



1 August 2024

Filed online

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: Notice of hearing, [Broadcasting Notice of Consultation CRTC 2024-148](#) (Ottawa, 2 July 2024)

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

The Forum's intervention regarding the transfer of ownership of 35 originating radio stations from Bell Media to four broadcasters is attached. FRPC does not oppose these applications provided two aspects of the transactions are addressed in the CRTC's decision(s), having to do with weekly hours of first-run local news and the level of full-time or equivalent employment at each station.

We look forward to reviewing the applicants' replies (if any). Should the CRTC decide to hold an appearing public hearing in this matter the Forum respectfully asks to participate in that process.

Monica Auer, M.A., LL.M.
Executive Director
Forum for Research and Policy in Communications (FRPC)
Ottawa, Ontario

execdir@frpc.net

cc:

Douglas E. Kirk
President
Durham Radio Inc.

doug.kirk@dri.fm

Andrew Dickson
Secretary/Treasurer
My Broadcasting Corporation

andrew@mbcmedia.ca

Sylvain Chamberland
Président et chef de la direction
Arsenal Médias Inc.

MLorrain Conseils inc.
Michel Lorrain
Président

schamberland@arsenalmedia.com
michellorrrain15@gmail.com
michellorrrain15@gmail.com

Bryan Edwards
President
Vista Radio

regulatory@vistaradio.ca



Broadcasting Notice of Consultation CRTC 2024-148

Notice of hearing

Items 1 through 4

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

Monica L. Auer
Executive Director

1 August 2024

Contents

Executive Summary	1
I. Introduction	1
A. BNoC 2024-148 does not explain CRTC's choice of non-appearing hearing process	1
B. CRTC's growing reliance on non-appearing hearings	2
C. Impact of non-appearing hearing process on right to be informed of broadcast applications	5
II. Insufficient information about programming and employment	10
A. Will the applicants' plans strengthen local programming?	12
B. Will approval of these applications increase broadcast employment?	14
III. Tangible benefit proposals ignore Parliament's intent	16
IV. Conclusion and recommendation	20

Executive Summary

- ES 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013. It undertakes research, legal analysis and quantitative research about communications, including broadcasting. FRPC believes that the public interest is served when it meets Parliament's objectives for the broadcasting system, as set out in section 3 of the 1991 Broadcasting Act.
- ES 2 The lack of clear, objective and empirical evidence in this proceeding makes it impossible to understand and comment on the impact of approval of the four applications to acquire 35 Bell radio stations in BNoC 2024-148.
- ES 3 That said, FRPC does not oppose approval of the applications provided the CRTC sets out in its licensing decision(s) the relevant empirical evidence demonstrating that first-run (original) local programming hours will be maintained or increased, that employment at the 35 radio stations and at the applicants' other stations will not decrease, and that the applicants will increase the number of journalists providing local-community news coverage.
- ES 4 FRPC's recommendations in this proceeding are that
- a. The Commission should in the decisions from this proceeding – and in similar proceedings going forward – set out the empirical evidence relating to these objectives.
 - b. The CRTC should, until it amends its *Rules of Practice and Procedure* in Spring 2026, require the undertakings that are the subject of an ownership transaction to broadcast notifications of its appearing and non-appearing licensing hearings;
 - c. CRTC should state in the decision(s) flowing from BNoC 2024-148 whether the applicants adhered to the *Rules'* requirements for notification;
 - d. The CRTC should initiate a proceeding in summer 2025 to incorporate the requirements added by Parliament in April 2023 to the 1991 *Broadcasting Act* into its licensing application forms so as to ensure that these forms remain relevant and appropriate;
 - e. The CRTC should obtain more information from the applicants to enable it to determine whether they will increase, maintain or reduce staffing at the stations (or their other stations) if the CRTC approves the applications;
 - f. The CRTC must set out in its decision(s) about these four applications clear and comparable quantitative information about the impact that approval of these applications would have, including programming and staffing information for the 2022-23 broadcast year and for the first year of operation of the applicants; and
 - g. The CRTC should reallocate 10% of the tangible benefits proposed by the applicants to the BPF-FPR, to reduce its ongoing financial instability.

I. Introduction

- 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 telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.
- 2 The Forum is intervening with respect to items 1 through 4 of [Broadcasting Notice of Consultation CRTC 2024-148](#) (Ottawa, 2 July 2024). The items relate to applications to transfer control of 35 originating radio stations from Bell Media Inc. (Bell Media) to four broadcasters: Arsenal Media Inc., Durham Radio Inc., My Broadcasting Corporation and Vista Radio Ltd. (Arsenal, Durham, MBC and Vista, respectively). The radio stations are located in 24 communities in three different provinces, with 21 (60%) located in British Columbia.
- 3 Each applicant is asking the CRTC for new licences to operate these undertakings.
- 4 Briefly, FRPC supports the approval of these applications on condition that the CRTC obtain from Bell Media and each of the four applicants the evidence the CRTC needs to meet Parliament's requirements in the current *Broadcasting Act*.
- A. ***BNoC 2024-148 does not explain CRTC's choice of non-appearing hearing process***
- 5 As an initial comment FRPC notes that BNoC 2024-148 announces a public hearing. Parliament mandated public hearings when the CRTC is considering whether to issue licences:

18 (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with

(a) the issue of a licence, other than a licence to carry on a temporary network operation;

....¹
- 6 In reality, BNoC 2024-148 announces a 'non-appearing' public hearing: "The Commission intends to consider the ... applications, subject to interventions, without the appearance of the parties"² The *Broadcasting Act* does not define either "public hearing" or 'non-appearing public hearing'.

¹ [Broadcasting Act](#), (S.C. 1991, c. 11, as am. to 2023-06-22), s. 18(1)(a).

² *Notice of hearing*, [Broadcasting Notice of Consultation CRTC 2024-148](#) (Ottawa, 2 July 2024).

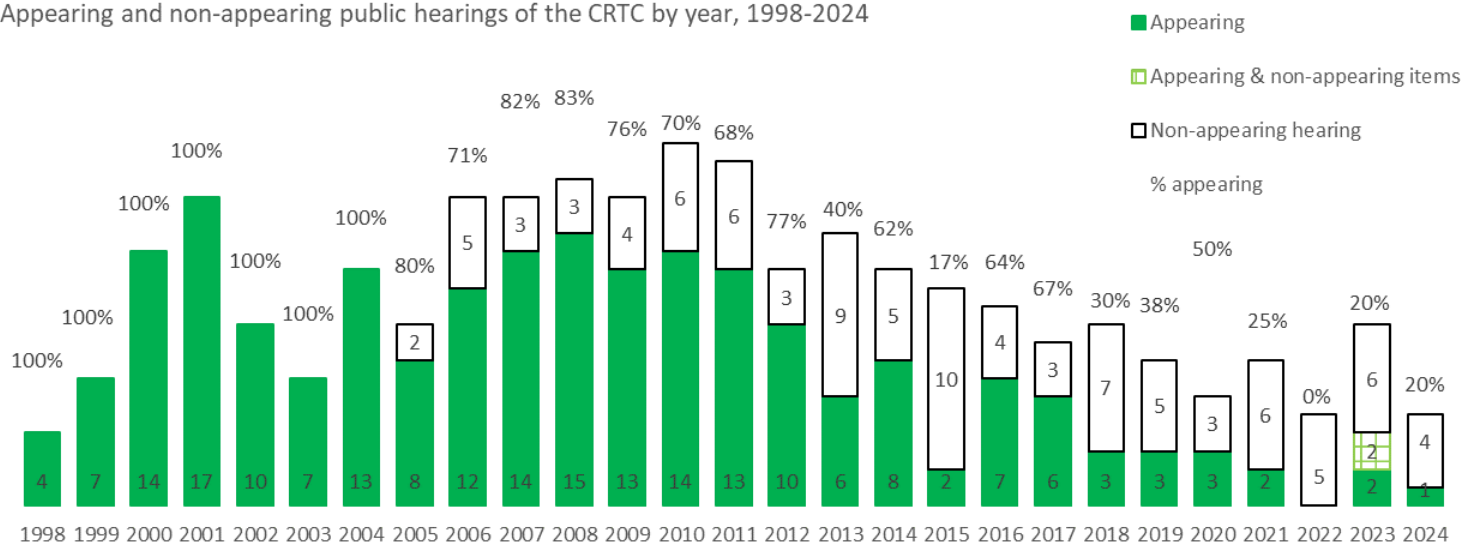
In *CIHX-FM Saskatoon – Technical changes*, [Broadcasting Decision CRTC 2024-9](#) (Ottawa, 12 January 2024), the CRTC wrote at paragraph 27 that it had approved an application to operate CIHX-FM "as part of a non-appearing hearing, in which International Harvesters was the only applicant for a new radio station in Saskatoon."

