



2 July 2024

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: *The Path Forward – Supporting Canadian and Indigenous content through base contributions*, Broadcasting Regulatory Policy CRTC 2024-121 (Ottawa, 4 June 2024) – reply by the Forum for Research and Policy in Communications (FRPC) to other comments on the CRTC’s proposed orders

- 1 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 and telecommunications.
- 2 The Forum participated in the proceeding initiated by BNoC 2023-138 and in response to Broadcasting Regulatory Policy CRTC 2024-121 submitted its Phase I comments about the CRTC’s proposed order on 14 June 2024. Our 14 June 2024 comments on the proposed order are reproduced with grey shading.
- 3 We have reviewed the comments posted by the Commission on its 2023-138 proceedings page and our final comments are attached.

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***The Path Forward –
Supporting Canadian and Indigenous content
through base contributions,
Broadcasting Regulatory Policy CRTC 2024-121 (Ottawa, 4 June 2024)***

Final Reply

2 July 2024

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I. Introduction

- 1 The following is the reply of the Forum for Research and Policy in Communications (FRPC) to comments filed regarding the order proposed by Broadcasting Regulatory Policy CRTC 2024-121 (2024-121) on 4 June 2024. FRPC participated in the 2023-138 proceeding and submitted its initial proposals for amendments on 14 June 2024. The arguments and evidence brought forward by other parties have led FRPC to propose changes.
- 2 Our reply begins by comparing the Order as proposed by the CRTC in 2024-121 with the changes now proposed by FRPC. Following this comparison FRPC addresses a number of issues raised by other parties.

II. Proposed changes to 2024-121 order

A. *Canada's Interpretation Act*

- 3 As a preliminary matter the CRTC's proposed order should comply with the federal [Interpretation Act](#) whose provisions apply "to every enactment, whether enacted before or after" its commencement.¹ For example, section 33 clarifies reference to gender and number:

(1) Words importing female persons include male persons and corporations and words importing male persons include female persons and corporations.

(2) Words in the singular include the plural, and words in the plural include the singular. The order proposed by the CRTC in Broadcasting Regulatory Policy CRTC 2024-121 is set out below, with changes proposed by FRPC in light of other parties' comments. Shaded text indicates that FRPC is not proposing any change.

- 4 Sections 26 and 27 of the same statute sets out guidance about time:

26 Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

27 (1) Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

(2) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

(3) Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

(4) Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

(5) Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.



B. FRPC’s final recommendations for the order proposed in Broadcasting Regulatory Policy CRTC 2024-121

- 5 Having reviewed the comments of interveners in the proceeding initiated by 2024-121, FRPC has made suggestions to clarify the wording of the proposed order: by including or recommending definitions of terms not defined in the draft text and by removing discretion whose effect will be to require the administrators of certain funds to divert the time they now devote to achieving the purposes of their funds, to the solicitation of funding from foreign broadcasters. Table 1 sets out the original text proposed in 2024-121 with the changes proposed by FRPC.

Table 1

BRP CRTC 2024-121 – Appendix		Changes proposed or supported by FRPC	
Pink shading: original draft	Green shading: proposed change	Bold font: Proposed text	
Interpretation		Interpretation	
The following definitions apply in this order.		The following definitions apply in this order.	
<i>affiliate</i> in relation to any person, means any other person who controls that first person, or who is controlled by that first person or by a third person who also controls the first person;		<i>affiliate</i> in relation to any person, means any other person who controls that first person, or who is controlled by that first person or by a third person who also controls the first person;	
<i>annual Canadian gross broadcasting revenues</i> 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>i.e.</i> , 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.		<i>annual Canadian gross broadcasting revenues</i> 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>i.e.</i> , 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.	
<i>annual contributions revenues</i> means the annual Canadian gross broadcasting revenues less any excluded revenue.		<i>annual contributions revenues</i> means the annual Canadian gross broadcasting revenues less any excluded revenue.	
		<i>associate</i> means “associate” means with respect to a person (a) a body corporate that the person directly or indirectly controls, determined without regard to paragraph 3(1)(d), or of which they beneficially own	



BRP CRTC 2024-121 – Appendix		Changes proposed or supported by FRPC	
Pink shading: original draft	Green shading: proposed change	Bold font: Proposed text	
		<p>shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing or a currently exercisable option or right to purchase the shares or convertible securities;</p> <p>(b) a partner of the person acting on behalf of the partnership of which they are partners;</p> <p>(c) a trust or estate in which the person has a substantial beneficial interest or in respect of which they serve as a trustee or a liquidator of the succession or in a similar capacity;</p> <p>(d) a spouse or common-law partner of the person;</p> <p>(e) a child of the person or of their spouse or common-law partner; or</p> <p>(f) if that relative has the same residence as the person, a relative of the person or of their spouse or common-law partner.</p> <p>[Source: An Act to amend certain Acts in relation to financial institutions, SC 2005, c 54, s. 271(5)]</p>	
<i>audiobook</i> means an audio program that reproduces a text, published in print or digital format, and that has an International Standard Book Number.		<i>audiobook</i> means an audio program that reproduces a text, published in print or digital format, and that has an International Standard Book Number.	
<i>audiobook service</i> means the transmission or retransmission of audiobooks over the Internet for reception by the public by means of broadcasting receiving apparatus.		<i>audiobook service</i> means the transmission or retransmission of audiobooks over the Internet for reception by the public by means of broadcasting receiving apparatus.	
		<i>annual base payment</i> means the payment that an operator or a broadcasting ownership group is required to make in a broadcast year pursuant to this Order and which comprises 5% (five per cent) of its annual contributions revenues derived from its audio or audio-visual broadcasting activities	
		<i>base payment recipient</i> means a person that the CRTC has designated as eligible recipients of base payments made by online undertakings	
		<i>broadcast month</i> means a calendar month within the broadcast year	
<i>broadcast year</i> means the period beginning on September 1 in a calendar year and ending on August 31 of the following calendar year.		<i>broadcast year</i> means the period beginning on September 1 in a calendar year and ending on August 31 of the following calendar year.	
<i>broadcasting ownership group</i> means a group of all operators that are affiliates of one another or, in the case		<i>broadcasting ownership group</i> means a group of all operators that are affiliates of one another or, in the	



