



23 September 2024

Filed online

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments on the Independent Local News Fund*, [Broadcasting Notice of Consultation CRTC 2024-164](#) (Ottawa, 23 July 2024) – Reply by FRPC

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 reply to other parties regarding the ILNF and Corus' application to become eligible for ILNF funding is attached.

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Call for comments on the Independent Local News Fund,
Broadcasting Notice of Consultation CRTC 2024-164
(Ottawa, 23 July 2024)
Reply

Forum for Research and Policy in Communications (FRPC)

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I. Introduction to FRPC's Reply

- 1 FRPC submitted its comments in response to BNoC 2024-164 on 6 September 2024 and in this submission is replying to comments submitted by other parties.
- 2 Briefly, FRPC supports the CRTC's temporary approval of the eligibility of Corus' television stations outside metropolitan communities for financial support from the ILNF, provided any additional funding deemed by the CRTC to be necessary for the ILNF is drawn from the mandated basic service now priced at \$25 per month per subscriber. The Forum believes this support should be temporary since it is at this time unclear what decision the CRTC will make regarding the consultation it recently announced it would hold in Fall 2024 regarding a temporary fund to support local news production by commercial radio stations outside Montreal, Toronto, Vancouver, Calgary, Edmonton, and Ottawa-Gatineau, or about the consultation it announced it would hold in Spring 2025 on local and national news programming distributed online or by radio or television. FRPC opposes the widening of the eligibility criteria for the ILNF at this time for the same reasons – the uncertainty of outcomes in the Fall 2024 radio fund consultation and the Spring 2025 news consultation.
- 3 FRPC's reply begins in Part II by addressing comments made in Phase I of this proceeding regarding the 10 questions raised in BNoC 2024-164. Part II replies to comments made in relation to other issues. Part IV summarizes FRPC's recommendations.

II. Comments on other parties' responses to BNoC 2024-164

A. *Impact*

Q.1 Expanding ILNF eligibility to other audiovisual news providers

Currently only private conventional television stations that provide locally reflective news and information are eligible to receive ILNF funding. Should the Commission revise the current criteria to permit access to the ILNF by a broader range of audiovisual news providers?

- 4 FRPC considers that the purpose of the ILNF should be used to develop the eligibility criteria for access to the ILNF. For example, the SMLPF began in 2003 “as a means to offset competitive inequities by compensating private stations operating *in markets with fewer than 300,000 people* for lost revenues as a result of a lack of carriage by DTH BDUs and for the program overlap created by BDUs that distributed the distant signals of stations and networks” [italics added].¹ The CRTC said it was “unnecessary to provide funding for local programming to all conventional television stations across Canada, regardless of market size or financial circumstances”.²

¹ *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224 (Ottawa, 15 June 2016), at ¶195 [2016-224].

² *Ibid.*, at ¶162.

- 5 The CRTC's 2016-224 decision set out several reasons to justify the ILNF's creation:
- Vertically-integrated groups' resources "can be leveraged to ensure that Canadians continue to have access to locally produced and locally reflective programming, including local news" (¶23)
 - "continued investment in high-quality local news content will help ensure that licensees have opportunities to succeed in the digital environment" (¶24)
 - "online services do not yet contribute to news gathering to the same extent as traditional media" (¶24)
 - "supporting the production by conventional television stations of local news and analysis is important not only to the overall health of the broadcasting system but also to that of the local news and information ecosystem" (¶25)
 - "conventional television broadcasters have a responsibility to meet their basic local programming obligations" (¶25), and
 - measures in its 2016-224 policy were "to ensure that broadcasters continue to fulfill their responsibility to broadcast locally reflective news and that they have the resources to do so" (¶26)
- 6 The CRTC later said in Broadcasting Regulatory Policy CRTC 2016-224 (in its Appendix 1, "Independent Local News Fund", "Objective") that the ILNF, "which will take effect 1 September 2017, is a fund available to support the production of locally reflective news and information by private independent television stations." FRPC notes that Question 5 of BNoC 2024-164 reformulated the statement slightly, stating that "[t]he ILNF's goal is to promote the creation and distribution of high quality locally reflective news in markets served by its recipients" [underlining added]. FRPC also notes that the Local Journalism Initiative of Canadian Heritage states that the LJl's "objective must be to increase local civic journalism in underserved communities" <https://www.canada.ca/en/canadian-heritage/services/funding/local-journalism-initiative.html> (accessed 20 September 2024; underlining added).
- 7 Friends of Canadian Media proposed changing the purpose of the ILNF. It said at ¶6 that "the Commission's priority must be to support local news in *smaller/underserved* markets, where there is a scarcity of local news outlets" [italics added]. Ken Zakreski suggested at page 1 that "[i]ndependent local news funding should support novel sources during this shift in news consumption patterns." The Miracle Channel Association added the issue of diversity to the purpose of the ILNF at ¶13 stating that it "is crucial that any expansion of eligibility or funding reallocation does not undermine the original purpose of the ILNF: to support smaller markets and maintain a diverse and locally reflective news ecosystem."
- 8 FRPC agrees that it is important to ensure that television stations providing local news in smaller, remote or underserved communities continue to provide the same or more first-run local news, but notes that objective evidence establishing the scarcity of local news outlets was not provided in BNoC 2024-164.

- 9 As it happens, the CRTC posts a list of all licensed and exempted-from-licensing broadcasters entitled, “Broadcasting services that do and do not need a licence”. The values for ‘Subtype’, a column heading in the table consist of 55 categories of licensed or exempted broadcaster and apply to 4,613 services:

Licensed and exempted-from-licensing broadcasters, September 2024, by Subtype			
Subtype	Number	(Continued)	Number
1. Audio Programming	3	30. Radio (community)	195
2. Cable	1481	31. Radio (ethnic)	36
3. Cable (Class 2)	3	32. Radio (native Type B)	246
4. Digital Media Audio	5	33. Radio (non-commercial)	3
5. Digital Media Audio online	2	34. Radio (religious church)	3
6. Digital Media Audiovisual		35. Radio (religious specialty format)	70
7. Digital Media Audiovisual online	1	36. Radio (tourist/weather/ traffic/Env. Can)	9
8. Direct-to-home satellite Distribution undertaking	2	37. RDU - non-encrypted	4
9. Discretionary Service	441	38. Relay Distribution	2
10. Discretionary Service (Mainstream Sports)	7	39. Specialty (category A service)	1
11. Discretionary Service (National News)	5	40. Specialty (category B service)	4
12. N/A	6	41. Specialty Audio Programming	6
13. Network - Community Programs (cable)	1	42. Subscription Radio - Satellite	2
14. Network - Radio	1	43. Television (CBC)	27
15. Network - Radio (CBC)	4	44. Television (commercial)	160
16. Network - Television	3	45. Television (community based digital)	
17. Network - Television (CBC)	2	46. Television (community based low-power)	6
18. On-demand Service (Hybrid VOD)	2	47. Television (community)	3
19. On-demand Service (Pay-per-viewdirect-to-home)	2	48. Television (Conventional)	27
20. On-demand Service (Pay-per-viewterrestrial)	4	49. Television (educational)	26
21. On-demand Service (Video-on-demand)	6	50. Television (ethnic)	11
22. Pay Audio Programming	1	51. Television (religious)	9
23. Pay-per-view programming		52. Television (SatCab) (comrc & educational)	2
24. Radio (campus)	49	53. Television (SatCab) (educational)	3
25. Radio (CBC)	729	54. Television (SatCab) (other)	1
26. Radio (commercial - religious)	29	55. Video-on-Demand	1
27. Radio (commercial)	960		
28. Radio (community - type A)	2		
29. Radio (community - type B)	5		
Total, 55 subtypes:			4,613

Source: <https://applications.crtc.gc.ca/portail-portal/eng/listes-lists/broadcasting-services-list/9>

- 10 According to the CRTC list of broadcasting services, all 14 communities served by local TV stations that receive ILNF funds are also served by from 2 to 14 audio services, and four of these communities have 1 or 2 other audiovisual services (see table below). It is not entirely clear why locations with 4 or more audio programming services would be considered underserved in the case of local news, as BNoC 2024-164 did not provide any empirical data or reasoning on this point.

