... when you are near the broadcasting point you cannot escape interference. I may say that I have in my home here in Ottawa one of the latest receiving-sets of the Marconi company, but when CNRO is broadcasting I can get nothing else" *House of Commons Debates* (31 May 1928) at 3626 (Mr. Cardin).

1932 Canadian Radio Broadcasting Act empowered the Canadian Radio Broadcasting Commission to "regulate and control broadcasting" – but the Minister licensed stations (s. 8)
1936 Canadian Broadcasting Act empowered the Canadian Broadcasting Corporation to regulate stations' operations and their programming (s. 22) – but Cabinet licensed stations and the Minister decided applications (s. 24(1))
1958 Broadcasting Act empowered the Board of Broadcast Governors to regulate broadcasters – but the Minister of Transport licensed stations and decided applications (ss. 12 and 15)
1968 Broadcasting Act established the CRTC as the "single independent public authority" empowered to regulate, supervise and license broadcasters in Canada (ss. 2, 16 and 17)

³ In 1937 Canada organized the Havana Conference; its attendees (including the United States, Mexico and Cuba as well as other countries in the Americas) [agreed to allocate radio frequencies to reduce interference](#). By 1938 American broadcasters unable to secure wave lengths in the United States had "simply moved over to Mexico and established high-power stations there using exclusive Canadian channels. The result [was] that not one of the six channels allotted to [Canada] [was] free from interference from Mexican sources." *House of Commons Debates* (8 February 1938) at 246 (Mr. Howe).

⁴ W.R. Wilson, Technical Adviser, Board of Broadcast Governors, *CATV in Canada* (3 October 1967), at 2: "The NCATA reported to the Parliamentary Committees in January 1967 that there were 360,000 subscribers served by the CATV industry in Canada representing 8% of the 4.5 million television homes in Canada."

⁵ *Ibid.*, "Comparative Weekly Hours of Tuning by CATV Subscribers by Region and Area (BBM areas selected on basis of at least 10% of TV homes subscribing to CATV)".

strengthening national unity by providing high-quality Canadian programming.⁶ Parliament's new "Broadcasting Policy for Canada" said the system's programming should be varied, that news should be balanced and offer differing views, and that individual broadcasters' programming should use "predominantly Canadian creative and other resources" (section 2(d)).

10. 1968 Act Parliament said for the first time that the "Canadian broadcasting system should be effectively owned and controlled by Canadians" (section 2(b)) and that broadcasting consisted of undertakings "located in whole or in part within Canada" (section 3(d)). At this time non-Canadians controlled major television and cable systems in Canada. The federal government subsequently used its new power of direction (section 27) to prohibit the CRTC from licensing foreign broadcasters – a prohibition that still exists.

11. By 1986 it had become clear that "there was a general reluctance to give priority to the social goals of [Canada's] broadcasting system."⁷ A federally-appointed Task Force on Broadcasting Policy explained the results in the case of the private sector

... inadequate high-quality programming; insufficient performance programming by the private sector in English Canada, insufficient attention paid to information and public affairs programming in the private sector in Quebec; and a general reluctance to give priority to the social goals of the broadcasting system.⁸

12. The 1991 *Broadcasting Act* consequently enlarged Parliament's broadcasting policy for Canada and the CRTC's regulatory toolkit. It incorporated new distribution media such as satellites,⁹ gave the CRTC the power to issue mandatory orders and authorized the CRTC to resolve some types of disputes between distribution and programming services.

Broadcasting Act, 1991

10 (1) *The Commission may, in furtherance of its objects, make regulations*

(h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;

13. Yet Canada's broadcasting system today is fundamentally different from that of 1991. Channel scarcity has been resolved to some extent: even if frequencies remain limited in a number of Canadian cities, cable, satellites, the Internet and mobile telephony give most people in Canada access to most of the world's information and entertainment. A strong Canadian program production sector has developed, and its music and its television programs are sold internationally.

14. So why does Canada need Bill C-11?

⁶ The 1965 *Report* of the [Fowler] Committee on Broadcasting (1 September 1965) recommended that the main concern of a new regulatory authority "should be the quality, variety and excellence of the radio and television programs that reach Canadian receiving sets." (Chapter 5, *The Agency of Control*, "Powers and Functions of a Canadian Broadcasting Authority"); the 1968 *Broadcasting Act* said that Canada's broadcasti

⁷ [Caplan Sauvageau] Task Force on Broadcasting Policy, *Report* (Minister of Supply and Services Canada, Ottawa: 1986) at 691.

⁸ *Ibid.*

⁹ By defining "distribution undertaking" in terms of 'retransmission' so as to be technologically neutral and to capture "conventional cable systems, some satellite direct-to-home services, 'mini cable systems' ... such as SMATV systems in apartment buildings ... and 'wireless cable systems' such as MMDS": Government *Response* (23 June 1988 at 71) to the Standing Committee on Communications and Culture, *Sixth Report* (6 May 1987).

15. The near-ubiquitous answer today to this question is, the Internet.
16. Yet the CRTC asserted jurisdiction over Internet broadcasters¹⁰ more than two decades ago. After studying the Internet's implications for Canada's broadcasting system in 1995,¹¹ it announced its jurisdiction over Internet broadcasting in 1999. The CRTC then promptly exempted this new section under its section 9(4) power to exclude broadcasters – whether operating in whole or in part in Canada, offline or online – from regulation when it thought they were unable to assist in the implementation of the Broadcasting Policy for Canada.

Exemption order for new media broadcasting undertakings, [Public Notice CRTC 1999-197](#) (Ottawa, 17 December 1999)
Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings), [Broadcasting Order CRTC 2012-409](#) (Ottawa, 26 July 2012),
17. What the CRTC has not done since then, is to research and develop policies to address both Internet programming and Internet distribution. It has also declined to consider applications asking that it review this exemption policy – and that would have enabled the CRTC to begin to develop coherent policies for regulating online broadcasting.
18. Rather than developing policies for regulating Internet broadcasters the CRTC instead enabled large Canadian telecommunications companies to acquire more and more Canadian broadcasting services, perhaps on the assumption that the revenue base of large, vertically integrated communications companies would ensure the production of high-quality Canadian programming. Theoretically, large Canadian companies would fend off the re-emergence of foreign control of Canada's broadcasting system in the 21st century's new online world.
19. Has the CRTC's approach regarding vertically integrated broadcasters 'worked'?
20. The CRTC collects information from each (unexempted) broadcaster about the programming it broadcasts. Broadcasters submit 'program logs' that track this information to the second – not just for the CRTC, but also to prove to advertisers and others that they have met any contractual requirements.
21. Unfortunately, it does not publish its analyses of this information, although interested parties can access the month-by-month logs for each of several hundred television services in Canada, but radio stations' logs are not published. In the absence of regular analyses by the CRTC, Canadians who do not or cannot download the CRTC's television programming logs have no way of knowing how the objectives of section 3(1) are being met: in particular, they do not know how much of the radio and television programming available from Canadian broadcasters is Canadian or how much of that Canadian programming is first-run or original programming. They have no way of knowing, in particular, whether vertically integrated companies are broadcasting more, the same, or less original (first-run) programming on radio and television than independent broadcasters.
22. Financial measures provide an indirect indication of broadcasters' commitment to Canadian programming. Unfortunately, the CRTC does not publish annual comparisons of vertically integrated

¹⁰ Online non-broadcasting activities fall outside the jurisdiction of the CRTC under the *Broadcasting Act*.

¹¹ *Competition and Culture on Canada's Information Highway: Managing the Realities of Transition*, (in accordance with Order in Council P.C. 1994-1689), not available on the CRTC's website.

broadcasters' expenditures on all Canadian radio and television programming with independent broadcasters' expenditures. However, it does publish this information for the discretionary television service sector that consists of specialty and pay television services.

Figure 1 Vertically integrated and independent discretionary broadcasters' CPE, 2019

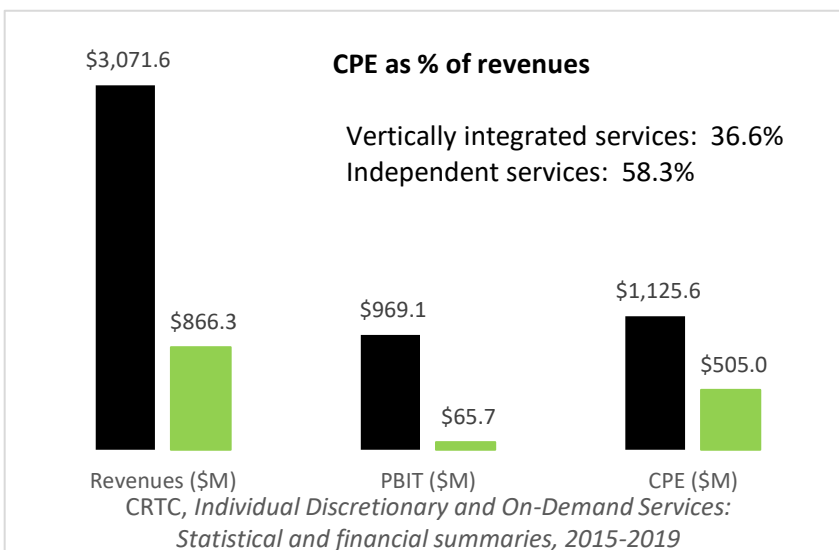
23. In the last pre-pandemic year (2019), vertically integrated companies' discretionary television services devoted less of their broadcast revenues to Canadian programming (36.6%), than independent discretionary television services (58.3%): Figure 1.

24. Yet the independents' revenues represent just 28% of the vertically integrated broadcasters' revenues, and

their profits before income and taxes (PBIT) are just 7% of the vertically integrated programming services' profits. One might therefore conclude that the programming offered by independent discretionary broadcasters simply does not appeal to enough subscribers for the services to thrive: that they are poor competitors in today's highly competitive broadcasting marketplace.

25. In reality, the CRTC forces independent discretionary broadcasters to rely on their competitors to exist. While holding dozens of licences for discretionary programming services, BCE, Rogers, Shaw and Quebecor together also provide three-quarters (75.4%) of Canada's cable and satellite subscribers with service.¹² Canada's discretionary programming services need Canada's distribution services – Canada's distribution services can simply replace Canada's discretionary services: as the CRTC does not set rates for discretionary services, and no independent service can operate on the income from a quarter of Canada's BDU subscribers, each independent programming service must negotiate with its direct competitors for the income it needs to survive.

26. Although independent services may ask the CRTC to mediate these negotiations, rumours abound of endlessly prolonged negotiations that disadvantage independent broadcasters while having no impact at all on the large vertically integrated companies. The CRTC has moreover denied independent program producers' pleas for the CRTC to support their growth by requiring fairer terms of trade with the vertically integrated companies. It has generally denied small discretionary services' pleas to ensure access to the subscribers of cable and satellite companies controlled by their programming competitors. In brief, Canada's regulatory authority has ensured the continued weakness, rather than the strengthening, of Canada's independent discretionary programming sector.



¹² See CRTC, [Communications Market Reports – Open Data](#), Data-BDU (Excel), Pages U-T1 and U-T5.

27. The CRTC's 'supervision' of Canada's 40-year old discretionary programming sector scarcely inspires confidence that when broadcasting shifts entirely from offline to online distribution, it will strive to ensure that Canadian audiences have access to a wide range of successful Canadian programming services offering more and higher-quality Canadian programming. Yet access to audiences is the key to any programming service's existence and success.
28. Bill C-11 appears to offer more of the same. Its proposed subsection 9.1(1)(i) enables the CRTC to issue orders to 'an online undertaking providing the programming services of other broadcasters' – but "without terms or conditions". What does this actually mean, and how does the Department of Heritage believe it will work?
29. Will Canadians in the 21st century have access to more and financially stronger Canadian programming services offered by a wide range of broadcasters – or not? In the Forum's view, and as the old adage goes, 'the definition of insanity is doing the same things over and over, while expecting different results.' In this case, handing more responsibilities to a regulatory agency that, after more than 50 years, has not shown how it has implemented its legal mandate, seems unreasonable.
30. FRPC respectfully submits that greater clarity, transparency and accountability will help to strengthen Canadian broadcasting in the online era. We have therefore developed several practical changes for ensuring that a new *Broadcasting Act* actually achieves Parliament's objectives and the public interest, by ensuring that broadcasters are able to operate and compete reasonable and predictable terms. We explain why these changes are needed below, and summarize the changes in Part III. Appendix 6 presents the changes in terms of Bill C-11. We also invite the Senate to consider studying the performance of the CRTC (similar to the way the Senate studied mass media in 1970).

Bill C-11, s. 9.1(1)(i)
9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings ... respecting:
...
(i) a requirement, without terms or conditions, for a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services, specified by the Commission, that are provided by a broadcasting undertaking;

II. Three problems with Bill C-11: lack of clarity, lack of compliance and lack of independence

31. FRPC's analysis of Bill C-11 has identified problems that can easily be corrected to ensure its operation as intended by Parliament. The Forum has not, however, made recommendations in two areas: the degree to which the English-language and French-language versions of Bill C-11 are equivalent (with one exception), and the impact of Bill C-11 on other statutes, including those addressing access to information, accessibility, copyright, multiculturalism and privacy.
- A. Parliament must set the broadcasting and regulatory policies for Canada's broadcasting system – not the CRTC
32. The best way to ensure that Parliament's laws are followed as it intends is to write clearly. Unfortunately, key parts of Bill C-11 are unclear. For example – and this is FRPC's only comment about the English-language and French-language versions of Bill C-11 – C-11 has attempted to clarify the

concept of decision. Unfortunately, the French-language and English-language versions of this term are different:

<i>Bill C-11, s. 2 (amending s. 2(1) of the Broadcasting Act)</i>	
<i>décision s'entend de toute mesure prise par le Conseil quelle qu'en soit la forme (decision)</i>	<i>decision means any measure of any kind taken by the Commission (décision)</i>

33. It is clear that 'decision' has been mistranslated because the definition of 'décision' is already provided in the 1993 *Telecommunications Act*, as follows:

<i>Telecommunications Act, 1993, s. 2</i>	
<i><u>décision</u> s'entend de toute mesure prise par le Conseil quelle qu'en soit la forme (decision)</i>	<i><u>decision</u> includes a determination made by the Commission in any form; (décision) (decision)</i>

34. To avoid statutory incoherence, FRPC respectfully asks that the Senate amend Bill C-11 (section 2) to incorporate the existing definition of 'decision' as now set out in the *Telecommunications Act*.

1. Bill C-11 empowers CRTC to ignore Parliament's broadcasting policy and to regulate user-uploaded programs

35. FRPC's initial submissions to the House of Commons did not address user-uploaded programming content, although when asked we did offer our views on this point at the 31 May 2022 CHPC hearing. We acknowledged that many parties fear that Bill C-11 enables the CRTC to regulate social-media users.
36. We agreed with these fears in May 2022 and agree with them now, for three reasons.
37. First, Bill C-11's approach to user-uploaded content is nearly impossible to understand.
38. As proposed by Bill C-11, new section 2(2.1) of the *Broadcasting Act* would specifically state that those who use social media services to upload programs for transmission over the Internet and reception by other users of the service are not broadcasters. Bill C-11 therefore does not allow the CRTC either to license or to register users as if they are broadcasters.

<i>Bill C-11, s. 2</i>
Exclusion — carrying on broadcasting undertaking
<i>2(2.1) A person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider's affiliate, or the agent or mandatary of either of them — does not, <u>by the fact of that use, carry on a broadcasting undertaking</u> for the purposes of this Act.</i>

39. Yet Bill C-11 takes aim at the programs these users upload using undefined terms and convoluted language in proposed subsections 4.1 and 4.2.

<i>Bill C-11, s. 4, adding text after s. 4 of the Broadcasting Act</i>
<i>4.1 (1) This Act does not apply in respect of a program that is uploaded to an <u>online undertaking that provides a social media service by a user of the service for transmission over the Internet and reception by other users of the service.</u></i>

40. Proposed subsection 4.1(1) says that the *Broadcasting Act* does not apply to programs uploaded by social media service online undertakings' users to be transmitted over the Internet and received by the social media service online undertakings' other users. The key word in this section appears to be 'uploaded', because new subsections 4.1(2) and 4.1(4) also use and rely on this word.

