



11 July 2023

Filed online

Claude Doucet  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content, Broadcasting Notice of Consultation 2023-138 (Ottawa, 12 May 2023)***

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in the 1991 *Broadcasting Act*. FRPC asks to appear before the CRTC at its hearing in this matter.

The Forum's comments in response to the fifteen questions specifically identified as being of interest in Step 1 of the CRTC's 3-Step Regulatory Plan are attached, along with certain contextual information.

We look forward to reviewing other parties' interventions and may reply at the appropriate time.

Regards,

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## **Broadcasting Notice of Consultation CRTC 2023-138**

**In designing a “Path Forward”,  
It’s good to know where the path begins**

Intervention of the Forum for Research and Policy in Communications (FRPC)

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11 July 2023

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## Executive Summary

- ES 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013. It undertakes research, legal analysis and quantitative research about communications, including broadcasting. FRPC believes that the public interest is served when it meets Parliament's objectives for the broadcasting system, as set out in section 3 of the 1991 Broadcasting Act.
- ES 2 The creation of space for Canadians in their broadcasting system is the foundational preface to the industrial side of a production industry that has been nurtured and has grown for decades. While technology has made the idea of airtime quotas nearly irrelevant – though still beneficial in the context of traditional broadcasting – funding and the ability to find Canadian programming are far more relevant.
- ES 3 Parliament's *Online Streaming Act* received royal assent on 27 April 2023. Just a week later the CRTC published its plan for modernizing Canada's broadcasting system. Four business days after publishing its plan, the CRTC called for comments on three important proceedings: NPH 2023-138, BNoC 2023-139 and BNoC 2023-140. Each covering significant issues and all interrelated, the extremely short deadlines provided by the CRTC along with the absence of nearly all relevant evidence left many – including FRPC – concerned that they would be unable to fully understand the CRTC's concerns and would therefore in turn be unable to locate and provide relevant evidence to address those concerns.
- ES 4 While FRPC has responded to a number of the questions set by the CRTC for its November 2023 public hearing, we are concerned that at this point – just four months from that hearing – Canadians have not been provided with a clear description of 'where we are'. Without that description, it is unclear whether or when Canadians and part will know whether our broadcasting system is on the better path promised by the Commission,

## I. Planning for the next decade

### A *Forum for Research and Policy in Communications (FRPC)*

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established ten years ago to undertake research and policy analysis about communications, including telecommunications.
- 2 The Forum supports a strong Canadian communications system that serves the public interest. In our view, the elements that help to define the public interest in this sector are set out in Parliament's broadcasting policy for Canada<sup>1</sup> and other statutes of Canada that are constitutional or quasi-constitutional in nature.<sup>2</sup>
- 3 The Forum is intervening with respect to Notice of Public Hearing 2023-138 (NPH 2023-138). We strongly support the establishment of a regulatory plan to implement the provisions of the *Online Streaming Act* with delineated stages and clear objectives.

### B *Online Streaming Act was necessary*

- 4 Each of Canada's broadcasting statutes has had at its core the creation of space within each medium for Canadians to share stories with other Canadians. Other government programmes in the cultural realm, whether federal or provincial, have also been designed to strengthen the economic base to create those stories. As Robert Fowler famously commented, "...all the rest is housekeeping".
- 5 The creation of space for Canadians is the foundational preface to the mechanics of the industrial side of a production industry that has been nurtured over several decades and that has now grown to complement and support (through public subsidy such as through the Canadian Media Fund, TFC, tax credits) these channels of exhibition. In a world of streaming and time shifting, airtime quotas are far less relevant – though still beneficial in the context of traditional television, radio and distribution services – meaning that funding and the ability to find Canadian programming are more relevant measures of Canada's commitment to ensure the availability of Canadian stories to Canadian and other audiences.
- 6 Continuing to ensure the availability of programming created by and for Canadians is key to the development of a new regulatory approach to today's online world. Canada should neither want nor try to reintroduce the walled-garden approach of the past,

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<sup>1</sup> *Broadcasting Act*, as am. in the 44<sup>th</sup> Parliament of Canada (1<sup>st</sup> session) by *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, S.C. 2023, c. 8. (See LEGISinfo at <https://www.parl.ca/legisinfo/en/bill/44-1/c-11>).

<sup>2</sup> Charter, Privacy act, official languages act and also accessible Canada act.

when the numbers of broadcasters were limited by the spectrum available in the communities they served.

7 The fact that so many young Canadians have developed their own broadcast channels online through streamers such as YouTube is heartening – we hope that many more Canadians will join this throng. In particular, we hope that new or prospective broadcasters are willing to give their time to work with the CRTC “to modernize Canada’s broadcasting system”.<sup>3</sup>

8 FRPC’ fundamental concern is that the CRTC – the “single, independent public authority”<sup>4</sup> responsible for “implementing the broadcasting policy”<sup>5</sup> of Parliament set out in the *Act* – has made it exceptionally difficult for interested or affected parties to participate in its processes for implementing the new *Online Streaming Act*.

### C *CRTC’s interrelated, 3-step process has created confusion*

9 The CRTC has said that its goal is to proceed as expeditiously as possible to implement the *Online Streaming Act*, enacted 27 April 2023. It published its 3-step “regulatory plan to modernize the broadcasting system” 7 days later.<sup>6</sup> Four business days after that the Commission launched its regulatory plan’s first step by inviting people’s comments on 3 broadcast proceedings: NPH 2023-138, BNoC 2023-139 and BNoC 2023-140.

**Table 1 CRTC Timelines in 2023-138, -139 and -140**

10 The 3 proceedings had two things in common: their deadlines and their interdependence.

Consultation	2023-138	2023-139	2023-140
Issued	12 May	12 May	12 May
# of questions	39 (24 for 2024)	7	15
1 <sup>st</sup> comments	27 June *	12 June	12 June
Reply	12 July **	27 June	27 June
Final reply	<i>Not disclosed</i>	12 July	12 July
* Amended 9 June to 11 July		** Am 9 June to 26 July	

11 The three proceedings raise significant issues related to support for Canadian programming, information about online undertakings in Canada and regulatory oversight and explicitly state that each is connected to the other: Figure 1.

**Figure 1 Interrelated issues of NPH 2023-138, BNoC 2023-139 and BNoC 2023-140 published on 12 May 2023**

<b><u>NPH 2023-138</u></b> “The Commission is launching Step 1 of a three-step process to establish a modernized regulatory framework regarding contributions to support Canadian and Indigenous content. <b>This</b>	“Today, the Commission has also issued Broadcasting Notice of Consultation 2023-139, in which it is seeking comments on its proposed Online Undertakings Registration Regulations and on the
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<sup>3</sup> CRTC, [Regulatory Plan to modernize Canada’s broadcasting system](#) (undated; page is dynamic).

<sup>4</sup> *Broadcasting Act* ss. 3(2).

<sup>5</sup> S. 5(1).

<sup>6</sup> CRTC, “CRTC announces plan to modernize the broadcasting system” [News release \(Ottawa, 8 May 2023\)](#).

<p><b>framework</b>, once implemented, <b>will set out the contributions (which may include both expenditures and other types of supports) that broadcasting undertakings</b>, including online undertakings (i.e., online audio and video services), will be required to make to support Canadian and Indigenous audio and video content.”</p>	<p>undertakings that should be exempt from those regulations, and Broadcasting Notice of Consultation 2023-140, in which it is seeking comments in regard to a review of certain exemption orders and the transition from conditions of exemption to conditions of service for broadcasting online undertakings. ... Given certain common elements between the various proceedings, interested persons should monitor the developments of the other proceedings.”</p>
<p><b><u>BNoC 2023-139</u></b>  “7. Currently the Commission has only limited information on online undertakings operating in Canada. <b>Requiring online undertakings to be registered with the Commission would allow it to (1) keep track of online undertakings operating in Canada, and (2) collect the most basic information from these undertakings.</b> Having such information would also help to better understand the Canadian online broadcasting landscape more generally.”</p>	<p>“Today, the Commission has also launched a proceeding to review certain current exemption orders and the transition from conditions of exemption to conditions of service for broadcasting online undertakings (Broadcasting Notice of Consultation 2023-140). ... Given certain common elements between the various proceedings, interested persons should monitor the developments of each proceeding.”</p>
<p><b><u>BNoC 2023-140</u></b>  “6. It is the Commission’s view that <b>some basic regulatory oversight for online undertakings should be maintained</b> until the numerous issues that will need to be dealt with in the transition to the current Broadcasting Act can be more fully addressed. Such oversight would serve to ensure symmetry between online undertakings and licensed broadcasters in respect of requirements set out in the current exemption orders, such as the prohibition on giving an undue preference, and the requirement to provide basic information to the Commission.”</p>	<p>“Today, the Commission has also launched a proceeding in regard to proposed Online Undertakings Registration Regulations and a related proposed exemption order (Broadcasting Notice of Consultation 2023-139). .... Given certain common elements between the various proceedings, interested persons should monitor the developments of each proceeding.”</p>