B. CRTC's growing reliance on non-appearing hearings

- 7 The CRTC has been holding non-appearing hearings since at least the 1980s. Earlier this year the CRTC appeared to indicate that a non-appearing hearing was appropriate because the applicant was the only one that applied to operate a new radio station.³
- 8 In fact, the number of public hearings where members of the public may appear to address and answer the questions of the Commissioners on CRTC hearing panels has been declining since 2001: Figure 1.⁴

Figure 1

Appearing and non-appearing public hearings of the CRTC by year, 1998-2024



Source: CRTC public hearing transcripts and notices
(includes broadcasting and telecom)

- 9 The trend away from appearing to non-appearing hearings is somewhat easier to discern when the numbers of hearings are grouped in multi-year periods, as in Figure 2.

³ See *French-language community FM radio station in Joliette*, [Broadcasting Decision CRTC 2024-113](#) (Ottawa, 27 May 2024), para. 11.

See also e.g. *Extension of Services to Small Communities in Saskatchewan and Alberta*, Decision CRTC 88-221 to 88-235 (Ottawa, 31 March 1988):

...
Several of the applications [for licences to carry on broadcasting receiving and/or transmitting undertakings] submitted in response to the Commission's call were non-competitive; a number of these were considered as non-appearing items at the Saskatoon hearing and are the subject of separate decisions.

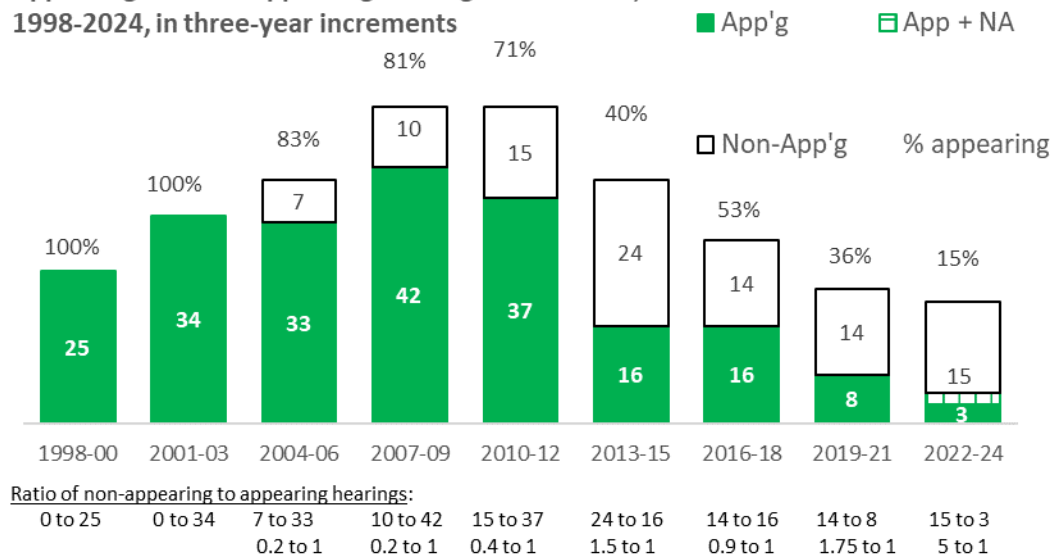
...
See also *OVERVIEW: LOCAL TELEVISION FOR THE 1990s*, [Public Notice CRTC 1989-27](#) (Ottawa, 6 April 1989) in which the CRTC referred to non-appearing applications:

In total, 53 applications from originating television stations were considered as appearing items and 23 other applications were considered as non-appearing. As a result of these hearings, the Commission was able to evaluate the performance of a wide cross-section of the television industry throughout the country.

⁴ FRPC reviewed the public-hearing transcripts and public consultation notices issued by the CRTC from 1998 to the present to obtain these data.

Figure 2

**Appearing and non-appearing hearings of the CRTC,
1998-2024, in three-year increments**



Source: CRTC public hearing transcripts and notices
(includes broadcasting and telecom)

10 Fourteen years ago the CRTC explained that the level of complexity in ownership transactions and applicants' willingness to abide by existing policies determine whether the CRTC uses appearing or non-appearing hearing processes:

14. The Act requires that all applications proposing new services (issuance of licences), excluding requests for a temporary network authority, be scheduled at public hearings. This process also applies to applications for authority to acquire the assets of a broadcasting undertaking, which require the issuance of a new licence. As is the case for public notice items, the level of complexity varies significantly and dictates whether an application will be scheduled as a non-appearing item, i.e. subject to a paper proceeding only, or as an appearing item at a public hearing with an oral phase.

15. Most applications proposing new services conform to existing policies and do not raise concerns. These are usually scheduled as non-appearing items at a public hearing.

16. More complex and controversial applications are often scheduled as appearing items at public hearings to allow various parties to participate in the oral phase of the hearing. This is the case for major ownership transactions, as well as for applications received in response to a call for applications and that are competing for a radio or television service in a given area. Occasionally, licence renewal applications that raise serious issues of non compliance or the licence renewal of several undertakings owned by major players are scheduled for appearance at a public hearing.

(A guide to the CRTC processes for broadcasting applications and policy reviews, Broadcasting Circular CRTC 2007-4, (Ottawa, 7 June 2007), "What criteria will determine how an application will be processed?", "c. Public hearing route", paragraphs 14-16)

- 11 Yet – and without in any way doubting the intentions of broadcast-asset buyers now or in the past – the lack of objective or empirical evidence published by the CRTC about the degree to which changes in ownership affected the implementation of the section 3 broadcasting policy for Canada means that there is no way of knowing whether the competitive bidding process in a purchase-and-sale context has implemented Parliament’s broadcasting policy for Canada.⁵
- 12 Similarly, in this proceeding neither Parliament nor the communities to be served by the applicants can know whether the needs and interests of Parliament and the communities would best served by the applicants whose offers were accepted by Bell. This is because relevant evidence – such as the level of local news provided by the stations whose licences Bell is returning – is missing from this proceeding’s record. Without comparative data describing the 35 radio stations’ current programming and employment levels and the applicants’ plans in the same areas, interveners cannot reasonably be expected to comment on an informed basis on these applications.
- 13 The Forum’s concern in the BNoC 2024-148 proceeding is that unlike licensing matters that were not competitive, in the sense that only a single party applied for a broadcasting licence in a given location, at least some of the licences now being sought in the BNoC 2024-148 proceeding involve radio-undertaking assets for which there was a competitive bidding process:

This transaction is poised to benefit all parties involved including Canadian radio listeners. Following the recent corporate restructuring, Bell Media has expressed its desire to divest itself of the Stations. A competitive bidding process was held. The Applicant provided the best offer for these stations.⁶

- 14 The difference is that competition between parties for a limited number of broadcast programming licences may be more likely to ensure that applicants strive their utmost to implement Parliament’s broadcasting policy for Canada as set out in the *Broadcasting Act*, than if applicants simply agree to meet the CRTC’s existing policies. To put this issue another way, a competitive bidding process helps those selling goods and/or services obtain the highest prices possible from interested and willing buyers. It is less clear that a competitive bidding process ensures the best possible outcome for communities: it is unknown, for example, whether any of the parties that submitted competing offers to Bell also provided Bell with their plans for meeting the needs and interests of the communities now served by the Bell stations, or for meeting Parliament’s broadcasting policy.

⁵ The CRTC abandoned the idea of inviting competing applicants in the context of ownership transactions ten years after the Commission was established: *Proposed CRTC Procedures and Practices Relating to Broadcasting Matters*, Public Announcement (Ottawa, 25 July 1978)

...the Commission has given serious consideration to the possibility of implementing a competitive transfer system whereby if control of a licensed undertaking were to be transferred, the situation would be treated as if the existing licence was being surrendered and a new one in its place being applied for, with interested parties entitled to submit competing applications. Such a procedure has been strongly advocated by a number of critics and intervenors. The Commission finds, however, that while there is much merit in theory in such a process, there are also such formidable obstacles to its implementation as to render it impracticable.

...

⁶ Durham Radio, 17 April 2024 answers to 8 April 2024 questions by CRTC, at page 2 (DM#4630097).

