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PUBLIC INTEREST
LAW CENTRE
(PILC)



27 October 2023

Marc Morin
Secretary General
CRTC
Ottawa, ONK1A 0N2

Filed online

Dear Secretary General,

Re: *Proposal for regulations to provide financial support to the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR)*

The attached Part 1 application is being filed by the civil-society organizations noted below pursuant to sections 3, 5(1) and 23 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* ([SOR/2010-277](#)).

The Applicants propose regulations and a procedural timeline to provide financial support to the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR), as provided for by the current *Broadcasting Act*. This application is separate from but related to Part 1 Application 2023-0219-9 filed with the CRTC six months (17 April 2023) and for which the record closed on 2 June 2023. The Applicants seek the approval of that application on an expedited basis.

The Applicants look forward to reviewing other parties' comments regarding the attached application.

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Proposal to regulate financial support for the BPF-FPR and to update its processes

27 October 2023

Part 1 Application submitted by:

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Consumers Council of Canada

Forum for Research and Policy in Communications (FRPC)

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Synopsis

Section 11.1 of Canada's *Broadcasting Act* now empowers the Commission to enact regulations and to make orders regarding the financial support of public-interest participation in CRTC broadcast matters.

Of the nine consultations that the CRTC has undertaken or is considering under its *Regulatory Plan to Modernize Canada's broadcasting system* none makes proposals to implement a regulatory framework to support public-interest participation in CRTC broadcasting proceedings. This application proposes such a framework based on a mechanism approved by the CRTC a decade ago – the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR).

The CRTC approved the BPF-FPR's establishment in 2012. It uses the CRTC's telecom forms and approach to cost applications, modified for broadcasting. From 2013 to 2022 the BPF-FPR reviewed each of 228 applications made by 36 parties whose submissions were accepted for consideration by the CRTC in its broadcasting proceedings. Making decisions within one to three months, it has denied 15 applications entirely and another 61 in part: it received requests to be reimbursed for \$5.1 million in CRTC broadcast-participation costs, and approved reimbursements of \$4.4 million (14% less). Its Board has met with its stakeholders on an ongoing basis and has responded to their concerns.

The BPF-FPR's operations have been funded by tangible-benefits payments from BCE, SiriusXM and Rogers. BCE's payments ended in 2013 and 2020, the SiriusXM payments end in 2024 (Sirius & XM) and Rogers' end in 2025. The BPF-FPR's finances have been precarious since 2016 and it is estimated that the BPF-FPR will be operating at a loss of \$242,000 in 2024 and of \$657,000 in 2025.

The Applicants propose that the CRTC enact regulations that

- define a class of large broadcasters deemed to be Canadian by the CRTC that in the 2023/24 broadcast year and going forward have Canadian broadcast revenues of over \$1 billion
- require the members of this class to make a one-time payment to the BPF-FPR by 31 December 2024 which totals \$6 million for the entire class (each class member remitting the average of the base amount across the class): interest earned from this base amount would fund the BPF-FPR's administrative expenses
- Mandate annual payments from the class members to the BPF-FPR beginning 31 December 2024 which total \$1 million (with each class member paying the average of the annual amount across the class): these annual payments would fund the BPF-FPR's operations for cost applications, and
- Enable the CRTC to temporarily suspend annual payments for one year should the BPF-FPR's Fund exceed \$2 million for two consecutive years

The Applicants propose that the Commission issue a notice of consultation about the application in early December 2023 which invites comments and replies by mid-February 2024. This timing provides the CRTC with six months to issue a determination about the proposal and to implement it by 1 September 2024. Taking these steps enables the CRTC to meet Parliament's concern for the financial support of public-interest participants in the CRTC's broadcasting proceedings.

Summary

Application for proceeding to update current public-interest participation costs regime

- ES 1 This application is being made under Part 1 of the CRTC's procedural rules by eight public-interest participants in CRTC broadcasting proceedings (the Applicants): Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC), Consumers Council of Canada, Forum for Research and Policy in Communications (FRPC), OpenMedia, Option consommateurs, Public Interest Advocacy Centre (PIAC), Public Interest Law Centre (PILC) and l'Union des consommateurs. (Appendix 1 sets out information about the Applicants.)
- ES 2 **The Applicants request that the CRTC initiate a proceeding in December 2023 to enable it to enact regulations by 1 September 2024 which will provide the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) with stable funding at minimal cost to broadcasters.** Such regulations are now authorized by section 11.1(1)(c) of the *Broadcasting Act*) to support public-interest participation in its broadcasting proceedings.
- ES 3 **The Applicants also request that the Commission grant Part 1 Application 2023-0219-9 filed with the CRTC six months ago on 17 April 2023 for which the public record closed on 2 June 2023. The application requested payment in 2023 of the full tangible-benefits payment (\$725,439) to the BPF-FPR which the Commission set out in Broadcasting Decision CRTC 2022-76.** Broadcasting Decision CRTC 2022-76 indicated that Rogers should remit \$241,813 to the BPF-FPR in each of three consecutive years; Rogers apparently made the first such payment in September 2023. Assuming SiriusXM makes its final \$119,333 payment in 2024 as indicated by Broadcasting Decision CRTC 2018-91, the combined payments from Rogers and SiriusXM in 2024 (\$361,146) remain 24% lower than the average annual broadcast-costs reimbursement made by the BPF-FPR from 2013 to 2022: \$475,951. Full payment of the three Rogers' tangible benefit payments remains necessary to stabilize the Fund's operations until new regulations that support public-interest participation in its broadcasting proceedings are, as the Applicants propose, enacted by the CRTC and enter into force in September 2024.
- ES 4 **The Applicants request that the Commission hold a public consultation to review the BPF-FPR's performance in Spring 2028 in line with its previously stated commitment to review its policies every five years.**

Financial support for public-interest participation in CRTC broadcast proceedings

- ES 5 Twelve years ago the CRTC approved a proposal by PIAC to establish the BPF-FPR and to provide it with initial financial support through a tangible-benefits requirement imposed on BCE's purchase of CTVglobemedia Inc.'s broadcasting subsidiaries. The Commission directed Bell to work with PIAC to submit a proposal to the CRTC by May 2011. It invited public

comments on the proposal in a consultation held from August to November 2011, and approved the BPF-FPR in March 2012 – an 8-month process.

- ES 6 Financing for the BPF-FPR was provided through the CRTC's tangible-benefits policy in which purchasers of radio and television broadcasting undertakings remit a portion of the price of their purchase to support Canada's broadcasting system. Since 2011 three broadcasters (Bell, SiriusXM and Rogers) have provided funding to the BPF-FPR.
- ES 7 The CRTC's tangible-benefits funding has enabled the BPF-FPR's Board of Directors to retain operational, accounting and legal assistance, and to meet its purpose by disbursing its remaining funds to reimburse qualified public-interest organizations for their costs of participating in CRTC proceedings. Altogether the BPF-FPR has reimbursed some or all of the CRTC-participation costs of 32 organizations in relation to 115 separate CRTC broadcasting matters from 2012 to 2022.
- ES 8 The Fund's depletion over time in current and real terms along with uncertainty as to the quantum and the timing of tangible-benefits remitted to the BPF-FPR have made BPF-FPR funding unstable. Since 2016 the BPF-FPR has issued six warnings that it might find itself unable to reimburse their CRTC-participation costs, might suspend its operations or close down entirely. The non-zero risk that the BPF-FPR might be unable to reimburse qualified public-interest participants the cost of their participation in CRTC broadcasting matters has led some to withdraw from or limit the scope of their participation in CRTC broadcasting proceedings.
- ES 9 In 2019 the CRTC acknowledged the impact of unstable funding on public-interest participation in its broadcasting work. It said that "the absence of stable funding limits the ability of public interest participants to develop a depth of expertise and experience" that the Commission considers useful to ensure that the record of its proceedings "contains a balance of evidence and diverse perspectives" ([CRTC submission to the Broadcasting and Telecommunications Legislative Review panel](#), at pages 18-19).

New Broadcasting Act contemplates regulations with respect to broadcast costs

- ES 10 The enactment of the *Online Streaming Act* in late April 2023 enables the CRTC to revise its current approach to the funding of the BPF-FPR. Parliament has empowered the CRTC to replace tangible benefits from radio and television ownership transactions with regulations or orders requiring broadcasters to direct expenditures to funds such as the BPF-FPR which support public-interest participation (as long as such funds are not administered by the CRTC).
- ES 11 This legislative change permits the Commission to provide the BPF-FPR and public-interest participants with financial certainty about CRTC broadcast-participation costs.

CRTC's Regulatory Plan referred to financial support for public-interest participation in Phase 1

- ES 12 On 8 May 2023 the CRTC published a [Regulatory Plan to modernize Canada's broadcasting system](#). Its *Plan* explains that this “[m]odernization will take place in three phases” beginning with Phase 1 in Spring 2023, Phase 2 in Fall 2023 to Winter 2023-2024 and Phase 3 in late 2024. The CRTC said in the context of Phase 1, that “[t]here may be additional consultations, including on establishing a new fund to provide financial support for participation in CRTC proceedings by persons and groups representing the public interest.”
- ES 13 Of the 60 questions set out by the CRTC on 12 May 2023 in its three Phase 1 proceedings ([2023-138](#), [2023-139](#) and [2023-140](#)) regarding contributions made by broadcasters to support Canadian program production, one (question 10 in 2023-138) asked whether the CRTC should direct a portion of broadcasters’ initial contributions to the BPF or similar funds. The CRTC did not make specific proposals about the application, wording or timing of regulations or orders regarding public-interest participation support: BNoC 2023-138 said that any detailed discussions or decisions about contributions to such funds will only take place in “Step 2” – presumably Phase 2 of the Regulatory Plan from Fall 2023 to the first three few months in 2024.

CRTC Regulatory Plan unclear as to when public-interest participation funding will be addressed

- ES 14 Phase 2 of the Regulatory Plan currently lists a single consultation on fees in Summer/Fall 2023 along with “preliminary engagement sessions with industry and creators” to “help design the approach for a full public consultation”. The fees consultation has ended and did not include any questions about public-interest costs’ reimbursement.
- ES 15 The CRTC’s Regulatory Plan lists another seven consultations it may include in Phase 2 from Winter 2023 to Winter 2024 (see Table 1). None of these addresses support for public-interest participation. The CRTC *Regulatory Plan*’s “Phase 3 Targeting launch: Late 2024” says it “will focus on implementing policy decisions listed above. More on Phase 3 will be included in future updates of this plan”.¹
- ES 16 While it is uncertain, in other words, when or whether the CRTC will initiate a proceeding to address the support of public-interest participation, it is possible that such a proceeding may only take place in late 2024 or thereafter.
- ES 17 This timeline maintains the existing uncertainty about the BPF-FPR, financial support for public-interest participation and the capacity of public-interest participants to participate in the CRTC’s proceedings beginning in 2024.

¹ CRTC *Regulatory Plan*, 8 May 2023.

Continued uncertainty about BPF-FPR's financial survival

- ES 18 Two ideas that are often bruited about stabilizing the BPF-FPR are that it should borrow money or that one or more federal departments will provide interim financing.
- ES 19 The BPF-FPR's by-laws do not empower its Board to seek loans from financial institutions. Even if it had such authority, the lack of firm dates when it will receive tangible-benefits payments, the fact that one of the three tangible-benefits payors failed to make all seven payments of its in full in the years set out by the CRTC, the fact that another payor remitted the first of its payments past the date when it had committed to make the payment, and the fact of the overall depletion of the BPF-FPR's asset base makes it unlikely that its loan application would be granted.
- ES 20 The BPF-FPR sought financial assistance from at least three government departments along with the CRTC from 2020 to 2022. Numerous BPF-FPR letters to and meetings of the BPF-FPR with officials from Heritage, ISED and Finance over three years did not result in any interim funding.
- ES 21 Faced with its inability to borrow money and government departments' denial of interim-funding requests the BPF-FPR has twice withheld 25% of the costs awarded to applicants so as not to suspend its operations. It withheld 25% of costs granted from October 2021 to November 2022, and from January 2023 to September 2023. The BPF-FPR returned the first set of withheld amounts to the relevant applicants in December 2022, and announced a similar remission of withheld payments for October 2023.
- ES 22 From 2021 to this month, in other words, public-interest participants subsidized the BPF-FPR's operations by effectively advancing a quarter of their approved public-interest participation costs to the BPF-FPR.
- ES 23 In early September 2023 Rogers made the first of three annual payments of \$241,813; it is unknown when it will make the payments set for 2024 and 2025, or whether it will remit the full amounts (as the payments were required by condition of approval rather than condition of licence and the BPF-FPR has already experienced a 25% underpayment in the past). SiriusXM is also scheduled to make its final payment of \$119,333 by May 2024.
- ES 24 From 2013 to 2022 the costs awarded by the BPF-FPR to applicants have amounted to an average of \$477,573 per year. Using this average as a proxy for the remainder of 2023 and for each of 2024 and 2025, the number of CRTC public consultations already announced establishes that a risk exists that the BPF-FPR will find itself operating at a loss by the end of 2024 and in 2025, even with the two Rogers' payments and the final SiriusXM payment:

BPF-FPR – estimated position from 2023-2025 (\$ current)	2023	2024	2025
Cash balance at 30 June 2023 (BPF/FPR financial update)	\$218,798		
Estimated cash balance at beginning of year		\$53,979	-\$261,217.62
Internally restricted contingency reserve	-\$60,000	-\$60,000	-\$60,000
Net cash available as at June 30, 2023 (BPF/FPR financial update)	\$142,387		
Available cash (with internal restriction)		-\$10,830.22	-\$321,217.62
Sept 2023 Rogers/Shaw (Note 1)	\$241,813		
31-Aug-24 Rogers/Shaw (Note 1)		\$241,813	\$241,813
24 May 2024 SiriusXM		\$119,333	
Interest earned from January 1, 2023 to June 30, 2023	\$2,792	Unknown	Unknown
Total cash available	\$386,992	\$350,315.78	-\$79,404.62
Expenses			
Cost claims paid and accrued by 30 June 2023 (BPF/FPR financial update)	\$117,845		
Cost claims paid and accrued		Unknown	Unknown
Remainder of 2023: 1/3 of ten-year average costs granted - estimate	\$152,790		
10-year average of BPF-FPR cost-claims disbursements ²		\$ 463,000	\$ 463,000
General and administrative (average of 2021 and 2022) - estimate	\$133,960	\$133,960	\$133,960
Less reversal of accrued costs at December 31, 2022 (BPF/FPR fin'l update)	-\$87,993		
Less reversal of accrued costs at end of previous year		Unknown	Unknown
Subtotal, expenses	\$321,411	\$ 611,533	\$ 611,533
Contingent reimbursement of 25% pending receipt of new funds	-\$16,411	Unknown	Unknown
Total, expenses	\$333,013	\$ 596,960	\$ 596,960
Cash available less expenses	\$53,979	-\$241,835	-\$656,982

ES 25 The BPF-FPR has few options: it cannot borrow money, its three years' of requests for temporary financial support from the federal government have been denied and – because the existing tangible-benefits payments are not set by enforceable conditions of licence (now orders), it is unclear when the three remaining tangible-benefits payments will be made or whether these will be made in full.

ES 26 Public-interest participants whose costs were reimbursed by the BPF-FPR in 2021, 2022 and 2023 have already effectively financed the BPF-FPR's operations – and in the absence of any other reasonable alternative, the BPF-FPR may decide to again withhold applicants' approved costs to avoid suspending or ending its operations.

² BPF-FPR, [CAUTION TO POTENTIAL APPLICATIONS FOR COST AWARDS](#) (Ottawa, 12 July 2021), at 1 of 3: "the historical rate of claim disbursements from the Fund [averages] \$463,000 per year"

ES 27 The Applicants say that it would be unreasonable for the CRTC to delay considering this application and Part 1 Application 2023-0219-9 of this past April because the BPF-FPR can finance its operations using funding approved for public-interest participants going forward.

ES 28 The Applicants respectfully ask instead that the CRTC stabilize the Fund by

- a. Granting Application 2023-0219-9 and requiring Rogers by order to remit all three tangible-benefits payments to the BPF-FPR in 2023 so as to ensure that the Fund may operate until 31 December 2024, and by
- b. Granting this application so that by 1 January 2025 regulations enacted by the CRTC provide the BPF-FPR with a stable base generating interest income that pays for its administrative expenses and stable annual income to support public-interest participation in CRTC broadcasting proceedings.

All financial risks have been borne by public-interest participants

ES 29 The Applicants have appreciated the attempts by the BPF-FPR's Board of Directors to address the past seven years of financial instability by meeting with and writing representatives of the CRTC, Canadian Heritage, Innovation, Science and Economic Development (ISED) and members of Parliament (Table 11). Nevertheless, these sources have not made any additional funding available to the BPF-FPR to stabilize its operations.

ES 30 The result is that public-interest participants have borne the financial risks and costs of the BPF-FPR's funding instability. None of the four CRTC decisions regarding tangible-benefits funding set enforceable conditions of licence. None set enforceable deadlines for payment. The result is that tangible-benefits payments to the BPF-FPR were made at different times of the year, leading to financial uncertainty (Table 9). One payment shortfall occurred, with the missing funding remitted the following (fiscal) year.

ES 31 Moreover, as the CRTC permitted broadcasters to make payments over time without adjustments for inflation, payors benefitted from the declining time-value of money while the BPF-FPR and public-interest participants absorbed the cost of inflation. Similarly, the CRTC requirement that the BPF-FPR adhere to the CRTC's cost guidelines – guidelines that have not changed since they were issued sixteen years ago in 2007 – has left public-interest participants with payments worth 24% less in real terms than in 2013. Over this period the salary ranges of those appointed to senior government positions by Cabinet have increased by 25%.

ES 32 The absence of any clear proposals or specific dates describing when the CRTC will address regulations to support public-interest participation in its broadcasting proceedings again makes it uncertain if the BPF-FPR will survive until the CRTC completes this work, and leaves the impression that the Commission expects public-interest participants are expected to work at 2007 rates.

ES 33 The applicants are therefore proposing a written public process to invite comment on regulations proposed to fund the BPF-FPR.

Proposed proceeding to address regulations to fund the BPF-FPR

ES 34 The process of establishing the BPF-FPR took nine months, from 2011 to 2012: 2 months for Bell and PIAC to develop a proposal; a CRTC public consultation with a 2-month intervention deadline, and 5 months for the CRTC to issue a decision approving the proposal.

ES 35 The applicants are proposing a nine-month written process beginning in December 2023 to develop new regulations and to update the BPF-FPR – this timeframe enables the CRTC to enact the regulations by the beginning of the 2024 broadcast year.

Week of 6-8 December 2023	Issuance of notice of consultation setting out questions and proposed regulations, with deadline for interventions in week of 5-9 February
Week of 5-9 February 2024	Interventions due
Week of 19-23 February 2024	Final submissions from interveners due
Consultation process: 2.5 months	
March to August 2024 (6 months)	CRTC consideration and determination
1 September 2024	New regulations re BPF-FPR funding enter into effect

Principles for updating the CRTC and drafting regulations

ES 36 The applicants are proposing that a new, broadly based regulatory regime for supporting public-interest participation meet key 21st century principles for public administration: certainty, openness and transparency. These principles should be applied to update the financing, structure, process, operations and outcomes of the BPF-FPR.

ES 37 Specifically, the Applicants propose that the CRTC enact regulations that apply to a class of broadcaster – large, licensed broadcasters whose gross annual Canadian revenues from their offline and online broadcasting activities exceed \$1 billion in the 2023/24 broadcast year and on which the regulations would have no demonstrable financial impact.

ES 38 Funding for the BPF-FPR would consist of a one-time, initial base payment and ongoing annual payments. The broadcast class would make a one-time payment of \$6 million to the BPF-FPR on 31 December 2024; this payment would generate income that the BPF-FPR would use to pay for its administrative expenses.

ES 39 Beginning on 31 December 2024 the broadcast class would then remit \$1 million (plus inflation) in annual payments to the BPF-FPR which the BPF-FPR would use to reimburse qualified public-interest participants in CRTC broadcast proceedings. If decreases in reimbursements granted by the BPF-FPR leave the Fund with double the annual amount or \$2

million over two consecutive years, the CRTC could order one or all of the large licensed broadcasters not to make their annual payment in the following broadcast year.

ES 40 Draft text for the regulations proposed by the Applicants is set out below.

Broadcast Participation Fund Financial Support Regulations, 2024

(1) The following definitions apply in these regulations.

annual Canadian gross revenues means total revenues attributable to the person or that person's subsidiaries and/or associates, if any, derived from Canadian broadcasting activities 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 within which the revenue calculation is being made), whether the services consist of services offered by licensed broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that receive revenue from other online undertakings by offering bundled services on a subscription basis. The Commission may accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

annual payment means \$1,000,000 in 2024 and the same amount each calendar year going forward adjusted on a compound basis in accordance with the percentage increase or decrease to the Consumer Price Index (CPI) for the previous calendar year and divided by the number of licensed broadcast ownership groups with annual Canadian gross revenues which exceed \$1,000,000,000 in the previous broadcast year.

base amount means \$6,000,000 divided by the number of licensed broadcast ownership groups with annual Canadian gross revenues in the 2023/24 broadcast year which exceed \$1,000,000,000.

Broadcasting Participation Fund means the independent not-for-profit organization incorporated as the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) Inc.

CPI means the annual average all-items Consumer Price Index for Canada (not seasonally adjusted) that is published by Statistics Canada

Fund's operating reserve means the total annual payments remaining at the end of a fiscal year of the Broadcasting Participation Fund less all expenditures required by its by-laws

Canadian broadcast ownership group means a broadcaster that operates licensed broadcasting undertakings or that is registered as an online broadcaster or both, and which is deemed to be Canadian by the CRTC

previous broadcast year means the period from 1 September to 31 August which ended immediately before the current broadcast year

(2) Each licensed broadcasting ownership group whose annual Canadian gross revenues exceed \$1,000,000,000 in the 2023-2024 broadcast year shall remit the base amount to the BPF-FPR on December 31, 2024.

(3) Each licensed broadcast ownership group shall on December 31 of each year beginning in 2024 remit to the Broadcasting Participation Fund the annual payment.

(4) If the Fund's operating reserve exceeds \$2,000,000 for two consecutive calendar years, the CRTC may order any or all of the Canadian broadcast ownership groups subject to these *Regulations* to not remit the annual payment for the following broadcast year.

ES 41 The applicants also propose that the BPF-FPR be empowered to set its own cost forms and tariffs, and that the BPF-FPR's bylaws be updated to require the BPF-FPR to amend its tariff in line with inflation every two years. The BPF-FPR should undertake the first amendment of these tariffs in 2024 as the tariffs have not changed since 2007.

ES 42 Finally, the Applicants ask the CRTC to schedule a public consultation with the purpose of reviewing the BPF-FPR in five years: Spring 2028.