- 12 Several dozen parties raised significant concerns about the Commission’s process: Appendix 1. They pointed out that launching three important consultations concurrently and setting the same deadline for two of them left them insufficient time to review the three consultation documents (and their related documents) gather and analyze relevant evidence, discuss options with their colleagues or members and then to draft and write their submissions.
- 13 To put this two-proceedings-and-one-month-to-comment deadline into perspective, the CRTC also holds proceedings under the *Telecommunications Act*. Towards the end of [March 2023](#), in fact, the CRTC called for comments on the Broadband Fund that it established in [2018](#): the CRTCS [notice of consultation](#) provided facts and information about this 5-year old existing policy and gave interested parties ***four months*** to submit their initial comments on an existing telecom policy (and another ***two months*** to review and reply to those comments). Parties in this CRTC telecom proceeding were afforded time to understand the case they needed to meet: should this not also have

been provided to those participating in its broadcasting proceedings?

**Figure 2 CRTC Calendar of hearings for 2023**

- 14 By contrast the CRTC denied the procedural requests it received to extend the deadlines for the three proceedings into August – including, incidentally, a request it received from the Canadian National Institute for the Blind.
- 15 The CRTC’s clear determination to push ahead is all the more puzzling giving the emptiness in its current calendar of proceedings in the months of August, September and October: Figure 2.
- 16 Unfortunately, while the CRTC appears to understand the path it wants to create for Canada’s broadcasting system, its consultation documents have resulted in an unusually high level of confusion about the purposes, objectives and ultimate goals of its plan.
- 17 This is not only because it is rare for the Commission to issue three separate notices announcing consultations – implying the consultations address different matters – while adjuring participants in each proceeding to follow the other two as all three are relevant to each other.
- 18 It is also somewhat unusual for the CRTC to address a key issue in a proceeding by saying it will not deal with that issue ....at this time: Figure 3.

Calendar of Public Hearings - 2023	
<b>January</b>	
January 10, 2023 - Gatineau, Quebec	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-252, 2022-252-1 <a href="#">View hearing documents (2022-252)</a>
January 19, 2023 - National Capital Region	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-208 <a href="#">View hearing documents (2022-208)</a>
<b>February</b>	
February 22, 2023 - National Capital Region	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-331, 2022-331-1 <a href="#">View hearing documents (2022-331)</a>
<b>March</b>	
<b>April</b>	
April 17, 2023 - Whitehorse, Yukon	Call for comments – Telecommunications in the Far North, Phase II - Telecom Notice of Consultation CRTC 2022-147, 2022-147-1, 2022-147-2 <a href="#">View hearing documents (2022-147)</a>
<b>May</b>	
May 3, 2023 - GATINEAU, QUEBEC	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2023-6, 2023-6-1, 2023-6-2 <a href="#">View hearing documents (2023-6)</a>
May 11, 2023 - National Capital Region	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2023-49 <a href="#">View hearing documents (2023-49)</a>
<b>June</b>	
June 28, 2023 - Gatineau, Quebec	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2023-72 <a href="#">View hearing documents (2023-72)</a>
<b>July</b>	
July 4, 2023 - National Capital Region	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2023-120, 2023-120-1 <a href="#">View hearing documents (2023-120)</a>
<b>August</b>	
<b>September</b>	
<b>October</b>	
<b>November</b>	
November 26, 2023 - Gatineau, Quebec	To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2023-136, 2023-136-1 <a href="#">View hearing documents (2023-136)</a>
<b>December</b>	



**Figure 3 NPH 2023-138, at paragraph 81**

81. As indicated above, the Commission intends to apply an approach that focuses on desired performance standards and measures of success without specifying the means or the method for achieving them. In this regard, the Commission does not intend, at this time, to prescribe or require an undertaking to use a certain method or tool in order to achieve desired promotion and discoverability outcomes. For example, the Commission would not require an undertaking to change marketing strategies or prescribe specific home page or search engine functions. Moreover, the current *Broadcasting Act* prohibits the Commission from making orders pursuant to paragraph 9.1(1)(e)<sup>22</sup> that that would require the use of a specific algorithm or source code. It would be up to the undertakings to decide which tools are best suited to achieve the identified outcomes regarding promotion and discoverability. However, the Commission will need to understand how those tools are utilized and measured to assess whether the identified outcomes are being achieved.

- 19 Announcing that it may at some other time “prescribe or require an undertaking” to use specified tools or measures without providing clarification obviously creates uncertainty.
- 20 Adding to this uncertainty is the absence from all three consultation notices of any relevant evidence describing the current position of Canada’s broadcasting system with respect to the purposes of the three proceedings: without this evidence, how will Canadians and Parliament know in three or four or five or ten years whether and how well the CRTC has been able to implement the *Online Streaming Act*? In particular, as NCRA/ANREC’s reply to BNoC 2023-139 suggests,<sup>7</sup> how will the CRTC know whether support for Canadian programming is *increasing* if it apparently has no information establishing its current levels or, indeed, its levels in the past (so as to eliminate the risk that unusual fluctuations become the floor or the ceiling going forward).

#### ***D CRTC’s objectives for the new regulatory framework***

- 21 The evidence that the CRTC should and could have placed on the NPH 2023-138 proceeding’s record is set out in Figure 4, which compares the 10 objectives set out in paragraph 19 of NPH 2023-138, with empirical tools that the CRTC has used in the past (in the 1970s and 1980s) to discuss these issues:

<sup>7</sup> In BNoC 2023-139 NCRA/ANREC wrote at ¶13, “CCD or equivalent contributions to the c/c sector must increase rather than decrease, and the total contribution required from each contributor should be based on their revenue across all services. ....”

**Figure 4 CRTC's objectives in NPH 2023-138 and their potential measurement**

NPH 2023-138, paragraph 19	Empirical measures ('operationalization')
19. Broadly speaking, the objectives of this new contribution framework are to ensure that:	
<ul style="list-style-type: none"> <li>○ Canadians continue to have access to a wide range of choice of high-quality audio and video content that is made by and for Canadians, as well as the best content from around the world, regardless of the platform, device or technology they wish to use;</li> </ul>	Programming analysis (see for example, <a href="#">Public Notice CRTC 1985-82</a> ) <a href="#">Television program logs, 2014-2023</a> Radio program logs – not published
<ul style="list-style-type: none"> <li>○ both Canadian and international online undertakings participate in the support of Canadian and Indigenous audio and video content and have equitable access to those supports when creating this content;</li> </ul>	Current support and production-funding levels – CRTC financial summaries No readily accessible data measuring equitable access
<ul style="list-style-type: none"> <li>○ the regulatory burden on all broadcasting undertakings is proportionate and relevant;</li> </ul>	Evaluation of 'regulatory burden' – "administrative" expenditures, in <a href="#">2022 Broadcasting Financial Summaries</a>
<ul style="list-style-type: none"> <li>○ contributions are considered at the level of the "broadcasting ownership group," where applicable, in order to provide greater flexibility and a reduced administrative burden;</li> </ul>	<a href="#">Ownership charts</a> <a href="#">Aggregated financial summaries by large ownership groups</a>
<ul style="list-style-type: none"> <li>○ contributions are fair, proportionate, and appropriate to the nature of the service while ensuring the sustainable financing of Canadian and Indigenous audio and video content, in both official languages as well as Indigenous languages;</li> </ul>	Canadian content funding by nature of the survey, by origin (Canadian), by Indigenous and non-Indigenous, in official and Indigenous languages <a href="#">2022 Broadcasting Financial Summaries</a> (for radio, TV, discretionary services and BDUs) <a href="#">Aggregated financial summaries by large ownership groups</a>
<ul style="list-style-type: none"> <li>○ funds, as a component of the new contribution framework, provide a sustainable financing option for original Canadian and Indigenous content, both audio and video, and support other public policy objectives;</li> </ul>	Operationalization of 'sustainability' => unknown
<ul style="list-style-type: none"> <li>○ funds are reflective of Canada's diversity and meet accessibility requirements in the projects they support;</li> </ul>	CRTC in 1984 and 1988 undertook a content analysis of the portrayal of people in on-air programming for public and private radio and television, but it is unknown whether it retains these data or the reports they generated
<ul style="list-style-type: none"> <li>○ Indigenous Peoples, their stories and their music are seen and heard, including through content broadcast <i>or made available in Indigenous languages</i>;</li> </ul>	<a href="#">Television program logs</a> Radio program logs (unpublished)
<ul style="list-style-type: none"> <li>○ incentives and other regulatory measures are introduced to better support the creation and distribution of Canadian content by communities that are currently under-represented in the broadcasting system, while also ensuring that this content is reflective of and relevant to these communities; and</li> </ul>	Unknown
<ul style="list-style-type: none"> <li>○ broad distribution and discoverability of Canadian and Indigenous audio and video content is achieved, domestically and internationally.</li> </ul>	Distribution of services and their discoverability presently unknown Jurisdiction uncertain