- 15 FRPC submits that the CRTC's decisions about the applications in BNoC 2024-148 should set out both the Commission's reasons for deciding that an appearing public hearing was unnecessary to ensure the best possible outcome both for the communities to be served by the new licensees (assuming the CRTC grants these applications) and for the *Broadcasting Act's* broadcasting policy.
- 16 What is clear, however, is that if Parliament had thought that competitive bidding was the best way to ensure the policy's implementation, it would not have decided to establish and maintain a single independent, quasi-judicial regulatory authority to ensure the broadcasting policy's implementation through its licensing decisions.
- 17 Unfortunately, the CRTC has not published any empirical evidence, especially in the case of radio,⁷ to enable objective analysis of whether its licensing policy for radio stations – whether in general, in ownership groups, in individual communities or one by one – has met the needs of the communities the stations were licensed to serve and also the objectives Parliament's broadcasting policy. Only this analysis would enable interveners to assess whether gaps exist, whether the applicants will fill those gaps (so to speak) or whether the applicants will go further than Bell in meeting Parliament's broadcast policy objectives.
- 18 FRPC submits that as Parliament has now adopted new broadcasting legislation that provides greater clarity about its objectives for the broadcasting policy of Canada, **the Commission should in the decisions from this proceeding – and in similar proceedings going forward – set out the empirical evidence relating to these objectives.**
- 19 This evidence should include data detailing the hours of programming provided by Bell in the most recently ended broadcast year and the commitments to such programming that the applicants have made. To be clear, FRPC believes that the CRTC should publish this information each year, for each community served by licensed broadcasting undertakings, but at a minimum submits that this information should be published in the licensing decisions flowing from BNoC 2024-148, if any. Only such published objective evidence will enable Parliament and other interested parties to determine whether Parliament's broadcasting policy is being more fully implemented over time.

C. *Impact of non-appearing hearing process on right to be informed of broadcast applications*

- 20 FRPC also notes that the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* state that when the CRTC issues notices of consultation about applications, applicants must post information about the notice on their website until the intervention deadline. The Commission's *Rules* do not distinguish between appearing and non-appearing CRTC hearings. Rather, section 35(1) of the *Rules* provides that in

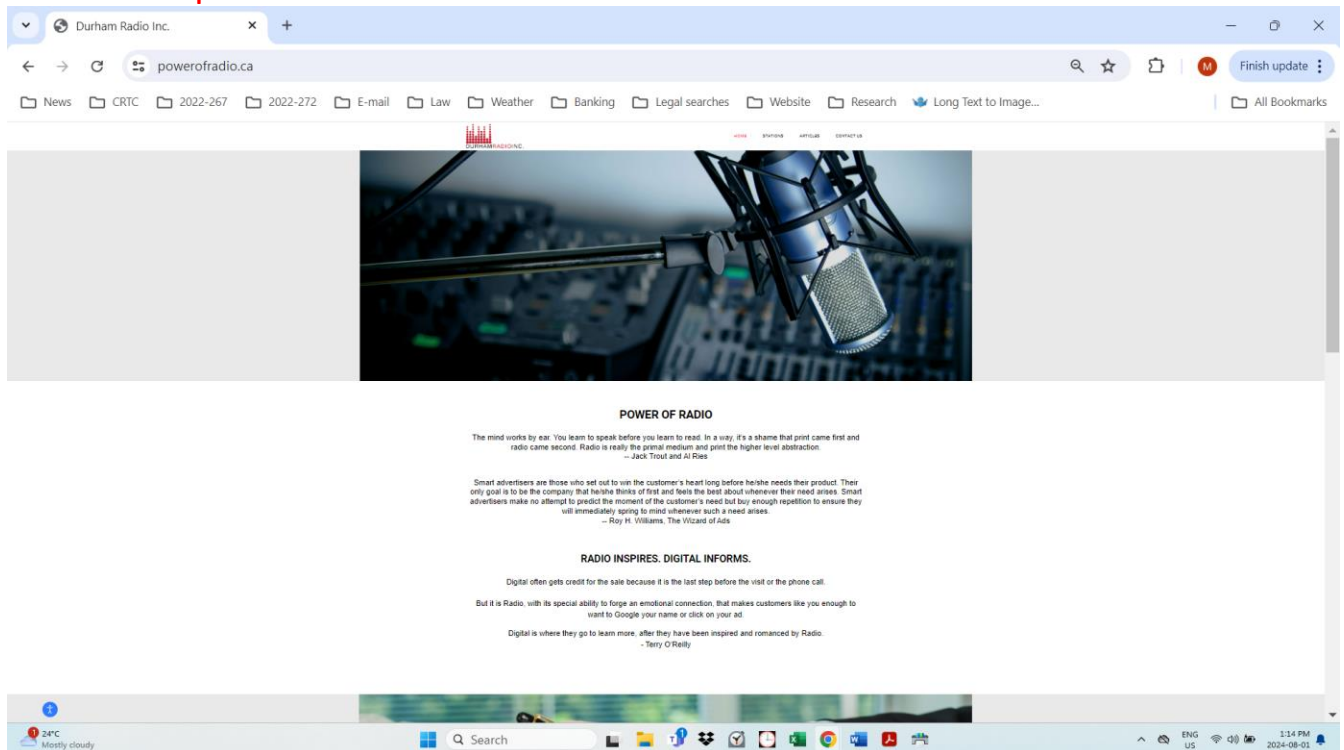
... a public hearing in respect of an application, the applicant must

⁷ The CRTC does not post the logs of radio programming services, making it impossible for members of the public to evaluate radio stations' progress in implementation section 3 and requiring them to rely on the Commission for such evidence.

- (a) no later than five days after the day on which the Commission posts the notice of consultation on its website, **post the notice or an electronic link to it on a page of their own website that is accessible from the homepage of the website and keep it posted until the deadline for intervening in the proceeding;** and
- (b) **give notice of the notice of consultation in any manner that the Commission directs, including through broadcast over the applicant's facilities or by service to any person that the Commission directs,** which notice must set out
- (i) the nature of the matters to be considered,
 - (ii) the deadline for intervening in the proceeding, and
 - (iii) the date and time of the commencement of the hearing.

- 21 Insofar as the broadcast notifications in section 35(1)(b) are concerned, the *CRTC Rules* do not provide expressly for situations where an applicant is acquiring a broadcasting undertaking and may not have their own facilities to notify the residents in communities that may be affected by changes in ownership, of the CRTC's public hearing.
- 22 BNoC 2024-148 itself does not clearly state that the applicants in items 1 through 4 must broadcast or post any notifications online.
- 23 FRPC visited all four applicants' websites the day of the intervention deadline (1 August 2024) in the early afternoon (ET). It is unclear whether we reached the applicants' home pages (as these are not necessarily identified as such). The main website page of Durham Radio (Figure 3) and its three other main pages⁸ did not display text regarding BNoC 2024-148.

Figure 3 Durham Radio – powerofradio.ca



⁸ "Stations", "Articles" and "Contact Us".

- 24 Neither the homepage nor the menu sidebar of My Broadcasting Corporation (Figure 4 and Figure 5) included references to BNoC 2024-148.

