



24 July 2023

Filed online

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: Bell Media Inc., Part 1 Application to Amend certain Conditions of Licence Applicable to Bell Media's English-Language Television Stations and Discretionary Services, Application 2023-0379-1 (Ottawa, 14 June 2023) and Part 1 Application to Amend Certain Conditions of Licence Applicable to Bell Media's English- and French-Language Television Stations, Application 2023-0380-9 (14 June 2023) – FRPC intervention

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 *Broadcasting Act* to which Royal Assent was given on 27 April 2023. FRPC asks to appear before the CRTC should it hold a public hearing regarding the above-noted applications.

The Forum's intervention opposing Bell's applications is attached. References in parentheses referring to the applications – "379-1" or "380-9" and the "¶" symbol followed by a number refer to a numbered paragraph in one of Bell's applications.

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Bell says, “Trust us.”

What could possibly go wrong?

Application 2023-0379-1

Application 2023-0380-9

Intervention of the
Forum for Research and Policy in Communications (FRPC)
24 July 2023
Monica Auer, Executive Director

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Executive Summary

- ES 1 On 14 June 2023 Bell Media (Bell) filed two applications asking the CRTC to reduce its current requirements for Bell's expenditures on local programming, local news and Canadian programming (CPE). Bell also asks the CRTC to widen its current definition of programming of national interest (PNI) now consisting of dramas, documentaries and certain award shows (English services) or music/dance shows (French services), to include analysis, music and dance, variety, game shows, general entertainment and reality TV. Bell also asks the Commission to drop current requirements to broadcast specified levels of local news for specified sums.
- ES 2 Bell sets out several reasons that the CRTC should approve its applications. It says that approval would enable Bell to better manage its regulatory obligations. It also says that the CRTC can in the future require non-Canadian broadcasters to support Canadian programming to offset reduced support for Canadian programming by Canadian broadcasters. Bell says it is entitled to the same regulatory flexibility that the CRTC gave to the CBC and finally, it says that if the CRTC grants its requests, Bell will devote all of its PNI to independent producers.
- ES 3 Bell has not provided evidence to support its arguments and has not offered any estimates of the impact of approval of its applications on its programming, on its CPE and PNI expenditures, or on Canada's broadcasting system as a whole.
- ES 4 Bell's applications do not mention that Bell Media is part of Bell Canada Enterprises (BCE) or that from 2017 to 2022 BCE distributed \$18.2 billion to its shareholders. They do not mention that during the Covid-19 pandemic the federal government remitted Bell's licence fees (on the condition that Bell agreed not to close its stations for at least two years). The applications do not state how these funds were used, or whether the company also benefitted from any other Covid-19 emergency relief programs.
- ES 5 FRPC argues that, due to the company's size, the decisions that the CRTC makes about Bell's applications could have consequences for Canada's broadcasting system. According to the CRTC's data, Bell's 35 local TV stations took in 40% of the revenues of Canada's 92 local TV stations in 2021/22, while its 32 discretionary TV services took in 38% of the revenues reported by the 174 discretionary TV services licensed to operate in Canada. Bell Media's programming services accounted for 38% of the Canadian programming expenditures reported by all private TV stations, and 48% of the Canadian programming expenditures reported by discretionary TV services.

Bell's commitment to local news

- ES 6 Bell argues that its commitment to the local communities its TV stations are licensed to serve means that it will continue to serve those communities even if the CRTC drops conditions of service requiring specific levels of local news and expenditures on local news.
- ES 7 Even with these requirements, however, Bell's TV stations reduced their expenditures on local TV from 2017 to 2022 by 15.5% in real terms. The stations' staffing levels decreased by 16% (306

jobs). Analyzing the program logs of CFTO-DT shows that from November 2014 to November 2022 the level of first-run (live) local news it broadcast decreased by 3.9%.

Financial impact of approving Bell's changes

ES 8 Had the CRTC granted Bell approval of these applications in 2020/21, FRPC estimates that the company would have saved \$257 million in reduced expenditures on CPE, and that independent producers would have seen their income decrease by 12% (or \$11.7 million).

Non-financial impact of approving Bell's changes

ES 9 Bell argues that the CRTC should grant its request to reduce its CPE requirements because the CRTC could then make up the reduction by requiring foreign online broadcasters to finance Canadian programming. If the CRTC approved Bell's application for this reason it would, arguably, be fettering its discretion about a key policy decision it must make in the future (so as to implement the *Online Streaming Act*).

ES 10 Bell also argues that the CRTC should grant its request to reduce its local news requirements because the CRTC granted the CBC such flexibility in Broadcasting Decision CRTC 2022-165. In that decision, however, the CRTC explained that the CBC plays a different role in Canada's broadcasting system than private broadcasters because of the Corporation's public-broadcaster mandate. More to the point, Cabinet sent 2022-165 back to the CRTC for reconsideration last September, in part because of Cabinet's concern about the CBC's "creation, presentation and dissemination of local news....". If the CRTC approved Bell's application because of the CRTC's approach to CBC, the Commission would arguably be fettering its discretion regarding that prospective decision.

ES 11 FRPC opposes approval of Bell's applications because the applications offer no evidence showing how approval will implement Parliament's broadcasting policy for Canada, and because data from the CRTC and Bell indicate that the effect of granting the applications would be a net loss to the broadcasting system and independent producers.

Unanswered questions

ES 12 Bell's applications offered to answer any questions the CRTC may choose to pose. Before granting the applications the CRTC should in any event strengthen the evidentiary record of Bell's two applications by asking Bell for the following information:

"Better management of Bell's regulatory obligations"

- a. The cost to Bell in 2021/22 of its management of its regulatory obligations
- b. Forecast cost to Bell in 2022/23 of the management of its regulatory obligations if its applications are or are not granted

Local news - exhibition

- c. Actual hours of exhibition of all and of all local first-run (first broadcaster) or live news produced by each of its television services in the 2021/22 broadcast year
- d. Forecast hours of exhibition of all and of all local first-run (first broadcaster) or live news produced by each of its television services in each of the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Local news – expenditures

- e. Actual expenditures on all and of all local first-run (first broadcaster) or live news produced by each of its television services in the 2021/22 broadcast year
- f. Forecast expenditures on all and of all local first-run (first broadcaster) or live news produced by each of its television services in each of the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Employment

- g. Full-time or equivalent positions at each of its television stations in in the 2021/22 broadcast year
- h. Forecast full-time or equivalent positions at each of its television stations in each of the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Independent production - exhibition

- i. Actual hours of exhibition of all first-run programs produced by independent producers in the 2021/22 broadcast year
- j. Forecast hours of exhibition of all first-run programs produced by independent producers in the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Revenues

- k. Actual and forecast revenues for Bell's conventional TV stations and discretionary programming services for the 2020/21, 2021/22, 2022/23, 2023/24 and 2024/25 broadcast years

Independent production - expenditures

- l. Actual expenditures independent programming by television programming category for the 2022/23 broadcast years, and
- m. Forecast expenditures independent programming by television programming category for each of the 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

I. Introduction

- 2 On 14 June 2023 Bell filed two applications asking the CRTC to replace conditions of licence which the CRTC imposed in 2017 regarding its television programming services (¶1). According to the CRTC's Open Broadcast Proceedings page the CRTC posted the applications a week and a half later on 23 June 2023.
 - 3 Application 2023-0379-1 asks the CRTC to lower Bell's current requirements for its conventional and discretionary television services to devote specific percentages of its previous year's revenues to Canadian programming expenditures (CPE) and to expenditures on programs of national interest (PNI). Application 2023-0380-9 asks the CRTC to drop requirements that its conventional television services (stations) exhibit and spend money on local programming, including local news.
 - 4 Bell's applications are currently the last of seven applications that the CRTC has posted which broadcasters filed under Part 1 of the CRTC's Rules of Practice and Procedures. As the CRTC does not post all Part 1 applications that it receives (in either broadcasting or telecommunications), it is unknown as of 22 July 2023 whether these are the only applications that the Commission has received from private broadcasters wanting to reduce regulatory requirements for their programming.
- A. 7 applications, 4 applicants and 1 purpose: reduced spending Canadian programs**
- 5 Bell and its compatriots – Corus, Québecor and Rogers – have all asked the CRTC to amend their licences to enable them to reduce spending currently mandated by the Commission with respect to Canadian programming and/or local news.

Group	Application	CPE	PNI	Local programming
Bell	2023-0379-1	Reduce from 30% to 20%	Reduce from 7.5% to 5% Include Cat 2(a) in PNI Increase independent production from 75% to 100% of PNI	
	2023-0380-9			<u>No requirements for locally reflective news:</u> English TV stations: from 11% to 0% French TV stations: from 5% to 0% <u>No requirements for local programming:</u> Drop exhibition requirements
Corus	2022-0946-0	Reduce to 25%	Reduce to 5%R	
		Reduce FACTOR and Musicaction payments		
	2022-0300-9			Confirm Corus' TV stations' eligibility for funding from the Independent Local News Fund
Québecor	2023-0307-2			Reduce local-programming exhibition requirements and requirements for local

Group	Application	CPE	PNI	Local programming
				newscasts in the city of Quebec
	2023-0986-6			Reduce local-programming requirements for all Québecor TV stations
Rogers	2023-0373-3		Expand PNI categories Increase independent production from 75% to 100% of PNI	

- 6 Applications 2023-0379-1 and 2023-0380-9 emphasize the urgency of Bell’s requests (at ¶43 and ¶58, respectively).
- 7 On 30 June FRPC and PIAC filed a joint Part 1 application asking the CRTC to consolidate Bell’s applications with those of its three peers so as to enable interested parties to participate in a preparatory conference at which facts that are relevant to and common to all four applicants could be presented and discussed. Facts matter in CRTC proceedings: in 2016¹ the Federal Court of Appeal considered the role of evidence in the CRTC’s decision-making and explained that it “will focus on evidence placed before” it. That said, the Court held that the CRTC may also “draw upon” broader insights it has gathered from previous proceedings and regulatory experience:

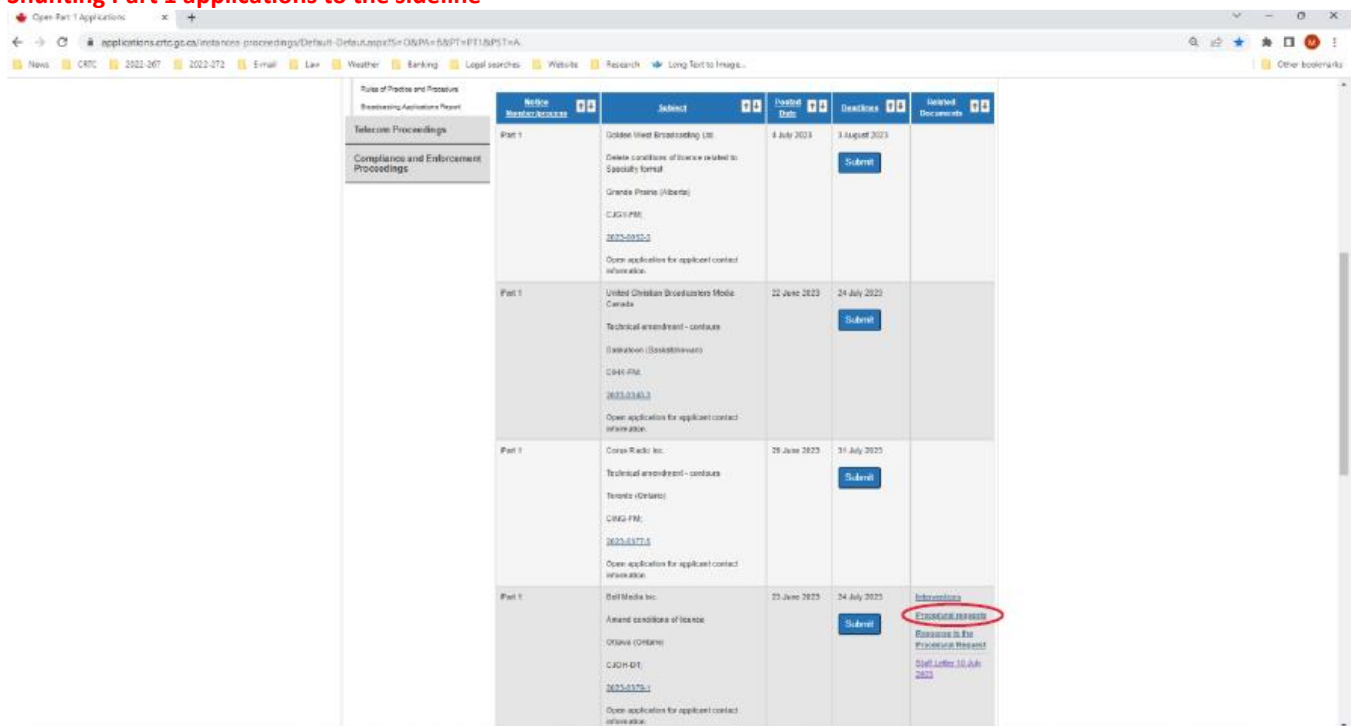
[14] But some administrative decision-makers, like the CRTC in this case, operate in an ongoing regulatory context where multiple issues, often more general and polycentric, interrelate and evolve over time. Administrative decision-makers such as these continually see many of the same parties on issues that relate to or intersect with past issues. In making decisions, these administrative decision-makers will focus on evidence placed before them in the specific matter but, subject to any obligations of procedural fairness and disclosure owed to the particular parties before them, they may go further and draw upon broader industrial, economic, regulatory or technological insights they have gathered from past proceedings and regulatory experience.

[15] In those circumstances, past proceedings and regulatory experience can form part of the data the administrative decision-maker can draw upon in making a decision. Accordingly, parts of that data, identified by the parties as matters that the administrative decision-maker drew upon in making its decision, can form part of the evidentiary record before the reviewing court. The inclusion of that data in the reviewing court’s record can often be useful in assessing reasonableness: a decision at odds with past proceedings and regulatory experience might be suspect, while one that is consistent with past proceedings and regulatory experience might be more likely to be found acceptable and defensible.

¹ *Bell Canada v. 7262591 Canada Ltd. (Gusto TV)*, [2016 FCA 123](#), at ¶¶14-15.

- 8 A preparatory fact-finding meeting – a broadcasting *voir dire*, so to speak² – would have been an efficient and time-saving way of providing all parties with a common basis of understanding the impact of the seven applications on Canada’s broadcasting policy.
- 9 Section 23 of the CRTC’s *Rules* requires the Commission to post applications such as that of FRPC and PIAC (provided they comply with the Commission’s filing requirements).³ For unknown reasons the CRTC’s staff posted the Part 1 application as a procedural request in each of the seven Part 1 applications filed by broadcasters, literally shunting the FRPC-PIAC application to the sideline of its Open Part 1 applications page listing the applications to which the FRPC-PIAC application applied: Figure 1.

Figure 1 Shunting Part 1 applications to the sideline



Application Number	Subject	Filing Date	Deadline	Status
2023-0379-1	Golden West Broadcasting Ltd. Delete conditions of license related to: Specialty format Grande Prairie (Alberta) CRTC File: 2023-0379-1 Open application for applicant contact information.	4 July 2023	3 August 2023	Submissions
2023-0380-9	United Christian Broadcasters Media Canada Technical amendment - continue Ottawa (Ontario) CRTC File: 2023-0380-9 Open application for applicant contact information.	22 June 2023	24 July 2023	Submissions
2023-0377-5	Corus Radio Inc. Technical amendment - continue Toronto (Ontario) CRTC File: 2023-0377-5 Open application for applicant contact information.	29 June 2023	31 July 2023	Submissions
2023-0379-1	Bell Media Inc. Amend conditions of license Ottawa (Ontario) CRTC File: 2023-0379-1 Open application for applicant contact information.	23 June 2023	24 July 2023	Submissions

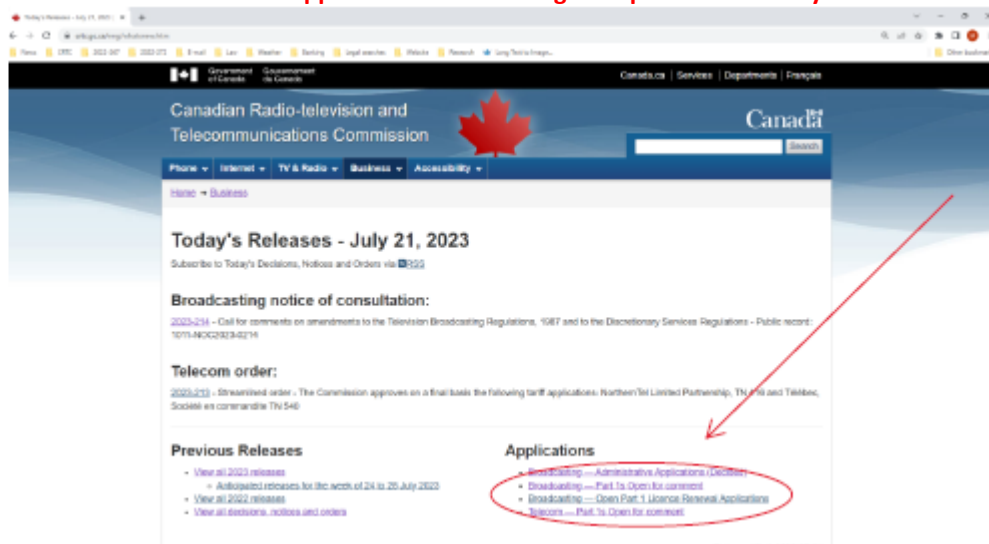
- 10 Requiring interested parties to review and comment on 7 applications separately has been inefficient, has misused parties’ time by requiring them to undertake research that the CRTC or the applicants have at their figurative fingertips, and has obscured both the CRTC’s thinking and available evidence.

² S. 37 of the CRTC’s *Rules* provides for a preparatory meeting when public hearings are scheduled, and does not stipulate whether this hearing must be ‘appearing’ or ‘non-appearing’ – in other words, the CRTC could hold a preparatory meeting prior to a non-appearing hearing to which it does not invite the applicants or other parties. Alternatively, s. 7 of the *Rules* enables the CRTC to “dispense with or vary these Rules” if it “is of the opinion that considerations of public interest or fairness permit”.

³ *Rules*, s. 7: “The Commission [sic] must post on its website all applications that comply with the requirements set out in section 22.”

- 11 The CRTC's one-by-one approach to applicants making the same or similar arguments and seeking the same or similar relief has also limited meaningful participation in the CRTC's processes to all but a few non-broadcaster parties. While the CRTC posts its notices of hearings and consultations prominently on its "Today's Releases" page, relatively few parties may understand the references at the bottom right of this page to "Open Part 1" applications or the requirement to consult these pages daily to learn whether the CRTC has decided to post new applications – see Figure 2.
- 12 The 7 applications shared not only the same theme – the precarity of their conventional television licences, but the same plea for relief – reducing their Canadian programming expenses. The CRTC should have issued a (non-appearing) notice of public hearing with expedited deadlines so as to enable the Commission to invite all interested parties to a preparatory conference that would establish a common factual foundation

Figure 2 CRTC does not list the Part 1 applications to which it grants process as a daily 'release'



- 13 A single preparatory conference could have provided all parties with a common set of facts and clear understanding of the case(s) to be met both from the perspective of the applicants and the CRTC. This would have saved all parties time and resources, commodities already in short supply due to the CRTC's many deadlines in June and July.
- 14 Considering each of the 7 applications as if it is entirely unconnected to the others implies, moreover, that the CRTC intends to focus on each applicant's circumstances separately, even though the law governing the CRTC has changed.

B. *New law – new requirement to implement Parliament's broadcasting policy*

- 15 The former *Broadcasting Act* required the CRTC to issue licences for up to seven years, "subject to such conditions related to the circumstances of the licensee" which the Commission considered appropriate to implement Parliament's broadcasting policy for Canada in subsection 3(1). It then permitted the CRTC to consider licensees' requests to amend these conditions (while not stating clearly whether the CRTC was still bound to consider licensees' individual circumstances.)

