



**19 August 2024**

Mr. Marc Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

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Dear Mr. Morin:

**Re: Online News Notice of Consultation CRTC 2024-143 – Application for exemption from the *Online News Act* by Google – CRTC File No. 1011-NOC2024-0143 – reply of the Forum for Research and Policy in Communications (FRPC) and the Public Interest Advocacy Centre (PIAC)**

1. The Public Interest Advocacy Centre (PIAC) and the Forum for Research and Policy in Canada (FRPC) commented on questions 15 through 18 of Online News Notice of Consultation 2024-143 (ONN 2024-143), regarding “Funding for public interest participation”. Our organizations jointly addressed the ideal format for creating such public funding rather than answering the questions separately.
2. FRPC and PIAC submit the following comments in reply to other parties’ submissions in this proceeding. We have focussed on arguments made concerning the reimbursement of public-interest participation costs in proceedings under the *Act*. We begin by addressing the role of public-interest participation under the *Online News Act*. We then address arguments concerning the level of funding for this participation, and conclude by addressing arguments as to the mechanism best suited to consider costs applications under the *Act*.

### **I. Public-interest participation and the *Online News Act***

3. The majority of submissions reviewed by FRPC and PIAC in this proceeding did not address public-interest participation. Bell Media, CBC/Radio Canada, Corus Entertainment, the Globe and Mail, Le Devoir, Journal Le Soir.ca, Hebdomas Québec, News

Media Canada, Québecor, Télé Inter-Rives, and ZoomerMedia Limited for example, did not address the questions about public-interest participation set out in 2024-143. Rogers, Google and the CAB, however, addressed the issue in some detail, and we respond to their concerns below.

**A. CRTC’s jurisdiction**

4. Google and Rogers argue that the absence of explicit language for public interest funding in the ONA prevents the Commission from authorizing such funding (Rogers, paras 13-20; Google paras 40-41).
5. FRPC and PIAC submit that these arguments are not supported by the record of Bill C-18. If Parliament had wished to exclude the public from participating in the CRTC’s proceedings under this statute it would have said so: instead, when Parliament finally enacted Bill C-18 it specifically required the CRTC to hold public consultations before making any exemption orders,<sup>1</sup> and it did not establish such consultations need be held solely with digital news intermediaries and news outlets. In other words, as stated by the Commission in 2024-55, Parliament did not explicitly limit the CRTC’s role to one that is “constrained” (Rogers, para. 19), but rather to one that is simply “narrower” than the roles it plays under other statutes such as the *Broadcasting Act*<sup>2</sup> and the *Telecommunications Act*.<sup>3</sup>
6. Second, had Parliament wished to deny the Commission the discretion to establish a mechanism to reimburse the costs of public-interest participation, it could have said so explicitly. Instead, the *Online News Act* not only grants the CRTC the discretion to establish exemptions from the statute’s application based on “**any conditions the Commission considers appropriate**” [underlining and bold font added], but also empowers the Commission to “make regulations respecting fees to be paid for the provision of services — **including** dealing with a complaint or **providing regulatory processes** — under this Act”.<sup>4</sup> In other words, the limit Parliament imposed on the CRTC is not to prevent it from reimbursing public-interest participation costs, but to ensure that fees paid do not exceed costs “attributable to providing the service”<sup>5</sup> – the same

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<sup>1</sup> S. 11(1):  
The Commission must make an exemption order in relation to a digital news intermediary if its operator requests the exemption and the following conditions are met:  
...  
(a.1) the Commission has held public consultations in accordance with any conditions that its Chairperson may specify; ....

<sup>2</sup> *Broadcasting Act*, s. 5(1); *Canadian Radio-television and Telecommunications Commission Act*, s. 12(2) regarding telecommunications and ‘Canada’s Anti-Spam Legislation’; *Accessible Canada Act*, ss. 45(1) and (1.1), 46, 122(1) and 123, *Elections Canada Act*, s. 347 and 348.1(1).

<sup>3</sup> *Ibid.*

<sup>4</sup> S. 79(1).