41. In 4.1(1) 'uploaded' is linked to a 'user', an online undertaking providing a social media service, transmission over the Internet *and to* reception by other unidentified users of, presumably, the social media service.

42. Proposed section 4.1(2) then says that the *Broadcasting Act* does apply to programs "uploaded as described" in 4.1(2) when uploaded by a service provider, affiliate, agent or mandatory, or when they are regulated under new section 4.2. So 'uploaded' in this subsection must apparently be interpreted in terms of the type of users involved, and to regulation by the CRTC. It is difficult to understand why a section purporting to describe what is to be regulated, depends on the regulator's decision to regulate.

<i>Bill C-11, s. 4, adding text after s. 4 of the Broadcasting Act</i>
4.1(2) Despite subsection (1), this Act applies in respect of a program that is uploaded as described in that subsection if the program
(a) is uploaded to the social media service by the provider of the service or the provider's affiliate, or by the agent or mandatory of either of them; or
(b) is prescribed by regulations made under section 4.2.

43. Proposed subsection 4.1(4) then also says that the *Broadcasting Act* does apply to programs that are the same as the programs in new section 4.1(1) *but are uploaded differently*. To know when the upload in subsection 4.1(4) is the same as or different from the upload in subsection 4.1(1) therefore clearly requires a definition of 'upload'.

<i>Bill C-11, s. 4, adding text after s. 4 of the Broadcasting Act</i>
4.1(4) For greater certainty, this section does not exclude the application of this Act in respect of a program that, except for the fact that it is not uploaded as described in subsection (1), is the same as a program in respect of which this Act does not apply under this section

44. How is 'uploaded' to be understood? Is it based on who uploads? On the online undertaking that provides a social media service? Or on why it is being transmitted and received?

<i>Bill C-11, s. 4, adding text after s. 4 of the Broadcasting Act</i>
Regulations – programs to which this Act applies
4.2 (1) For the purposes of paragraph 4.1(2)(b), the Commission may make regulations prescribing programs in respect of which this Act applies, in a manner that is consistent with freedom of expression.

45. 'Programs uploaded as described' must be defined more clearly because these are the programs that the CRTC may regulate in proposed section 4.2(1) – unless the programs do not make any money for the user who did the uploading, or the owner of the program's copyright did not make any money from the program, or if it "consists only of visual images" as set out in section 4.2(3).

<i>Bill C-11, s. 4, adding text after s. 4 of the Broadcasting Act</i>
4.2 (3) The regulations shall not prescribe a program
(a) in respect of which neither the user of a social media service who uploads the program nor the owner or licensee of copyright in the program receives revenues; or
(b) that consists only of visual images.

46. In other words, proposed 4.2(3) apparently sets out three more criteria that matter when it comes to understanding which uploaded programs will or will not be regulated. In other words, in addition to the mandatory exemption requirement for broadcasters that are unable to implement the Broadcasting Policy for Canada, Bill C-11 adds a new mandatory exemption requirement for programs that do not earn revenues for users or copyright holders, or that lack sound ("only ... visual images").

47. Unfortunately, the language in these sections makes it next to impossible to understand what programs Bill C-11 includes in or excludes from the application of a new *Broadcasting Act* – only that ‘how’ these programs are uploaded somehow matters.
48. Bill C-11’s amendment to section 10 to require that regulations made under sections 9.1(1) and 10(1) must respect the freedom of expression of users of online social media services¹³ does NOT, incidentally, reassure FRPC that users will not be regulated. This amendment actually means that the government has considered that at least some of the CRTC’s regulations will apply to these users, and is prepared to afford them limited protection with respect to their freedom of protection.¹⁴
49. The incomprehensibility of subsections 4.1 and 4.2 also means that if Bill C-11 is enacted as written Canada’s courts will eventually have to determine just what programs may be regulated. FRPC respectfully submits that it is for lawmakers to make this determination before enacting Bill C-11: creating policy *is* properly the role and responsibility of Parliament, not the courts. Parliament must know who is to be regulated under the *Broadcasting Act*; moreover, requiring parties to go to court misallocates money that would be better spent on Canadian program development and production.
50. The Forum’s position is that **broadcasters able to contribute to the material implementation of the Broadcasting Policy for Canada must be regulated** – not those who ‘use’ broadcasters or those whose broadcasting cannot materially contribute to the implementation of the Broadcasting Policy for Canada.
51. ‘Users’ in our view includes communities served by broadcasters, broadcasters’ audiences and independent program producers. The concept of ‘independent program producers’ include large production companies with many employees, smaller companies that engage independent contractors as needed, volunteers who produce programming for cable TV services’ community channels, ham-radio operators who still broadcast using that older medium – and individuals who today make programs that they upload to social media online services and that can be received by other users of those social media online services.
52. To the extent that users upload their programs in a way that generates income for them, the appropriate question is whether they should be regulated. Under the current *Broadcasting Act* it seems unlikely that a broadcaster earning \$500,000 a year from advertising or subscription income would be regulated: would even as much as 25% of this income enable the broadcaster to materially contribute to the implementation of section 3(1)? Now suppose a user earns \$500,000 a year from subscriptions related to the programs they upload to a social media service: will requiring that user to allocate the same 25% **materially** implement the Broadcasting Policy for Canada? Parliament was correct in 1991 to exclude those who are unable to contribute to the Broadcasting Policy for Canada from regulation: it should not re-introduce regulation of users who similarly are unlikely to contribute to the implementation of the broadcasting policy.

¹³ Bill C-11, s. 12:

For greater certainty

10.1 For greater certainty, the Commission shall make orders under subsection 9.1(1) and regulations under subsection 10(1) in a manner that is consistent with the freedom of expression enjoyed by users of social media services that are provided by online undertakings.

¹⁴

53. FRPC also notes that no clear rationale has been seriously offered for regulating any user-uploaded content under the *Broadcasting Act*. It seems unlikely that any revenues gained from regulating user-uploaded programs would pay for the overall costs of such regulation, no matter how many millions of views or downloads that a user-uploaded program may enjoy. The revenues accruing to Canada from regulating user-generated content are likely to amount to just a tiny fraction of the current revenues of Canada's 'traditional' broadcasters: that earned \$20.8 billion in 2021, according to the CRTC.¹⁵
54. If Parliament believes that social-media users' online programming contravenes Canadian values, the solution is to rely on the *Criminal Code*. If Parliament believes that social-media users' uploaded content infringes the content owners' rights, its solution is to rely on the *Copyright Act*. User-uploaded programs should be excluded from Bill C-11, by dropping its section 4 in its entirety.
- Criminal Code sections related to online content*
 83.223(1) – permits a judge to order delivery of computer-system material believed to be terrorist propaganda
 164.1(1) – permits a judge to order delivery of computer-system material to be child pornography
 320.1(1) – permits a judge to order delivery of computer-system material believed to be hate propaganda
55. The second reason that FRPC shares other parties' fears that the new *Broadcasting Act* proposed by Bill C-11 will subject users, rather than just broadcasters, to regulation by the CRTC is because recently re-appointed CRTC Chairperson Ian Scott confirmed this understanding when he appeared before the CHPC Committee on [May 18, 2022](#). When asked whether Bill C-11 'captures' "individual users generating content", Mr. Scott agreed that it did:¹⁶ "As constructed, there is a provision that would allow us to do it as required,"
56. The third reason that FRPC believes that the CRTC will regulate users' uploaded programs is because the CRTC often regulates indirectly what it cannot or must not regulate directly. One example stems from the predecessor statute to the 1991 *Broadcasting Act*.
57. When Parliament created the CRTC in 1968 its new *Broadcasting Act* expressly authorized it to "make regulations applicable to all persons holding broadcasting licences".¹⁷ In fall 1986, however, the CRTC "received 134 written complaints concerning open-line programs" involving "35 radio licensees, eight television licensees and four cable television licensees".¹⁸ Despite the fact that one of the stations was

¹⁵ Consisting of: \$2.5 billion from conventional TV, \$4 billion from discretionary TV, \$1.4 billion from radio, \$7.8 billion from BDUs and \$5.1 billion from [exempted] digital media broadcasting undertakings: CRTC, [Annual highlights of the broadcasting sector 2020-2021](#).

¹⁶ Although he also expressed his opinion that the CRTC may do so now: "We could do any of those things today under the Broadcasting Act."

FRPC respectfully disagrees with the Chairperson, as the scope of the CRTC's jurisdiction under the 1991 *Broadcasting Act* is limited to the regulation of broadcasters that includes "programming undertakings" – and users themselves typically do not meet the definition of 'programming undertaking' in s. 2(1) of the *Act* as they do not 'transmit' programs:

programming undertaking means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus; (entreprise de programmation)

¹⁷ *Broadcasting Act*, 16 & 17 Eliz. 2, c. 25 (7 March 1968), s. 16(1)(b): "In furtherance of its objects, the Commission, on the recommendation of the executive Committee, may ... make regulations applicable to all persons holding broadcasting licences ... respecting standards of programs"

¹⁸ *Policy regarding open-line programming*, [Public Notice CRTC 1988-213](#) (Ottawa, 23 December 1988).

subsequently prosecuted and fined for breaching the CRTC's regulations¹⁹ the CRTC went on to propose and establish "guidelines for open-line programs"²⁰ based on the 1968 Act's objective for "programming ... of high standard".

58. The CRTC today still expects radio broadcasters to respect these guidelines.²¹ To be clear, guidelines (and expectations, for that matter) are not "regulations": while breaching a regulation constitutes an offence subject to large financial penalties, there is no statutory penalty for breaching an expectation or guideline.²²
59. A more recent example of indirect regulation by the CRTC concerns violence in programming. In the early 1990s many concerns arose about this issue, especially for children's programming. The CRTC did not regulate the users of such programming: it issued a CRTC-staff report on violence in television in 1992, approved the [Canadian Association of Broadcasters' Violence Code](#) in 1993 and in 1996 required an *Action Group on Violence in Television* (AGVOT) "to develop an acceptable rating system" to enable parents to block their children's access to certain programming.²³ The CRTC still 'expects' programming licensees to respect the CAB's *Violence Code*.²⁴
60. Indirect regulation such as the open-line guidelines and the *Violence Code* is problematic for two reasons. First and foremost is the fact that substituting indirect for direct regulation effectively circumvents Parliament's statutes and, therefore, its will.
61. Second, using indirect regulation enables the CRTC to exercise authority behind the scenes. Neither public hearings nor a lengthy public record is needed for the CRTC to influence self-regulatory outcomes: nothing prevents the industry that pays for self-regulatory bodies or even representatives of the self-regulatory body itself from meeting privately with the CRTC or its staff to exchange views on issues of common concern over a coffee or tea. Indirect regulation erases both transparency and accountability.

¹⁹ *Ibid.*, CJRN Niagara Falls pled guilty for breaching the CRTC's radio regulations

²⁰ *Ibid.*

²¹ *Various commercial radio stations – Licence renewals*, [Broadcasting Decision CRTC 2020-265](#) (Ottawa, 13 August 2020), at para. 10:

Open-line programming – CIRR-FM Toronto

The Commission reminds the licensee that it expects licensees who broadcast open-line programming to adhere to the policy regarding such programming, as set out in [PN] 1988-213.

²² S. 32(2) makes it an offence to contravene a regulation or order of the CRTC; s. 33 makes it an offence to contravene a condition of licence. Proceedings for such offences must take place within 2 years of the offence (s. 34).

²³ *POLICY ON VIOLENCE IN TELEVISION PROGRAMMING*, [Public Notice CRTC 1996-36](#) (Ottawa, 14 March 1996):

The Commission designates AGVOT to develop an acceptable rating system. [It] ... must be submitted to the Commission for approval prior to the September 1996 implementation date. If AGVOT does not have a satisfactory V-chip decodable classification system approved by that date, the Commission will expect the licensees of programming undertakings to classify programs according to the system employed in the second and current rounds of V-chip trials.

²⁴ *The News Forum – Licensing of a national news discretionary service*, [Broadcasting Decision CRTC 2022-130](#) (Ottawa, 17 May 2022), para. 34.

62. The simple fact that so many people, so many organizations and so many experts have taken time in the last three years to object to CRTC regulation of user-uploaded programming is a strong signal that their fears must be addressed.

2. More than three-quarters of the objectives in Canada's broadcasting policy are left to CRTC's discretion

63. A second issue presented by Bill C-11 is that it leaves nearly all decisions about the objectives in the Broadcasting Policy for Canada to the CRTC. This is because Bill C-11 repeats the habit of the current broadcasting policy for Canada by writing "should" instead of "shall".
64. Where "shall" requires the CRTC to ensure an object's implementation, "should" and "may" merely enable objects to be met if the regulator wants to do so.²⁵ The [federal Interpretation Act](#) confirms that "'shall' is to be construed as imperative". "Should", by contrast, "and the expression 'may'" are directory or permissive.²⁶ The text in Table 1 set out English-language and French-language examples of mandatory ("shall" / "doit") and discretionary ("should" / "devrait") objectives in Bill C-11.

Table 1 Examples of mandatory and discretionary objects in Bill C-11

Bill C-11: examples of mandatory, discretionary and declaratory objects			
English-language text		French-language text	
3(1)(a)	the Canadian broadcasting system shall be effectively owned and controlled by Canadians, and it is recognized that it includes foreign broadcasting undertakings that provide programming to Canadians;	3 (1) a)	le système canadien de radiodiffusion doit être, effectivement, la propriété des Canadiens et sous leur contrôle, et il est reconnu que celui-ci comprend des entreprises de radiodiffusion étrangères qui fournissent également de la programmation aux Canadiens;
(o)	programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;	o)	le système canadien de radiodiffusion devrait offrir une programmation qui reflète les cultures autochtones du Canada, au fur et à mesure de la disponibilité des moyens;
(p)	programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;	p)	le système devrait offrir une programmation adaptée aux besoins des personnes atteintes d'une déficience, au fur et à mesure de la disponibilité des moyens;

[remainder of page left intentionally blank]

²⁵ Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, (4th ed.) (Butterworths, 1982), at 56-57 and 65:

Both "may" and "shall" are used in a variety of ways in legislation. "May" is used to Confer an authority or a power ...

....

"Shall" is used to Impose a duty

....

... "should" effectively imposes a duty to consider: the decision-maker is to take the listed factors into account but is not bound by them.

²⁶ [Interpretation Act, R.S.C., 1985, c. I-21, s. 11.](#)

Table 2 Mandatory and discretionary objects in the 1991 Act and Bill C-11

65. FRPC analyzed the section 3(1) broadcasting policies in the 1991 Act and Bill C-11. We looked at the wording of individual clauses (subsections), and then at the specific purposes in those clauses. Four-fifths – 40 (82%) – of the 49 clauses in Bill C-11's broadcasting policy for Canada are

Mandatory and discretionary objects	1991 Act	Bill C-11
3(1) Clauses (subsections and sub-subsections)		
Mandatory clauses (use 'shall')	6	9 (18%)
Discretionary clauses (use 'should')	33	40 (82%)
Total clauses	39	49 (100%)
3(1) 'purposes' (counting objectives, not clauses)		
Mandatory (introduced by 'shall')	8	20 (22%)
Discretionary (introduced by 'should')	47	70 (78%)
Total	55	90 (100%)

discretionary because they are written using "should". More than three-quarters – 70 (78%) – of the 90 *separate purposes* in in Bill C-11's broadcasting policy for Canada are discretionary, again because they are set out in relation to "should". (This analysis is set out in Appendix 1 and Appendix 2.)

66. The result is that the CRTC may ignore or indefinitely postpone implementation of at least 43 aspects or purposes of the broadcasting policy in Bill C-11: Table 3.