- 22 Should parties in this proceeding be concerned about the ability of the CRTC to take on the many new responsibilities imposed on it by the *Online Streaming Act*, as well as by Bill C-18 and any other statutes that are enacted in 2023 or 2024?
- 23 The CRTC has collected a wealth of facts about Canadian broadcasting, as its Open Data list of datasets shows. A challenge, at times, is that data that reflect the *Broadcasting Act*'s objectives – knowing, for instance, how much Canadian programming is being made available – are difficult to find, despite the wealth of information it provides otherwise for both radio and television.
- 24 Appendix 2 provides a snapshot of the 42 pages of data available from the CRTC's "[Communications Market Reports – Open Data](#)" page in the CRTC's "data-television-sector" excel spreadsheet. The CRTC's page does not mention that television broadcasters' program logs are available on the federal government's [Open Government](#) site.
- 25 One solution – to ensure that all parties can assure themselves that the data collected by the CRTC in any of its Regulatory Plan's proceedings meet their needs and the needs of Parliament, would be to schedule a more-informal proceeding in 2024 – a colloquium, perhaps – to enable the CRTC to introduce its data holdings to all concerned, to elicit parties' recommendations to strengthen the quality of data held by the CRTC and to determine how to ensure that the CRTC's data sets are readily accessible in at least one, single location.

**Recommendation 1** The CRTC should add an informal proceeding to its 2024 agenda to invite interested parties to learn about its data holdings and to make recommendations to strengthen the quality of its data

- 26 Another step that the CRTC could take would be to strengthen its practices regarding openness, transparency and accountability. For example, the *Act* requires the CRTC to publish information on certain matters, such as reports on the CBC's non-compliance and a public register of petitions to the Governor-in-Council (Cabinet): Table 1

**Table 2 CRTC publication requirements**

Act, section	Requirement	Location of information
25(1)	If the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened section 31.1, any order made under subsection 9.1(1), 11.1(2) or 12(2) or any regulation made under this Part, the Commission <b>shall</b> forward to the Minister a report setting out the circumstances of the contravention, the findings of the Commission and any observations or recommendations of the Commission in connection with the contravention.	Unknown Following a public hearing the CRTC determined the CRTC to be in breach of its regulations or a condition of licence (now condition of service) in Broadcasting Decisions 2000-1 (¶92), 2001-53 (¶18) and 2013-263 (¶83); neither the CRTC nor the Department of Canadian Heritage have copies of any of the required reports

Act, section	Requirement	Location of information
29(3)	The Commission <i>shall</i> establish and maintain a public register in which shall be kept a copy of each petition received by the Commission.	Unknown Appendix 2 lists the number of orders in council FRPC has located involving the CRTC, many of which it could not locate on the CRTC's website
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.	CRTC maintains a list of exemptions at: <a href="#">Broadcasting Exemption Orders</a>
9.1(5)	(5) The Commission shall publish each order that is made under this section on its website.	Unknown
11.1(7)	A copy of each regulation that the Commission proposes to make under this section [11.1] shall be published in the <i>Canada Gazette</i> and a copy of each proposed order shall be published on the Commission's website. 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 or order.	Unknown

- 27 While the Act does not require the CRTC to publish information about its hearings on its website (only in the *Canada Gazette* and relevant newspapers), [the CRTC does so](#) and also publishes information about its [non-hearing consultations](#) online.

**Recommendation 2** In 2023 and 2024 the CRTC should begin to ensure that its 'A to Z' index is updated regularly, that it include references to statutorily mandated reports and that it maintain links to such website pages.

- 28 The CRTC should also – preferably early in 2024 – initiate a proceeding to deal with its approach to confidentiality. The 2019-2022 CBC renewal proceeding established that broadcasters' failure to provide complete information unnecessarily lengthens and complicates the CRTC's proceedings. (In that proceeding the Corporation declined to provide any information about its online activities by interveners' February 2020 deadline, then submitted the requested information four months later, requiring an unexpected re-start of the proceeding.)
- 29 More clarity is needed about the information gathered by the CRTC because, without such clarity, there will be no way to determine whether any of the CRTC's ten

objectives are being met. If the objectives are being met, lack of objective evidence to this effect could lead the CRTC to increase any requirements it imposes in 2023 and 2024. Lack of transparency also raises concerns about the degree to which the CRTC's decision-making is based on the evidentiary record before it or is rather more arbitrary. Tribunals in Canada today are adopting procedures to ensure that the service they deliver to Canadians is "fair, transparent, efficient, proactive, proportionate and principled."<sup>8</sup>

## II. Where does the CRTC believe Canada's broadcasting system "is"?

30 The changes implemented by the *Online Streaming Act* could transform the programming available in Canada. Unfortunately, at present we have no way of knowing 'from what' it will be transformed, and therefore will be unable to determine when it has actually moved to the point envisaged by the current *Broadcasting Act*. This is because the CRTC – the only agency empowered to collect such information from those it regulates – has provided no information about the level of creation and presentation of Canadian content.

31 The CRTC has described seven funds it has approved<sup>9</sup> and says these "support the creation, distribution and promotion of Canadian audio and video programming": the question is, how many programming hours and employment do these funds yield?

32 The fact that the CRTC has concluded that only one datum from the *Annual Digital Media Survey (ADMS)* could be published – total revenues (of audio and of video services, for 2021 and 2022) is somewhat breathtaking. After all, the CRTC has undertaken similar surveys for its licensed radio, television and distribution surveys for more than 50 years. What went wrong in this survey?

**Recommendation 3** The CRTC should undertake a public, in-person consultation to address the problems it encountered in its 2021 and 2022 *Annual Digital Media Surveys* so as to prevent these problems from recurring.

33 The *ADMS* revenue data provide no meaningful information, and in fact raise questions (rather than answering them).

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<sup>8</sup> See e.g. Zena [Olinjynk's article in Canadian Lawyer](#) regarding the Law Society of Alberta whose Chief Executive Officer and Executive Director of the LSA said in a statement the core group of the society ... is to regulate the legal profession in the public interest.

Part of that mandate involves creating and promoting required standards for the ethical and competent delivery of legal services and enforcing compliance with those standards in a manner that is fair, transparent, efficient, proactive, proportionate and principled.

<sup>9</sup> NPH 2023-138, ¶145: being the Canada Media Fund, the Canada Music Fund; a variety of Certified Independent Production Funds (CIPF); FACTOR/Musicaction; Radio Starmaker Fund/Fonds RadioStar; the Community Radio Fund of Canada (CRFC); and the Independent Local News Fund (ILNF).