BRP CRTC 2024-121 – Appendix		Changes proposed or supported by FRPC	
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of an operator that is not an affiliate of any other operator, that operator.		case of an operator that is not an affiliate of any other operator, that operator.	
		<i>Canadian content expenditure</i> means expenditures on (a) certified Canadian content drawn from any of the programming categories genres: drama and comedy, documentary, children’s and youth, and variety and performing arts, or (b) music that	
		<i>certified Canadian content</i> means (a) in the case of audiovisual programs, programs certified by the Canadian Audio-Visual Certification Office or the Commission which received 10 out of 10 points or which if certified would have received 10 out of 10 points (b) in the case of audio programs, musical selections that meet two of these criteria: i) music must be composed by a Canadian ii) music or lyrics must be principally performed by a Canadian iii) production consists of live performance recorded wholly in Canada, or performed wholly in Canada and broadcast live in Canada iv) lyrics must be written by a Canadian	
		<i>direct expenditure</i> means EXPENSES SOLELY ATTRIBUTABLE TO THE PRODUCTION OF PROGRAMMING, AND INCLUDES SALARIES AND BENEFITS PAID TO STAFF WHO WORK EXCLUSIVELY IN THE PROGRAMMING DEPARTMENT, NON-STAFF TALENT FEES, FILMS, TAPES, PROPS, SETS, PROGRAM VEHICLE OPERATING COSTS, AND ANY OTHER PROGRAM-RELATED MATERIALS AND SUPPLIES [excludes 1997 reference to acquisitions; requires amendment for 2024-121 purposes]	
<i>excluded revenue</i> means revenue derived from providing audiobook services, podcast services or video game services; revenue associated with user-generated content; as well as revenue derived from broadcasting activities that are carried out by broadcasting undertakings that are, by order, exempted from licensing requirements or exempted from all regulations made under Part II of the <i>Broadcasting Act</i> , unless, in either case, otherwise specified in an exemption order.		<i>excluded revenue</i> means revenue derived from providing audiobook services, podcast services or video game services; revenue associated with user-generated content; as well as revenue derived from broadcasting activities that are carried out by broadcasting undertakings that are, by order, exempted from licensing requirements or exempted from all regulations made under Part II of the <i>Broadcasting Act</i> , unless, in either case, otherwise specified in an exemption order.	



BRP CRTC 2024-121 – Appendix		Changes proposed or supported by FRPC	
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			<p><i>first-run audiovisual programming</i> means</p> <p>(a) a program that has not previously been broadcast within an operator’s coverage area by any broadcasting undertaking including the operator or a program</p> <p>(b) an English-language program dubbed in French which is broadcast for the first time</p> <p>(c) a French-language program dubbed in English which is broadcast for the first time or</p> <p>(d) an Indigenous-language program dubbed in English or in French which is broadcast for the first time.</p> <p>[Source for (a), (b) and (c): Public Notice CRTC 1988-197]</p>
			<p><i>Indigenous content</i> means ...</p> <p>[for inclusion at a later date]</p>
<p><i>licensee</i> means a person who is authorized by a licence issued by the Commission to carry on a broadcasting undertaking under the <i>Broadcasting Act</i>.</p>			<p><i>licensee</i> means a person who is authorized by a licence issued by the Commission to carry on a broadcasting undertaking under the <i>Broadcasting Act</i>.</p>
			<p><i>monthly base payment</i> means the payment that an operator is required to make in a broadcast month pursuant to this Order and which comprises 5% (five per cent) of its monthly contribution revenue derived from its audio or audio-visual broadcasting activities</p>
			<p><i>monthly Canadian gross broadcasting revenues</i> 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 broadcast month, 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.</p>
			<p><i>monthly contribution revenue</i> means for a given month, the Canadian gross broadcasting revenues earned in that month less any excluded revenue earned in that month.</p>
<p><i>operator</i> means a person that carries on a broadcasting undertaking to which the <i>Broadcasting Act</i> applies.</p>			<p><i>operator</i> means a person that carries on a broadcasting undertaking to which the <i>Broadcasting Act</i> applies.</p>
<p><i>podcast service</i> means the transmission or</p>			<p><i>podcast service</i> means the transmission or</p>



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retransmission of podcasts over the Internet for reception by the public by means of broadcasting receiving apparatus.	retransmission of podcasts over the Internet for reception by the public by means of broadcasting receiving apparatus.		
	<p><i>program of national importance (PNI)</i> means a type of programming</p> <p>(a) that is expensive to produce</p> <p>(b) that bears a higher risk of unprofitability than other types of programming, and</p> <p>(c) whose widespread availability to Canadians is necessary to the achievement the <i>Broadcasting Policy of Canada</i>.</p> <p>[Modified version of definition set out at Broadcasting Regulatory Policy CRTC 2015-86, paragraph 296]</p>		
video game means an electronic game that involves the interaction of a user by means of an Internet connected device, where the user is primarily engaged in active interaction with, as opposed to the passive reception of, sounds or visual images, or a combination of sounds and visual images.	video game means an electronic game that involves the interaction of a user by means of an Internet connected device, where the user is primarily engaged in active interaction with, as opposed to the passive reception of, sounds or visual images, or a combination of sounds and visual images.		
video game service means the transmission or retransmission of video games over the Internet for reception by the public by means of broadcasting receiving apparatus.	video game service means the transmission or retransmission of video games over the Internet for reception by the public by means of broadcasting receiving apparatus.		
Application	Application		
The proposed conditions of service set out herein apply to all operators carrying on online undertakings who are registered with the Commission pursuant to the <i>Online Undertakings Registration Regulations</i> , with the following exceptions:	The following conditions of service apply to all operators carrying on online undertakings that are registered with the Commission pursuant to the <i>Online Undertakings Registration Regulations</i> , with the exception of:		
(a) online undertakings whose operator forms part of a broadcasting ownership group that has annual contributions revenues of less than \$25 million;	(a) online undertakings whose operator is part of a broadcasting ownership group that has annual contributions revenues of less than \$25 million;		
(b) online undertakings whose operator does not form part of a broadcasting ownership group, that have annual contributions revenues of less than \$25 million; and	(b) online undertakings whose operator is not part of a broadcasting ownership group which have annual contributions revenues of less than \$25 million; and		
(c) online undertakings whose operator:	(c) online undertakings whose operator:		
(i) is a licensee; or	(i) is a licensee; or		
(ii) is affiliated with a licensee; or	(ii) is affiliated with a licensee; or		
(iii) is a person operating, or affiliated with a person operating an exempt broadcasting undertaking that operates pursuant to an exemption order that requires the undertaking to be licensable.	(iii) is a person operating, or affiliated with a person operating an exempt broadcasting undertaking that operates pursuant to an exemption order that requires the undertaking to be licensable.		



