



10 June 2023

Filed online

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations, Broadcasting Notice of Consultation 2023-139 (Ottawa, 12 May 2023); Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings, Broadcasting Notice of Consultation 2023-140 (Ottawa, 12 May 2023) – Procedural request*

- 1 The CRTC has in the above-mentioned notices of consultation invited interested parties to submit “comments that address the issues and question set out” in the notices (2023-139 at paragraph 21; 2023-140 at paragraph 42). The deadline for comments is next Monday, 12 June 2023. Neither notice sets out objective evidence or facts about the issues they raise, appearing therefore to leave the assembly of relevant data and other objective evidence to interveners.
- 2 Parties replying to “matters raised during the comment period” must then file replies by Tuesday, 27 June 2023, and may file their final replies “to any replies received” by 12 July 2023.
- 3 The [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure \(Rules\)](#) limit the content of parties’ replies to CRTC notices of consultation to admissions or denials of fact. Subsection 27(2)(b) of the *Rules* states that the reply to the document of an intervener “must admit or deny the facts alleged in the ... document;” The CRTC’s broadcast regulatory policies have in the past explained the CRTC’s determinations not to accept parties’ proposals due to the absence of sufficient evidence: see, for examples, paragraphs 300, 303, 344 and 411 of the CRTC’s 2022 [Revised Commercial Radio Policy](#), paragraph 12 of the CRTC’s 2016 [Amendment to exemption orders for various types of radio programming undertakings](#), in paragraph 65 in the CRTC’s 2016 [Standard requirements for television stations, discretionary services, and on-demand services](#), paragraph 177 in the CRTC’s 2016 [Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.](#), paragraph 25 in the CRTC’s 2014 [Let’s Talk TV: The way forward – Creating compelling and diverse Canadian programming](#), paragraph 68 in the CRTC’s 2013 [Revised regulatory framework for pay-per-view services](#), paragraph 12 of the CRTC’s 2012 [Code of Best Practices for Community Television Access Programming](#) as well as paragraphs 28, 30, 42 and 136 in the CRTC’s 2011 [Regulatory framework relating to vertical integration](#).
- 4 A possibility exists, however, that due to inexperience in CRTC proceedings in general or to straitened deadlines in these proceedings a number of parties may be unable to provide relevant facts in their interventions or comments and may therefore believe that they may do so in their replies – when, as noted above, section 27(2)(b) appears to preclude this.

- 5 FRPC is therefore making this procedural request to ask the CRTC to grant parties submitting comments next Monday the explicit opportunity to submit new information or evidence in their replies.
- 6 The CRTC¹ has in the past granted parties' submission of new evidence in their replies.² It has said that replies may include "new information" "in response to an argument" made in another party's intervention,³ that a reply does not contain new evidence if the information had already been discussed in a related hearing,⁴ and that the new information "is without prejudice to the other parties and would serve the public interest."⁵ While this proceeding invites comments on the issues it raises, it has not scheduled a public hearing and no parties are formally *a lis* in that they have filed or oppose an application: individual parties are therefore unlikely to be disadvantaged by the filing of new evidence in others' replies. While it is true that some uncertainty may result if parties' replies, rather than their comments, provide evidence supporting their thinking, this uncertainty is balanced by the fact that enabling parties to submit new evidence in their replies would provide the Commission with a more fulsome public record, thereby strengthening the quality of its final determinations in these proceedings.
- 7 Section 7 of the *Rules* enables the CRTC to "dispense with or vary" its *Rules* when "considerations of public interest or fairness permit ...", provided parties "provide reasons for ... the change and address how the requested change might affect other persons" and that the request is made "as soon as possible".⁶ The Forum asks the CRTC permit all parties including FRPC to submit relevant new evidence in their replies because – due to the four-week deadline in the above-noted proceedings – they were unable to gather, analyze and include evidence in their interventions. This change would, in particular, benefit smaller organizations lacking in-house resources and expertise, without disadvantaging others, including large offline or online broadcasters.



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¹ Whether the Commission itself or its staff.

² See e.g. *Re: New intervention period - Part 1 application (application 2017-0434-6)*, [ARCHIVED - Broadcasting Procedural Letter Addressed to Monique Lafontaine \(Ethnic Channels Group Limited\)](#) (Ottawa, 11 August 2017).

³ *Subject: Quebecor Media Inc.'s further request for permission to file additional information on the public record of CRTC Notice of Consultation 2011-525*, [Archived – Letter](#) (Ottawa, 25 November 2011): the CRTC explained that while one party had "included new information" in its reply to an argument made in another party's intervention.

⁴ See e.g. *Re: New evidence filed out of process by Rogers Broadcasting Limited - Broadcasting Notice of Consultation CRTC 2014-26-1*, [ARCHIVED - Procedural letter](#) (Ottawa, 7 May 2014) "the content of the letter does not constitute new evidence since it does not provide any new information that was not already discussed at the hearing."

⁵ *Subject: Reply filed by NATYF Inc. in connection with its application for distribution as part of the digital basic service for its discretionary service Natyf TV – Application 2021-0215-1 – Broadcasting Notice of Consultation CRTC 2022-252*, [Broadcasting - Commission letter addressed to Jean-Yves Roux \(Natyf Inc.\)](#) (Ottawa, 19 December 2022).

⁶ *Converged Rules of Procedure, Broadcasting and Telecom Notice of Consultation CRTC 2010-509* (Ottawa, 23 July 2010), Appendix 2, "b. Asking the Commission to Change the Procedure".