Table 3 43 section 3(1) purposes in Bill C-11 that CRTC may ignore because they use "should", not shall

Purpose in section 3(1) as proposed to be amended	Bill C-11	Purpose in section 3(1) as proposed to be amended	Bill C-11
1. Guard, enrich and strengthen Canada	(d)(i)	23. Use local, regional, national and international sources	(i)(ii)
2. Provide range of programming	(d)(ii)	24. Give community broadcasters "unique position of being able to provide varied programming"	(i)(ii)
3. Display Canadian talent	(d)(ii)	25. Include programs by Canadians that cover news and current events, reflecting Canadians' views	(i)(ii.1)
4. Foster Canadian program exports	(d)(ii)	26. Include educational and community programs	(i)(iii)
5. Offer information and analysis from Canadian point of view	(d)(ii)	27. Enable public to be exposed to differing views on matters of public concern	(i)(iv)
6. Serve Canadians' interests in programming	(d)(iii)	28. Have community element enable direct public participation	(i)(iv)
7. Serve Canadians' needs for employment opportunities	(d)(iii)	29. Maximize "contribution" (programs?) from Canadian producers whether or not independent	(i)(v)
8. Reflect Canadians' circumstances	(d)(iii)	30. Provide programming reflecting Canada's Indigenous cultures	(o)
9. Provide Indigenous people with opportunities to produce programming	(d)(iii.1)	31. Provide programming in Indigenous languages	(o)
10. Provide Indigenous people with broadcasting undertakings	(d)(iii.1)	32. Have Indigenous broadcasters operate	(o)
11. Support production and broadcast of original programs by Black and other racialized communities	(d)(iii.1.1)	33. Provide accessible programs in the system	(p)
12. Support production and broadcast of original programs in French	(d)(iii.2)	34. Enable persons with disabilities to develop own content and voices	(p)
13. Support production and broadcast of original programs by and for official language minority communities	(d)(iii.3)	35. Provide some programming that is accessible in the broadcasting system	(p.1)
14. Support community broadcasting	(d)(iii.4)	36. Online distributors to ensure discoverability of Canadian programming services and original Canadian content "in an equitable proportion"	(q)(i)
15. Ensure Canadian independent broadcasting undertakings exist and have vital role in system	(d)(iii.5)	37. Online distributors to provide reasonable terms to carry, package and retail Canadian programming services	(q)(ii)
16. Ensure racialized and ethnoculturally diverse Canadians produce and broadcast programs	(d)(iii.6)	38. Private programming services to "contribute significantly" to create and present Canadian programming	(s)(i)
17. Give racialized and ethnoculturally diverse Canadians opportunities to produce and broadcast programs for their communities	(d)(iii.7)	39. Private programming services should "be responsive" to public's changing demands	(s)(ii)
18. Adapt to scientific and technological change	(d)(iv)	40. Priority carriage of Canadian and Canadian local programming services by distribution services	(t)(i)
19. Broadcast high-standard programming	(g)	41. Efficient delivery of programming at affordable rates by distribution services	(t)(ii)
20. System should have varied and comprehensive programming	(i)(i)	42. Reasonable terms to carry, package and retail programming services	(t)(iii)

Purpose in section 3(1) as proposed to be amended	Bill C-11	Purpose in section 3(1) as proposed to be amended	Bill C-11
21. System should have programming for all ages, interests and tastes	(i)(i)	43. Distribution services provide local programming if they want, especially for underserved linguistic and cultural minority communities	(t)(iv)
22. Support creation, production and broadcast of original French-language programs	(i)(i.1)		

Note: this analysis excludes subsections 3(1)(l), (m) and (n) addressing the national public broadcaster, which will apparently to be the subject of a future bill

67. FRPC notes that among other things, Bill C-11 enables the CRTC to drop local programming requirements for private broadcasters because proposed subsection 3(1)(i)(ii) declares that within Canada's broadcasting system community broadcasters "are in the unique position" of collaborating with local organizations and community members "to provide varied programming to meet the needs of specific audiences. It is unclear why only community broadcasters – not the public broadcaster and not local radio or television stations, licensed to serve specific communities and their needs – are in the position, the "unique position", of providing varied programming to such communities.
- | |
|--|
| <p><i>Bill C-11, s. 2.1:</i></p> <p>3(1)(i) (ii) the programming provided by the Canadian broadcasting system should ... be drawn from local, regional, national and international sources, including, at the local level, from community broadcasters who, through collaboration with local organizations and community members, are in the unique position of being able to provide varied programming to meet the needs of specific audiences,</p> |
|--|
68. Even if the CRTC could implement all of the objects in the Broadcasting Policy for Canada – challenging, to say the least – its decisions show that it pays close attention to objects that are mandatory, and next to no attention to objects that are discretionary. One example relates to the CRTC's [1990 policy for Indigenous broadcasting](#). The CRTC typically reviews and updates its policies for commercial radio and television, and for distribution, every five years or so: the CRTC has been announcing its soon-to-come [review of the 1990 policy since 1997](#) – but has not yet completed it. As noted above, Indigenous broadcasting remains a discretionary objective under the 1991 Act and Bill C-11.
69. Accessibility is also a discretionary object in section 3(1). One of the tools available to ensure that programming is accessible is to provide closed captions, enabling those who are hard of hearing or cannot hear, to read text describing what others can hear. Captioning was first demonstrated in 1971²⁷ and in 1976 the Federal Communications Commission in the United States designated a special line to be used to transmit closed captions in that country.²⁸ The first closed-captioned TV series were broadcast in 1980 – *ABC Sunday Night Movie* (ABC), *The Wonderful World of Disney* (NBC) and *Masterpiece Theatre* (PBS).²⁹
70. In 1984, when already armed at the time with the ability to impose enforceable conditions of licence, the CRTC told broadcasters instead that "services which are directly related to the programming broadcast on the main channel, such as captioning for the hearing impaired, *should* receive high

²⁷ At the First National Conference on Television for the Hearing Impaired in Nashville, Tennessee: Mary Bellis, "Closed Captioning" online: about.com "Inventors" <<http://inventors.about.com/library/inventors/blclosedcaptioning.htm>> (accessed 22 November 2010).

²⁸ Mary Bellis, "Closed Captioning" online: about.com "Inventors" <<http://inventors.about.com/library/inventors/blclosedcaptioning.htm>> (accessed 22 November 2010).

²⁹ Mary Bellis, "Closed Captioning" online: about.com "Inventors" <<http://inventors.about.com/library/inventors/blclosedcaptioning.htm>> (accessed 22 November 2010).

priority, and it *expects* them to be come increasingly available.”³⁰ The CRTC finally required all Canadian TV broadcasters to caption 100% of their programming in 2007³¹ – five decades after captioning was invented.

71. As for the implementation of other discretionary (“should”) objects of the section 3(1) broadcasting policy, next to nothing is known, because the CRTC apparently either does not publish its own analyses of this matter, or because it does not undertake original research about the matter using its own data. FRPC has learned through access-to-information requests, for example, that the CRTC has neither undertaken nor commissioned any studies of the amount of original local news broadcast by large ownership groups’ radio stations ([A-2020-00066](#)). Nor has it undertaken nor commissioned any studies of the types of amounts of programming broadcast by radio stations in Canada ([A-2020-00065](#)).
 72. Continuing to use “should” for most objectives in Parliament’s broadcasting policy for Canada essentially means that in five or ten years from now - 2028 or 2033 – Parliament may well find that its new objectives for ‘recognizing and supporting’ Canada’s linguistic duality by emphasizing the “creation, production and broadcasting of original French-language programs” have not been met because the CRTC decided not to implement them.
- B. Bill C-11 does not address regulator’s non-compliance and lack of transparency
73. Implementation of Parliament’s existing and proposed broadcasting statutes depends on its delegate’s respect for Parliament’s statutes. The challenge for the Senate is that even if Parliament ultimately adopts some, many or all of the recommendations being made by parties interested in Bill C-11 there is no guarantee that Canada’s new broadcasting statute will ‘succeed’ any better than the 1991 *Broadcasting Act*: in each case the regulator is the CRTC.
 74. The problem is that, though not well-known, the CRTC has been disregarding and sidestepping mandatory requirements in the 1991 *Broadcasting Act* for at least twenty years.

1. CRTC has disregarded section 3(1)(f)’s requirement that each broadcasting undertaking make at least predominant use of Canadian programming

75. Section 3(1)(f) is one of the few mandatory sections of Parliament’s broadcasting policy. It requires each broadcasting undertaking to make maximum or at least predominant use of Canadian resources in presenting programming. It arguably speaks to the idea that in offline, linearly scheduled programming, Canadian programs should predominate. Until 2014, the CRTC required Canadian private TV

Broadcasting Act, 1991:

*3(1)(f) each broadcasting undertaking **shall** make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;*

³⁰ *Services using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM) Introduction*, Public Notice CRTC 1984-117 (Ottawa, 17 May 1984).

³¹ *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54 (Ottawa, 17 May 2007).

broadcasters to devote 55% of their broadcast day and 50% of their evening or prime-time schedule (6 pm – midnight), to Canadian programs. This regulation required 3,613 hours of Canadian programming per year (55% of the 365 18-hour days).

76. The CRTC **dropped** the 55% per year requirement in 2015, reducing the required level of Canadian programming hours to 1,095 hours per year (3 hours each evening)³² – a 70% reduction in required Canadian programming hours. A private Canadian TV station’s schedule can now be up to 83% foreign over the year – unless the CRTC imposes conditions of licence separately for each TV station requiring a different level of Canadian programming.³³

2. CRTC has disregarded section 25’s mandatory reporting requirement

77. In 1991 Parliament directed the CRTC to report to the Minister if the Commission finds the CBC in non-compliance with its regulations or conditions of its licences, in section 25 of the Act:

Broadcasting Act, 1991, s. 25:

Report of alleged contravention or non-compliance by Corporation

25 (1) Where the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened or failed to comply with any condition of a licence referred to in the schedule, any order made under subsection 12(2) or any regulation made under this Part, the Commission **shall** forward to the Minister a report setting out the circumstances of the alleged contravention or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith.

(2) The Minister **shall** cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is received by the Minister.

78. In 2000, 2004 and again in 2013 the CRTC found after holding public hearings that CBC had breached its conditions of licence or the CRTC’s regulations.
79. In response to access-to-information requests the CRTC has said it has no copies of any reports that it sent to the Minister: Table 4. Similarly, the Department of Canadian Heritage in September 2022 said that [it has no copies of any reports from the CRTC](#) about findings CBC in breach of the regulations or a condition of its licences.

Table 4 Three breaches of section 25 by CRTC (reports to Minister on CBC regulatory non-compliance)

Hearing	Decision	CRTC report
May 1991	Decision 2000-1 (¶92) finding that CBC breached a condition of licence for Canadian content	A-2022-00001 : None
Feb 2004	Decision 2004-531 (¶¶11-12) finding that CBC breached the CRTC’s regulations	A-2021-00078 : None
Nov 2021	Decision 2013-363 (¶83) finding that CBC breached a condition of licence for children’s prog’g	A-2020-00055 : None

³² In 2017 the CRTC dropped its regulation requiring private TV stations to devote at least 55% of the broadcast year to Canadian programs (former subsection 4(6) of the CRTC’s *Television Broadcasting Regulations, 1987*), but retained the requirement that the stations devote 50% of the period from 6pm to midnight to Canadian programs: *Television Broadcasting Regulations, 1987*, s. (7)(b).

³³ If the CRTC imposes the same condition of licence on each broadcaster, it would offend the requirement in section 9(1)(b) of the current *Broadcasting Act* that conditions be imposed as these relate “to the circumstances of the licensee”. (Regulations, by contrast, apply to all broadcasters or to separate classes of broadcaster: *Act*, s. 10(2).)

3. *CRTC disregards public hearing requirement for mandatory orders*

80. In 1991 Parliament gave the CRTC the power to issue mandatory orders. Under subsection 12(2) the CRTC may order “any person to do ... any ... thing ... under any ... order made or issued by the Commission under this Part” Parliament set out the process the CRTC was to use for such orders: subsection 18(1)(d) states that “the Commission **shall** hold a public hearing in connection with ... the making of an order under subsection 12(2)”.
81. The CRTC has for some time been issuing mandatory orders after holding hearings that are public in name only, “[without the appearance of the parties](#)”. As [its transcripts show](#), a non-appearing hearing is attended only by the panel of Commissioners and CRTC staff assigned to the hearing, and lasts just a few minutes. In 2018 the CRTC used ‘non-appearing hearings’ to issue four mandatory orders regarding non-compliance by licensees with three or more consecutive terms of regulatory non-compliance: CIBC-FM Parrsboro – [Decision CRTC 2018-110](#), CJWI Montreal – [Decision CRTC 2018-168](#), CJMS Saint-Constant – [Decision CRTC 2018-172](#) and CKMN-FM Rimouski/Mont-Joli - [Decision CRTC 2018-468](#) (which, as it happened, had already breached CRTC mandatory orders issued in 2011 and 2015).
82. More recently, the CRTC in August 2022 dispensed with non-appearing public hearings. It granted “must-offer status in English-language markets” to a discretionary programming service by issuing [Broadcasting Order 2022-224](#)³⁴ following a written public process and no public hearing of any kind – appearing or non-appearing.

4. *CRTC does not post all applications as its regulations require*

83. Like a court, much of the CRTC’s broadcasting work is triggered by applications. Some parties apply to the CRTC to obtain, to renew or to amend licences. Others apply to the CRTC to consider matters within the CRTC’s broadcasting jurisdiction, such as its policies.
84. The 1991 *Broadcasting Act* requires the CRTC to notify the public about licensing applications it receives and the licensing decisions it has issued. Section 19 states that the CRTC “**shall** cause notice” of these matters “to be published in the *Canada Gazette* and ... newspapers of general circulation” near the affected communities.
85. In 2010 the CRTC enacted regulations about applications: the [Canadian Radio-television and Telecommunications Rules of Practice and Procedure](#) (CRTC Rules). These regulations require the CRTC to publish all applications that it receives – online. A decade ago rumours spread that parties were submitting applications to the CRTC that it neither posted nor heard, several involving applications about the CRTC’s continued exemption of digital media services from regulations. In 2018 the Syndicat canadien de la fonction publique (SCFP) filed a [Part 1 application asking the CRTC to review its Digital Media Exemption Order \(DMEO\)](#). The CRTC did not post either this application or SCFP’s follow-up Part 1 application asking the CRTC to post its previous Part 1 application.

*CRTC Rules of Practice and procedure
Posting of application
23 The Commission [sic] **must** post on its website all applications that comply with the requirements set out in section 22 [related to style].*

³⁴ FRPC [intervened in support](#) of this service’s request for the order.

86. When asked about such ‘missing’ applications under the *Access to Information Act*, the CRTC disclosed another 64 applications that it had received without publishing (Appendix 4) – but this list did not include SCFP’s two Part 1 applications. It is therefore unknown how many applications the CRTC actually receives in a given year. The CRTC itself, moreover, does not publish determinations stating that it will not hear specific applications, thereby remaining unaccountable for such determinations.³⁵ Commission staff informally explained by e-mail that the CRTC “in some situations” decides not to hear applications because they are inconsistent with a CRTC policy, or should be dealt with in another way.

5. CRTC makes decisions before publishing applications

87. In 1991 Parliament formalized CRTC procedures for applications and decisions. Section 19 requires the CRTC to notify the public through the *Canada Gazette* and newspapers when it receives applications to issue, amend or renew licences, and then when it makes decisions to issue, amend or renew licences. By notifying the public of applications it has received the CRTC enables interested parties to submit comments.