ES 43 The following table summarizes other proposals the Applicants are making with respect to the BPF-FPR and that, as indicated, may require changes to the BPF-FPR's by-laws:

Certainty	1. Annual funding sufficient to meet public-interest participants' requirements for CRTC broadcast proceeding participation from one year to next: CRTC regulations requiring each Canadian licensed broadcast ownership group whose Canadian broadcast revenues exceeded \$1 billion in the previous broadcast year to make a one-time payment of \$1,500,000 to the BPF-FPR on 31 December 2024, and to remit \$200,000 (plus inflation) in each year going forward beginning on 31 December 2024; income from the one-time payments will pay for the BPF-FPR's administrative costs while the annual income will pay for costs applications
	2. Decision-making independence and impartiality of Board: independence to set forms and tariffs and published decisions (By-law)
	3. Amend tariffs every two years to adjust for inflation (By-law)
	4. Publication of best-practice timelines for cost awards and appeal decisions (By-law)
Openness	1. Annual meetings with stakeholders at beginning of year, including information concerning proposed annual budget and administrative expenditures (By-law)
	2. Published minutes of meetings (By-law) <ul style="list-style-type: none"> a) Of BPF-FPR Board of Directors b) With stakeholders c) With CRTC and Canadian Heritage d) With other organizations/institutions
	3. Upon receipt of applications, provision of estimated date when BPF-FPR Board may consider (Best practice)
Accountability	1. Publication online of annual reports, and of annual and quarterly financial statements (By-law)
	2. Comparative financial history to 2013 (By-law)
	3. Clear explanation of changes in presentation and impact of those changes retrospectively and prospectively (By-law)
	4. Publication online of outcomes as well as decisions, including appeals, showing

	<ul style="list-style-type: none"> a) Participant name b) CRTC proceeding number c) Description of proceeding d) Date proceeding began e) Date proceeding ended f) Date application received g) Date application considered by BPF-FPR h) Nature of decision: interim or final i) Date of decision j) Date of payment (By-law)
	<p>5. Establishment of searchable online database of decisions (including appeals) showing</p> <ul style="list-style-type: none"> a) Participant name b) CRTC proceeding number c) Description of proceeding d) Date proceeding began e) Date proceeding ended f) Date application received g) Application type: funding or appeal h) Date application considered by BPF-FPR i) Nature of decision: interim or final j) Decision outcome: granted, granted in part, denied k) Date of decision l) Date of payment (By-law)
	<p>6. Annual meetings with stakeholders at beginning of year (By-law)</p>

I. Introduction: updating the broadcast participation-costs regime

1 This application regarding the updating of the Broadcasting Participation Fund-Le Fond de Participation à la Radiodiffusion (BPF-FPR) is being made under Part 1 of the CRTC's *Rules of Practice and Procedure* eight public-interest participants in CRTC broadcasting proceedings – together, the Applicants:

- Consumers Association of Canada, Manitoba Branch
- Consumers Council of Canada
- Forum for Research and Policy in Communications (FRPC)
- OpenMedia
- Option consommateurs
- Public Interest Advocacy Centre (PIAC),
- Public Interest Law Centre (PILC) and
- Union des consommateurs.

2 Details about the Applicants are set out in Appendix 1.

3 The BPF-FPR came into existence as a 'tangible benefit' of BCE's 2011 acquisition of CTVglobemedia.³ (Appendix 2 sets out related CRTC determinations.) It has since then made decisions about applications it receives from applicants seeking the reimbursement of their costs of participating in CRTC broadcasting proceedings.

4 The Applicants are asking the CRTC to update the current broadcast costs-participation regime consisting of the BPF-FPR in the manner provided for by Parliament's *Online Streaming Act* amendments to the *Broadcasting Act*. These amendments empower the Commission, for the first time since 1968, to regulate the financing of "participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission". Specifically, section 11.1(1)(c) of the *Broadcasting Act* now authorizes the CRTC to replace the BPF-FPR's current reliance on the CRTC's 'tangible-benefits' policy, with funding set by regulations enacted by the CRTC.

Regulations — expenditures

11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of

...

(c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act; ...

....

³ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011).

A. Of 60 questions posed in the CRTC's Regulatory-Plan consultations, one (1) has asked about public-interest participation

- 5 While the CRTC's workplan for implementing the *Online Streaming Act* amendments refers to support for public-interest participation, the CRTC has not yet scheduled a process to address either the regulations or the revised BPF-FPR structure that supporting public-interest participation requires.
- 6 The CRTC's current [Regulatory Plan to modernize Canada's broadcasting system](#)⁴ lists eight public consultations it may undertake between now and late 2024 when it intends to begin implementing the changes brought about by the *Online Streaming Act*: Table 1 and Appendix 3.

Table 1 CRTC's 29 September 2023 Regulatory Plan – consultations underway or contemplated

Regulatory Plan – consultations still underway	
1	Consultation on contributions to the Canadian broadcasting system : Nov/Dec public hearing
2	Engagement on definitions of Canadian and Indigenous content: These preliminary engagement sessions with industry and creators will help design the approach for a full public consultation .
3	
4	Consultation on definitions of Canadian and Indigenous content: This consultation would review the definition of Canadian content and examine possible changes.
5	Consultation on tools to support Canadian music and other audio content: This consultation would assess tools to support Canadian audio content
6	Consultation on programming and supports for video content: This consultation would assess tools to develop, support, and promote Canadian and Indigenous content on all platforms.
7	Consultation on local markets access and competition: This consultation would evaluate market access, news and local programming, and competitive behaviours
8	Consultation on protecting Canadian consumers: This consultation would review ways to protect consumers and include broadcaster codes of conduct and mechanisms for complaints

- 7 The only mention of support for public-interest participation in broadcasting in the context of the CRTC's *Regulatory Plan* consultations to date was made five months ago. Broadcasting Notices of Consultation 2023-138, -139 and -140 asked 60 questions about the "contributions that broadcasting undertakings ...will be required to make to support the creation, distribution, promotion and discoverability of Canadian and Indigenous audio and video content. BNoC 2023-138 asked if some of these contributions should be directed to the BPF-

⁴ First published on 8 May 2023 and last modified, according to the CRTC's webpage (<https://crtc.gc.ca/eng/industr/modern/plan.htm>), on 29 September 2023.

FPR or other funds with similar objectives;⁵ it did not provide any information about the BPF-FPR's funding to date, the specific mechanism by which funding could be required, or suggestions as to the appropriate level of funding.

- 8 BNoC 2023-138 also went on to say that the Commission may finally change regulatory requirements for mechanisms such as the BPF-FPR sometime from Summer (now Fall) 2023 until Winter 2024 when “Phase 2” begins: “existing contributions by traditional broadcasters will not change as a result of Step 1,⁶ but will form part of the Step 2 discussion. Issues in this regard will be addressed in greater detail during Step 2”⁷ (we assume Step 2 is Phase 2).
- 9 In other words, 6 months into a 19-month long process involving extensive public consultations, public-interest participants continue to face uncertainty about the CRTC's thinking regarding support for public-interest participation. It is also unclear whether the CRTC plans to change or replace the existing BPF-FPR process that, while reasonably open, transparent and efficient, continues to lack the funding stability to meet its purpose.

B. Proposal for CRTC to launch consultation to update BPF-FPR

- 10 This application asks the Commission to initiate a written proceeding to update the current costs regime in broadcasting so as to reflect Parliament's new provisions for supporting public-interest participation, based on three foundational principles: openness, transparency accountability.
- 11 The proposal sets out three options for regulations to support public-interest participation in broadcasting, along with measurable criteria to enable Parliament, the public and the CRTC to know whether its regulatory approach to reimbursing the costs of qualified public-interest participants in its broadcast proceedings is working as intended and meeting the key principles mentioned previously. It then makes recommendations regarding a public process and the timing of that process to ensure that development of the regulatory public-interest participation framework provides sufficient time for analysis and reasoned consideration of this framework before the CRTC begins to implement its modernization plan in Fall 2024.
- 12 Part II sets out the context of public-interest participation in CRTC broadcasting proceedings along with the impact of the *Online Streaming Act*. Part III sets out the 21st century

⁵ “Q10. 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?”

⁶ BNoC 2023-138, at paragraph 5. We have taken the liberty of assuming that the CRTC's reference to steps 1 and 2 in fact refer to Phases 1 and 2. According to its *Regulatory Plan*, phase 1 began and concluded in Spring 2023; Phase 2 began in Summer 2023 and will conclude in Winter 2024. Phase 3 is timed for late 2024.

⁷ *Ibid.*

administrative principles applicable to a new approach to a public-interest participation costs regime in broadcasting, while Part IV sets out a proposal for discussion.

II. Public-interest participation in CRTC proceedings: legislative background

- 13 While broadcasting has been regulated since 1918,⁸ Parliament only established the CRTC in 1968⁹ (to replace the Board of Broadcast Governors or BBG). At the time the Commission's sole purpose was the "regulation and supervision of the Canadian broadcasting system".¹⁰
- 14 The CRTC welcomed public participation in its work from the time it began. In 1971 the CRTC revoked and replaced the BBG's *Procedure Regulations* with its own *CRTC Rules of Procedure*.¹¹ It described these procedures five years later as "relatively informal, widely advertised to the public, and open to frequent interventions and representations from members of the public."¹²
- 15 In 1976 Parliament transferred responsibility to regulate telecommunications services from the Canadian Transport Commission¹³ to the (renamed) Canadian Radio-television and Telecommunications Commission (CRTC).¹⁴ Its role was to implement the 1970 *National Transportation Act*¹⁵ that, among other things, specifically enabled the CRTC to fix or to tax costs of and incidental to its telecom proceedings.¹⁶

⁸ In 1918 "authority for the establishment and operation of an experimental broadcasting station in Montréal was granted ... to the Marconi Wireless Telegraph Company of Canada." Frank Foster, *Broadcasting Policy Development* (Ottawa, 1982), at 5.

⁹ *Broadcasting Act*, 7 March 1968, 16&17 Eliz. 2, c. 25. It was then known as the Canadian Radio-Television Commission (CRTC).

¹⁰ *Ibid.*, s. 2.

¹¹ *Telecommunications Regulation – Procedures and Practices*, Statement of the CRTC in preparation for a public hearing at the Chateau Laurier Hotel in Ottawa commencing September 27, 1976 (Ottawa, 20 July 1976) [1976 *Telecom Procedures and Practices*], at page 5.

¹² *Ibid.*, at page 5.

¹³ *Ibid.*, at page 1.

¹⁴ The *Canadian Radio-television and Telecommunications Commission Act* was proclaimed on 1 April 1976; section 12(2) requires "the members of the Commission and the Chairperson" to "exercise the powers and perform the duties vested in the Commission and the Chairperson, respectively, by the *Telecommunications Act*"

¹⁵ R.S.C. 1970, c. N-17.

¹⁶ *Ibid.*, s. 73:

(1) The costs of and incidental to any proceeding before the Commission, except as herein otherwise provided, are in the discretion of the Commission, and may be fixed in any case at a sum certain, or may be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid, and by whom they are to be taxed and allowed.

(3) The Commission may prescribe a scale under which such costs shall be taxed.

- 16 In July 1976 the CRTC published its first proposals regarding the procedures and practices it would use in telecommunications regulation.¹⁷ From the Commission's perspective it had "an obligation to re-examine and re-evaluate regulatory practices and procedures which have been built up since telephone rates were first brought under regulation in 1906."¹⁸ The CRTC said it "will make every effort to assist members of the public to understand the issues and procedures involved in a particular hearing and to participate in the hearing, if desired"¹⁹ although it cautioned that it did "not have funds to provide for representations at hearings".²⁰
- 17 In 1978 the Commission concluded that financial support was not just necessary but critical to informed public participation in its telecom proceedings.²¹ It established a process through which qualified applicants could present their invoices to a CRTC 'taxing officer' to examine and query applicants' bills, and to make recommendations to the CRTC as to whether it should order costs to be paid by relevant telecommunications companies. In the 1993 *Telecommunications Act* Parliament clarified the CRTC's authority to award both final and interim telecom proceedings costs, while retaining the its 'taxation of costs' mechanism.²²
- 18 The CRTC used the taxing process for telecom costs applications until 1998 when it decided to adopt "a more streamlined approach for costs awards in appropriate circumstances."²³ Several years later it generally dispensed with the taxation process as "the process of fixing costs immediately in costs awards is a more efficient process" that allows more expeditious

¹⁷ *Telecommunications Regulation – Procedures and Practices: Statement of the CRTC in Preparation for a Public Hearing at the Chateau Laurier in Ottawa Commencing September 27, 1976*, (Ottawa, 20 July 1976).

¹⁸ *Ibid.*, at page 9.

¹⁹ *Ibid.*, at 11 (14. Assistance to the Public).

²⁰ *Ibid.*, at 12.

²¹ *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978) at pages 37-38:

The Commission has concluded that if the objective of informed participation in public hearings is to be met, some form of financial assistance must be available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interests of a substantial number or class of subscribers. The complexity and importance of the issues which come before the Commission often demand that expert resources be available for their adequate treatment. Such resources are employed by the regulated companies. In the Commission's view, it is critical to, and part of the necessary cost of, the regulatory process that such resources also be available to responsible representative interveners.

²² *Telecommunications Act*, s. 56:

(1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

²³ *NEW PROCEDURE FOR TELECOM COSTS AWARDS*, [Telecom Public Notice CRTC 98-11](#) (Ottawa, 15 May 1998). The change followed the CRTC's consultations in 1997 with "all regulated companies, persons or organizations who have paid or have been awarded costs in the past four years as well as other interested parties": CRTC, *Re: Guidelines for the Taxation of Costs*, Reference Letter regarding Guidelines for the Taxation of Costs (Ottawa, 15 May 1998). The CRTC's *Guidelines for the Taxation of Costs* also revised the CRTC's existing fee structure.

determination of the costs while reducing “the administrative burden on the Commission and the parties involved.”²⁴

- 19 In 2007 the CRTC set out new [Guidelines for the Taxation of Costs](#) that its Legal Directorate had adopted²⁵ and which included rates or it considered acceptable. The rates have not changed since then.²⁶

A. 2011 ‘tangible benefits’ supported public-interest participation in broadcasting

- 20 The current BPF-FPR was established as a ‘tangible benefit’ of change in the ownership of broadcasting undertakings. Tangible-benefits emerged in the 1980s as part of a test that the Commission began to use when deciding whether to approve changes in broadcast ownership:

[t]he first test any applicant must meet is that the proposed transfer of ownership or control yield significant and unequivocal benefits to the communities served by the broadcasting undertakings, to the Canadian broadcasting system as a whole, and that it is in the public interest.²⁷

- 21 While court cases went on to find that Parliament had empowered the Commission to set conditions of licence regarding broadcasters’ expenditures on and exhibition of Canadian programming,²⁸ neither the 1968 *Broadcasting Act* nor the 1975 *Canadian Radio-television and Telecommunications Commission Act* explicitly enabled the CRTC to enact regulations about payments not clearly related to Canadian programming.
- 22 In 1991 Parliament revised the *Broadcasting Act*, authorizing the CRTC for the first time to issue “guidelines and statements”.²⁹ The Commission set out and continued to develop “general policy guidelines for disposing of applications for changes of ownership or effective control of all classes of broadcasting undertakings”.³⁰ These included its 1993 notice on its

²⁴ *New procedure for Telecom costs awards*, [Telecom Public Notice CRTC 2002-5](#) (Ottawa, 7 November 2002), at paras. 5-6.

²⁵ CRTC (Revised as of 24 April 2007).

²⁶ In 2010 the Commission decided not to review the public-interest participation tariff because it “found no compelling evidence on the record indicating that the rates listed in the Guidelines are out of step with market rates”: *Revision of CRTC costs award practices and procedures*, [Telecom Regulatory Policy CRTC 2010-963](#) (Ottawa, 23 December 2010) at para. 35.

²⁷ *Applications for Authority to Transfer Effective Control of Télé-Métropole Inc. to Power Corporation of Canada*, [Decision CRTC 86-367](#) (Ottawa, 18 April 1986) (no paragraph numbers).

²⁸ *CRTC v. CTV Television Network Ltd. et al.*, [1982] 1 SCR 530, 1982 CanLII 175 (SCC) 19 June 1975, 23 & 24 Eliz. 2, c. 49, rev’g 1980 CanLII 4317 (FCA), [1981] 2 FC 248.

²⁹ Described in the marginal note of section 6 as “Policy guidelines and statements”:

6. The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.

³⁰ *Assessment of the Impact of the Benefits Test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1992-42](#) (Ottawa, 15 June 1992).

Application of the Benefits Test at the Time of Transfers of Ownership of Broadcasting

Undertakings.³¹ At the time the Commission said it would apply the test to all changes in broadcast undertakings' ownership, with the exception of "unprofitable radio undertakings".³² Three years later, however, the CRTC announced in a call for comments on its approach to regulating broadcasting distribution undertakings (BDUs) that BDUs were no longer subject to the tangible-benefits policy due to the CRTC's adoption of an open-entry approach to BDU licensing.³³

- 23 In 2010 Bell applied to the CRTC for permission to buy CTVglobemedia.³⁴ PIAC intervened in this broadcasting proceeding and proposed that part of the tangible-benefits in the transaction be used to establish "an independent fund to represent non-commercial consumer interests before the Commission in its broadcasting proceedings."³⁵
- 24 The CRTC accepted the proposal for a fund to support public-interest participants in its broadcasting proceedings. It required the 'Canadian Broadcasting Participation Fund' to meet the "established governance and accountability" criteria it had approved for independent production funds³⁶ "as one of the conditions of approval"³⁷ of the Fund. The Commission made this new fund along with the Broadcasting Accessibility Fund (BAF) "eligible for contributions from other sources, including annual contributions by broadcasting distribution undertakings (BDUs) to the broadcasting system and future tangible benefits from transfers of ownership or control."³⁸ It said that it was "satisfied that the structure of the BPF as proposed by BCE and PIAC would allow for future sources of funding as described in Broadcasting Decision 2011-163, including future transfers of ownership for which the BPF may be specified

³¹ Public Notice CRTC 1993-68 (Ottawa, 26 May 1993).

³² *Ibid.*

³³ *CALL FOR COMMENTS ON A PROPOSED APPROACH FOR THE REGULATION OF BROADCASTING DISTRIBUTION UNDERTAKINGS*, [Public Notice CRTC 1996-69](#) (Ottawa, 17 May 1996)

...
VII. TRANSFERS OF OWNERSHIP AND CONTROL
...

... with adoption by the Commission of a policy that removes all or most of the existing licensing restrictions on market entry and which, in fact, encourages the imminent entry of new competitors using a variety of distribution technologies, the underlying rationale for applying the benefits test in considering future applications for authority to transfer the ownership or control of distribution undertakings has essentially disappeared.

...
Accordingly, the Commission announces that, in assessing an application for authority to transfer the ownership or effective control of a broadcasting distribution undertaking, it will no longer require prospective purchasers to identify the significant and unequivocal benefits that will result if the transaction is approved. This approach will apply to all such applications published after the date of this notice.

³⁴ [Broadcasting Notice of Consultation CRTC 2010-926](#) (Ottawa, 9 December 2010).

³⁵ *Ibid.*, at para. 47.

³⁶ *Ibid.*, at Appendix 2 ("Guidelines for the establishment of independent funds resulting from benefits").

³⁷ CRTC, *CRTC Written Public Submission to the Legislative Review Panel*, (Ottawa, 2019), at page 18.

³⁸ Broadcasting Decision CRTC 2011-163, Appendix 2.

as an eligible initiative for tangible benefits.”³⁹ Neither the CRTC’s establishment of the BPF-FPR nor its use of the tangible-benefits policy to support the BPF-FPR financially was challenged before the courts.

25 In early 2012 the CRTC approved the public-interest participation fund proposal made by PIAC and Bell Canada⁴⁰ and the BPF-FPR was incorporated as a not-for-profit corporation in the fall of that year.⁴¹ Its purposes are to

(a) provide costs support to public interest groups and consumer groups representing non-commercial user interests and the public interest before the Canadian Radio-television and Telecommunications Commission in broadcasting matters under the Broadcasting Act (Canada), recognizing that English and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(b) support research, analysis and advocacy in the official language of the applicant’s choice in CRTC broadcasting proceedings under the Broadcasting Act (Canada);

(c) retain an independent costs officer who shall be responsible for the day-to-day operations of the corporation subject to the overriding authority of the board of directors of the corporation;

(d) provide efficient and accessible service in English and French and make audiovisual available in both official languages the corporation’s documents necessary for potential costs applicants, including policies, costs funding criteria and annual reports; and

(e) do all things which are in furtherance of the foregoing.⁴²

26 The BPF-FPR accepted its first applications regarding public-interest participation costs in April 2013.⁴³

27 In addition to the 2011 tangible-benefits from BCE’s acquisition of CTV, the CRTC has required that tangible-benefits payments be remitted to the BPF-FPR in three other ownership transactions:

³⁹ *Ibid.*, at para. 25.

⁴⁰ *Broadcasting Participation Fund*, [Broadcasting Regulatory Policy CRTC 2012-181](#) (Ottawa, 26 March 2012). The BPF-FPR’s application to incorporate under the *Canada Not-for-profit Corporations Act* was granted on 6 September 2012.⁴⁰

⁴¹ BCE, *Broadcasting Participation Fund – Filing of executed constituting documents and agreements amended pursuant to Broadcasting Regulatory Policy CRTC 2012-181-1*, Letter to CRTC Secretary General (6 September 2012)

⁴² BPF-FPR, *Annual Report 2013*, at page 1 of 6 (“Corporate Statement of Purpose”).

⁴³ Welch LLP, *Broadcasting Participation Fund (BPF), Inc./le fonds de Participation à la Radiodiffusion (FPR), Inc.: Annual Report 2016*, (Ottawa, 1 March 2017), <http://www.bpf-fpr.ca/en/press/BPFAnnualReport2016.pdf>, Appendix 1, at note 1.

Decision	Broadcaster	Purchase of	BPF-FPR tangible benefits
2011-163 ⁴⁴	BCE	CTV	\$3,000,000
2013-310 ⁴⁵	BCE	Astral	\$2,000,000
2018-91 ⁴⁶	Sirius XM	Sirius FM	\$1,596,666
2022-76 ⁴⁷	Rogers	Shaw	\$725,439
Total			\$7,322,105

28 As described below in Table 2, however, none of these benefits was imposed by condition of licence.

Table 2 CRTC tangible-benefits requirements re BPF-FPR, 2011 - 2023

Source	Regulatory device	Amount	Payment status
BCE	<i>Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries, Broadcasting Decision CRTC 2011-163 (Ottawa, 7 March 2011), "58: ..., the Commission directs BCE to allocate its benefits contribution as set out in Appendix 1. Further, given the magnitude of the benefits, the Commission directs BCE to submit with its annual return for each of the next seven years a detailed report on the manner in which these tangible benefits have been spent."</i>	\$3,000,000	Completed
BCE	<i>Astral broadcasting undertakings – Change of effective control, Broadcasting Decision CRTC 2013-310 (Ottawa, 27 June 2013) "157.As set out in Public Notice 1999-97, for transfers of ownership or control involving television programming undertakings, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits. "158....the Commission has calculated the tangible benefits package to be \$175,400,000, as indicated in the table set out in paragraph 153 above. The Commission directs BCE to file by no later than 29 July 2013 a revised tangible benefits package with a value of \$175,400,00 that reflects the Commission's determinations set out below."</i>	\$2,000,000	Completed
Sirius	<i>Tangible benefits proposal by Sirius XM Canada Inc., Broadcasting Decision CRTC 2018-91 (Ottawa, 16 March 2018),</i>		

⁴⁴ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraphs 46 and 48.*

⁴⁵ *Tangible benefits proposal by Sirius XM Canada Inc., [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), at paragraph 38:*

In light of all of the above, the Commission:
approves Sirius XM's proposal to contribute \$1 million to the BPF paid in two equal installments of \$500,000 in year 1 and 2;
denies Sirius XM's proposal to allocate 3.79 million to the Proposed Fund;
directs Sirius XM to contribute \$1,596,667 to FACTOR and \$1,596,667 to MUSICACTION, expended in equal amounts over seven consecutive broadcast years and to contribute an additional \$596,666 to the BPF expended in equal amounts over five consecutive broadcast years starting in year 3.

⁴⁶ *Astral broadcasting undertakings – Change of effective control, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013), at Appendix 3.*

⁴⁷ *Shaw Communications Inc. – Change of ownership and effective control, Broadcasting Decision CRTC 2022-76 (Ottawa, 24 March 2022), at paragraph 68.*

Source	Regulatory device	Amount	Payment status
	<p>“38. ... approves Sirius XM’s proposal to contribute \$1 million to the BPF paid in two equal installments of \$500,000 in year 1 and 2</p> <p>“directs Sirius XM ... to contribute an additional \$596,666 to the BPF expended in equal amounts over five consecutive broadcast years starting in year 3”</p>	\$1,596,667	<p>Incomplete:</p> <p>\$119,333 due 24 May/24</p>
Rogers	<p><i>Shaw Communications Inc. – Change of ownership and effective control, Broadcasting Decision CRTC 2022-76</i> (Ottawa, 24 March 2022)</p> <p>68. ... the Commission requires Rogers to propose a revised tangible benefits package that allocates \$725,439 each to the BPF and the BAF. In addition, the Commission requires Rogers to make these payments over three consecutive broadcast years instead of the usual seven given the funds’ current circumstances and the significant role that they will be called on to play in the near future.</p> <p>69. ... the Commission requires Rogers, as a condition of approval, to file by no later than 25 April 2022, an application to amend the conditions of licence for all of the television programming undertakings currently operated by a Rogers-related entity to require it to report annually on its tangible benefits expenditures stemming from this transaction.</p>	\$725,439	<p>Incomplete</p> <p>\$241,813 due 31 Aug/24</p> <p>\$241,813 due 31 Aug/25</p>
Total, 4 transactions		\$7,322,106	
Payments made as of 31 September 2023		\$6,328,165	
Payments to be made from 2024 to 2025:		\$993,941	

29 Although the Commission has not published any reviews of the BPF-FPR in its 11 years of operation, its understanding of the BPF-FPR has apparently changed over time. In 2021 the CRTC’s staff advised the Commission that it was unclear under the 1991 *Broadcasting Act* (as then written) whether the CRTC had the jurisdiction to make BPF-FPR “contributions more stable and mandatory through regulations under the current Act”:⁴⁸

... the *Broadcasting Act* does not allow the Commission to award costs in relation to a CRTC broadcasting proceeding. Under section 10 of the *Broadcasting Act*, there is no explicit rubric of regulatory authority that would give the Commission the authority to make regulations that provide for certain funding to be earmarked or reallocated to the Broadcasting Participation Fund (BPF) or the Broadcasting Accessibility Fund. Furthermore, support for public interest participation under the *Broadcasting Act* is currently a proposed amendment under Bill C-10, thereby flagging that the Commission may not currently have the authority to make such regulations. Therefore, since it is not clear that the Commission has the jurisdiction to make such contributions more stable and mandatory through regulations under the current Act, a proceeding to do so would also involve some uncertainty as to its outcome.