Served area	Audio	Audiovisual	Audiovisual ILNF recipients
Carleton	2		1
Gatineau	6		2
Hamilton	8	1	1
Kamloops	10		1

Served area	Audio	Audiovisual	Audiovisual ILNF recipients
Lethbridge	11	2	1
Lloydminster	3		2
Medicine Hat	9		1
Prince George	9		1
Rivière-du-Loup	6		2
Rouyn-Noranda	8		1
St. John's	14	1	1
Thunder Bay	11		2
Val d'Or	4		1
Victoria	11	1	1
Total: 18	112	5	18

Source: <https://applications.crtc.gc.ca/portail-portal/eng/listes-lists/broadcasting-services-list/9>; CAB ILNF report 2023 (for ILNF recipient callsigns)

- 11 The same CRTC list shows that 119 communities lack service from either an originating local TV station or an originating local radio station. Another 567 communities have a single TV or radio station, 200 have 2 radio and/or television stations, 105 have 3 radio or television stations, and 128 communities have four or more radio and television stations which originate programming.
- 12 It is unknown whether these communities are served by online local news sources. While the CRTC list noted above lists 3 online broadcasting services, none is linked to a specific 'area served':

Subtype: online services				
Call Sign / Service Name	Served area	Digital Media Audio online	Digital Media Audiovisual online	Total
CHUP-FM - C97.7	N/A	1		1
CKPC-FM Lite 92.1	N/A	1		1
TVA Nouvelles	N/A		1	1
Total		2	1	3

- 13 The CRTC's list may be unreliable, however, as the CAB at ¶27 wrote that broadcasters "often" share news broadcast by their conventional media online, suggesting this practice is widespread:

...[i]n terms of distribution, it is important to recognize that the traditional newscast serves as a foundation for any distribution of news content across online media platforms. While stories are gathered and packaged for the newscast, they are often shared online through the stations' websites and social media platforms. This can include providing additional information and updates through online platforms between newscasts, and additional information and links to other resources. ...

- 14 The available data to evaluate the degree to which some communities have or lack licensed or exempt programming services to provide first-run local news appear unreliable, making it

difficult to estimate the cost implications of expanding the ILNF eligibility criteria to encompass all communities that may lacking local broadcast news.

15 The Computer & Communications Industry Association commented at page 2 that

... broadening the scope of the entities allowed to access the fund to include foreign online service suppliers would not solve the burdensome nature of the CRTC proposal. The companies in question are not in the news business—allowing them access to a fund specified to Canadian independent journalism would not change that fundamental fact, and the policy would remain market distortive.

16 FRPC notes that conventional broadcasting is, of course, inherently a distorted market in that usable frequencies must be allocated in each community. That said, FRPC notes that the ILNF exists not to distort the market further but to attempt to correct the distortion introduced by the excessive levels of concentration that the CRTC began to permit in the early 1990s: broadcasters that incurred or said they incurred debt to support their acquisitions pled for regulatory relief that the CRTC granted. Concerns about the degree to which people’s access to fact-based news was shrinking due to private (and public) broadcasters’ reductions in news expenditures eventually led the CRTC to revamp the SMLPF (established to correct the distortions that satellite [direct-to-home] broadcasting introduced for local television services) so as to halt or perhaps reverse ongoing cuts to first-run local television news.

17 FRPC considers overall that in the absence of clear empirical evidence from the CRTC as to whether the ILNF has achieved its purpose(s), expansion of the criteria for ILNF eligibility should, except for Corus’ request to be considered eligible, be deferred until the Spring 2025 public consultation on news. The Miracle Channel Association agreed, at ¶15:

...TMCA supports LITS’s recommendation to defer any decision on the entry of other audiovisual news providers until after the Commission’s broader news proceeding in Spring 2025. This will allow for a more comprehensive evaluation of the potential impact on the local news landscape and ensure that the ILNF continues to fulfill its mandate effectively.

Recommendation 1: FRPC’s recommends that the CRTC defer consideration of requests to broaden eligibility for ILNF support until it has the empirical evidence needed to evaluate the impact of its 2016 ILNF regulatory policy in terms of the exhibition of and expenditures on first-run local news

18 The CRTC’s current version (modified on 17 September 2024) of its *Regulatory Plan* states that it will hold a consultation and a public hearing in Spring 2025 on “how to ensure that everyone has access to strong, high quality and diverse local and national news programming on TV, radio and online in Canada.” This consultation may enable the CRTC to evaluate CAB’s position at ¶16 that while the ILNF and a new commercial-radio news fund represent “a good first step”, “more needs to be done to support professional broadcast news production in Canada.”

19 Due to the lack of evidence from the CRTC – the only entity empowered to obtain information from broadcasters – in BNoC 2024-164 and the lack of relevant information from other

interveners, FRPC does not believe that sufficient evidence exists in this proceeding to enable the CRTC to amend the ILNF eligibility criteria for applicants other than Corus.

Recommendation 2 The CRTC should undertake research to determine which licensed radio and television stations share their news with their stations' online website

20 Ken Zakreski's intervention proposed at page 2 that certain audiovisual-only social-media sites be regulated so as to provide for their financial support:

... a pathway for legitimizing Facebook Groups and websites of a certain size and reach, particularly those that feature local news through full-motion video. This new medium, which combines the immediacy of radio with the persistence of newspapers, warrants regulation. The interaction within these groups—through posts, comments, replies, and reactions—creates a rich information ecosystem. Given that Life on Gabriola primarily shares text-based content with less than 10 hours of full-motion video per month and serves hearing-impaired users, we believe our service should be regulated. In this context, members' Facebook posts, including comments and reactions, should be considered programs.

...

21 It is unclear to FRPC whether the CRTC would have the legal authority to regulate social-media sites in this manner.

Q1(a) Criteria to define eligibility

If so, which eligibility criteria should the Commission use?

22 As noted above, several parties agreed in response to the CRTC's first question that eligibility should be expanded, including general agreement that ILNF recipients should abide by specific codes of conduct.

23 Apart from codes of conduct, FRPC considers that eligibility criteria must be linked to the funding mechanism's specific purpose. As the CRTC is only intending to learn Canadians' perspectives on what Canadians need and want from news in Spring 2025, it is premature to establish any new eligibility criteria at this time. We therefore do not agree with Friends of Canadian Media's proposal at ¶15 that "the CRTC should satisfy itself that ILNF recipients have meaningful audiences for the audiovisual locally reflective news programming they produce, however those audiences are obtained." First, the idea that audiences must be meaningful is linked to the existence of the ILNF itself: if the audiences for local news were large enough (one way of defining 'meaningful'), one assumes that ILNF recipients would not lack the advertising income the ILNF is intended to supplement. Second, it is unclear how 'meaningful' is to be defined. The CRTC's Spring 2025 consultation should address these questions.

24 It is also premature, in our view, to consider which licensees should be eligible for financial support from the ILNF when no information has been published in BNoC 2024-164 or on its public record to clearly describe the interrelationship between licensed programming undertakings and exempted online programming undertakings. Such evidence is needed to

understand and evaluate the CAB’s argument at ¶19 that “independent television stations have no or very little access to other sources of revenue to offset declining advertising revenue and support news gathering, production and broadcast.”, as this argument does not address independent television stations’ website businesses.

- 25 The question of evidence matters if it is expected that BDU subscribers are to pay for the ILNF as it is currently unclear just what their payments support. Assuming a TV station gathers, produces and broadcasts 10 first-run hours of news about the community it is licensed to serve each week – and its licensee shares this programming with the station’s website – BDU subscribers would be providing at least partial support for the TV station’s news, but would also be fully subsidizing the broadcaster’s online website.