- 34 FRPC asked the CRTC for the number of respondents in the four surveys (two years, two media sectors) and notes that when ‘average revenues per respondent’ are calculated, the revenue per respondent ranges from \$9.4 million to \$53.3 million:

**Table 3 CRTC’s ADMS data and respondent data from access-to-information request**

\$ millions	Audio	Audiovisual	Total
<b>2021</b>			
Revenues	\$ 1,186	\$ 3,728	\$ 4,914
Undertakings		Unknown	
Respondents	126	70	196
<i>Rev/respondent</i>	<i>\$9.4</i>	<i>\$ 53.3</i>	<i>\$ 25.1</i>
<b>2022</b>			
Revenues	\$ 1,272	\$ 4,188	\$ 5,460
Undertakings		Unknown	
Respondents	77	93	170
<i>Rev/respondent</i>	<i>\$ 16.5</i>	<i>\$ 45.0</i>	<i>\$ 32.1</i>
<b>Change: 2021-22</b>			
<i>Revenues</i>	<i>7.3%</i>	<i>12.3%</i>	<i>11.1%</i>
<i>Undertakings</i>			
<i>Respondents</i>	<i>-38.9%</i>	<i>32.9%</i>	<i>-13.3%</i>
<i>Rev/respondent</i>	<i>75.5%</i>	<i>-15.4%</i>	<i>28.1%</i>

*Italics:* estimates calculated by FRPC

Source: Revenue figures are from <https://crtc.gc.ca/eng/publications/reports/policymonitoring/cmrd.htm>, being CRTC’s “Data – Broadcasting Sector”, tab B-T43 (“Digital Media Broadcasting Undertakings Revenues (millions)”, 2021, 2022; tab B-T43 cites to “CRTC Annual Digital Media Survey” and states

“Note: the survey includes DMBUs that meet the thresholds set in BRP 2022-47; see also Broadcasting Decision CRTC 2023-34”

Numbers of respondents are from CRTC’s 30 June 2023 answer to Access-to-information request A-2023-00025 (which asked for respondent numbers)

- 35 It remains unclear, therefore, whether the CRTC based its proposed \$10 million threshold for the registration regulations – which may also constitute a threshold for providing financial or other support for Canadian programming – on these data.
- 36 The CRTC’s statistical and financial summaries for individual discretionary television programming services include results for 16 on-demand or pay per view services licensed to Canadian broadcasters.
- 37 More than half – 9 of the 16 – of the programming services had revenues below the proposed \$10 million registration regulations exemption threshold: Table 3 shows these services, sorted in ascending order of revenue.

**Table 4 Total revenues in 2022 of 16 pay-per-view or on-demand television services, in order of revenue**

Order	Service Name	Type	Revenue (\$)
1	Access Communications Co-operative	On-demand Service (Video-on-demand)	\$36,413



Order	Service Name	Type	Revenue (\$)
	Limited, Regina		
2	Câblevision du Nord de Québec Inc., Val d'Or	On-demand Service (Video-on-demand)	\$60,833
3	On Demand	On-demand Service (Video-on-demand)	\$191,694
4	Saskatchewan Telecommunications, Regina	Pay-per-view programming	\$711,568
5	Max Front Row	On-demand Service (Video-on-demand)	\$753,504
6	Eastlink OnDemand	On-demand Service (Video-on-demand)	\$1,531,639
7	Canal Indigo	On-demand Service (Pay-per-view terrestrial)	\$2,117,486
8	Cogeco Connexion Inc., Montréal	On-demand Service (Video-on-demand)	\$5,056,765
9	Bell TV On Demand (terrestrial pay-per-view service)	On-demand Service (Pay-per-view terrestrial)	\$8,365,529
10	Shaw Pay-Per-View (formerly Allarcom)	On-demand Service (Pay-per-view direct-to-home)	\$10,346,412
11	Rogers on Demand	On-demand Service (Video-on-demand)	\$12,371,162
12	Bell TV On Demand (direct-to-home pay-per-view service)	On-demand Service (Pay-per-view direct-to-home)	\$16,498,818
13	Shaw on Demand	On-demand Service (Video-on-demand)	\$17,082,947
14	Illico sur demande	On-demand Service (Video-on-demand)	\$17,304,048
15	TELUS Communications Inc., Edmonton	On-demand Service (Video-on-demand)	\$21,410,951
16	Bell TV On Demand (video-on-demand service)	On-demand Service (Video-on-demand)	\$22,085,382
Total			\$ 135,925,151
<a href="#"><u>CRTC, Statistical and financial summaries for individual discretionary television services</u></a>			

**38** When considered in terms of parent-subsidary structure, however, only 5 services would be exempted from the \$10 million threshold: Table 5.

**Table 5 Total revenues in 2022 of 16 pay-per-view or on-demand television services, by “ultimate owner”**

Licensee Ultimate Owner	Service Name	Total
BCE Inc.  3 services below \$10 million	Bell TV On Demand (video-on-demand service)	\$22,085,382
	Bell TV On Demand (direct-to-home pay-per-view service)	\$16,498,818
	Bell TV On Demand (terrestrial pay-per-view service)	\$8,365,529
	Câblevision du Nord de Québec Inc., Val d'Or	\$60,833
	On Demand	\$191,694
	<b>BCE Inc. Total</b>	<b>\$47,202,256</b>
Rogers Communications Inc. Shaw Communications Inc.	Rogers on Demand	\$12,371,162
	Shaw on Demand	\$17,082,947
	Shaw Pay-Per-View (formerly Allarcom)	\$10,346,412
	<b>Rogers and Shaw</b>	<b>\$39,800,521</b>
Saskatchewan Telecommunications	Max Front Row	\$753,504
	Saskatchewan Telecommunications, Regina	\$711,568
	<b>Saskatchewan Telecommunications Total</b>	<b>\$1,465,072</b>

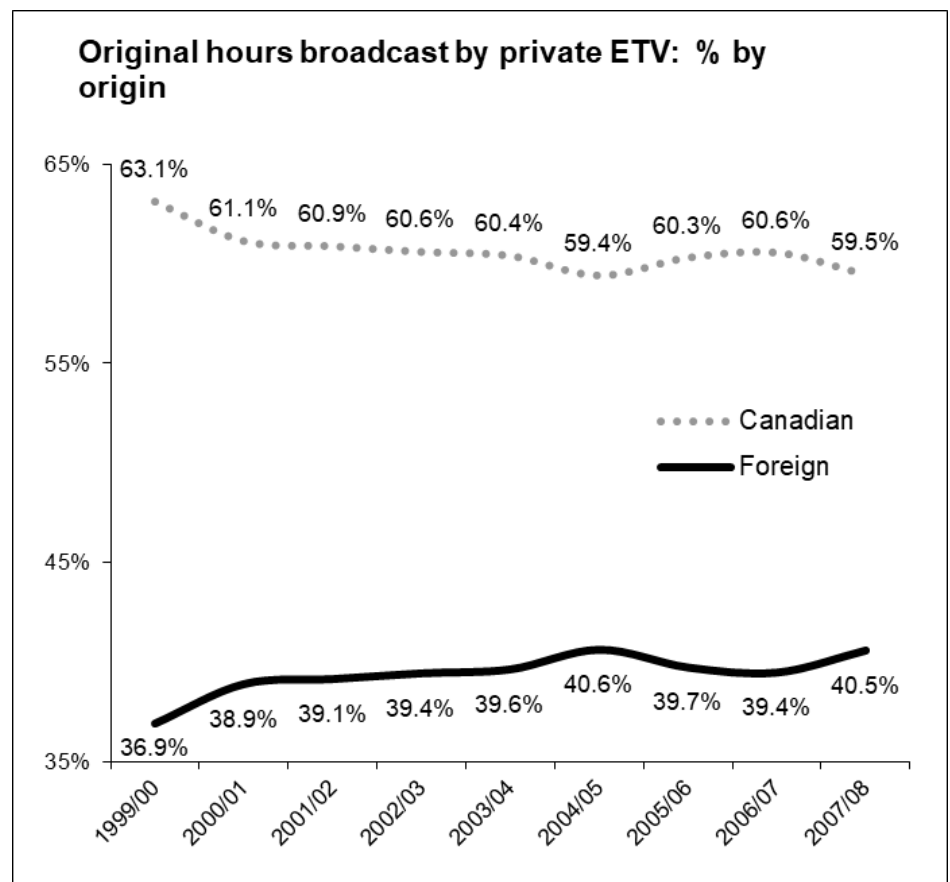
Licensee Ultimate Owner	Service Name	Total
Les Placements Péladeau inc.	Canal Indigo	\$2,117,486
1 service below \$10 million	Illico sur demande	\$17,304,048
	<b>Les Placements Péladeau inc. Total</b>	<b>\$19,421,534</b>
Access Communications Co-operative Limited	Access Communications Co-operative Limited, Regina	\$36,413
TELUS Corporation	TELUS Communications Inc., Edmonton	\$21,410,951
Tidnish Holdings Limited	Eastlink OnDemand	\$1,531,639
Gestion Audem inc.	Cogeco Connexion Inc., Montréal	\$5,056,765
Total, 9 companies		\$ 135,925,151

39 The CRTC does not publish annual summaries of the data it collects describing the total hours of Canadian and non-Canadian programming it broadcasts. For instance, it does not publish information about the original hours of Canadian or non-Canadian television programming broadcast by English-language Canadian TV stations. In the late 2000s, however, in response to an access-to-information request, the CRTC provided data enabling FRPC to determine the Canadian and non-Canadian percentages of original television programming broadcast by English-language television. As Figure 5 shows, original Canadian programming decreased as a percentage of English-language TV stations' broadcasts from 2000 to 2008.