30 As no legal challenges were filed about the BPF-FPR tangible-benefits payments, it is unclear what a court might have said about the CRTC’s authority and jurisdiction regarding the BPF-FPR. Regardless, the absence of enforceable conditions of licence and the CRTC’s position that

⁴⁸ CRTC Release Package sent 26 July 2022 in response to Access to Information A-2021-00031, page 46 of 48: Nanao Katchi, CRTC, to Commissioner Simard, Secretariat/Meetings and Commissioners, e-mail (5 July 2021, 4:07 PM ET).

it may have lacked the authority to take legal action when payors delayed or failed to remit full payments as expected left the BPF-FPR (and stakeholders) without a legal remedy with respect to late or incomplete tangible-benefits payments.

B. Legislative change

- 31 Proposals to amend the 1991 *Broadcasting Act* to empower the CRTC to address public-interest participation in broadcasting through regulations were made in 2020, and were enacted by the *Online Streaming Act* in 2023.

1 Broadcasting and Telecommunications Legislative Review Panel

- 32 The CRTC's approach to the reimbursement of public-interest participation costs was most recently discussed by the experts commissioned in June 2018 by the federal government to review Canada's broadcasting and telecommunications legislation. In its submission to the expert panel the CRTC explained that financial support for public-interest participation balances the evidence and perspectives made available to the Commission in its proceedings:

The CRTC makes its decisions based on the evidence presented on the public record of its proceedings. The communications companies that participate in CRTC proceedings generally have substantial internal resources and can afford to retain external consultants and lawyers, as well as to commission research to put forward their views and evidence in a proceeding. Consumer groups and public interest organizations are typically not-for-profit, volunteer-run organizations with limited monetary resources to develop similarly sophisticated submissions.

To ensure the record of a proceeding contains a balance of evidence and diverse perspectives, the CRTC has established the following mechanisms to award costs to facilitate the participation of these groups in its proceedings:

- cost awards for telecommunications proceedings; and
- the Broadcasting Participation Fund (BPF).⁴⁹

- 33 The Commission noted that the “absence of stable funding limits the ability of public-interest participants to develop a depth of expertise and experience”.⁵⁰ It then summarized four approaches to public-interest participation funding:

- establishing a single public interest funding or costs process for telecommunications and broadcasting proceedings;
- introducing grants for selected organizations to create stable multi-year funding for public interest participation;

⁴⁹ CRTC, *CRTC written public submission to the Legislative Review Panel* (Ottawa, 2019), Cat. No.: [BC92-102/2019E-PDF](#), at pages 17 to 18.

⁵⁰ *Ibid.*, at 19.

- more equitable funding of costs or grants, either by the CRTC through industry-wide telecom and broadcasting fees or from general revenues through a government department; and/or
- creating a publicly funded consumer advocate with a legislative mandate, either within the CRTC to intervene on its proceedings or within a government department to intervene before a variety of Federal regulators in the public interest.⁵¹

34 In its final report of 29 January 2020 – *CANADA’S COMMUNICATIONS FUTURE: Time to Act* – the Broadcasting and Telecommunications Legislative Review Panel also discussed public-interest participation costs (reproduced in Appendix 6).

35 Briefly, the review panel said that “there must be recognition of and support for the role of public interest groups in communications regulatory proceedings as a critical element in ensuring the credibility of and trust in the regulatory process” (Appendix 6, page 55). It made proposals to stabilize and address matters related to timeliness and predictability, and recommended that the Commission hold “a public consultation” to establish a non-adversarial, public-interest funding approach that ensures transparency and timeliness (Appendix 6, pages 57 to 58).

2 Legislative change: Bill C-11, the Online Streaming Act

36 Within a year the federal government proposed changes to the 1991 *Broadcasting Act* including an amendment that would enable the CRTC to order broadcasters to support public-interest participation. On 3 November 2020 the House of Commons gave first reading to Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*. Although Bill C-10 completed second reading in the Senate, a federal election was called in mid-August 2021 which led to the dissolution of Parliament before the bill received third reading.

37 C-10’s successor – Bill C-11 – retained the proposed text regarding public-interest participation support and became law on 27 April 2023 when the bill received Royal Assent.

38 Parliament effectively combined two of the public-interest funding approaches set out by the CRTC’s submission to the legislative review panel (see paragraph 33, above). It empowered the CRTC to provide stable multi-year funding for public interest participation, by making regulations or orders for such payments from all or some broadcasters.

3 Amended sections related to public-interest participation in broadcasting

39 The current *Broadcasting Act* now expressly empowers the CRTC to enact regulations or to make orders to support public-interest participation in broadcasting in ‘new’ section 11.1:

⁵¹ *Ibid.*, at 21 (footnotes omitted).

Regulations — expenditures

11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of

...

(c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act;

...

(2) The Commission may make an order respecting expenditures to be made by a particular person carrying on a broadcasting undertaking for any of the purposes set out in paragraphs (1)(a) to (d).

Règlements — dépenses

11.1 (1) Le Conseil peut prendre des règlements concernant les dépenses à effectuer aux fins ci-après par les exploitants d'entreprises de radiodiffusion :

...

c) le soutien à la participation des personnes, des groupements ou des organisations qui représentent l'intérêt public dans le cadre d'une affaire dont il est saisi au titre de la présente loi;

...

(2) Le Conseil peut prendre une ordonnance concernant les dépenses à effectuer par un exploitant d'entreprise de radiodiffusion en particulier, à toutes fins visées aux alinéas (1)a) à d).

40 As noted above, Parliament did not adopt the costs process set out in the 1993 *Telecommunications Act* for the CRTC's broadcasting proceedings. While that statute empowers the CRTC itself to award costs related to proceedings, the *Broadcasting Act* instead authorizes the Commission both to enact regulations and to make orders requiring broadcasters to make expenditures in support of public-interest participation which may be directed to any fund other than one administered by the CRTC.⁵² Table 3.

Table 3 Comparison of public-interest participation provisions in telecom and broadcasting

1993 <i>Telecommunications Act</i>	<i>Broadcasting Act</i> as am. April 2023
Award of costs 56 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.	Regulations — expenditures 11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of ... (c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act; ...
Payment of costs (2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be	Order — particular broadcasting undertaking (2) The Commission may make an order respecting expenditures to be made by a particular person carrying on a broadcasting undertaking for any of the purposes set out in paragraphs (1)(a) to (d). ...

⁵² This provision protects the Commission from concerns about unconscious bias as described in the 1979 case of *RE GREEN, MICHAELS & ASSOCIATES LTD. et al. AND PUBLIC UTILITIES BOARD* (Alberta Supreme Court, Appellate Division (19 January 1979) [94 D.L.R. \(3d\)](#)) per Clement J.A., at page 655:

The difficulty facing the intervenors is that in all of the circumstances disclosed in the record there is little ground for the contention save perhaps in respect of the treatment of the claim by Consumers' for reimbursement of the fees and disbursements of Dr. Star. There, one is left with some doubt as to whether in the overall view the slashing of his account may have been in some measure the result of a perhaps unconscious resentment of the attitude of Dr. Star, despite the explicit statement by the Board that this was not a factor.

...

1993 Telecommunications Act	Broadcasting Act as am. April 2023
<p>taxed and may establish a scale for the taxation of costs.</p>	<p>Application of regulations (4) A regulation made under this section may be made applicable to all persons carrying on broadcasting undertakings or to all persons carrying on broadcasting undertakings of any class established by the Commission in the regulation.</p> <p>Recipients (5) Regulations and orders made under this section may provide that an expenditure is to be paid to any person or organization, other than the Commission, or into any fund, other than a fund administered by the Commission.</p> <p>Criteria (6) Regulations and orders made under this section may provide for expenditures to be calculated by reference to any criteria that the Commission considers appropriate, including by reference to (a) the revenues of the persons carrying on broadcasting undertakings; (b) the performance of the persons carrying on broadcasting undertakings in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and (c) the market served by the persons carrying on broadcasting undertakings</p>
[version française]	
<p>Frais 56 (1) Les frais provisoires ou définitifs relatifs à une instance devant le Conseil, ainsi que tous les frais accessoires, sont laissés à l'appréciation de celui-ci et peuvent être taxés ou fixés.</p> <p>Taxation (2) Le Conseil peut désigner les créanciers et les débiteurs de ces frais ainsi que le responsable de leur taxation; il peut également établir un barème à cette fin.</p>	<p>Ordonnance — entreprise de radiodiffusion en particulier (2) Le Conseil peut prendre une ordonnance concernant les dépenses à effectuer par un exploitant d'entreprise de radiodiffusion en particulier, à toutes fins visées aux alinéas (1)a) à d). ...</p> <p>Application des règlements (4) Les règlements pris en vertu du présent article s'appliquent soit à tous les exploitants d'entreprises de radiodiffusion, soit à tous les exploitants d'entreprises de radiodiffusion de certaines catégories d'entre elles établies par le Conseil dans les règlements.</p> <p>Bénéficiaires (5) Les ordonnances ou les règlements pris en vertu du présent article peuvent prévoir que certaines dépenses soient payées à toute personne, à toute organisation ou à tout fonds, à l'exclusion du Conseil ou d'un fonds qu'il administre.</p> <p>Critères (6) Les ordonnances ou les règlements pris en vertu du présent article peuvent prévoir le calcul des dépenses en fonction de certains critères que le Conseil estime indiqués, notamment : a) les revenus des exploitants d'entreprises de radiodiffusion; b) la réalisation par ceux-ci des objectifs fixés par le Conseil, y compris ceux qui concernent la radiodiffusion d'émissions canadiennes; c) le marché desservi par ces exploitants.</p>

- 41 The CRTC may set regulations for a class of broadcasting undertaking or for all broadcasters to make expenditures for public-interest participation (section 11.1(4)), and it may also order a specific broadcaster to make such expenditures (section 11.1(2)).

III. Facts about the BPF-FPR and its performance

42 This section provides describes the purpose, organization and procedures of the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR). Part III concludes with an analysis of its strengths and weaknesses

A. Purpose

43 The BPF-FPR came into existence as is a federally incorporated not-for-profit corporation on 6 September 2012. Its mandate is to

“Provide costs support to public interest groups and consumer groups representing non-commercial user interests and the public interest before the CRTC in broadcasting matters under the Broadcasting Act.”⁵³

44 The BPF-FPR’s core purposes are to

- provide costs support to public interest groups and consumer groups representing non-commercial user interests and the public interest before the CRTC in its broadcasting matters
- support research, analysis and advocacy in CRTC broadcasting proceedings, and to
- provide efficient and accessible service in both official languages.⁵⁴

45 As a not-for-profit corporation the BPF-FPR is exempt from income tax.⁵⁵

B. Governance

1 BPF-FPR Board of Directors and members

46 All decisions of the BPF-FPR including disbursements from the Fund⁵⁶ are made by its Board of Directors, consisting of three and only three directors:⁵⁷ a Consumer/Public Interest director, a Broadcast Industry director and a Jointly Approved director (By-law section 27). The Directors may be remunerated provided the total remuneration amounts to no more than 1% of the BPF-FPR’s annual capital.⁵⁸ The Applicants consider that the Board has met and continues to meet the CRTC’s 2012 requirements for being ‘lean and efficient’.⁵⁹

⁵³ BPF-FPR, [Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs](#) (26 February 2013, amended 7 December 2020).

⁵⁴ Synopsis of BPF-FPR’s *Corporate Statement of Purpose* (BPF-FPR, *Annual Report 2013*, at 4 of 23).

⁵⁵ BPF-FPR, *Financial Statements 2022* at Note 1.

⁵⁶ BPF-FPR By-law, section 48(a).

⁵⁷ BPF-FPR, *Articles of Incorporation*, s. 3.

⁵⁸ BPF-FPR, By-law No. 1, s. 44.

⁵⁹ Broadcasting Decision CRTC 2012-181:

- 47 The BPF-FPR's directors are also its only members (By-law section 6); only members may vote for directors (By-law section 27(a), (b) and (c)), and may receive up to 1% of the BPF-FPR's annual capital in remuneration (By-law section 44).
- 48 The Board may only act when it has quorum, being the current Board's three members (By-law section 36) who may meet in person or electronically (By-law section 42). All questions arising at meetings of the Board must be decided by majority vote (By-law section 40).
- 49 In other words, while it predated the CRTC's 2016 *Policy framework for Certified Independent Production Funds* by several years the BPF-FPR meets that policy's criteria regarding the Board's composition: all members are Canadian, two-thirds of the Board members are independent (that is, they do not represent broadcasters), and the non-broadcast members of the Board must cast at least two-thirds of the votes in a meeting (based on the Board's current 3-Director requirement).⁶⁰

2 BPF-FPR stakeholders

- 50 Apart from its members the BPF-FPR also has two categories of 'stakeholders' that must apply to the BPF-FPR for admission: consumer/public-interest and broadcast industry stakeholders, defined in section 1 of the BPF-FPR's by-laws: Table 4.

Table 4 BPF-FPR's stakeholder definitions

Consumer/Public Interest Stakeholders	Broadcasting Industry Stakeholders
<p>"Consumer/Public Interest Stakeholders" means consumer and public interest groups, including advocacy and service groups, that are active before the CRTC in broadcasting proceedings and directly represent a broad-based membership of users, which shall have:</p> <p>(i) been recommended by not less than fifty percent (50%) of the then existing Consumer/Public Interest Stakeholders;</p> <p>(ii) executed the Stakeholder Agreement; and</p> <p>(iii) been confirmed by the Board and recorded as such pursuant to Sections 47(a) and 72 of this By-law;</p>	<p>"Broadcasting Industry Stakeholders" means broadcasting industry businesses and BDUs, subject to CRTC regulation or conditions of licence, which shall have:</p> <p>(i) been recommended by not less than fifty percent (50%) of the then existing Broadcasting Industry Stakeholders;</p> <p>(ii) executed the Stakeholder Agreement; and</p> <p>(iii) been confirmed by the Board and recorded as such pursuant to Sections 47(a) and 72 of this By-law;</p>

- 51 Each stakeholder group may nominate a director, while the third is proposed by the public-interest stakeholders and approved (or not) by the broadcast-industry stakeholders (By-law

28. The Commission agrees with BCE and PIAC's argument that the BPF is first and foremost an entity that determines, in an impartial manner, eligibility for costs in broadcasting proceedings before the Commission, and that a Board of three Directors ensures that no specific interest is over-represented. The Commission also agrees with BCE and PIAC that a Board of three Directors would promote a lean and cost-efficient operation, provide the ability to hold meetings more efficiently and achieve quorum more easily.

⁶⁰ *Policy framework for Certified Independent Production Funds*, [Broadcasting Regulatory Policy CRTC 2016-343](#) (Ottawa, 25 August 2016), at para. 134.

section 73). The BPF-FPR currently has 15 stakeholders: Table 5. If the Consumer/Public Interest Stakeholders do not propose a Jointly Approved Director or the Broadcasting Industry Stakeholders do not accept that person, “the CRTC shall choose a nominee following consultation with the Stakeholders.”⁶¹ (If the Jointly-Approved Director position becomes vacant, however, the position is filled by “a nominee recommended by the Board.”⁶²) The BPF-FPR meets on occasion with the stakeholders. The most recent BPF-FPR Stakeholder meeting occurred in January 2023.

Table 5 BPF-FPR stakeholders

Consumer/Public Interest Stakeholders (10)	Broadcasting Industry Stakeholders (5)
Canadian Association of Community Television Users and Stations (CACTUS) Consumers Council of Canada Canadian Media Guild Forum for Research and Policy in Communications (FRPC) Media Access Canada, (MAC) Inc. OpenMedia Engagement Network Public Interest Advocacy Centre (PIAC) Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic Telecommunities Canada Union des Consommateurs	Shaw Communications Inc. MTS Inc. Golden West Broadcasting Ltd. Aboriginal Peoples Television Network BCE Inc.

3 BPF-FPR’s public accountant and costs officer

- 52** The BPF-FPR must appoint a costs officer who is also the BPF-FPR’s Chief Executive Officer (By-law subsections 60(a) and 67); it must also retain a public accountant (By-law sections 11(f) and 83). The BPF-FPR’s “accounts and cash flow” are monitored each month by the Board and Welch LLP.⁶³ Up to 5% of contributions to the BPF-FPR may be allocated to its administrative expenses, unless the Board decides otherwise in writing.⁶⁴
- 53** The BPF-FPR has from time to time obtained outside legal advice “to deal with corporate matters or matters of interpretation related to CRTC requirements and the purpose of the Fund.”⁶⁵

⁶¹ BPF-FPR, By-law No. 1, s. 28(c).

⁶² *Ibid.*, s. 35(c).

⁶³ BPF-FPR, *Annual Report 2022*, at page 2.

⁶⁴ BPF-FPR, By-law No. 1, s. 48(a): “...Not more than five percent (5%) of the Fund contributions, including recouped proceeds, may be spent on administration, except where authorized in writing, in advance, by the Board based upon what the Board determines to be proper justification.”

⁶⁵ BPF-FPR, *Annual Report 2016*, at page 1, s. 2.0.

4 BPF-FPR's relations with stakeholders

- 54 In 2013 the BPF-FPR said it was “in ongoing communication with all interested parties and stakeholder” and that this was important “to maintaining positive business relationships with all parties.”⁶⁶ While it is unclear how often it has met with stakeholders either formally or informally since 2013, the BPF-FPR and its Costs Officer have held meetings with the BPF-FPR's stakeholders in each of the past several years.
- 55 The BPF-FPR has also accepted suggestions from stakeholders with respect to its administrative procedures. On 15 December 2015 it amended its *Guidelines for the Assessment of Costs* to provide for interim costs awards⁶⁷ such as when the CRTC suspends proceedings for indefinite periods; it began to make “interim costs awards available to consumer and public interest groups”⁶⁸ in February 2016. In 2020 the BPF-FPR agreed that applicants that had previously submitted applications that it had approved would no longer be required to have their applications notarized, and on 5 May 2020 it agreed to use electronic fund transfers (ETFs) to make payments to applicants whose applications had been granted.⁶⁹

C. *Process*

1 Applicants and applications

- 56 The BPF-FPR distinguishes between individual and organizational applicants. Individuals may apply for the reimbursement of their out-of-pocket expenses, but will “generally not be compensated for time spent preparing for, or appearing at, a hearing.”⁷⁰ Qualifying public-interest or consumer organizations that represent “non-commercial user interests and the public interest” in CRTC broadcasting proceedings⁷¹ and which employ in-house counsel or consultants or that retain external counsel or consultants may apply for the costs of these services based on the CRTC's (2007) telecommunications tariff.⁷² The BPF-FPR does not generally grant costs for applicants' “support staff, administrative staff, officers, and directors, acting as such” in connection with CRTC proceedings.⁷³

⁶⁶ BPF-FPR, *Annual Report 2013*, at s. 5.3.

⁶⁷ BPF-FPR, *Annual Report 2015*, at “Chronology of Key Events” (9 December 2015).

⁶⁸ BPF-FPR, *Annual Report 2016*, at 19 of 21.

⁶⁹ BPF-FPR, *Annual Report 2020*, at 3 and 26 of 26.

⁷⁰ BPF-FPR, [Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs](#) (26 February 2013, amended 7 December 2020), s. 15.

⁷¹ BPF-FPR, By-laws, section 48(b)(ii): “costs determinations (interim and final) shall only be awarded by the Corporation to public interest groups and consumer groups representing non-commercial user interests and the public interest before the CRTC in broadcasting matters”

⁷² BPF-FPR, [Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs](#) (26 February 2013, amended 7 December 2020), ss. 19-21.

⁷³ *Ibid.*, s. 16.

- 57 The BPF-FPR asks that applications for costs be filed within a year of the final date on which the CRTC accepts final representations in a broadcasting matter.⁷⁴ In cases where the CRTC has not set a date for making final submissions, applicants are to file within:
- 30 days following the hearing
 - In non-appearing proceedings, the date for filing interventions
 - For hybrid claims, the date of the CRTC payment directive that identifies the percentage split between Telecommunications and Broadcasting.⁷⁵
- 58 Applicants must submit “detailed and accurate accounts of the costs claimed ... with invoices and receipts necessary to support those costs” on forms that are completed in full and filed with the BPF-FPR,⁷⁶ along with copies of their submissions to the CRTC in the relevant proceeding.⁷⁷ The BPF-FPR also “requires information about the legal status of the claimant, the names of its Board of Directors, and who the organization represents.”⁷⁸ The BPF-FPR’s forms are based on those developed and used by the CRTC in its telecom costs process.
- 59 The BPF-FPR’s Costs Officer receives and reviews costs applications and makes recommendations to the Board of Directors. The BPF-FPR may request additional documentation from applicants and if this information is not filed may disallow applications.⁷⁹ Since January 2021 applications must be filed within 12 months of the CRTC’s filing date for final submissions or, if that date is unclear, within 30 days of a public hearing or the intervention date for non-appearing hearings.⁸⁰
- 60 As the BPF-FPR has developed its reporting has at times been somewhat informal. For example, in 2021 and 2022 the BPF-FPR reported that it had recalculated and adjusted amounts related to five claims:

2021:

The BPF reviewed a total of 16 new cost award applications received in 2021 totaling \$590,056 and processed and paid an additional 7 applications received late in 2020 totaling \$367,241 for a combined total of \$957,297 of claims under review for payment during the year. One (1) claim was denied and five were recalculated and adjusted. A

⁷⁴ *Ibid.*, section 6.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, section 7.

⁷⁷ *Ibid.*, s. 5.

⁷⁸ BPF-FPR, *Annual Report 2022* at 3 of 28.

⁷⁹ BPF-FPR, [Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs](#) (26 February 2013, amended 7 December 2020), section 10.

⁸⁰ *Ibid.*, section 6.

total of \$893,224 was paid out of the fund with \$50,278 accrued at December 31, 2021 for claims received late in the year to be paid out in early 2022.⁸¹

2022:

The BPF reviewed a total of seven new cost award applications received in 2022 totaling \$ 141,405 and processed and paid an additional three applications received late in 2021 totaling \$ 50,278 for a combined total of \$ 191,683 of claims for payment during the year. Two claims were recalculated and adjusted and one claim remains under review. A total of \$ 123,072 was paid out of the fund with \$ 68,613 accrued at December 31, 2022 for claims received late in the year to be paid out in early 2023.⁸²

61 It is not clear from the annual reports whether applicants had appealed these claims, or whether the BPF-FPR itself had decided to review and adjust previous applications.

2 Decisions

62 The number of applications received by the BPF-FPR by year varies significantly, from a low of 6 in 2019, to a high of 44 in 2014.

63 The BPF-FPR approves claims that meet its guidelines but may reduce claims “to a level that it deems appropriate” if “there appears to be a departure” from its *Guidelines* or their intent.⁸³ In 2021 the BPF-FPR said that disbursements from the Fund for applicants’ claims averaged \$463,000 per year.⁸⁴

64 Changes in presentation in the BPF-FPR’s published financial documents make it difficult to determine average amounts approved or expensed each year from 2013 to the more current financial year (2022). The BPF-FPR published figures for amounts *approved* from 2013 to 2018, and figures for amounts *expensed* from 2016 to 2022. Using the amounts approved from 2013 to 2015 and the amounts expensed from 2016 to 2022 yields an average of \$475,951 per year from 2013 to 2022 or 16.5% less than applicants requested: Table 6.