Recommendation 3 FRPC recommends that the CRTC gather and publish information on the exhibition of first-run local news, expenditures on first-run local news and local advertising revenues of individual television stations and their websites; to understand how stations’ use of the ILNF has changed over time, the CRTC should publish this information for each of the past five years.

Q.2 Incentives or measures to ensure ILNF funding supports first-run local news

Local stations have always produced news to meet audience needs. However, this programming is becoming difficult to produce and the quality of news that viewers receive may suffer as a result. Are there any incentives or measures that the Commission should put in place to ensure that funds received from the ILNF are focussed on the production and broadcast of high-quality locally reflective news?

- 26 FRPC agrees with Friends of Canadian Media’s comment at ¶24 that the synergies retained by Corus included “the centralization of local news production”. Corus would therefore be unique among the other ILNF recipients, in that the latter do not operate centralcasting hubs and therefore do not benefit from the synergies of so many TV stations. The CRTC should quantify the degree to which broadcasters like Corus benefit from synergies before granting them amounts equivalent to the funding of their far-smaller ILNF ‘peers’.
- 27 The CAB opposed the introduction of any new regulatory measures at ¶26, noting at ¶27 that stations’ ability to share their broadcast news with their online sites is a built-in commercial incentive to distribute news:

[i]n terms of distribution, it is important to recognize that the traditional newscast serves as a foundation for any distribution of news content across online media platforms. While stories are gathered and packaged for the newscast, they are often shared online through the stations’ websites and social media platforms. This can include providing additional information and updates through online platforms between newscasts, and additional information and links to other resources. In fact, private broadcasters have a built-in commercial incentive to further the broader distribution of their local news in order to maximize audiences and revenue.

28 FRPC's 6 September 2024 intervention addressed the idea of incentives and impact of the ILNF. We noted the reduction in the hours of first-run local news for the majority of ILNF-recipient news programming before (November 2001) and after (November 2023) the ILNF's introduction, and charted the lack of any clear relationship between broadcasters' news expenditures and regulatory incentives.

29 FRPC also notes the comment of Elinor Ashcroft (intervention number 43):

I am writing this letter to express my extreme disappointment at the recent steps taken by Corus Entertainment regarding Global Okanagan located in Kelowna B.C. Corus (Global News) has laid off most of the local staff, shuttered the studio and moved the Global Okanagan newscast to Burnaby reducing the newscast from the live one hour weekday newscast to a ½ hour pre-recorded newscast and eliminated the local weekend newscasts entirely. **The Burnaby produced newscast is now anchored by a variety of Vancouver news readers. The news stories are assigned from Burnaby office by someone who has no clue about the region or any direct knowledge of the many local communities.** Instead they rely on what other media are covering as a guide for the remaining employees as to what they should be covering. **All this under the guise of improving local coverage.**

I understand Corus is now applying for funding under the Independent Television fund. I would urge the CRTC to deny Corus access to any funds with the lack of local commitment it has demonstrated here in the Okanagan and from what I understand in other areas it has licenses in Canada. The company is showing zero corporate social responsibility. **The fact Corus has reduced a once proud and highly regarded television station to nothing more than a bureau shows it does not care about the many communities it was serving in this region.** Corus appears to be simply looking for ways to get money without investing into the community and help pad its own corporate spread sheet.

While Corus is most likely meeting the very basic and low requirements of its license it is hard to see how this current realignment reflects the spirit of the local broadcasting license. Can the CRTC not make a requirement where the license holder must broadcast from the market it is licensed for? The license should be contingent of having an actual broadcast centre employing locals to produce a local newscast and other programming . The current practice of allowing token newscasts broadcast from a far location outside of the broadcast license region is a sham, and reflects poorly on the CRTC [sic] ability to protect strong local production and support of community groups that rely on services that local television stations can provide. Maybe it is time the CRTC mandate local production as part of any broadcast license or force the sale to an entity that will keep local stations LOCAL!

[Bold font added]

30 FRPC therefore believes there is little evidence demonstrating that incentives have measurably increased the hours or the quality of first-run local news. In our view, measures related to transparency, accountability and CRTC enforcement of commitments made to serve local communities with specific levels of first-run local news would be more effective in ensuring the availability of that programming than incentives that may confer little financial advantage to those opting to adhere to them.

Recommendation 4 FRPC recommends that the CRTC publish reports from each ILNF recipient showing for the just-ended broadcast year, each recipient station's incremental expenditures on news, the number of full-time or equivalent staff each ILNF recipient station employed in the local area served to collect, assemble and produce first-run local news, and the total hours of first-run local news the ILNF recipient broadcast. Each ILNF recipient station should also state the percentage of their newscasts selected by and delivered to it by non-local (centralcasting) broadcast hubs.

Q2(a) Prioritizing platforms

Which platforms (traditional and/or online) should the Commission prioritize?

- 31 The CRTC's *Regulatory Plan* states that it will "examine the relationships between small, medium, and large players in traditional broadcasting and online streaming" in Winter 2024-2025, and that it will hold a consultation and public hearing to consider Canadians' access to "strong, high quality and diverse local and national news programming" in Spring 2025. The evidence from these consultations may enable the CRTC to address this question more coherently.
- 32 In the meantime FRPC considers that the CRTC should maintain the ILNF's focus on licensed, private television programming undertakings that are not owned by or affiliated with vertically integrated broadcasters with programming, distribution and other communications media interests.

Q2(b) Incentives to broaden distribution of local news

What types of incentives would best further the broader distribution of local news and how should the Commission assess their impact?

- 33 As noted previously FRPC is unaware of any evidence demonstrating that incentives achieve the objectives of Parliament's broadcasting policy for Canada.
- 34 That said, the CAB noted ILNF-recipients' ability to share their first-run local news with their own online websites, which implies that first-run local news is being more broadly distributed.

Q.4 Favours stations in rural, remote and underserved communities

Should the allocation method favour recipients operating in rural, remote, and underserved communities?

**Q4(a) How to favour stations in rural, remote and underserved communities
*If so, how?***

- 35 APTN noted at ¶14 that "more than half of APTN's news and current affairs coverage (and perhaps as much as 70%) originates from or relates to Indigenous communities that are outside an urban area". It added at ¶16 that "a recent story that appeared on APTN news related to a request made by the Nisichawayasihk Cree Nation (NCN) to the Manitoba government for the government to terminate a 2012 agreement on Métis Harvesting. This

story is specific to the NCN, includes imagery from that community and was produced by APTN.³

36 The Local Independent Television Group (LITS Group) noted that its members comprise 9 ownership groups and 18 private local TV stations serving “some of the smallest TV markets in Canada” (¶1), and explained at ¶4 that they

- Serve more than 4 million Canadians, or over 10% of Canada’s population, many living in some of the sparsest parts of this country;
- Employ 140 full-time and 23 part-time journalists and/or reporters, not including news anchors, ENG/operations personnel, meteorologists and other technical personnel and staff needed to deliver local news programming;
- Provide 300 hours of quality, locally relevant news and information programming every week, 52 weeks a year;
- Provide vital local community news and information 24/7 through our local websites and portals;
- Gift through the donation of airtime and the involvement of our personnel in excess of \$20 million across the country every year to charitable and community public service endeavours; and
- Are relied on virtually every day as our viewers’ primary source of news and information.

[footnoting omitted]

37 Despite this detailed description it remains unclear how many hours of first-run local news have been broadcast thanks to the ILNF. Given the absence of clear evidence on this point, FRPC at this time agrees that the ILNF allocation method should favour recipients operating in rural, remote and underserved communities (RRU communities). If the CRTC adopts this view, it will be all the more necessary to consider carefully whether it should evaluate the fund’s success by audience levels (as rural, remote and underserved communities may be smaller in terms of population).

