



2 February 2024

Marc Morin
 Secretary General
 CRTC
 Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: Procedural Request re: Final Written Submissions by PIAC and OpenMedia Engagement Network (PIAC-OpenMedia), Broadcasting Notice of Consultation CRTC 2023-138-2 – Support for extension

- 1 The Forum for Research and Policy in Communications (FRPC) is writing in support of the above-noted procedural request made on 1 February 2024 by the Public Interest Advocacy Centre and OpenMedia Engagement Network (PIAC-OpenMedia). This request is available in the [“Procedural requests” page of the 2023-138 proceeding](#).
- 2 PIAC-OpenMedia have asked the Commission to amend its procedures in the 2023-138 proceeding by granting an additional two weeks for the deadline to submit final replies in the proceeding, announced as 15 February 2024 in the CRTC’s [2023-138-2](#) notice issued yesterday to compensate for the disadvantage caused by the CRTC’s failure to publish its December 2023 and January 2024 requests for information (RFIs) before 29 January 2024.
- 3 In the pages that follow FRPC sets out its support for PIAC-OpenMedia’s request and provides four additional reasons for granting the extension proposed by PIAC-OpenMedia. These reasons follow a brief recital of facts.

I Facts

- 4 The CRTC announced its *Regulatory Plan to modernize Canada’s broadcasting framework* on Monday, May 8, 2023. It announced the first three of its public consultations about this framework four days later, on Friday, May 12, 2023: Table 1. FRPC understands that the CRTC has also begun to invite certain parties to attend workshops to discuss how to define Canadian and Indigenous content.

Table 1

Notice	Date issued	Deadline – interventions	Deadline – Reply	Deadline – Final reply
2023-138	12 May 2023	27 June 2023 => 11 July 2023	12 July 2023 => 26 July 2023	15 February 2024
2023-139		12 June 2023	27 June 2023	12 July 2023
2023-140		12 June 2023	27 June 2023	12 July 2023
2023-280	23 August 2023	22 September 2023	None	None
Engagement on Can. and Indig. content	“preliminary engagement sessions with industry and creators” – none publicly announced			

- 5 The CRTC held a public hearing from Monday, November 20, 2023 to Friday, December 8, 2023 during which 79 interveners appeared before the hearing panel.
- 6 On the first day of the public hearing the Commission's hearing secretary said that "... for the record, we would like to announce that there may be requests for information sent to some interveners after the hearing and that there will be a final submission period providing an opportunity for parties to file brief final written comments that will be announced at a later date." (20 November 2023 at paragraph 44). The hearing secretary repeated this statement on Tuesday, November 28, 2023 (paragraph 4970).
- 7 On Friday, December 8 the CRTC's hearing secretary announced that undertakings requested by the hearing panel during the hearing would be merged with "specific requests for information" issued "to some interveners", that the date when the information was due would be stated in the letters and that the final-reply date "will be announced at a later date":

12090 For the record, as mentioned throughout the hearing, Commission staff will be sending specific requests for information to some intervenors. It has been decided to merge the undertakings to those RFIs. Therefore, as we are announcing that anything that has been identified as pertinent information or as an undertaking will be made part of the RFI process.

12091 You may disregard the December 15 date previously announced for undertakings.

12092 The RFIs will be sent in upcoming weeks. Response to these RFIs will be due in early 2024. The exact date will be indicated in the letters.

12093 As for the date for the final written submissions, it will be announced at a later date. Thank you.
- 8 On Tuesday, January 8, 2024 FRPC emailed the CRTC's Secretary General to ask that the Commission publish the two sets of RFIs distributed by the CRTC on December 21, 2023 and January 4, 2024.
- 9 Having received neither an acknowledgement nor a reply to its January 8 e-mail, FRPC submitted a second procedural request to the Secretary General on Friday, January 12, 2024. It again asked the CRTC to publish the two RFI letters it had sent to 79 parties (some of whom did not participate in the public hearing) both on 21 December 2023 and on 4 January 2024. It also asked that all four letters be published in both official languages. (This request was filed because the two RFI letters sent by the Commission in December and January were not official-language versions of each other, but different letters. The English-only RFI letters each set out 22 requests for information in English and the French-only RFI letters each set out 6 requests for information in French.)
- 10 The CRTC's 21 December 2023 letters set a filing deadline of Thursday, January 18, 2024, while its 4 January 2024 letters set a filing deadline of Friday, January 26, 2024.
- 11 The date information associated with the files currently posted as "[Responses to requests for information](#)" on the CRTC's [Open Notices of Consultation Page](#) for 2023-138 shows 12 different dates: 20 (24%) of the responses to the RFIs have dates from January 8 to 25, 53 (65%) are dated 26 January while 9 (11%) are dated after January 26. The last RFI response

date shown is for 30 January 2024. The CRTC then issued BNoC 2023-138-2 the next day, on February 1, 2024.

II Arguments

A *Late publication of RFIs disadvantaged those without knowledge of the RFIs*

- 12 FRPC agrees that PIAC-OpenMedia was placed at a disadvantage in this proceeding by
- the CRTC's failure to publish Requests for Information (RFIs) it had distributed to certain parties in December 2023 and January 2024.
 - the fact that some of the requests for information appear outside the scope of the 2023-138 proceeding as described by the Commission, and
 - the unequal allocation of preparatory time for those required to respond to the CRTC's RFIs and all other 2023-138 interveners.