Figure 4 MBC – mybroadcastincorp.com

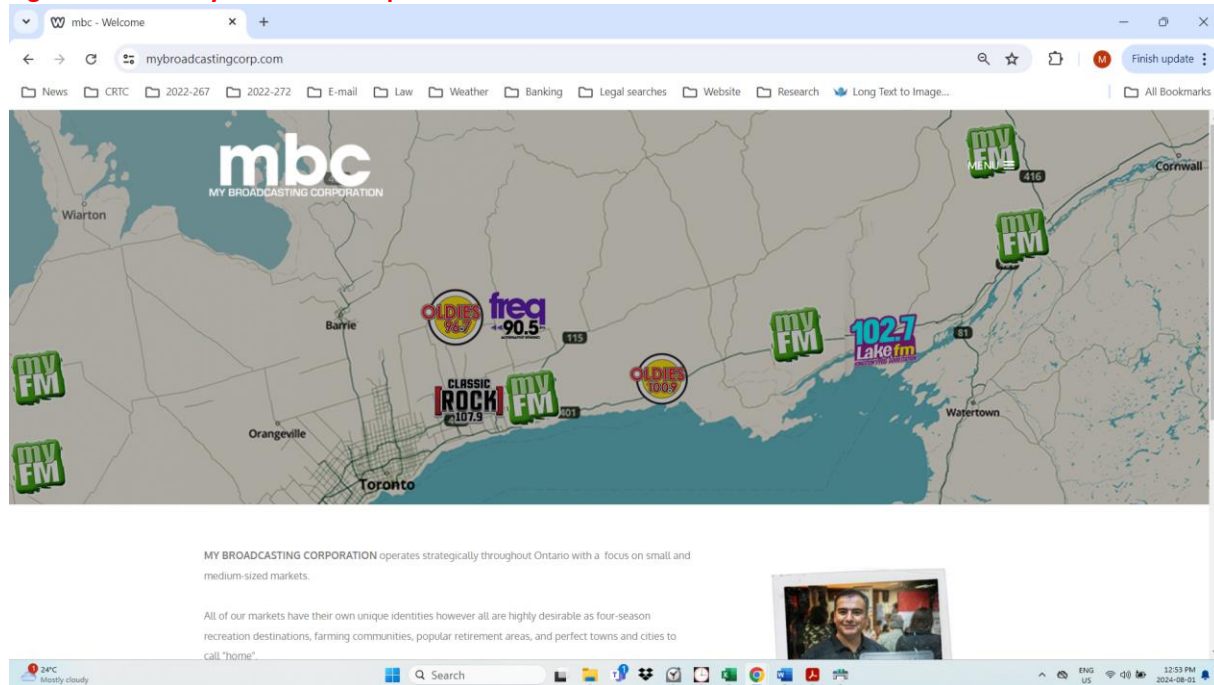
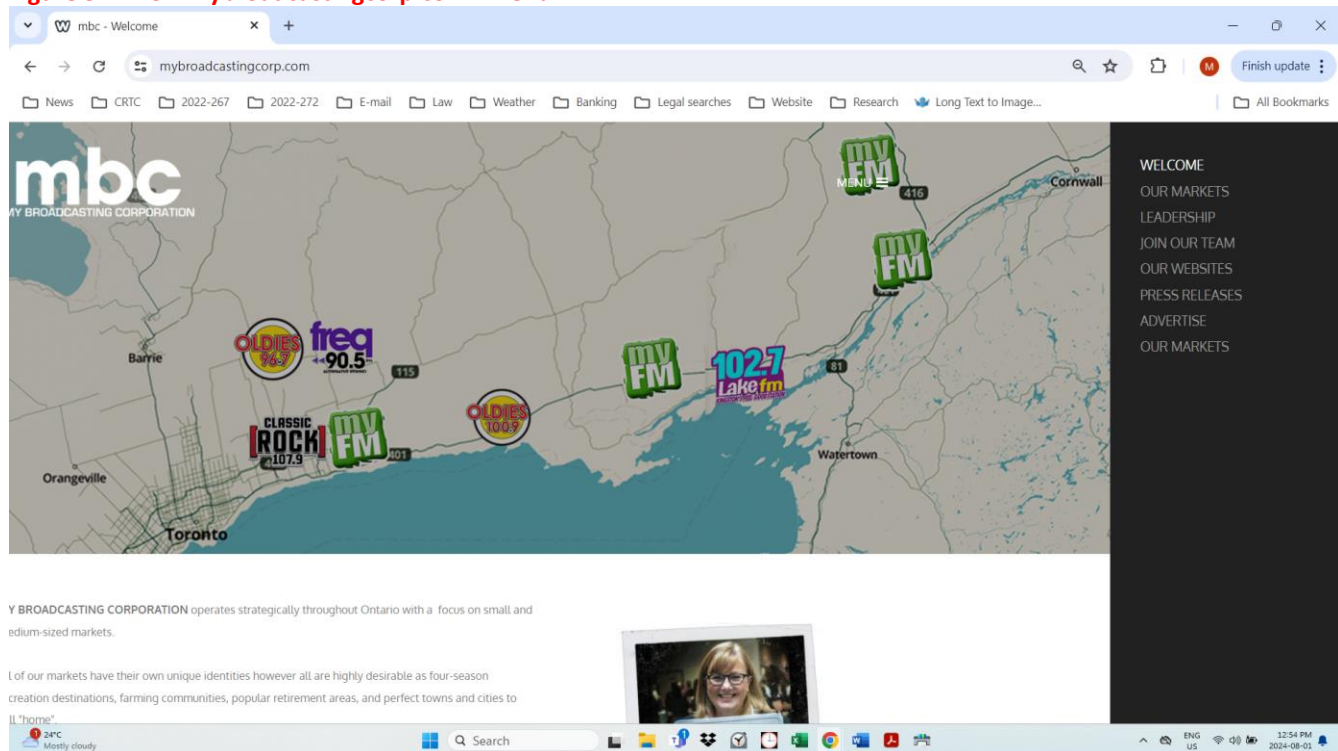


Figure 5 MBC – mybroadcastingcorp.com - menu



- 25 The homepage and the regulatory page of Vista Radio (Figure 6 and Figure 7) did not include text related to BNoC 2024-148.

Figure 6 Vista Radio – “vistaradio.ca”

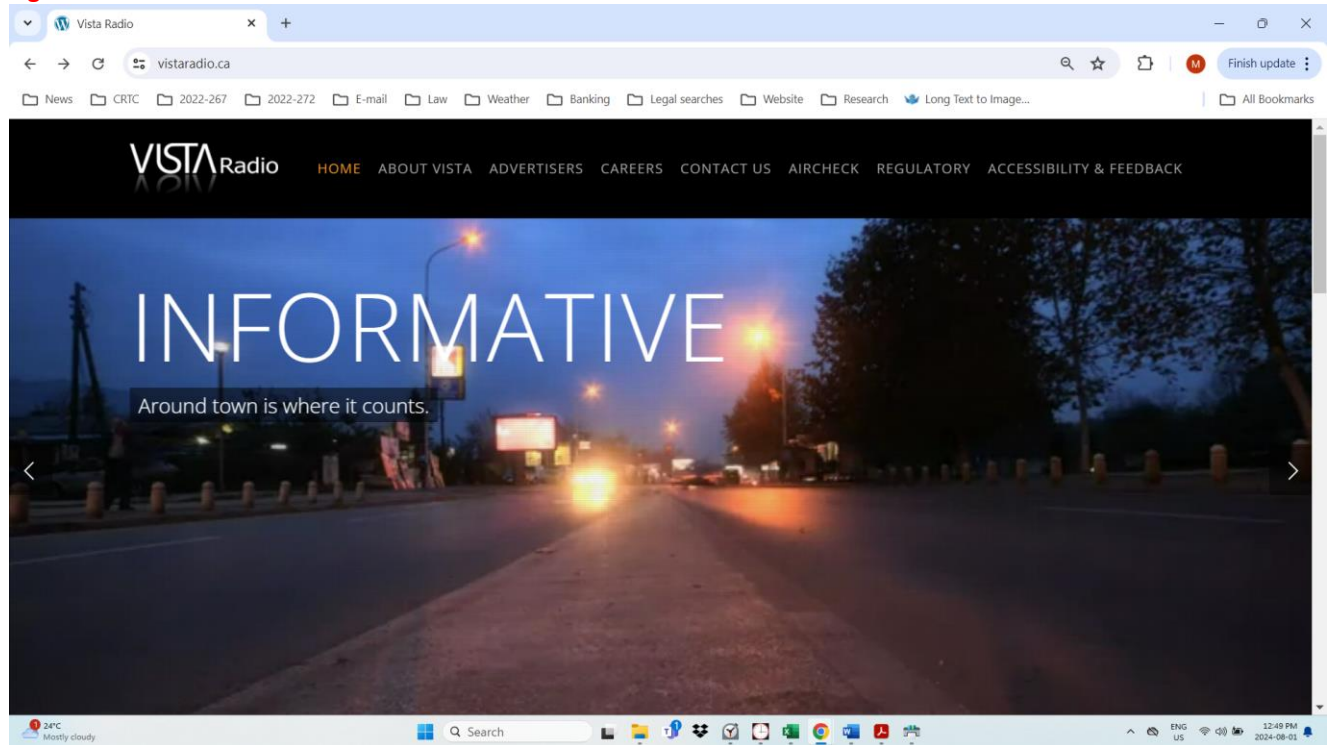
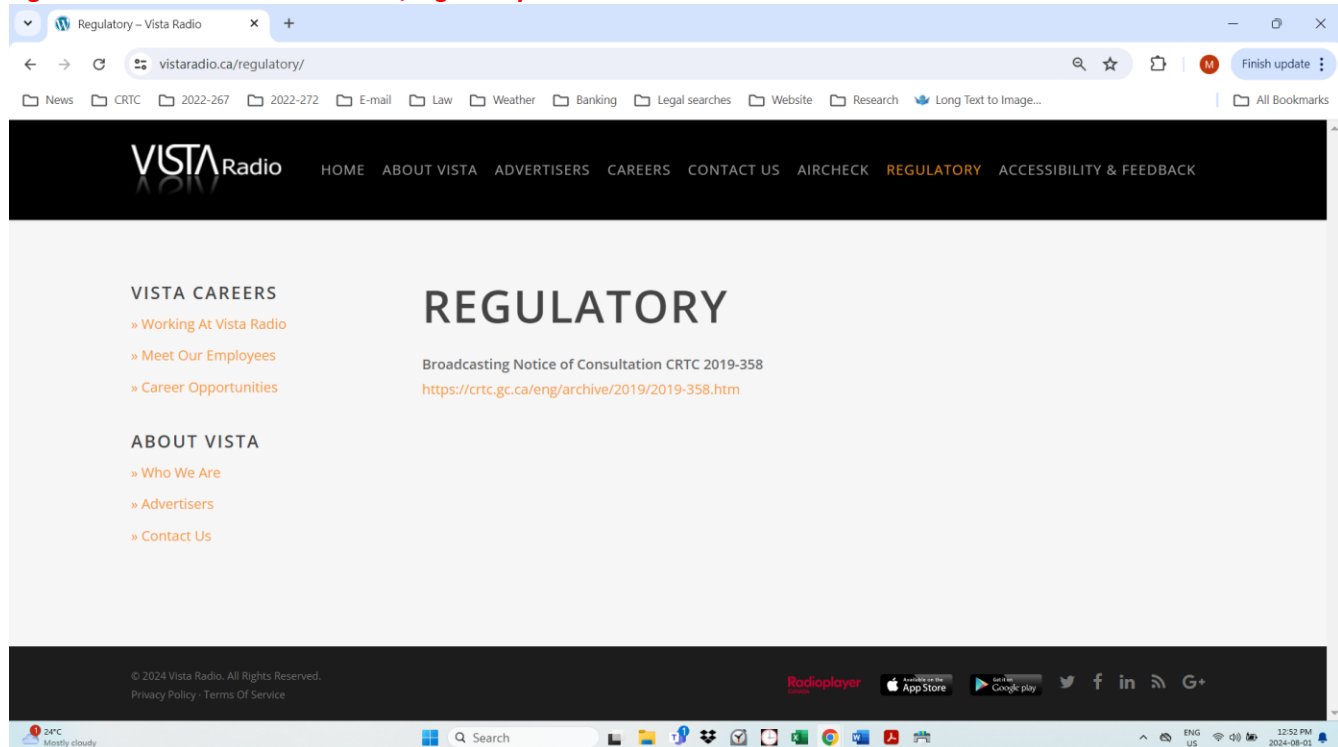