38 FRPC also notes that several other parties have also suggested in this proceeding that the ILNF’s ambit be enlarged to include different groups of programming services:

- All private radio and television stations (CAB, ¶3)
- All but six locations in Canada (Montréal, Toronto, Vancouver, Calgary, Edmonton and English-language Ottawa-Gatineau) (Friends of Canadian Media at ¶19)
- Multiple news sources providing news to third-language audiences (Ethnic Channels Group, ¶8)
- Television news produced for Indigenous Peoples (APTN, ¶4)
- To support small news businesses or any other minority groups (CDGM, ¶8) and
- News services serving minority groups (communities) such as the Deaf and Hard-of-Hearing (DHH Coalition, ¶15f)

³ The story may be found at: <https://www.aptnnews.ca/national-news/nisichawayasihk-cree-nation-calls-for-end-to-metis-harvesting-on-their-territory/>

- 39 FRPC suggests that these proposals be considered in the CRTC's coming structural and news consultations in Winter 2024-2025 and Spring 2025, respectively.

B. *Impact of Corus's application on the ILNF*

Q.5 Equitable distribution of ILNF funding

The ILNF's goal is to promote the creation and distribution of high quality locally reflective news in markets served by its recipients. If stations like those owned by Corus or other services are added to the list of recipients of the ILNF, how should the Commission ensure that the distribution of funding is equitable among all recipients?

Q5(a) Changing ILNF allocation criteria

What other criteria should the Commission consider in its allocation method if it decides to change the current method in place?

- 40 The CAB noted at ¶130 that the ILNF's "current allocation method ensures that money is distributed primarily in relation to hours/expenditures on news" and did not refer to 'high-quality' news.
- 41 FRPC notes that while expenditures are often used as a surrogate measure for quality, other measures also exist, such as the numbers of people in local communities who are employed by stations to gather and produce news and, in particular the hours of first-run local news that stations broadcast. Measuring employment and hours would provide the CRTC with a way of evaluating whether the allocation of ILNF funding has yielded tangible and equitable benefits for the communities served. (If the CRTC finds, for instance, that most of the local news being broadcast consists of repeats, it should not conclude that the community received meaningful benefits.) If the results show inequities in terms of the availability of first-run local news gathered and produced by employees living in the communities served by the ILNF recipients, the Commission could address this inequity in a subsequent proceeding.
- 42 The CRTC should include criteria related to outcomes in its allocation method. Broadcasters that choose to reduce their expenditures on local news after receiving ILNF funding should be given one year to redirect this funding to that programming; broadcasters that nevertheless reduce their local news expenditures should become ineligible for ILNF funding.

Q.6 Cap on ILNF funding

Should the Commission maintain a cap on the amount of funding that can be obtained from the ILNF? Is the cap still relevant per station or should the Commission apply a cap per ownership group?

- 43 The LITS Group offered two options at ¶135 recommending

1. The addition of a per ownership group cap. Based on available data and projected subscription to the ILNF, we submit that the per ownership group cap should no more than 45% of ILNF funding in a given year. This would provide Corus with up to \$26 million in new funding, or double the amount previously received from Shaw; and/or
2. The exclusion of metropolitan market stations from eligibility to receive ILNF funding. This would recognize the greater availability and viability of major market stations, and the policy imperative of giving priority to shoring up news in underserved markets.

- 44 FRPC's intervention favoured option 2, and did not find any evidence on the record to lead us to change our position.

Q.7 Other measures to ensure ILNF funding fairly distributed

What other measures should the Commission put in place to ensure that ILNF funds are fairly distributed across recipients?

- 45 The CAB argued at ¶123 that the CRTC should “ensure that current ILNF recipients are not disadvantaged as a result of this update of the ILNF. Additional funding is required to compensate for reductions in the ILNF resulting from declining BDU subscriptions/revenue. Ultimately, existing recipients should at least each receive no less than they have received in the past to support local news production.”
- 46 FRPC supports this proposal as a temporary measure, pending the CRTC’s Winter 2024-2025 structural consultation, and the Spring 2025 news consultation. The additional funding should be drawn from the mandated price of basic service now set by CRTC regulation.
- 47 That said, rather than focusing on ‘fair’ distribution across recipients, FRPC considers that the Commission should assess outcomes for the communities served by stations that receive ILNF funding. Stations that reduce the level of first-run local news they broadcast to the communities they serve should after one year’s grace, lose ILNF funding.

Q.9 Measuring outcomes

Currently, the ILNF administered by the CAB must file and make publicly available on its website reports detailing the amounts received and distributed on 30 November of each year. Further, ILNF recipients must file and make publicly available on their websites reports detailing how the funds received have been used to meet the ILNF’s objectives. Considering the possible additional funding, should the Commission consider whether additional measures are needed to monitor the success of the ILNF?

- 48 The CRTC’s current approach to ILNF accountability suffers from two major problems. First, it is ahistoric, in that the CRTC does not publish and regularly update a complete database of the information set out by the CAB in its yearly reports on the ILNF. Second, the reports themselves are unclear, lacking clear definitions of terms (for instance) and are presented inconsistently over time.

- 49 FRPC therefore disagrees with the CAB on this point. It argued that no additional reporting requirements are needed because the funding available to individual stations “will not inordinately increase” if new funding is added to the ILNF (¶137). It also argued that new reporting would be administratively burdensome, proposing that for each regulation adopted one should be dropped (¶138).
- 50 The CAB’s comment stands in some contrast with that of the LITS Group at ¶136 of its intervention. FRPC shares its position that “... [e]ligibility for ILNF funding is a privilege, not a right, and one that for existing recipients comes with commensurate obligations. ...”
- 51 FRPC’s intervention pointed out that private broadcaster’s administrative expenses decreased in total and as a percentage of total expenses from 1988/89 to 2022/23. Before yielding to the siren-song temptation of lowering administrative costs further, FRPC asks that the Commission consider that its regulations exist to implement Parliament’s broadcasting policy for Canada and that the CAB has not provided any evidence to show which regulations are not required to measure the implementation of that policy.
- 52 FRPC also asks that the Commission consider that even if it erased all of its regulations on 31 August 2025, broadcasters would continue to track their expenses, income and broadcast content because they need this information to operate their business: broadcasters that advertise require proof that ads have been broadcast, for instance, and broadcasters developing new programming schedules rely on information about previous programming decisions to evaluate the potential impact of changing these schedules. Denying the CRTC access to relevant evidence to evaluate the necessity for and impact of its regulatory policies is to tie both of its figurative arms behind its figurative back. More specifically, it is unclear how a CRTC decision not to gather relevant evidence will then enable it in seven years to report on its policies, regulations and orders as the new *Broadcasting Act* requires:

Regulations and orders

34.01 (1) Every seven years the Commission shall consult with all interested persons with respect to orders made under section 9.1 and regulations and orders made under section 11.1 and shall publish, on the Internet or otherwise, a report on the consultations that also lists the orders and regulations that the Commission proposes to review as a result of the consultations and sets out its plan for conducting the review.

Publication of report

(2) The Commission shall publish the first report within seven years after the day on which this subsection comes into force and, subsequently, within seven years after the day on which the most recent report is published.

Tabling of reports

(3) The Minister shall cause a copy of all reports published under subsections (1) and (2) to be tabled before each House of Parliament.

9(a) Measures, reports and rationale

If so, please provide the measures as well as the rationale. Please also address how frequently additional reports should be filed to increase transparency and to evaluate trends while not unduly increasing the administrative burden on ILNF recipients.