**Figure 5 Original hours of programming broadcast by private English-language television stations in Canada, by program origin (2000-2008)**

40 The CRTC no longer provides this kind of information to access-to-information requestors, leaving the current status of Canadian programming levels broadcast by commercial private broadcasters unknown.

41 A similar issue – lack of historical data to evaluate implementation of Parliament's

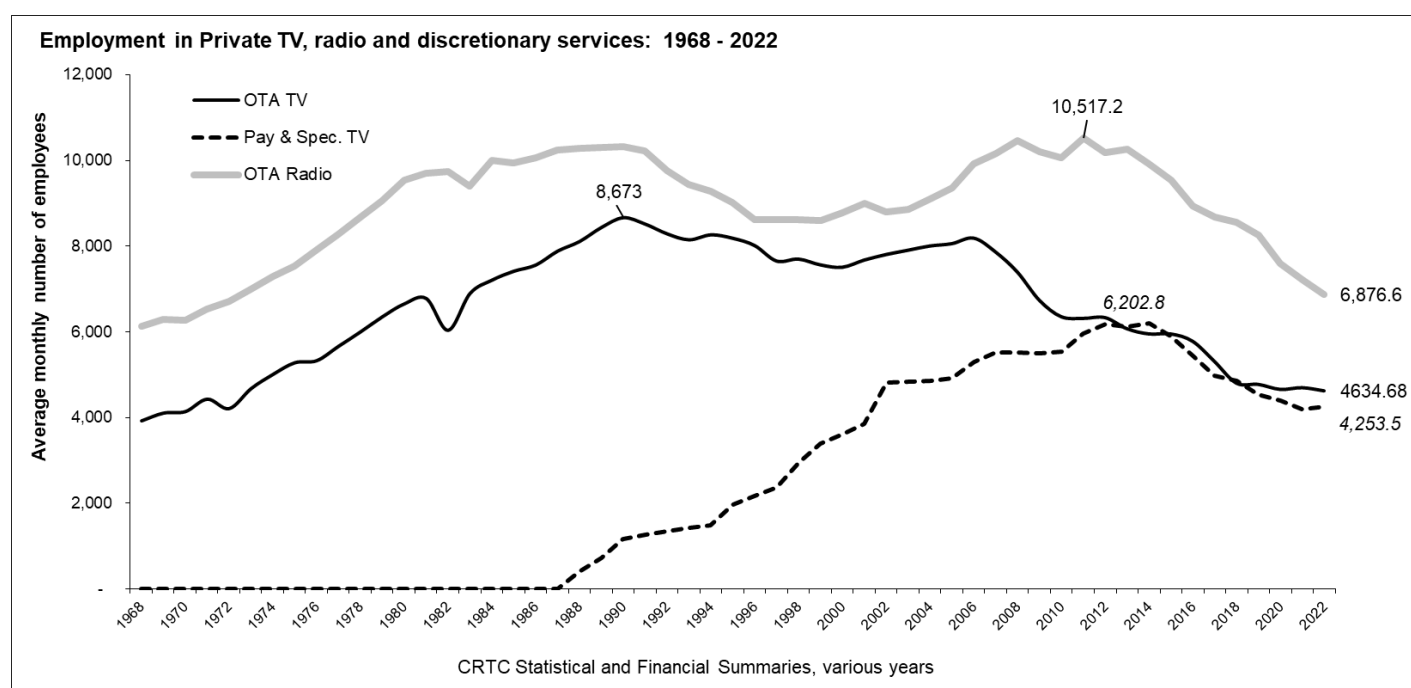




broadcasting policy – exists with respect to employment.

- 42 In Canada, Parliament has held since 1991 that Canadians ought to have the opportunity to find employment in their broadcasting system. It said (then) that Canada’s broadcasting system “should ... through ... the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations” of Canadians. For some time, however, employment by licensed radio, television and discretionary television programming services has been decreasing: Figure 6.

**Figure 6 Employment in private television, radio and discretionary services, 1968-2022**



- 43 While heartened, therefore, by the CRTC’s clear willingness to implement the *Online Streaming Act*, FRPC is concerned lest the rush to regulate or to exempt from regulation leaves Canadians unable to evaluate any changes in this sector.

**Recommendation 4** Each new regulatory process initiated by the CRTC to implement new statutory requirements must include clear provisions for measuring changes before and after the requirements are implemented.

### III. Questions in NPH 2023-138

44 Our preliminary responses to CRTC questions 1 through 15 are set out below.

**CRTC question 1.** The thresholds proposed in Broadcasting Notice of Consultation 2023-139 and Broadcasting Notice of Consultation 2023-140 are being consulted on as part of those proceedings, and any decisions in that regard will be considered by the Commission in the context of this proceeding.

Are there other criteria upon which the Commission should base its threshold for the purposes of the new contribution framework?

If so, what should the specific threshold be (e.g., what specific revenue or subscriber level should apply)?

Indicate whether the criteria or threshold should be different for audio versus video services and online versus traditional undertakings.

45 As FRPC and other participants commented in the BNoC 2023-139 and BNoC 2023-140 proceedings, the CRTC has not explained in these consultation documents how it determined the revenue thresholds that it proposed in those consultations. (And, moreover, in the case of its registration regulations, the CRTC did not explain the purpose or purposes for which these would be used.)

46 Nor has the CRTC explained how its thresholds relate to the subsection 9(4) exemption criteria. If online, traditional, audio and video broadcasters are – after all – all broadcasters, and they are unable to materially affect the implementation of the subsection 3(1) policy, why not set the same threshold for all?

47 Nor has the Commission explained why different thresholds should exist for audio and video, or online and traditional undertakings. Its failure to publish expenditure results from the *Annual Digital Media Survey* makes it impossible for all parties except the CRTC to evaluate whether operating profit margins are significantly different between the different groups of undertakings.

48 The CRTC should share the evidence that led it to develop the thresholds proposed in NPH 2023-138 and BNoC 2023-139 before September 2023, to enable those participating in its public hearing to gather, evaluate and review their own data.

49 FRPC's position is that any exemption criteria must be based on subsection 9(4) of the current *Broadcasting Act*. In that case, the CRTC would have had to have determined that an undertaking with up to \$10 million in revenues would be unable to contribute materially to the subsection 3(1) broadcasting policy. Has it done so already? If so, how did it make this determination?

**CRTC question 2.** In regard to Q1 [CRTC question 1], if you are proposing to consider elements other than Canadian broadcasting revenues, please indicate how the Commission should measure those elements.

- 50 Other criteria could be adopted, based on concepts such as subscriptions (with low numbers indicating low reach and therefore relatively low impact in meeting Canadians' needs and interests).
- 51 Low or zero employment (even when combined with low revenues) should not be used as any threshold, as one of the objectives of Canada's broadcasting policy for Canada is to ensure that Canadians have opportunities to be employed in their own broadcasting system: rather, the CRTC should more carefully regulate low- or zero-employment services to determine whether the money not being allocated to staffing is in fact being allocated to Canadian program production.

**CRTC question 3.** Are there other factors that the Commission should take into consideration in establishing which broadcasting undertakings do not have a material effect on the implementation of the broadcasting policy set out in subsection 3(1) of the current Broadcasting Act and should therefore be exempted from the requirement to make specific contributions to the Canadian broadcasting system?