Broadcasting Act, 1991:

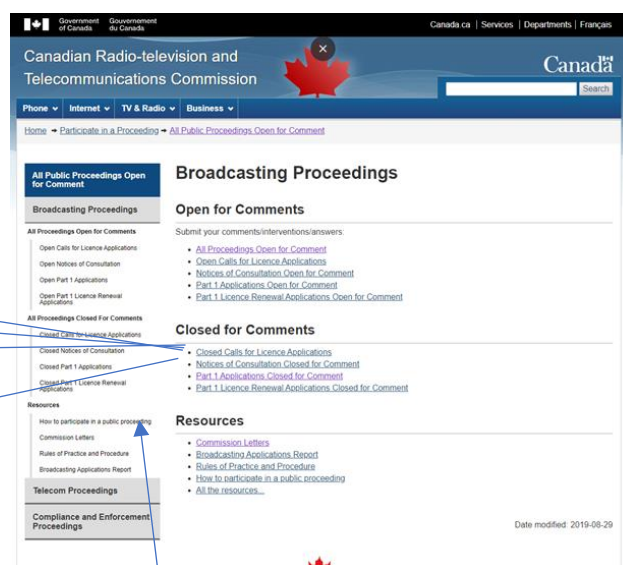
19 The Commission **shall** cause notice of
 (a) any application received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation,
 (b) any decision made by it to issue, amend or renew a licence,
 ...
 to be published in the *Canada Gazette* and in one or more newspapers of general circulation within any area affected or likely to be affected by the application, decision or matter ...

88. In dozens of cases each year, however, the CRTC makes decisions to amend licences – including transfers of ownership – before publishing the related applications, and does not make the decisions public at all.
89. It is somewhat difficult to find these applications and their related decisions (sometimes listed as ‘Letter decisions’). The CRTC has a main page for ‘Broadcasting Proceedings’ that offers links to proceedings that are either ‘[Open for Comments](#)’ (link to page as it appeared on 7 September 2022) or ‘Closed for Comments’: see Figure 2, next page.

[Remainder of page left intentionally blank]

³⁵ Hypothetically parties could apply to the courts for a writ of mandamus that would compel the CRTC to issue a decision to consider or not to consider a specific application. The *Broadcasting Act* itself does not require the CRTC to do so, and as the CRTC is ‘master’ of its own proceedings it is possible that a court may find that it is empowered to ignore its own regulations (‘guidelines’) under s. 6 of the *Broadcasting Act*: “6 The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.”

Figure 2 The CRTC's Broadcasting Proceedings page

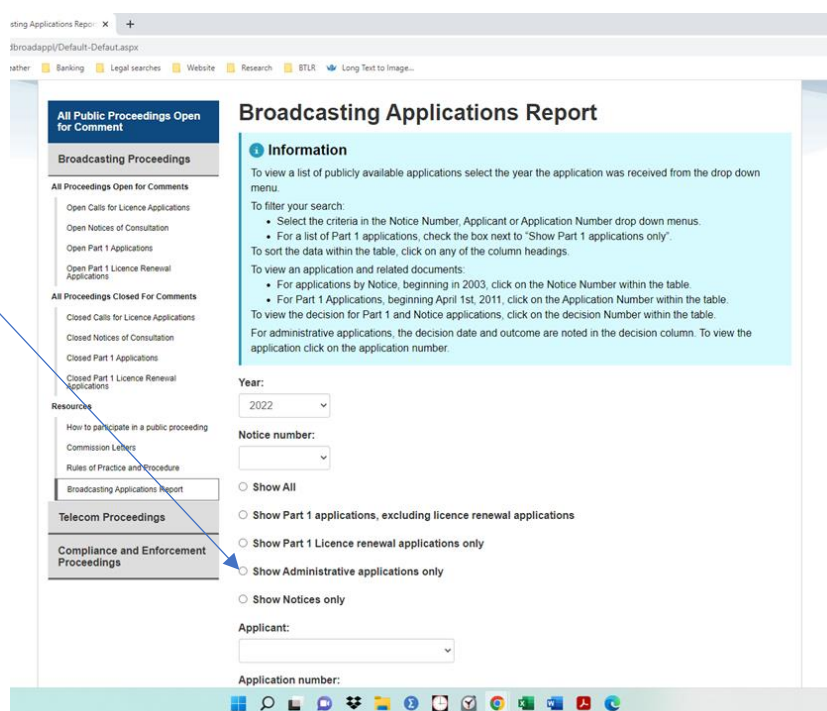


Closed calls for licence applications
 Notices of consultation closed for comment
 Part 1 applications closed for comment
 Part 1 licence renewal applications closed for comment.

90. Yet for the past several years the CRTC has also made decisions about dozens of applications in secret: the applications are made public after the decisions are made, and the decisions are not published. These applications and their related 'letter decisions' can only be found by going to the 'Broadcasting Applications Report' (BAR) shown in Figure 1, above, on the left.

91. The fourth of five options for the Broadcasting Applications Report is "Show Administrative applications only":

92. This 'administrative applications' page lists dozens of applications, brief descriptions of them, the dates they were filed and the outcome of the CRTC's decisions, for each year. None of the decisions is accessible through a link on the page, in the CRTC's decisions database or through its search engine.



93. According to the BARs for the pre-pandemic years of 2017, 2018 and 2019, the CRTC issued 168 decisions about applications: it approved 166 (98.8%) in whole (164, or 97.6%) or in part (2, or 1%) and denied two (1%) applications.

94. The applications were made public – either after or the day the decisions were made. The CRTC posted four out of five (135 or 80%) of the applications days, weeks or months *after* making its decisions, and posted all but two of the remaining 35 (19%) of the applications the date it made the decisions. (No posting date was shown for two of the applications.)
95. While almost three-quarters of the applications involved technical amendments or extensions of deadlines, a quarter (44) involved changes in broadcast ownership and/or control (32) or in programming requirements (12), including 7 applications to change Canadian content requirements in some way (Appendix 5).
96. The CRTC’s practice of publishing applications after it makes decisions might fit within the language, if not the spirit, of the 1991 *Act*, as it section 19 does not require the Commission to publish applications before it decides them – it simply requires that the public be ‘notified’.

6. *CRTC does not report on the implementation of Parliament’s broadcasting policy for Canada*

97. Finally, a fundamental problem for Parliament is that as mentioned previously, the CRTC has not reported regularly on its implementation of Parliament’s current broadcasting policy for Canada since 1991. The annual *Communications Monitoring Reports* it has published since the late 1990s provide a scorecard of industry ‘players’ – their share of total revenues, profits, subscribers etc. – but do not tell Parliament or Canadians how much programming in the broadcasting system is Canadian, and which broadcasters are doing the best job.

98. FRPC respectfully submits that Canadians today expect more transparency and accountability, rather than less.
99. In 2019, in fact, the *Canadian Radio-television and Telecommunications Commission Act* did not include any reporting requirements for the CRTC. It was amended at that time to require the CRTC to report annually to the Minister about steps it has taken regarding accessibility.

Canadian Radio-television and Telecommunications Commission Act

Annual report

13 (1) *The Commission shall, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.*

Broadcasting Act

(2) *The report must include information about the following in respect of the fiscal year, including their number:*

- (a) inquiries conducted under subsection 12(1) of the Broadcasting Act in relation to the identification, prevention and removal of barriers;*
- (b) inquiries conducted under that subsection in relation to sections 42 to 44 of the Accessible Canada Act;*
- (c) orders made under subsection 12(2) of the Broadcasting Act in relation to the identification, prevention and removal of barriers; and*
- (d) orders made under that subsection in relation to sections 42 to 44 of the Accessible Canada Act.*

101. Bill C-11 also proposes that the CRTC be required – though only in matters involving official language communities – to provide such communities with information about its policies.

Bill C-11, s. 6, adding the following after s. 5 of the Act:

5.2(2) (2) When engaging in consultations required by subsection (1), the Commission shall

(a) gather information to test its policies, decisions and initiatives;

...

(d) provide them with all relevant information on which those policies, decisions or initiatives are based;

....

102. Yet neither the *CRTC Act*, the *Broadcasting Act* nor Bill C-11 otherwise requires the CRTC to report on how it is implementing Parliament's Broadcasting Policy for Canada. This gap makes it impossible to determine whether the CRTC is implementing Parliament's Broadcasting Policy for Canada, and also makes it impossible to know what sections of that policy require more work.

103. The Forum is respectfully asking the Senate to revise the *CRTC Act* to require the Commission to post and maintain on its website annual reports that provide comprehensive and objective evidence about its implementation of 3(1) of the *Broadcasting Act*.

104. Recommending that the CRTC report annually and publicly on the implementation of section 3(1) of the *Act* – along with, if it wishes, its financial report card for the industry³⁶ – should not be understood, in the vernacular of contemporary American philosophers Jesse Braham and Taylor Swift, as “haters gonna hate”.³⁷ It would be absurd, after all, to reduce proposals for objectively evaluating all objective evaluation of government institutions and their implementation of their statutes to an *ad hominem* categorization – when Parliament and Canadians are entitled to know how the *Broadcasting Act* is being met.

C. Bill C-11 covertly transfers power from CRTC to Cabinet

105. Even if the Parliament ensures that all key objectives are mandatory and also requires timely, transparent and accountable decision-making, Bill C-11 effectively re-empowers Cabinet to control the regulation of Canada's broadcasting system as it controlled licensing from 1932 to 1967. Under Bill C-11 the CRTC will remain the face of regulation – but true and final power will reside with Cabinet, based on a process that is largely not public and not transparent. Essentially, this change represents the politicization of key powers over broadcast regulation in Canada.

106. At present, Cabinet is empowered to intervene in five areas of the CRTC's mandate:

107. Cabinet may issue directions to the CRTC about “broad policy matters” related to the broadcasting policy for Canada (s. 7(1)(a)) and the regulatory policy in the *Act* (s. 7(1)(b))

³⁶ The CRTC's *Communications Monitoring Reports*, issued annually.

³⁷ Jesse Graham is said to written, *Haters Gone Hate*, in 2013; Taylor Swift recorded *Shake It Off* n 2014. According to tThe latter's chorus

cause the haters gonna hate, hate, hate, hate, hate

and the players gonna play, play, play, play, play.

Kevin Rieffel, Haley Guiliano LLP, “Who Used ‘Haters Gonna Hate’ Lyrically First and Should it be

Protected by Copyright?”, linked.in ([4 November 2015](#)).

108. Cabinet may issue directions about the frequencies that may be used (s. 26(1)(a) and (b), certain applicants that cannot be licensed (or whose licences cannot be renewed or amended) (s. 26(1)(c)), and about issuing licences to agents of a province (s. 26(1)(d))
109. Cabinet may direct the CRTC to order licensees through Canada or a part of Canada to broadcast a specific program of urgent importance (s. 26(2))
110. Cabinet may on its own initiative or in response to a petition, order the CRTC to set aside, or reconsider and hear a decision to issue, amend or renew a licence (s. 28)
- and
111. Cabinet may issue directions to the CRTC about implementing Canada's international trade agreements (s. 27).
112. The 1991 Act specifically prohibits Cabinet from directing the CRTC's decisions about individual licences and does not empower it to override the CRTC's powers to set regulations.
113. Bill C-11 gives Cabinet new power to issue directions to the CRTC about the orders and regulations issued by the CRTC to groups of or individual online or offline broadcasters.
114. By our count Bill C-11 gives Cabinet direct control over the 40 existing and new powers purportedly given to the CRTC in existing section 10(1) of the *Broadcasting Act*, and in proposed sections 9.1(1) and 11.1: Table 5 .

<i>Broadcasting Act, 1991</i>

<i>Policy directions</i>

<i>[7] (2) No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence</i>

<i>Bill C-11, s. 7 – amending s. 7 of the Broadcasting Act by adding</i>
--

<i>For greater certainty</i>

<i>(7) For greater certainty, an order may be made under subsection (1) with respect to orders made under subsection 9.1(1) or 11.1(2) or regulations made under subsection 10(1) or 11.1(1).</i>

Table 5 Forty new powers that Bill C-11 would give to Cabinet

Bill C-11, subsection 7(7): “For greater certainty an order may be made under subsection (1) with respect to orders made under subsection 9.1(1) or 11.1(2) or regulations made under subsection 10(1) or 11.1(1)”	
9.1(1) CRTC may “make orders imposing conditions on the carrying on of broadcasting undertakings” which apply	
9.1(2) ... “to all persons carrying on broadcasting undertakings, to all persons carrying on undertakings of any class established by the Commission in the order <u>or to a particular person carrying on a broadcasting undertaking</u> ”, with respect to	
1.	% of programs and time that must be Canadian
2.	% of Canadian programs that must be 1st run original French-language programs
3.	% of programs that must be original French-language programs
4.	% of programs devoted to specific genres (diversity of programming)
5.	showcasing & discoverability of Canadian programs and programming services, such as original French-language programs
6.	offline broadcasters’ contracts with telcos to distribute programming to the public
7.	carriage of programming as priority for distribution undertakings
8.	carriage by distribution undertakings of specific programming services
9.	requirement for online services to carry local broadcast services’ programming services
10.	terms of service in contracts between distribution undertakings and their subscribers
11.	access by persons with disabilities to programming
12.	carriage of emergency messages
13.	any change in ownership or control of licensed broadcasting undertakings
14.	information from licensees or exempted broadcasters about ownership and affiliation
15.	information from all broadcasters about finances, programming, expenditures and audiences
16.	continued ownership and control by Canadians of Canadian broadcasting undertakings

Bill C-11, subsection 7(7): “For greater certainty an order may be made under subsection (1) with respect to orders made under subsection 9.1(1) or 11.1(2) or regulations made under subsection 10(1) or 11.1(1)”	
9.1(4) A copy of each order that the Commission proposes to make under this section shall be published on the Commission’s website and a reasonable opportunity shall be given to persons carrying on broadcasting undertakings and other interested persons to make representations to the Commission with respect to the proposed order.	
9.1 (5) The Commission shall publish each order that is made under this section on its website.	
10(1)	CRTC may “make regulations” that apply
10(2)	to all broadcasters or to all broadcasters of a class in furtherance of its objects re
17.	% of time devoted to broadcast of Canadian programs
18.	Definition of Canadian content for broadcasting
19.	Standards of programs and allocation of time for s.3(1) broadcasting policy
20.	Character of advertising and amount of time devoted to advertising
21.	% of time for partisan political broadcasting time allocated to political parties and candidates
22.	Network ³⁸ operations
23.	Carriage of foreign or other programming services by distributors
24.	Resolving “by way of mediation or otherwise” disputes over carriage between programming and distribution services
25.	Unjust discrimination, undue/unreasonable preference, or undue/unreasonable disadvantage by a broadcaster
26.	Information to be submitted to the CRTC by licensees about programs and finances
27.	Registration of broadcasting undertakings with the CRTC
28.	Audit of licensees’ records and books of account
29.	“respecting other such matters as it deems necessary for the furtherance of its objects”
10(3) A copy of each regulation that the Commission proposes to make under subsection (1) shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be given to persons carrying on broadcasting undertakings and other interested persons to make representations to the Commission with respect to the regulation.	
10(1.1)	When it makes regulations about Canadian content (under s. 10(1)(b)) CRTC must consider
30.	IP rights that Canadian producers have in a program so they can control and benefit fairly from its use
31.	Whether Canadians primarily hold key creative positions in a production
32.	Whether a program advances Canadian artistic and cultural expression
33.	Whether online undertakings or programming undertakings work with Canadians and
34.	“(e) any other matter that may be prescribed by regulation”
10(1.2) The Governor in Council may make regulations prescribing matters that the Commission is required to consider under paragraph [10](1.1)(e).	
11.1(1)	CRTC “may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings” to
35.	develop, finance, produce, promote Canadian programs for broadcasting by broadcasting undertakings
36.	support, promote, train Canadian creators of programs for broadcast by broadcasting undertakings
37.	support participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under the Act
11.1(2)	CRTC “may make an order respecting expenditures to be made by a particular person carrying on a broadcasting undertaking” to
38.	develop, finance, produce, promote Canadian programs for broadcasting by broadcasting undertakings
39.	support, promote, train Canadian creators of programs for broadcast by broadcasting undertakings
40.	support participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under the Act

115. How might proposed section 7(7) work?

116. Hypothetically, new section 7(7) will allow a non-Canadian online programming service to seek the support of all or certain members of the government to ask Cabinet to direct the CRTC to reduce the service’s expenditure requirements to develop or finance Canadian programs.³⁹ The public would have no notice of meetings or documents soliciting this support.