Table 6 Amounts applied for and approved by the BPF-FPR, 2013 - 2022

Calendar year	Applications	Amounts applied for	Approved	Amounts approved or expensed*	% difference	Source(s)
2013	29	\$ 355,811	21	\$330,773	-7.0%	AR 2013, p. 7
2014	43	\$ 838,812	36	\$801,612	-4.4%	AR 2014, p. 7
2015	44	\$ 347,088	44	\$310,083	-1.3%	AR 2015, p. 19
2016	41	\$ 1,106,041	36	\$736,920	-33.4%	AR 2016, p. 6; AR 2022, p. 8
2017	24	\$ 910,681	24	\$674,821	-25.9%	AR 2017, p. 6; AR 2022, p. 8

⁸¹ BPF-FPR, *Annual Report 2021*, at 9 of 27.

⁸² BPF-FPR, *Annual Report 2022*, at 9 of 28.

⁸³ *Ibid.*, section 8.

⁸⁴ BPF-FPR, [CAUTION TO POTENTIAL APPLICATIONS FOR COST AWARDS](#) (Ottawa, 12 July 2021), at 1 of 3: “the historical rate of claim disbursements from the Fund [averages] \$463,000 per year”

2018	16	\$ 374,877	14	\$316,799	-25.9%	AR 2018, p. 5; AR 2022, p. 8
		\$278,540				AR 2019, p. 5; AR 2022, p. 8
2019	6	\$ 221,266	8	\$227,410	2.8%	AR 2019, p. 5; AR 2022, p. 8
2020	18	\$ 910,998	22	\$610,981	-32.9%	AR 2020, pp. 6,9; AR 2022, p. 8
2021	25	\$ 957,297	24	\$576,262	-2.3%	AR 2021, p. 6; AR 2022, p. 8
2022	12	\$ 191,683	NA	\$141,405	3.0%	AR 2022, pp. 6, 9; AR 2022, p. 8
Total		\$5,696,604		\$4,759,510	-16.5%	
10 yr average	25.8	\$ 569,660**	25.4	\$475,951		

*: BPF-FPR reported "amounts approved" from 2013 to 2018, and "amounts expensed" in its *Annual Reports* from 2016 to 2022; expensed amounts used from 2016 to 2022

** : uses 2018 revised amount

NA: not available in BPF-FPR *Annual Reports*

Notes: 2019: received 2 applications late in 2018; 2020: received 3 claims late in 2019 and one appeal from prior year; 2021: reviewed 16 new applications rec'd in 2021, paid 7 applications received late in 2020, denied 1 claim and recalculated/adjusted 5 claims; 2022: reviewed 7 new applications rec'd in 2022, paid 3 applications received late in 2021, recalculated/adjusted 2 claims

Source: BPF-FPR, *Annual Reports*

65 In mid-2021 the BPF-FPR noted that the 10-year average of BPF-FPR cost-claims disbursements was somewhat lower - \$463,000 per year.⁸⁵ The 10-year average of costs approved by the BPF-FPR – using a database consisting of all approved applications and the amounts granted for reimbursement by the BPF-FPR – was \$444,483. (It seems likely that the variation in these figures results from timing issues – amounts identified as having been approved in one year may in reality have been remitted in the following year.)

66 The Applicants consider that the decisions by the BPF-FPR not to grant all costs sought addresses a concern raised by then CRTC-Commissioner Stuart Langford, writing in dissent regarding the CRTC's 2006 *Commercial Radio Policy*. He opposed guaranteed funding to develop radio talent on the basis that the guarantee might make recipients complacent:

I am not opposed to increasing funding for talent development, though unlike the majority I do not regard such funding as a substitute for airplay. However, I am opposed to playing favorites. **In my opinion, guaranteed funding is not a good idea. It can lead to complacency. If you are not required to prove yourself, you are less likely to work hard for the stakeholders who rely on you.** I prefer a more market-reflective approach, where candidates for talent development subsidies are required to compete on a level playing field for available dollars.⁸⁶

67 That the BPF-FPR Board of Directors regularly 'refreshes' itself with new members, that it does not rubber-stamp cost applications and that its Costs Officer reviews all applications to ensure their financial integrity and to assess the quality of the submissions applicants made to the

⁸⁵ Ibid.

⁸⁶ *Commercial Radio Policy 2006*, [Broadcasting Public Notice CRTC 2006-158](#) (Ottawa, 15 December 2006).

CRTC shows, in our view, that the risk of complacency on the part of previous, current and prospective applicants is low.

- 68 In its first year of operations the BPF-FPR issued decisions (and mailed payments when approved) within 60 to 90 days of receiving applications. In 2014 the BPF-FPR said that its practice was to issue decisions (and make payments when approved) within 30 to 45 days of receipt of applications;⁸⁷ its annual reports since then indicate that the timing varies from 45 to 60 days. While shorter time frames are preferable to longer ones, the BPF-FPR appears to have met its own guidelines. This is not always the case for institutions. For example, in the past five years the CRTC has met 10 of its 47 application-processing standards in broadcasting and telecom:

CRTC standards ⁸⁸	2018/19	2019/20	2020/21	2021/22	2022/23	Total
Broadcasting						
Standards	6	6	6	5	5	28
Met	-	-	3	-	-	3
Not met	6	6	3	5	5	25
Telecom						
Standards	4	4	4	4	3	19
Met	3	1	0	3	0	7
Not met	1	3	4	1	3	12
Broadcasting and Telecom						
Standards	10	10	10	9	8	47
Met	3	1	3	3	-	10
Not met	7	9	7	6	8	37

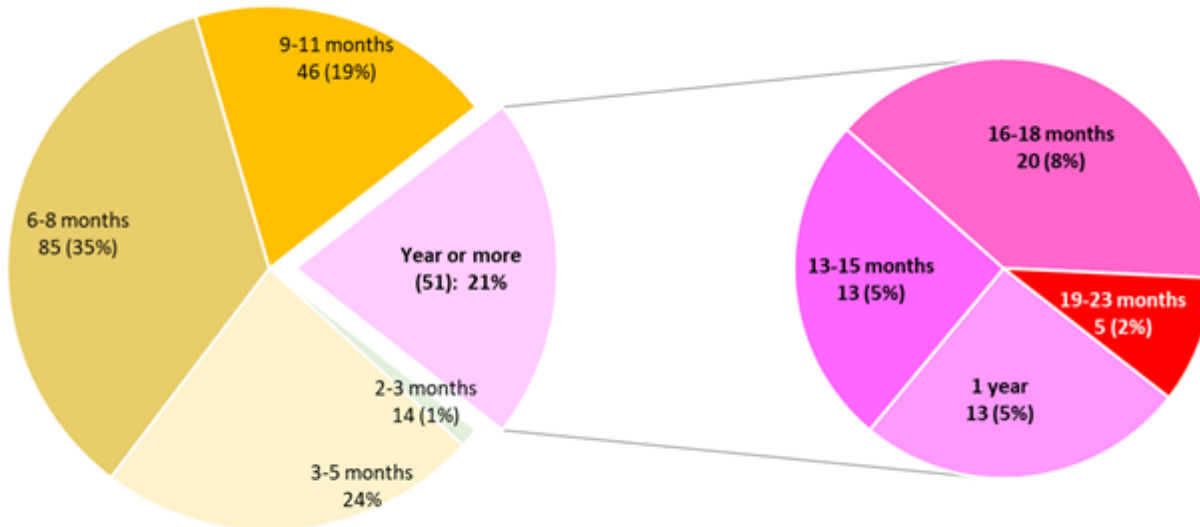
- 69 The BPF-FPR's 1 to 2 months' timeline for issuing decisions also compares favourably with the timelines in the CRTC's telecom costs process: Figure 1.

⁸⁷ BPF-FPR, *Annual Report 2015*, at page 3, s. 5.2; Costs Officer and CEO, BPF-FPR, [Update November 24, 2015](#) Slide 5 of 10.

⁸⁸ Sources: <https://crtc.gc.ca/eng/publications/reports/standards18.htm>; [Service objectives for the processing of certain types of broadcasting applications 1 April 2019 to 31 March 2020](#); <https://crtc.gc.ca/eng/publications/reports/standards20.htm>; [Service objectives for the processing of certain types of broadcasting applications 1 April 2021 to 31 March 2022](#); [Service objectives for the processing of certain types of broadcasting applications 1 April 2022 to 31 March 2023](#); [Service objective/standards and performance measure for processing telecommunications applications 1 April 2018 to 31 March 2019](#); https://crtc.gc.ca/eng/publications/reports/t_standards19.htm; https://crtc.gc.ca/eng/publications/reports/t_standards20.htm; https://crtc.gc.ca/eng/publications/reports/t_standards21.htm; https://crtc.gc.ca/eng/publications/reports/t_standards22.htm.

Figure 1 Days for decisions about CRTC telecom costs, 2014-September 2023

Months from date of costs application to CRTC costs decision,
2014 to September 2023



Source: CRTC telecom cost orders,
January 2014 to September 2023

70 The BPF-FPR's by-laws state that all of its "costs determinations shall be in writing and made available to the public to provide precedents to potential costs applicants."⁸⁹ We could not locate written decisions for the 263 applications listed in the BPF-FPR's annual or financial reports from 2013 to 2022. The BPF-FPR instead publishes outcomes – the amounts decided for individual applications with respect to individual broadcasting proceedings. The Applicants note that the CRTC publishes written telecommunications costs orders concerning each application it receives in line with the 1979 *Green* case. In that matter the Alberta Court of Appeal held that cost orders "must state clearly the findings of fact in respect of each particular item of the claimed costs which the order affects, and express "adequate and intelligible" reasons for the decision in respect of it, in order that it can be determined whether the findings of fact are well grounded and the reasons based thereon are proper."⁹⁰

3 Appeals

71 Applicants that disagree with a BPF-FPR decision may appeal the decision to the BPF-FPR within 60 days of the decision. An applicant must notify the BPF-FPR in writing that a decision

⁸⁹ By-law 48(b).

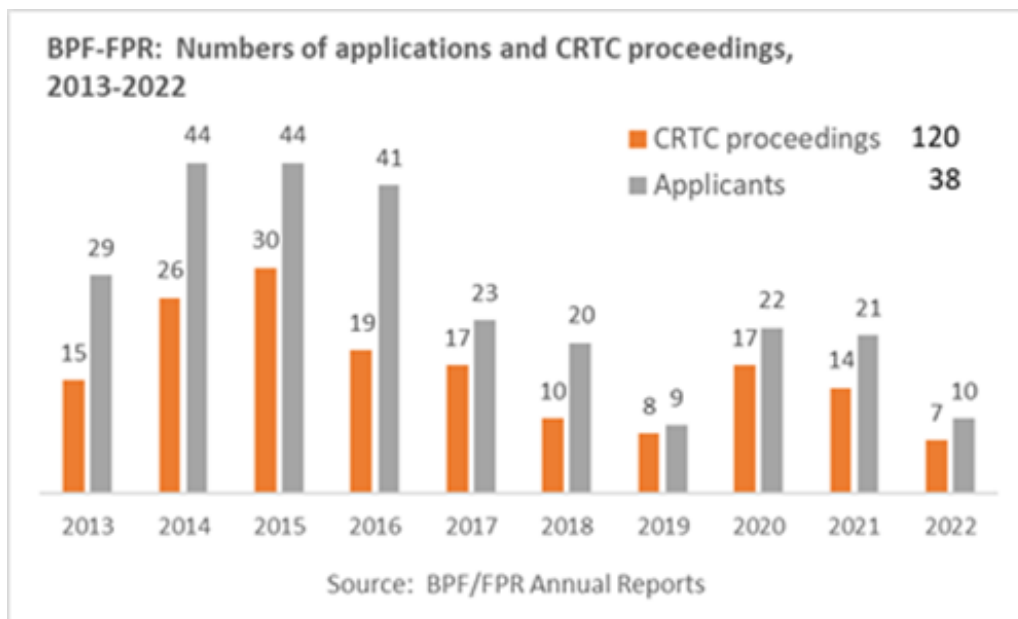
⁹⁰ *Green v. Public Utilities Board*, [1979 CanLII 2771 \(AB CA\)](#), per Clement J.A., at pages 656-657.

will be appealed and file the written appeal within the following 60 days. The BPF-FPR provides itself with 90 days to review the appeal and make a final decision.⁹¹

4 Outcomes

- 72 It is estimated that from 2013 to 2022 the BPF-FPR received applications from 36 different parties that participated in 120 CRTC broadcasting proceedings. It granted the reimbursement of all or some of the costs requested by 32 of the applicants.

Figure 2 BPF-FPR applications: numbers of applicants and CRTC proceedings, 2013-2022



- 73 The five and ten largest CRTC proceedings in terms of costs reimbursed accounted for 51% and 65%, respectively, of the total costs reimbursed by the BPF-FPR from 2013 to 2022: Table 7.

Table 7 Major proceedings and costs reimbursed, 2013-2022

Proceeding		Proceeding description	Costs reimbursed	% of total
1	2015-421	Local and Community TV Policy Review	\$1,233,404	23.4%
2	2019-379	Renewal of CBC's licences	\$465,580	8.8%
3	2017-160	BDU renewals	\$386,408	7.3%
4	2014-190	Let's Talk TV	\$359,437	6.8%
5	2013-1746	Non-compliance Complaint by ICTV regarding Matv	\$237,754	4.5%
Top 5			\$2,682,583	51.0%
6	2017-359	GIC - future distribution models	\$178,121	3.4%

⁹¹ BPF-FPR, [Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs](#) (26 February 2013, amended 7 December 2020), Appendix B: Appeals Process – Stages and Timelines.

Proceeding		Proceeding description	Costs reimbursed	% of total
7	2016-225	TV ownership group renewals	\$150,110	2.9%
8	2016-0063-5	CACTUS Complaint Against Shaw Cablesystems	\$147,734	2.8%
9	2013-106	Astral - Change of Effective Control	\$134,587	2.6%
10	2021-281	Change in ownership and control - Shaw	\$130,995	2.5%
Top 10			\$3,424,130	65.0%
All others		109 proceedings	\$1,840,418	35.0%
Total		119 proceedings	\$5,264,548	100%

D. *BPF-FPR's strengths and challenges*

74 While the federal government has not adopted a set of best practices for administrative agencies or organizations, other levels of government have. The Quebec Energy Board, for example, values respectful treatment of its staff and participants in its proceedings, the competence of its staff and commissioners, as well as impartiality “that it associates with neutrality, fairness, objectivity and which is the basis of any notion of justice.”⁹²

75 The Applicants consider that the BPF-FPR has demonstrated a high degree of objectivity, efficiency and openness in meeting its mandate.

1 Strengths: impartiality, efficiency and openness

76 The BPF-FPR uses a two-stage process for evaluating applications. Applicants must first meet the BPF-FPR's terms for qualification, being public-interest or consumer organizations that represent “non-commercial user interests and the public interest” in CRTC broadcasting proceedings.⁹³ Applicants complete forms provided by the BPF-FPR setting out the costs of the services required for their participation, calculated using the CRTC's (2007) telecommunications tariff.⁹⁴ Applications may be completed in the official language⁹⁵ selected by the applicants. Once submitted each application is reviewed by the BPF-FPR's Costs Officer for accuracy. The applications, including the submissions applicants made to the CRTC, are then reviewed by the BPF-FPR's Directors. The BPF-FPR has adapted its procedures over time:

⁹² Régie de l'énergie, *About Régie de l'énergie*, “[Values](#)”.

⁹³ BPF-FPR, By-laws, section 48(b)(ii): “costs determinations (interim and final) shall only be awarded by the Corporation to public interest groups and consumer groups representing non-commercial user interests and the public interest before the CRTC in broadcasting matters”

⁹⁴ BPF-FPR, [Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs](#) (26 February 2013, amended 7 December 2020), ss. 19-21.

⁹⁵ BPF-FPR By-laws, section 67.

it did not initially set a deadline for submitting costs applications,⁹⁶ but in 2020 it established a one-year limitation period for accepting claims in applications.⁹⁷

a. Impartiality

77 In 2012 the CRTC agreed that the BPF-FPR be “first and foremost an entity that determines, in an impartial manner, eligibility for costs in broadcasting proceedings before the Commission”.⁹⁸

78 Unlike the CRTC telecom costs regime, decision-makers at the BPF-FPR are not employed by any of the parties involved in CRTC proceedings – whether broadcasters, government or the CRTC. In addition to disqualifying applicants lacking requisite qualifications the BPF-FPR has from time to time denied claims due to the submissions’ lower-than-required standard. The Applicants consider that the BPF-FPR has made its decisions impartially and objectively throughout its existence.

b. Efficiency

79 As for efficiency, the BPF-FPR meets at least monthly, and renders decisions on applications it receives within one to three months: Table 8. It is unclear whether volume of applications is related to the time required to make decisions – in 2017 the BPF-FPR required 45 days to make decisions about 24 applications while in 2019 it required 60 days to make decisions about 6 applications. Such variations may occur because applications are not submitted uniformly across a given year, but after the close of CRTC broadcasting proceedings which sometimes occurs late in the year. Little information is available about the time required by the BPF-FPR to consider matters under appeal.

Table 8 BPF-FPR – decisions and timing

Calendar year	Applications	Timing	Source(s)	Page
2013	29	60-90 days	BPF-FPR Annual Report 2013	7
2014	43	30-45 days	BPF-FPR Annual Report 2014	7
2015	44	NA	BPF-FPR Annual Report 2015	19
2016	41	30-45 days	BPF-FPR Annual Report 2016	6
2017	24	30-45 days	BPF-FPR Annual Report 2017	6
2018	16	60 days	BPF-FPR Annual Report 2018	5
2019	6	45-60 days	BPF-FPR Annual Report 2019	5
2020	18	45-60 days	BPF-FPR Annual Report 2020	6, 9
2021	25	45-60 days	BPF-FPR Annual Report 2021	6
2022	12	45-60 days	BPF-FPR Annual Report 2022	6, 9

⁹⁶ BPF-FPR, *Financial Statements 2014*, Note 2 at page 5.

⁹⁷ BPF-FPR, *Annual Report 2021*, at 7 of 27.

⁹⁸ Broadcasting Decision CRTC 2012-181, para. 28.

80 The BPF-FPR's single-payor reimbursement regime contributes to its efficiency. In a multi-payor system cost applicants bear a higher burden in terms of time and risk of non-payment: applicants must sometimes follow up with those whose payments have not been received and in some cases payments never arrive. In the past five years, for example, payors have failed to remit payment to PIAC on four occasions.⁹⁹ The use of a single-payor regime and the BPF-FPR's adoption of electronic funds transfers to remit payments in the case of applications it approved has reduced the time between its decisions and payments, and has increased successful applicants' certainty not just that payment will arrive but that they will arrive within a reasonable time frame.

c. Openness

81 Along with detailed guidelines about the applications process, the BPF-FPR publishes information about its processes, applications and decisions on its website, in its annual reports and in its financial statements. Its online pages set out applicants' names, information about the proceedings for which they seek reimbursement of costs and amounts granted or denied. Empirical information about applications made to the BPF-FPR is not available in a single, public database, however. This means that information must be exported from its PDF reports and imported into datasets with comparable variables (to the extent the variables appear comparable).

82 The BPF-FPR's annual reports generally provide little longer-term historical financial information. While its financial statements offer extensive detail, it is unclear whether all users including the BPF-FPR's stakeholders have the technical expertise to understand accounting terms of art and their implications.

83 Outcomes – whether applications have been granted or denied – are set out in the BPF-FPR's annual reports and on its website and brief explanations of differences between amounts sought and granted are usually provided. Specific decisions about each application are not provided, leaving it unclear as to whether specific decisions are written for each application. Information such as the dates when applications are received and are decided is not consistently available: of the 263 separate applications listed in the BPF-FPR's annual reports from 2013 to 2022, 174 showed the dates when they were received by the BPF-FPR and 137 showed the dates when the BPF-FPR made payments. Presentation also sometimes changes from time to time without clear explanation, such as with information about the dates that tangible-benefits are received.

⁹⁹ With respect to Telecom Orders CRTC 2019-17, 2019-60 (consisting of an original and a supplementary costs application) and 2019-143.

84 All that said, in the applicants' experience the BPF-FPR's Board and Costs Officer have responded very quickly to enquiries, have held annual meetings with all stakeholders wishing to attend and have been responsive to stakeholders' comments and suggestions.

2 Challenges: financial uncertainty, lack of independence and inconsistent transparency

a. Financial uncertainty

85 The key challenge for the BPF-FPR and applicants has been financial uncertainty with respect to the quantum of tangible-benefits payments. Under the 1991 *Broadcasting Act* as then written, the CRTC's main leverage with respect to licensee non-compliance was that the *Act* made it an offence for broadcasters to breach conditions of their licence(s).¹⁰⁰ As Table 2 showed (above), however, none of the four decisions made regarding tangible-benefits payments to the BPF-FPR imposed these payments as conditions of licence. Therefore, when in 2020 one applicant remitted 25% less in payments to the BPF-FPR than expected, the CRTC had no legal mechanism to address the shortfall (that was in the end paid five months later, although it is unclear whether interest was remitted as well).

86 Moreover, none of the four tangible-benefits decisions set dates when payments were to be made. The result is that broadcasters have made payments anytime from March to December: Table 9. In one case, the payment made was \$30,000 (25%) lower than shown in the CRTC's decision.

Table 9 Timing of tangible-benefits payments made to the BPF-FPR, 2013-2025

Year	2011-163	2013-310	2018-91	2022-76	Annual total	Source
Total	\$3.000	\$2.000	\$1.597	\$0.725	\$7.322	
2013	\$3.000 (8 Mar/2013)				\$3.000	Ann Rep, p. 22
2014		1 st : \$0.286 (30 Apr/14)			\$0.286	Ann Rep, p. 9
2015		2 nd : 0.286 (29 Apr/15)			\$0.286	Ann Rep, p. 20
2016		3 rd : \$0.286 (6 Jun/16)			\$0.286	Ann Rep, p. 19
2017		4 th : \$0.286 (7 Jun/17)			\$0.286	Ann Rep, p. 21
2018		5 th : \$0.286 (14 May/18)	1 st : \$0.500 (24 May/18)		\$0.786	Ann Rep, p. 23
2019		5 th [sic]: \$0.286 (21 May/19)	2 nd : \$0.500 (21 May/19) 3 rd : \$0.119 (31 Dec/19)		\$0.905	Ann Rep, p. 22
2020		Final: \$0.286 (15 Jun/20)	4 th : \$0.089 (30 Dec/20)		\$0.375	Ann Rep, p. 26
2021			Payment of \$0.030 shortfall on 24 May 2021 5 th : Unknown (30 Dec/21)		Unknown	BPF-FPR letter to SiriusXM of 24 May 2021 Ann Rep, p. 27
2022						Ann Rep, p. 21
2023				1 st : \$0.242(Sep/23)		

¹⁰⁰ *Broadcasting Act*: "33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction."

2024			Final: \$0.119 (unknown)	2 nd : \$0.242 (2024)		
2025				Final: \$0.242 (2025)		
Pink Highlighting		Future period				

- 87 Uncertainty as to the amounts that are to be paid to the BPF-FPR and the timing of such payments has reduced the Applicants' confidence in the BPF-FPR's ability to meet its mandate. While the rationale underlying the CRTC's tangible-benefits policy was that such benefits were to yield clear and unequivocal benefits for the broadcasting system, the financial instability of the BPF-FPR has made it unclear at times where the Fund would survive. As it is, the value of the Fund and the tariffs it is required to apply have declined significantly in real terms – scarcely an unequivocal benefit.
- 88 A second challenge for the BPF-FPR is that the applications it receives ebb and flow in response to the CRTC's business. Apart from consultations the CRTC initiates itself – such as the four now included in the Winter 2023-24 portion of Phase 2 of its *Regulatory Plan to modernize Canada's broadcasting system* – parties may also initiate licensing, regulatory or policy proceedings by applying to the CRTC. In some years, moreover, just a few CRTC proceedings take place but due to their scope or the number of applicants involved may engage a number of public-interest participants with different interests, leading to requests for participation costs that are higher than average: the BPF-FPR's annual reports show that public-interest participation costs reimbursed for the CBC renewal proceeding came to \$465,580, or 98% of the annual average costs reimbursed from 2013 to 2022 (\$475,919). The complexity of the CRTC's broadcast calendar adds to the BPF-FPR's difficulties in budgeting its already unstable financial reserves. Together, the unpredictability of the CRTC's broadcasting business and the BPF's inadequate financial base have created uncertainty for public-interest participants in general and for the Applicants.
- 89 A third challenge is that the BPF-FPR and public-interest participants have been operating under terms of financial uncertainty for seven of the past ten years: Table 10. Uncertainty as to timing and amounts led the BPF-FPR to warn its stakeholders and the CRTC repeatedly from 2016 to 2022 that the BPF-FPR's funding might be insufficient for it to meet its mandate. In October 2021 the BPF-FPR began to withhold 25% of the amounts it granted to applicants, a practice that continued to the end of 2022¹⁰¹ and that resumed from January to September 2023. (While in late November 2022 the Board paid applicants the amounts it had withheld since October 2021,¹⁰² it is unclear whether these amounts included interest.)