<sup>5</sup> S. 79(3).

requirement set out in the CRTC's current costs-applications processes for both telecommunications and broadcasting.<sup>6</sup>

7. While Google did not address the function of section 11(3) of the *Online News Act*, Rogers argued that (paras 17-19) that its language does not support public-interest participation costs-reimbursement because of the CRTC's narrow role in implementing the *Online News Act*. The company pointed to the more explicit "statutory provisions under the *Broadcasting Act* or the *Telecommunications Act*, both of which are the source of the Commission's authority to create a framework to fund public interest participation in the CRTC's broadcasting and telecom proceedings" (para. 16). Neither Google nor Rogers explained how the Commission should reconcile their position that the CRTC's role is "narrow" with the wider scope of the language of section 11(3) which enables the Commission to impose "any conditions" it "considers appropriate". (Nor did Rogers explain how the CRTC was able to establish a public-interest cost-reimbursement regime in *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011 (at paras 47 and 48) when the *Broadcasting Act* at that time lacked the now-explicit wording added by the passage of the *Online Streaming Act*.<sup>7</sup>)
8. Briefly, arguments that Parliament has not empowered the CRTC to establish a mechanism to reimburse public-interest participation costs ignore the context of the *Online News Act* and its requirement that the Commission consult with the public in some matters.

**B. Necessary despite main purpose of the *Online News Act***

9. Although the Canadian Association of Broadcasters (CAB) said it had "no objection" to the reimbursement of public-interest participation costs and "no reason to oppose the funds being directed to the Broadcasting Participation Fund" (page 35), it questioned the need for public-interest participation because it believes that the purpose of the *Online News Act* is to mediate bilateral business negotiations that do not directly affect the general public (page 35). Similarly, Google argued that the CRTC "has the necessary expertise to consider all of the questions raised by the application without needing to require Google to fund public interest participation" (para. 38).
10. FRPC and PIAC agree that a key purpose of the *Online News Act* is to empower the CRTC to facilitate negotiations between news intermediaries and news outlets. That said, the very fact of this proceeding (2024-143) is clear evidence of Parliament's position that financial relationships between online platforms and news organizations are *not* solely a matter of private contract and negotiation. Had that been the case – and it is not –

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<sup>6</sup> *Revision of CRTC costs award practices and procedures*, [Telecom Regulatory Policy CRTC 2010-963](#) (Ottawa, 23 December 2010), "Guidelines for the Assessment of Costs", s. 4: "These Guidelines are intended to implement the following principles: (a) costs awarded shall not exceed those necessarily and reasonably incurred by the applicant in connection with its participation in the proceeding ...."

<sup>7</sup> It has provided since April 2023 at s. 11.1(1)(c) that the Commission may make regulations regarding expenditures to support "participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act ...."

Parliament would not have enacted Bill C-18. Nor would it have permitted the CRTC to grant requests for exemption from the *Online News Act* provisions without a public consultation. Parliament instead decided to pass C-18 with a requirement for public participation: the issue for Parliament was not the CRTC's expertise 'to consider all questions' related to the *Online News Act*, but rather the role the CRTC must play as a neutral mediator.

11. As Unifor pointed out, “[p]ublic engagement and participation in these matters is critical, and ... extra measures must be implemented to support public interest participants” (para. 33); the Fédération nationale des communications et de la culture similarly noted that public consultations “pérméttént aux partiés prénnantés dé donnér léur avis sur lés éfféts dé la Loi ét lés avntagés dé l'accord, contribuant ainsi a maintenir un alignémént avéc lés bésoins dés communauté s ét l'é volution dé l'industrié” (page 7).
12. FRPC and PIAC submit that bilateral business relationships do not exist in a vacuum that has no impact on the Canadian public and consumers: all business relationships affect the quality, value, prices and availability of the products and services on which the general public and Canadian consumers rely. In the classic competitive marketplace theory described centuries ago by Adam Smith, the public interest with respect to a kettle (for example) is reflected solely by its purchase by buyers: no or few sales prove the public's lack of interest in the product. As is self-evident from Parliament's enactment of the *Online News Act*, news is not a kettle but a service on which people rely daily. Arguing that the funding of news in Canada is solely a matter of bilateral business negotiations, therefore, is to negate Parliament's actual position that news is so integral to Canadian society, to Canadian democracy and to the public that the legislature's intervention is both required and desirable. As the Canadian Association of Community Television Users and Stations (CACTUS) commented, funding public interest participation “ensure[s] that a diversity of voices can be heard, including from small public-interest stakeholders such as community broadcasters” (para 13).
13. FRPC and PIAC also note that Parliament has determined that the Google exemption and other potential exemptions in the future must expire after five years, after which a review for a renewal would be required. Such reviews may require an as-yet undefined level of public participation to ensure that Parliament's goals and objectives for the *Online News Act* are being met. It would be inappropriate for Google or any other party to attempt to pre-emptively ensure the minimization of public interest participation in these proceedings by asking the CRTC to determine now that “there are no issues under consideration that require financial support for ... public participation” (para. 38).
14. Finally, FRPC and PIAC note that public-interest participation ensures that Canadians have an opportunity to assess and address the potential impacts of such relationships: while transparent regulation demands that such participation be enabled, a serendipitous effect of reimbursing public-interest participation costs is to maintain and strengthen trust in government institutions such as the Commission.