³⁸ Under the *Broadcasting Act* a network exists if a Broadcaster A gives control over any of its broadcasting schedule to Network Operator B. Network Operator B then assumes responsibility for the broadcasts made while it is in control. A group of stations owned by the same licensee is often described incorrectly as a network – in that case, an owner controls the stations and no delegation of control has been made. I

³⁹ Bill C-11, s. 14, amended “Regulations – expenditures”, s. 11.1(1)(a).

117. If Cabinet agreed to issue the Direction, the Minister would then have the direction published in the *Canada Gazette*.⁴⁰ The Minister would next consult the CRTC about the proposed direction.⁴¹ There is no requirement for the communications in this consultation to be made public.
118. The Minister would lay the proposed direction before the House of Commons and the Senate.⁴² The proposed direction would not be referred to the relevant committee of the House,⁴³ but interested parties who follow Parliament's day-to-day activities would have up to 30 days to make representations.⁴⁴
119. On the day after the deadline for representations Cabinet could order the CRTC to implement the order as laid before Parliament or otherwise revised by Cabinet.⁴⁵
120. The Minister would then publish the representations received about the original direction, at an unknown time.⁴⁶
121. One concern raised by proposed subsection 7(7) is that it effectively overrides the current *Broadcasting Act*'s declaration in subsection 3(2) that "... the objectives of the broadcasting policy set out in subsection [3](1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority." Bill C-11's amendment instead creates a two-tier regulatory system: parties with sufficient resources will be able to meet regularly and privately with Members of Parliament and Cabinet Ministers to advocate on behalf of the parties – those without such resources, will not, and Canadians will be limited to making their views known to an emasculated CRTC.
122. Proposed section 7(7) also raises many concerns about transparency and accountability. Bill C-11 does not set out a process for the CRTC to follow once it receives Cabinet's order: will it invite comments? Will it hold a public hearing? And – realistically – would the public's participation matter? How would the public know which arguments and evidence are actually driving the CRTC's decisions – the arguments and evidence presented to the Commission, or that proposed to the Members of Parliament and of Cabinet? Public participation becomes effectively moot if the public does not know the arguments it must meet and the evidence it must present.

⁴⁰ *Broadcasting Act*, s. 8(1)(a).

⁴¹ *Broadcasting Act*, s. 8(4): "The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1)."

⁴² *Ibid.*, s. 8(1)(b).

⁴³ Bill C-11 would drop existing section 8(2) of the *Broadcasting Act*: "Where a proposed order is laid before a House of Parliament pursuant to subsection (1), it shall stand referred to such committee thereof as the House considers appropriate to deal with the subject-matter of the order."

⁴⁴ Bill C-11, s. 8(1), amending s. 8(2) of the *Act*: "[8](2) The Minister shall (a) specify in the notice the period – of at least 30 days from the day on which the notice was published under paragraph (1)(a) – during which interested parties may make representations;"

⁴⁵ Bill C-11, s. 8(1), amending s. 8(3) of the *Act*: "[8](3) The Governor in Council may, after the period referred to in paragraph (2)(a) has ended and the proposed order has been laid before each House of Parliament, implement the proposal by making an order under section 7, either in the form proposed or revised in the manner that the Governor in Council considers appropriate."

⁴⁶ Bill C-11, s. 8(1), amending s. 8(2)(b) of the *Act*: "[8](2) The Minister shall ...(b) publish the representations that are made during that period."

123. Proposed subsection 7(7) also effectively constrains meaningful use of the two appeal mechanisms now in the *Act*: petitions to Cabinet and applications for leave to appeal to the Federal Court of Appeal. Section 28 still enables parties to petition Cabinet – but only about CRTC decisions to issue, amend or renew licences. Under Bill C-11, however, licences may become irrelevant in the short- to medium-term and true power resides in the orders and conditions that the CRTC may (or may not) issue.

<i>Broadcasting Act,</i>	<i>Bill C-11</i>
28 (1) Where the Commission makes a decision to issue, amend or renew a <u>licence</u> , the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).	28 (1) <u>If</u> the Commission makes a decision under <u>section 9</u> to issue, amend or renew a <u>licence</u> , the Governor in Council may, within <u>180</u> days after the date of the decision, on petition in writing of any person received within 45 days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).

124. The Senate could recommend changing Cabinet's section 28 power to set aside licensing decisions, to address "decisions" more generally of the Commission. But would it be practical for parties to petition Cabinet about CRTC decisions made at the direction of Cabinet?
125. As for section 31, which enables parties to appeal 'decisions and orders' of the CRTC to the Federal Court of Appeal, Canadian courts have deferred for many years to Cabinet and have granted its decision-making broad confidentiality. At least in the short- to medium-term, those attempting to appeal CRTC decisions made at the behest of Cabinet will bear a heavy burden to overcome this deferential posture.

III. Summary recommendations and practical ideas for Bill C-11

126. To reiterate the statement made at the outset of this submission, FRPC supports passage of Bill C-11 provided several key concerns are addressed. Appendix 6 sets out Bill C-11 and our specific recommendations, clause by clause.
127. In terms of practical ideas for Bill C-11, FRPC is proposing amended or additional text with respect to what might be considered as the purposes of the *Broadcasting Act*, as well as changes to the CRTC's way of implementing those purposes. Table 6 sets out the Forum's proposals in relation to the policy that the *Broadcasting Act* is intended to implement. Table 7 sets out FRPC's proposals in relation to the CRTC's exercise of its responsibilities. Our goal in both cases is to ensure that Parliament's new broadcasting legislation achieves its purposes, and serves the public interest.

Table 6 FRPC proposals regarding broadcast policy and Parliament's requirements

Rationale	FRPC proposals regarding broadcast policy and powers	Location of change		
		Bill C-11	1991 Act	CRTC Act
Consistency and coherence	Use the definition of 'decision in the <i>Telecommunications Act</i>	2(2)	2(1)	Not Applicable
Transparency and accountability, and declaration of single regulatory authority	Retain CRTC independence; maintain integrity of FCA appellate review => drop proposed s. 7(7)	7(7)	3(2) 7(7)	NA
Clarity of jurisdiction and coherence re exemption	Drop proposed sections 4.1 and 4.2 as these are unclear, subject at least certain user-uploaded programs to regulation, while conflicting with the principle under existing s. 9(4) that only broadcasters able to implement s. 3(1) should be regulated	4	[FRPC] 4.1 and 4.2] 9(4)	NA
Canadian programming services must have access to Canadian audiences on reasonable terms	Empower CRTC to order online distributors operating in whole or in part in Canada to carry Canadian programming services, and to set the rates of those services to enable them to implement s. 3(1)	10	9.1(h)(i)	NA
Require CRTC to meet Parliament's requirements for Indigenous and accessible programming	Replace "should" with "shall" in proposed subsections 3(1)(o) [Indigenous broadcasting] and (p) [accessibility] of the current Act	3(7)	9(1)(o) 9(1)(p)	NA

Table 7 FRPC proposals concerning the CRTC's exercise of its authority

Rationale	FRPC proposals regarding CRTC's exercise of its authority	Location of changes		
		Bill C-11	1991 Act	CRTC Act
Policy evaluation	Require the CRTC to submit objective information regarding its implementation of each objective of the Broadcasting Policy for Canada and its compliance with the Act's procedural requirements, in an annual report to Parliament through the Minister and maintained on the CRTC's website	37	NA	13.2
Timeliness	Reasonably timely determinations by the CRTC in all areas, including mediation and negotiation between programming services and all distributors	[FRPC] 17(1.1)	[FRPC] 20(3.2)	NA
	Publish orders within seven days of their being made	10	[FRPC] 9.1(5)	NA
Transparency and accountability	Require the CRTC to publish all applications before deciding them and to provide a reasonable time frame for public comment	[FRPC] 16.1	[FRPC] 19.3	NA
	Ensure that all CRTC decision-making panels consult with the CRTC and may consult with CRTC staff	17(1)	20(1), 20(1.1)	NA
	Require that all CRTC decisions be signed by those who make them	[FRPC] 17(1.1)	[FRPC] 20(3.1)	NA
	Require CRTC to publish evidence regarding decisions being made about any community, before making the decisions	6	5.2(1)	NA
	Require publication of all applications meeting basic criteria for style and contact information before deciding the applications, and all decisions	[FRPC] 16.1	[FRPC] 19.2	NA
	Clarify 'registration': its purposes, who must register, the information they must provide and whether registrations are permanent.	11(8)	10(i)	NA
Predictability	Eliminate the CRTC's predisposition to find that unjust discrimination is not 'undue' – that is, that a broadcaster may be unjustly discriminating, but not enough (unduly) to require the CRTC to intervene	11(8)	10(1)(e) 10(1)(h.1)	NA

Proposal that the Senate review the CRTC

128. Last, the Forum respectfully invites the Senate undertake an objective study of the CRTC and its performance because, frankly, no one else seems able to do so. The 1970 Report of the Special Senate Committee on Mass Media stands as a beacon of thorough research, analysis and recommendations about Canada's broadcasting system – and Canadians deserve today to have the same level of scrutiny applied to the CRTC to ensure that, going forward, they can have trust in this important institution.
129. The CRTC's performance must be reviewed objectively to ensure that it is complying with Canadian law and its enabling statutes. Past analyses of Canada's broadcasting system – from the Caplan-Sauvageau Task Force and the Lincoln Committee's report, to the Broadcasting and Telecommunications Legislative Review Panel report – have focussed on the entire broadcasting system and its future. Yet the CRTC is responsible not just for broadcasting, but for telecommunications, fair elections and accessibility:

Current responsibilities of the CRTC	Source
Ensure availability of and affordable access to Canadian programming	1991 <i>Broadcasting Act</i>
Ensure high-quality, widely available and affordable telephone and Internet service	1993 <i>Telecommunications Act</i>
Ensure fairness in broadcasts related to elections	<i>Elections Canada Act</i>
Ensure that programming and distribution are accessible to all Canadians	<i>Accessible Canada Act</i>
Implement <i>Broadcasting Act</i> as set out in that Act; implement <i>Telecommunications Act</i> ; report as required by <i>Accessible Canada Act</i>	<i>CRTC Act</i>

130. It is time to review the CRTC's performance, to ensure that it is properly equipped and is subject to proper oversight because, quite from adding to the CRTC's responsibilities through Bill C-11, the government is also proposing in Bill C-18 to add negotiations between digital intermediaries and non-broadcast news organizations to the CRTC's 'List of Things to Do'.
131. Canadians deserve to know that the CRTC – which regulates sectors worth billions of dollars and on which Canadians rely for nearly all communications and an important aspect of their democracy insofar as elections are concerned– is functioning properly, is serving the public interest and can be trusted to do so going forward.

Appendices

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Appendix 1 Bill C-11's proposed changes to subsections 2(3) to 5(2)

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
<p>2(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.</p> <p>[1 objective]</p>	<p>INTERPRETATION</p> <p>2(3) This Act shall be construed and applied in a manner that is consistent with</p> <p>(a) the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings; and</p> <p>(B) THE COMMITMENT OF THE GOVERNMENT OF CANADA TO ENHANCE THE VITALITY OF OFFICIAL LANGUAGE COMMUNITIES AND TO SUPPORT AND ASSIST THEIR DEVELOPMENT, AS WELL AS TO FOSTER THE FULL RECOGNITION AND USE OF BOTH ENGLISH AND FRENCH IN CANADIAN SOCIETY.</p> <p>[2 objectives]</p>
<p>3 (1) It is hereby declared as the broadcasting policy for Canada that</p>	<p>3 (1) It is hereby declared as the broadcasting policy for Canada that</p>
<p>[=> see 3(1)(b) and 3(2)]</p>	<p>[=> see 3(1)(b) and 3(2)]</p>
<p>(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;</p> <p>[=> see above and 3(1)(d)(i)]</p> <p>[1 objective] / 2</p>	<p>(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians, AND IT IS RECOGNIZED THAT IT INCLUDES FOREIGN BROADCASTING UNDERTAKINGS THAT PROVIDE PROGRAMMING TO CANADIANS;</p> <p>[2 objectives – ownership and control] / 4</p>
<p>[resembles subsection 3(1)(f) <=]</p>	<p>(a.1) EACH BROADCASTING UNDERTAKING SHALL contribute TO THE IMPLEMENTATION OF THE OBJECTIVES OF THE BROADCASTING POLICY SET OUT IN THIS SUBSECTION IN A MANNER THAT IS APPROPRIATE IN CONSIDERATION OF THE NATURE OF THE SERVICES PROVIDED BY THE UNDERTAKING;</p> <p>[1 objective] / 5</p>
<p>[Declaration]</p> <p>(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;</p>	<p>[Declaration]</p> <p>(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;</p>
<p>(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;</p> <p>[1 objective] / 3</p>	<p>(c) while sharing common aspects, English and French language broadcasting operate under different conditions. — IN PARTICULAR, THE MINORITY CONTEXT OF FRENCH IN NORTH AMERICA — and may have different requirements;</p> <p>[1 objective] / 6</p>

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
(d) the Canadian broadcasting system should	(d) the Canadian broadcasting system should
(i) serve to safeguard , enrich and strengthen the cultural, political, social and economic fabric of Canada, [3 objectives] /6	(i) serve to safeguard , enrich and strengthen the cultural, political, social and economic fabric of Canada, [3 objectives] / 9
(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view [3 objectives]/9	(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view, AND FOSTER AN ENVIRONMENT THAT ENCOURAGES THE DEVELOPMENT AND EXPORT OF CANADIAN PROGRAMS GLOBALLY , [4 objectives] /13
(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children , including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and [4 objectives]/13	(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians — including Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socioeconomic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages — and reflect their circumstances and aspirations, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples within that society, [4 objectives] /17
	(iii.1) PROVIDE OPPORTUNITIES TO INDIGENOUS PERSONS TO PRODUCE PROGRAMMING IN INDIGENOUS LANGUAGES, ENGLISH OR FRENCH, OR IN ANY COMBINATION OF THEM, AND TO CARRY ON BROADCASTING UNDERTAKINGS, AND [3 objectives] /20
	(iii.11) PROVIDE OPPORTUNITIES TO BLACK AND OTHER RACIALIZED PERSONS IN CANADA BY TAKING INTO ACCOUNT THEIR SPECIFIC NEEDS AND INTERESTS, NAMELY, BY SUPPORTING THE PRODUCTION AND BROADCASTING OF ORIGINAL PROGRAMS BY AND FOR BLACK AND OTHER RACIALIZED COMMUNITIES, [3 objectives]/23