Table 10 BPF-FPR warnings and withholdings, 2016-2023

BPF-FPR warnings and withholdings	Total costs reimbursed	Sources:
2013: "Net assets of the Fund at December 31, 2013 were \$4,457,158."	\$331,042	BPF-FPR, <i>Annual Report</i> , 2013, p. 6.

¹⁰¹ BPF-FPR, *Annual Report 2022*, at page 2.

¹⁰² *Ibid.*

BPF-FPR warnings and withholdings	Total costs reimbursed	Sources:
2014: “Net assets of the Fund at December 31, 2014 were \$3,903,743”	\$801,612	BPF-FPR, <i>Annual Report</i> , 2014, p. 4.
2015: “Net assets of the Fund at December 31, 2015 were \$2,573,261”	\$342,527	BPF-FPR, <i>Annual Report</i> , 2015, p. 5.
6 Sep/16: “BPF Board of Directors advised the CRTC and BPF Stakeholders that, based on current estimates, the BPF will run out of cash around December 31, 2017, subject to receiving three annual payments of \$285,714.29 commencing in the spring or summer of 2018.”	\$736,920	BPF-FPR, <i>Annual Report</i> , 2016, p. 19
30 Oct/17: Caution note – “significant risk exists that the Fund will not be in a financial position to award costs in early 2018”	\$910,681	BPF-FPR, <i>Annual Report</i> , 2017, p. 21
The most important risk point to be aware of this year is the likely probability of the Fund running out of money unless additional funding sources can be determined. Based on the dollar value of claims being received, it is possible that the Fund could be unable to support additional claims beyond 2022.	\$910,998	BPF-FPR, <i>Annual Report</i> 2020, at pp. 5, 7, 9
8 Jul/21 letter to stakeholders re BPF fin'l situation 12 Jul/21 Caution to Potential “Applicants for Cost Awards” BPF-FPR advises CRTC of plan to reduce payments on 7 Sep/21 BPF Board decides not to accept claims if cash levels insufficient Financial statements: “Emphasis of Matter Without modifying our opinion, we draw attention to note 1 to the financials statements which describes the finite nature of the funds of the Fund.”	\$576,262	BPF-FPR, <i>Annual Report</i> 2021, pp. 2, 21, 26, 27 <i>Fin'l Statements 2021</i> , at 2 of 11
Payments reduced 25%: 1 Oct/21 – 31 Dec/22 BPF Board focused “on the Fund’s Depletion Nov/22: Board discusses “potential hiatus of the BPF” The Fund has received finite funds as a result of CRTC Decisions that determined that an applicant, desiring to change the control, or effective control, of a broadcasting undertaking, should provide financial contributions to this Fund. The timing and amount of future funding is not determinable by the Fund. The existing funds are finite and, as a result, the Fund may lack sufficient funds to approve and pay costs awards in respect of costs awards applications received by the Fund.	\$141,405	BPF-FPR, <i>Annual Report</i> 2022, pp.3, 8, 22, 28
Payments reduced 25%: 1 Jan/23 – Oct/23 Based on the historical rate of claim disbursements from the Fund averaging \$463,000 per year plus administration costs, if no additional funding contributions are forthcoming, the Board currently projects that the Fund could be materially depleted in 2022, to the point that it is anticipated that the funding of cost awards from the Fund could cease in whole or in part prior, on or around such time, dependent upon the number and scope of Commission broadcast proceedings as well as the participation of groups seeking cost awards in those proceedings. ¹⁰³	\$117,845	<i>Financial Statement</i> 2023, Q2, p.1

90 The warnings of the BPF-FPR from 2016 to 2023 and its withholding of 25% of applicants’ approved cost-reimbursements from Fall 2021 to Fall 2023 created and continue to create uncertainty and financial instability for the Applicants and other public-interest participants. The CRTC’s statement in June 2022 that the BPF-FPR was at that time enabling public-interest participants “to continue to participate in Commission proceedings and in the broadcasting

¹⁰³ BPF-FPR, *Caution to Potential Applications [sic] for Cost Awards*, (Ottawa, 12 July 2021).

system in a meaningful and fulsome way” was therefore perplexing:¹⁰⁴ the BPF-FPR had written to the CRTC’s Chairperson on 8 September 2021 to advise him of its “plans to pay claimants \$0.75 on the dollar of each claim received”¹⁰⁵ and at the time of the CRTC’s June 2022 statement the 25% withholding had been in effect for the previous eight months.

- 91 *Ad hoc* reductions in public-interest participants’ approved reimbursements do more than reduce public-interest participants’ funding – they reduce the latter’s ability to commission and undertake research needed to provide evidence to the Commission in its broadcasting proceedings and to commission and retain expertise needed to participate in these proceedings.
- 92 The Applicants acknowledge that the BPF-FPR has had few options, however. As noted earlier, its by-laws do not empower the BPF-FPR to borrow money and even if they did, the uncertainty of payments’ timing, of amounts that will be paid and adherence to payment commitments makes it less rather than more likely that the BPF-FPR would be granted a loan. (Nor is it clear whether the tangible-benefits funding provided for the purposes of the BPF-FPR could or ought be used to pay interest for monies borrowed for operating purposes.)
- 93 Nor did repeated representations to and meetings with Heritage, ISED and others result in additional funding to stabilize the BPF-FPR’s financial position: Table 11

Table 11 Representations to and meetings with Heritage, ISED, Finance regarding BPF-FPR’s financial instability

2020	“Meetings were held with officials of CRTC and the Department of Canadian Heritage.” The BPF-FPR wrote to the Ministers of Canadian Heritage, the Minister of Innovation, Science and Economic Development and the Standing Committee on Canadian Heritage regarding the precarity of the BPF-FPR (<i>BPF-FPR Annual Report 2020</i> at 3 of 26)
January 8, 2021	Meeting with Canadian Heritage Officials (<i>BPF-FPR Annual Report 2021</i> at 26 of 27)
January 26, 2021	Letter sent to Minister of Canadian Heritage about the depletion of the BPF and request for interim financing (<i>BPF-FPR Annual Report 2021</i> at 26 of 27)
January 29, 2021	Letters to Chair, CRTC; Minister of Innovation, Science & Economic Development re imminent depletion of BPF and request for interim financing (<i>BPF-FPR Annual Report 2021</i> at 26 of 27)
February 15, 2021	Letter written to Minister of Finance re depletion of BPF and request for interim financing Letters written to Members of Standing Committee on Canadian Heritage re Bill C-10 and its impact on the BPF (<i>BPF-FPR Annual Report 2021</i> at 26 of 27)

¹⁰⁴ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022), para 68, underlining and italics added.

¹⁰⁵ BPF-FPR, *Annual Report 2021*, at 26 of 27.

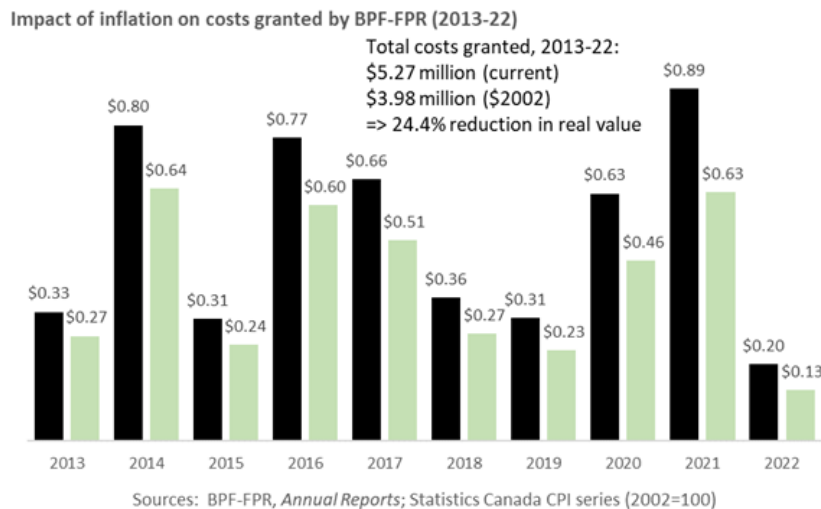
July 12, 2021	Letter to CRTC with update on BPF-FPR financial situation (BPF-FPR <i>Annual Report 2021</i> at 26 of 27)
August 5, 2021	Meeting with Deputy Director of Policy, Office of the Minister of Canadian Heritage (BPF-FPR <i>Annual Report 2021</i> at 26 of 27)
August 18, 2021	Meeting with Department of Canadian Heritage officials (BPF-FPR <i>Annual Report 2021</i> at 26 of 27)
August 2, 2022	BPF-FPR Board met with Canadian Heritage on funding and risk that Fund will “be exhausted during 2023” (BPF-FPR <i>Annual Report 2022</i> at 3, 7 and 28 of 28)

94 Continued financial uncertainty about the BPF-FPR has preoccupied its Board of Directors, stakeholders and public-interest participants, and has led some to withdraw from CRTC broadcasting proceedings due to the risk that their costs will not be reimbursed in full and that the BPF-FPR will suspend or end its operations.

b. Inflation ignored

95 A second major challenge faced by public-interest participants is that the rates at which they are paid have not changed since 2007. As the tariffs’ nominal values have not changed since 2007, the ‘real’ value of BPF-FPR costs granted from 2013 to 2022 (shown in green) was \$1.28 million lower than their nominal value (shown in black) – a decrease of 24.4%: Figure 3.

Figure 3 Impact of inflation on costs granted by BPF-FPR (2013-22)



96 Other provincial commissions and boards have updated their tariffs more recently: Table 12. Among five organizations that fund public-interest participants, each has reviewed tariffs for such participation in the last two years. This past April the Ontario Energy Board recognized

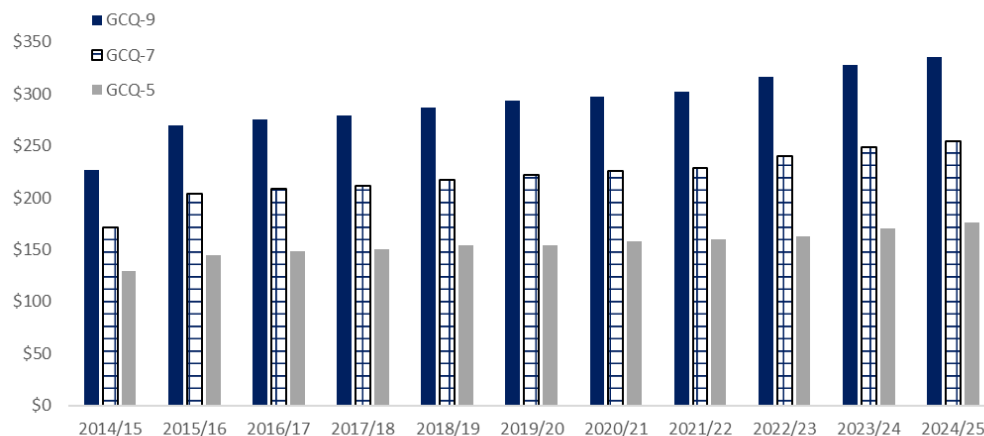
that it would be reasonable to review the fees in its tariff as these had not changed since 2007.¹⁰⁶

Table 12 Tariffs for professional services

NWT Public Utilities Board Scale of Costs Professional fees	16 March 2020
BC Utilities Commission Rate Schedule	30 June 2022
Alberta Utilities Commission Scale of costs	Began review process in 2022
Ontario Energy Board Practice Direction on Cost Awards	1 April 2023
Quebec Régie de l'Énergie Taux des honoraires	January 2020

97 At the federal level salary ranges for senior governor-in-council appointments such as those responsible for its boards and agencies are increased from 2015 to 2023, and also scheduled to increase from 2024 to 2025.¹⁰⁷

Compensation levels of GIC appointees: minimum-salary range, 2015-2025



¹⁰⁶ Ontario Energy Board [Practice Direction on Cost Awards \(April 1 2023 fees\)](#): “The OEB recognizes that the fee has not been reviewed since 2007, and it is appropriate to assess the reasonableness of the tariff.”

¹⁰⁷ From 2015 to 2023 the GCQ9, -7 and -5 minimum salary ranges increased by 39.7%, 39.9% and 25.3%, respectively; from 2024 to 2025 the GCQ9, -7 and -5 minimum salary ranges are set to increase by 2.9%, 2.9% and 4.2% respectively. Sources: [Salary ranges and maximum performance pay for Governor in Council appointees](#) and <https://federal-organizations.canada.ca/profil.php?OrgID=CRTC&t=1&lang=en>.

- 98 The BPF-FPR uses the tariffs adopted by the CRTC's Legal Directorate¹⁰⁸ in 2007 and which it continues to use for its telecommunications costs regime.¹⁰⁹
- 99 Granting costs based on rates unchanged in over a decade devalues the work of public-interest participants. It unintentionally suggests that public-interest participation is either unimportant, unworthy of consideration or irrelevant. Given the CRTC's strong support for public-interest participation in its 2019 submission to the Broadcasting and Legislative Review Panel, the Applicants consider that it would be just and reasonable for a revised broadcast participation process to bring the 2007 tariffs up to date in terms of inflation and, going forward, to change the rates to take inflation into account. This change implies in turn that the BPF-FPR must be provided with a financial base sufficient to take inflation into account.

c. May not fully independent

- 100 The CRTC's staff advised the Commission that the BPF-FPR is "an independent organization that can modify how it operates (*i.e.* how it processes cost applications)"¹¹⁰ As it happens, the BPF-FPR ensures that all of its "policies, procedures, forms, and processes are updated and remain aligned to the extent possible with the CRTC's telecommunications costs awards practices and procedures".¹¹¹ The BPF-FPR has met with the Commission or its officials since the Fund's establishment, and attended what the BPF-FPR described as an "Annual Review" in 2020: Table 13.

Table 13 BPF-FPR meetings with the CRTC

"Attended meetings with the CRTC as required" ¹¹² including 25 September 2013 meeting with CRTC
"BPF presentation to the CRTC and CLOSM (Community of Official Languages in a Minority Situation)" ¹¹³ on 17 November 2014

¹⁰⁸ BROADCASTING PARTICIPATION FUND (BPF), INC. / LE FONDS DE PARTICIPATION À LA RADIODIFFUSION (FPR), INC., By-Law No. 1, section 48(b):

The Board intends that Disbursements From the Fund and the Fund costs processes, criteria, rates, policies, and forms should be as consistent as possible, with those utilized in relation to telecommunications costs under the Telecommunications Act as they may be amended from time to time, including but not limited to Section 56 thereof, Rules 60 to 70 of the CRTC Rules of Practice and Procedure, Telecom Regulatory Policy 2010-963, Revision of the CRTC Costs award practices and procedures and The Guidelines for the Assessment of Costs, dated 23 December 2010...

¹⁰⁹ Guidelines for the Taxation of Costs, CRTC (Revised as of 24 April 2007), para. 1:

These *Guidelines*, which have been adopted by the Commission's Legal Directorate, are to be employed by taxation officers appointed by the Commission to tax costs awarded to persons pursuant to sections 56 of the *Telecommunications Act* and 44 of the *CRTC Telecommunications Rules of Procedure* (the Rules). The *Guidelines* do not detract from or limit the taxation officers' general discretion. They shall apply to taxation of costs made in respect of costs awarded by the Commission on or after 15 May 1998. [Mod. May 1998]

¹¹⁰ CRTC staff e-mail to CRTC Commissioners (5 July 2021 4:07 PM), 2022 07 26 response by CRTC to Access to information request A-2021-00031, "Release Package", at 46 of 48 released pages.

¹¹¹ BPF-FPR, *Annual Report 2021* at 7 of 27.

¹¹² BPF-FPR, *Annual Report 2013*, at page 4 of 23 (section 3.6).

¹¹³ BPF-FPR, *Annual Report 2014*, at 9 of 9.

“Attended meetings with the CRTC as required”¹¹⁴ in 2015, including
 “Meeting with CRTC officials to update the Commission on the BPF progress”¹¹⁵ on 24 November 2015
 BPF-FPR, *Annual Report 2016* at page 2:
 “Attended meetings with the CRTC as required”¹¹⁶
 “Annual Review with CRTC (Nanao Kachi and team)”¹¹⁷ on 26 May 2020; “Attended meetings with the CRTC and
 Heritage Canada as required”¹¹⁸
 In 2021 “Meetings held with the CRTC and Heritage Canada to keep them” apprised of BPF-FPR’s situation¹¹⁹

101 No minutes are available on the BPF-FPR’s website summarizing the substance of the BPF-FPR’s discussions with the CRTC, leaving uncertainty as to the nature of the relationship between the Commission and the BPF-FPR in terms of the latter’s independence.

d. Greater transparency and consistency in presentation

102 Empirical information about the applications the BPF-FPR has received and considered is not available in a single, public database from the BPF-FPR website. Comparative analysis requires that information be exported from its PDF reports and imported into datasets with comparable variables (to the extent the variables appear comparable).

103 As for its decisions, in 2021 the BPF-FPR said that it “debriefs applicants on the results of their claims”.¹²⁰ This process is not fully explained in the BPF-FPR’s annual reports that are set out on its website from 2012 to 2022. The BPF-FPR website lists separate financial-statements documents for seven of the BPF-FPR’s 12 documented years.

Table 14 BPF-FPR Annual Reports and Financial Statements, 2012-2023

January to December	Annual Report	Separate financial statements	
		Annual	More frequently
2012	Yes	Yes	Unavailable online
2013		Yes	
2014	Yes	Yes	
2015	Yes	Unavailable online	
2016	Yes		
2017	Yes		
2018	Yes	Yes	
2019	Yes	Yes	

¹¹⁴ BPF-FPR, *Annual Report 2015* at page 2, section 3.0.

¹¹⁵ *Ibid.*, at 20 of 20.

¹¹⁶ BPF-FPR, *Annual Report 2016*, at page 2.

¹¹⁷ BPF-FPR, *Annual Report 2020*, at 26 of 26.

¹¹⁸ *Ibid.*, at 5 of 26.

¹¹⁹ BPF-FPR, *Annual Report 2021*, at 7 of 27.

¹²⁰ *Ibid.*, at section 5.3.

January to December	Annual Report	Separate financial statements	
		Annual	More frequently
2020	Yes	Yes	
2021	Yes	Yes	
2022	Yes	Yes	
2023	Not yet	Not yet	Q2
Total	10	7	1

- 104 The BPF-FPR's annual reports do not generally provide comprehensive historical financial information about its finances. While its financial statements offer extensive detail it is unclear whether all users including the BPF-FPR's stakeholders have the technical expertise to understand terms of art and their implications. For example, the BPF-FPR's 2022 *Financial Statements* said at Note 2 that

Contributions to the Fund are legislated from time to time by CRTC Decisions. Unrestricted contributions are recognized as revenue as of the date of the relevant CRTC Decision. Restricted contributions are recognized as revenue in the year in which the related expenses are incurred. Some contributions may be payable by the contributor in multiple instalments spanning several reporting periods. Contributions that are unpaid as of the date of the financial statements are recognized as contributions receivable in the Statement of Financial Position.

- 105 While this explanation sets out necessary information, it is unclear whether all stakeholders have the necessary technical expertise to understand what this means.
- 106 Reports showing changes from 2012 (or 2013) to the present could facilitate comprehension of changes in the BPF-FPR's financial position over time. While the BPF-FPR said in 2021 that its "... website ... gives quarterly updates as to the financial status of the Fund",¹²¹ the quarterly updates are difficult to locate for each year. Changes in presentation in the absence of complete historical data make it difficult to know whether expressions and terms that are different have the same meaning – which might be assumed given some of the figures are the same for the same year: Table 15 (see bolded figures).

Table 15 BPF-FPR changes in presentation regarding cost awards, 2013-2022

BPF-FPR financial year (calendar year)	"Total Costs Awards expense for the year"	"Amounts expensed"	"Total amounts approved"	Average of "Total Costs Awards expense for the year", "Amounts expensed" and "Total amounts approved"
2013			\$330,773.00	\$330,773.00
2014			\$801,612.00	\$801,612.00
2015			\$342,527.00	\$342,527.00

¹²¹ *Ibid.*, s. 5.3.

2016		\$736,920.00	\$769,368.00	\$753,144.00
2017		\$674,821.00	\$674,821.00	\$674,821.00
2018		\$316,799.00		\$316,799.00
2019		\$227,410.00		\$227,410.00
2020		\$610,981.00		\$610,981.00
2021	\$576,262.00	\$576,262.00		\$576,262.00
2022	\$141,405.00			\$141,405.00
10 year average:				\$477,573.40

107 Outcomes – whether applications have been granted or denied – are set out in the BPF-FPR’s annual reports and on its website and brief explanations of differences between amounts sought and granted are usually provided. Individual written decisions about each application do not appear on the BPF-FPR’s website. Information such as the dates when applications are received and are decided is not consistently available.

108 The presentation of statistics and financial information about the BPF-FPR also sometimes changes without clear explanation, such as with information about the dates that tangible-benefits are received. In December 2021 the BPF-FPR reported that it had received a payment from SiriusXM, but did not identify the amount in its *Annual Report* for that year; the discussion in its *Financial Statements 2022* does not clarify this matter.¹²²

109 That said, in the Applicants’ experience the BPF-FPR’s Board and Costs Officer have responded very quickly to enquiries, have held a number of meetings with all stakeholders wishing to attend and have been responsive to stakeholders’ comments and suggestions.

IV. Re-establish BPF-FPR based on 21st century principles of certainty, openness and accountability

110 Parliament’s decision to empower the CRTC to make regulations or issue orders to support public-interest participation in its broadcasting proceedings is timely. First, taking this step will provide the BPF-FPR, its stakeholders and prospective public-interest participants with much-needed certainty. The CRTC’s new powers are also timely because they enable it to address the concern expressed by the Ministers of Canadian Heritage and of Innovation, Science and

¹²² BPF-FPR, *Financial Statements 2022*, Note 5:

CRTC’s Broadcasting Decision CRTC 2018-91 required Sirius XM Canada Inc. to contribute a total of \$1,596,667 to the Fund. The contribution was to be received in seven annual instalments from 2018 to 2024. As at December 31, 2022, all but one of these payments have been received. This payment is to be received no later than: May 24, 2024 \$ 119,332.

Economic Development that “public confidence and trust in the CRTC has waned in recent years.”¹²³

111 Support for public-interest participation in public proceedings is related to public confidence and trust in those holding the proceedings, as shown by research undertaken in 2021 by the Manitoba Branch of the Consumers’ Association of Canada. It found that “... a well-designed and implemented public involvement plan can ... impact public perception of the process, by strengthening trust and confidence” that may in turn lead to:

- increased transparency surrounding the process and outcomes, including the costs, benefits and risks of different options (Winfield, 2016)
- increased legitimacy of process and outcomes (Davies, Blackstock, & Rauschmayer, 2005; Diduck, Reed, & George, 2015; Fung, 2006; Winfield, 2016);
- Foster more rich deliberation of issues by improved representativeness (Davies et al., 2005; Diduck et al., 2015; Fung, 2006), particularly when designed to ensure the interests of minorities are reflected in actions (Pateman, 1970); and
- Enhance learning & innovation by all involved (Diduck et al., 2015), In doing so, it is possible for policy makers to make better decisions and have greater success at implementing those (Davies et al., 2005; Diduck et al., 2015; Fung, 2006).¹²⁴

....