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		Conditions of service relating to the timing of base payments made by online undertakings	
		1. In the 2024-2025 broadcast year and in each subsequent broadcast year, an operator providing audiovisual programming shall remit its monthly base payment within the 45 calendar days following the end of each broadcast month (a) to the care of the CRTC for subsequent distribution, or (b) to the base payment recipients pursuant to conditions of service 2 and 3.	
Condition of service relating to base contributions applicable to online undertakings carrying on audio-visual broadcasting activities		Conditions of service relating to base payments applicable to online undertakings carrying on audio-visual broadcasting activities	
1. Commencing in the 2024-2025 broadcast year, the operator of an online undertaking providing audio-visual services shall, by 31 August of each broadcast year, devote not less than 5% of its annual contributions revenues derived from its audio-visual broadcasting activities from the previous broadcast year to the support of Canadian and Indigenous content, to be allocated as follows:		2. In the 2024-2025 broadcast year and in each subsequent broadcast year, an operator providing audio-visual services shall allocate its monthly base payment, as follows:	
(a) not less than 2% to the Canada Media Fund. The operator may deduct certified Canadian content expenditures of up to 1.5% of the contribution for this initiative. Of that 1.5%, a maximum of 60% of these expenditures can be allocated to English-language productions and a maximum of 40% to French-language productions;		(a) at least 2% to the Canada Media Fund. The operator may deduct direct expenditures for certified Canadian content expenditures made on first-run programming of national importance of up to 1.5% of the contribution for this initiative. Of that 1.5%, a maximum of 60% of these expenditures may be allocated to English-language productions and a maximum of 40% to French-language productions;	
(b) not less than 1.5% to the Independent Local News Fund;		(b) not less than 1.5% to the Independent Local News Fund;	
(c) not less than 0.5% to the Indigenous Screen Office Fund;		(c) not less than 0.5% to the Indigenous Screen Office Fund;	
(d) not less than 0.5%, at the discretion of the operator, to any or a combination of the following funds:		(d) not less than 0.5% to the following funds, as follows:	
(i) Black Screen Office Fund,		(i) 4% to the Black Screen Office Fund,	
(ii) Canadian Independent Screen Fund for BPOC creators, and		(ii) 4% to the Canadian Independent Screen Fund for BPOC creators, and	
(iii) Broadcasting Accessibility Fund; and		(iii) 2% to the Broadcasting Accessibility Fund; and	
(e) not less than 0.5% to any or a combination of identified Certified Independent Production Funds (CIPF), other than the Indigenous Screen Office Fund, the Black		(e) not less than 0.5% to any or a combination of identified Certified Independent Production Funds (CIPF), other than the Indigenous Screen Office Fund,	



BRP CRTC 2024-121 – Appendix		Changes proposed or supported by FRPC	
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Screen Office Fund and the Canadian Independent Screen Fund for BPOC creators, that demonstrates a dedicated funding envelope for producers from official language minority communities and producers from diverse communities, as approved by the Commission. This contribution shall be held by the operator until the Commission publishes the list of eligible CIPFs or indicates that there are no eligible CIPFs. Should no CIPF be deemed eligible, the 0.5% contribution shall be directed to the Canada Media Fund.	the Black Screen Office Fund and the Canadian Independent Screen Fund for BPOC creators, that demonstrates a dedicated funding envelope for producers from official language minority communities and producers from diverse communities, as approved by the Commission. This contribution shall be held by the operator until the Commission publishes the list of eligible CIPFs or indicates that there are no eligible CIPFs. Should no CIPF be deemed eligible, the 10% contribution shall be directed to the Canada Media Fund.		
Condition of service relating to base contributions applicable to online undertakings carrying on audio broadcasting activities	Condition of service relating to base payments applicable to online undertakings carrying on audio broadcasting activities		
2. Commencing in the 2024-2025 broadcast year, the operator of an online undertaking providing audio services shall, by 31 August of each broadcast year, devote not less than 5% of its annual contributions revenues derived from its audio broadcasting activities from the previous broadcast year to the support of Canadian and Indigenous content, to be allocated as follows:	3. In the 2024-2025 broadcast year and in each subsequent broadcast year, the operator of an online undertaking providing audio services shall allocate its monthly base payment, as follows:		
(a) not less than 2% to FACTOR and Musicaction, of which 60% is to be allocated to FACTOR and 40% to Musicaction;	(a) not less than 2% to FACTOR and Musicaction, 60% of which is to be allocated to FACTOR and 40% to Musicaction;		
(b) not less than 1.5% to the Canadian Association of Broadcasters, to be allocated to a temporary fund supporting local news production by commercial radio stations outside of the designated markets of Montréal, Toronto, Vancouver, Calgary, Edmonton and Ottawa-Gatineau;	(b) not less than 1.5% to a temporary fund administered by the Canadian Association of Broadcasters to support local news production by commercial radio stations outside of the designated markets of Montréal, Toronto, Vancouver, Calgary, Edmonton and Ottawa-Gatineau;		
(c) not less than 0.5% to the Canadian Starmaker Fund and Fonds RadioStar, of which 60% is to be allocated to the Canadian Starmaker Fund and 40% to Fonds RadioStar;	(c) not less than 0.5% to the Canadian Starmaker Fund and Fonds RadioStar, of which 60% is to be allocated to the Canadian Starmaker Fund and 40% to Fonds RadioStar;		
(d) not less than 0.5% to the Community Radio Fund of Canada;	(d) not less than 0.5% to the Community Radio Fund of Canada;		
(e) not more than 0.35% to Canadian expenditures on initiatives supporting Canadian or Indigenous content, in the following categories:	(e) not more than 0.35% to Canadian expenditures on initiatives supporting first-run Canadian or Indigenous content, as follows:		
(i) songwriting camps specifically developed for Canadian and/or Indigenous artists;	(i) 0.10% to songwriting camps specifically developed for Canadian and/or Indigenous artists;		
(ii) support for the production of sound recordings by	(ii) 0.15% for the production of sound recordings by		



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Canadian and/or Indigenous artists; and	Canadian and/or Indigenous artists; and		
(iii) support for Canadian events (award shows and festivals) exclusively featuring Canadian and/or Indigenous artists;	(iii) 0.10% for Canadian events (award shows and festivals) exclusively featuring Canadian and/or Indigenous artists;		
Any remaining amount is to be allocated to any or a combination of funds among the Canadian Starmaker Fund, Fonds RadioStar, the Community Radio Fund of Canada, and the Indigenous music fund identified in (f) once in operation; and			
(f) not less than 0.15% to the Indigenous Music Office (IMO) for a new fund to support Indigenous music. For the 2024-2025 broadcast year, 0.05% shall be directed to the IMO by 31 December 2024, to allow the IMO to conduct consultations and develop an operational plan for an Indigenous music fund. The remaining 0.10% for that broadcast year shall be held until the Commission approves the fund.	(f) not less than 0.15% to the Indigenous Music Office (IMO) for a new fund to support the production of Indigenous music. For the 2024-2025 broadcast year, 0.05% shall be directed to the IMO by 31 December 2024, to allow the IMO to conduct consultations and develop an operational plan for an Indigenous music fund. The remaining 0.10% for that broadcast year shall be held until the Commission approves the fund.		
Condition of Service – Data Collection	Condition of Service – Data Collection		
3. The operator of an online undertaking that is required to make expenditures as provided in either conditions 1 or 2 above shall submit reviewed financial statements, reporting its annual Canadian gross broadcasting revenues and providing information on revenue allocation and any inclusions or exclusions of revenues. Reviewed financial statements shall be the product of an engagement performed by a third-party practitioner in accordance with Canadian Standard on Review Engagement (CSRE) 2400 and Canadian Generally Accepted Accounting Principles (GAAP).	4. The operator of an online undertaking that is required to make expenditures as provided in either conditions 2 or 3 above shall submit reviewed financial statements, reporting its annual Canadian gross broadcasting revenues and providing information on revenue allocation and any inclusions or exclusions of revenues. Reviewed financial statements shall be the product of an engagement performed by a third-party practitioner in accordance with Canadian Standard on Review Engagement (CSRE) 2400 and Canadian Generally Accepted Accounting Principles (GAAP).		