Figure 7 Vista Radio – vistaradio.ca/regulatory



- 26 Only Arsenal included the required text on the second screen of its homepage: Figure 8 and Figure 9.

Figure 8 Arsenal– arsenalmedia.com – screen 1

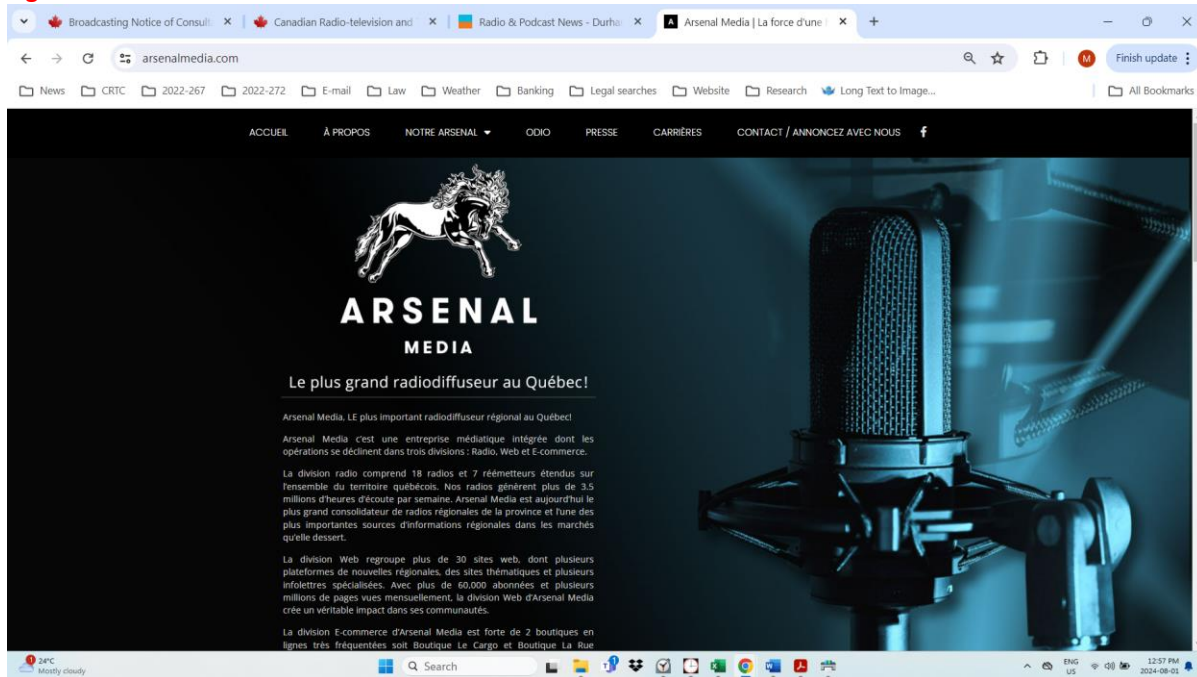
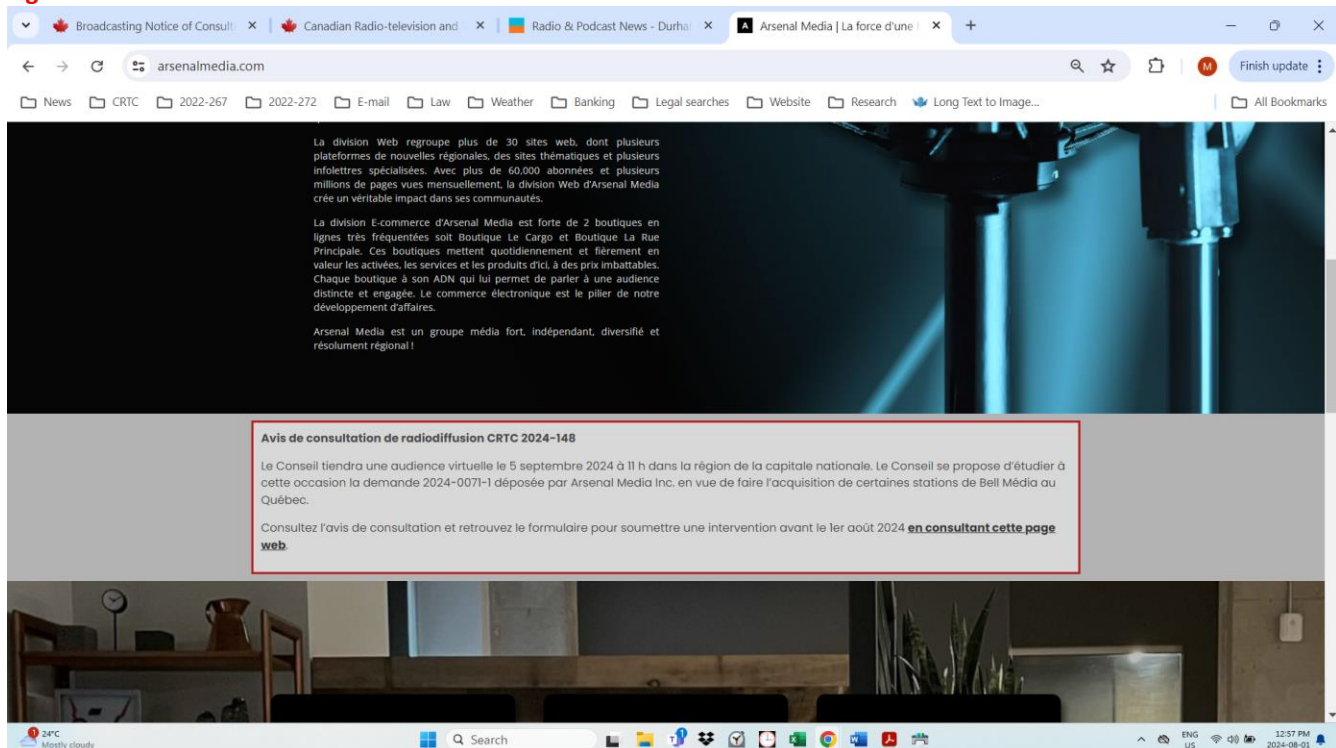


Figure 9 Arsenal Media – arsenalmedia.com – screen 2



- 27 The point FRPC is making is that the CRTC's decision to hold non-appearing public hearings regarding ownership transactions has implications for the degree to which the communities

served by the stations whose ownership may change are informed and therefore aware that they may participate by intervening in proceedings such as these.