- 16 As Table 1 shows, Parliament has dropped the former Act's requirement to consider individual licensees' circumstances when issuing or amending broadcasting licences.

Table 1 Former and current *Broadcasting Act*'s requirements for issuing and amending licences

Former <i>Broadcasting Act</i>	Current <i>Broadcasting Act</i>
<p>9. (1) Subject to this Part, the Commission may, in furtherance of its objects, ... (b) issue licences for such terms not exceeding seven years <u>and subject to such conditions related to the circumstances of the licensee</u> (i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) (c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;</p>	<p>9 (1) Subject to this Part, the Commission may, in furtherance of its objects, (b) issue a licence, the term of which may be indefinite or fixed by the Commission; (c) amend a licence as to its term, on the application of the licensee; (d) amend a licence other than as to its term, on the application of the licensee or on the Commission's own motion;</p>

- 17 Instead, Parliament now requires that the CRTC focus on how the requirements it imposes on individual broadcasters will implement Parliament's broadcasting policy, due to subsections 9.1(1) and (2) of the new Act: Table 2.

Table 2 Current Act's pre-requisite for imposing requirements on individual broadcasters

<p>9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting (a) the proportion of programs to be broadcast that shall be Canadian programs and the proportion of time that shall be devoted to the broadcasting of Canadian programs; (b) the proportion of Canadian programs to be broadcast that shall be original French language programs, including first-run programs; (c) the proportion of programs to be broadcast that shall be original French language programs; (d) the proportion of programs to be broadcast that shall be devoted to specific genres, in order to ensure the diversity of programming; ... (2) An order made under this section may be made applicable to all persons carrying on broadcasting undertakings, to all persons carrying on broadcasting undertakings of any class established by the Commission in the order or to a particular person carrying on a broadcasting undertaking.</p>

- 18 The broadcasting policy for Canada is both long and complex.⁴ It speaks most clearly when it says at subsection 3(1)(f) that individual broadcasting undertakings such as Bell's television

⁴ As some of its discretionary and mandatory requirements apply to the broadcasting system as a whole (e.g. 3(1)(a), (b), (d) and (i)), some apply to different elements of that system (e.g. 3(1)(e), (l), (m), (n) and (s)) or to types of undertakings (3(1)(q) and (r)), while others refer to individual undertakings (e.g. 3(1)(f) and (f.1)).

programming services “shall employ and make maximum use ... of Canadian creative and other human resources” to create, produce and present programming”, unless the undertakings’ format makes this impracticable.⁵ Bell has not claimed that the formats of its programming services make it impracticable for them to meet this requirement.

19 In the remainder of this intervention FRPC summarizes the facts and arguments presented by Bell in its 2023-0379-1 and 2023-0380-9 applications. The Forum sets out other relevant facts and arguments in Part III.

II. Bell’s applications – grounds and relevant facts

20 Section 3 of the [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#) (Rules) empowers applicants to bring matters before the Commission.⁶ The Rules then require Bell to set out in its applications “a clear and concise statement of the relevant facts, of the grounds of the application and of the nature of the decision sought”.⁷

A. Bell’s arguments (grounds)

21 Bell’s arguments in both applications may be summarized as follows:

- its licences now expire in August 2024 (Application 2023-0379-1, ¶132; Application 2023-0380-9, ¶133)
- Bell needs immediate regulatory relief from its existing requirements for CPE, PNI and local programming including local news to enable it to ‘manage its regulatory obligations better’ (¶¶13 and 58 in each application).
- CPE and PNI policy and requirements are outdated (Application 2023-0379-1, ¶133; Application 2023-0380-9, ¶134)
- conventional broadcasters are obtaining a diminishing share of advertising revenues (Application 2023-0379-1, ¶113; Application 2023-0380-9, ¶114).
- Bell’s TV stations are losing money (Application 2023-0379-1, ¶121; Application 2023-0380-9, ¶122).

⁵ S. 3(1)(f):
3 (1) It is hereby declared as the broadcasting policy for Canada that
...
(f) each Canadian broadcasting undertaking shall employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources in the creation, production and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

⁶ Rules, s. 3: “A matter may be brought before the Commission by an application or complaint or on the Commission’s own initiative.”

⁷ Subsection 22(2)(e).

- Bell's local news programs lose money (Application 2023-0379-1, ¶138; Application 2023-0380-9, ¶139),
- the CRTC did not impose requirements for local programming on CBC (Application 2023-0380-9, ¶10, ¶¶41-46)
- Bell's requests are consistent with Cabinet's draft policy direction (Application 2023-0379-1 at ¶¶54 and 55, and Application 2023-0380-9 at ¶¶55-56), and
- Approval of Bell's requests will benefit the broadcasting system because "[n]ew obligations can be imposed on foreign DMBUs requiring them to contribute to production funds" (¶47).

B. Bell's evidence

- 22 [Section 22\(2\)\(e\)](#) of the *Rules* requires broadcasting applicants to set out "a clear and concise statement of the relevant facts" of their applications: "[e]vidence is relevant 'where it has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would appear to be in the absence of that evidence'"⁸
- 23 While the CRTC may consider "insights" gained from previous proceedings and its regulatory experience, it must focus on the evidence set out in applications. The Federal Court of Appeal explained [in *Bell Canada v. 7262591 Canada Ltd. \(Gusto TV\)*](#), 2016 FCA 123 (CanLII
14. ... some administrative decision-makers, like the CRTC in this case, operate in an ongoing regulatory context where multiple issues, often more general and polycentric, interrelate and evolve over time. Administrative decision-makers such as these continually see many of the same parties on issues that relate to or intersect with past issues. In making decisions, these administrative decision-makers will focus on evidence placed before them in the specific matter but, subject to any obligations of procedural fairness and disclosure owed to the particular parties before them, they may go further and draw upon broader industrial, economic, regulatory or technological insights they have gathered from past proceedings and regulatory experience.
- 24 Bell's applications do not provide clear evidence showing how the changes it proposes for its television services will help to implement Parliament's broadcasting policy for Canada. Rather, it says that *if* the CRTC approves its applications, and *if* the CRTC then imposes the same, lower requirements on foreign online services which it imposes on Canadian services, there will be a net gain to Canada's broadcasting system. Bell has also not explained how reducing requirements for CPE, PNI and local programming on its television programming services will enable it to manage its operations better. For example, will Bell's administrative costs decrease insofar as management is concerned? Will it require fewer staff to manage its broadcasting activities?

⁸ *R. v. J.-L.J.*, 2000 SCC 51 (CanLII), [2000] 2 SCR 600, at ¶47.

- 25 The lack of evidence from Bell about the costs imposed on Bell by its conditions of licence makes it impossible for interveners to know how approval of Bell's applications will affect those costs and in turn Canada's broadcasting system. For example, will approval lead to changes in Bell's expenditures on local news? Will Bell raise or reduce its exhibition of first-run, first-broadcast local news? Will it raise or reduce broadcast its employment in Canada? Will it raise or reduce its expenditures on independent program production? Will approval raise or reduce expenditures on Canadian programming and programming of national interest? In all cases, would the size of the change contribute materially to the broadcasting policy's implementation?
- 26 Bell has offered to answer any questions the CRTC may choose to pose (Application 2023-0379-1, ¶160; Application 2023-0380-9, ¶159). The CRTC should ask the applicant for, and then consider, the following information before making any decision on Bell's applications:

"Better management of Bell's regulatory obligations"

- a. The cost to Bell in 2021/22 of the management of its regulatory obligations
- b. Forecast cost to Bell in 2022/23 of managing its regulatory obligations

Local news - exhibition

- c. Actual hours of exhibition of all and of all local first-run (first broadcaster) or live news produced by each of its television services in the 2021/22 broadcast year
- d. Forecast hours of exhibition of all and of all local first-run (first broadcaster) or live news produced by each of its television services in each of the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Local news – expenditures

- e. Actual expenditures on all and of all local first-run (first broadcaster) or live news produced by each of its television services in the 2021/22 broadcast year
- f. Forecast expenditures on all and of all local first-run (first broadcaster) or live news produced by each of its television services in each of the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Employment

- g. Full-time or equivalent positions at each of its television stations in in the 2021/22 broadcast year
- h. Forecast full-time or equivalent positions at each of its television stations in each of the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Independent production - exhibition

- i. Actual hours of exhibition of all first-run programs produced by independent producers in the 2021/22 broadcast year

- j. Forecast hours of exhibition of all first-run programs produced by independent producers in the 2022/23, 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

Revenues

- k. Actual and forecast revenues for Bell's conventional TV stations and discretionary programming services for the 2020/21, 2021/22, 2022/23, 2023/24 and 2024/25 broadcast years

Independent production - expenditures

- l. Actual expenditures on independently produced programming by television programming category for the 2022/23 broadcast years
- m. Forecast expenditures on independently produced programming by television programming category for each of the 2023/24 and 2024/25 broadcast years if Bell's applications are or are not granted.

27 Bell has provided the Commission with results from a model purporting to show how approval of Application 2023-0379-1 might lead to more funding for Canadian programming. It is unclear why the Commission should rely on the results of this report, as it does not address the impact of the changes Bell is seeking for its services but instead develops estimates for the entire television system. Moreover, the reports results depend on its assumptions. In commissioning the model, for example, Bell required estimates of CPE obligations 'rebalanced in an equitable manner'.⁹ The subjective character of 'equity' in this context is self-evident.

28 The model then estimated CPE estimates for Canadian linear programming services based on the assumption that "trends evident in the pre-pandemic years will resume".¹⁰ Regardless of the trends' specific size and direction, Bell actually argues in Application 2023-0379-1 and Application 2023-0380-9 that pre-pandemic trends are in fact not present:

The economic erosion of the industry has been further exacerbated by the COVID-19 pandemic from which the industry has not fully recovered. For example, the CMR states that in 2021, the traditional broadcasting sector revenues saw a small decrease of 0.4% from the previous broadcast year, but were still 6.9% lower than the 2019 broadcast year – the last complete pre pandemic broadcast year. In addition, as Corus pointed out, the macroeconomic environment became increasingly uncertain in the fourth quarter of the 2022 broadcasting year, characterized by high inflation and supply chain constraints. We now find ourselves amidst an advertising recession and some have estimated that there will be high single digit percentage declines in advertising revenue for all of 2023.