III. Reply to comments from Phase I

6 2024-121 provided all parties with the opportunity to “submit a reply to any comments received” (paragraph 190). FRPC’s reply to certain comments about the proposed order is set out below, followed by additional comments made by other parties in connection with the 2023-138 and 2024-121 proceedings. Our failure to address specific points in other parties’ comments does not indicate our acquiescence to those comments but rather reflects the lack of time available to make this submission.

A. Comments about the order proposed by 2024-121

1. Definitions

7 The Forum’s overall position on the proposed order is that its definitions should be so complete as to enable readers to understand the meaning of the order without having to refer to other CRTC documents. We have made a number of suggestions for this purpose.

a) Examples

8 Apple proposed that if the CRTC “intends to illustrate the type of expenditures” that would qualify under the order, “then it should do so in the Order to clarify online undertakings’ obligations with respect to this contribution allocation” (¶15).

9 FRPC agrees with Apple that “lack of information creates additional legal uncertainty” (¶15) in relation to online undertakings’ investment plans and actions.

10 In our view, however, definition sections’ sole purpose should be to set out the meaning of terms, not to provide examples and illustrations. The latter should instead be set out in the decision in which the CRTC sets out its final order, in information bulletins or circulars and on the CRTC’s website.

b) Procedures

11 FRPC notes that the proposed order included procedural information: “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.”

12 FRPC recommends that the draft order exclude references to procedures regarding requests. Procedural information should be included in the notice accompanying the order in its final form and in information bulletins or circulars; definitional sections should be limited to setting out the meaning of specified terms.

c) Annual Canadian gross broadcasting revenues

13 The Independent Broadcasters Group set out its concern (¶17) that the reference in the CRTC’s definition of annual Canadian gross broadcasting revenues to “on a subscription basis” could be interpreted so as to exclude advertising-supported bundled services. FRPC agrees with IBG’s reasoning and proposal.

d) Direct and indirect expenses

14 CMPA pointed out (¶¶7-10) that while 2024-121 mentioned “direct expenditures” in its findings, it did not address these in its draft order. It proposed to amend condition of service [1](a) to refer to the deduction of direct expenditures, and FRPC supports this recommendation. FRPC also recommends that the CRTC include definitions of ‘direct expenditures’ in the order for the convenience of readers, as the only definition that FRPC was readily able to locate was in *Guidelines respecting financial contributions by the*

licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming, [CRTC Circular 426](#) (Ottawa, 22 December 1997). It defined direct expenses in the context of broadcasting distribution undertakings' community channels as follows:

Direct expenses are those expenses solely attributable to the acquisition or production of programming. This includes, for example, salaries and benefits paid to staff who work exclusively in the programming department, non-staff talent fees, films, tapes, props, sets, program vehicle operating costs, and any other program-related materials and supplies.

e) Canadian content

- 15 FRPC agrees with the Canadian Media Fund (CMF) that the order should clarify that “Canadian content expenditures” as used in the order refers to expenditures on [audiovisual] programming that achieves a 10 out of 10 score when certified, and which is drawn from these categories: drama and comedy, documentary, children’s and youth, and variety and performing arts (¶¶7-8). Similar clarification should also be provided for audio programming.
- 16 FRPC’s proposes that the definition of Canadian content expenditures provide for circumstances in which a program has not yet been, but is cable of being, certified as receiving 10 out of 10 points.
- 17 FRPC also agrees with Rogers (¶15) that the CRTC should address the matter of intellectual property – when it initiates its consultation on the definition of Canadian audio or audiovisual programs. The Commission would thereafter be able to amend any of its regulatory decisions if needed, in response to new evidence and arguments in this consultation (currently scheduled for spring 2025).
- 18 Similarly, FRPC considers that it is premature for the Commission to adopt the suggestion of MPA-Canada that the Commission extend “standard CPE credits” in its order. First, MPA-Canada provided no evidence of the financial impact of applying the credit system to the 2024-121 base-payment framework in terms, or of the impact on programming. It is therefore unclear whether the credit system would yield higher program production expenditures (per hour or overall for the system), or more hours of first-run Canadian programs. FRPC’ position is that insufficient information is available for the CRTC to adopt this proposal, at this time.

f) First-run Canadian content

- 19 FRPC shares the concern expressed by a number of parties that the order should focus on expenditures that will result in the production of new Canadian programming (RPICQ at ¶10; Indigenous Screen Office at ¶11; CMPA at ¶15, DGC at ¶12; WGC at ¶11), rather than enable expenditures on acquisitions of programming that may have been created and broadcast in previous years. The CMF noted (¶10) that the CAVCO rules require that

“newly created projects” – but not acquisitions – “must be shown in Canada to qualify as Canadian content”.

- 20 CMPA proposed that references to “content that is certified by the Canadian Radio-television and Telecommunications Commission” be set out in the footnote now set out for condition of service [1(a)]. FRPC considers that consistent practice requires that information related to definitions of terms used in the order be set out in the definitions section, and to that end proposed a definition of ‘certified Canadian content’ based on the requirements for audiovisual certification and the MAPL criteria for audio-based music.
- 21 WGC proposed that that the condition of service [1] refer to “original production” while CMPA proposed that the content be ‘first run’ (¶13(1)(a)). FRPC recommends that the condition refer to “first-run programming” because the CRTC defined this term in [Public Notice CRTC 1988-197](#).
- 22 The Commission’s definition in 1988 took into account the locations where a program might already have been broadcast as well as dubbing. As Parliament has now clarified that the *Broadcasting Policy for Canada* must strengthen the availability of Indigenous-language content, FRPC proposes that programming originally produced in an Indigenous language or languages and subsequently dubbed into English or French which is broadcast for the first time should be defined as first-run Indigenous programming. The CMF expressed its concern that “dubbed content (i.e., an English-language Canadian production dubbed into French) to count as a French-language Canadian content expenditure” (¶9). It therefore proposed and FRPC agrees that

... for the 60% allowance for English-language content, the order should stipulate that the original language of the project must be English. Similarly, for the 40% allowance for French-language content, the order should stipulate that the original language of the project must be French.

- 23 The definition of first-run audiovisual programming proposed by FRPC should enable online broadcasters to ‘commission’ Canadian audiovisual programming, as Google suggests (¶15), while limiting the acquisition of audiovisual programming that has already been commissioned and previously broadcast.