- 52 FRPC may respond to this question in reply.

**CRTC question 4.** How should the Commission determine the appropriate level of contributions in cases where only a portion of an online undertaking's services are covered by the Broadcasting Act?

- 53 NPH 2023-138 does not explain what it means by "portion of ... services". Some confusion about this phrase may exist because the wording of the current *Broadcasting Act* appears to define 'undertakings' as single-purpose entities, apparently not contemplating undertakings that perform more than one function:

***broadcasting undertaking*** includes a distribution undertaking, an online undertaking, a programming undertaking and a network;

....

***online undertaking*** means an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus ...<sup>10</sup>

- 54 Subsection 4(2), which states that the *Act* "Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada ...." does not clarify whether

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<sup>10</sup> *Broadcasting Act*, subsection 2(1).

the CRTC's authority extends to that part of an undertaking's activities which is not carried on in Canada. Subsection 4(3), which states that the *Act* applies to broadcasting undertakings when they are carried on "as part of ... any other undertaking or activity", also does not state clearly whether the *Act* applies to the entire undertaking or solely the part that consists of broadcasting.

For greater certainty

4(3) For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.

- 55 Based on historical precedent, however, FRPC's position is that the CRTC should apply the *Broadcasting Act's* requirements to that part of an undertaking's activities that takes place in Canada and consists of broadcasting – being "any transmission of programs" ... that consist of "sound or visual images, or a combination of sound and visual images, that are intended to inform, enlighten or entertain" – but does not consist primarily of alphanumeric text.<sup>11</sup>
- 56 In 1979<sup>12</sup> the CRTC approved cable television licensees' deployment of non-programming services on an experimental basis. In 1985 it extended this approval to authorize the distribution of "a closed-circuit surveillance service, monitoring and opinion polling, controlling and switching, video games, teleshopping, shared computer [sic] information services and downloading of financial and news services on an experimental basis".<sup>13</sup> The CRTC emphasized in both 1979 and 1985 that the cable systems' subscribers should not be required to take or pay for the non-programming services and, we gather, it did not include the revenues from these non-programming activities as part of the undertakings' broadcasting revenues.
- 57 The difficulty in 2023 is that the data that broadcasters obtain from their users and audiences – which does not consist of broadcast programming – are now being

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<sup>11</sup> *Act*, s. 2(1).

<sup>12</sup> *Non-Programming Services by Cable Television Licensees*, Public Announcement (Ottawa, 26 March 1979):

In a CRTC Public Announcement the Commission approves a two-year experiment in which cable systems could distribute new, non-programming communications services

... The fact that broadcasting receiving undertakings may distribute non-programming services does not, in the Commission's view, alter its jurisdiction over the undertakings, so long as their reliance on television signals and on their ability to receive and transmit such signals to their subscribers, is clear.

A2 the June 6 [1978] announcement indicated, the Commission does not intend to regulate non-programming services as such. Rather, it views the applications for such services as requests to utilize the channel capacity of the cable television undertakings in question that is not at present required for off-air and locally originated programming services. ...

...

The Commission's concern is to ensure that the priority claims of off-air and locally originated programming services, in terms of channel capacity and spectrum space, both present and future, are not compromised. ....

<sup>13</sup> *Cable Distribution of Non-Programming Services*, Public Notice CRTC 1985-150 (Ottawa, 18 July 1985).

obtained directly as a result of these undertakings' broadcasting activities. It is unclear, however, whether they have clearly obtained the consent of their users and audiences to the use and sale of data describing the users and audiences.

- 58 Broadcasters that derive significant benefits that, but for their broadcasting activity, they could not obtain, should be required to return a portion of those benefits to Canadians in the shape of financial support for Canadian programming.

**CRTC question 5.** How should the Commission define “social media service”?

What, if any, criteria should be used to assess whether an online undertaking is providing a social media service?

- 59 The Forum may respond to these questions in reply.

**CRTC question 6.** Generally speaking, commercial radio stations with total revenues exceeding \$1,250,000 are required to make basic CCD contributions of \$1,000 plus 0.5% of revenues in excess of \$1,250,000. Large English-language vertically integrated television groups have CPE requirements of approximately 30% of gross revenues from the previous broadcast year, while large French-language vertically integrated television groups have CPE requirements of up to 45% of gross revenues from the previous broadcast year, along with a requirement to produce original French-language programs. Licensed BDUs are generally required to contribute 4.7% of their previous broadcast year's gross revenues relating to broadcasting activities to Canadian programming, less any allowable contribution to local expression. With this in mind, under the new contribution framework, should the overall contribution commitment of online undertakings be comparable to the existing contribution levels of traditional broadcasting undertakings?

If so, which traditional broadcasting undertakings?

Please explain.

- 60 The Forum may respond to these questions in reply.

**CRTC question 7.** Many of the Commission's existing contribution requirements are calculated on the basis of annual revenues. On what basis should the initial base contribution level and the overall contribution commitment of online undertakings be calculated?

If the Commission were to use annual revenues, please comment on the appropriateness of the following definition:

Annual revenues means revenues **attributable** to the person or that person's subsidiaries and/or associates, if any, collected from the Canadian broadcasting system

across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year for which the revenue calculation is being filed), whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that collect revenue from other online undertakings by offering bundled services on a subscription basis. The Commission will accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

- 61 FRPC' initial comment regarding NPH 2023-138 and BNoC 2023-139 set out detailed concerns about lack of definition of "attributable". We continue to have these concerns.
- 62 FRPC also disagrees with the idea that "annual revenues" should be deemed to mean revenues from the previous year as this is confusing and does not reflect the phrase's plain meaning. The CRTC should instead use precise and clear language: "annual revenues" refers to revenues of an identified or identifiable broadcast year, and "previous year's revenues" should refer to the revenues of the broadcast year preceding the current broadcast year.
- 63 FRPC also suggests clarifying *whose* "bundled services" are being offered: 'online undertakings .... that collect revenue from other online undertakings by offering their services as part of a bundle of services on a subscription basis'.

**CRTC question 8. What would constitute an appropriate level of initial base contributions for online undertakings?**

**Should this initial base contribution be the same for online undertakings operating audio services versus those operating video services?**

**Please explain and specify the level that should be established for each type of service.**

- 64 The Forum may respond to this question in reply.

**CRTC question 9. In the current system a variety of funds exist to support the creation and promotion of Canadian content. In what ways are the existing funds successful in their support of Canadian content generally, and in what ways could they be improved?**

**Similarly, do the existing funds sufficiently support the objectives of the current Broadcasting Act, including those relating to OLMCs, diversity, inclusion and accessibility?**

**How can they be improved? For example, should the Commission consider amending the CIPF criteria?**

- 65 It is somewhat unclear whether the existing funds are helping to implement Parliament's broadcasting policy for Canada.
- 66 The overarching problem is that the CRTC has not set out clear, quantifiable criteria to evaluate whether the funds are implementing Parliament's broadcasting policy for Canada. Related to this problem is the fact that each fund reports separately. The CRTC then posts each of these reports – separately for each year – on its [website](#): see Figure 7.