(Application 2023-0379-1 at ¶19; Application 2023-0380-9 at ¶120, bold font added)

29 Overall, the model's results are based on assumptions that linear Canadian television programming services, Canadian DMBUs and foreign DMBUs would be required to remit 20% of

⁹ *Canadian Programming Expenditure and Contribution Model*, (12 June 2023), Appendix 3, p. 2.

¹⁰ *Ibid.*, page 4.

their previous year's revenues on CPE,¹¹ while legacy and digital BDUs would remit 4%.¹² Factoring in foreign services' potential financial support for Canadian programming would deliver a net benefit to the broadcasting system which would counter any reduced Canadian programming expenditures by Canadian broadcasters.

- 30 A highly problematic challenge for the Commission is that, if it approves Application 2023-0379-1, the CRTC would then be aware that any benefits from that approval could only be obtained if it also subsequently adopts Bell's proposals concerning the future financial requirements it should impose on foreign online broadcasters. In other words, by granting Bell's application now, the CRTC might inadvertently fetter its discretion on this issue in the future.

III. FRPC comments on Bell's application

- 31 As noted above, the Forum's main concern is whether Bell's applications provide the CRTC with the evidence it needs to approve them. In our view, neither Application 2023-0379-1 nor Application 2023-0380-9 sets out clear grounds and facts showing that the changes it seeks for Bell's television programming services will implement Parliament's broadcasting policy for Canada. Appendix 1 and Appendix 2 offer a structural analysis of Bell's applications, showing that nearly all of Bell's arguments and facts are not focussed on Bell's services but on other broadcasters and Canada's broadcasting system as a whole.

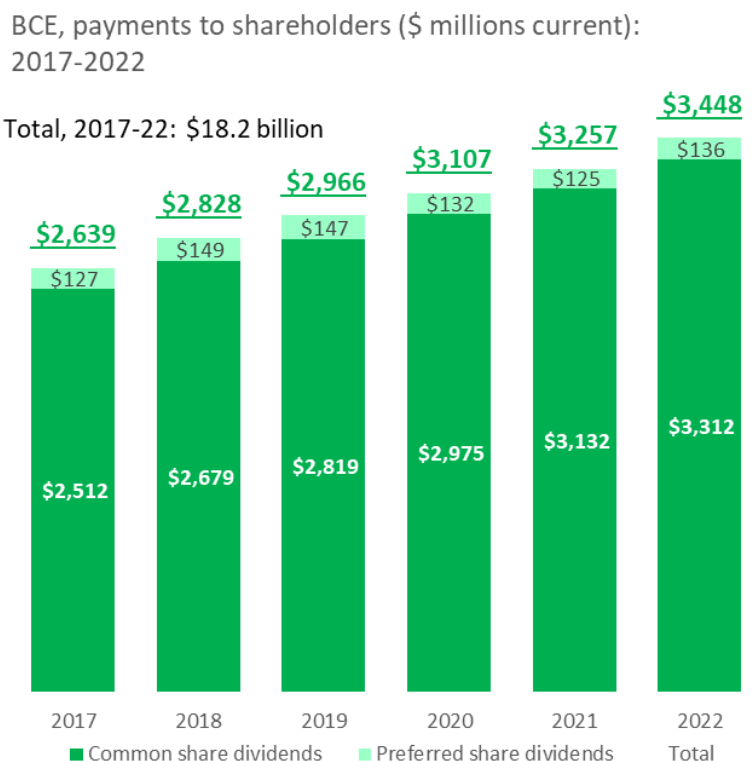
- 32 In the remainder of this section FRPC provides additional context for BCE and Bell Media. It then sets out relevant facts regarding Canadian programming and local TV news.

Figure 3 BCE's payments to shareholders, 2017-2022

A. About Bell

- 33 Bell Media is owned and controlled by Bell Canada Enterprises, which also holds numerous non-broadcasting interests including wireline and wireless telephony and Internet. From 2017 to 2022 BCE's Board of Directors decided to distribute \$18.2 billion of the company's revenues to its shareholders: Figure 3.

- 34 Bell Media holds CRTC licences for broadcasting and distribution services and also operates an unknown number of online broadcasting undertakings that are



Source: BCE Annual Reports

¹¹ *Ibid.*

¹² *Ibid.*

exempted from licensing by the CRTC's current digital media exemption order.

- 35 Apart from the 35 conventional TV programming services mentioned in Bell's applications,¹³ Bell also holds broadcasting licences for a satellite-to-cable television service (CTV 2 Atlantic), 32 discretionary TV services, the Noovoo TV network, and 109 radio stations. The CRTC's charts do not list any online programming services that Bell operates or in which it holds financial interests; Bell's 2022 *Annual Report* reports that it operates "more than 200 websites and more than 30 apps".¹⁴ Bell explained in 2022 that as advertisers shift from "traditional advertising methods" such as radio, television and out-of-home (billboard) advertising to digital media content, it has "initiated programs to sell ... advertising inventory on a more targeted basis through updated buying platforms with enhanced access to data"¹⁵
- 36 FRPC notes that when Bell appeared in late 2016 before the CRTC panel that heard its renewal applications, the President of Bell Media summarized the "new regulatory measures" taken by the CRTC to help Bell and other broadcasters "meet the challenges ahead", and described these as providing "much-needed flexibility":

1897 There are many new regulatory measures that you have put in place which should help us to meet the challenges ahead. These include the standardization of regulatory requirements for all discretionary services; modified content exhibition requirements which will help support the production of high quality Canadian programs; the amended VOD exemption order which helps hybrid VOD undertakings, such as CraveTV, to compete in a market dominated by foreign OTT providers; and a partial but very much needed support mechanism for local news through the redirection of community television funding.

1898 The shared characteristic of these specific initiatives is the parity between licensees, and the much-needed flexibility they provide. However, we now compete in an ecosystem that blends both regulated and unregulated operators, which creates a new level of complexity.¹⁶

- 37 The CRTC renewed Bell's conventional and discretionary television programming licences in 2017.¹⁷ It said at that time that it intended to give broadcasters flexibility to meet their programming obligations:

[t]he requirements imposed by the Commission as part of these licence renewals confer both obligations and related benefits on the individual licensees and their groups so that they have the flexibility they require to create compelling and diverse programming within an increasingly dynamic broadcasting system. Individual requirements cannot be viewed in isolation, but rather must be viewed as part of a whole, as the Commission

¹³ Application 2023-0379-1 at ¶137; Application 2023-0380-9 at ¶138.

¹⁴ BCE, *Annual Report 2019*, at 33.

¹⁵ *Ibid.*, at 133.

¹⁶ President, Bell Media, CRTC Public Hearing Transcript ([29 November 2016](#)), at ¶¶1897-1898.

¹⁷ *Bell Media Inc. – Licence renewals for English-language television stations and services*, [Broadcasting Decision CRTC 2017-149](#) (Ottawa, 15 May 2017), and again in 2018, following a reconsideration of the 2017 decision.

might have come to a different set of determinations had a particular requirement been changed or removed.¹⁸

- 38 Before granting Bell's applications the CRTC should require detail from Bell establishing how the CRTC's regulatory support measures available in 2016 and provided in 2017 have failed to achieve their objectives.

B. Regulatory context

1. Bell's stations benefitted from Covid-19 support

Figure 4 Conditions to receive licence fee remissions

- 39 During the Covid-19 pandemic the government provided companies such as Bell Media with financial assistance.

- 40 In conjunction with the government, for example, the CRTC remitted certain years of Part 1 and Part II licence fee payments that broadcasters were then required to make, in exchange for certain commitments. Undertakings that applied to receive these remissions agreed to continue operating for two years after the remissions were granted: see Figure 4.

Remission of the CRTC Part II licence fees

The Government of Canada is remitting the Part II licence fees paid or payable by licensees of television stations, radio stations and discretionary television services for 2020-2021, subject to certain conditions.

To be eligible for the remission of your Part II fees, you must carefully read, complete, sign and return this attestation form to the Canadian Radio-television and Telecommunications Commission (CRTC). Your decision to choose or not choose to access this financial support will have no impact on funding you may have already received from the Department of Canadian Heritage or any other level of government.

Part II fees will be remitted on an undertaking-by-undertaking basis. It is possible that only certain of the broadcasting undertakings owned by a single licensee will qualify for the remission.

If you are eligible for a remission and you had withheld payment of your Part II fees, the amount owed and any interest accrued since December 2nd, 2020 will be waived. If you had paid, the amount you paid will be reimbursed.

Conditions for remission

The remission of Part II licence fees is subject to the following conditions:

- i. the signing of the attestation provided below by the licensee, prior to January 31, 2021;
- ii. the maintenance in operation of the licensee's broadcasting undertaking(s) for a period of at least two years after the day on which the remission is granted, and
- iii. the maintenance of compliance with the requirements under the *Broadcasting Act*, and the conditions of their licence, in respect of Canadian content exhibition for a period of at least two years after the day on which the remission is granted.

Source: CRTC access-to-information request A-2020-00083 Release Package (30 June 2022)

- 41 Bell benefitted from this program (see e.g. Figure 5).

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¹⁸ *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-148 (Ottawa, 15 May 2017) at ¶11.

