



The CRTC and 21st century expectations of openness, transparency and accountability: a month of comments on how Parliament's delegate performs its responsibilities

16: Transparency means operational clarity regarding applications

16 March 2023

This is the sixteenth of a series of comments by FRPC about the openness, transparency and accountability of the Canadian Radio-television and Telecommunications Commission (CRTC). Parliament established the CRTC on 1 April 1968 and delegated responsibility to it for implementing Parliament's broadcasting and telecommunications policies for Canada.

The Ministers of Canadian Heritage and Innovation, Science and Economic Development wrote Chairperson Eatrudes in early February 2023 to offer congratulations on her appointment to the Commission¹ and also to "inform her of the Government's vision and priorities with respect to Canada's broadcasting and telecommunications system".² The Ministers said they had "consistently heard" that the CRTC "falls short in "openness and transparency" and were confident in the new Chairperson's ability to see to the CRTC's "to being more ... transparent"

Transparency can refer to several aspects of the work of an organization like the CRTC, including the degree to which it explains or describes its plans, the 'dealings' it has with other parties, its operations or processes, and the information it makes available about its work. This note deals with the transparency of the CRTC's operations in terms of timeliness.

Parliament's broadcasting and telecommunications statutes give the CRTC three main operational responsibilities requiring planned activities: to respond to Ministerial requests to take action, to process applications and to consider complaints from the public. This note briefly examines the degree to which the CRTC's operations are transparent in terms of timing.

While neither the 1968 nor the 1991 *Broadcasting Act* set deadlines for the CRTC to perform its responsibilities, the 1993 *Telecommunications Acts* requires the CRTC within 45 business days of a Canadian carrier's filing of a tariff, to approve, disapprove or publish written reasons explaining why it has not approved the tariff and when it intends to do so (section 26).

The CRTC acknowledged 24 years ago that the "timeliness" of its decisions has wide-ranging consequences:

The timeliness of CRTC decisions directly affects business decisions and the public. In the highly competitive communications environment, the CRTC's ability to respond quickly and effectively to applications and requests is a key component of a strong and healthy Canadian communications sector. Resource constraints, workload increases and the increasing complexity of the communications environment affected the timeliness of some types of CRTC decisions in 1998. As applications vary widely in complexity, so does the time spent in rendering decisions on them.

CRTC, *Canadian Radio-television and Telecommunications Commission: Performance Report For the period ending March 31, 1999*, Estimates, at p. 41

It is therefore unsurprising that the CRTC began to set standards for 'processing' the applications it received the following year, in 2000, in *The CRTC Introduces New Service Standards for Processing Broadcasting Applications*,

¹ CRTC, "[Meet Vicky](#)" (accessed 1 March 2023).

² Department of Canadian Heritage, "[New CRTC Chair's Leadership Will Help Shape the Future of Canada's Communication System](#)", News release (Gatineau, 6 February 2023).



[Information Bulletin 2000-440](#) (Circular No. 440) (Ottawa, 31 March 2000). The CRTC set out its service goals based on the percentage of applications that were ‘processed’ within specified months of their receipt by the CRTC:

Type of application and processing route	Time taken to process applications (from the date of their receipt in the Commission)	
	1 st Phase - 1 April 2000	2 nd Phase - 1 April 2003
1. Share transfers, including control, dealt with administratively	60% of all applications – 2 months 80% of all applications – 3 months	75% of all applications – 2 months 95% of all applications – 3 months
2. Other types of applications dealt with administratively	75% in 2 months 85% in 3 months	85% in 2 months 90% in 6 months
3. Share transfers, including control, dealt with by public notice	60% in 6 months 80% in 9 months	75% in 4 months 90% in 6 months
4. Other types of applications dealt with by public notice	60% in 6 months 80% in 9 months 90% in 12 months	75% in 6 months 80% in 8 months 90% in 10 months
5. Appearing applications at public hearings	60% in 9 months 90% in 12 months	80% in 9 months 90% in 10 months
6. Non-appearing applications at public hearings	80% in 9 months 90% in 12 months	75% in 6 months 90% in 10 months