- 53 FRPC notes that the LITS Group at ¶1 stated that its members, thanks to the ILNF, have “been able to maintain or increase hours of and expenditures to locally reflective news and information programming. ...” It goes on to state at ¶10 that its members’ news operations have been able to “maintain local news levels, some being able to increase hours, improve local coverage or hire new reporters”.
- 54 Similarly, the Miracle Channel Association states at ¶2: that the ILNF “...has been instrumental in enabling local independent television stations, including the one operated by TMCA, to continue producing high-quality, locally relevant news. ...” It then went on to say that the ILNF allowed stations like its own to “maintain and expand our news coverage” [underlining added].
- 55 These important claims unfortunately lack a foundation in evidence. The CRTC should gather and publish these data – hours, expenditures, coverage and news reporters – in the notice of consultation announcing the Spring 2025 consultation on news. Given the distinction between ‘continuing’ to provide news coverage and ‘expanding’ that coverage, the Spring 2025 news consultation should define, measure and provide evidence about these concepts.
- 56 Meanwhile, Friends of Canadian Media pointed out at ¶35 that
- [t]he CAB currently reports locally reflective news expenditures and hours on a three-year total basis [for the ILNF]. While annual reporting itself is not unreasonable, it would be more useful for trending analysis if the CAB reported on the previous years’ locally reflective news expenditures and hours. ... it would also be appropriate if in-market FTE counts be provided for ILNF recipients as well as overall FTE counts (taking into account out-of-market resources used to produce locally reflective news).
- 57 Having itself recommended that ILNF recipients report total hours of first-run local news broadcast in each community, total number of full-time or equivalent employees in each community who collect and report news, and total expenditures of each ILNF recipient on first-run local news in each community, FRPC agrees with Friends of Canadian Media that current and historical information about the ILNF recipient stations should be available to the public (preferably from a single CRTC website). We note that at ¶26 CACTUS similarly agreed that “recipient data and outcomes should be reported by recipients and made public.”
- 58 FRPC believes that in addition to requiring the provision of data relevant to the evaluation of the ILNF’s impact (on exhibition, expenditures and employment with respect to first-run local news), the CRTC itself should publish a coherent version of the information provided by ILNF recipients, including all years of data that are available.

- 59 We note that the CRTC in BNoC 2015-421 published information about the hours and costs of local news in small, medium-sized and large communities (see Table 1, next page). In our view the CRTC should provide this information for individual ILNF recipients, for all ILNF recipients and for all non-ILNF stations, for the period from 2015/16 to 2022/23, to remove the burden of collating this information from individual Canadians, public-interest organizations and other broadcasters.

Recommendation 5 FRPC recommends that the CRTC publish information on the hours and costs of first-run local news in each broadcast year from 2015/16 to 2022/23 for each ILNF TV station, all ILNF TV stations and all non-ILNF TV stations in the notice of consultation it publishes for the Spring 2025 consultation on news, along with parallel (small, medium-sized and large) information for commercial radio stations.

Recommendation 6 FRPC recommends that the CRTC continue to publish exhibition, expenditure and employment data by ILNF station, for all ILNF stations and for all non-ILNF stations, by broadcast year, in a database that includes historical and current data.

III. Other issues raised by parties in BNoC 2024-164

A. Prematurity

- 60 MPA-Canada (supported by Netflix) argued that BNoC 2024-164 is premature because of legal challenges to Broadcasting Regulatory Policy CRTC 2024-121 which are now before the Federal Court of Appeal (¶17).
- 61 While agreeing in principle with MPA-Canada and Netflix regarding prematurity, FRPC supports Corus' application's being eligible now for the ILNF as it now exists, provided additional funding is available from through the basic service that BDUs must now provide to all subscribers and provided the Corus stations in Canada's largest markets do not receive funding. We agree that the CRTC should approve Corus' request to be considered eligible for ILNF funding on a temporary basis – pending the Fall 2024 commercial-radio news consultation (as it is unclear to what extent Corus' radio and TV stations currently benefit from cross-media synergies and access to two funds rather than just the ILNF), the Winter 2024-2025 structural consultation and the Spring 2025 news consultation and public hearing.

B. Confidentiality

- 62 MPA-Canada expressed its concern at ¶16 about submitting “highly sensitive and confidential financial information” to the CAB, self-described at (its) ¶11 as “the national voice of small, medium and large Canadian privately-owned and controlled radio, television and discretionary broadcasters both vertically integrated and independent, including all of the recipients of the Independent Local News Fund (ILNF) as well as Corus Entertainment Inc. (Corus)”.



Table 1 Source: CRTC 2015-421	Local news			2012/13- 2014/15	Local non-news			2012/13- 2014/15
	2012/13	2013/14	2014/15		2012/13	2013/14	2014/15	
All stations, by size								
Exhibition hours								
Small markets	23,197	23,023	11,334	-51%	4546	4360	2440	-46%
Medium-sized markets	13,069	13,548	6,503	-50%	2716	2846	1343	-51%
Large markets	20,361	21,672	10,325	-49%	12602	12125	6443	-49%
Total	56,626	58,243	28,162	-50%	19864	19331	10226	-49%
Employees								
Small markets	789	786	730	-7%	40	38	34	-15%
Medium-sized markets	628	632	535	-15%	63	60	52	-17%
Large markets	1,762	1,786	1,782	1%	513	421	395	-23%
Total	3,179	3,204	3,046	-4%	615	520	480	-22%
Total costs								
Small markets	\$67,674,689	\$67,500,024	\$33,122,101	-51%	\$4,396,305	\$3,477,223	\$ 1,734,522	-61%
Medium-sized markets	\$64,938,805	\$66,573,643	\$33,039,269	-49%	\$7,515,600	\$7,215,461	\$ 3,256,451	-57%
Large markets	\$207,424,644	\$210,959,933	\$107,857,654	-48%	\$ 116,811,649	\$ 116,563,998	\$61,450,672	-47%
Total	\$340,038,138	\$345,033,600	\$174,019,024	-49%	\$ 128,723,554	\$ 127,256,683	\$66,441,646	-48%
Number of stations								
Small markets	49	49	49		49	49	49	
Medium-sized markets	15	15	15		15	15	15	
Large markets	22	22	22		22	22	22	
Total	86	86	86		86	86	86	
Average per station								
Exhibition hours								
Small markets	473.4	469.9	231.3		92.8	89.0	49.8	
Medium-sized markets	871.3	903.2	433.5		181.1	189.7	89.5	
Large markets	925.5	985.1	469.3		572.8	551.1	292.9	
Total	658.4	677.2	327.5		231.0	224.8	118.9	
Employees								
Small markets	16.1	16.0	14.9		0.8	0.8	0.7	
Medium-sized markets	12.8	12.9	10.9		1.3	1.2	1.1	
Large markets	36.0	36.4	36.4		10.5	8.6	8.1	
Total	64.9	65.4	62.2		12.6	10.6	9.8	
Total costs								
Small markets	\$1,381,116	\$1,377,552	\$675,961		\$89,721	\$70,964	\$ 35,398	
Medium-sized markets	\$1,325,282	\$1,358,646	\$674,271		\$ 153,380	\$ 147,254	\$ 66,458	
Large markets	\$4,233,156	\$4,305,305	\$2,201,177		\$2,383,911	\$2,378,857	\$ 1,254,095	
Total	\$6,939,554	\$7,041,502	\$3,551,409		\$2,627,011	\$2,597,075	\$ 1,355,952	
Grey shading:	FRPC calculation							

63 FRPC considers MPA-Canada’s concern to be valid, and recommends that the Commission require that all payments with respect to the ILNF be made in trust to the CRTC so that it may remit the total of these funds to the CAB at the appropriate time.

C. *Lack of clear planning*

64 It was clear from the introduction of Bill C-10 to the House of Commons in November 2020 that the government was concerned that the *Broadcasting Act* be changed as quickly as possible to enable the CRTC to regulate online broadcasting services. Upon the appointment of a new Chairperson to the CRTC in early 2023, the Ministers of Canadian Heritage and of Innovation, Science and Economic Development (ISED) anticipated that once the government’s policy direction process ended “interested parties” would “quickly look to the CRTC to provide a roadmap for when and how the key regulatory questions will be considered”.⁴ The Ministers noted, however, that “public confidence and trust in the CRTC has waned in recent years”, due to delays in decision-making, barriers to non-broadcaster participation and to lack of transparency in CRTC decision-making.