Figure 5 Sample of Bell stations that submitted required attestations in order to benefit from the licence-fee remission program (from CRTC response to access-to-information A-2020-00083)

	CICC-TV	Television	English	4-2096900-8	2017-0149-044-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979124	X		
	CIPA-TV	Television	English	4-2500186-4	2017-0149-045-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979127	X		
	CKCK-DT	Television	English	4-2049200-1	2017-0149-046-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979130	X		
	CFQC-DT	Television	English	4-2045500-8	2017-0149-043-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979133	X		
	CICI-TV	Television	English	3-3050900-1	2017-0149-038-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979135	X		
	CHRO-DT-43	Television	English	3-0542969-0	2017-0149-054-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979145	X		
	CKVR-DT	Television	English	3-2051100-9	2017-0149-041-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979147	X		
	CHWI-DT	Television	English	3-2541048-8	2017-0149-037-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979149	X		
	CTV Two Atlantic (ASN)	Television	English	1-2410028-0	2017-0149-056-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979153	X		
	CKY-DT	Television	English	4-1051400-4	2017-0149-042-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979155	X		
	CKCO-DT	Television	English	3-2049300-0	2017-0149-055-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979158	X		
	CJOH-DT	Television	English	3-3048600-2	2017-0149-036-2022	Bell Media Inc. Lenore Gibson BCE, 160 Elgin Street, 19th Fl. Ottawa, ON K2P 2C4	X	3979161	X		

Note: “X” indicates that the undertaking submitted the attestation required in order to apply for the licence-fee remission programs

42 Other Covid-19-related initiatives included the

- Canada Emergency Business Account (CEBA)
- Canada Emergency Commercial Rent Assistance (CECRA)
- Canada Emergency Rent Subsidy (CERS)
- Canada Emergency Wage Subsidy (CEWS)¹⁹
- CMF Allocation of COVID-19 Emergency Relief Fund
- Regional Relief and Recovery Fund (RRRF)
- Telefilm Emergency Support Fund, and
- Provincial or Municipal government subsidies/grants/assistance/relief funds.²⁰

43 Bell’s applications do not state how much financial support it received from these initiatives, or whether Bell devoted any of those monies to its programming, its local stations or its local news.

¹⁹ BCE, *Annual Report 2021*, at 73.

²⁰ Statistics Canada, [Annual Return of Television Survey 2022](#), “Information”.

Before the Commission grants Bell's applications, the CRTC should determine how the company has used the support already made available to it in the past several years.

2. Bell's online services

- 44 Bell's applications provide little information about its online services that have been exempted from nearly all regulation since their launch. The absence of information about Bell Media's digital media services' performance means three things. First, there is no way to know whether Bell's conventional television services are sharing their programming with Bell's digital services – meaning that Bell's conventional TV stations may be paying for programming obtained at no cost by Bell's digital services. Second, it means there is no way to know whether – insofar as digital media are 'taking away' advertising from conventional media – Bell in fact is still earning advertising revenue but through its digital-media programming services rather than its conventional television services. Third, the absence of evidence from Bell about its digital services means that there is no way to know whether Bell's digital media services are in fact also 'taking away' revenue from non-Bell programming services such as Rogers and Québecor.
- 45 In other words, when Bell argues that the CRTC should reduce its Canadian programming expenditure and local programming expenditure and exhibition requirements because of the competition Bell's services face from online programming services, it is unclear whether Bell's stations are losing money to Bell's own services and/or whether Bell's stations are effectively subsidizing Bell's services with the former's programming.
- 46 The absence of any information from Bell about its own digital media services leaves important gaps in the record of this proceeding. In particular, if Bell's legacy or discretionary television services provide any programming to its online services, should the latter not compensate the former for that programming before Bell asks the CRTC to reduce the former's regulatory requirements?

C. Canadian programming

- 47 In 2017 Bell Media's President of Broadcasting and Content told the CRTC that Bell wanted to be recognized internationally as "Canada's preeminent media company", and that it would continue investing in Canadian content:

1915 ... our entire team works very hard not just to satisfy our conditions of licence, but to serve our viewers by giving them the best possible TV content. And we are very proud of this. We want to build upon our achievements, to be seen as innovators, and continue to be the number one destination for Canadian viewers. Most importantly, we want to be recognized around the world as Canada's preeminent media company.

1916 We do this by focusing on quality over quantity with respect to programming, by continuing to invest in Canadian content, including heavy emphasis on local news; and by ensuring continued and strong promotion of our content across all platforms.

...

48 Bell's Broadcasting and Content President assured the Commission that "[c]hampioning and promoting Canadian content is also an integral element of our conventional television stations."²¹

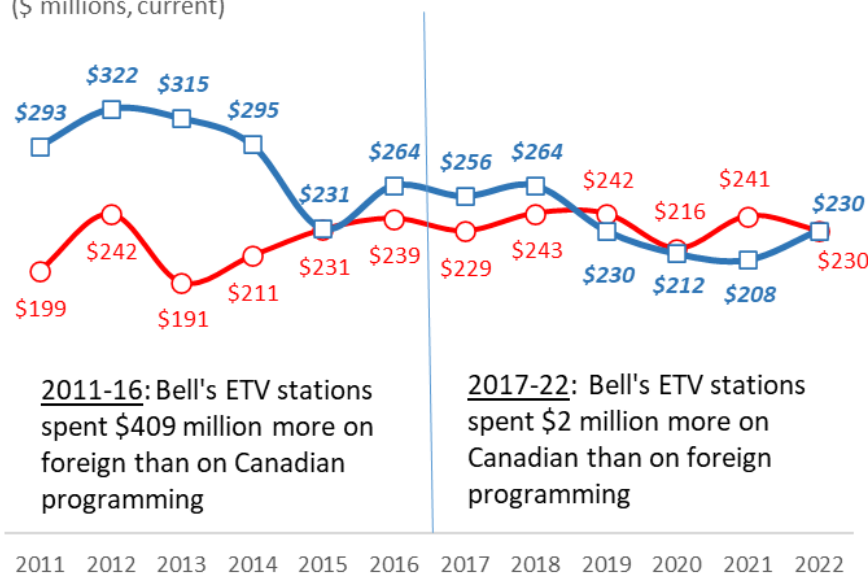
1. Over the past 5 years Bell has spent nearly as much on foreign as on Canadian programming

49 Bell's stations may well be promoting Canadian programming, but from 2011 to 2016 its OTA television stations spent almost a third more on foreign programming than on Canadian programming.

50 The CRTC's 2017 renewal decision appears to have ensured that the stations spent more on Canadian than on foreign programming, at least until 2021: Figure 6. (In 2022 the stations spent \$271,000 more on foreign programming.)

Figure 6 Canadian and non-Canadian programming expenditures by Bell's English-language TV stations, 2011-22

Canadian and non-Canadian programming expenditures by English-language TV stations licensed to Bell in 2022: 2011-22 (\$ millions, current)



Source: Bell, Aggregated Financial Summaries, TV

Bell English-language TV stations, programming expenditures \$ millions current		
Year	Canadian	Non-Canadian
2011	\$ 199.21	\$293.40
2012	\$ 242.16	\$321.79
2013	\$ 190.53	\$315.01
2014	\$ 210.63	\$295.16
2015	\$ 230.60	\$231.44
2016	\$ 238.93	\$263.92
2011-16	\$ 1,312.06	\$ 1,720.72
2017	\$ 229.39	\$255.92
2018	\$ 242.83	\$264.04
2019	\$ 242.47	\$229.91
2020	\$ 216.28	\$212.44
2021	\$ 240.84	\$207.61
2022	\$ 229.64	\$229.91
2017-22	\$ 1,401.44	\$ 1,399.84
Total	\$ 2,713.50	\$ 3,120.56

Source: Bell, Aggregated financial summaries, English-language TV stations

51 Bell argues that reducing its English-language CPE requirements will not undermine Canada's broadcast system, but "will actually enhance it" (Application 2023-0379-1, ¶47). Actually, the CRTC's allowing Bell to reduce its CPE expenditures simply reduces financial support by Bell for Canadian programming.

52 Bell is really asking the CRTC to adopt a specific regulatory approach to all Canadian and non-Canadian broadcasters in the future, to accommodate Bell's desire to reduce its Canadian programming expenditures now.

²¹ *Ibid.*, at ¶1929.

53 FRPC does not agree that the CRTC should fetter its discretion regarding future Canadian programming requirements in order now to help a very large broadcaster reduce its support for implementing Parliament's broadcasting policy.

2. Expanding PNI

54 Bell is asking the Commission – until the next 'non-administrative' renewal proceeding of its licences – to permit the company to reduce its PNI expenditures from 7.5% to 5% in exchange for directing the 5% to independent production companies to provide a wider range of programming than that now defined as PNI (Application 2023-0379-1, ¶12). Specifically, Bell says it would like to count "programs drawn from categories 2(a) Analysis and interpretation, 8(a) Music and dance other than music video programs or clips, 9 Variety, 10 Game shows, and 11(a) General entertainment and human interest, and 11(b) Reality television" towards its PNI requirements.

55 Table 3 compares Bell's current PNI program requirements with its proposal for change, using the CRTC's television program categories.

Table 3 Comparison of Rogers' PNI category proposal with CRTC's 2010 and 2017 policies

PNI program categories using CRTC program categories			
Broadcasting Decision CRTC 2017-149		Application 2023-0379-1	
		2(a)	Analysis and interpretation
2(b)	Long-form documentary	2(b)	Long-form documentary
7	Drama and comedy	7	Drama and comedy
		8(a)	Music and dance other than music video programs or clips
		9	Variety
		10	Game shows
		Certain award shows not in category 11(a)	
	Certain award shows not in category 11(a)	11(a)	General entertainment and human interest
		11(b)	Reality television.

56 One effect of Bell's proposal is that the CRTC would be returning to the "priority programs" approach in place before the CRTC adopted the PNI approach in 2010. Table 4 compares the pre-2010 'priority programs' categories with the PNI categories used when the CRTC renewed Bell's television services in 2017²² and Bell's proposals for change.