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
	<p>(III.2) SUPPORT THE PRODUCTION AND BROADCASTING OF ORIGINAL PROGRAMS IN FRENCH,</p> <p>[2 objectives]/25</p>
	<p>(III.3) ENHANCE THE VITALITY OF OFFICIAL LANGUAGE MINORITY COMMUNITIES IN CANADA AND SUPPORT AND ASSIST THEIR DEVELOPMENT BY TAKING INTO ACCOUNT THEIR PARTICULAR NEEDS AND INTERESTS — IN PARTICULAR THAT FRENCH IS A MINORITY LANGUAGE IN CANADA AND THAT ENGLISH IS A MINORITY LANGUAGE IN QUEBEC — INCLUDING THROUGH SUPPORTING THE PRODUCTION AND BROADCASTING OF ORIGINAL PROGRAMS BY AND FOR THOSE COMMUNITIES,</p> <p>[5 objectives]/30</p>
	<p>(III.4) SUPPORT COMMUNITY BROADCASTING THAT REFLECTS BOTH THE DIVERSITY OF THE COMMUNITIES BEING SERVED , INCLUDING WITH RESPECT TO THE LANGUAGES IN USE WITHIN THOSE COMMUNITIES AND TO THEIR ETHNOCULTURAL AND INDIGENOUS COMPOSITION, AND THE HIGH ENGAGEMENT AND INVOLVEMENT IN COMMUNITY BROADCASTING BY MEMBERS OF THOSE COMMUNITIES, INCLUDING WITH RESPECT TO MATTERS OF PUBLIC CONCERN,</p> <p>[2 objectives]/32</p>
	<p>(III.5) ENSURE THAT CANADIAN INDEPENDENT BROADCASTING UNDERTAKINGS CONTINUE TO BE ABLE TO PLAY A VITAL ROLE WITHIN THAT SYSTEM,</p> <p>[1 objective]/33</p>
	<p>(III.6) SUPPORT THE PRODUCTION AND BROADCASTING OF PROGRAMS IN A DIVERSITY OF LANGUAGES THAT REFLECT RACIALIZED COMMUNITIES AND THE DIVERSITY OF THE ETHNOCULTURAL COMPOSITION OF CANADIAN SOCIETY, INCLUDING THROUGH BROADCASTING UNDERTAKINGS THAT ARE CARRIED ON BY CANADIANS FROM RACIALIZED COMMUNITIES AND DIVERSE ETHNOCULTURAL BACKGROUNDS,</p> <p>[3 objectives]/36</p>
	<p>(III.7) PROVIDE OPPORTUNITIES TO CANADIANS FROM RACIALIZED COMMUNITIES AND DIVERSE ETHNOCULTURAL BACKGROUNDS TO PRODUCE AND BROADCAST PROGRAMS BY AND FOR THOSE COMMUNITIES,</p> <p>[3 OBJECTIVES]/39</p>
<p>(iv) be readily adaptable to scientific and technological change;</p> <p>[1 objective] /14</p>	<p>(iv) be readily adaptable to scientific and technological change;</p> <p>[1 objective] /40</p>
<p>(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;</p> <p>[1 objective] / 15</p>	<p>(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;</p> <p>[1 objective] /41</p>

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
<p>(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;</p> <p>[3 objectives] / 18</p>	<p>(f) each Canadian broadcasting undertaking shall EMPLOY AND make maximum use, and in no case less than predominant use, of Canadian creative and other HUMAN resources in the creation, PRODUCTION and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;</p> <p>[5 objectives] / 46</p>
	<p>(f.1) EACH FOREIGN ONLINE UNDERTAKING SHALL MAKE THE GREATEST PRACTICABLE USE OF CANADIAN CREATIVE AND OTHER HUMAN RESOURCES, AND SHALL CONTRIBUTE IN AN EQUITABLE MANNER TO STRONGLY SUPPORT THE CREATION, PRODUCTION AND PRESENTATION OF CANADIAN PROGRAMMING, IN ACCORDANCE WITH THE OBJECTIVES OF THE BROADCASTING SET OUT IN THIS SUBSECTION AND TAKING INTO ACCOUNT THE LINGUISTIC DUALITY OF THE MARKET THEY SERVE;</p> <p>[5 objectives] / 51</p>
<p>(g) the programming originated by broadcasting undertakings should be of high standard;</p> <p>[1 objective] / 19</p>	<p>(g) the programming OVER WHICH A PERSON WHO CARRIES ON A BROADCASTING UNDERTAKING HAS PROGRAMMING CONTROL should be of high standard;</p> <p>[1 objective] / 52</p>
<p>(h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast; [=> resembles 2(3)]</p> <p>[1 objective] / 20</p>	<p>(h) all persons who carry on broadcasting undertakings have a responsibility for the programs that they broadcast AND OVER WHICH THEY HAVE PROGRAMMING CONTROL;</p> <p>[1 objective] / 53</p>
<p>(i) the programming provided by the Canadian broadcasting system should</p> <p>(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes, [=> see i(iv) – 'differing views'] [=> see g – 'high standard'] [=> see f – 'predominantly Canadian resources']</p> <p>[2 objective] / 22/</p>	<p>(i) the programming provided by the Canadian broadcasting system should</p> <p>(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes, [=> see i(iv) – 'differing views'] [=> see g – 'high standard'] [=> see f – 'predominantly Canadian resources']</p> <p>[2 objectives] / 55</p>

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
	<p>(i.1) RECOGNIZE AND SUPPORT CANADA'S LINGUISTIC DUALITY BY PLACING SIGNIFICANT IMPORTANCE ON THE CREATION, PRODUCTION AND BROADCASTING OF ORIGINAL FRENCH LANGUAGE ORIGINAL PROGRAMS, INCLUDING THOSE FROM FRENCH LINGUISTIC MINORITY COMMUNITIES,</p> <p>[2 objectives]/57</p>
<p>(ii) be drawn from local, regional, national and international sources,</p> <p>[1 objective] / 23</p>	<p>(ii) be DRAWN from local, regional, national and international sources, INCLUDING, AT THE LOCAL LEVEL, FROM COMMUNITY BROADCASTERS WHO, THROUGH COLLABORATION WITH LOCAL ORGANIZATIONS AND COMMUNITY MEMBERS, ARE IN THE UNIQUE POSITION OF BEING ABLE TO PROVIDE VARIED PROGRAMMING TO MEET THE NEEDS OF SPECIFIC AUDIENCES,</p> <p>[1 objective]/58</p>
	<p>(ii.1) INCLUDE PROGRAMS PRODUCED BY CANADIANS THAT COVER NEWS AND CURRENT EVENTS — FROM THE LOCAL AND REGIONAL TO THE NATIONAL AND INTERNATIONAL — AND THAT REFLECT THE VIEWPOINTS OF CANADIANS, INCLUDING THE VIEWPOINTS OF INDIGENOUS PERSONS AND OF CANADIANS FROM RACIALIZED COMMUNITIES AND DIVERSE ETHNOCULTURAL BACKGROUNDS;</p> <p>[2 objectives]/60</p>
<p>(iii) include educational and community programs,</p> <p>[1 objective] / 24</p>	<p>(iii) include educational and community programs,</p> <p>[1 objective]/61</p>
<p>(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and</p> <p>[1 objective] / 25</p>	<p>(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and to directly participate in public dialogue on those matters including through the community element; and</p> <p>[1 objective]/62</p>
<p>(v) include a significant contribution from the Canadian independent production sector;</p> <p>[1 objective] / 26</p>	<p>(v) include the greatest possible contribution from the Canadian production sector, whether it is independent or affiliated with or owned by a broadcasting undertaking;</p> <p>[1 objective]/63</p>
<p>[Declaration]</p> <p>(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;</p>	<p>[Declaration]</p> <p>(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;</p>
<p>(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;</p>	<p>(k) a range of broadcasting services in English and in French shall be PROGRESSIVELY extended to all Canadians;</p>

1991 Broadcasting Act: Objectives Bold & struck through – replaced or dropped in C-11 Pink background – mandatory objective 56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion (" should " / " may ")	Bill C-11 (June 2022): Objectives HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language Pink background – mandatory objective 91 broadcast policy objectives in section 3(1) (62% increase compared to 1991 Act) of which 71 are discretionary (" should " / " may ")
[1 objective] / 27	[1 objective] / 64
(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains; [1 objective] / 28	(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide BROADCASTING SERVICES incorporating a wide range of programming that informs, enlightens and entertains; [1 objective] / 65
(m) the programming provided by the Corporation should	(m) the programming provided by the Corporation should
[=> see 3(1)(l)]	[=> see 3(1)(l)]
[=> see m(vii)]	[=> see m(vii)]
(i) be predominantly and distinctively Canadian , [2 objectives] / 30	(i) be predominantly and distinctively Canadian , [2 objectives] / 67
(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions, [2 objectives] / 32	(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions, [2 objectives] / 69
(iii) actively contribute to the flow and exchange of cultural expression, [1 objective] / 33	(iii) actively contribute to the flow and exchange of cultural expression, [1 objective] / 70
(iv) be in English and in French , reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities, [2 objectives] / 35	(iv) be in English and in French , reflecting the different needs and circumstances of each official language community, including the specific needs and interests of official language minority minorities, [2 objectives] / 72
(v) strive to be of equivalent quality in English and in French, [1 objective] / 36	(v) strive to be of equivalent quality in English and in French, [1 objective] / 73
(vi) contribute to shared national consciousness and identity, [1 objective] / 37	(vi) contribute to shared national consciousness and identity, [1 objective] / 74
(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and [1 objective] / 38	(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and [1 objective] / 75
(viii) reflect the multicultural and multiracial nature of Canada; [1 objective] / 39	(viii) reflect the multicultural and multiracial nature of Canada; [1 objective] / 76
(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting	(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
<p>undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);</p>	<p>system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);</p>
<p>(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;</p> <p>[1 objective] / 40</p>	<p>(o) programming that reflects the Indigenous cultures of Canada and programming that is in Indigenous languages should be provided within the Canadian broadcasting system, including by broadcasting undertakings that are carried on by Indigenous persons and community elements</p> <p>[1 objective] / 77</p>
<p>(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;</p> <p>[1 objective] / 41</p>	<p>(p) programming that is accessible without barriers to persons with disabilities should be provided within the Canadian broadcasting system, including through community broadcasting, as well as the opportunity for them to develop their own content and voices</p> <p>[2 objectives] / 78</p>
<p>(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;</p> <p>[1 objective] / 42</p>	<p>(p.1) programming that is accessible without barriers to persons with disabilities should be provided within the Canadian broadcasting system, including without limitation, closed captioning services and video services available to assist persons living with a visual impairment;</p> <p>[1 objective] / 79</p>
	<p>(q) online undertakings that provide the programming services of other broadcasting undertakings should</p>
	<p>(i) ensure the discoverability of Canadian programming services and original Canadian content, including French language original content, in an equitable proportion, and</p> <p>[1 objective] / 80</p>
	<p>(ii) when programming services are supplied to them by other broadcasting undertakings under contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services;</p> <p>[1 objective] / 81</p>
	<p>(r) online undertakings must clearly promote and recommend Canadian programming, in both official languages as well as Indigenous languages, and ensure that any means of control of the programming generates results allowing its discovery; and</p>

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
	[3 objectives] / 84
<p>(r) the programming provided by alternative television programming services should</p>	
<p>(i) be innovative and be complementary to the programming provided for mass audiences,</p> <p>[2 objectives] / 44</p>	
<p>(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,</p> <p>[2 objectives] / 46</p>	
<p>(iii) reflect Canada's regions and multicultural nature,</p> <p>[1 objective] / 47</p>	
<p>(iv) as far as possible, be acquired rather than produced by those services, and</p> <p>[1 objective] / 48</p>	
<p>(v) be made available throughout Canada by the most cost-efficient means;</p> <p>[1 objective] / 49</p>	
<p>(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,</p>	<p>(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,</p>
<p>(i) contribute significantly to the creation and presentation of Canadian programming, and</p> <p>[1 objective] / 50</p>	<p>(i) contribute significantly to the creation and presentation of Canadian programming, and</p> <p>[1 objective] / 85</p>
<p>(ii) be responsive to the evolving demands of the public; and</p> <p>[1 objective] / 51</p>	<p>(ii) be responsive to the evolving demands of the public; and</p> <p>[1 objective] / 86</p>
<p>(t) distribution undertakings</p>	<p>(t) distribution undertakings</p>
<p>(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,</p> <p>[1 objective] / 52</p>	<p>(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,</p> <p>[1 objective] / 87</p>
<p>(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,</p> <p>[1 objective] / 53</p>	<p>(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,</p> <p>[1 objective] / 88]</p>

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
<p>(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and</p> <p>[1 objective] / 54</p>	<p>(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and</p> <p>[1 objective] / 89]</p>
<p>(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.</p> <p>[2 objectives] / 56</p>	<p>(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.</p> <p>[2 objectives] / 91</p>
<p>3(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.</p> <p>[1 objective] / 65</p>	<p>3(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.</p> <p>[1 objective] / 92</p>
<p>Regulatory policy</p> <p>5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p>(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;</p>	<p>Regulatory policy</p> <p>5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p>(a) TAKES INTO ACCOUNT THE DIFFERENT CHARACTERISTICS OF ENGLISH, FRENCH AND INDIGENOUS LANGUAGE BROADCASTING AND THE DIFFERENT CONDITIONS UNDER WHICH BROADCASTING UNDERTAKINGS THAT PROVIDE ENGLISH, FRENCH OR INDIGENOUS LANGUAGE PROGRAMMING OPERATE – INCLUDING THE MINORITY CONTEXT OF FRENCH IN NORTH AMERICA – AND THE SPECIFIC NEEDS AND INTERESTS OF OFFICIAL LANGUAGE MINORITY COMMUNITIES IN CANADA AND OF INDIGENOUS PEOPLES;</p> <p>(A.1) TAKES INTO ACCOUNT THE NATURE AND DIVERSITY OF THE SERVICES PROVIDED BY BROADCASTING UNDERTAKINGS, AS WELL AS THEIR SIZE, THEIR IMPACT ON THE CREATION AND PRODUCTION INDUSTRY, PARTICULARLY WITH RESPECT TO EMPLOYMENT IN CANADA AND CANADIAN PROGRAMMING, THEIR CONTRIBUTION TO THE IMPLEMENTATION OF THE BROADCASTING POLICY SET OUT IN SUBSECTION 3(1) AND ANY OTHER CHARACTERISTIC THAT MAY BE RELEVANT IN THE CIRCUMSTANCES;</p> <p>(A.2) ENSURES THAT ANY BROADCASTING UNDERTAKING THAT CANNOT MAKE MAXIMUM OR PREDOMINANT USE OF CANADIAN CREATIVE AND OTHER HUMAN RESOURCES IN THE CREATION, PRODUCTION AND PRESENTATION OF PROGRAMMING CONTRIBUTES TO THOSE CANADIAN RESOURCES IN AN EQUITABLE MANNER;</p>

<p>1991 Broadcasting Act: Objectives</p> <p>Bold & struck through – replaced or dropped in C-11</p> <p>Pink background – mandatory objective</p> <p>56 broadcast policy objectives in section 3(1) of which 48 are at CRTC's discretion ("should" / "may")</p>	<p>Bill C-11 (June 2022): Objectives</p> <p>HIGHLIGHTED BOLD SMALL CAPS – addition to 1991 language</p> <p>Pink background – mandatory objective</p> <p>91 broadcast policy objectives in section 3(1) (62%% increase compared to 1991 Act) of which 71 are discretionary ("should" / "may")</p>
<p>(b) takes into account regional needs and concerns;</p> <p>(c) is readily adaptable to scientific and technological change;</p> <p>(d) facilitates the provision of broadcasting to Canadians;</p> <p>(e) facilitates the provision of Canadian programs to Canadians;</p> <p>(f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and</p> <p>(g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.</p> <p style="text-align: right;">[8 objectives] / 64</p>	<p>(b) takes into account regional needs and concerns;</p> <p>(c) is readily adaptable to scientific and technological change;</p> <p>(d) facilitates the provision of broadcasting to Canadians;</p> <p>(e) facilitates the provision to Canadians of Canadian programs CREATED AND PRODUCED IN BOTH OFFICIAL LANGUAGES, INCLUDING THOSE CREATED AND PRODUCED BY OFFICIAL LANGUAGE MINORITY COMMUNITIES IN CANADA, AS WELL AS IN INDIGENOUS LANGUAGES;</p> <p>(e.1) facilitates the provision of programs that are accessible without barriers to persons with disabilities;</p> <p>(e.2) facilitates the provision of programs created and produced by members of Black or other racialized communities;</p> <p>(f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and</p> <p>(g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings AND</p> <p>(h) TAKES INTO ACCOUNT THE VARIETY OF BROADCASTING UNDERTAKINGS TO WHICH THE ACT APPLIES AND AVOIDS IMPOSING OBLIGATIONS ON ANY CLASS OF BROADCASTING UNDERTAKINGS IF THAT IMPOSITION WILL NOT CONTRIBUTE IN A MATERIAL MANNER TO THE IMPLEMENTATION OF THE BROADCASTING POLICY SET OUT IN SUBSECTION 3(1).</p> <p style="text-align: right;">[11 objectives] / 103</p>
	<p>5.1 In regulating and supervising the Canadian broadcasting system and exercising its power under this Act, the Commission shall enhance the vitality of official language minority communities in Canada and support and assist their development.</p> <p style="text-align: right;">[3 objective] / 106 objectives</p>
Total sections or subsections: 41	48
Summary of objectives in section 3(1), and in sections 2 to 5(2)	
<p>Section 3(1) objectives</p> <p>Mandatory ("shall") objectives 8 (14%)</p> <p><u>Discretionary ("should") objectives 48 (88%)</u></p> <p>Total objectives 56 (100%)</p>	<p>Section 3(1) objectives</p> <p>Mandatory ("shall") objectives 20 (17%)</p> <p><u>Discretionary ("should") objectives 71 (83%)</u></p> <p>Total objectives 91 (100%)</p>