1. *Delayed decision-making*

65 The Ministers’ 6 February 2023 letter to the CRTC noted that “timely decision making will only be more critical in responding to the needs and expectations of society and industry”, and that delays in decision-making are problematic.⁵

66 In the current proceeding Bell expressed its disappointment about the lack of timely action by the CRTC to support local news. It wrote at ¶14 that

... the Commission ignored the urgent need for support for news within all broadcasting news outlets producing local news and instead decided to start its consultations on the overall state of broadcasting news only in spring 2025, with potential changes being implemented even later. As we currently see with Corus, waiting too long to provide any relief and support to broadcasters could lead to catastrophic financial health for the major Canadian broadcasters. The Commission should not wait until all the major news producers in the country face an even worse crisis to take action. Moreover, we note that the Policy Direction applicable to the Online Streaming Act requires to the Commission to "consider the importance of sustainable support by the entire Canadian broadcasting system for news and current events programming, including a broad range of original local and regional news and community programming."

⁴ Minister of Canadian Heritage and Minister of Innovation, Science and Economic Development, *New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System*, [News Release \(Gatineau, 6 February 2023\)](#).

⁵ Minister of Canadian Heritage and Minister of Innovation, Science and Economic Development, *New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System*, [News Release \(Gatineau, 6 February 2023\)](#):

... there is a perception that the CRTC is taking too long to make decisions. CRTC regulatory decisions are essential to creating a stable, competitive, and innovative business environment. Undue delays create uncertainty and potentially impact investment decisions and service offerings for Canadians.

...

- 67 FRPC agrees with Bell. We note that in the context of BNoC 2024-164, the CRTC recognized Corus as an “independent programming undertaking” two years and four months ago on 24 March 2022, in Broadcasting Decision CRTC 2022-76 (permitting Rogers to buy Shaw’s BDU assets). It stated in that decision its intention “to launch a public proceeding as soon as feasible to review the impact of Corus’s new status and the appropriateness of existing mechanisms with respect to independent programming services”.⁶
- 68 While BNoC 2024-164 mentioned Decision CRTC 2022-76⁷ it did not clarify the 2-year-and-4-month-long gap between 2022-76 and the current BNoC 2024-164 proceedings. A reasonable question given that the CRTC answered the Heritage and ISED Ministers’ concerns about timeliness by saying that it is “seeking ways to enhance [its] timeliness ...”,⁸ is how long the public can continue to expect the CRTC to take to ensure that broadcasting services authorized to operate in Canada’s broadcasting system provide first-run local news.
2. [Unannounced changes to CRTC’s Regulatory Plan limit effective participation](#)
- 69 FRPC notes that in February 2023 the Minister of Canadian Heritage and of Innovation, Science and Economic Development addressed the issues of the public’s ability to participate effectively in CRTC proceedings.⁹

⁶ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022), at ¶¶96-97:

... the Commission acknowledges that its regulatory framework relating to independent programming services was designed to support smaller independent programming undertakings and was not intended to apply to an independent programming undertaking of Corus’s scale. While a review of the Commission’s regulatory framework relating to independent programming services and their commercial relationships with BDUs is beyond the scope of this proceeding, the Commission acknowledges that the application of existing policies could lead to unintended outcomes following the close of the transaction.

In light of the above, the Commission, while recognizing that BDUs routinely make packaging changes to adapt and improve their offerings to customers, encourages BDUs to minimize packaging changes until the Commission can complete a review of its policy framework supporting independent programming services and stations. **The Commission intends to launch a public proceeding as soon as feasible to review the impact of Corus’s new status and the appropriateness of existing mechanisms with respect to independent programming services.**

[bold font and underlining added]

⁷ At ¶16, mentioning its approval of Rogers’ purchase of Shaw.

⁸ Chairperson and Chief Executive Officer, CRTC, [Letter addressed to The Honourable Pablo Rodriguez, P.C., M.P., Minister of Canadian Heritage and Quebec Lieutenant and The Honourable François-Philippe Champagne, P.C., M.P., Minister of Innovation, Science and Industry](#), (Ottawa, 13 February 2023).

⁹ Minister of Canadian Heritage and Minister of Innovation, Science and Economic Development, *New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System*, [News Release \(Gatineau, 6 February 2023\)](#):

... there is a perception that the CRTC is taking too long to make decisions. CRTC regulatory decisions are essential to creating a stable, competitive, and innovative business environment. Undue delays create uncertainty and potentially impact investment decisions and service offerings for Canadians.

...

Right now, there is a perception among many that access to CRTC processes is unequal. While the regulator’s open and evidence-based processes are a core strength, barriers to participation remain. Smaller organizations and civil society groups, in particular, expressed concern about not having the same level of resources as large corporate interests to participate in CRTC proceedings.

...

- 70 The CRTC answered the Heritage and ISED Ministers to say that it appreciates that its “success will depend on ensuring that all interested parties have an opportunity to participate in [the CRTC’s] proceedings.”¹⁰
- 71 On 6 May 2023 – a little more than a week after the Online Streaming Act received Royal Assent – the CRTC published a [Regulatory Plan to modernize Canada’s broadcasting system](#).¹¹ The *Regulatory Plan* set out consultations it planned to hold in 2023 and 2024, advising that it would focus on implementing the decisions flowing from these consultations in “[l]ate 2024”. Whether one agreed or disagreed with the CRTC’s approach, the *Regulatory Plan* had the virtue of being published and offering the semblance of certainty.
- 72 By 8 December 2023 (when the CRTC published a new version of its *Regulatory Plan*), the Commission had not published any notices of consultation for the five consultations it had indicated it might hold in Winter 2023-2024: on definitions of Canadian content and Indigenous content, on tools to support Canadian music and other audio content, on programming and supports for video content, on local markets *[sic]* access and competition and on protecting Canadian consumers. Nine public-interest organizations therefore wrote the CRTC on 22 January 2024 to ask for clarification about “the timing of the various consultations it will be holding in 2024 in connection with its *Regulatory Plan* to modernize Canada’s broadcasting framework (“*Regulatory Plan*”)” – given their need to plan the best use of their limited staff and financial resources.
- 73 The CRTC’s Executive Director, Broadcasting, answered the groups four months later. They said that the Commission is committed to both transparency and predictability in its regulatory processes:
- [y]our letter raises important considerations. The Commission has been engaging openly and broadly to ensure that its modernization process provides opportunities for public and industry participation and reflects a wide range of perspectives. The Commission is also committed to transparency and predictability in its regulatory processes, which is why the Commission took the step of publishing its *Regulatory Plan* in May 2023 and committed to updating the plan regularly. To that end, the Commission published an updated *Regulatory Plan* on 6 May 2024, which is available on the Commission's website. ...¹²
- 74 Since 6 May 2023, however, the CRTC seems to have changed its *Regulatory Plan* at least 7 times. We assume the *Regulatory Plan* has changed because the “Date modified” information published at the bottom of the CRTC *Regulatory Plan* website page shows that the CRTC

¹⁰ *Ibid.*

¹¹ The CRTC changed its plan’s name by 8 December 2023: *Regulatory Plan to modernize Canada’s broadcasting framework*; see *infra* footnote 19.