2. Conditions of service

a) Condition of service 1 – timing and base payments

- 24 A number of parties (CMF, ¶¶12-13; Indigenous Music Office, page 1; Black Screen Office, ¶¶3-9; BAF, ¶¶22-25) raised concerns about the implications of the draft order for the timing of payments – namely, that the base-payment recipients may only first receive any payment at the end of the 2024-2025 broadcast year in August 2025.
- 25 DISF (¶9) and inSync media asked that all payments “be made monthly” (page 2), the Indigenous Screen Office asked the CRTC to require that payments be made monthly (¶8)

and the CMF (¶13) proposed that payments to the CMF be made “in 12 equal monthly instalments ... starting in September 2024”, as did FCM (¶9). Corus proposed that payments be made beginning in September 2024, with instalments being made before the last day of each month and under the proviso that the payments could be estimated for September, October and November 2024 (¶9). BAF proposed that payments be made quarterly beginning 30 November 2024, and proceeding “with evenly calculated quarterly distribution going forward” (¶26).

- 26 ITI said the CRTC should “avoid any retrospective activity” (¶15), while Spotify said that imposing an obligation to pay in “the 2024-2025 broadcast year based on revenues earned during the 2023-2024 broadcast year ... would be an impermissible retroactive condition of service.” The concepts of retroactivity and retrospectivity flow from “the already somewhat arcane subject of statutory interpretation”:²

... years ago, in an effort at refinement, a distinction was drawn between “retroactive legislation”, defined as legislation that changes the past legal consequences of completed transactions, and “retrospective legislation”, defined as legislation that changes the future consequences of completed transactions by imposing new liabilities or obligations. The legislature was presumed to eschew both retroactive and retrospective applications, both of which were distinguished from interference with vested rights, a less serious matter.³

- 27 FRPC’s view is that requiring base payments to be made in the 2024-2025 broadcast year based on revenues earned in the 2023-2024 broadcast year would be inequitable because it would effectively ‘attach new prejudicial consequences to closed transactions’.⁴ Similarly, requiring operators to make equal payments each month requires the assumption that monthly revenues are equal – which is unlikely to be the case. The Forum also believes that requiring base-payment recipients to wait until late August 2025 or early September 2025 to receive these payments is contrary to Parliament’s intention that financial support begin as quickly as reasonable. Given these considerations the Forum believes that base payments should be made monthly on a prospective basis,.
- 28 DiMA (¶¶19-20) and Spotify (¶20) both addressed concerns that base-payment recipients could use the payment they receive from individual operators to estimate these operators’ revenues. DiMA suggested (¶¶190-20) that the payments be made to the CRTC or an independent third party, while Corus suggested (¶18) that payments be made for the ILNF in trust.

² *Incremona-Salerno Marmi Affini Siciliani (I.S.M.A.S.) s.n.c. v. Castor (The) (T.D.)*, [2001 FCT 1330 \(CanLII\)](#), [2002] 3 FC447 (*Incremona-Salerno*) per Gibson J. at paragraph 10, citing to Dickson J. as he then was in *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1975 CanLII 4 \(SCC\)](#), [1977] 1 S.C.R. 271.

³ *Ibid.* (*Incremona-Salerno*) at ¶13, citing Professor Ruth Sullivan.

⁴ *Ibid.*

- 29 The Forum is concerned that directing base payments to an independent third party will of necessity lead to the allocation of a percentage of the payments to the third party to cover administrative and other costs. Yet section 11.1(5) of the *Broadcasting Act* appears to prevent the CRTC from requiring payments to be made to it or to a fund it administers:
- 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.
- 30 It is unclear whether 11.1(5) specifically prohibits the CRTC from holding payments *in trust* for base-payment recipients: if it does not, FRPC recommends that the CRTC perform this function. If the CRTC is unable for legal reasons to provide this service, a third party should be retained to do so – while ensuring that its administrative or other fees represent no more than 0.05% of the total annual base payments it distributes.⁵
- 31 FRPC has therefore proposed that a condition of service be added before the CRTC’s first condition of service to establish the time frame within which payors should remit required payments. The condition would
- enter into effect on 1 September 2024
 - require an operator to remit required payments within 45 days of the last day of each month⁶
 - to either the CRTC (in care for subsequent distribution base-payment recipients) or the base-payment recipients identified in the order.
- 32 Those making payments would only begin to do so in the 2024-2025 broadcast year based on calculations that apply to revenues earned in the 2024-2025 broadcast year, while base-payment recipients would begin to receive monthly payments by the middle of November 2024. Payments based on online broadcasters’ revenues in September 2024, for example, would be paid on or before 14 November 2024.
- 33 In response to Apple’s concern regarding “over- and under-expenditures” (¶14(b)), operators that subsequently discover they have made insufficient or excessive base payments could apply by the end of July each year to the CRTC to adjust the payment they make in August (the final month in each broadcast year); the CRTC could grant, amend or deny this application and should, in the event it grants or amends the application, notify base-payment recipients that might be affected by a reduction in anticipated base payments.

⁵ If the base payments in 2024-2025 amounted to \$200,000,000, for example, 0.05% would represent \$100,000 – which seems a reasonable amount to receive and distribute funds according to requirements already set out by the CRTC.

⁶ Note that section 27(5) of the *Interpretation Act* provides that “Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.”

- 34 FRPC believes monthly payments made based on the 2024-2025 broadcast year (and future broadcast years going forward) will enable all parties to benefit from certainty and ‘effective budget planning’ (Spotify, ¶¶8-9).
- b) Condition of service 2 – audiovisual base payment recipients*
- 35 FRPC shares FCM’s concern that condition of service 1 of the draft order “would allow online undertakings to receive credit for any certified Canadian programming, produced or acquired” (¶16) and “run completely contrary to the Commission’s stated objective ‘to encourage online undertakings to produce Canadian content’” (¶17).
- 36 To encourage the production of ‘new’ Canadian programming, FRPC recommends that the CRTC define Canadian programming in this order as “first-run programming” and that its conditions of service emphasize the production of first-run audiovisual or audio content.
- 37 FRPC shares CNIB’s concern that “there are no mandatory requirements or guaranteed contributions to support the BAF” and its work with respect to described video (¶11), and we agree with RECM (page 1) and the BAF that the draft order created “an illogical competitive structure among the three organizations”, uncertainty and unpredictability (¶¶13-21).
- 38 To eliminate the risk that the administrators or beneficiaries of the Black Screen Office Fund, the Canadian Independent Screen Fund for BPOC creators and the Broadcasting Accessibility Fund will be forced to compete against each other and others for scarce financial support, FRPC recommends that the Commission set the amount that online broadcasters are to remit to the Broadcasting Accessibility Fund/Fonds pour l’accessibilité de la radiodiffusion. We have arbitrarily suggested that the two programming funds receive 80% of the funding that appears to be available (0.4% of 0.5%), leaving the remaining 20% of available funding (0.1% of 0.5%) to the BAF. Establishing set amounts removes the uncertainty and unpredictability of funding that the draft order would inevitably generate.
- 39 BAF also called “on the CRTC to ensure that, in subsequent broadcast years, the above noted competitive structure is modified such that BAF, BSO and CISF-BPOC are afforded separate and dedicated allocations of contributions from audio-visual online undertakings” (¶21). The proceedings announced by Broadcasting Notices of Consultation [2024-137](#) and [-138](#) may enable BAF to set out its views in greater detail.
- c) Condition of service 3 – audio base payment recipients*
- 40 FRPC agrees with Makusham that “la musique est un véhicule ayant un impact important pour l’apprentissage, le maintien et la préservation des langues autochtones, en particulier auprès des jeunes” (page 2).
- 41 As proposed the CRTC’s order would give base-payment payors the discretion to allocate funding to songwriting camps, Canadian award shows and festivals exclusively featuring