13 Extending the final-reply deadline provides a remedy for this procedural disadvantage.

B *CRTC's short deadline disadvantages interveners with few or no staff*

- 14 The 10-working-day final-reply deadline set by the CRTC in the 2023-138 proceeding imposes an unreasonable disadvantage on public-interest participants because organizations such as FRPC and PIAC-OpenMedia have few staff available to develop and provide the Commission with informed analysis, conclusions and recommendations.
- 15 Intervenors such as Bell and Rogers, by contrast, have far more staff to devote to the 2013-138 proceeding. For example, the Bell and Rogers panels at the CRTC's 2016 public hearing to renew their broadcasting licences included 15 Presidents, Senior Vice-Presidents and Vice-Presidents: Table 2.

Table 2

Senior officers of Bell Media and Rogers who appeared before the CRTC in November 2016

Senior officers of Bell Media and Rogers who appeared before the CRTC in November 2016	
Bell Media: ^A President of Bell Media President of Broadcasting and Content; President of CTV News; Senior Vice-President of Independent Production; Senior Vice-President of CTV and Specialty Services; Senior Vice-President of Regulatory Affairs (BCE); Senior Vice-President of Finance for Bell Media Vice-President, Regulatory Affairs, and Content and Distribution (BCE)	Rogers: ^B President of Rogers Media. Senior Vice-President of Television and Broadcast Operations; Senior Vice-President of Media Sales, and Senior Vice-President, NHL Properties and Content Distribution; Vice-President, Television Programming and Content Vice-President, Regulatory, Media; President, NHL and Sportsnet Properties;
A CRTC, Public Hearing Transcript, 28 November 2016 at paragraphs 35 to 38 (Rogers Media)	
B CRTC, Public Hearing Transcript, 29 November 2016 at paragraphs 1877-1880 (Bell Media)	

- 16 Assuming each of these positions were aided by, say, two other people, Rogers and Bell might have 45 people available to consider the contents of their final replies in the 2023-138 contributions proceeding. To put this another way, assuming everyone learned of the final

reply deadline on February 1, 2024, Rogers and Bell could (based on their 2016 CRTC panel composition) have allocated 450 or more person-days of time to their final reply (45 staff x 10 working days). FRPC, by contrast, can devote a maximum of 10 person-days to its final reply. (We assume the CRTC is not proposing that participants devote all 366 days of 2024 to its proceedings.)

17 The burden of short timelines therefore falls more lightly on the larger companies, and more heavily on public-interest participants.

18 Extending the deadline is not a complete remedy, but would at least provide those interveners with fewer staff with a chance to determine the issues of key concern to them, to evaluate the RFIs in that context and to provide the Commission with more thoughtful analysis and recommendations.

C CRTC's short deadline disadvantages those unaware of RFIs

19 As PIAC's procedural request noted, parties that received the CRTC's RFIs from 21 December 2023 to 4 January 2024 had six weeks to the issuance of BRP 2014-444 2023-138-2 to consider, research and develop the issues of concern to them. The CRTC's decision to not publish its requests either on December 21, January 4, January 9 or January 12 creates the appearance of an *ex parte* process in which some participants were provided with more and more relevant information than all others.

20 The knowledge of the RFIs provided their recipients (especially larger companies) with a special advantage over all other interveners in this proceeding because the CRTC had already emphasized the importance of evidence in this proceeding. BNoC 2023-138 asked specifically that "whenever possible, parties provide evidence in support of their comments or proposals" (paragraph 87).

21 Parties that were unaware of the RFIs had no such forewarning, and therefore may not have allocated time to develop their familiarity with the 2023-138 record from December 21, 2023 to January 30, 2024.

22 While not perfect, extending the final-reply deadline partially compensates those disadvantaged by the *ex parte* character of the CRTC's December 21 and January 4 letters.

D Benefits of extending deadline outweigh potential harm to CRTC

23 FRPC submits that no party will be disadvantaged by a two-week extension in the 2023-138 proceeding. Rather, parties with limited resources will be able to focus more clearly on the elements needed for their reply, in turn providing the CRTC with a stronger record whose integrity will be less susceptible to concerns about procedural fairness.

24 FRPC also takes this opportunity to note that the CRTC has neither replied to nor answered the request submitted by nine parties including the Forum on Monday, January 22, 2024 asking the Commission to clarify its deadlines for the Regulatory-plan proceedings that the CRTC has indicated it may – or may not – hold this year.

- 25 The importance of the CRTC's proceedings in 2024 strongly favours the approach the CRTC has used in many of its major telecom proceedings. The consultations it announced in [2010](#) and [2015](#) to review access to basic telecommunications services, as well as its [2020 review](#) of the approach to setting rates for wholesale telecommunications services all included key procedural details about timing.
- 26 Publishing procedural information at the beginning of proceedings rather than at their conclusion gave all participants an equal understanding of the CRTC's telecom processes and the timelines they needed to observe, and the Commission's publication of such information did not prevent it from subsequently amending this information. All participants in the CRTC's modernization of broadcasting should be provided with the same information about the deadlines for key procedural steps at the same time – when the proceedings begin, not at the end near their conclusion.



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CC.:

Parties in distribution list of CRTC staff letter of 4 January 2024):

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Association des radios régionales francophones:
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Appearing interveners not shown in CRTC's 4 January 2024 distribution list

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