Appendix 2 Mandatory and discretionary objects in Bill C-11's broadcasting policy for Canada

Clauses that use mandatory language	Clauses that use discretionary language
<p>3 (1) It is hereby declared as the broadcasting policy for Canada that</p> <p>(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians, and it is recognized that it includes foreign broadcasting undertakings that provide programming to Canadians;</p> <p>(a.1) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;</p> <p>(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;</p> <p>(f) each Canadian broadcasting undertaking shall employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources in the creation, production and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;</p> <p>(f.1) each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, in accordance with the objectives of the broadcasting set out in this subsection and taking into account the linguistic duality of the market they serve;</p> <p>(h) a) Il persons who carry on broadcasting undertakings have a responsibility for the programs that they broadcast and over which they have programming control;</p>	<p><i>[Declaration or descriptive statement lacking clear objective]</i></p> <p>(b) <i>the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;</i></p> <p><i>[Declaration or descriptive statement lacking clear objective]</i></p> <p>(c) <i>while sharing common aspects, English and French language broadcasting operate under different conditions — in particular, the minority context of French in North America — and may have different requirements;</i></p> <p>(d) the Canadian broadcasting system should</p> <p>(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,</p> <p>(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view, and foster an environment that encourages the development and export of Canadian programs globally,</p> <p>(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians — including Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socioeconomic statuses,</p>

Clauses that use mandatory language	Clauses that use discretionary language
<p>(k) a range of broadcasting services in English and in French shall be progressively extended to all Canadians;</p> <p>(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);</p> <p>(r) online undertakings must clearly promote and recommend Canadian programming, in both official languages as well as Indigenous languages, and ensure that any means of control of the programming generates results allowing its discovery; and</p>	<p>abilities and disabilities, sexual orientations, gender identities and expressions, and ages — and reflect their circumstances and aspirations, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples within that society,</p> <p>(iii.1) provide opportunities to Indigenous persons to produce programming in Indigenous languages, English or French, or in any combination of them, and to carry on broadcasting undertakings, and</p> <p>(iii.11) provide opportunities to Black and other racialized persons in Canada by taking into account their specific needs and interests, namely, by supporting the production and broadcasting of original programs by and for Black and other racialized communities,</p> <p>(iii.2) support the production and broadcasting of original programs in French,</p>
	<p>(iii.3) enhance the vitality of official language minority communities in Canada and support and assist their development by taking into account their particular needs and interests — in particular that French is a minority language in Canada and that English is a minority language in Quebec — including through supporting the production and broadcasting of original programs by and for those communities,</p> <p>(iii.4) support community broadcasting that reflects both the diversity of the communities being served, including with respect to the languages in use within those communities and to their ethnocultural and Indigenous composition, and the high engagement and involvement in community broadcasting by members of those communities, including with respect to matters of public concern,</p> <p>(iii.5) ensure that Canadian independent broadcasting undertakings continue to be able to play a vital role within that system,</p>

Clauses that use mandatory language	Clauses that use discretionary language
	<p>(iii.6) support the production and broadcasting of programs in a diversity of languages that reflect racialized communities and the diversity of the ethnocultural composition of Canadian society, including through broadcasting undertakings that are carried on by Canadians from racialized communities and diverse ethnocultural backgrounds,</p> <p>(iii.7) provide opportunities to Canadians from racialized communities and diverse ethnocultural backgrounds to produce and broadcast programs by and for those communities,</p>
	<p>(iv) be readily adaptable to scientific and technological change;</p> <p>(g) the programming over which a person who carries on a broadcasting undertaking has programming control should be of high standard;</p> <p>(i) the programming provided by the Canadian broadcasting system should</p> <p>(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes,</p> <p>(i.1) recognize and support Canada's linguistic duality by placing significant importance on the creation, production and broadcasting of original French language original programs, including those from French linguistic minority communities,</p> <p>(ii) be drawn from local, regional, national and international sources, including, at the local level, from community broadcasters who, through collaboration with local organizations and community members, are in the unique position of being able to provide varied programming to meet the needs of specific audiences,</p> <p>(ii.1) include programs produced by Canadians that cover news and current events — from the local and regional to the national and international — and that reflect the viewpoints of Canadians, including the viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds;</p> <p>(iii) include educational and community programs,</p> <p>(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and to directly participate in public dialogue on those matters including through the community element; and</p> <p>(v) include the greatest possible contribution from the Canadian production sector, whether it is independent or affiliated with or owned by a broadcasting undertaking;</p>

Clauses that use mandatory language	Clauses that use discretionary language
	<p><i>[Declaration or descriptive statement lacking clear objective]</i></p> <p><i>(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;</i></p> <p>.....</p> <p>(o) programming that reflects the Indigenous cultures of Canada and programming that is in Indigenous languages <i>should</i> be provided within the Canadian broadcasting system, including by broadcasting undertakings that are carried on by Indigenous persons and community elements</p> <p>(p) programming that is accessible without barriers to persons with disabilities <i>should</i> be provided within the Canadian broadcasting system, including through community broadcasting, as well as the opportunity for them to develop their own content and voices</p> <p>(p.1) programming that is accessible without barriers to persons with disabilities <i>should</i> be provided within the Canadian broadcasting system, including without limitation, closed captioning services and video services available to assist persons living with a visual impairment;</p>
	<p>(q) online undertakings that provide the programming services of other broadcasting undertakings <i>should</i></p> <p>(i) ensure the discoverability of Canadian programming services and original Canadian content, including French language original content, in an equitable proportion, and</p> <p>(ii) when programming services are supplied to them by other broadcasting undertakings under contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services;</p> <p>(s) private networks and programming undertakings <i>should</i>, to an extent consistent with the financial and other resources available to them,</p> <p>(i) contribute significantly to the creation and presentation of Canadian programming, and</p> <p>(ii) be responsive to the evolving demands of the public; and</p> <p>(t) distribution undertakings</p>
	<p>(i) <i>should</i> give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,</p> <p>(ii) <i>should</i> provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,</p> <p>(iii) <i>should</i>, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and</p>

Clauses that use mandatory language	Clauses that use discretionary language
	(iv) may , where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

Appendix 3 Revenue-generating discretionary services without staff in 2019

Source: CRTC, *Individual Discretionary Television Programming Services: Statistical and financial summaries, 2015-2019*

Ranked by total revenue	Name	Total Revenue	Total Staff
1	CTV Comedy (formerly The Comedy Network)	\$60,343,319	0
2	CTV Drama (formerly Bravo!)	\$55,796,513	0
3	Shaw on Demand	\$47,482,490	0
4	Family Channel (formerly Family)	\$42,968,101	0
5	E! (formerly Star! TV)	\$27,764,344	0
6	Super Channel (formerly Allarco Entertainment)	\$24,295,461	0
7	Bell TV On Demand and Vu! (formerly Bell)	\$23,204,782	0
8	MTV (Canada) (formerly known as Talk TV)	\$17,133,708	0
9	ELLE Fictions (MusiquePlus)	\$13,980,339	0
10	CTV Life (formerly Gusto)	\$13,306,616	0
11	MAX (formerly MUSIMAX)	\$12,729,907	0
12	Telelatino	\$12,492,522	0
13	Daystar Canada (formerly Grace TV)	\$9,608,154	0
14	Shaw Pay-Per-View (formerly Home Theatre (pay-per-view))	\$9,405,746	0
15	Bell TV On Demand (formerly General Interest)	\$9,201,079	0
16	Cogeco Connexion Inc., Montréal	\$9,124,576	0
17	Love Nature (formerly Oasis HD)	\$7,440,124	0
18	travel + escape	\$7,188,054	0
19	ICI EXPLORA (formerly SENS)	\$6,497,541	0
20	RDS Info (formerly Réseau Info Sports (RIS))	\$6,032,278	0
21	Family CHRGD	\$5,628,044	0
22	Fight Network	\$5,154,649	0
23	BBC Earth (formerly radX)	\$4,950,409	0
24	Cottage Life (formerly Bold)	\$4,946,823	0
25	GameTV (formerly CGTV Canada)	\$4,798,011	0
26	Wild tv(The Hunting Channel)	\$4,755,584	0
27	Smithsonian Channel (formerly eqhd)	\$4,753,042	0
28	HIFI (formerly Treasure HD)	\$3,808,264	0
29	Shaw Pay-Per-View (formerly Allarcom)	\$3,802,922	0
30	Silver Screen Classics	\$3,694,864	0
31	Makeful TV (formerly BITE Television)	\$3,615,244	0
32	NTD Television	\$3,402,729	0
33	Salt & Light (Inner Peace Television Network)	\$3,402,229	0
34	Bragg Communications Incorporated, Halifax	\$3,063,036	0
35	Hollywood Suite 70s Movies (formerly Warner Films)	\$2,965,758	0
36	Hollywood Suite 80s Movies (formerly MGM Channel)	\$2,965,758	0
37	Hollywood Suite 2000s Movies (formerly Sony Movie Channel)	\$2,962,709	0
38	Hollywood Suite 90s Movies (formerly AXN Movies)	\$2,962,709	0
39	MTV2 (formerly Razer)	\$2,865,713	0
40	Télémagino	\$2,795,336	0
41	Stingray Ambiance	\$2,599,752	0
42	Mediaset Italia (formerly Italian Entertainment TV)	\$2,491,795	0
43	ATN South Asian Television (SATV)	\$2,204,116	0
44	Rewind (formerly Movieola)	\$2,153,485	0
45	Univision Canada (formerly TLN en Español)	\$2,106,204	0
46	Comedy Gold (formerly TV Land)	\$2,084,110	0
47	Sportsman Canada	\$2,017,740	0
48	Book Television (formerly Book Television - The Channel)	\$1,561,386	0
49	Festival Portuguese Television	\$1,090,258	0
50	BBC Kids	\$1,039,401	0
51	A.Side (formerly AUX TV)	\$971,907	0

Ranked by total revenue	Name	Total Revenue	Total Staff
52	FashionTelevisionChannel (formerly Fashion Television ...)	\$853,081	0
53	HPltv (formerly The Racing Network Canada)	\$609,653	0
54	ESPN Classic	\$588,374	0
55	Game+ (formerly FNTSY Sports Network)	\$453,273	0
56	The Rural Channel	\$280,640	0
57	Access Communications Co-operative Limited, Regina	\$148,669	0
58	EuroWorld SPORT (formerly RCS Television)	\$138,018	0
59	Avis de Recherche	\$107,848	0
60	Stingray Country	\$92,650	0
61	Stingray Retro	\$81,666	0
62	Stingray Loud	\$60,772	0
63	Stingray Vibe	\$31,281	0
64	CTV Sci-Fi (formerly Space)	\$53,330,770	0.15
65	Saskatchewan Telecommunications, Regina	\$4,160,830	0.25
66	Wightman Telecom Ltd., Clifford	\$44,397	0.5
67	Discovery Velocity (formerly Discovery World HD)	\$16,355,749	1
68	Investigation Discovery (formerly Court TV Canada)	\$13,281,062	1
69	Animal Planet	\$12,333,974	1
70	Discovery Science (formerly Discovery Civilization Channel)	\$8,717,746	1
71	Zeste (formerly Cuisine)	\$6,061,774	1
72	Max Front Row	\$1,870,616	1
73	Câblevision du Nord de Québec inc., Val d'Or	\$180,710	1
74	STARZ (formerly The Movie Network Encore)	\$20,961,356	1.42
75	Investigation (formerly Canal D Investigation)	\$7,375,691	1.84
76	Bell TV On Demand (formerly Vu! On Demand)	\$37,587,357	1.96
77	Prise 2 (formerly Nostalgie)	\$12,244,648	2
78	Casa - (formerly Les idées de ma maison)	\$11,704,131	2
79	Évasion (formerly Canal Évasion)	\$11,169,678	2
80	YOOPA (formerly TVA Junior)	\$3,711,230	2
81	Northwestel Inc., Yellowknife	\$339,529	2
82	DTOUR (formerly TVtropolis)	\$18,415,670	2.3
83	The Independent Film Channel Canada	\$3,834,384	2.3
84	DejaView	\$7,256,429	2.41
85	Fyi (formerly Twist TV)	\$6,605,044	2.6
86	H2 (formerly The Cave, Men TV)	\$9,127,461	2.7
87	Adult Swim (formerly ACTION)	\$19,414,051	3
88	addikTV (formerly Mystère)	\$15,521,980	3
89	Moi&cie (formerly Mlle)	\$8,977,604	3
90	Canal Indigo	\$3,382,427	3
91	CINÉPOP (formerly Cinémania)	\$9,597,445	3.07
92	MovieTime (formerly known as Lonestar)	\$11,858,865	3.23
93	Crime + Investigation (formerly Mystery)	\$18,069,651	3.4
94	Rogers on Demand	\$25,188,344	4
95	Sportsnet PPV	\$13,701,995	4
96	Super Écran	\$47,729,971	4.38
97	Lifetime (formerly Showcase Diva)	\$15,402,283	4.4
98	The Brand New ONE Body, Mind, Spirit, Love Channel	\$2,700,370	5.51
99	Z (formerly Ztélé)	\$18,047,569	5.59
100	FXX (Canada) (formerly Ampersand)	\$12,518,484	6.49
101	Cosmopolitan TV (formerly Cosmopolitan Television)	\$5,301,317	6.7
102	Crave (The Movie Network)	\$ 196,935,615	6.83
103	VRAC (formerly Vrak.TV)	\$16,475,532	7.14
104	OWN: The Oprah Winfrey Network (formerly OWN; formerly VIVA)	\$15,297,179	7.5
105	D.I.Y. Network (formerly D.I.Y. Television)	\$10,992,524	8.3
106	La chaîne Disney (formerly TÉLÉTOON Rétro (Français))	\$2,906,625	8.9