Canadian and/or Indigenous artists and the production of sound recordings by Canadian and/or Indigenous artists. DiMA has argued (¶15) that “the CRTC should remove the requirement that Canadian events eligible for support from the funds ... feature exclusively Canadian and/or Indigenous artists. This requirement would not be met by any of the best-known events in the music sector and thus would be unduly restrictive.” FRPC recommends that the CRTC retain its original wording: Parliament’s clear intention in enacting the *Online Streaming Act* was not to maintain and reinforce current practices with respect to the music sector. It was to expand the access of Canadian and Indigenous audiences to audiences, and to give Canadian audiences the opportunity learn about and experience the performances of Canadian and Indigenous artists. The CRTC’s proposed order would advance the implementation of this objective – provided the order offers base-payment recipients certainty.

- 42 FRPC recommends that the Commission set the amount that online broadcasters are to remit to these three types of audio support. We have arbitrarily suggested that the two programming funds receive 80% of the funding that appears to be available (0.4% of 0.5%), leaving the remaining 20% of available funding (0.1% of 0.5%) to the BAF.

B. CRTC’s authority in this proceeding

- 43 Amazon says that the CRTC’s proposed order lies outside the legal authority of the Commission and that the CRTC may not use its order-making power to make regulations. At paragraph 10 it says that

(a) Per subsection 11.1(1), the Commission may make regulations respecting expenditures that apply 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;” and

(b) Per subsection 11.1(2), the Commission may only make orders respecting expenditures “to be made by a particular person.”

...

12. Sections 1 and 2 of the Proposed Order impose expenditure requirements on a class of undertakings for the purpose of supporting Canadian content and creators. Such expenditures must be made pursuant to section 11.1.

13. The Proposed Order makes clear that the expenditure requirements apply “to all operators

carrying on online undertakings who are registered with the Commission pursuant to the Online

Undertakings Registration Regulations,” subject to certain exceptions. The Proposed Order is

clearly applicable to a “class” of undertakings and not “a particular person.”

- 44 FRPC disagrees. We note at the outset that 2023-121 states that the Commission is proposing to make orders imposing conditions of service “on the particular operators of the online undertakings” described in the order. While not dispositive of the question

raised by Amazon, the CRTC appears to be emphasizing its position that its intention is to identify specific operators rather than a class of operator.

- 45 FRPC further submits that it is entirely within the CRTC’s power – should it wish to do so – to apply its order to a class of online undertaking.
- 46 By way of background FRPC notes Parliament introduced the concept of ‘broadcast class’ in the 1968 *Broadcasting Act*⁷ in reference to licences.⁸ The legislature empowered the CRTC to define classes of broadcasting licences and to make regulations that applied to all licensees or to all broadcasters of a class or classes: in 1985, for example, the Commission established “a new class of FM licence, namely an experimental F.M. licence”⁹ Parliament also granted the CRTC the power not to regulate broadcasters – but limited this exemption authority to the then-proliferating cable systems springing up across the nation (“broadcasting receiving undertakings”).
- 47 When Parliament amended the *Broadcasting Act* in 1991 it retained the concept of class with respect to licensing, and expanded the CRTC’s exemption authority from cable systems to all licensable undertakings: Table 2.

Table 2

1968 Broadcasting Act	1991 Broadcasting Act
Powers of the Commission	General Powers of Commission
16.(1) In furtherance of its objects the Commission, on the recommendation of the executive committee, may	9. (1) Licences, etc. Subject to this Part, the Commission may, in furtherance of its objects,
(a) prescribe classes of broadcasting licences;	(a) establish classes of licences;
(b) make regulations applicable to all persons holding broadcasting licences, or to all persons holding broadcasting licences of one or more classes,	(b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the lee
(i) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to paragraph (d) of [the <i>Broadcasting Policy for Canada</i>] (ii) respecting the character of advertising and the amount of time that may be devoted to advertising, ...	(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and (ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by

⁷ 16&17 Eliz. 2, c. 25.

⁸ At that time it was an offence to operate a broadcasting undertaking without a valid licence (section 29(3)).

⁹ *Amendment to the Radio (F.M.) Broadcasting Regulations: Prescription of a New Class of FM Licence - The Experimental Class*, [Public Notice CRTC 1985-66](#) (Ottawa, 26 March 1985).



1968 Broadcasting Act	1991 Broadcasting Act
Powers of the Commission	General Powers of Commission
	paragraphs 3(1)(l) and (m);
	...
	(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on <u>broadcasting undertakings of any class</u> specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).
17.(1) In furtherance of the objects of the Commission, the Executive Committee, after consultation with the part-time members in attendance at a meeting of the Commission, may ... (e) exempt persons carrying on <u>broadcasting receiving undertakings</u> of any class from the requirement that they hold broadcasting licences;	

[bold font, italics and underlining added]

48 The 1991 *Broadcasting Act* entered into force on 4 June 1991 and on 19 June 1991 the CRTC issued *New Broadcasting Act – Amendments to Classes of Licence*, [Public Notice CRTC 1991-63](#). Since then the Commission has periodically updated or amended its licence classes (see e.g. *Review of certain aspects of the regulation of cable undertakings*, [Public Notice CRTC 2000-164](#) (Ottawa, 7 December 2000), often exempting classes of licensee from some or all regulation.

49 Parliament retained the concept of class in relation to licensing in the 2023 *Broadcasting Act*, while stipulating that the CRTC may not establish classes of licence for online broadcasters: Table 3.

Table 3

1991 Broadcasting Act	2023 Broadcasting Act
General Powers of Commission	General Powers Marginal note: Licences, etc.
9. (1) Licences, etc. Subject to this Part, the Commission may, in furtherance of its objects,	9 (1) Subject to this Part, the Commission may, in furtherance of its objects,
(a) establish classes of licences;	(a) establish classes of licences other than for online undertakings;
....