**Figure 7 CRTC website page for “Annual/Monthly Reports Filed by Broadcasting Industry Players”**



- 67 Analysing whether the Funds individually or collectively have helped to implement the broadcasting policy is time-consuming and requires more than a passing familiarity with accounting practices to understand the funds' actual financial performance. Figure 8, for example, traces the total revenue and expenses of one of the funds that

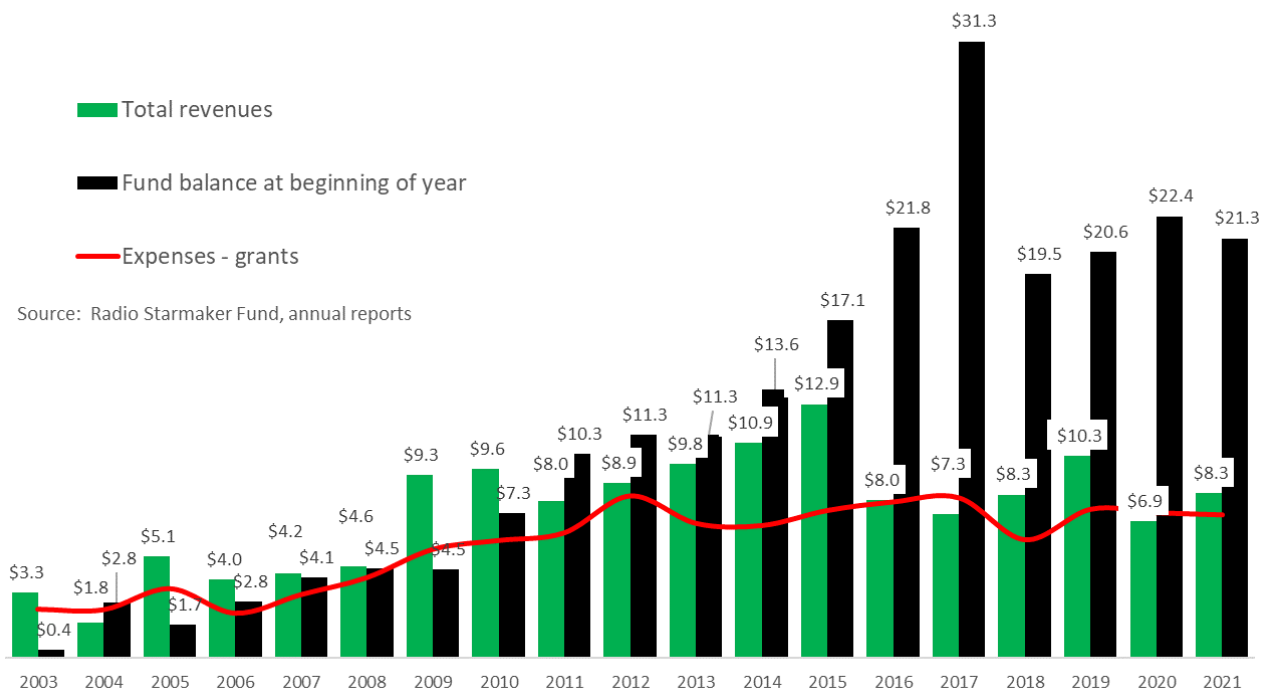


supports Canadian music production, and required the review of numerous annual reports issued by the Funds.

**Figure 8 Radio Starmaker Fund, 2023-2021**

Radio Starmaker Fund, 2003-2021:

Revenues, expenses and fund balance at beginning of the year (\$M current)



- 68 While Funds' reports often provide qualitative descriptions related to certain of the *Broadcasting Act's* objectives (such as diversity, and less frequently accessibility) these are unlikely to enable quantitative analysis to be undertaken so as to assess change over time.
- 69 Finally, the Funds do not share a common approach to their reporting history, offering historical data that describe different numbers of years.
- 70 The CRTC could improve the transparency and accountability of the Funds with respect to the *Broadcasting Act* by establishing a common set of quantitative indicia to be used by CRTC-associated Funds to report on key broadcasting policy objectives.
- 71 The CRTC should itself also undertake the responsibility of providing an online summary of the Funds' objective empirical results – so that parties interested in these results do not then each have to laboriously enter each fund's data.

**CRTC question 10.** The current *Broadcasting Act* sets out that the Commission “may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the



purposes of [...] supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.” Should the Commission direct a portion of initial base contributions to the BPF or other funds with similar objectives?

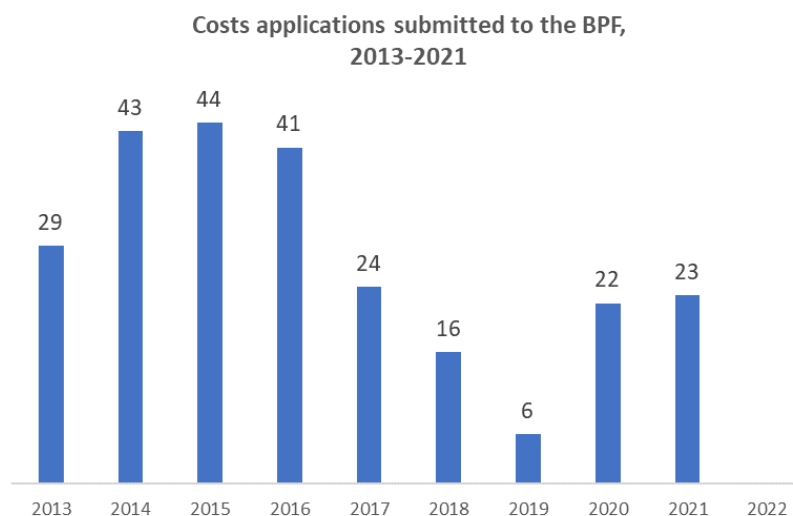
72 Yes.

73 A small percentage of initial base contributions would and should address the continuing financial instability of the Broadcast Participation Fund / Le Fonds de Participation à la Radiodiffusion (BPF-FPR). As the CRTC is aware the BPF-FPR has suffered from funding instability for the past several years. Since last year (and for the second time) it reduced the cost awards it grants by 25% so as to preserve its small capital base. The tariff on which it bases costs applications has also not changed for the past 16 years.

Figure 9 Costs applications submitted to the BPF-FPR, 2013-2021

74 The CRTC should ensure that the BPF-FPR receives a percentage of the total revenues of each undertaking or reporting unit, so as to facilitate informed participation by qualified, public-interest organizations.

75 The number of applications received by the BPF-FPR and the amounts applied for varies considerably from one CRTC year to the next: Figure 9.

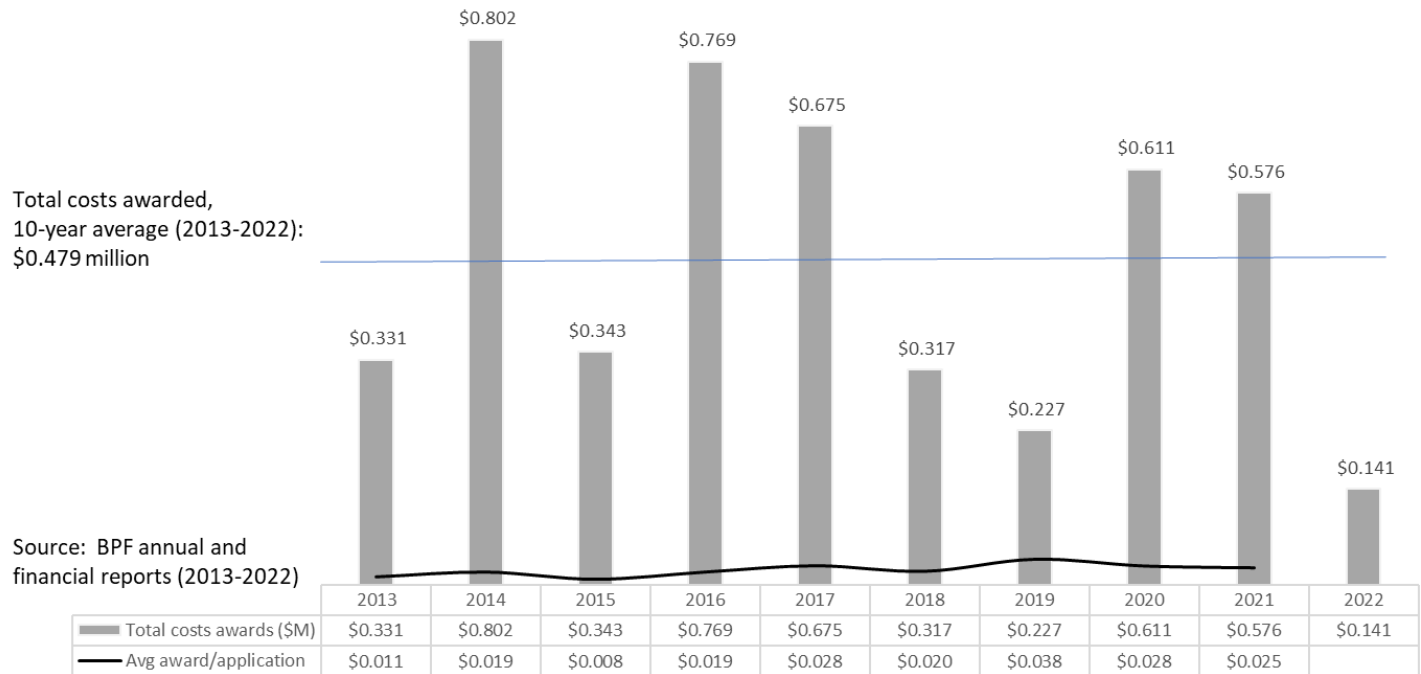


Source: BPF annual reports  
(2013-2021; no data available for 2022)

76 In years when – as in 2023 and 2024 – the CRTC proposes numerous and substantive proceedings, there tend to be more applicants who also apply for higher costs.