... policy makers to make better decisions and have greater success at implementing those (Davies et al., 2005; Diduck et al., 2015; Fung, 2006).¹²⁵

112 As the Applicants support the continued existence of the BPF-FPR, we believe it would be worthwhile to ensure that its operations and outcomes meet 21st century standards for certainty, openness and transparency.

A. Certainty

1 Maintain governance structure

113 The BPF-FPR’s Board has performed efficiently since its establishment, and the Applicants consider that its current structure serves the interests for which it was established: to promote public-interest participation in CRTC broadcasting proceedings.

¹²³ Canadian Heritage, *New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System*, [News Release](#) (Gatineau, 6 February 2023).

¹²⁴ Consumers’ Association of Canada (Manitoba) Inc., *Your Voice Matters. Really?!*: *Consumer and Public Participation in Regulatory Proceedings*, (June 2021), at page 14.

¹²⁵ *Ibid.*, para. 116.

- 114 That said, the Applicants have two recommendations. The first relates to Directors' fees. In 2021 the BPF-FPR's Directors' fees were \$16,082. In 2022, these increased by \$4 to \$16,086. We propose that Board members' remuneration increase in line with annual inflation rates.
- 115 Second, we recommend clarification regarding the Board's independence. In 2016 the CRTC determined that the Board of Directors of such funds "shall have sole and exclusive responsibility for its funding decisions".¹²⁶
- 116 In reality, the Board is currently required to use the CRTC's telecommunications-costs practices, including its forms and tariffs. The BPF-FPR therefore lacks independence in making decisions about the reimbursement of applications it receives.
- 117 Tying the BPF-FPR to the CRTC's telecom-costs regime was appropriate in 2011 as no organization had experience with awarding costs applications in broadcasting proceedings. That said, the CRTC's telecom regime was based on the approach to costs set under the *National Transportation Act*, in turn based on court practices in awarding costs in proceedings in which parties are (often) in direct conflict (*ad lis*). CRTC broadcasting proceedings from time to time involve complaints about broadcasters but for much of the past thirty years have dealt primarily with licensing, regulatory and policy matters raising matters relevant to the public interest.
- 118 With 12 years of experience in CRTC broadcasting matters the BPF-FPR in the Applicants' view is very well able to ensure that its practices reflect the proceedings for which participants seek reimbursement of their costs. In 2015, for example, the CRTC considered that funding for Canadian programming could be "improved ... to foster a robust Canadian production sector":¹²⁷ similarly, the BPF-FPR should be able to foster robust public-interest participation in broadcasting.
- 119 The Applicants also consider that the current stakeholder levels with respect to broadcasters remain sufficient and do not consider that increases in these numbers will enable the BPF-FPR to achieve its mandate more efficiently or effectively.

2 Stable, long-term funding: three options

- 120 The BPF-FPR's funding has been unstable since 2016 – for eight (including 2023) of its 11 years of operation.

¹²⁶ Policy framework for Certified Independent Production Funds, [Broadcasting Regulatory Policy CRTC 2016-343](#) (Ottawa, 25 August 2016), at para. 148.

¹²⁷ The way forward - Creating compelling and diverse Canadian programming, [Broadcasting Regulatory Policy CRTC 2015-86](#) (Ottawa, 12 March 2015) at para. 134.

- 121 Many attempts were made since 2016 by the BPF-FPR and others to stabilize the BPF-FPR's funding:
- The BPF-FPR held meetings in 2021 with officials at the Commission and the Department of Canadian Heritage.
 - The BPF-FPR wrote the Minister of Finance, the Minister of Canadian Heritage, the Minister of Innovation, Science and Economic Development, all members of the Standing Committee on Canadian Heritage and also CRTC Chairperson Scott to say that by the end of 2022, the BPF would be unable to fulfill its mandate which would likely result in its probable termination. Given Bill C-10, the BPF-FPR "requested that bridge financing be provided to sustain the operations of the BPF until the new public consultation procedures proposed in the bill are put in place."
 - On April 21st, 2021, the Public Interest Advocacy Centre ("PIAC") and the Forum for Research and Policy Communications ("FRPC") submitted a Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Funding; on [6 August 2021](#) the CRTC declined to grant process to the application because the Commission had asked the CRTC's staff to hold meetings with interested and prospective public-interest participants to determine the burdens they face in participating in CRTC proceedings; during online meetings held in early 2022 the Commission staff said it would publish a "what we learned" report by September 2022 and send public-interest participants in the meetings a link to the report; this link has not yet been received and no copy of the report has appeared on the CRTC's website.
- 122 These attempts did not result in any commitments to alleviate the BPF-FPR's financial instability. The tangible-benefits payment approved for the BPF-FPR in Broadcasting Decision CRTC 2022-76, while welcome to the extent that they provide support for the BPF-FPR, continue to create uncertainty due to the CRTC requirement of payment over three years (with amounts equivalent to half the annual costs reimbursed by the BPF-FPR in an average year).
- 123 New section 11.1(1)(c) empowers the CRTC to correct the BPF-FPR's long-standing financial instability. If the CRTC wishes to implement Parliament's intention that public-interest participants be provided with support, the Commission has at least three options:
- i. Continue with the tangible-benefits approach
 - ii. Enact regulations requiring a class of broadcaster – in this case, a small number of broadcasters with Canadian broadcasting licences whose annual broadcast revenues from broadcasting exceed \$1 billion/year – to make annual payments to the BPF-FPR and to make an initial, one-time payment to establish a fund that will pay the BPF-FPR's administrative costs

- iii. Make orders requiring annual payments to the BPF-FPR by an individual or certain broadcasters, or

a. Continue with the current approach

- 124 The CRTC could decide to take no action regarding the BPF-FPR's financing and to continue with its current tangible-benefits approach to funding.
- 125 Parliament's decision to empower the Commission to enact regulations or make orders to support public-interest participation indicates the legislature's desire that the Commission end its use of tangible-benefits to support the BPF-FPR.
- 126 Moreover, in the summer of 2021 the CRTC acknowledged that tangible-benefits funding has resulted in unstable funding for the BPF-FPR. The Commission wrote "that the nature of funding through tangible benefits already results in unstable and unpredictable ongoing support for the BPF and that when licensees do not make their scheduled tangible benefits payments that exacerbates the instability and unpredictability."¹²⁸ The CRTC therefore asked its staff to meet with public-interest participants to better understand their challenges in participation in CRTC proceedings. The Commission said it had
- ...directed staff to organize a virtual meeting in the coming months in order to engage with Canadian public interest and consumer organizations.
- This meeting will serve to enhance understanding of the challenges and barriers facing these organizations when they intervene in Commission proceedings and begin the process of identifying the most appropriate and effective model(s) of funding to provide support for such organizations in the future.
- 127 The CRTC's staff held online meetings with a number of public-interest participants in early 2022. Participants were told that the staff then intended to publish a "What We Learned Report" on the CRTC's website and to e-mail a link to the report to all participants in the meetings. In June 2022 the CRTC's staff confirmed that there was as yet no publication date for this report. To the best of the Applicants' knowledge, this report has not yet been published on the CRTC's website.
- 128 The Applicants make no claim to detailed knowledge of the BPF-FPR's current position. That said, based on the information it has published in the past, the fact that one consultation in the CRTC's *Regulatory Plan* has not yet concluded this year while at least five others have not yet launched, the BPF-FPR may find itself again with insufficient funds by the December 2024 – even with funding from Rogers and SiriusXM: Table 16.

¹²⁸ CRTC, *Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Fund*, [Letter to PIAC and FRPC](#) (Ottawa, 6 August 2021).

Table 16 Estimated financial position of the BPF-FPR in 2024 and 2025

	Jan-23	2023	2024	2025
Cash balance at beginning of period (Note)		\$218,798.00	\$53,979.00	-\$261,217.62
Internally restricted contingency reserve (Note 3)		-\$60,000.00	-\$60,000.00	-\$60,000.00
Net cash available as at June 30, 2023		\$142,387.00		
Available cash (with internal restriction)			-\$10,830.22	-\$321,217.62
Sept 2023 Rogers/Shaw (Note 1)		\$241,813.00		
31-Aug-24 Rogers/Shaw (Note 1)			\$241,813.00	\$241,813.00
24 May 2024 SiriusXM			\$119,333.00	
Interest earned from January 1, 2023 to June 30, 2023		\$2,792.00		
Interest earned			Unknown	Unknown
Total cash available		\$386,992.00	\$350,315.78	-\$79,404.62
Expenses				
Cost claims paid and accrued (Applicants' note A)		\$117,845.00	Unknown	Unknown
Remainder of 2023: 1/3 of ten-year average costs granted		\$152,790		
10-year average of BPF-FPR cost-claims disbursements ¹²⁹			\$ 463,000.00	\$ 463,000.00
General and administrative (average of 2021 and 2022)		\$133,960.00	\$133,960.00	\$133,960.00
Less reversal of accrued costs at December 31, 2022		-\$87,993.00	Unknown	Unknown
Subtotal, expenditures		\$321,411.22	\$ 611,533.40	\$ 611,533.40
Contingent reimbursement of 25% pending receipt of new funds (Note 2)		-\$16,411.00	Unknown	Unknown
Total, expenditures		\$333,013.00	\$ 596,960.00	\$ 596,960.00
Cash available less expenses		\$53,979.00	-\$241,835.00	-\$656,982.00

Note: from BPF-FPR Financial Update to June 30, 2023; 2023 cash balance is for 30 June 2023.

Note 1: "Under CRTC Broadcasting Decision 2022-76 (March 24, 2022), upon the closure of the transaction between Rogers Communications Inc. (Rogers) and Shaw Communications Inc. (Shaw), \$725,439 in tangible benefits were to be awarded to the BPF over 3 consecutive broadcast years. In early April 2023, with the completion of this merger, the BPF has recognized this revenue. Rogers has confirmed their intent to make payments to the BPF by August 31 of each of the next 3 consecutive years and as such, these amounts are included as deferred contributions at the date of this report."

Note 2: "Effective for claims for periods on or after October 1, 2021, and in order to preserve/extend the Fund, until sufficient funding is received, the Broadcasting Participation Fund provided reimbursement at \$0.75 on each dollar claimed. The Board subsequently repaid to 100% reimbursement, on a retroactive basis for all claims received up to December 31, 2022. Since January 1, 2023, claim reimbursement has been maintained at 75% pending confirmation of new funding being received. An amount of \$16,411 has been contingently set aside for the purpose of tracking the 25% balance owing to claimants since that date."

Note 3: "On July 22, 2021, the Board of Directors for the Broadcasting Participation Fund approved the internal restriction of \$115,000. These restricted funds were set aside to cover expenses related to the ongoing costs of running the fund should the fund go into an extended hiatus and will ensure that sufficient funds remain available to cover final expenses in the event that the fund is ultimately unable to secure

sufficient ongoing funding and is required to be wound down."

Applicants' note A: It is unclear which claims have been filed in connection with CRTC proceedings ending from July 2023 to December 2023; 'Cost claims paid' consists of 10-year average of costs granted by BPF-FPR (as BPF-FPR estimated its Legal expenditures in its *Annual Report 2022* at 26 of 28) -- \$475,919

Source: "Broadcasting Participation Fund, Financial Update to June 30, 2023"

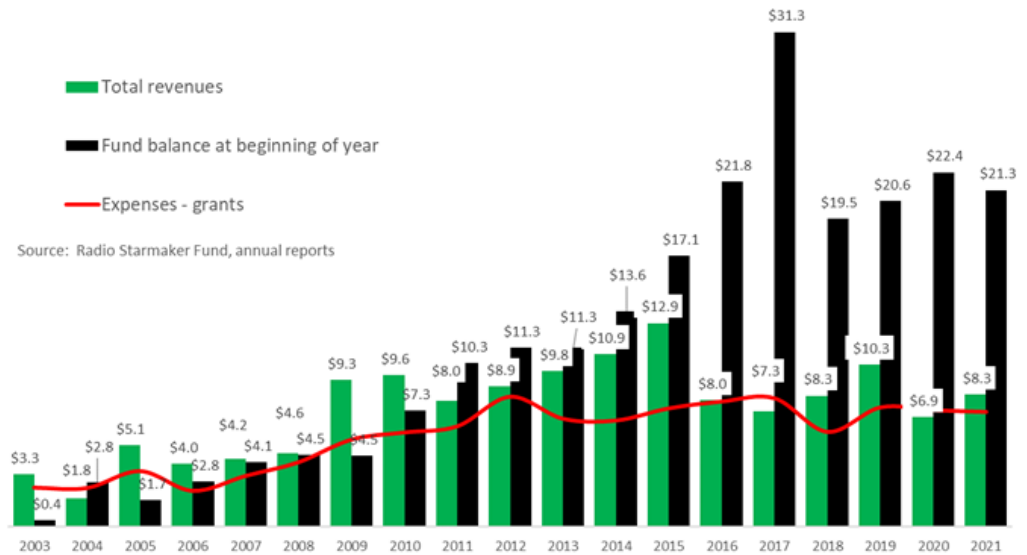
¹²⁹ BPF-FPR, [CAUTION TO POTENTIAL APPLICATIONS FOR COST AWARDS](#) (Ottawa, 12 July 2021), at 1 of 3: "the historical rate of claim disbursements from the Fund [averages] \$463,000 per year"

129 While calculations such as these are only estimates, they demonstrate that the BPF-FPR has no room to manoeuvre with the financing it is supposed to receive from Rogers and Sirius.

130 Other funds have had such problems. Radio Starmaker Fund, for example, saw the balance of its Fund decrease from 2017 to 2018:

Radio Starmaker Fund, 2003-2021:

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

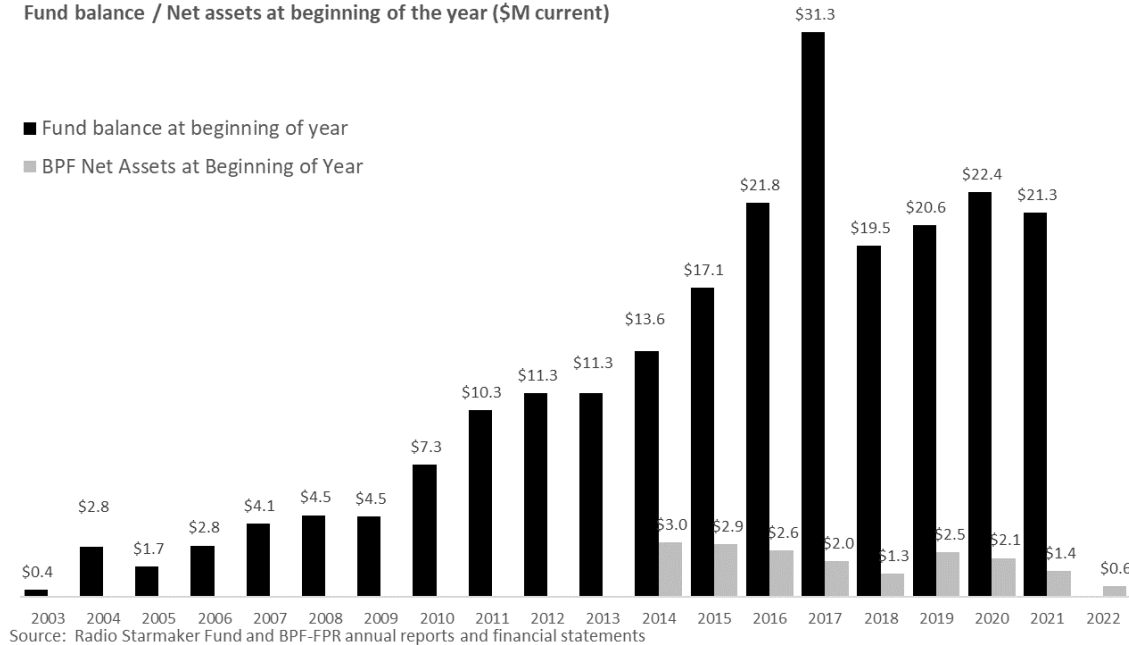


131 Yet where the Radio Starmaker Fund's fund balance never decreased below \$19 million and the Fund began to regroup after 2017, the BPF-FPR has been decreasing steadily since 2019: Figure 4.

Figure 4 Radio Starmaker Fund vs BPF-FPR

Radio Starmaker Fund vs BPF-FPR, 2003-2021:
Fund balance / Net assets at beginning of the year (\$M current)

■ Fund balance at beginning of year
■ BPF Net Assets at Beginning of Year



132 Rather than continuing as is – thereby guaranteeing the BPF-FPR’s continuing financial instability – the CRTC should use the tools with which Parliament has empowered it to regulate stable funding for the BPF-FPR.

b. Enact regulations to establish stable, long-term financial support

133 A second option is for the CRTC to enact regulations under subsection 11.1(1)(c) of the current *Broadcasting Act*:

11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of

...

(c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act; or

134 The CRTC could apply such regulations to all broadcasters or to a class of broadcasters that it identifies:

11.1(4) A regulation made under this section may be made applicable to all persons carrying on broadcasting undertakings or to all persons carrying on broadcasting undertakings of any class established by the Commission in the regulation.

135 It may direct that the expenditures be paid into any fund other than one that the CRTC administers:

11.1(5) Regulations and orders made under this section may provide that an expenditure is to be paid to any person or organization, other than the Commission, or into any fund, other than a fund administered by the Commission.

136 The CRTC may provide for expenditures to be calculated using any criteria it considers appropriate, including broadcasters' revenues:

11.1(6) (a) Regulations and orders made under this section may provide for expenditures to be calculated by reference to any criteria that the Commission considers appropriate, including by reference to ... the revenues of the persons carrying on broadcasting undertakings;

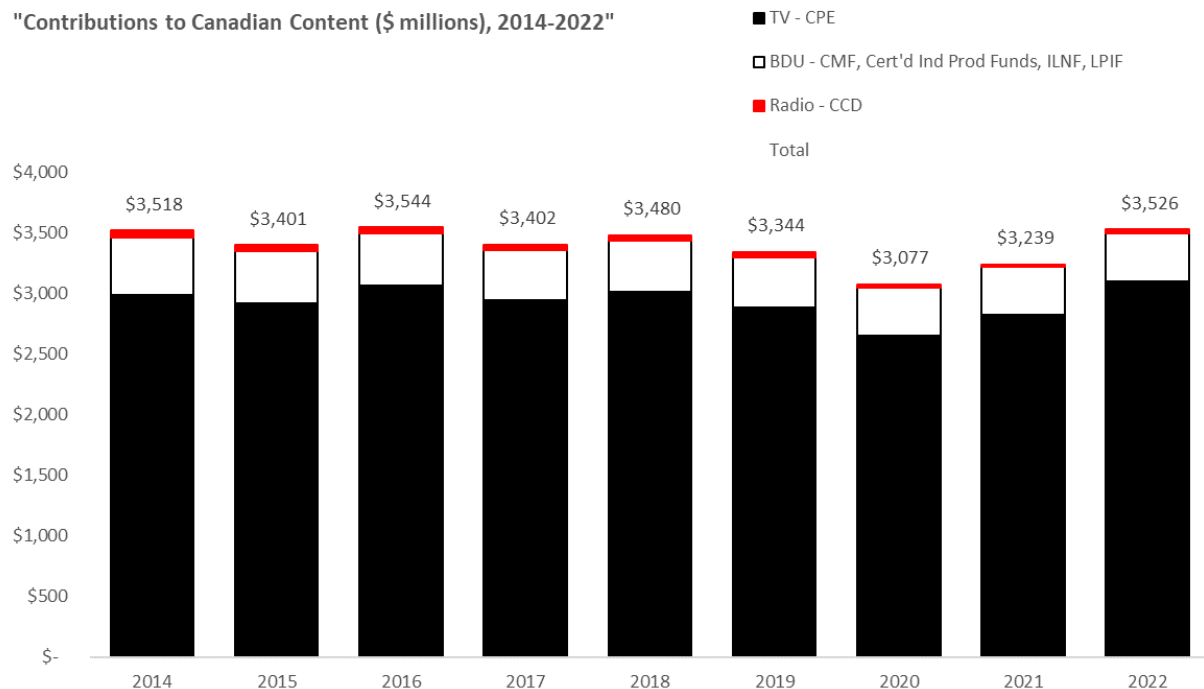
137 The CRTC currently sets financial-support requirements for Canadian programming or talent development in its radio and BDU regulations, using different thresholds and amounts for such payments. Radio must allocate a flat amount (\$1,000) and 0.5 % of their total revenues over a \$1.25 million while all BDUs must (if required) allocate 5.0 % of their gross revenues.

<i>Radio Regulations, 1986</i>	<i>Broadcasting Distribution Regulations</i>
Flat amount + 0.5% of total revenues over specified amount – of which 45% must be directed to FACTOR or MusicAction and 15% to the Community Radio Fund of Canada (sections 15(2))	4.7% of gross revenues of which 80% must be directed to the Canadian production fund (section 34(1 and 2))
15(2) (2) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or ethnic station shall, if the licensee's total revenues are more than \$1,250,000, contribute annually to eligible initiatives \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.	34 (1) If a licensee is required under this section to make a contribution to Canadian programming, it shall contribute (a) to the Canadian production fund at least 80% of its total required contribution; and (b) to one or more independent production funds, the remainder of its total required contribution. (2) Except as otherwise provided under a condition of its licence or subsection (3), a licensee shall, for each broadcast year, contribute to Canadian programming an amount equal to 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year less any allowable contribution to local expression made by the licensee in the current broadcast year to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year.
15(5) Except as otherwise provided under a condition of its license, a licensee whose total revenues are more than \$1,250,000 shall make	35 Except as otherwise provided under a condition of its licence, a licensee shall, for each broadcast year, contribute an amount equal to 0.3% of its gross revenues derived from

<i>Radio Regulations, 1986</i>	<i>Broadcasting Distribution Regulations</i>
<p>(a) at least 15% of the contribution referred to in subsection (2) to the Community Radio Fund of Canada; and</p> <p>(b) at least 45% of the contribution referred to in subsection (2) to FACTOR or MUSICACTION, however, if the licensee is licensed to operate an ethnic station or spoken word station, the licensee may instead make that percentage of the contribution to any eligible initiative that supports the creation of ethnic programs or programming from content category 1, as the case may be.</p>	<p>broadcasting activities in the previous broadcast year to the Independent Local News Fund.</p> <p>36 (1) Each contribution that is required under section 34 or 35 shall be made separately by the licensee in 12 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.</p> <p>(2) The licensee may estimate the required monthly contribution for September, October and November.</p>

- 138 The CRTC's approach to radio licensees ensures that their business supports the development of the Canadian radio sector. Similarly, its requirements for BDUs support the programming that BDUs distribute to their subscribers.
- 139 Overall, in fact, financial support for Canadian programming remains strong despite a decrease from 2018 to 2020: Figure 5.

Figure 5 Contributions to Canadian content by broadcast licensees, 2014-2022 (\$ millions)



Source: Open Data, CRTC, "data-broadcasting-overview.xlsx", Tab BT3

- 140 The BPF-FPR does not require funding equivalent to that granted for Canadian program production.
- 141 Nor should each licensee be required to calculate and remit payment to the BPF-FPR, as it will be administratively costly for the BPF-FPR to identify each licensee to ensure it has made the requisite payment(s). Requiring registrants as well as licensees to make such payments merely enlarges the problem as many individual and inexperienced registrations may need to be contacted by the BPF-FPR regarding payments that, for individuals, are likely to be very small.
- 142 The Applicants also do not believe it is either appropriate or necessary at this time to require non-Canadian registrants to make expenditures on the BPF-FPR.
- 143 Moreover, the Applicants are proposing that regulatory requirements to finance the BPF-FPR be separate from existing or new regulatory requirements to support Canadian programming: combining the two types of support risks an outcome in which or the perception that support for Canadian programming is being reduced to provide support for public-interest participation. Had Parliament intended that Canadian programming contributions also support public-interest participation, it could have incorporated support for public-interest participation in subsection 11.1(1)(a) – the subsection empowering the Commission to make regulations to support Canadian programming: it rather established a separate authority to enact regulations for expenditures to support public-interest participation in subsection 11.1(1)(c).
- 144 Regulations would also ensure that the BPF-FPR receives stable funding over time. The Applicants are proposing a one-time payment to support the BPF-FPR's administrative expenses, and annual payments for broadcast-costs reimbursement purposes.
- 145 Insofar as the BPF-FPR's administrative costs are concerned, the Applicants are proposing a one-time payment that may be invested by the BPF-FPR. The [Bank of Canada's Investment Calculator](#) estimates that an investment of \$6 million would generate roughly \$120,000 in interest:

Value of initial investment	\$6,000,000
Start year	2024
End year	2025
Annual interest rate	2.0%
Total interest earned	4.0%
Interested earned, after inflation effects	\$115,384.62

- 146 The Applicants then propose that, as with Canadian program production funding, the BPF-FPR receive stable funding adjusted for inflation over time.