1991 Broadcasting Act	2023 Broadcasting Act
(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).	(4) The Commission shall, by order, on the terms and conditions that it considers appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part, <i>of an order made under section 9.1 or of a regulation made under this Part</i> if the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).
2.(1) In this Act, ... “broadcasting undertaking” « entreprise de radiodiffusion » “broadcasting undertaking” includes a distribution undertaking, a programming undertaking and a network;	2(1) In this Act, ... broadcasting undertaking includes a distribution undertaking, an online undertaking, a programming undertaking and a network; (<i>entreprise de radiodiffusion</i>)

[bold font in original text; green shading and italics added]

- 50 In FRPC’s view a plain reading of section 9(1)(a) of the 2023 Act is that Parliament did not want the CRTC to establish classes of licensed online undertakings – and that it enabled the Commission to establish classes of online undertakings that are not licensed. Parliament confirmed the CRTC’s ability to make orders for classes of online undertaking in new subsection 9.1(2):¹⁰

An order made under this section [9.1] may be made applicable to all persons carrying on broadcasting undertakings, ***to all persons carrying on broadcasting undertakings of any class established by the Commission in the order*** or to a particular person carrying on a broadcasting undertaking.

[bold font and italics added]

- 51 FRPC therefore does not agree with Amazon and Spotify that the order proposed in 2024-121 is outside of the CRTC’s authority.

¹⁰ “New”, in the sense that Parliament in s. 9.1 expanded upon the CRTC’s 1991 power to make orders (see e.g. section 12 of the 1991 Act).

C. Purpose, timing and fairness of this proceeding

1. Purpose of this proceeding

- 52 Several parties explicitly or implicitly asked the Commission to use the 2024-121 proceeding to provide its interpretation of the April 2023 *Broadcasting Act*.
- 53 The Computer & Communications Industry Association asked the Commission to “clarify once and for all that social media services are not considered broadcasting undertakings for the purposes of payment obligations or broadcasting regulations (or funding of the regulator) to ensure such confusion is put to rest” (page 6).
- 54 FRPC does not support this request.
- 55 First, the most appropriate source of clarification about the scope of the CRTC’s authority regarding social-media services are the debates in Parliament and its resulting determinations. Parliament drafted and enacted new sections 4.1 and 4.2 – each referring to social-media services – without explicitly stating that these services are subject to the *Act*’s application (section 4.1) or the CRTC’s regulations (section 4.2): instead, Parliament referred to the programs uploaded by users of social-media services to online undertakings providing social-media services. Given the extensive criticism that these sections attracted before and after their enactment and the fact that Parliament nevertheless enacted the sections one must conclude that Parliament was satisfied with their wording (see *e.g.* [Canadian Cable Television Assn. v. Canada \(Copyright Board\)](#), [1993] 2 FCR 138, 1993 CanLII 2920 (FCA)). That said, the Federal Court of Appeal may offer interested parties understanding on this point when it considers *Google LLC v. Attorney General of Canada et al* (Court file number 24-A-15).
- 56 Second, while the CRTC’s role under section 5(1) of the *Act* is to implement rather than to clarify Parliament’s broadcasting policy, it is at least clear from Broadcasting Regulatory Policy CRTC 2023-139 that the Commission “has only just begun to explore the concept of social media and the role, if any, that social media platforms may play in the broadcasting system, should they engage in activities that are subject to the *Broadcasting Act*” (paragraph 169). The CRTC may be unable to offer any clarification about social-media platforms until its exploration is more advanced.
- 57 Finally, it appears from 2024-121 that the purpose of this proceeding is to ensure that the order as proposed by the Commission in 2024-121 accords with Parliament’s *Broadcasting policy for Canada*, meets the CRTC’s purposes for the order as stated in 2024-121, comports with the principles of statutory drafting in Canada and is within the CRTC’s authority under the *Broadcasting Act*. While FRPC considers that any authoritative clarification of the meaning of sections 4.1 and 4.2 of the *Broadcasting Act* would be welcome, it does not agree that the CRTC must provide it at this time.
- 58 The Digital Media Association (DiMA) also argued that the proposed order risked “negatively impacting the listeners the CRTC is mandated to support” (paragraph 5).

- 59 FRPC does not agree with this description of the CRTC's mandate. If the role of the CRTC were to support listeners or, more broadly, audiences, its role under the *Broadcasting Act* would be greatly circumscribed possibly to the point of merely ensuring that broadcasting services are available to Canadian audiences. The century-long history of Canadian broadcast legislation, the *Broadcasting Policy of Canada* set out in section 3 of the *Broadcasting Act* and the *Act's* regulatory policy all show that the CRTC's role extends much further: to – broadly speaking – implementing the *Policy* to ensure that Canadians have the opportunity to access the programming contemplated by Parliament's broadcasting policy.
- 60 Finally, parties including the CAB (¶¶6-8), Rogers (¶¶10, 15-16) and Québecor (¶3) urged the Commission to use the opportunity provided by the 2024-121 proceeding to deregulate.
- 61 In light of the significant amendments made by Parliament in April 2023 to the 1991 *Broadcasting Act* it is clear that the legislature did not in any way intend that the CRTC should modernize its regulatory framework for Canada's broadcasting system by dismantling it. The challenge confronting the CRTC in this specific proceeding is not to deregulate Canada's broadcasting system, but to determine how online broadcasters unaffiliated with licensed Canadian broadcasters can best support the financial underpinning of Canadian program production.

2. Timing of the modernization proceedings

- 62 FRPC shares the position expressed by a number of parties in this proceeding about the timing of the CRTC's consultations as it makes efforts to implement the *Online Streaming Act*.
- 63 The sequence of consultations that the CRTC has either announced or offered as part of its 'modernization' process have in FRPC's respectful submission impaired rather than facilitated informed participation.
- 64 For instance, given that a number of non-Canadian broadcasters could reasonably be expected to participate in CRTC proceedings for the first time, would it not have been helpful to begin the CRTC's modernization process by updating its 2010 *Rules of Practice and Procedure* thereby enabling all parties to continue with other CRTC consultations with a more equivalent level of understanding? FRPC also notes that parties such as ITI raised concerns in this proceeding about the degree to which the CRTC's 2024-121 procedures were consistent with the *Canada-United States-Mexico Agreement*, in particular Article 28.9(4) with respect to deadlines:

4. If a Party expects a draft regulation to have a significant impact on trade, the Party should normally provide a time period to submit written comments and other input on the items published in accordance with paragraph 1 that is:
 - (a) not less than 60 days from the date the items identified in paragraph 1 are published; or

(b) a longer time period as is appropriate due to the nature and complexity of the regulation, in order to provide interested persons adequate opportunity to understand how the regulation may affect their interests and to develop informed responses.

5. With respect to draft regulations not covered under paragraph 4, a Party shall endeavor, under normal circumstances, to provide a time period to submit written comments and other input on the information published in accordance with paragraph 1 that is not less than four weeks from the date the items identified in paragraph 1 are published.

6. In addition, the Party shall consider reasonable requests to extend the comment time period under paragraph 4 or 5 to submit written comments or other input on a draft regulation.

[yellow highlighting added]

65 Reviewing and updating the CRTC’s procedural regulations before launching the modernization plan in May 2023 would, in FRPC’s opinion, have been very useful.