**Figure 10 BPF-FPR – total and average costs awarded, 2013-2021**

Broadcasting Participation Fund (BPF):  
total and average costs awarded, 2013-2021



**77** The percentage amount remitted to the BPF-FPR should include a floor and a ceiling: a threshold below which the Fund would be replenished through the percentage mechanism, and a ceiling above which the BPF-FPR would cease to require contributions. FRPC proposes an initial floor of \$5 million and an initial ceiling of \$10 million.

**CRTC question 11.** Should base contributions flow only to existing funds or could they be directed to newly created independent funds?

Should online entities be permitted to create their own independent production funds, to which their contributions would flow?

If yes, what criteria should they be required to meet?

For any proposal, please describe the initiative, including the level of funding that would be required to support it.

**78** The Forum may respond to these questions in reply.

**CRTC question 12. (a) How can production funds better support Canada's diversity, inclusion and accessibility, as they relate to representation in programming, creators, or a combination of both?**

**(b) Should contributions or a portion of the contributions be directed towards the funds specifically dedicated to supporting diversity, inclusion and accessibility in the broadcasting system?**

**(c) If yes, which organizations and funds?**

**(d) Should new funds be created?**

**In addition, please comment on the selection process, eligibility criteria, and reporting requirements that would be necessary to support this objective.**

**79** Insofar as question 12(a) is concerned, production funds may well be supporting Canada's diversity, inclusion and accessibility – but the current reporting systems provide insufficient to enable their performance to be assessed.

**80** The Forum may respond further to question 12 and its subquestions in reply.

**CRTC question 13. Comment on the possibility of a certain percentage or envelope of production funds being dedicated to Indigenous video productions and audio projects.**

**What percentage would be appropriate and what entities should be required to contribute to such a fund?**

**How could/should such a requirement be implemented and who should administer and be responsible for such a fund?**

**What other considerations are relevant to the creation and management of such a fund?**

**81** The Forum may respond to these questions in reply.

**CRTC question 14. Are there new funds that should be created?**

**If so, what entities should be required to contribute to such a fund?**

**Who should administer and be responsible for the fund?**

**82** The Forum may respond to these questions in reply.

CRTC question 15. Should the Commission require that a certain percentage or proportion of an undertaking's or ownership group's base contribution be directed to a particular fund or type of fund?

83 The Forum may respond to this question in reply.

#### IV. Conclusion and recommendation

84 FRPC notes that NPH 2023-138 advises participants that it will publish its determinations about “initial contributions ... following Step 1”. FRPC submits that it would be important for parties that may be required to make these determinations to know more about the timing of these determinations, than a period “following Step 1” that is not defined:

¶128: The initial contributions would be imposed only on certain online undertakings following Step 1. Proposed orders imposing initial base contributions on applicable online undertakings may be published either simultaneously with or shortly following the Step 1 decision(s). If so, the Commission will follow the publication and additional consultation requirements of the current Broadcasting Act when publishing those orders.

85 More specifically, subsection 11.1(7) of the *Broadcasting Act* explains that the CRTC need not publish its decisions in the *Canada Gazette* but on its own website:

Publication and representations

11.1 (7) A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and **a copy of each proposed order shall be published on the Commission's website**. 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 or order.

86 It is unclear when the CRTC will be publishing these orders – and FRPC recommends that the CRTC amend the *CRTC Rules of Practice and Procedure* to clarify this point for its staff and interested parties.

87 The CRTC should consider whether it can make its website more easily accessible so that those inexperienced with it are able to navigate it easily. For instance, the CRTC could update its [“A to Z” index](#), and include specific headings such as ‘registration’, ‘online broadcasters’, ‘Canadian content orders’.

88 The Forum supports the CRTC in its work in this important area. Our answers to the CRTC's questions are set out above (Part III), while four other recommendations are set out on the next page.

**Recommendation 1** The CRTC should add an informal proceeding to its 2024 agenda to invite interested parties to learn about its data holdings and to make recommendations to strengthen the quality of its data

**Recommendation 2** In 2023 and 2024 the CRTC should begin to ensure that its 'A to Z' index is updated regularly, that it include references to statutorily mandated reports and that it maintain links to such website pages.

**Recommendation 3** The CRTC should undertake a public, in-person consultation to address the problems it encountered in its 2021 and 2022 Annual Digital Media Surveys so as to prevent these problems from recurring.

**Recommendation 4** Each new regulatory process initiated by the CRTC to implement new statutory requirements must include clear provisions for measuring changes before and after the requirements are implemented.



## Appendices

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**Appendix 1      Parties applying for extensions of deadlines of NPH 2023-138, BNoC 2023-139 and BNoC 2023-140**

1. Black Indigenous and People of Colour in TV and Film (BIPOC)
2. Canadian Association of Broadcasters (CAB)
3. Canadian Broadcast Museum Foundation (CBMF)
4. Canadian National Institute of the Blind (CNIB)
5. Conseil provinciale du secteur des communications du syndicat canadien de la fonction publique (SCFP)
6. Digital First Canada (DFC)
7. Digital Media Association (DiMA)
8. Directors Guild of Canada
9. Documentary Organization of Canada (DOC)
10. Eastlink
11. Federation Culturelle Canadienne-française (FCCF)
12. Forum for Research and Policy in Communications
13. FRIENDS/Les AMIS
14. Independent Broadcast Group/Le Groupe de diffuseurs indépendants (IBG)
15. Information Technology Industry Council
16. Mr. Marc Nanni
17. National Campus and Community Radio Association (NCRA/ANREC)
18. Ontario Association of Broadcasters (OAB)
19. OpenMedia
20. Public Broadcasting for the 21st Century (PBC21/DPC21)
21. Public Interest Advocacy Centre
22. Quebec English-language Production Council (QEPC)
23. TELUS
24. TikTok Technology Canada Inc.
25. Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC)
26. SiriusXM
27. Writers Guild of Canada
28. YouTube
29. Unifor

## Appendix 2 CRTC's Communications Market Reports - Open Data, Television Sector contents (June 2023)

### [Communications Market Reports – Open Data](#)

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### Appendix 3 Petitions filed with Cabinet regarding the CRTC

Year	Order number	Outcome		
		Denied	Granted	Total
1992	Unknown (no order number available)	1		1
1993	1993-1799		1	1
	1993-1890	1		1
	Unknown	1		1
	1993 Total	2	1	3
1994	Unknown	4		4
1995	Unknown	5		5
1996	1996-0356		2	2
	1996-1734		2	2
	1996-1885	1		1
	1996-1896		1	1
	Unknown	8		8
	1996 Total	9	5	14
1997	1997-0039		1	1
	Unknown	9		9
	1997 Total	9	1	10
1998	Unknown	1		1
1999	Unknown	2		2
2000	Unknown	3		3
2001	Unknown	3		3
2002	2002-0330		1	1
	Unknown	4		4
	2002 Total	4	1	5
2003	Unknown	1		1
2004	Unknown	1		1
2005	Unknown	4		4
2006	Unknown	2		2
2007	2007-1604		1	1
	Unknown	1		1
	2007 Total	1	1	2
2008	2008-1769		1	1
	2008-1770		1	1
	Unknown	1		1
	2008 Total	1	2	3
2009	2009-2007		1	1
	Unknown	2		2
	2009 Total	2	1	3
2011	2011-541	1		1
2012	Unknown	2		2
2013	Unknown	1		1
2014	Unknown	2		2
2015	Unknown	1		1



Year	Order number	Outcome		
		Denied	Granted	Total
2017	2017-1060		1	1
	Unknown	1		1
	2017 Total	1	1	2
2018	Unknown	1		1
2019	Unknown	2		2
2022	2022-0183		1	1
	2022-0995		1	1
	2022 Total		2	2
Total		66	15	81

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