



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

17: Transparency means clarity about evidence

17 March 2023

This is the seventeenth 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 degree to which information about the CRTC's operations can be obtained and evaluated.

Parliament has empowered the CRTC to collect information from those it regulates with respect to its responsibilities. The CRTC has the authority to require Canadian carriers to submit "any information" it considers necessary to administer its responsibilities (section 37(1) of the *Telecommunications Act*) and to require broadcast licensees to submit "such information" about their programming, finances, conduct and/or management as the CRTC requires (section 9(1)(i) of the *Broadcasting Act*).

A sample of the wealth of information collected by the CRTC can be gleaned from the *Guide* published by the CRTC [to give "an overview of the layout of" CRTC Data Collection](#). Briefly, this page indicates that the CRTC collects information about

- Broadcasters' revenues, expenditures and staffing levels ("Annual Return" forms for broadcast undertakings)
- Telecommunications
 - Wireline access and long-distance
 - Data and private lines
 - Internet
 - Mobile and paging
- Payphones
- Telecommunications fees

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).



The CRTC has also published monitoring reports about telecommunications and broadcasting since the late 1990s, merging these separate reports into one document in 2008. Formerly the *Communications Monitoring Report* the CRTC's *Communications Market* today reports on "current trends" and is "[updated every 3 months](#)".

The main problem for parties that want to use the CRTC's data to submit informed comments about broadcasting and telecommunications matters is that the data provided by the CRTC are, for the most part, connected with broadcast and telecom companies' financial performance.

In the case of broadcasting, for example, the CRTC gathers but does not publish any information about the radio or television programming broadcast to audiences, although it requires radio and TV programming services to collect this information. While it gathers and [publishes information on the number, hours and budgets of programming produced by 12 TV broadcast groups](#), it gathers but does *not* publish any data about the amount of programming that radio and TV services broadcast. As a result a gap exists: how much news and in particular, original local news, do Canadian radio and television stations broadcast in an average week? (This is a trick question, actually, because the CRTC requires TV services to collect information about the news they broadcast, but does not impose the same requirement on radio services.) On what basis can interested parties comment about the programming broadcast by radio and TV services, if that information is withheld by the Commission?

The CRTC does publish extensive data about the services provided by telecommunications companies – but in a format that is likely inaccessible to most people. Downloading the CRTC's [Year-End Monthly Reported Prices for Internet, Mobile and TV services – CMR \(2016-2021\)](#) yields a 21,250-line dataset: presumably these data will be useful to experienced parties in CRTC proceedings – but would it not facilitate discussion if the CRTC were to publish its own analyses of such data and the conclusions it draws with respect to the achievement of Parliament's goals for telecommunications, in particular affordability?

In light of the CRTC's supervisory responsibilities, moreover, which presumably require the CRTC to ascertain the degree to which broadcasters are implementing Parliament's broadcasting policy for Canada, what explains the CRTC's approach to identifying stations that do or do not meet the regulatory requirements it has established to implement that policy? In 2014 the CRTC said that it "will publish annual lists of radio stations in compliance and non-compliance" with its regulations and their conditions of licence: seven years later the CRTC explained that the lists are no longer available because "[it was not possible to have accurate, up to date information always available](#)".

Even when the CRTC does publish information about its understanding of a broadcasting or telecom matter, however, what is left unsaid sometimes matters more than what the CRTC says. For example, parties reviewing the [commercial radio policy the CRTC released in 2022](#) might have gained the impression that most radio stations comply with the CRTC's regulatory requirements, as at paragraph 242

[t]he Commission notes that, over the past three years, few radio stations assessed during monitoring evaluations were found to be in non-compliance with their regulatory requirements regarding the broadcast of Canadian Popular Music musical selections. In addition, some commercial radio broadcasters air more Canadian Popular Music musical selections than the required 35% of their musical selections on their own initiative.

Yet when asked for any studies undertaken by the CRTC from January 2014 to February 2021 to analyze radio stations' compliance with the CRTC's policies or regulations for radio, [the CRTC in mid-January 2023 disclosed](#) that from 2015 to 2018, a roughly a fifth (21% of commercial stations in 2014-15) to a third (34% of commercial radio stations in 2018) were non-compliant: Figure 1.