## II. Equitable funding of public-interest participation in Online News Act proceedings

15. Google Inc. (Google) argued that public interest participants who are participating in this consultation “will have had to decide to participate without any expectation of having costs covered” (para 39).
16. FRPC and PIAC begin by noting that each participated in this proceeding with the knowledge that no mechanism currently exists to reimburse their costs. We also note that while our organizations would have preferred to comment on all 21 of the questions set out in ONN 2024-143 it would have been irresponsible on our part to incur this level of unfunded work in light of the uncertainty that our costs will be reimbursed. To put this responsibility in context, ONN 2024-143 is just one of 12 CRTC broadcasting proceedings underway at the same time as 2024-143: Table 1.

Table 1: Broadcasting matters announced by CRTC in July, August and September 2024

CRTC broadcasting matters	Issued	Deadline
1. Indigenous broadcasting (2024-67)	22 March 2024	22 July 2024
2. Google exemption (2024-143) - comments	27 June 2024 => see #5, below	29 July 2024
3. BCE radio asset sale I (2024-148)	2 July 2024	1 August 2024
4. BPF amendment (2024-0355-9)	5 July 2024	6 August 2024
5. Google exemption (2024-143) - reply	29 July 2024*	19 August 2024
6. Online captioning	25 June 2024	19 August 2024
7. Blue Ant – PNI amendment (2024-0385-6)	18 July 2024	19 August 2024
8. CPAC rate increase (2024-0399-7)	24 July 2024	23 August 2024
9. Online described video	25 June 2024	26 August 2024
10. BCE radio asset sale II (2024-172)	30 July 2024	29 August 2024
11. ILNF (2024-164)	23 July 2024	6 September 2024
12. Corus-Rogers (2024-0418-5)	12 August 2024	11 September 2024
* Date when comments became available so as to prepare replies		

17. The deadlines of these proceedings generally limit our organizations’ ability to retain outside assistance to prepare submissions regarding matters requiring both familiarity with proceedings’ issues, knowledge as to where required evidence may be found and expertise in drafting submissions. FRPC and PIAC participated in this proceeding without any guarantee of future payment so as to make the base case for supporting public-interest participation<sup>8</sup> in matters related to the funding of news organizations in Canada. We also note that matters related to the public interest can arise in a variety of contexts as the Commission begins to implement Parliament’s requirements for the *Online News Act*, whether by seeking public comment on its aspects of its draft regulatory approach or

<sup>8</sup> FRPC also participated in the comment, reply and secondary comment stages of *Call for comments – Framework under the Online News Act (formerly Bill C-18)*, Online News Notice of Consultation CRTC 2024-55 (Ottawa, 13 March 2024).

by initiating reviews to assess the impact of implementing such requirements and to help determine whether changes to the CRTC's regulatory approach are required.