¹² Executive Director, Broadcasting, CRTC, [RE: Updated Regulatory Plan and Request for clarification regarding timing of consultations, \(Ottawa, 15 May 2024\)](#).

modified it on 28 August 2023, 8 December 2023, 6 May 2024, 7 May 2024, 28 August 2024, 10 September 2024 and most recently, on 17 September 2024.¹³

- 75 The actual number of changes to the plan is unknown because the CRTC does not announce them or maintain readily accessible archived copies of each version. Its “Today’s Releases” page, for instance, has not announced any changes to the *Regulatory Plan* since it was published in May 2023.
- 76 New versions of the *Regulatory Plan* do not indicate either in writing or symbolically¹⁴ any changes that have been to the plan. Some changes are relatively easy to spot – the *Regulatory Plan to modernize Canada’s broadcasting system* became the *Regulatory Plan to modernize Canada’s broadcasting framework* sometime between 23 August 2023 and 8 December 2023; the implementation timeframe for new CRTC regulations and policies shifted from late 2024 (in the 8 December 2023 *Regulatory Plan*) to late 2025 (in the 6 May 2024 *Regulatory Plan*).
- 77 More importantly for planning purposes, consultation dates have changed and consultations have been added to the *Regulatory Plan* without notice. The 8 May 2023 *Regulatory Plan* announced it might hold a public consultation on protecting consumers in Winter 2023-2024; the 6 May 2024 *Regulatory Plan* replaced the consumer-protection consultation with a consultation on public interest participation to be held in Fall 2024.
- 78 The 6 May 2023 *Regulatory Plan to modernize* stated the CRTC’s intention to hold a consultation in Spring 2025 on “how to ensure everyone has access to strong, high quality and diverse local and national news programming on TV, radio and online Canada”.¹⁵ The 29 August 2024 version of the *Regulatory Plan* then announced a consultation on the Independent Local News Fund in Summer 2024 – along with a Fall 2024 consultation on “on a fund to support local news production by commercial radio...outside of the major designated markets of Montréal, Toronto, Vancouver, Calgary, Edmonton, and Ottawa-Gatineau”;¹⁶ it does not explain why a separate proceeding on commercial radio news is needed in Fall 2024 if the CRTC is also holding a consultation on Canadians’ needs for news (including radio news) in Spring 2025.
- 79 Intermittent and unannounced changes to the CRTC’s planned consultations place the public, public-interest organizations and small broadcasters at a disadvantage, forcing them (if they wish to understand the CRTC *Regulatory Plan*) to check the CRTC’s website weekly or to subscribe to a monitoring service that will track changes to the CRTC’s website automatically. It seems reasonable to ask what the Commission meant in February 2023 when it told the Heritage and ISED Ministers that it is aware that success in implementing the *Online Streaming*

¹³ It is unknown whether the *Regulatory Plan* changed between 7 May 2024 and 29 August 2024, dates when FRPC downloaded it.

¹⁴ As with Word’s Track Changes feature.

¹⁵ CRTC, *Regulatory plan to modernize Canada’s broadcasting framework* (Date modified: 2024-05-06).

¹⁶ CRTC, *Regulatory plan to modernize Canada’s broadcasting framework* (Date modified: 2024-08-29).

Act and the *Online News Act* depends on “ensuring that all interested parties have an opportunity to participate in our proceedings”.¹⁷

Recommendation 7 The CRTC should announce changes to its Regulatory Plan as these are made, and indicate through text or symbols how the Regulatory Plan has changed.

D. Lack of relevant evidence

1. No evidence in BNoC 2024-164

80 In writing the CRTC in February 2023 the Ministers of Canadian Heritage and of Innovation, Science and Economic Development expressed their trust that “interested parties, civil society, and the public can continue to count on the CRTC to help them understand the ... evidence, and data underpinning its decisions.”¹⁸ FRPC also notes that the [Canada-United States of America-Mexico agreement](#) requires each party to the agreement to use and publish reliable and high-quality information before it finalizes regulations:

Article 28.5: Information Quality

1. Each Party recognizes the need for regulations to be based upon information that is reliable and of high quality. To that end, each Party should adopt or maintain publicly available guidance or mechanisms that encourage its regulatory authorities when developing a regulation to:

- (a) seek the best, reasonably obtainable information, including scientific, technical, economic, or other information relevant to the regulation it is developing;
- (b) rely on information that is appropriate for the context in which it is used; and
- (c) identify sources of information in a transparent manner, as well as any significant assumptions and limitations.

...

Article 28.9: Transparent Development of Regulations

1. During the period described in paragraph 2, when a regulatory authority is developing a regulation, the Party shall, under normal circumstances, publish:

- (a) the text of the regulation along with its regulatory impact assessment, if any;

¹⁷ Chairperson and Chief Executive Officer, CRTC, [Letter addressed to The Honourable Pablo Rodriguez, P.C., M.P., Minister of Canadian Heritage and Quebec Lieutenant and The Honourable François-Philippe Champagne, P.C., M.P., Minister of Innovation, Science and Industry](#), (Ottawa, 13 February 2023).

¹⁸ Minister of Canadian Heritage and Minister of Innovation, Science and Economic Development, *New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System*, [News Release \(Gatineau, 6 February 2023\)](#):

... there is a perception that the CRTC is taking too long to make decisions. CRTC regulatory decisions are essential to creating a stable, competitive, and innovative business environment. Undue delays create uncertainty and potentially impact investment decisions and service offerings for Canadians.

...

Right now, there is a perception among many that access to CRTC processes is unequal. While the regulator’s open and evidence-based processes are a core strength, barriers to participation remain. Smaller organizations and civil society groups, in particular, expressed concern about not having the same level of resources as large corporate interests to participate in CRTC proceedings.

...

(b) an explanation of the regulation, including its objectives, how the regulation achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered;
(c) an explanation of the data, other information, and analyses the regulatory authority relied upon to support the regulation; and
(d) the name and contact information of an individual official from the regulatory authority who may be contacted concerning questions regarding the regulation.
At the same time the Party publishes the information listed in subparagraphs (a) through (d), the Party shall also make publicly available data, other information, and scientific and technical analyses it relied upon in support of the regulation, including any risk assessment.

2. With respect to the items required to be published under paragraph 1, each Party shall publish them before the regulatory authority finalizes its work on the regulation³ and at a time that will enable the regulatory authority to take into account the comments received and, as appropriate, make revisions to the text of the regulation published under subparagraph 1(a).

- 81 The CRTC answered the Heritage and ISED Ministers on 13 February 2023 to say that it “will hold consultations that are open ... and will rely on evidence to make [its] decisions.”¹⁹
- 82 BNoC 2024-164 did not set out any factual information relevant to the ILNF, the local-news programming broadcast by ILNF recipients or the levels of employment by ILNF recipients – whether before or after news subventions began for private broadcasters. Friends of Canadian Media noted the impact of lack of data, noting at ¶16 that even if it had the expertise to develop a specific allocation formula for the ILNF (and it said it did not have this expertise), it also did not “have the data necessary, to propose a specific allocation formula to this effect”. Similarly, the Local Independent Television Group (LITS Group) noted at ¶134, footnote 23 that “Modelling of a market cap would require data on individual Corus station locally reflective news and information expenditures and hours. While the Commission is in a position to conduct such modelling, LITS Group is not.”
- 83 In light of CUSMA’s requirements regarding evidence in regulatory proceedings and the CRTC’s 13 February 2023 commitment to be open, it seems reasonable to ask how the absence of information about the impact of the ILNF in BNoC 2024-164 enables all parties to understand the evidence on which the CRTC is relying to make its determinations about the ILNF. Section 37 of the CRTC’s *Rules of Practice and Procedure* empower the Commission to ask parties to a public hearing to meet with one of its members to ‘formulate the issues and consider’
- (a) the simplification of the issues;
 - (b) the necessity or desirability of amending the application, answer, intervention or reply;

¹⁹ Chairperson and Chief Executive Officer, CRTC, [Letter addressed to The Honourable Pablo Rodriguez, P.C., M.P., Minister of Canadian Heritage and Quebec Lieutenant and The Honourable François-Philippe Champagne, P.C., M.P., Minister of Innovation, Science and Industry](#), (Ottawa, 13 February 2023).

- (c) the making of admissions of certain facts, the proof of certain facts by affidavit or the use by a party of matters of public record;
- (d) the procedure to be followed at the hearing;
- (e) the mutual exchange by the parties of documents and exhibits that the parties intend to submit at the hearing; and
- (f) any other matters that might aid in the simplification of the evidence and disposition of the proceedings.

84 FRPC recommends that the CRTC invite public comment on the evidence it should gather before its major, upcoming public consultations.

Recommendation 8 The CRTC should invite the public to comment on the evidence it should gather for its consultations, at least two months before it issues actual notices of consultation.