- 28 Given the gap in the current *CRTC Rules* – in which an applicant without broadcasting facilities in a community affected by an ownership transaction may be unable to broadcast notifications⁹ of a CRTC non-appearing hearing – **the CRTC should, until it amends its *Rules* in Spring 2026, require the undertakings that are the subject of an ownership transaction to broadcast these notifications.**
- 29 The CRTC should also state in the decision(s) flowing from BNoC 2024-148 whether the applicants adhered to the *Rules*' requirements for notification, to remind the applicants and other broadcasters of these requirements.
- 30 In the remaining pages of this intervention FRPC sets out three concerns common to all four applications in this proceeding. The Forum is concerned first, as already noted above, that BNoC 2024-148's public record provides insufficient before-and-after objective evidence to show how the programming of the 35 stations whose licences the applicants seek will be affected by the change in ownership. Second, FRPC is concerned that the applicants have not provided clear proposals and data regarding employment at the 35 stations. Third, the Forum notes that none of the applicants have included any proposals to allocate funding to the Broadcasting Participation Fund whose long-standing financial precarity has only been addressed temporarily by 2-years of funding from the Department of Canadian Heritage.¹⁰

II. Insufficient information about programming and employment

- 31 In April 2023 Parliament requirements to the 1991 *Broadcasting Act* stipulating that each broadcasting undertaking must contribute to its broadcasting policy objectives to the degree that is appropriate, and that Canadian employees who create, produce and present programming must predominate in each undertaking: see Table 1 (English-language) and Table 2 (French-language).

Table 1 1991 and current *Broadcasting Act* requirements about programming and employment – English

1991 <i>Broadcasting Act</i>	1991 <i>Broadcasting Act</i>, as amended in April 2023
3. (1) It is hereby declared as the broadcasting policy for Canada that	3. (1) It is hereby declared as the broadcasting policy for Canada that
[absent]	(a.1) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;
(f) each broadcasting undertaking shall make	(f) each Canadian broadcasting undertaking shall

⁹ Free of charge, as they would be able to do on their own facilities.

¹⁰ BPF-FPR, [Broadcasting Participation Fund Receives Financial Assistance from Department of Canadian Heritage](#), (Ottawa, 24 January 2024).

1991 Broadcasting Act	1991 Broadcasting Act, as amended in April 2023
maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;	employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources in the creation, production and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

Table 2 1991 and current Broadcasting Act requirements about programming and employment - French

1991 Broadcasting Act	1991 Broadcasting Act, as amended in April 2023
3 (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion : [absent]	3 (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion : a.1) chaque entreprise de radiodiffusion est tenue de contribuer à la réalisation des objectifs de cette politique, de la manière appropriée en fonction de la nature des services qu'elle fournit;
f) toutes les entreprises de radiodiffusion sont tenues de faire appel au maximum, et dans tous les cas au moins de manière prédominante, aux ressources — créatrices et autres — canadiennes pour la création et la présentation de leur programmation à moins qu'une telle pratique ne s'avère difficilement réalisable en raison de la nature du service — notamment, son contenu ou format spécialisé ou l'utilisation qui y est faite de langues autres que le français ou l'anglais — qu'elles fournissent, auquel cas elles devront faire appel aux ressources en question dans toute la mesure du possible;	f) les entreprises de radiodiffusion canadiennes sont tenues d'employer des ressources humaines — créatrices et autres — canadiennes et de faire appel à celles-ci au maximum, et dans tous les cas au moins de manière prédominante, pour la création, la production et la présentation de leur programmation, à moins qu'une telle pratique ne s'avère difficilement réalisable en raison de la nature du service — notamment, son contenu ou format spécialisé ou l'utilisation qui y est faite de langues autres que le français ou l'anglais — qu'elles fournissent, auquel cas elles devront faire appel aux ressources en question dans toute la mesure du possible;

- 32** FRPC considers that two key issues that the CRTC must address are whether approval of the applications will strengthen the local programming offered to the communities that the radio stations are licensed to serve, and whether approval will ensure maximum use of Canadian creative and other employees.
- 33** Due to the lack of information made available by BNoC 2024-148, the answer to each question is unknown.

A. *Will the applicants' plans strengthen local programming?*

- 34 Much, but not all of Parliament's broadcasting policy for Canada concerns programming. FRPC is concerned that BNoC 2024-148 does not set out any information about the impact that approval of the Arsenal, Durham, MBC and Vista applications will have on broadcast programming.
- 35 A ready answer to this concern is that Bell, but for the purchase offers from the four applicants, might otherwise have closed these stations as it has said it would close others.
- 36 This argument would be speculative, however, and would not address the fact that Parliament now requires that each of the 35 radio stations that are the subject of BNoC 2024-148 contribute to the implementation of the section 3(1) objectives.
- 37 The CRTC reminded each applicant (in an unnumbered question)¹¹ that
- that a station must incorporate spoken word material of direct and particular relevance to the communities served in its local programming, and that this programming must include local news, weather, sports coverage, and the promotion of local events and activities.
- 38 To some extent the vague nature of this text may explain why the applications regarding 35 different radio stations elicited relatively little objective evidence about the way in which stations' local programming will serve individual communities. Durham at least explained that its local programming would surpass the 1/3 hours requirement set out in the CRTC's 31-year old policy for local radio programming by increasing local news and local programming:

Durham (DM#4630097, page 9 of 15):

...

(page 9 of 15): It is the Applicant's intent to broadcast more than 42 hours of local programming in each broadcast week. The goal is to increase the amount of both local news coverage and local programming on each station. Based on our experience in other markets, the target will be to exceed 100 hours of local programming on each of the stations as per CRTC policy 1993-33.

(page 8 of 15): ... It should be noted that it is the intent of the applicant to operate these three stations in the formats inherited from Bell Media. ."

- 39 Another problematic factor complicating analysis of the benefits of approving the four applications in items 1 to 4 of BNoC 2024-148 is that the CRTC – which receives monthly programming data and annual staffing information from its broadcast licensees – did not provide any of this information for the Bell stations in most recently completed broadcast year: September 2022 to August 2023.
- 40 The CRTC instead suggested that interested parties refer to 11 previous decisions of the CRTC that renewed the licences of stations that included the ones that are the subject of this

¹¹ Durham, DM#4630097 at page;

proceeding. The decisions were made over the past nine years, beginning in 2016 and ending in 2023.

- 41 Unfortunately, the decisions do not set out objective information about 23 of Bell's 35 stations, and did not provide any information about weekly local news hours, let alone weekly first-run (original) broadcast local news. As Table 3 shows, the only information provided in the 11 decisions to which BNoC 2024-148 referred interested parties had to do with total hours of news per week – not total hours of local news, or total hours of first-run (original) local news.

Table 3 Objective information about Bell stations in decisions referenced in BNoC 2024-148

Applicants	Arsenal	Durham	MBC	Vista		
Bell decision to which BNoC 2024-148 refers	2023-167 2020-407 2016-280	2021-12 2017-232	2019-201 2019-250 2016-252	2023-167 2020-407 2017-232		
35 radio stations	CJDM-FM CHRD-FM CFZZ-FM CJOI-FM CIKI-FM CFEI-FM CFVM-FM:	CKPT-FM CKQM-FM CKLY-FM	CJPT-FM CFJR-FM CFLY-FM CKLC-FM	CHOR-FM	CICF-FM	CKRX-FM
				CJAT-FM	CHSU-FM	CKOR
				CKKC-FM	CILK-FM	CJOR
				CKGR-FM	CJFW-FM	CKFR
				CKXR-FM	CKTK-FM	CFTK
				CKCR-FM	CKNL-FM	CJDC
				CJMG-FM	CHRX-FM	
				Hours of news per week	No data	<i>42 minutes (CKLY-FM)</i>
CFTK 1:50	CJDC 0:54	CKFR 0:36				
CICF-FM 1:00	CHRX-FM 0:54	CKNL-FM 0:54				
CILK-FM 0:25	CHSU-FM 0:00	CKTK-FM 1:50				
CJAT-FM 1:40	CKKC-FM 1:40					
Hours of local news	No data	No data	No data	No data		
Hours of 1 st run news	No data	No data	No data	No data		
Number of FTE staff	No data	No data	No data	No data		
- in programming	No data	No data	No data	No data		
- in production	No data	No data	No data	No data		
- as reporters	No data	No data	No data	No data		
Comments	CFVM-FM: Bell in breach (2016-280)					
Red font	Weekly hours of news per week shown					
Italics: proposed (not actual)						

- 42 Broadcast applicants – and perhaps especially those whose purchase offers existing licensees have tentatively accepted¹² -- are only required to provide the CRTC with the information it specifically requests, and FRPC does not suggest that the applicants are required to do more than this.