Table 4

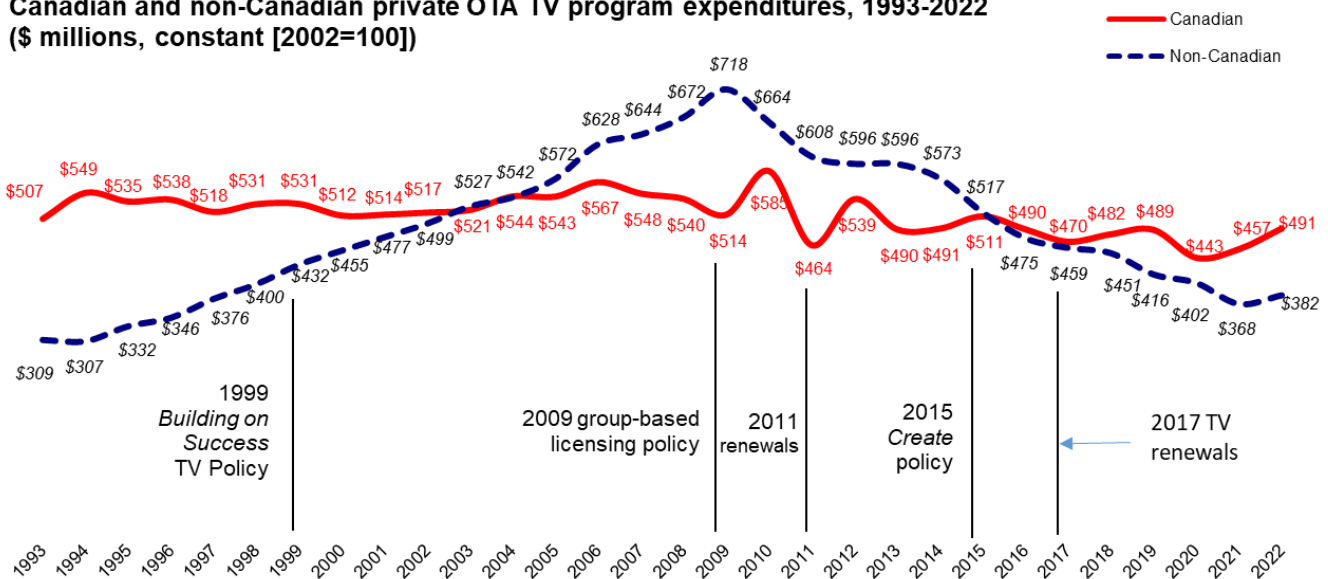
PNI program categories using CRTC program categories			
BRP CRTC 2010-167's description of priority programs		Broadcasting Decision CRTC 2017-149	Bell's June 2023 Part 1 application, ¶125
			2(a) Analysis and interpretation
2(b)	Long-form documentaries	2(b) Long-form documentary	2(b) Long-form documentary
7	Drama and comedy	7 Drama and comedy	7 Drama and comedy
(8)(a)	Music		8(a) Music and dance other than music video programs or clips
(9)	Variety		9 Variety
			10 Game shows

PNI program categories using CRTC program categories		
BRP CRTC 2010-167's description of priority programs	Broadcasting Decision CRTC 2017-149	Bell's June 2023 Part 1 application, ¶25
		Certain award shows not in category 11(a)
(11) General entertainment and human interest	Certain award shows not in category 11(a)	11(a) General entertainment and human interest
		11(b) Reality television.
Regionally-produced programs other than news and sports		

- 57 The 'priority programs' approach dates to 1999 when the CRTC – again trying to implement Parliament's broadcasting policy – required large broadcasters holding licences for more than one TV station "to broadcast, over the broadcast year, on average, at least eight hours per week of priority Canadian programs ... from 7:00 p.m. to 11:00 p.m."²³ Priority programs came to include "drama, long-form documentaries, music/variety, entertainment magazines and regionally-produced programs other than news and sports."²⁴
- 58 Unfortunately, as Figure 7 shows, the introduction of the more flexible, priority programs approach in 1999 was followed by a surge in private TV broadcasters' expenditures on foreign programming and the absence of sustained growth in their Canadian programming expenditures.

Figure 7: Canadian and non-Canadian private TV program expenditures 1993-2022

Canadian and non-Canadian private OTA TV program expenditures, 1993-2022 (\$ millions, constant [2002=100])



Source: CRTC statistical and financial summaries, private TV; Statistics Canada (CPI)

²³ A group-based approach to the licensing of private television services, [Broadcasting Regulatory Policy CRTC 2010-167](#) (Ottawa, 22 March 2010), at ¶67.

²⁴ *Ibid.*, at ¶66.

- 59 The imbalance between Canadian and foreign programming expenditures appears to have led the CRTC to invite proposals for simplifying Canadian priority programs requirements a decade later. In 2015 the CRTC “determined that PNI expenditures” are “an appropriate tool for ensuring that Canadians have access to the maximum number of programs from categories that are of national interest and that require regulatory support.”²⁵ When private broadcasters proposed changing PNI categories in 2017 the CRTC said that the PNI approach ensures that “this type of programming is available within the system” and gives ownership groups and their services the opportunity “to compete on an equal footing” along with “the flexibility to adapt in a more competitive marketplace”.²⁶
- 60 Bell has not provided any specific evidence or evidence in general to show that re-adoption of the pre-2010 priority-programs approach would implement Parliament’s broadcasting policy for Canada as well as or better than the CRTC’s 2017 approach. Again – as Figure 7 showed – private TV broadcasters have been spending more on Canadian programming than on foreign programming since 2017 – as subsection 3(1)(f) of the current *Act* requires.
- 61 Bell is asking the CRTC to reduce its CPE and PNI by a third: for CPE, from 30% down to 20% of its previous year’s revenues, and for PNI, from 7.5% to 5.0% of previous year’s revenues. It has not offered an estimate of the financial impact of this change. The CRTC publishes large broadcasters’ aggregated financial summaries that include their expenditures on Canadian programming and publishes PNI data about large broadcasters through the Open Data portal. The most recent data published by the CRTC about CPE are from 2021/22, while the most recent about PNI are from 2020/21.
- 62 Using the CRTC’s 2020/21 data, FRPC estimates that if the CRTC had in 2020/21 approved the change Bell is now seeking, Bell would have spent \$257 million less than it actually spent on Canadian programming. PNI could have decreased to \$85.54 million – meaning that even if independent producers received 100% of these expenditures, their income would have fallen by \$11.66 million (or 12%).

\$ millions, current	2020/21 – Actuals	If proposed change applied to 2020/21 results	Financial change
CPE – 2020/21 spending			
Bell’s TV stations	\$281.92	\$186.06	\$(95.85)
Bell’s discretionary services	\$474.89	\$313.43	\$(161.46)
Total CPE, Bell	\$756.81	\$499.49	\$(257.31)
PNI – 2020/21 spending²⁷			
Long-form documentary	\$ 42.80	\$ 28.25	\$(14.55)
Drama	\$ 82.50	\$ 54.45	\$(28.05)
Music, dance and variety - French	\$ 4.10	\$ 2.71	\$ (1.39)
Award shows- English	\$ 0.30	\$ 0.20	\$ (0.10)

²⁵ See *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, [Broadcasting Decision CRTC 2017-148](#) (Ottawa, 15 May 2017) at ¶134.

²⁶ *Broadcasting Decision CRTC 2017-148*, ¶41.

²⁷ CRTC, “data-television-sector.xlsx”, Tab TV-T36 (“PNI expenditures by CBC/SRC and large private ownership groups, by program category, 2015-20-21 (\$ millions)”).

Total PNI, Bell	\$ 129.60	\$ 85.54	\$(44.06)
Independent producers: 75% of PNI	\$97.20		
Independent producers: 100% of PNI		\$85.54	\$(11.66)

- 63 FRPC does not agree that the CRTC should reverse its current policies to help a very large broadcaster reduce its spending on Canadian programming as well as the income this generates for Canada's independent producers.

3. Independent production's "explosive growth"

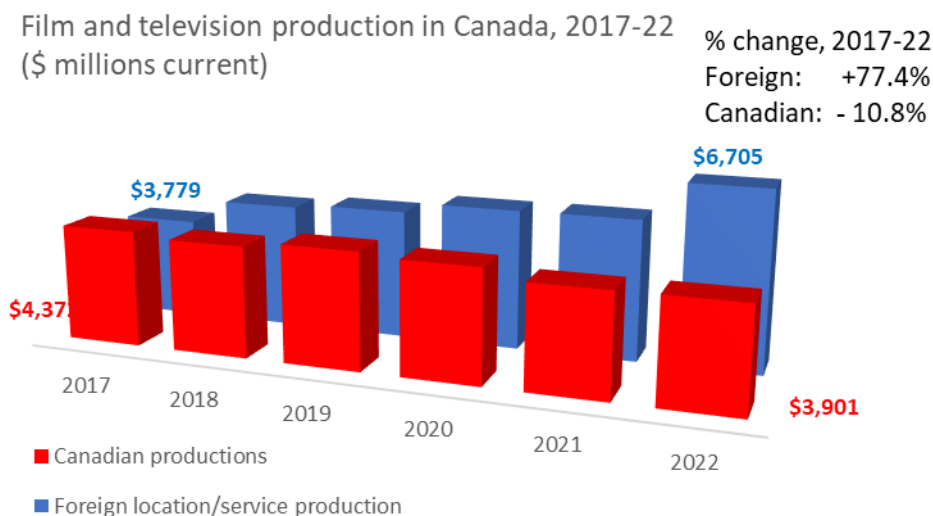
- 64 In 2017 the Commission required Bell to spend 7.5% of the precedent year's annual gross broadcasting revenues on PNI programming and to direct 75% of these expenditures to independent production companies.
- 65 Bell proposes that in exchange for the CRTC's approval of its proposals, it will direct all PNI expenditures to Canadian independent producers. Bell says this "would only result in as small decrease to our commitment for Canadian producers" (Application 2023-0379-1, ¶51), but that this would probably strengthen Canada's independent producers (¶47):

. [a]s demonstrated in the Armstrong Report, this will lead to an influx of new money that will be available to Canadian producers. **The Canadian production industry, which is already setting new records each year, will likely experience even more explosive growth.**

[bold font added]

- 66 First, FRPC notes that Bell agrees that approval of its application will reduce its spending on Canadian independent program production. Second, Bell has not explained why it believes that the Canadian program production industry is showing "explosive growth". When the value of total foreign location/service productions measured in dollars is deducted from total program production the remaining annual figures – Canadian program production – decrease by almost 11%: Figure 8.