- 147 Applicants propose that a separate set of regulations be enacted regarding a one-time base amount and ongoing annual funding for the BPF-FPR. For administrative efficiency the regulations would require a small class consisting of the largest broadcast groups with annual Canadian broadcasting revenues of \$ 1 billion or more to provide the BPF-FPR with
- Annual funding beginning 30 December 2024 equivalent to just over two times the average of the BPF-FPR's 2013-2022 awards (approximately \$1 million) adjusted for inflation measured using the Consumer Price Index and
 - One-time funding totalling \$6,000,000 on 30 December 2024 to generate annual income to pay for the BPF-FPR's administrative expenses.
- 148 Insofar as the one-time base payment is concerned, additional information would be required from the BPF-FPR to ensure that the interest revenue generated by the amount suffices to meet its administrative expenses.
- 149 As for the annual payments, the Applicants have suggested an amount equivalent to \$1 million per year. The final amount set must bring and keep the BPF-FPR's tariffs up to date in terms of inflation, eliminate any requirement going forward for public-interest participants to advance funding to the BPF-FPR and to ensure that more – not fewer – qualified public-interest participants engage in the CRTC's broadcast proceedings so as to increase the quality and evidence the number of perspectives made available to the Commission in these proceedings.
- 150 The Applicants assume that very few broadcasters will be subject to the proposed regulations' requirements. In 2022 the CRTC reported that four broadcast groups holding licences had Canadian offline broadcast revenues above \$1 billion in 2022. It is unclear whether there are now more or fewer than such groups. If there are four groups, the base and annual amounts required in the proposed regulations would be divided by four. In the case of the four groups in 2022, the amounts set out for the BPF-FPR in the proposed regulations would have amounted to less than a quarter of a percent (from 0.03 to 0.12%) of each group's total broadcasting revenues: Table 17. The regulations' impact on these four groups would be extremely small or *de minimus*.

Table 17 Impact of proposed BPF-FPR financial-support regulations

Group	Total broadcasting revenues (\$ millions)	Base amount: \$6 million divided by 4 (\$1,500,000) as % of total revenues	Annual amount: \$1 million divided by 4 (\$250,000 as % of total revenues
BCE	\$4,538.0	0.03%	0.006%
Corus/Shaw (pre 2022-76)	\$2,646.9	0.06%	0.009%
Rogers (pre-2022-76)	\$2,396.9	0.06%	0.010%
Québecor	\$1,261.1	0.12%	0.020%

- 151 The CRTC could revise the base and annual amounts downwards if there are now more than four large licenced broadcast ownership groups, provided the revised amounts continue to yield the required base and the required annual amounts.
- 152 A two-step process involving a one-time base amount and annual amounts provides the BPF-FPR with stable funding sufficient to generate interest income to support its administrative costs and to reimburse public-interest participation costs from CRTC broadcasting proceedings. Enacting regulations enables the CRTC to enforce compliance, if necessary using its powers to levy administrative monetary penalties. Setting a date by which the base and annual payments must be remitted provides certainty to the BPF-FPR, public-interest participants and the broadcasters subject to the regulations. Establishing a single base amount removes the risk that administrative costs consume resources required to reimburse CRTC public-interest participation costs.
- 153 Insofar as the class of broadcasters to which the regulations would apply is concerned, the Applicants are proposing that the Commission require only the largest Canadian broadcasters to support the BPF-FPR financially, for two reasons. First, limiting the application of the proposed regulations to Canadian broadcasters reflects the fact that notwithstanding the CRTC's current agenda of consultations, the majority of public-interest participation in CRTC proceedings over the past decade has involved licensing matters of Canadian broadcasters; if this pattern changes, the CRTC could consider expanding the class of broadcaster subject to the proposed regulations. Second, limiting the class of broadcaster subject to the regulations ensures that the regulations operate efficiently, have minimal impact on the financial position of the broadcasters subject to the regulations, and have no impact on medium- to smaller-sized broadcasters. They relieve smaller broadcasters of the administrative expense of compliance for relatively small amounts.
- 154 Draft text requiring large Canadian broadcasters to remit base funding to the BPF-FPR in December 2024 and December 2025 and to make ongoing annual payments roughly equivalent to roughly two times the BPF-FPR's average cost awards from 2013 to 2022 is set out below: Figure 6.

Figure 6 Proposed Broadcast Participation Fund Financial Support Regulations, 2024

Broadcast Participation Fund Financial Support Regulations, 2024

(1) The following definitions apply in these regulations.

annual Canadian gross revenues means total revenues attributable to the person or that person's subsidiaries and/or associates, if any, derived from Canadian broadcasting activities 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 within which the revenue calculation is being made), whether the services consist of services offered by licensed broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that receive revenue

from other online undertakings by offering bundled services on a subscription basis. The Commission may accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

annual payment means \$1,000,000 in 2024 and the same amount each calendar year going forward adjusted on a compound basis in accordance with the percentage increase or decrease to the Consumer Price Index (CPI) for the previous calendar year and divided by the number of licensed broadcast ownership groups with annual Canadian gross revenues which exceed \$1,000,000,000 in the previous broadcast year

base amount means \$6,000,000 divided by the number of licensed broadcast ownership groups with annual Canadian gross revenues in the 2023/24 broadcast year which exceed \$1,000,000,000

Broadcasting Participation Fund means the independent not-for-profit organization incorporated as the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) Inc.

CPI means the annual average all-items Consumer Price Index for Canada (not seasonally adjusted) that is published by Statistics Canada

Canadian broadcast ownership group means a means a broadcaster that operates licensed broadcasting undertakings or that is registered as an online broadcaster or both, and which is deemed to be Canadian by the CRTC

previous broadcast year means the period from 1 September to 31 August which ended immediately before the current broadcast year

(2) Each Canadian broadcast ownership group whose annual Canadian gross revenues exceed \$1,000,000,000 in the 2023-2024 broadcast year shall remit the base amount to the BPF-FPR on December 31, 2024.

(3) Each Canadian broadcast ownership group shall on December 31 of each year beginning in 2024 remit to the Broadcasting Participation Fund the annual payment.

(4) If the Fund's operating reserve exceeds \$2,000,000 for two consecutive calendar years, the CRTC may order any or all of the Canadian broadcast ownership groups subject to these *Regulations* to not remit the annual payment for the broadcast year that follows.

- 155 The Applicants also propose that the BPF amend its by-laws to require it to return funding demonstrably in excess of its current and next-two-years of needs to another qualifying public-interest participation fund such as the Broadcast Accessibility Fund,¹³⁰ or if that Fund has sufficient resources, to a production Fund of the CRTC's choosing.

130

Broadcasting Participation Fund, [Broadcasting Regulatory Policy CRTC 2012-181](#) (Ottawa, 26 March 2012): Dissolution or wind-up of the BPF

156 Finally, the Applicants ask that the CRTC review the implementation of these (or revised) regulations in 2028, to ensure that the regulations and any changes made to the BPF-FPR's by-laws have met the objectives of providing certainty, transparency and accountability.

157 A stable base to generate income to pay for administrative costs and adequate, stable annual funding for reimbursement purposes which is regularly adjusted for inflation will eliminate much of the uncertainty that public-interest participants have experienced with the BPF-FPR's current finances for the past seven years.

c. Make orders

158 Subsection 11.1(2) of the current *Broadcasting Act* gives the CRTC the discretion to order "a particular" broadcaster to make expenditures for the purposes of supporting public-interest participation.

159 The Applicants believe it would be unjust and unreasonable to require a single broadcaster to support the BPF-FPR and public-interest participation. This could also create an impression, however misleading, of undue influence with respect to the BPF-FPR and public-interest participants. Moreover, while orders may be varied expeditiously over time, regulations provide greater certainty.

B. Transparency

160 The Applicants have several recommendations regarding the Board's transparency. In 2016 the CRTC determined that independent certified production funds' financial statements must be made public, and that such reports

... are meant to present the financial information of the entity in question as clearly and concisely as possible for both the entity and for readers. The amounts spent on the administration of the fund should be clearly indicated in the statement of operations. The reports must be easily accessible and made publicly available by the fund itself on its own website and will also be made publicly available on the Commission's website.¹³¹

161 The Applicants recommend that the BPF-FPR publish all of its annual and quarterly financial statements both within and separate from its annual reports, and that it maintain its current practice of publishing all years of its reports on its website. (Some organizations only publish their most recent reports.) It would benefit all parties if the BPF-FPR's annual reports provided a complete historical context for its operations and finances.

39. In Broadcasting Decision [2011-163](#), the Commission directed BCE and PIAC to include a provision for the distribution of the BPF to other qualifying funds in the unlikely event that the BPF is dissolved. The Commission directs BCE and PIAC to amend the specific provision, as indicated in the appendix, to make it clear that monies will be directed to other qualifying funds in such an event.

¹³¹ *Policy framework for Certified Independent Production Funds*, [Broadcasting Regulatory Policy CRTC 2016-343](#) (Ottawa, 25 August 2016), at para. 162.

- 162 In addition to publishing its decisions in its annual reports, the BPF-FPR should provide public access to a single, searchable and downloadable dataset of all decisions it has made, including decisions it has made about appeals. Going forward, moreover, the BPF-FPR should publish its individual decisions about applications (in the official language in which the applications were submitted) to enable current or prospective public-interest participants to understand the basis of its decisions and to comply with its requirements.
- 163 The CRTC has in the past directed that administrative costs represent a minimum of the funding used by the BPF-FP, and the BPF-FPR's By-laws limit this amount to 5% of funding received from tangible-benefits (section 48(a)) except if the Board authorizes additional expenditures in writing.

C. Summary of proposals for updating BPF-FPR

Certainty	1. Annual funding sufficient to meet public-interest participants' requirements for CRTC broadcast proceeding participation from one year to next: CRTC regulations requiring Canadian licensed broadcast ownership groups whose Canadian broadcast revenues exceeded \$1 billion in the previous year to remit \$500,000 to the BPF-FPR in 2024 and 2025, and \$200,000 (plus inflation) in each year going forward
	2. Decision-making independence and impartiality of Board: independence to set forms and tariffs and published decisions (By-law)
	3. Amend tariffs every two years to adjust for inflation (By-law)
	4. Publication of best-practice timelines for cost awards and appeal decisions (By-law)
Openness	4. Annual meetings with stakeholders at beginning of year, including information concerning proposed annual budget and administrative expenditures (By-law)
	5. Published minutes of meetings (By-law) <ul style="list-style-type: none"> a) Of BPF-FPR Board of Directors b) With stakeholders c) With CRTC and Canadian Heritage d) With other organizations/institutions
	6. Upon receipt of applications, provision of estimated date when BPF-FPR Board may consider (Best practice)
Accountability	7. Publication online of annual reports, and of annual and quarterly financial statements (By-law)
	8. Comparative financial history to 2013 (By-law)
	9. Clear explanation of changes in presentation and impact of those changes retrospectively and prospectively (By-law)
	10. Publication online of outcomes as well as decisions, including appeals, showing <ul style="list-style-type: none"> a) Participant name b) CRTC proceeding number c) Description of proceeding d) Date proceeding began e) Date proceeding ended

	<ul style="list-style-type: none"> f) Date application received g) Date application considered by BPF-FPR h) Nature of decision: interim or final i) Date of decision j) Date of payment (By-law)
	<p>11. Establishment of searchable online database of decisions (including appeals) showing</p> <ul style="list-style-type: none"> a) Participant name b) CRTC proceeding number c) Description of proceeding d) Date proceeding began e) Date proceeding ended f) Date application received g) Application type: funding or appeal h) Date application considered by BPF-FPR i) Nature of decision: interim or final j) Decision outcome: granted, granted in part, denied k) Date of decision l) Date of payment (By-law)
	<p>12. Annual meetings with stakeholders at beginning of year (By-law)</p>

V. Conclusion

- 164 When Parliament enacted new legislation giving the CRTC authority over telecommunications the CRTC said that it had “an obligation to re-examine and re-evaluate regulatory practices and procedures which have been built up” since the regulation of telephony began.¹³²
- 165 When the Commission made its written submission to the Broadcasting and Telecommunications Legislative Review panel in January 2020 it agreed that public-interest participation in its broadcasting proceedings required financial support – because such participation strengthens the quality of arguments and evidence on the public record of its proceedings.
- 166 The entry into force in April 2023 of new broadcasting legislation now enables the CRTC to consider the practices and procedures used to support public-interest participation in its broadcasting proceedings.
- 167 The Applicants ask that the Commission begin its consideration of a new regulatory framework for public-interest participation by issuing a notice of consultation for comments about the

¹³² *Ibid.*, at page 9.



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draft regulations proposed by the Applicants to improve and strengthen the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR). Taking this step in December 2023 as proposed by this application will enable the Commission to meet Parliament's goal of stronger, stably funded public-interest participation by the end of 2024.



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Part 1 Application (27 October 2023)
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Appendix 1 Applicants



The **Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic** (CIPPIC) is Canada's first and only public interest technology law clinic. Established in 2003 and based at the University of Ottawa's Faculty of Law, our team of legal experts and law students works together to advance the public interest on critical law and technology issues including:

- Privacy;
- Free Expression;
- Intellectual Property;
- Telecommunications Policy; and
- Data and Algorithmic Governance.

We speak up for the public interest when key decisions about technology law and policy are being made by Parliament, the courts, regulatory agencies, international bodies, and private companies.



The **Consumers Council of Canada** is a non-profit, voluntary organization that works towards an improved marketplace for consumers in Canada. It seeks an efficient, equitable, effective and safe marketplace in which consumers are able to exercise their rights and responsibilities. The Council advocates for the charter of International Consumer Rights, to which it has added a ninth, the Right to Privacy, and they include:

- The right to safety.
- The right to choose.
- The right to be heard.
- The right to be informed.
- The right to consumer education.
- The right to consumer redress.
- The right to a healthy environment.
- The right to basic needs.
- The right to privacy.



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, defined with respect to broadcasting by Parliament in the *Broadcasting Act*.



OpenMedia is a community-driven organization that works to keep the Internet open, affordable, and surveillance-free. It operates as a civic engagement platform to educate, engage, and empower Internet users to advance digital rights around the world.



Créée en 1983, Option consommateurs est une association à but non lucratif qui a pour mission d'aider les consommateurs et de défendre leurs droits.

Au fil des années, Option consommateurs a développé une expertise dans les domaines suivants :

- services financiers,
- endettement,
- protection de la vie privée,
- accès à la justice,
- pratiques commerciales,
- finances personnelles,
- énergie

Option consommateurs représente les consommateurs et fait valoir leurs droits :

- En siégeant à différents comités, tables de concertation et conseils d'administration
- En alertant l'opinion publique et en intervenant régulièrement dans les médias
- En rédigeant des mémoires et en participant à des commissions parlementaires
- En s'engageant dans des actions collectives



The **Public Interest Advocacy Centre (PIAC)** is a federally incorporated non-profit organization that works to ensure that government and the private sector consider the public interest, consumer rights, as well as values like diversity and equal opportunity, when making decisions about public services that are vital to participation in society.

PUBLIC INTEREST LAW CENTRE (PILC)

The **Public Interest Law Centre** is an independent office of Legal Aid Manitoba which represents groups and individuals on issues affecting the environment, human rights, Indigenous people, consumers and low-income persons. We assist those who are far too often silenced in legal and public policy debates by providing high quality, evidence based advocacy.



Union des consommateurs est un organisme à but non lucratif qui regroupe 14 groupes de défense des droits des consommateurs. La mission d'Union des consommateurs est de promouvoir et de défendre les droits des consommateurs, en prenant en compte de façon particulière les intérêts des ménages à revenu modeste. Les interventions d'Union des consommateurs s'articulent autour des valeurs chères à ses membres soit la solidarité, l'équité et la justice sociale, ainsi que l'amélioration des conditions de vie des consommateurs aux plans économique, social, politique et environnemental.



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Union des consommateurs agit principalement sur la scène nationale, en représentant les intérêts des consommateurs auprès de diverses instances politiques, réglementaires et judiciaires, ainsi que sur la place publique. Parmi ses dossiers privilégiés de recherche, d'action et de représentation, mentionnons le budget familial et l'endettement, l'énergie, les questions liées à la téléphonie, la radiodiffusion, à l'Internet et à la vie privée, la santé, les produits et services financiers ainsi que les politiques sociales et fiscales.

Appendix 2 CRTC determinations in relation to the BPF-FPR

2011

Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011)

Call for comments on the Canadian Broadcasting Participation Fund, [Broadcasting Notice of Consultation CRTC 2011-524](#) (Ottawa, 24 August 2011)

Call for comments on the Canadian Broadcasting Participation Fund, Broadcasting Notice of Consultation CRTC 2011-524-1 (Ottawa, 16 September 2011)

2012

Broadcasting Participation Fund, [Broadcasting Regulatory Policy CRTC 2012-181](#) (Ottawa, 26 March 2012)

Broadcasting Participation Fund - Amendments, [Broadcasting Regulatory Policy CRTC 2012-181-1](#) (Ottawa, 26 March 2012)

CRTC accepts PIAC's proposal that a Canadian Broadcasting Participation Fund be established as a tangible benefit of BCE's purchase of CTV (if approved by CRTC)

CRTC invites written comments by 24 October 2011 on the proposal for the Canadian Broadcasting Participation Fund submitted by BCE and PIAC

Following a request for extension, CRTC extends deadline in the 2011-524 proceeding from 24 October 2011 to 7 November 2011

CRTC approves the BCE-PIAC proposal to establish and operate the Broadcasting Participation Fund subject to amendments required by the Commission and filing deadline of 25 April 2012

CRTC received no interventions re 2012-181; requires additional amendments but otherwise approves the proposal

Appendix 3 CRTC's October 2023 Regulatory Plan to modernize Canada's broadcasting system

Phase	CRTC description of phases	Additional CRTC text :
Phase 1	Consultation on contributions to the Canadian broadcasting system	[complete but for Nov/Dec public hearing on BNoC 2023-138]
Phase 2	<p>Summer/Fall 2023</p> <p>Engagement on definitions of Canadian and Indigenous content: These preliminary engagement sessions with industry and creators will help design the approach for a full public consultation.</p> <p>Public hearing (20 Nov – 8 Dec 2023)</p>	<p>In May 2023, we published an Information Bulletin clarifying more technical details for broadcasters. We also:</p> <ul style="list-style-type: none"> consulted on a registration requirement for certain online streaming services; reviewed exemption orders and possible basic conditions of service; and started to develop a framework for contributions that will apply to traditional broadcasters and online streaming services.
	<p>Winter 2023-2024(upcoming)</p> <p>Public consultations may include</p> <ul style="list-style-type: none"> Consultation on definitions of Canadian and Indigenous content: This consultation would review the definition of Canadian content and examine possible changes. Consultation on tools to support Canadian music and other audio content: This consultation would assess tools to support Canadian audio content. Consultation on programming and supports for video content: This consultation would assess tools to develop, support, and promote Canadian and Indigenous content on all platforms. Consultation on local markets access and competition: This consultation would evaluate market access, news and local programming, and competitive behaviours. Consultation on protecting Canadian consumers: This consultation would review ways to protect consumers and include broadcaster codes of conduct and mechanisms for complaints. 	<p>In this phase, we are looking at how we can tailor our expectations of and requirements for different broadcasting services, including:</p> <ul style="list-style-type: none"> Definitions of Canadian and Indigenous content; Our approach to licensing; Funding to improve public participation in broadcasting processes; Audio-related support, such as contributions for music and spoken-word programming; Mechanisms, such as incentives and regulatory measures, that could be used to: <ul style="list-style-type: none"> support emerging talent foster creation, production, distribution, promotion, and discoverability of diverse content; Supports for news and local programming; Market access and other power imbalances; Fair negotiations, ownership, and dispute resolution; Improving protections for consumers; and Broadcasting industry fees.
Phase 3	<p>Targeting launch: Late 2024</p> <ul style="list-style-type: none"> This phase will focus on implementing policy decisions listed above. More on Phase 3 will be included in future updates of this plan. 	Phase 3 will focus on implementing the new regulations and policy decisions. More information will follow.
<p>Source:CRTC, Regulatory Plan to modernize Canada's broadcasting system, Date modified: 2023-09-29</p> <p>[Yellow highlighting added]</p>		

Appendix 4 Links to BPF-FPR documents

BPF-FPR Annual Reports and Financial Statements

<http://www.bpf-fpr.ca/en/press.html>

BPF-FPR – Costs submissions process

BPF-FPR, [*Broadcasting Participation Fund \(BPF\), Inc.: Guidelines for the Assessment of Costs*](#)
(26 February 2013, amended 7 December 2020).

2023 BPF-FPR Stakeholders

[Stakeholders](#)

Claims made to the BPF-FPR by year

Click on the '[Costs Submission](#)' link to see and choose applications by year

Notices to BPF-FPR stakeholders

[June 2021 Caution To Potential Applications For Cost Awards](#)

[August 2021 NOTICE TO BPF STAKEHOLDERS AND CLAIMANTS REGARDING BROADCASTING PARTICIPATION FUND DIMINISHMENT](#)

[April 2023 Lack of funding jeopardizes Canada's Broadcasting Participation Fund](#)

Appendix 5 Appendix 2 to Broadcasting Decision CRTC 2011-163

<p><i>Modification du contrôle effectif des filiales de radiodiffusion autorisées de CTVglobemedia Inc., Décision de radiodiffusion CRTC 2011-163 (Ottawa, le 7 mars 2011)</i></p>	<p><i>Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries, Broadcasting Decision CRTC 2011-163 (Ottawa, 7 March 2011)</i></p>
<p>Annexe 2 à la décision de radiodiffusion CRTC 2011-163</p>	<p>Appendix 2 to Broadcasting Decision CRTC 2011-163</p>
<p>Lignes directrices pour la création de fonds indépendants découlant des avantages</p> <p>Quoique le Fonds d'accès à la radiodiffusion et le Fonds canadien de participation à la radiodiffusion ne soient pas à proprement parler des fonds de production, le Conseil estime que les critères de gouvernance et de comptabilité établis pour la mise sur pied de fonds indépendants de production (avis publics 1997-98 et 1999-29, et politique réglementaire de radiodiffusion 2010-833) constituent un modèle approprié pour les deux fonds qui verront le jour en vertu du bloc d'avantages tangibles de BCE. Des règles claires sur la gouvernance, sur l'obligation de rendre des comptes et sur les décisions en matière de financement feront en sorte que ces fonds sont admissibles à des contributions émanant d'autres sources, comme les contributions annuelles des entreprises de distribution de radiodiffusion (EDR) au système de radiodiffusion et de futurs avantages tangibles découlant de transferts de propriété ou de contrôle.</p> <p>Les propositions déposées par BCE devront renfermer des dispositions claires et détaillées sur le mode de sélection des deux conseils d'administration (y compris leur composition initiale) et une disposition pour la répartition du fonds dans l'éventualité peu probable de sa dissolution, de manière à ce que l'argent soit investi dans d'autres fonds admissibles. Les propositions pour les deux fonds devront aussi fournir des renseignements détaillés sur le mandat, la structure et la gestion de ces fonds, sans oublier les renseignements sur le processus de sélection des projets admissibles à bénéficier de ces fonds.</p> <p>Conformément aux critères énoncés dans l'avis public 1999-29, la composition des conseils d'administration des deux fonds doit respecter les critères suivants : 1) tous les membres doivent être canadiens; 2) un tiers des membres au maximum peut consister de représentants d'EDR ou de télédiffuseurs, et ceux-ci détiennent au maximum un tiers des droits de vote lors d'une assemblée; 3) toutes les décisions sont adoptées par vote majoritaire.</p>	<p>Guidelines for the establishment of independent funds resulting from benefits</p> <p>While the Broadcasting Accessibility Fund and Canadian Broadcasting Participation Fund are not production funds, the Commission considers that the established governance and accountability criteria for the creation of independent production funds (Public Notices 1997-98 and 1999-29 and Broadcasting Regulatory Policy 2010-833) represent an appropriate model for the two funds to be established as part of BCE's tangible benefits package. The establishment of clear rules with respect to governance, accountability and funding decisions will ensure that these funds are eligible for contributions from other sources, including annual contributions by broadcasting distribution undertakings (BDUs) to the broadcasting system and future tangible benefits from transfers of ownership or control.</p> <p>The proposals to be filed by BCE should include clear provisions detailing the means of selecting the boards of directors (including their initial composition) and a provision for the distribution of the fund in the unlikely event of their dissolution to ensure that monies are directed to other qualifying funds. The proposals should also provide details on the mandate, structure and administration of these funds, including information on the process by which projects or initiatives are chosen to receive funds.</p> <p>Consistent with the criteria articulated in Public Notice 1999-29, the composition of the boards of directors of the funds is to adhere to the following criteria: 1) all members must be Canadian; 2) no more than one third of the members may be members representing BDUs or broadcasters, casting no more than one third of the votes in a meeting; and 3) all decisions must be made by majority vote.</p>

Le Conseil estime que les autres administrateurs doivent être représentatifs des regroupements de parties prenantes. Dans le cas du Fonds d'accès à la radiodiffusion, ces administrateurs seront des personnes handicapées, des représentants d'organismes œuvrant pour les personnes handicapées ou toute autre personne détenant une expertise dans l'élaboration et l'application de solutions à l'accessibilité. Pour le Fonds canadien de participation à la radiodiffusion, les autres administrateurs représenteront des organismes de consommateurs ou de défense de l'intérêt public dotés de mandats non commerciaux. Les personnes qui représentent les regroupements de parties prenantes détiennent les deux tiers des droits de vote dans une assemblée.