- 43 Rather, FRPC submits that the CRTC should initiate a proceeding in summer 2025 to incorporate the requirements added by Parliament to the 1991 *Broadcasting Act* into its licensing application forms so as to ensure that these forms remain relevant and appropriate.

¹² As the CRTC's prior approval for transfers is required.

44 FRPC also submits that the CRTC's decision(s) about these four applications provide clear and comparable quantitative information about the impact on programming that approval of these applications would have, by setting out programming-hour information for the 2022-23 broadcast year and for the first year of operation of the applicants.

B. Will approval of these applications increase broadcast employment?

45 It is unclear whether the CRTC's approval of the four applicants' proposals will increase employment by the 35 radio stations that are the subject of their proposals.

46 This lack of clarity is due to the absence of any relevant information in BNoC 2024-148, and to the absence of clear questions from the CRTC either in its licensing form or in the deficiency questions posed to applicants.

47 When asked how Durham intends to use the "assets" it would be buying from Bell, Durham stated that "There are no redundancies" but that there will be "operational synergies, including shared management and creative resources": it is unclear whether Durham will maintain or reduce the stations' staff:

Durham (DM#4630007, page4 of 15)

8. For the locations that will be owned by the Purchaser, please describe how Durham intends to use the assets, including whether it anticipates any synergies to be drawn from the operation of the stations across the assets.

DRI intends to use the assets as they are currently being utilized by Bell Media. There are no redundancies. All three Stations stand to benefit from operational synergies, including shared management and creative resources with Durham Radio Inc.

48 Further, in describing how it "will meet the particular needs and interests of the communities the applicant will be serving", Durham stated that it "has" – in other words, currently has – "the ... skilled staff ... to increase the local presence and coverage" for the communities it would be serving. Again, it is at least somewhat unclear whether Durham will be increasing its news staff.

Durham (DM#4630007, page 9 of 15, yellow highlighting added)

CKPT-FM and CKQM-FM Peterborough:

DRI focuses on local needs and interests in the communities it serves. The Applicant has the experience, skilled staff and resources to increase the local presence and coverage of the Peterborough and area market. Our interactive approach both on-air and on-line helps focus the presentation of information, specifically targeting relevant local needs and interests to the residents of Peterborough.

CKLY-FM Lindsay

DRI focuses on local needs and interests in the communities it serves. The Applicant has the experience, skilled staff and resources to increase the local presence and coverage of the Lindsay and Kawartha Lakes area market. Our interactive approach both on-air and on-line helps focus the presentation of information, specifically targeting relevant local needs and interests, in this case to the mix of urban and rural residents of Lindsay/Kawartha Lakes.

- 49 MBC, on the other hand, may increase the number of journalists in Brockville and Kingston: – may be adding staff, although it is unclear whether MBC will then reduce employment in “support” areas:

MBC (DM#4601744, page 2 of 3, yellow highlighting added)
With MBC as the owner and operator of these stations in Brockville and Kingston both operations will see immediate additional resources to the newsrooms and an increase in local news and local content. **MBC will return journalist positions to each market.** Local News will be used on-air, and local news web hubs will be launched that will provide “anytime” access to the audience.
- The addition of Brockville and Kingston will allow MBC to further strengthen its operations in Gananoque, Greater Napanee and Perth. **Regionally, the additional journalists** will be able to cover more local events and share items or interviews that may be relevant to each market from a regional perspective (the information flows both ways). This includes School Boards, Sports events, local hospitals or government services and political ridings. **To be clear - these smaller markets will benefit from the additional regional support and vice versa, it will not replace the local news positions.**

- 50 While Vista said that it empowers and encourages “decision-making at the local level” and that the employees at the stations it wants to buy “will benefit from Vista’s Employment Equity Policy”, it entirely redacted Schedule 3.1(16) – a list of the stations’ employees. It made no clear statements about the number of employees it planned to have at the end of the 2024-2025 broadcast year, stating instead that it shares ideas for programming, sales and promotion, and also its human resources:

Vista, *Reply to [CRTC] letter dated May 31 2024*, (Courtenay, 10 June 2024)
(DM#4638773, page 5, yellow highlighting added):
... As a corporate group, we exchange programming, sales and promotion ideas between our stations on a regular basis. **We also have human resource expertise** and financial resources to facilitate the growth and development of strong staff teams at each station. Vista does not operate like a large media entity, making local decisions from afar. We empower and encourage decision-making at the local level. The current employees of the radio stations that we are proposing to acquire will benefit from Vista’s Employment Equity Policy, our commitment to professional and leadership training as well as enrollment into our employment benefits program.

- 51 Employment matters not only because Parliament has declared that broadcasting must strengthen employment in Canada, but also because it is unclear how stations with limited on-air staff are able to provide the communities they are licensed to serve with new (first-run) programming every day. Based solely on the record of this proceeding some broadcasters have more on-air staff per station than others: Table 4.

Table 4 Applicants’ proposals regarding staffing

Applicants (sources of information)	On-air employees “in the last year”	Total employees	Total stations	Average on-air employees per station: total stations % on-air employees)
Arsenal (DM#4613824, p. 28 of 28)	21	64**	19	1.1
Durham (DM#4566836, p. 13 of 15)	56	Unknown	7	8.0

MBC (DM#4566792, p. 11, 13 of 14)	17	109	18	0.9
Vista (DM#4583741, p. 19 of 21)	114	Unknown	50	2.3
* Source: CRTC Ownership charts 236 (Arsenal), 75 (Durham), 233 (MBC)				
** Arsenal stated that 33 members of its “équipes” were from the designated groups, indicating a total of 64 staff				

- 52 The CRTC should obtain more information from the applicants to enable it to determine whether they will increase, maintain or reduce staffing at the stations (or their other stations) if the CRTC approves the applications. It should ensure that the stations have sufficient on-air staff to provide the high-quality, local programming that the applicants are proposing to offer the communities now served by Bell’s 35 radio stations.

III. Tangible benefit proposals ignore Parliament’s intent

- 53 The CRTC first introduced the nascent basis of its current tangible-benefits policy in the late 1970s, when it said that transfers of ownership should yield “significant and unequivocal benefits” in the public interest. It said that

... in cases of transfers of ownership and control ... the onus is on the applicants to demonstrate that approval of the transfers would be in the interest of the public, the communities served by the licensees, including listeners, viewers and cable television subscribers, and the Canadian broadcasting system. In transactions of this magnitude, there must be significant and unequivocal benefits demonstrated to advance the public interest.¹³

- 54 Over the last 13 years the CRTC has issued four decisions that require licensing applicants to direct ‘tangible-benefits’ funding to the BPF-FPR, most recently in the Shaw-Rogers decision of March 2022. In early 2024 the Department of Canadian Heritage undertook to provide the BPF-FPR with needed financial stability, in the amount of \$650,000 spread two years from 2023/24 to 2024/25: Table 5.

Table 5 Four CRTC decisions approving funding for the BPF-FPR, 2011 to 2022

Source	Regulatory device	Amount	Payment status
BCE	<i>Change in effective control of CTVglobemedia Inc.’s licensed broadcasting subsidiaries</i> , 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.”	\$3,000,000	Completed
BCE	<i>Astral broadcasting undertakings – Change of effective control</i> , 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	\$2,000,000	Completed

¹³ Decision CRTC 77-456 (Ottawa, 28 July 1977).

Source	Regulatory device	Amount	Payment status
	\$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."		
Sirius	<i>Tangible benefits proposal by Sirius XM Canada Inc.</i> , Broadcasting Decision CRTC 2018-91 (Ottawa, 16 March 2018), "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 " 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"	\$1,596,667	Completed
Rogers	<i>Shaw Communications Inc. – Change of ownership and effective control</i> , Broadcasting Decision CRTC 2022-76 (Ottawa, 24 March 2022) 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. 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.	\$725,439	Incomplete \$241,813 due 31 Aug/24 <u>\$241,813 due 31 Aug/25</u> \$497,626 due from August 2024 to August 2025
Total, 4 transactions		\$7,322,106	
Payments to be made by 31 August 2024			\$241,813
Payments to be made by 31 August 2025			\$241,813
Heritage Canada (total of (\$650,000 over 2023/24 and 2024/25)	2024/25 (assumption)		\$325,000
Total funding to be available to BPF-FPR from August 2024 to August 2025			\$822,626
Amount remitted to applicants per year, 2013 to 2023: \$475,951 – total over two years			\$951,902

55 The main source of uncertainty regarding the BPF-FPR's financial status is not the BPF-FPR but the CRTC. The Commission, rather than the BPF-FPR, is responsible for deciding how many proceedings it will undertake in a given year along with their 'style of cause'. Proceedings in which many parties participate may lead to more public-interest participants – a desirable outcome that helps to ensure that diverse interests are represented before the Commission. That said, the BPF-FPR has had, effectively, to borrow from cost applicants in the past (by withholding 25% of their approved costs to ensure that its Fund is not fully depleted).