Figure 1: CRTC A-2020-00068 response, page 4 of 98

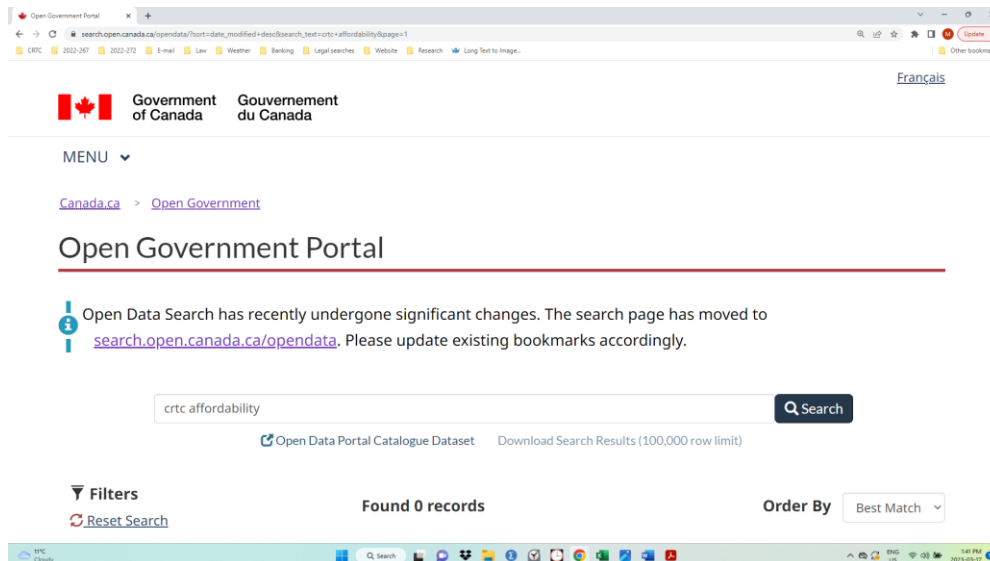
Table 1: Non-compliance rate of radio stations due for licence renewal since October 28, 2014:

Sector	2014-15			2016			2017			2018		
	A*	**B	***C	A*	**B	***C	A*	**B	***C	A*	**B	***C
Commercial	56	12	21%	67	18	27%	78	12	15%	26	9	34%
Commercial Ethnic/specialty	9	2	22%	3	2	67%	9	8	89%	12	7	58%
Campus/community	12	8	67%	17	9	53%	10	5	50%	18	9	50%
Native	13	10	77%	3	3	100%	4	4	100%	4	4	100%
Other	6	2	33%	4	0	0%	4	3	75%	0	0	0%
TOTAL	96	34	35%	94	32	34%	105	32	31%	60	29	48%

*A = Total # of stations/licences renewed **B = Total # of stations in non-compliance ***C = Non-compliance rate

To recap, [the CRTC said in 2020 that](#) “the main objective” of its commercial radio review was “to assess the relevance and effectiveness of the regulatory tools governing commercial radio”. The information it disclosed in [2023 \(in response to a 2021 request\)](#) showed not just regulatory non-compliance in 2018 among a third (34%) of the radio stations it reviewed, but also that the level of non-compliance had increased over time (from 21% in 2015) to 2018. It therefore seems disingenuous, at best, for the CRTC to say in its [2022 review of its commercial radio policy](#) that “few” radio stations were in non-compliance in the previous three years – presumably in 2019/20, 2020/21, 2021/22. The contradictory results leave the impression the goal of this proceeding was not to strengthen radio broadcasters’ implementation of Parliament’s broadcasting policy, but to “[e]stablish a flexible regulatory framework” for radio stations ([2022-332](#), paragraph 4).

The CRTC similarly publishes little data about its alternative-dispute-resolution processes, including the basics of how long these processes take. Nor is information readily available about telecommunications affordability:





Why, in a proceeding launched in 2023 to '[ensure that Canadians have access to reliable communications](#)' would the CRTC not refer to evidence that might be relevant from a proceeding it had launched in [September 2019](#) on "Service Outages"?

The absence of readily usable quantitative information from the CRTC which may be evaluated and/or used as evidence in submissions from the public – and the CRTC's own decisions not to disclose relevant information that it already has – limits the public's ability to participate effectively in the CRTC's proceedings. This limitation in turn places the public interest in general at a disadvantage compared to the interest(s) of large telecommunications companies with well-staffed regulatory affairs departments and access to key data of their own.

Recommendations:

The CRTC should update its administrative processes for the 21st century by clearly and consistently reporting its own findings about matters relevant to its policy- and decision-making when it invites the public to participate in its consultations. Even if well-intentioned, the CRTC's [ongoing offer of access](#) to dozens, if not hundreds or CRTC datafiles (through the Open Data portal) effectively sends interested parties hunting for the proverbial needle in the haystack or worse, chasing after wild Canadian geese.

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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