Pour les fonds de production indépendants certifiés, le Conseil décrète habituellement que les frais de gestion ne doivent pas dépasser 5 % des contributions versées au fonds. Dans le cas du Fonds d'accès de la radiodiffusion, étant donné qu'il y aura des frais additionnels liés à l'accommodement des personnes handicapées qui siègent au conseil, le Conseil fera montre de souplesse. Dans sa proposition, BCE doit préciser et justifier l'écart qu'il propose par rapport aux maximums habituels pour les frais de gestion.

The Commission considers that the remaining directors should be representative of the relevant stakeholder groups. With respect to the Broadcasting Accessibility Fund, these directors must be persons with disabilities, representatives of disability organizations and/or other parties with relevant expertise in developing or implementing accessibility solutions. For the Canadian Broadcasting Participation Fund, the remaining directors should represent consumer and public interest organizations with non-commercial mandates. The parties representing stakeholder groups must cast at least two thirds of the votes in a meeting.

For certified independent production funds, the Commission typically establishes that no more than 5% of the fund contributions should be spent on fund administration. In the case of the Broadcasting Accessibility Fund, considering that there may be additional administrative expenses related to accommodation to ensure effective participation by persons with disabilities on the board, the Commission may be flexible in this regard. In its proposal, BCE should specify and provide justification for any proposed departure from the usual maximum level of administrative expenses.

Appendix 6 BTLR Report discussion of public-interest participation costs

Broadcasting and Telecommunications Legislative Review Panel, *Canada's Communications Future: Time to Act, Report* (Ottawa, 29 January 2020)

[page 54]

...

1.5 ENABLING BROAD PARTICIPATION

CRTC proceedings and, increasingly, ISED-initiated processes involve multi-stakeholder consultations. This ensures that regulatory processes are forward-looking and informed and that a broad and diverse range of voices and perspectives is heard and taken into consideration in the decision-making process. This approach is essential to creating public trust in the integrity of the regulatory process and enhancing both the quality and the credibility of the outcomes. Our Recommendation 2 in section 1.3.2 of this Report, to disclose more research and data to the public are intended to help support proactive stakeholder engagement, identify emerging issues and concerns, or provide advice on the formulation of potential solutions.

Funding mechanisms have been put in place to facilitate public interest group participation in CRTC proceedings [sic], as follows:

- With respect to telecommunications proceedings, the CRTC exercises its broad powers under the *Telecommunications Act* to award interim or final costs. Applicants who have participated responsibly and contributed to a better understanding of the issues may apply for reimbursement of costs that correspond to a cost schedule developed by the CRTC. Other parties, such as telecommunications service providers and industry organizations, that participated in the proceeding are required to pay these costs, which they may also contest through a further process.

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- For broadcasting proceedings, the CRTC has created an independent Broadcasting Participation Fund (BPF)¹² 12 Broadcasting Regulatory Policy CRTC 2012-181, Broadcasting Participation Fund (26 March 2012), para 24.using tangible benefits funding from broadcast licence transfers. The BPF has identified fund depletion as a key risk, in view of already high ownership concentration and the resulting decrease in potential tangible benefits.

No provision has been made to support public interest participation in proceedings under the *Radiocommunication Act*.

Notwithstanding the mechanisms that are in place, public interest groups face several challenges, including resource constraints that limit the effectiveness of their participation and their contribution to the overall quality of the proceeding in question. There is a significant disparity in the resources available to these groups relative to industry participants in CRTC proceedings. This affects the public interest groups' ability to undertake research, retain experts, and develop in-house expertise. This situation is exacerbated by the uncertainty associated with cost awards, whose claimants do not know how much of their claim will be approved when their participation decisions must be made.

The administration of telecommunications cost awards and the BPF awards are not aligned in terms of process, source of funds, timeliness, administrative burden, or legislative basis. Neither process provides funding of cost awards outside the context of CRTC proceedings, including GiC and court appeals of

CRTC decisions. There are also challenges related to the timeliness of payments. The cost award process in telecommunications proceedings has become lengthy, resulting in increased delays in the adjudication of cost claims and negatively impacting public interest participation. More focus and attention must be brought to this issue, along with a streamlined reimbursement process. Similar concerns do not appear to exist within the process administered by the BPF regarding broadcasting proceedings.

The process to obtain funding is also adversarial and cumbersome. Current CRTC practice is to conduct a process in which the industry participants in the proceeding can challenge the claimant's expenses, contributing to conflict and delay. The cost award process should be administered by dedicated staff with expertise in this area in order to ensure consistent claims determinations.

1.5.1 Stable, Predictable Funding

As a matter of principle, we believe there must be recognition of and support for the role of public interest groups in communications regulatory proceedings as a critical element in ensuring the credibility of and trust in the regulatory process. Such support is particularly urgent at present: the administrative procedure involved in cost awards in telecommunications proceedings is becoming unwieldy, and funding for cost awards in broadcasting proceedings is dwindling. Further, the impact

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of the lack of cost awards under the *Radiocommunication Act* will increase as the spectrum and device regulatory framework for future 5G, machine-to-machine communication, and the Internet of Things is developed.

It is essential to find a means for ensuring stable, predictable, and long-term funding for public interest groups. This funding should support participation in proceedings, development of in-house expertise by public interest groups, and involvement in broader public consultation processes. It should also create a uniform model for telecommunications and broadcasting proceedings, with a parallel approach to radiocommunication proceedings.

A number of models have been proposed to assure such funding. One model proposes a multi-year commitment by government rather than costs imposed on telecommunications service providers. We are concerned that this may be unrealistic and could be subject to budgetary uncertainty. Another approach explored in the United Kingdom is the creation of an operationally independent "consumer advocate". This approach is funded directly by government, whose mandate could include conducting research, promoting the consumer interest, advocating on behalf of consumers in key policy and regulatory proceedings, and advising industry on achieving improved consumer outcomes. While we propose a new Public Interest Committee in Recommendation 15 below, which would help inform the CRTC in advance of formal proceedings, there are concerns with an approach that establishes a single public interest advocate to participate in the proceedings themselves. Funding a single entity to advocate on behalf of consumers might narrow the diverse views that would be put forward relative to funding for independent public interest groups that represent a variety of perspectives. Moreover, such an advocate reliant on a single source of government funding may be constrained in its operational independence.

Public interest funding that supports multi-stakeholder involvement in proceedings should be considered an essential element of regulatory operations. To ensure a proper and consistent statutory requirement for funding, cost award powers similar to those set out at subsections 56(1) and 56(2) of the *Telecommunications Act* should be added to the *Broadcasting Act*. Similarly, under the *Radiocommunication Act*, participation in consultations held by ISED should be supported with departmental funding. To this end, ISED should establish a program to assess and grant requests for funds from public interest groups that participate in proceedings under that Act.

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Recommendation 12: We recommend that to promote public interest group participation in regulatory proceedings:

- the *Broadcasting Act* be amended to provide the CRTC with explicit authority to award costs, similar to the authority granted under subsections 56(1) and 56(2) of the *Telecommunications Act*;
- ISED establish a funding program to support participation in proceedings under the *Radiocommunication Act*; and
- the provisions concerning cost awards in the *Broadcasting Act* and *Telecommunications Act* be amended to include appeals that flow from decisions so that public interest intervenors are not left behind on appeals.

To further entrench public interest funding in regulatory operations, it should be included in the regulators' operational funding assessments and funded from current sources. In telecommunications and broadcasting, the CRTC's costs of regulatory operations are borne by market participants as regulatory fees calculated based on proportion of industry revenue. To fund radiocommunication regulatory operations, ISED draws directly from the Treasury Board, with licensing and spectrum fees similarly finding their way back to general government revenues.

Recommendation 13: We recommend that the *Broadcasting Act* and the *Telecommunications Act* be amended to include public interest participation funding in the operational funding requirements of the CRTC, and that this be included in the expenditure plans for Broadcasting Activity and Telecommunications Activity costs recovered under the *Broadcasting Licence Fee Regulations* and *Telecommunications Fee Regulations*, respectively. We further recommend that ISED's operational funding include amounts to be directed to public interest participation.

Finally, in order to address the timeliness and predictability challenges created by the way in which funding is distributed, the CRTC should design a transparent, non-adversarial process with clear service standards and broader scope for participation.

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Recommendation 14: We recommend that the CRTC convene a public consultation on establishing a transparent process for funding public interest participation regarding telecommunications or broadcasting based on the following elements:

- to ensure transparency, the CRTC would be required to report quarterly on the status of cost claims and their disposition;
- to ensure timeliness, the funding process would be subject to a three-month service standard with a six-month upper limit for the completion of cost awards. The CRTC would be required to report annually on compliance with this standard; and
- to eliminate lengthy and adversarial processes, the new process would be administered either by CRTC staff directly or delegated to an independent organization modelled along the lines of the Broadcasting Participation Fund.

....

Appendix 7 Amounts and dates related to tangible-benefits payments to BPF-FPR, 2013-2025

Year	CRTC decisions	Tangible-benefits payments and dates of payment	Total Cost Awards exp. for year	Cash		Impact on stakeholders	Annual Report
				Jan 1	Dec 30		
2011	2011-163 ¹³³	Grants \$3.000 Payment made on 8 Mar/13	\$0				2013, p. 22 of 23
2012	2012-443 ¹³⁴	Denies tangible-benefits for BPF	\$0	\$0	\$0		2013, pp 5, 14, 18 of 23
2013	2013-310 ¹³⁵	Grants tangible-benefits for BPF - \$2 million over 7 years	\$331,042	\$0	\$2,505,455		
	2013-738 ¹³⁶	Denies tangible-benefits for BPF					
2014		1 st (-310): \$0.286 (30 Apr/14)	\$801,294	\$2,505,455	\$80,024		2014, pp 5, 9 of 10
2015		2 nd (-310): 0.286 (29 Apr/15)	\$342,527	\$80,024	\$60,591		2015, pp 12, 16 of 20
2016	2016-110 ¹³⁷	Denies tangible-benefits for BPF	\$736,920	\$60,591	\$63,547	6 Sep/16:“BPF Board of Directors advised the CRTC and BPF Stakeholders that, based on current estimates, the	2016, p. 19
	2016-487 ¹³⁸	Denies tangible-benefits for BPF					

¹³³ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraphs 46 and 48.

¹³⁴ *Leafs TV, Gol TV, NBA TV Canada, Mainstream Sports and Live Music Channel – Change in effective control*, [Broadcasting Decision CRTC 2012-443](#) (Ottawa, 16 August 2012), para. 62: PIAC's proposal for ongoing tangible-benefits payments to BPF-FPR "relates to a broader discussion that would need to be dealt with through a policy review. Consequently, the Commission does not consider it appropriate to impose such a requirement in regard to the present transaction"

¹³⁵ *Tangible benefits proposal by Sirius XM Canada Inc.*, [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), at paragraph 38:

In light of all of the above, the Commission:

approves Sirius XM's proposal to contribute \$1 million to the BPF paid in two equal installments of \$500,000 in year 1 and 2;

...

directs Sirius XM to contribute ... an additional \$596,666 to the BPF expended in equal amounts over five consecutive broadcast years starting in year 3.

¹³⁶ *Historia and Séries+ – Acquisition of assets and change in effective control*, [Broadcasting Decision CRTC 2013-738](#) (Ottawa, 20 December 2013) – does not refer to PIAC's argument that tangible-benefits payments be allocated to BPF-FPR.

¹³⁷ *Various television services and stations - Corporate reorganization (transfer of shares)*, [Broadcasting Decision CRTC 2016-110](#) (Ottawa, 23 March 2016), at paragraph 25: no tangible-benefits required as this is a reorganization that does not change licensee's effective control.

¹³⁸ *Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control*, [Broadcasting Decision CRTC 2016-487](#) (Ottawa, 20 December 2016), at paragraph 32 – change of control of BDU licensee and does not trigger tangible-benefits payments

Year	CRTC decisions	Tangible-benefits payments and dates of payment	Total Cost Awards exp. for year	Cash		Impact on stakeholders	Annual Report
				Jan 1	Dec 30		
		3 rd (-310): \$0.286 (6 Jun/16)				BPF will run out of cash around December 31, 2017, subject to receiving three annual payments of \$285,714.29 commencing in the spring or summer of 2018.”	
2017		4 th (-310): \$0.286 (7 Jun/17)	\$674,821	\$63,547	\$127,551	30 Oct/17: Caution note – “significant risk exists that the Fund will not be in a financial position to award costs in early 2018”	2017, p. 21
2018	2018-91 ¹³⁹	5 th (-310): \$0.286 (14 May/18) 1 st (-91): \$0.500 (24 May/18)	\$316,799	\$127,551	\$764,026		2018, pp. 14, 18 of 25
2019		5 th [sic] (-310): \$0.286 (21 May/19) 2 nd (-91): \$0.500 (21 May/19) 3 rd (-91): \$0.119 (31 Dec/19)	\$227,410	\$764,026	\$513,348		2019, pp.14, 18 of 24
2020	2020-154 ¹⁴⁰	Denies tangible-benefits for BPF	\$610,981	\$513,348	\$483,920	The most important risk point to be aware of this year is the likely probability of the Fund running out of money unless additional funding sources can be determined. Based on the dollar value of claims being received, it is possible that the Fund could be unable to support additional claims beyond 2022.	2020, at pp. 5, 7, 9
		Final (-310): \$0.286 (15 Jun/20) 4 th (-91): \$0.089 (30 Dec/20)					
2021		Apr/21 application to stabilize funding: CRTC letter denies process on 6 August 2021 ¹⁴¹					
		Payment of \$0.030 shortfall on 24 May 2021 (BPF-FPR letter) 5 th : (-91): Unknown (no date)	\$576,262	\$439,920	\$133,811	8 Jul/21 letter to stakeholders re BPF fin'l situation 12 Jul/21 Caution to Potential “Applicants for Cost Awards” BPF-FPR advises CRTC of plan to reduce payments on 7 Sep/21	2021, pp. 2, 21, 26, 27 Fin'l Statements 2021, at 2 of 11

¹³⁹ Astral broadcasting undertakings – Change of effective control, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013), at Appendix 3.

¹⁴⁰ V Interactions inc. – Change in ownership and effective control, [Broadcasting Decision CRTC 2020-154](#) (Ottawa, 19 May 2020):

170, at paras. 170.

¹⁴¹ CRTC, Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Fund, Broadcasting - [Commission Letter addressed to John Lawford \(Public Interest Advocacy Centre\) and Monica Auer \(Forum for Research and Policy in Communications \(FRPC\)\)](#) (Ottawa, 6 August 2021)

Year	CRTC decisions	Tangible-benefits payments and dates of payment	Total Cost Awards exp. for year	Cash		Impact on stakeholders	Annual Report
				Jan 1	Dec 30		
2022	2022-76 ¹⁴²	Grants tangible-benefits to BPF-FPR (\$0.725 over 3 unidentified years)	\$141,405	\$133,811	\$203,688	<p>BPF Board decides not to accept claims if cash levels insufficient</p> <p>Financial statements: “Emphasis of Matter Without modifying our opinion, we draw attention to note 1 to the financials statements which describes the finite nature of the funds of the Fund.”</p> <p>Payments reduced 25%: 1 Oct/21 – 31 Dec/22 BPF Board focused “on the Fund’s Depletion Nov/22: Board discusses “potential hiatus of the BPF” The Fund has received finite funds as a result of CRTC Decisions that determined that an applicant, desiring to change the control, or effective control, of a broadcasting undertaking, should provide financial contributions to this Fund. The timing and amount of future funding is not determinable by the Fund. The existing funds are finite and, as a result, the Fund may lack sufficient funds to approve and pay costs awards in respect of costs awards applications received by the Fund.</p>	2022, pp.3, 8, 28
2023	17 Apr/23	Part 1 application to combine all 3 Rogers’ payments into one – posted 1 May 2023	\$117,845	Net cash at 30 June: \$142,387		<p>Payments reduced 25%: 1 Jan/23 – Oct/23</p> <p>“Based on the historical rate of claim disbursements from the Fund averaging \$463,000 per year plus administration costs, if no additional funding contributions are forthcoming, the Board currently projects that the Fund could be materially depleted in 2022, to the point that it is anticipated that the funding of cost awards from the Fund could cease in whole or in part prior, on or around such time, dependent upon</p>	Fin Statement, Q2, p.1



Part 1 Application (27 October 2023)
Regulations to support public-interest
participation in CRTC broadcasting matters

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Year	CRTC decisions	Tangible-benefits payments and dates of payment	Total Cost Awards exp. for year	Cash		Impact on stakeholders	Annual Report
				Jan 1	Dec 30		
						the number and scope of Commission broadcast proceedings as well as the participation of groups seeking cost awards in those proceedings. ¹⁴³	
2024		Final (-91): \$0.119 (unknown) 2 nd (-76): \$0.242 (unknown)					
2025		Final (-76): \$0.242 (unknown)					
Pink shading		Prospective					

Appendix 8 Public-interest participation tariffs (current)

Legal staff and consultants	CRTC	Alberta Utilities Commission Scale of costs	BC Utilities Commission Rate Schedule	NWT Public Utilities Board Scale of Costs Professional fees	Ontario Energy Board Practice Direction on Cost Awards	Quebec Régie de l'Énergie Taux des honoraires
Effective	Current	Current	30 June 2022	16 March 2020	1 April 2023	January 2020
Legal assistant	\$35					
Articling students	\$70	\$140	\$110		\$100	
Years at the bar						
0-2	\$135					
0-4			\$240			
1-4		\$240				
0-5					\$170	\$135
3-5	\$165					
5-7		\$280	\$285			
6-10	\$206				\$230	\$160
8-12		\$320	\$320			
11-15						\$195
11-19	\$250				\$290	
12 years +		\$350	\$350			
15 years +						\$240
20 +	\$290				\$330	
Consultants Maximum				\$350		
0-4	\$110		\$120			
0-5					\$170	
1-4		\$120				
5-7		\$160	\$165			
5-8	\$165					
6-10					\$230	
7+			\$235			
8-12		\$230				
9+	225					
12 years +		\$270				
11-19					\$290	
20+					\$330	
Maximum				\$270		
Expert witness			\$270	\$270		
Case manager			\$75		\$170	\$80 (to max. of 7% of intervener's eligible hours)
Support staff				\$45		

Appendix 9 Service standards of other institutions

CRTC “Service objective/standards and performance measure for processing telecommunications applications”, past five CRTC fiscal years – CRTC excluded applications shown in square brackets					
Green shading	Met service objective				
Pink shading	Did not meet service objective				
Yellow shading	Met service objective although may have excluded applications from consideration				
BROADCASTING	2018-19	2019-20	2020-21	2021-22	2022-23
1. Part 1 broadcasting applications: “decision to be issued within 4 months of the close of record”					
Number of applications	79	80	60	58	47
Decisions issued within 4 months of close of record	69	66	40	38	39
Percentage issued within 4 months of close of record	87%	83%	67%	66%	83%
2. Broadcasting applications considered at a public hearing					
Number of applications	84	39	33	15	12
Decisions issued within 4 months of close of record	14	19	29	10	3
Percentage of decisions issued within 4 months of close of record	17%	49%	88%	67%	25%
3. Broadcasting applications that do not require a public process (i.e. admin’v)					
Number of applications	37	40 [5]	41 [5]	44	48
Decisions rendered within 1 month of the date of receipt	34	34	37	32	38
Percentage of decisions rendered within standard	92%	97%	90%	73%	79%
4. Ownership-related applications					
a) hearing route: within 35 days of the close of record					
Number of applications	15	5 [2]	7 [2]	12	6
Decisions rendered within standard	12	3	7	3	0
Percentage of decisions rendered within standard	80%	60%	100%	25%	0%
b) notice of consultation route: within 2 months of the close of record					
Number of applications	2	1	1	0	0
Decisions rendered within standard	1	0	1	0	0
Percentage of decisions rendered within timeframe	50%	0%	100%	NA	NA
c) administrative route: within 2 months after the date of receipt					
Number of applications	9	4 [4]	3 [4]	5	6
Decisions rendered within standard	5	3	3	0	2
Percentage of decisions rendered within standard	56%	75%	100%	0%	33%
Total, all broadcasting processes					
Number of standards that could be met	6	6	6	5	5
Times standards met	0	0	3	0	0
Number of applications	226	169	145	134	119
Decisions issued within standard	135	125	117	83	82
% of applications for which decisions were issued within standard	59.7%	74.0%	80.7%	61.9%	68.9%
TELECOMMUNICATIONS	2018-19	2019-20	2020-21	2021-22	2022-23
1. Part 1 applications: 100% of decisions to be issued within 4 months of close of record					
Applications received	26	39	16	23	13
Number of decisions made within 4 months of close of record	15	12	9	10	5
Percentage of decisions made within 4 months of close of record	42%	31%	56%	43%	38%
2. Part 1 – Local forbearance applications: “Decision to be issued within 120 days of receiving a complete application:”					
Appl’ns received	4	3	1	1	0

# of decisions made within 4 months of receiving complete appl'n	4	0	0	1	0
% of decisions made within 4 months of receiving complete appl'n	100%	0%	0%	100%	NA
3. Tariff app'ns and intercarrier agreements: "95 percent of determinations are to be made on an interim or final basis within four months of receipt of a complete application"					
Number processed	280	272	280	298	132
# of determinations made within 4 months of receiving complete appl'n	265	252	261	289	115
% of determinations made within 4 months of receiving complete appl'n	95%	93%	93%	98%	87%
4. Destandardization and/or withdrawal applications: "To issue 95 percent of determinations on a final basis within 12 months of a complete application"					
Number processed	11	8	19	17	18
# of determinations made within 12 months of receiving complete appl'n	11	8	17	17	17
% of determinations made within 12 months of receiving complete appl'n	100%	100%	89%	100%	94%
Total, all telecommunications processes					
Number of standards that could be met	4	4	4	4	3
Times standards met	3	1	0	3	0
Number of applications	321	322	316	339	163
Decisions issued within standard	295	272	287	317	137
% of applications for which decisions were issued within standard	91.9%	84.5%	90.8%	93.5%	84.0%
Sources: CRTC, "Service Objectives for the Processing of Certain Types of Broadcasting Applications" and					
BROADCASTING AND TELECOMMUNICATIONS, TOTAL					
Total service standards that could be met	10	10	10	9	8
Times CRTC met its service standards	3	4	3	3	3
Applications received/processed	547	491	461	473	282
# meeting required service objectives	430	397	404	400	219
# not meeting required service objectives	117	94	57	73	63
% meeting required service objectives	78.6%	80.9%	87.6%	84.6%	77.7%
% not meeting required service objectives	21.4%	19.1%	12.4%	15.4%	22.3%

*** End of document ***