Over the next decade the CRTC revisited different aspects of its operations and announced new procedures to streamline its decision-making:

- 2003: *Ownership applications granted approval*, [Broadcasting Public Notice CRTC 2003-50](#), 19 September 2003 (Public Notice 2003-50) [announced streamlined procedure for CRTC to consider applications involving transfers of ownership and changes in the effective control of broadcasting undertakings]
- 2005: *Introduction of a streamlined process for retail tariff filings*, [Telecom Circular CRTC 2005-6](#), 25 April 2005
New procedures for disposition of applications dealing with the destandardization and/or withdrawal of tariffed services, [Telecom Circular CRTC 2005-7](#), 30 May 2005 (Circular 2005-7)
Finalization of the streamlined process for retail tariff filings, [Telecom Circular CRTC 2005-9](#) (Ottawa, 1 November 2005)
- 2006: *Streamlined processes for certain broadcasting applications*, [Broadcasting Circular CRTC 2006-1](#) (Ottawa, 27 March 2006)
Introduction of service standards for certain broadcasting applications, [Broadcasting Circular CRTC 2006-2](#), (Ottawa, 5 April 2006)
Service standards for the disposition of telecommunications applications, [Telecom Circular CRTC 2006-11](#), 7 December 2006
- 2011: *New service objectives for the processing of broadcasting and telecommunications applications as of 1 April 2011*, [Broadcasting and Telecom Information Bulletin CRTC 2011-222](#) (Ottawa, 1 April 2011)

These procedures continued to be based on the date it received applications. In [2005](#) the CRTC said that its objective in telecommunications “will be to ensure that within 10 business days from the date a complete retail tariff application is received” [underlining added] it will issue

- (a) an order granting the application interim approval,
- (b) a letter stating that it intends to dispose of the application within 45 business days of receipt of the application, setting out the reasons why interim approval was not granted,
- (c) a letter either with interrogatories included or confirmation that interrogatories are to follow within 5 business days, and an indication that it still intends to dispose of the application within 45 business days, or



(d) a letter indicating that the file is being closed due to deficiencies in the application, identifying the specific deficiencies.

In [2006](#) the Commission established an “expedited process” for broadcasting in which, “within 15 business days of receiving an application” [underlining added] for a licence amendment or authorization not generally requiring a public process, it would issue a

- a public notice announcing the application;
- a letter approving the application;
- a letter requesting clarification;
- a letter returning an application that is deemed incomplete.

Half a decade later, however, in [2011](#) the CRTC changed its measure of timeliness being the date it received applications, to the date it closed the public record related to a decision. Other than saying it “has measured its service results for Part VII applications from the close of record to the public date of the decision”, the CRTC did not explain this change. It added that as of 1 April 2011, “a single service objective will apply to all broadcasting and telecommunications Part 1 applications. The Commission will aim to publish its decisions within 4 months after the close of record”

The CRTC has published annual reports on its processing standards for broadcasting and telecom for each of the past five years. The following table summarizes the data in those reports, showing decision-making timeliness across five years for twelve types of applications. Despite the CRTC’s 2011 statement that it would publish its decisions within 4 months of applications’ close of record, eight of the twelve types of applications used different measures either in terms of timing (35 days or one, two, four or twelve months) or in terms of the measure (date of receipt [“DOR”], complete application or close of record [“COR”]) just four of the Green-shaded cells in Tables 1 and 2 (below) show when the CRTC met its objective of publishing all decisions within 4 months: 6 out of 60 times. In 2021-22 the CRTC meet this objective once (involving one [1] application).