Figure 8 Film and TV production in Canada, 2017-22



Source: CMPA, *Profile* annual reports

- 67 The CRTC should ask Bell for more specific information about the impact of its proposals on Canada's independent producers: having access to the entirety of Bell's PNI expenditures may still leave independent producers worse off.

D. Local TV news

- 68 When Bell Media applied to renew its licences in 2017 its President of Broadcasting and Content told the CRTC that Bell was "very proud" of its TV services, adding that the company wanted to build on its achievements:

1915 ... our entire team works very hard not just to satisfy our conditions of licence, but to serve our viewers by giving them the best possible TV content. And we are very proud of this. We want to build upon our achievements, to be seen as innovators, and continue to be the number one destination for Canadian viewers. Most importantly, we want to be recognized around the world as Canada's preeminent media company.

1916 We do this by focusing on quality over quantity with respect to programming, by continuing to invest in Canadian content, **including heavy emphasis on local news**; and by ensuring continued and strong promotion of our content across all platforms.

...

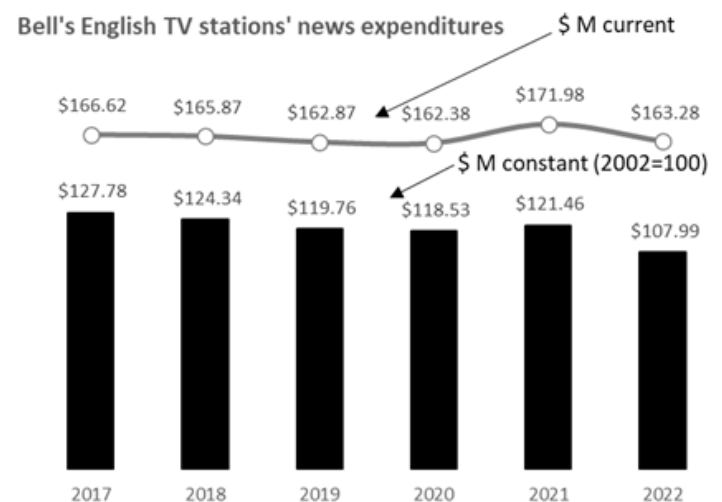
- 69 In Application 2023-0380-9 Bell similarly describes its pride in the service provided by its local TV stations (¶150). Based in part on this pride, Bell explains that the CRTC need not impose requirements for local TV programming:

... Bell Media is one of the largest publishers of broadcast local news in Canada, proudly operating 35 local television stations, each of which provides local news to the communities we serve. The Commission does not need to maintain COLs, which mandate that we must invest minimum amounts in our local news operations, air minimum amounts of locally reflective news or minimum amounts of local programming in metropolitan markets. Our local television stations, without codified COLs, will continue to cover a wide range of quality news that our viewers in markets large or small have come to expect from us.

1. Reduced spending on Bell's English-language local TV-station news

Figure 9 Bell, English OTA TV stations' news expenditures, 2017-22

- 70 Bell's aggregated financial summaries (and Statistics Canada 2002 Consumer Price Index) show that Bell Media reduced its spending on local TV news by 15.5% in real terms from 2017 to 2022: Figure 9. Between 2020 – when the CRTC remitted broadcasters' licence fees and the federal government instituted other financial-support measures for business – and 2022, Bell reduced its expenditures on local news by 9%. Added together, the year-to-year



Source: CRTC Aggregated financial summaries (Bell TV stations)

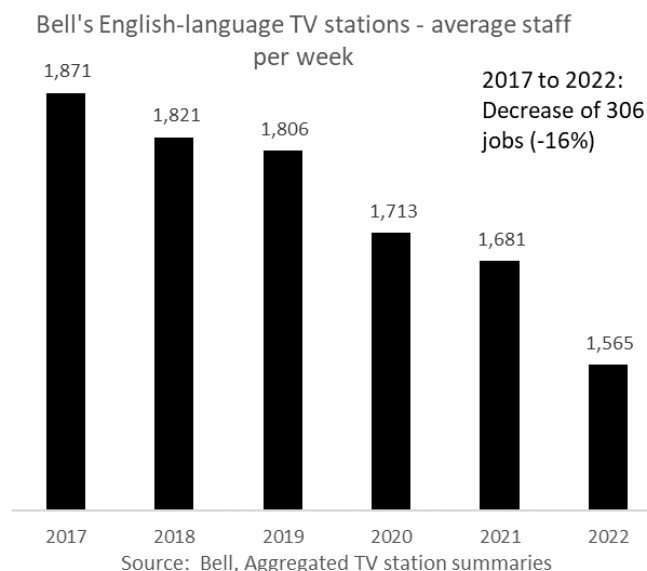
reductions in Bell's local station news expenditures from 2017 to 2022 amount to \$3.3 million.

2. Reduced staffing at Bell's English-language TV stations

Figure 10: Changes in Bell's English-language TV stations staffing levels

71 Bell also reduced staffing at its English-language TV stations over the same period. The average number of staff working at its stations per week decreased by 16% (306 jobs) from 2017 to 2022, and by 8% (148 jobs) from 2020 to 2022: Figure 10.

72 Application 2023-0380-9 does not address these facts when it argues that the CRTC should drop local programming expenditure and exhibition requirements because it "has been losing tens of millions alone in the production and delivery of local news" (Application 2023-0380-9, ¶130).



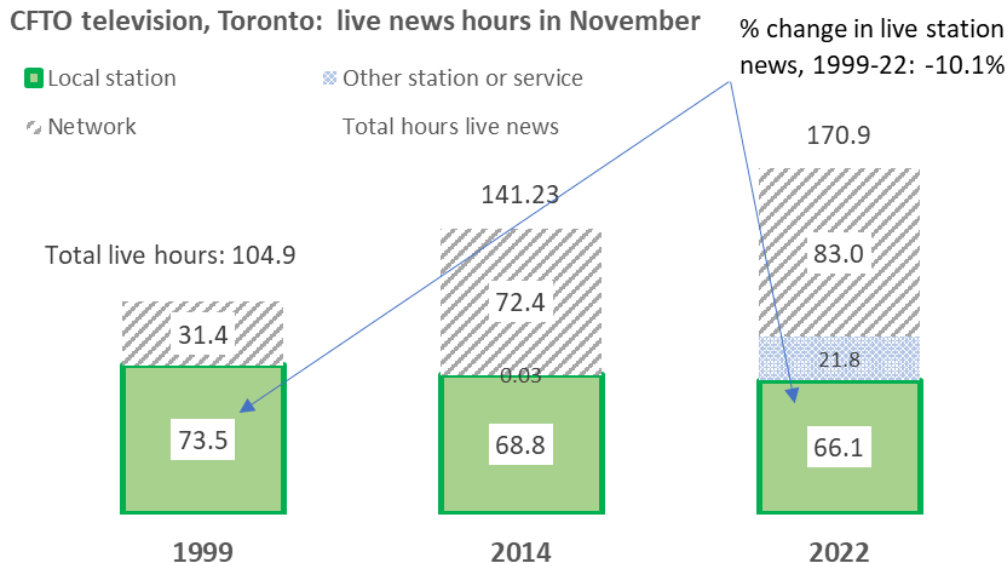
73 Bell has not explained why it believes that the CRTC's conditions of service of service are responsible for these losses. Could these losses not also be due in whole or in part to the reductions that Bell made in its TV stations' expenditures (Figure 9), staffing levels (Figure 10) and availability of original, first-run, first-broadcast news? Have these reductions affected the quality of its newscasts' quality and audience-appeal? Could CTV's adoption of centralcasting have affected its popularity among viewers and, consequently, its advertising revenues?²⁸

3. Reductions in first-run local TV news

74 FRPC reviewed CFTO Toronto television's program logs for November 1999, November 2014 and November 2022. They show that the live news originating from the station decreased by 10% between November 1999 and November 2022, and by 3.9% between November 2014 and November 2022: Figure 11.

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Figure 11 Live news broadcast by CFTO-TV/-DT Toronto, 1999 to 2022



Source: CRTC program logs from November 1999, 2014 and 2022 for CFTO television, Toronto

4. Bell's argument regarding CBC has two major flaws

75 Bell argues that it should be granted the same regulatory flexibility regarding local news that the Commission granted to the CBC in Broadcasting Decision CRTC 2022-165: "CBC/Radio-Canada currently has programming flexibility for which there is no valid policy reason that this same flexibility should not be applied to us" (Application 2023-0380-9, ¶145 and footnote 48). The CRTC in fact explained its rationale for this in Broadcasting Decision CRTC 2022-165:

406. While the CBC has a role to play in achieving the outcomes set out in the Local and Community Television Policy, the specific application of that policy or of the Commission's actions with respect to the CBC may differ from those for private commercial broadcasters given the public broadcaster's mandate, its vast territory, its revenue sources, and reinvestment in programming.

76 More to the point, however, FRPC notes that Cabinet returned 2022-165 to the CRTC for reconsideration ten months ago in part because of concerns about the decision's determinations about CBC's "**creation, presentation and dissemination of local news**, children's programming, original French-language programming, and programming produced by independent producers".²⁹ As the CRTC has not yet held its reconsideration proceeding it is unclear whether the CBC will or will not continue to have programming flexibility regarding local news. Nor is it clear what impact 2022-165 has had on CBC's programming decisions because the Corporation has (presumably) not yet submitted its annual return to the CRTC describing its expenditures from September 2022 to August 2023 by exhibition sources and programming categories.

- 77 Finally, Bell has not addressed the potential impact that approval of its ‘regulatory parity’ argument would have on the CRTC. Granting Bell and any other private broadcaster the same programming flexibility that the CRTC gave to the CBC regarding local news could indirectly fetter the CRTC’s discretion when it reconsiders its 2022-165 decision renewing CBC’s licences.
- 78 In 2020 the Federal Court of Appeal explained that an “administrative decision maker fetters the exercise of their discretion by relying exclusively on an administrative policy without regard to the law”.³⁰ Granting Bell Media the relief it seeks now on the ground that the CRTC previously gave CBC such relief may inappropriately encourage the Commission to grant CBC the same relief when it reconsiders the Corporation’s licence renewal applications.
- 79 FRPC does not agree that the CRTC should fetter its discretion in the future regarding Canada’s national public broadcaster, in order to help a very large broadcaster reduce its support for implementing Parliament’s broadcasting policy in the present.