56 In April 2023 Parliament for the first time gave explicit authorization to the CRTC to make regulations that apply to all broadcasters or orders that apply to individual broadcasters regarding expenditures allocated to support public-interest participation:

57 The CRTC's approval of the four applications in items 1 to 4 of BNoC 2024-148 will result in the payment to Bell of \$12.936 million, along with CRTC-defined 'tangible benefits' for the broadcasting system of \$1.182 million: Table 6.

Table 6 Tangible benefits proposed in BNoC 2024-148 re Bell's radio stations

Tangible benefits	Arsenal	Durham	MBC	Vista	Total
Radio Starmaker Fund/Fonds Radiostar	\$0.254				\$0.254

Tangible benefits	Arsenal	Durham	MBC	Vista	Total
Radio Starmaker Fund		\$ 0.038	\$0.036	\$0.050	\$0.124
as designated by the current CRTC tangible-benefits policy: Fonds Radiostar		\$ 0.025	\$0.022	\$0.033	\$0.081
FACTOR/Musicaction	\$0.127				\$0.127
FACTOR		\$ 0.019	\$0.017	\$0.025	\$0.061
Musicaction		\$ 0.013	\$0.011	\$0.017	\$0.041
Initiatives discretionnaires	\$0.085	\$ 0.021	\$0.019	\$0.195	\$0.319
CRFC/FCRC	\$0.042	\$ 0.011	\$0.009	\$0.014	\$0.076
Subtotal, required tangible benefits	\$0.508	\$ 0.127	\$0.114	\$0.334	\$1.082
Tangible benefits as % of transaction value	6.0%	6.0%	6.1%	6.0%	6.0%

58 None of the applicants proposed allocating any of their \$1.082 in tangible-benefits “payments” to the Broadcasting Participation Fund/Le Fonds de participation à la radiodiffusion (BPF-FPR).

59 This omission is understandable. First, Parliament only explicitly authorized the CRTC to order an individual person carrying on a broadcasting undertaking to support public-interest participation in proceedings before the Commission under the *Broadcasting Act* in April 2023.

60 Second, the CRTC had by 22 February 2024 to 26 March 2024 – when the applications in items 1 to 4 of BNoC 2024-148 were first submitted – not yet issued any determinations about funding for the BPF-FPR.

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;

...

...

11.1(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).

...

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.

61 (Section 11.1(6) also gave the CRTC flexibility in determining how to calculate expenditures to support public-interest participation:

11.1(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)

62 Second, it was only at the end of July 2024 that the CRTC encouraged broadcasters to allocate tangible-benefits funding to the BPF-FPR:

The Commission also encourages broadcasters who are filing ownership transaction applications to favourably consider directing any future tangible benefits packages to the BPF, given its importance to broadcasting proceedings.¹⁴

63 It is true that the applicants have followed the CRTC's policy regarding tangible benefits in radio ownership transactions. As the Commission knows, the CRTC's policies cannot bind its decisions.¹⁵ It explained this principle in 2016, writing that its:

... policies are non-binding; in other words, they create no obligation in and of themselves. More specifically, section 6 of the Act provides that the Commission may issue policy statements or guidelines, but that these are not binding on the Commission. This is a codification of the common law and reflects the Supreme Court of Canada's decision in *Capital Cities Communications Inc. et al. v. CRTC et al.* That decision upheld the Commission's practice of issuing policy statements in light of the broad objectives entrusted to it under the Act, including the supervision of the broadcasting system to implement the broadcasting policy set out at section 3 of the Act. Accordingly, if the Commission were to treat [its policy] as binding or as having the force of law, it would be fettering its discretion and this would amount to an error of law.¹⁶

64 FRPC is not proposing that the current designated beneficiaries of the applicants' tangible benefits be dispossessed of this funding. It proposed a reallocation of a small portion of this amount given the BPF-FPR's continued financial precarity and the uncertainty of the timing of a decision in the as-yet not published "consultation on public interest participation".¹⁷

65 Specifically, FRPC proposes that the Commission redirect 10% of the total tangible benefits proposed by all four applicants to the BPF-FPR, to provide it with still-needed financial stability. Based on the information provided, we estimate that this change would provide the BPF-FPR with an additional \$108, 000 to support public-interest participation in the CRTC's proceedings: Table 7.

¹⁴ *Rogers Communications Inc.'s payment of the tangible benefits allocated to the Broadcasting Participation Fund*, [Broadcasting Decision CRTC 2024-169](#) (Ottawa, 26 July 2024), at paragraph 37.

¹⁵ *Broadcasting Act*, s. 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."

¹⁶ *Requests that Rogers Media Inc. reinstate local third-language newscasts on its OMNI stations*, [Broadcasting Decision CRTC 2016-8](#) (Ottawa, 12 January 2016), at para. 32, footnotes omitted.

¹⁷ CRTC, [Regulatory plan to modernize Canada's broadcasting framework](#), (accessed 1 August 2024):

Fall 2024 (upcoming)

Consultation on public interest participation

This consultation will explore new ways to fund the participation of groups that represent the public interest in CRTC proceedings.

Table 7 Proposed reallocation of 10% of BNoC 2024-148 tangible benefits

Tangible benefits	Total	Reallocation of 10% of tangible benefits to BPF-FPR	Tangible benefits flowing to original designates
Radio Starmaker Fund/Fonds Radiostar	\$0.254	\$0.025	\$0.228
Radio Starmaker Fund	\$0.124	\$0.012	\$0.111
Fonds Radiostar	\$0.081	\$0.008	\$0.073
FACTOR/Musicaction	\$0.127	\$0.013	\$0.114
FACTOR	\$0.061	\$0.006	\$0.055
Musicaction	\$0.041	\$0.004	\$0.036
Initiatives discretionnaires	\$0.319	\$0.032	\$0.287
CRFC/FCRC	\$0.076	\$0.008	\$0.068
Subtotal, required tangible benefits	\$1.082	\$0.108	\$0.974
Tangible benefits as % of transaction value	6.0%		

66 FRPC proposes that the CRTC reallocate 10% (\$108,000) of the \$1.08 million in tangible benefits proposed by the applicants to the BPF-FPR.

67 FRPC also submits that the CRTC should initiate a proceeding in summer 2025 to incorporate the requirements added by Parliament to the 1991 *Broadcasting Act* into its licensing application forms so as to ensure that these forms remain relevant and appropriate.

IV. Conclusion and recommendation

68 The lack of clear, objective and empirical evidence in this proceeding makes it impossible to understand and comment on the impact of approval of the four applications to acquire 35 Bell radio stations in BNoC 2024-148.

69 FRPC's recommendations in this proceeding are set out below:

- a. The Commission should in the decisions from this proceeding – and in similar proceedings going forward – set out the empirical evidence relating to these objectives.
- b. The CRTC should, until it amends its *Rules of Practice and Procedure* in Spring 2026, require the undertakings that are the subject of an ownership transaction to broadcast notifications of its appearing and non-appearing licensing hearings;
- c. CRTC should state in the decision(s) flowing from BNoC 2024-148 whether the applicants adhered to the *Rules'* requirements for notification;
- d. The CRTC should initiate a proceeding in summer 2025 to incorporate the requirements added by Parliament in April 2023 to the 1991 *Broadcasting Act* into its licensing application forms so as to ensure that these forms remain relevant and appropriate;
- e. The CRTC must set out in its decision(s) about these four applications clear and comparable quantitative information about the impact that approval of these applications would have, including programming and staffing information for the 2022-23 broadcast year and for the first year of operation of the applicants;

- f. The CRTC should obtain more information from the applicants to enable it to determine whether they will increase, maintain or reduce staffing at the stations (or their other stations) if the CRTC approves the applications, and
- g. The CRTC should reallocate 10% of the tangible benefits proposed by the applicants to the BPF-FPR, to reduce its ongoing financial instability.

70 FRPC also recommends that the Commission take Durham's comment regarding Indigenous musical selections into account when considering next steps in BNoC 2024-67 regarding a new policy on Indigenous programming. Durham wrote that it

... values and strives to adhere to the Commission's rules and expectations. However, DRI must state there is a fundamental challenge in gathering information on Indigenous musical selections. Currently, there is no centralized source or method to identify these selections, making it extremely difficult for broadcasters like DRI to track and report Indigenous airplay accurately."¹⁸

* * * End of document * * *

¹⁸ Durham, p. 15 of DM#4630097.