2. *Lack of evidence before final reply*

85 After the CRTC posted six applications from Canada's four largest broadcasters in May-June 2023 seeking reductions in required programming expenditures including on local news, FRPC and PIAC asked the CRTC on 30 June 2023 to consolidate the proceedings and to provide more information for the public record.²⁰ The CRTC denied FRPC-PIAC's request on 13 May 2024, explaining that it

... will be launching consultations relating to broad policy matters. The Commission considers it appropriate to incorporate the applications submitted by Bell (2023-0379-1 and 2023-0380-9), Corus (2022-0946-0 Footnote2 and 2023-0300-9), Quebecor (2022-0986-6) and Rogers (2023-0373-3) **into these upcoming proceedings. As a result, the Commission is suspending these applications at this time and will consider them as part of the implementation of the amended *Broadcasting Act*.**

...
The Commission finds that since it will consider the applications made by the large broadcasting groups in the context of upcoming public proceedings, it is not necessary to consolidate them into a single application and launch a proceeding. Furthermore, ... **future proceedings will provide opportunities to add information to the record**, there is no need to consider the ... request from FRPC and PIAC [for additional information] at this time.

....²¹

86 On the same date as its decision denying FRPC-PIAC's requests to consolidate and clarify proceedings with the effect of reducing expenditures on Canadian programming, the CRTC also issued decisions about the six applications (see table below), making it unclear how its future broad policy consultations will also consider these applications.

²⁰ FRPC-PIAC, *The emerging crisis in local television – Part 1 application by FRPC AND PIAC for the CRTC to reconsider its approach to applications by Bell Media, Corus, Québecor and Rogers* (Ottawa, 30 June 2023).

²¹ CRTC, *Part 1 applications filed by Bell, Corus, Quebecor and Rogers seeking amendments to conditions of service for their respective television services, and procedural requests in regard to those applications, filed by the Forum for Research and Policy in Communications and the Public Interest Advocacy Centre*, [Broadcasting - Secretary General Letter addressed to the Distribution List](#) (Ottawa, 13 May 2024; no page or paragraph numbers).

CRTC application number	Applicant	Date application filed	Date CRTC posted application	CRTC decision and date
2022-0986-6	Québecor	August 2022 ²²	15 May 2023	2024-103 and 2024-104, – 13 May 2024
2022-0946-0	Corus	17 November 2022	15 May 2023	
2023-0300-9	Corus	10 May 2023	24 May 2023	
2023-0373-3	Rogers	12 June 2023	19 June 2023	
2023-0379-1	Bell	14 June 2023	23 June 2023	
2023-0380-9	Bell	14 June 2023	23 June 2023	

87 In the result, BNoC 2024-164 did not set out any evidence and appeared instead to expect the public instead to rely on information provided by broadcasters and other parties such as the CAB in support of their arguments and their positions, or to use the limited time available to develop and write comments to hunting for data from other sources.

88 Relying on other interveners’ evidence raises two concerns. The first is that such evidence only becomes available to all parties after the intervention deadline, essentially preventing the evidence from being analyzed before the deadline, and limiting the opportunity to provide new counter-evidence in reply.²³ The second concern is that Parliament specifically empowered the CRTC – and only the CRTC – to require broadcasters to provide any information necessary to administer the *Broadcasting Act*, including and not limited to

- (i) financial or commercial information,
- (ii) information related to programming,
- (iii) information related to expenditures made under section 11.1, and
- (iv) information related to audience measurement, other than information that could identify any individual audience member²⁴

89 If the CRTC is not publishing relevant information when it invites comments from the public about its proceedings, what purpose does the information collected by the CRTC serve? It is true that the CRTC publishes facts accessible through on its [Communications Market Reports – Open Data](#) page – but it is unclear which of the 16 Excel datasets sets out data that is specifically relevant to BNoC 2024-164. It is also unclear why the CRTC does not provide any of the data it has itself used in preparing its consultations, or why it has not provided any information about the local news programming broadcast by ILNF recipients and Corus.

²² The CRTC subsequently published an amended version of this application on 25 May 2023.

²³ [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#) (SOR/2010-277),

s. 27(2)(b):

The reply must

- (a) be restricted to the points raised in the answer or the document;
- (b) admit or deny the facts alleged in the answer or the document;
- (c) state the grounds of objection or opposition, if any, to points raised in the answer or the document;

....

²⁴ *Broadcasting Act*, s. 9.1(1)(o).

90 FRPC notes that in their February 2023 letter to the CRTC the Ministers of Canadian Heritage and of Innovation, Science and Economic Development touted the CRTC’s supervision and regulation of Canada’s communication system “in an impartial manner”²⁵ while also warning that “access to CRTC processes is unequal”.²⁶ The Ministers said they trusted that the public can “count on the CRTC to understand the ... evidence, and data underpinning its decisions.”²⁷ The absence of any relevant factual information in BNoC 2024-164 is entirely at odds with the Ministers’ position that

[s]uccess depends on sharing data and information and collaborating on complex and interrelated issues arising from the digital economy.²⁸

91 The absence of evidence in BNoC 2024-164 also contradicts the Ministers’ exhortation that the CRTC “consider creative and innovative ways [wording in the original] improve access to and the usability of information and data held by the CRTC.”²⁹ It seems reasonable to ask how, in an important proceeding about the financial support of local news, the absence of any of the evidence that only the CRTC is empowered to obtain is a creative and innovative way to improve access to the CRTC’s data.

IV. Summary of FRPC’s recommendations

92 FRPC has responded to a number of other parties in the BNoC 2024-164 proceeding. Our reply also includes the following 8 recommendations:

Recommendation 1: FRPC's recommends that the CRTC defer consideration of requests to broaden eligibility for ILNF support until it has the empirical evidence needed to evaluate the impact of its 2016 ILNF regulatory policy in terms of the exhibition of and expenditures on first-run local news 5

Recommendation 2 The CRTC should undertake research to determine which licensed radio and television stations share their news with their stations’ online website 6

²⁵ Minister of Canadian Heritage and Minister of Innovation, Science and Economic Development, *New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System*, [News Release \(Gatineau, 6 February 2023\)](#):

...
For over 50 years, the Government of Canada has remained committed to an independent public authority that operates at arm’s length as a communications regulator. This ensures that the Canadian communications system is supervised and regulated in an impartial manner by an expert body, which is essential to a free and democratic society.

²⁶ *Ibid.*:

...
Public interest decision making requires hearing from diverse interests. Right now, there is a perception among many that access to CRTC processes is unequal. While the regulator’s open and evidence-based processes are a core strength, barriers to participation remain. Smaller organizations and civil society groups, in particular, expressed concern about not having the same level of resources as large corporate interests to participate in CRTC proceedings.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

Recommendation 3 FRPC recommends that the CRTC gather and publish information on the exhibition of first-run local news, expenditures on first-run local news and local advertising revenues of individual television stations and their websites; to understand how stations' use of the ILNF has changed over time, the CRTC should publish this information for each of the past five years. 7

Recommendation 4 FRPC recommends that the CRTC publish reports from each ILNF recipient showing for the just-ended broadcast year, each recipient station's incremental expenditures on news, the number of full-time or equivalent staff each ILNF recipient station employed in the local area served to collect, assemble and produce first-run local news, and the total hours of first-run local news the ILNF recipient broadcast. Each ILNF recipient station should also state the percentage of their newscasts selected by and delivered to it by non-local (centralcasting) broadcast hubs. 9

Recommendation 5 FRPC recommends that the CRTC publish information on the hours and costs of first-run local news in each broadcast year from 2015/16 to 2022/23 for each ILNF TV station, all ILNF TV stations and all non-ILNF TV stations in the notice of consultation it publishes for the Spring 2025 consultation on news, along with parallel (small, medium-sized and large) information for commercial radio stations. 15

Recommendation 6 FRPC recommends that the CRTC continue to publish exhibition, expenditure and employment data by ILNF station, for all ILNF stations and for all non-ILNF stations, by broadcast year, in a database that includes historical and current data. 15

Recommendation 7 The CRTC should announce changes to its Regulatory Plan as these are made, and indicate through text or symbols how the Regulatory Plan has changed. 21

Recommendation 8 The CRTC should invite the public to comment on the evidence it should gather for its consultations, at least two months before it issues actual notices of consultation. 23

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