5. Conclusions regarding Bell’s local-news arguments

- 80 Bell appears to be asking the CRTC to remove regulatory requirements for its TV stations to provide local news coverage because, Bell argues, it can be trusted to maintain this important service. Bell says, in fact, that its “local television news ... forms the backbone” of one of its discretionary news services “as the news content and stories gathered and produced by our local stations are often shown on CTV News Channel” (¶138). Moreover, Bell’s 2022 *Integrated Annual Report* says that the *Online News Act*, Bill C-18, would “as currently drafted ... entitle Bell Media’s general news services, such as CTV and Noovo, to compensation.”³¹
- 81 If the CRTC approves Bell’s proposed changes, Canadians will no longer be assured that Bell will continue to provide original, first-run (first-broadcast) television news to the local communities it is licensed to serve. If Bell reduces this service or, moreover, if it reduces its presence in local communities as it has for the past five years, the removal of condition of licence or (today) conditions of service means that the CRTC will be powerless to intervene. Approving Bell’s proposals would clearly serve Bell’s financial interests – transforming news into a profit centre – but how will it serve local communities’ interests and ensure the implementation of Parliament’s broadcasting policy?

IV. Conclusion

- 82 FRPC considers that Bell has provided insufficient facts and evidence in support of its specific proposal. It has also failed to provide clear information about the potential benefits that Canadians would obtain if the CRTC approved its applications. Nor has Bell explained why it would be appropriate for the CRTC to fetter its discretion by granting Bell’s requests on the premise that, in the future, the CRTC can make up any shortfalls from the pockets of non-Canadian broadcasters.

³⁰ *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140 at ¶157, 2021 13268 SCC dismiss’g leave to appeal.

³¹

- 83 The absence of clear, unequivocal and demonstrable benefits for Canada's broadcasting system, for the communities served by Bell and for Canadian audiences leaves the Commission in the untenable position of potentially giving Bell what it desires, without 'giving' Canadians something of equal or preferably greater value. Approving Bell's applications will reduce Bell's financial support for Canadian programming and Canadian independent program production.
- 84 For the reasons set out above, FRPC asks the Commission to deny Bell's applications at the present time, and until sufficient reliable evidence is provided to ensure that the Commission's decisions will strengthen Bell's implementation of the broadcasting policy for Canada.

Appendix 1 Application 2023-0379-1 – structural analysis

Suppl'y brief paragraph	Subject of paragraph	Application 2023-0379-1
1	Bell	Its requests to change CPE and PNI conditions of licence
2	Bell	Its specific requests to change CPE and PNI
3	Bell	Granting its request will enable Bell to manage its regulatory obligations better as broadcasting system is in crisis
4	Bill C-11	May help but private broadcasters are in crisis
5	Canada	DMBUs are thriving (CMR 2022, Chart 1)
6	Canada	Canadian production industry is thriving
7	Canada	Traditional broadcasters are in crisis
8	Private broadcasters	Operating in significantly uncertain regulatory environment
9	Broadcasting	Is in crisis
10	2023-0380-9	Bell's other application re local programming
11	Unknown	Unknown information filed in confidence
12	Private broadcasters	Operating environment has changed since 2013
13	Traditional broadcasters	Billions in dollars have migrated to the Internet
14	Canada	Average hours watching traditional TV are decreasing
14	Canada	Higher use of DMBU services by audiences
15	Canada	Fewer subscribers to traditional BDUs
16	Canada	DMBUs' revenues have grown since 2012
16	Canada	Conventional TV revenues decreased since 2012
17	Corus, TVA	Layoffs at Corus and Groupe TVA
18	Corus	Corus cut quarterly dividend in March 2023
19	Canada	Traditional broadcast industry revenues lower than in 2019
20	Canada	Private conventional TV revenues
21	Canada	Unprofitability of local television
21	Bell TV stations	"94% of our television stations had a negative PBIT in 2020"
21	Bell TV stations	"As of 2022 our local television stations have reported an aggregate loss of \$583.7 M since 2012."
22	Bell	Bell's longstanding relationship with US studios
23	Canada	\$680 M spent on news in radio and TV
23	Canada	Access to foreign content
24	Private broadcasters	Benefit Canadians and local economies
25	Television broadcasters	Simsub ensured successful Canadian system
26	Canada	What Canadian broadcasters pay for American content
27	Canada	Cost of foreign program rights
28	Canada	Harnessing Change - Canadian broadcasting industry
29	Canada	Canadian program rights market
30	Canada	traditional broadcasting industry
31	Canada	Implementing Bill C-11
32	Bell	Licences expire 31 August 2024
33	Canada	Regulatory requirements are outdated
34	Canada	Local news faces (unquantified) challenges
35	Canada	Journalism and Bill C-18 are important
36	Canada	News is important to Canadians & is linked to local stations' financial health

Suppl'y brief paragraph	Subject of paragraph	Application 2023-0379-1
37	Bell	Operates 35 local TV stations that broadcast news
38	Bell	News operating loss
39	Legacy broadcasters	Other legacy broadcasters
40	Bell	Requirements set by CRTC 2017-148 and 2018-335
41	Private broadcasters	Group licence administrative renewals in 2022
42	Bell	Changes sought for its conditions of service
43	Bell	Urgent relief is required
44	Bell	Rationale for changes to follow in section 3.1
45	Canada	Model of rebalancing CPE obligations
46	Canadian television	Model shows reducing CPE would yield more CPE
47	Foreign broadcasters	Reducing English-language CPE will increase CPE if CRTC requires CPE from foreign DMBUs
48	Bell	Its current CPE restricts it to 2(b) and 7 programming
49	Canadian television	PNI requirement and definitions are outdated
50	Bell	If PNI is adjusted it will support more programming such as <i>Farming for Love</i>
51	Bell	If PNI is adjusted it will spend 100% of PNI on independent producers
52	Canadian television	PNI makes broadcasters spend their production budgets on dramas and documentaries instead of reality TV
53	Bell	CRTC set its PNI on historical spending that does not reflect the programming that Bell would have preferred to buy
54	Act	Bell's request is consistent with draft policy direction
55	Act	Bell's request is consistent with draft policy direction
56	Bill C-11	Conditions of service replace conditions of licence
57	Bell	Replace its existing conditions of licence with proposed conditions of service
58	Bell	Approval will let it manage its regulatory obligations better
59	Bell	The changes it seeks are critical
60	Bell	Is happy to give CRTC more information if it asks

Appendix 2 Application 2023-0380-9 – structural analysis

Suppl'y brief paragraph	Subject of paragraph	Application 2023-0380-9
1	Bell	Licensing history
2	Bell	Summarizes changes to conditions of service
3	Bell	Changes will enable Bell to manage its regulatory obligations better
4	Bill C-11	May help but private broadcasters are in crisis
5	Canada	DMBUs are thriving (CMR 2022, Chart 1)
6	Canada	Canadian production industry is thriving
7	Canada	Traditional broadcasters are in crisis
8	Private broadcasters	Operating in significantly uncertain regulatory environment
9	Broadcasting	Is in crisis
10	CBC	Bell's proposal matches its approach to CBC
11	Bell	Application 2023-0379-1
12	Bell	Information filed in confidence
13	Traditional private broadcasters	Operating environment has changed
14	Traditional Canadian broadcasters	Billions in dollars have migrated to the Internet
15	Canada	Higher use of DMBU services by audiences
16	Canada	DMBUs' revenues have grown since 2012
17	Canada	Estimated DMBU revenues
18	Corus, TVA	Layoffs at Corus and Groupe TVA
19	Corus	Corus cut quarterly dividend in March 2023
20	Canada	Private conventional TV revenues
21	Canada	Unprofitability of local television
22	Bell TV stations	"94% of our television stations had a negative PBIT in 2020"
23	Canada	Access to foreign content
24	English Canadian broadcasters	Original programming and copyright payments
25	Private broadcasters	Benefit Canadians and local economies
26	Television broadcasters	Simsub ensured successful Canadian system
27	Canada	Cost of foreign program rights
28	Canada	Harnessing Change - Canadian broadcasting industry
29	Canada	Canadian broadcasting policy re Canadian broadcasters
30	Canada	Canadian program rights market
31	Traditional broadcasters	Immediate regulatory relief
32	Canada	Implementing Bill C-11
33	Bell	Licences expire 31 August 2024
34	Canada	Regulatory requirements are outdated
35	Canada	Local news faces (unquantified) challenges
36	Canada	Journalism and Bill C-18 are important
37	Canada	News is important to Canadians & is linked to local stations' financial health
38	Bell	Operates 35 local TV stations that broadcast news
39	Bell	News operating loss
40	Legacy broadcasters	Other legacy broadcasters and local news

Suppl'y brief paragraph	Subject of paragraph	Application 2023-0380-9
41	CBC	2022-165
42	CBC	2022-165 excludes conditions of licence that apply to Bell
43	Bell and CBC	Bell's stations operating at a disadvantage relative to CBC
44	CBC	CRTC said it could trust CBC
45	CBC	Has programming flexibility that CRTC should grant to private broadcasters
46	CBC	Regardless of reconsideration CRTC should give private broadcasters regulatory relief as their conditions of service are not sustainable
47	Bell	5-year renewal
48	Bell	Changes sought for its conditions of service
49	Bell	Urgent relief is required
50	Bell	Largest publisher of broadcast local news and can be trusted to invest minimum amounts of news
51	Bell	Bell's TV stations will provide better news service to local communities
52	Bell	Its conditions of licence make Bell provide irrelevant news
53	Bell	Its stations must be free to cover events that serve their viewers' needs
54	Bell	Will still invest in Canadian programming
55	Act	Bell's request is consistent with draft policy direction
56	Act	Bell's request is consistent with draft policy direction
57	Bell	Approval will let it manage its regulatory obligations better
58	Bell	Grant immediate relief
59	Bell	Is happy to give CRTC more information if it asks

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