Ranked by total revenue	Name	Total Revenue	Total Staff
107	Outdoor Life Network (OLN)	\$15,304,575	8.95
108	Cartoon Network (formerly TELETOON Retro (English))	\$3,916,253	9
109	Nickelodeon (formerly YTV OneWorld)	\$4,271,785	9.2
110	Documentary (formerly The Canadian Documentary Channel)	\$6,679,031	9.25
111	Disney XD	\$8,385,568	9.3
112	Canal D	\$30,018,773	9.38
113	Disney Junior	\$11,766,978	9.4
114	Odyssey (formerly OTN)	\$1,993,935	10
115	FX (formerly FX Canada)	\$23,423,953	10.12
116	Canal Vie	\$32,721,153	10.75
117	NatGeo Wild	\$10,296,336	11.1
118	Discovery Channel	\$77,347,639	11.22
119	National Geographic Channel	\$24,399,426	11.8
120	BBC Canada	\$7,816,627	13.2
121	TreeHouse TV	\$12,098,340	14.3
122	CMT (formerly Country Music Television)	\$15,178,760	14.5
123	Sportsnet One (formerly Rogers Sportsnet One)	\$ 106,377,406	15
124	Illico sur demande	\$31,327,133	15
125	ABC Spark (formerly Harmony)	\$15,541,244	16
126	Slice	\$28,649,117	16.3
127	Showcase	\$73,105,766	17.3
128	History Television	\$67,547,255	17.5
129	OUTtv (formerly PrideVision)	\$4,546,413	18
130	Historia	\$20,598,378	18.7
131	HGTV Canada - Home and Garden Television Canada	\$73,956,033	20
132	ICI ARTV	\$12,394,665	21.09
133	NBA TV (Canada) - (formerly Raptors NBA TV)	\$11,334,638	23
134	Disney Channel	\$28,845,134	25.2
135	AMI-télé	\$9,275,812	26.23
136	BC News 1 (formerly Global News Plus BC)	\$1,986,100	26.64
137	Food Network Canada	\$56,253,733	26.8
138	Séries Plus	\$26,120,171	27.8
139	Cooking Channel (formerly W Movies)	\$5,467,472	29
140	Much (formerly MuchMusic)	\$31,308,393	29.8
141	TELUS Communications Inc., Edmonton	\$34,383,870	32
142	Leafs TV	\$4,920,732	39
143	YTV	\$57,037,131	41.6
144	W Network	\$84,140,939	44.8
145	Vision TV	\$23,979,644	45.7
146	TELETOON/TÉLÉTOON	\$44,156,370	52.5
147	AMI-tv (formerly The Accessible Channel)	\$18,034,236	55.15
148	BNN Bloomberg	\$28,283,689	58
149	LCN	\$33,719,614	62
150	Talentvision	\$4,530,284	62
151	TV5 - Unis	\$36,724,592	65
152	Sportsnet 360 (formerly The Score)	\$35,742,766	67
153	OMNI Regional	\$17,063,400	68.12
154	CTV News Channel (formerly CTV Newsnet)	\$30,667,167	69.38
155	TVA Sports	\$95,175,219	70
156	CablePulse 24 (CP24)	\$53,641,335	90
157	Cable Public Affairs Channel (CPAC)	\$16,434,518	91
158	The Weather Network / MétéoMédia	\$36,279,709	140
159	Le Réseau des Sports (RDS)	\$ 148,824,560	145
160	Aboriginal Peoples Television Network (APTN)	\$49,342,940	190
161	The Sports Network (TSN)	\$ 502,319,109	207
162	Fairchild TV	\$17,256,483	275

Ranked by total revenue	Name	Total Revenue	Total Staff
163	ICI RDI	\$46,246,754	332.21
164	CBC News Network (Formerly Newsworld)	\$74,502,766	430.13
165	Sportsnet (formerly Rogers Sportsnet)	\$ 557,970,731	466
	Total	\$4,195,378,186	3896.29

Appendix 4 CRTC's 'Missing' Part 1 applications

The regulations in the *CRTC Rules* have five Parts:

Part 1 – Rules applicable to broadcasting and telecommunications;

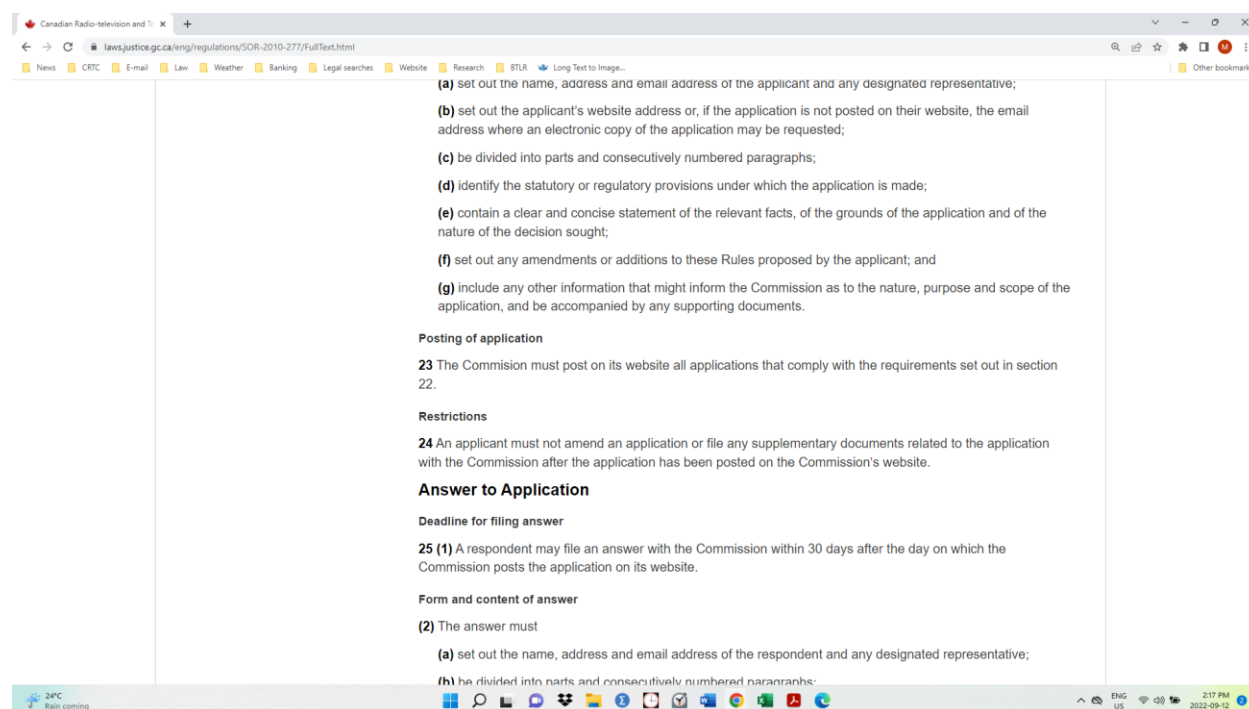
Part 2 – Rules applicable to complaints and dispute resolution,

Part 3 – Rules applicable to certain broadcasting applications;

Part 4 – Rules applicable to certain telecommunications applications, and

Part 5 – Transition provisions, repeals and coming into force.

Section 23 of the *CRTC Rules* states that the Commission “must” post all applications it receives that comply with its other requirements for style and contact information:



The CRTC's answers to access-to-information requests disclosed 64 Part 1 applications that the CRTC did not publish on its website.

Access-to-information release A-2020-00046: 8 Part 1 applications received by the CRTC from 1 January 2016 to 30 September 2020 which the CRTC did not post on its website				
App. No.	Applicant	Type	Category*	Status
2017-0657-4	Bell Canada**	POL	A (Amendment)	ACT
2019-0734-6	Sound of Faith Broadcasting	FM	A (Amendment)	ACT
2019-0857-6	Bell Media Regional Radio Partnership	AM	A (Amendment)	ACT
2019-0894-8	Acadia Broadcasting Limited	FM	A (Amendment)	ACT
2019-0924-3	1760791 Ontario Inc.	AM	A (Amendment)	ACT
2019-0950-9	Rogers Media Inc.	FM	A (Amendment)	ACT

Access-to-information release A-2020-00046: 8 Part 1 applications received by the CRTC from 1 January 2016 to 30 September 2020 which the CRTC did not post on its website				
App. No.	Applicant	Type	Category*	Status
2020-0372-1	Groupe TVA inc.	DIS	A (Amendment)	ACT
2020-0541-2	Byrnes Communications Inc.	FM	A (Amendment)	ACT
Total: 8 applications				
Clarification received by e-mail on 25 November 2020 Type: A: "Policy" DIS: "Discretionary service" Status: ACT: Active				
*A= Application for amendments				
** Application resolved through Supreme Court decision without further CRTC process required.				

Access-to-information release A-2020-00034: 54 applications that were not posted and were returned by the CRTC from 1 January 2016 to 11 September 2020					
App. No.	Applicant	Call Sign	Location	Type Category	Status
2020-0536-3	Intercity Broadcasting Network Inc,	CKFG-FM	Toronto, ON	FM A	RWCS
2020-0405-0	The B,C, Conference of the Mennonite Brethren Churches	CFEG-TV	Abbotsford, BC	TV A	RWCS
2020-0393-7	Les medias acadiens universitaires inc,	CKUM-FM	Moncton, NB	FM A	RWCS
2020-0344-0	My Broadcasting Corporation	CJMB-FM	Peterborough, ON	FM A	RWCS
2020-0130-4	La radio communautaire de LaSalle	CKVL-FM	Montreal (Lasalle), QC	FM A	RWCS
2019-1077-9	Fairchild Television Ltd,		Vancouver, BC	SPEC R	RWCS
2019-1076-1	Fairchild Television Ltd,		Toronto, ON	SPEC R	RWCS
2019-0784-1	Parrsboro Radio Society	CICR-FM	Parrsboro, NS	FM A	RWCS
2019-0723-9	Stingray Radio Inc,	CFXE-FM	Edson, AB	FM R	RWCS
2019-0720-6	Stingray Radio Inc,	CHSL-FM	Slave Lake, AB	FM R	RWCS
2019-0715-6	Stingray Radio Inc,	CKQK-FM	Charlottetown, PE	FM R	RWCS
2019-0714-8	Stingray Radio Inc,	CHTN-FM	Charlottetown, PE	FM R	RWCS
2019-0713-0	Stingray Radio Inc,	CHTN-FM	Charlottetown, PE	FM R	RWCS
2019-0712-2	Stingray Radio Inc,	CFXE-FM	Edson, AB	FM R	RWCS
2019-0705-7	Caper Radio Incorporated	CJBU-FM	Sydney, NS	FM R	RWCS
2019-0687-7	Stingray Radio Inc,	CKQK-FM	Charlottetown, PE	FM R	RWCS
2019-0671-0	Stingray Radio Inc,	CKXG-FM	Grand Falls, NL	FM R	RWCS
2019-0660-4	Radio Diffusion Sorel-Tracy inc,	CJSO-FM	Sorel, QC	FM A	RWCS
2019-0631-4	Stillwater Broadcasting Ltd,	CJSB-FM	Swan River, MB	FM R	RWCS
2019-0573-8	Utilities Consumers' Group Society	CJUC-FM	Whitehorse, YT	FM A	RWCS
2019-0534-0	Radio CJFP (1986) ltee	CIEL-FM	Riviere-du-Loup, QC	FM A	RWCS
2019-0401-1	Bell Media Inc,		Montreal, QC	DIS A	RWCS
2019-0346-9	8159203 Canada Limited	CKNT	Mississauga, ON	AM A	RWCS
2019-0111-6	TotalTV Inc,		Montreal, QC	CATV R	RWCS
2019-0110-9	TotalTV Inc,		Toronto, ON	CATV R	RWCS
2019-0006-9	Fabrique de la Paroisse de Saint-Gerard	VF8027	Weedon, QC	FM R	RWCS
2018-1102-6	Radio communautaire du Labrador inc,	CJRM-FM	Labrador City, NL	FM R	RWCS
2018-1066-4	Native Communications Society of the N,WT	CKLB-FM	Yellowknife, NT	FM R	RWCS
2018-0987-3	Lenape Community Radio Society	CKBK-FM	Thamesville, ON	FM R	RWCS

Access-to-information release A-2020-00034:					
54 applications that were not posted and were returned by the CRTC from 1 January 2016 to 11 September 2020					
App. No.	Applicant	Call Sign	Location	Type Category	Status
2018-0870-1	Radio communautaire MF Lac Simon inc,	CHUT-FM	Lac-Simon (Louvicourt), QC	FM R	RWCS
2018-0869-3	Radio communautaire MF Lac Simon inc,	CHUN-FM	Rouyn-Noranda, QC	FM R	RWCS
2018-0842-9	Corporation de Radio Kushapetsheken Apetuamiss Uashat	CKAU-FM	Maliotenam, QC	FM R	RWCS
2018-0840-4	Micmac Historical Cultural Art Society	CFIC-FM	Listuguj, QC	FM R	RWCS
2018-0839-6	Gespegewag Communications Society	CHRQ-FM	Restigouche, QC	FM R	RWCS
2018-0828-9	Corporation Mediatique Teuehikan	CHUK-FM	Mashteuiatsh, QC	FM R	RWCS
2018-0619-2	General Manager, Shubie FM Radio	CIPU-FM	Micmac, NS	FM R	RWCS
2018-0408-9	Southshore Broadcasting Inc,	CFTV-DT	Leamington, ON	TV A	RWCS
2018-0317-2	Radio communautaire de Radisson	CIAU-FM	Radisson, QC	FM A	RWCS
2018-0277-8	Robert G, Hopkins	CFET-FM	Tagish, YT	FM A	RWCS
2018-0276-0	DHX Television Ltd,		Montreal, QC	SPEC A	RWCS
2018-0274-4	DHX Television Ltd,		Toronto, ON	SPEC A	RWCS
2018-0135-8	Bell Media Inc,	CFTO-DT	Toronto, ON	TV A	RWCS
2018-0113-4	Canadian Cable Systems Alliance Inc,			UP A	RWCS
2018-0055-8	Evanov Radio Group Inc,	CHSV-FM	Hudson, QC	FM R	RWCS
2018-0051-6	Ottawa Media Inc,	CJWL-FM	Ottawa/Gatineau, ON	FM R	RWCS
2018-0049-1	Dufferin Communications Inc,	CHRC-FM	Clarence - Rockland, ON	FM R	RWCS
2017-1168-0	Kosiner Venture Capital Inc,			COM A	RWCS
2017-0887-7	Dufferin Communications Inc,	CIRR-FM	Toronto, ON	FM A	RWCS
2017-0885-1	Dufferin Communications Inc,	CIDC-FM	Orangeville, ON	FM A	RWCS
2017-0819-0	RNC MEDIA inc,	CKRN-DT	Rouyn-Noranda, QC	TV R	RWCS
2017-0806-7	Small Town Radio	CFWN-FM	Port Hope, ON	FM A	RWCS
2017-0779-6	Hector Broadcasting Company Limited	CKEZ-FM	New Glasgow, NS	FM R	RWCS
2017-0773-8	King's Kids Promotions Outreach Ministries Incorporated	CKOS-FM	Fort McMurray, AB	FM R	RWCS
2017-0491-6	1486781 Ontario Limited	CFWC-FM	Brantford, ON	FM R	RWCS
Total: 54 applications					
Clarification received by e-mail on 15 October 2020:					
Category:					
A = amendment					
R = renewal					
RWCS: R = returned W = withdrawn at request of applicant (C and S: no longer used)					

Appendix 5 Types of administrative decisions not published by the CRTC

Type of application	Number of decisions issued				Application total as % of total applications
	Before appl'n published	Same day that application was published	Application posting date unknown	In total	
Amend condition of licence (CoL) re adult programming	1			1	0.6%
Amend CoL re Cancon	7			7	4.2%
Amend CoL re nature of service	1	1		2	1.2%
Programming - adult	2			2	1.2%
Subtotal, programming	11	1	0	12	7.1%
Change eff'v control	2			2	1.2%
Change ownership	3			3	1.8%
Change ownership & eff'v control	25	2		27	16.1%
Subtotal, ownership	30	2	0	32	19.0%
Corporate reorganization	2			2	1.2%
Delete area under licence	3	1	2	6	3.6%
Delete rebroadcast	6	2		8	4.8%
Extend deadline to begin	27	6		33	19.6%
Extend deadline to convert AM to FM		2		2	1.2%
Extend deadline to implement technical parameters	1			1	0.6%
Extend deadline to make tech'l change	2	1		3	1.8%
Extend deadline to relocate transmitter	2			2	1.2%
Extend management authorization	1			1	0.6%
Extend deadline to replace antenna		1		1	0.6%
Extend deadline to meet mandatory order	1			1	0.6%
Subtotal, extension of deadlines	45	13	2	60	35.7%
Amend tech'l parameters	32	12		44	26.2%
Add rebroadcast		1		1	0.6%
Relocate transmitter	4	1		5	3.0%
Technical amendment	1			1	0.6%
Technical amendment - contours	2			2	1.2%
Temporary relief from conditions of licence	3			3	1.8%
Transfer of transmitters	2	1		3	1.8%
New CoL - repurpose 600 MHz	5			5	3.0%
Subtotal, technical application	49	15	0	64	38.1%
Total	135	31	2	168	100.0%
	80.4%	18.5%	1.2%	100.0%	

Appendix 6 Changes proposed to Bill C-11 by FRPC