Table 1: CRTC processing standards and outcomes in broadcasting, 2018 to 2022

Broadcasting	2017-18	2018-19	2019-20	2020-21	2021-22	2017/18 - 2021/22	
						Change	% Change
Part 1 applications	118	79	80	60	58	-60	-50.8%
1 Decisions within 4 months of COR	94	69	66	40	38	-56	-59.6%
% of decisions within 4 months	79.7%	87.3%	82.5%	66.7%	65.5%		
Public hearing applications *	32	84	39	33	15	-17	-53.1%
2 Decisions within 4 months of COR	24	14	19	29	10	-14	-58.3%
% of decisions within 4 months	75.0%	16.7%	48.7%	87.9%	66.7%		
* 2018-19 figure of 84 includes 47 administrative renewals							
Administrative applications	46	37	40	41	44	-2	-4.3%
3 Decisions within 1 month of DOR	34	34	34	37	32	-2	-5.9%
% of decisions within 1 month of receipt	73.9%	91.9%	85.0%	90.2%	72.7%		
Ownership-related applications							
4 Hearing route	12	15	5	7	12	0	0.0%
5 Decisions within 35 days of COR	12	12	3	7	3	-9	-75.0%
% of decisions within 1 month of receipt	100.0%	80.0%	60.0%	100.0%	25.0%		
Notice of consultation route	2	2	1	1	0	-2	-100.0%
6 Decisions within 2 months of COR	1	1	0	1	0	-1	-100.0%
% of decisions within 1 month of receipt	50.0%	50.0%	0.0%	100.0%	NA		
Administrative route	7	9	4	3	0	-7	-100.0%
7 Decisions within 2 months after DOR	4	5	3	3	0	-4	-100.0%
% of decisions within 2 months of DOR	57.1%	55.6%	75.0%	100.0%	0.0%		



Table 2: CRTC processing standards and outcomes in telecommunications, 2018 to 2022

Telecommunications	2017-18	2018-19	2019-20	2020-21	2021-2022	2017/18 - 2021/22	
						Change	Change
Part 1 applications	44	26	39	16	23	-21	-47.7%
8 Decisions within 4 months of COR	25	15	12	9	10	-15	-60.0%
% of decisions within 4 months	56.8%	57.7%	30.8%	56.3%	43.5%		
Part 1 applications - Local forbearance	3	4	0	0	1	-2	-66.7%
9 Decisions within 4 months of COR	3	4	0	0	1	-2	-66.7%
% of decisions within 4 months	100.0%	100.0%	0.0%	0.0%	100.0%		
Tariff Applications and Inter-carrier Agreements							
Applications processed	257	280	272	280	296	39	15.2%
10 Determination made within 2 months of complete application	208	256	221	251	287	79	38.0%
% within 2 months of complete application	80.9%	91.4%	81.3%	89.6%	97.0%		
Applications processed	257	280	272	280	296	39	15.2%
11 Determination within 4 months of complete application	212	265	252	261	289	77	36.3%
% within 2 months of complete application	82.5%	94.6%	92.6%	93.2%	97.6%		
Destandardization and/or Withdrawal Applications							
Applications processed	23	11	8	19	17	-6	-26.1%
12 Determinations within 12 months	23	11	8	17	17	-6	-26.1%
% made within 12 months	100.0%	100.0%	100.0%	89.5%	100.0%		
Total applications	544	547	488	460	466	-78	-14.3%
Total completed within designated period	432	430	397	404	400	-32	-7.4%
Total incomplete	112	117	91	56	66	-46	-41.1%
Incomplete as % of total applications	20.6%	21.4%	18.6%	12.2%	14.2%		
COR: "Close of record" DOR: "Date of receipt" NA: "Not applicable"							

Cells shaded pink in the 2021-22 column of the table denote the times when the CRTC processed fewer numbers of applications than it did in five years earlier, in 2017-2018. For example, the Commission did not meet its goal of issuing decisions within 4 months for four types of Part 1 broadcasting and telecommunications applications (numbers 1, 2, 3 and 8) although in each case it processed fewer applications than in 2017-2018.