18. Google also argued that “there should be minimal costs involved for any public interest participants in this proceeding as it is entirely a written proceeding” (para 39). Arguing that minimal costs – in other words, minimal time – are required for the CRTC's non-hearing matters ignores the quasi-judicial character of all of its proceedings, however informal these proceedings may at first glance appear. As many parties are aware, the CRTC has in line with Canada's courts published rules for engaging in its proceedings.
19. The [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#) do not distinguish between hearing and non-hearing proceedings except to set out rules governing the entry of new evidence at a hearing and the appearance of interveners.<sup>9</sup> Hearing and non-hearing proceedings otherwise both require participants to set out facts, information and arguments. FRPC and PIAC note that while appearing public hearings<sup>10</sup> obviously require additional time to monitor hearings, to draft remarks to make to and to prepare for questions from the members of the CRTC hearing panel, the time involved is generally secondary to the preparation of initial written comments or interventions.<sup>11</sup>
20. FRPC and PIAC also submit that acceptance of Google's ‘minimal-cost’ argument would effectively fetter the Commission's jurisdiction going forward. Rather than inviting comments from all interested parties, for example, as it now does, a ‘minimal-cost’ approach would require the CRTC to ensure that public-interest participants' participation in the future is of an appropriately ‘minimal’ level rather than that it is of assistance (which is the current threshold test). As some, though not all, proceedings can be highly technical – involving a polycentric analysis of overlapping issues related to broadcasting, news and telecommunications – the CRTC would also be constraining the evidence that one class of participant, namely public-interest participants, may adduce, thereby casting doubt on the substantive meaning of the equality rights guaranteed by Canada's constitution.

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<sup>9</sup> See *e.g.* ss. 38, 41 and 42, as well as s. 40.

<sup>10</sup> As opposed to non-appearing public hearings to which the CRTC does not invite applicants or interveners – see *e.g.* *Notice of hearing*, [Broadcasting Notice of Consultation CRTC 2024-172](#) (Ottawa, 30 July 2024): “The Commission will hold a virtual hearing on 8 October 2024 at 11:00 a.m. in the National Capital Region. The Commission intends to consider the following applications, subject to interventions, without the appearance of the parties ....”

<sup>11</sup> For example, a multi-year proceeding such as that involving the renewal of the broadcasting licences (and of the continued exemption of the online broadcasting services) of the Canadian Broadcasting Corporation/Radio-Canada might, due to the volume of documentation such a proceeding entails and the commensurate level of evidence required to address the documentation, involve several hundred hours of time for a single public-interest intervener to participate in the ‘written’ component of the proceeding alone. This written component typically consumes from 80% to 90% of the total time required for the proceeding which in some cases can extend over one or more years. (The most recent CBC/RC renewal began on 25 November 2019 and concluded on 22 June 2022 [before Cabinet ordered the CRTC to reconsider the matter in September 2022].)

21. FRPC and PIAC submit that as a matter of law and also of practicality, the CRTC's open and inclusive proceedings in which all interested parties may engage enable the Commission to ensure that it is able to consider a wide range of issues, perspectives and evidence.

### **III. Mechanism for collecting and distributing public-interest participation funding**

22. A number of parties<sup>12</sup> agreed that the Broadcasting Participation Fund (BPF) would be the appropriate vehicle for collecting and distributing funding for public participation funding under the *Online News Act*. The BPF was established in 2012 to consider applications made by public-interest organizations including PIAC and FRPC for the reimbursement of their costs of participating in the Commission's proceedings. Given the growing complexity of communications in over the past several decades the existence of the BPF-FPR and funding to enable it to meet its mandate have permitted more parties to participate in the CRTC's proceedings and to provide it with a greater range of perspectives, evidence and analysis.
23. While we note the FNCC's concern that the members of the BPF-FPR "ont peu ou pas d'expertise en matière de presse écrite, secteur lié aux indemnisations de Google" (page 7), FRPC and PIAC consider that the BPF-FPR's Board has since its establishment met the CRTC's expectation that it facilitate and promote public-interest participation in the CRTC's proceedings. After all, its function is not to place itself in the Commission's shoes to determine the merits of parties' positions on complex issues, but to decide whether parties' applications for the reimbursement of their costs are well-founded and whether these applications should be granted, amended or denied. Other parties including CACTUS and CAB also explicitly endorsed the use of the BPF as the method to distribute the public interest participation funds.
24. Given the 5-year period during which an exemption order can last, and the relatively large upfront costs in proceedings to establish the structure of any exemption application, FRPC and PIAC recommended that there be sufficient funds available to pay not only for representation of the public interest throughout this application but also for any follow-up proceedings as well as some for the (likely) eventual application for renewal of the exemption order.
25. Section 4(d) of the *Contribution Agreement* provides that the collective "may deduct an amount in respect of reasonable administrative expenses, not to exceed 2 percent of the Contribution, provided the deducted amount is solely used in respect of activities relating to the administration of the Contribution". As the Contribution each year is defined as \$100 million plus an adjustment equivalent to changes in the Consumer Price Index (section 4(a)), the Collective may be entitled to up to \$2 million per year to "ensure the