66 Similarly, given the CRTC’s oft-stated strong desire to encourage public participation in all of its proceedings, would it not have been helpful to determine the best ways of supporting support public-interest participation in the Commission’s proceedings?

67 Also, given the complexities that have grown over time in the conceptualization of audiovisual and audio content, particularly with respect to accessibility, would it not have been helpful to ensure – by holding proceedings related to definitions that specifically address accessibility – that all interested parties understood the legal requirements for accessibility which are set out not just in the 2023 *Broadcasting Act* but also in the [Accessible Canada Act](#)?

68 As for the core of the proceeding now undertaking – 2024-121 through the route of BNoC 2023-138 – it remains unclear why the Commission decided to launch a vital proceeding to determine financial support needed to produce new (‘first-run’) Canadian programming before holding proceedings that would clarify for all parties the CRTC’s conceptualization of what Canadian programming ‘is’ in the 21st century. Table 4, below, sets out what is known about 17 proceedings as announced by the Commission to date in 2024-121, other notices of consultation and its current *Modernization Plan*, and also offers another “what-if” way of scheduling the same proceedings to help explain Canada’s broadcasting system to non-Canadians and to update the CRTC’s regulatory approach to key issues.

Table 4

Proceeding mentioned or adumbrated by CRTC, 2023-2026	Current timing	What-if schedule
1. Registration of online streaming services, BNoC 2023-139	Jun 2023	CRTC Rules of Practice and Procedure
2. Exemptions and transition to conditions of service, BNoC 2023-140	Jun/Jul 2023	Public-interest participation
3. Funding Canadian and Indigenous content,	Jul 2023	Registration of online streaming services



Proceeding mentioned or adumbrated by CRTC, 2023-2026	Current timing	What-if schedule
BNoC 2023-138		
4. Proposed order to implement, BRP CRTC 2024-121 ; 2023-138	Jun/Jul 2024	Canadian and Indigenous content definitions
5. Proposed cost recovery regulations (BNoC 2024-111)	Jun 2024	Inclusion and Diversity
6. Indigenous broadcasting policy (BNoC 2024-67)	Jul 2024	Defining Canadian audiovisual content & Closed captioning
7. Closed captioning (BNoC 2024-137)	July 2024	Defining Canadian audio content & Described video and audio descriptions
8. Described video and audio descriptions (BNoC 2024-138)	Sep 2024	Consultation on news programming, Temporary commercial radio news fund & Independent Local News Fund
9. Temporary commercial radio news fund (BRP CRTC 2024-121)	Aug 2024?	Funding Canadian and Indigenous content
10. Public-interest participation (Regulatory Plan)	Fall 2024	Indigenous Music Office
11. Independent Local News Fund (BRP CRTC 2024-121 , para. 119)	Win 2024-2025	Structural relationships
12. Structural relationships (Regulatory Plan)	Win 2024-2025	Exemptions and transition to conditions of service
13. Consultation on News programming (Regulatory Plan)	Spring 2025	Proposed order to implement
14. Indigenous Music Office (2024-121 , para. 179)	Jun 2025	
15. Canadian and Indigenous content definitions (Regulatory Plan)	Spr 2025	
16. Defining Canadian audiovisual content (Regulatory Plan)	Spr 2025	
17. Defining Canadian audio content (Regulatory Plan)	Spr 2025	
18. Inclusion and Diversity (Regulatory Plan)	Win 2025-2026	
19. CRTC Rules of Practice and Procedure (Regulatory Plan)	Spr 2026	

D. *Issues related to fairness in this proceeding*

69 FRPC has raised concerns about procedural fairness in the 2023-138 proceeding with respect to timing and duplicated deadlines, and in the 2024-121 proceeding with respect to standing.

70 The “Broadcasting Regulatory Policy” that the CRTC issued on 4 June 2024 included a call for comments on a draft order appended to the regulatory policy. The deadline for comments was 14 June 2024.

- 71 Two interveners mentioned a “Stakeholder Information Session” and an “information session” in connection with 2024-121 which was held by CRTC staff for ‘stakeholders’ on 11 June 2024 (inSync media, page 1; BAF, paragraph 3) – after the CRTC called for comments on the draft order and three days before the comment deadline. After hearing rumours about an ‘information session’ planned to be held by Commission staff, FRPC on 10 June 2024 emailed a senior CRTC broadcasting staffperson to ask to attend the session; FRPC received no reply and did not attend the information session.
- 72 As of 1 July 2024 the CRTC’s search engine did not disclose any information about this information session, including a published letter of invitation, the list of stakeholders invited to attend, the names of all participants (CRTC staff, stakeholders or anyone else in attendance whether in person or online) or written minutes of the meeting. It has been said that the CRTC staff at the meeting clarified for those attending that
- “the Decision will not be changed”
 - “the level and allotment of contributions will be reviewed once initial base contributions have been completed for the 2024-25 broadcast year”
 - “the review will include analysis of whether the level and allotment of contributions outlined in the proposed orders are meeting the policy objectives of the Broadcasting Act and the Online Streaming Act” and that
 - “they” – presumably the CRTC staff, as only the Commission can speak for the Commission – “would be leaving it to the discretion of streamers to direct mandated contributions to ‘any or a combination of’ the three funds”
- 73 As it happens, the CRTC’s 2010 *Rules* do not address *ex parte* or private meetings between members of the Commission, the staff of the Commission and parties in proceedings that are in progress. FRPC notes, however, that the CRTC in April 2018 published on its website a “CRTC Code of Conduct” on its website which was last modified on 20 November 2012. This CRTC Code of Conduct is no longer accessible through the CRTC’s search engine, leaving it unclear whether the Commission has rescinded the Code.
- 74 In April 2018 the CRTC Code of Conduct stated that,

Effective September 6, 2012, the CRTC Code of Conduct applies to all individuals employed by the CRTC, including the Chairperson. The Commissioners are governed by their own values and ethics instruments, which are referred to below.

- 75 The Code of Conduct addressed meetings such as the Stakeholder Information Session noted above:

Meetings



Certain types of meetings can present a risk to the integrity of the CRTC's processes. If we have any questions about whether or not a proposed meeting could create a perception of bias on the part of the Commission, we consult our supervisor.

Because of the confidentiality of CRTC decision-making and the importance of not only being, but also being seen, to be fair and impartial at meetings with parties before the CRTC, we may not discuss matters before the Commission. To make it clear to all participants that such matters are not to be discussed, we prepare an agenda for meetings with parties and intervene during the meeting if the conversation appears to be moving to a topic before the Commission. Information from such meetings that may be relevant to any future proceeding must be filed on the record of that proceeding in order to be considered by the Commission. Otherwise, other parties to the proceeding would not be aware of or have the opportunity to comment on the information.

[bold highlighting added]

- 76 It is, however, unclear whether the CRTC's Code of Conduct for its staff and the Code's provisions remains in effect.

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