Even if the CRTC had met its self-imposed 4-months-from-close-of-record deadline, it remains unclear whether this achievement addresses the concerns it reflected in 1999 (quoted at the outset of this note): "the CRTC's ability to respond quickly and effectively to applications and requests is a key component of a strong and healthy Canadian communications sector". How long, then, does the CRTC require applicants to wait for decisions about their applications once these have been filed?

FRPC therefore reviewed 100 Part 1 broadcasting applications unrelated to licence renewals which the CRTC listed in its Broadcasting Applications Report for 2019, to determine when they were filed. We reviewed each of the applications and their related decisions to determine when the applications were signed (on the assumption the applications were then filed that date or shortly thereafter) and when they were decided. The CRTC's Broadcasting Applications Report does not show these dates, or the date when the record closed for each proceeding. Four applications were excluded from the analysis because one was withdrawn by the applicant and because three other decisions were inaccessible from the CRTC's website (meaning that the decision dates could not be determined).



In 2019 nearly half (49%) of the Part 1 non-renewal broadcasting applications submitted in 2019 were decided more than four months after they were filed, with 29.1% (28) being decided a year or more after filing. Similarly, half (36 or 50.7%) of the applications filed from January to August 2019 – five or more months before the Covid-19 pandemic began to disrupt government operations – were decided after 4 months, with more than a quarter (21, or 29.6%) being decided a year or more later.

Month application was filed in 2019	Months between filing and CRTC decision date					
	4 months	5-6 months	7-11.9 months	12-18 months	2 years	Total
Jan	4	1				5
Feb	6	1	1			8
Mar	2					2
Apr	6		1	2		9
May	5	5	2	1		13
Jun	3		1			4
Jul	6			2	7	15
Aug	3		3	9		15
Subtotal, pre-Covid 19	35	7	8	14	7	71
Subtotal, % of total	49.3%	9.9%	11.3%	19.7%	9.9%	100.0%
Sep	3		1			4
Oct	5		1			6
Nov	3	1	1	5		10
Dec	3			1	1	5
Total	49	8	11	20	8	96
% of total	51.0%	8.3%	11.5%	20.8%	8.3%	100.0%

A decade and a half ago the CRTC explained that its processing standards (in broadcasting) were developed “to ensure fairness and transparency at all times and ... to deal with applications in the most efficient and timely manner” (*A guide to the CRTC processes for broadcasting applications and policy reviews*, [Broadcasting Circular CRTC 2007-4](#) (Ottawa, 7 June 2007), at paragraphs 8 and 37).

The data available from the CRTC’s reporting of how it meets its own decision-making standards show that it generally has been unable to meet its self-imposed standards. Time-consuming analysis of the CRTC’s broadcasting-applications-report data which is summarized above also highlights an even greater problem: that for a significant number of applications (say, one in four), the CRTC is taking not just a few months to issue decisions but a year or more. Previous research by FRPC similarly found that the time taken by the CRTC to make decisions about civil-society organizations’ applications for remuneration of their costs of participating in the CRTC’s telecommunications proceedings had, on average, [more than doubled from 2013 to 2018](#), from 3.7 months to 9.6 months.

Such delays impose direct and indirect costs on applicants, bring the CRTC’s administration of its responsibilities into disrepute, and lead to mistrust of the Commission by those it regulates and the public whose interests it serves.

Recommendations:

The CRTC should update its administrative processes for the 21st century by clearly reporting on the time it is taking to issue decisions about every application it receives, from the time the application is filed and posted, and from the time the public record closes. It should also report clearly and fully about applications it chooses not to consider, instead of simply returning them to the applicants or by ignoring them by not posting them.



Maintaining the *status quo* – in which the CRTC obscures the untimeliness of its decision-making by not disclosing the time between its receipt of applications and when it decides the applications – would surely contradict the concern about transparency raised by the Ministers to whom the CRTC reports.

~ Forum for Research and Policy in Communications (FRPC)

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