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<sup>12</sup> Fédération nationale des communications et de la culture (page 7); CSUR LA TÉLÉ (para. 8); Schriber Media Centre (page 3); Life on Gabriola Media Society (para. 10); Unifor (para. 34);

timely and equitable distribution of the Contribution” to those entitled to receive such funding<sup>13</sup> and to “ensure the compliance of all of its Members” with the *Online News Act*, the regulations made under the *Online News Act* and “any conditions applicable to them contained in the Exemption” order.<sup>14</sup>

26. The CAB has argued that the funding for public interest should not affect the funding for news businesses. PIAC and FRPC agree with this position, with the proviso that the Commission may determine that the Collective does not require financial support amount to \$10 million over five years to perform its role. For example, the Commission may decide, based on a review of the reports submitted to and published by the CRTC filed by the Canadian Association of Broadcasters regarding its administration of the Small Market Local Programming Fund (SMLPF) and the Independent Local News Fund (ILNF) that the Collective may perform its work with less than \$2 million per year. (While not entirely clear from the CAB’s reports, Table 2 below shows that the amounts that appear to have been allocated to the CAB’s administration of the SMLPF and ILNF generally approximate the salary of one-half to one person-year.)

Table 2

<b>CAB reports on funding received and disbursed with respect to the Small Market Local Programming Fund (SMLPF) and the Independent Local News Fund (ILNF)</b>					
<b>Broadcast year for which report submitted</b>	<b>Amount received</b>	<b>Disbursed</b>	<b>Received less disbursed: difference</b>	<b>Difference as % of amount received</b>	<b>2% of amount received</b>
<b>SMLPF: 2003-2004</b>	\$ 5,984,413.38	\$ 5,892,384.00	\$92,029.38	1.54%	\$ 119,688.27
2004-2005					Missing
2005-2006	\$ 6,488,169.00	\$ 6,394,176.00	\$93,993.00	1.45%	\$ 129,763.38
2006-2007	\$ 7,180,799.81	\$ 7,071,090.00	\$109,709.81	1.53%	\$ 143,616.00
2007-2008	\$ 8,305,606.03	\$ 8,197,611.00	\$107,995.03	1.30%	\$ 166,112.12
2008-2009	\$ 8,821,192.91	\$ 8,647,884.00	\$173,308.91	1.96%	\$ 176,423.86
2009-2010	\$ 9,538,349.12	\$ 9,376,287.01	\$162,062.11	1.70%	\$ 190,766.98
2010-2011	\$10,329,016.51	\$10,306,331.98	\$22,684.53	0.22%	\$ 206,580.33
2011-2012	\$10,795,218.65	\$10,728,519.33	\$66,699.32	0.62%	\$ 215,904.37
2012-2013	\$10,903,811.49	\$10,888,543.50	\$15,267.99	0.14%	\$ 218,076.23
2013-2014	\$10,079,118.89	\$10,041,482.88	\$37,636.01	0.37%	\$ 201,582.38
2014-2015	\$ 9,372,411.06	\$ 9,288,757.98	\$83,653.08	0.89%	\$ 187,448.22
2015-2016 (30 Nov/16)	\$ 8,931,245.94	\$ 8,867,424.00	\$63,821.94	0.71%	\$ 178,624.92
2015-2016 (28 Apr/17)	\$ 9,372,411.06	\$ 8,721,298.50	\$651,112.56	6.95%	\$187,448
2016-2017 (18 Jul/18)	\$ 7,879,838.43	\$ 7,821,530.52	\$58,307.91	0.74%	\$157,597
2016-2017	\$115,520.00				\$2,310
2016-2017	\$ 7,879,838.43				\$157,597

<sup>13</sup> S. 7(b) of the *Contribution Agreement*.

<sup>14</sup> S. 7(a).



CAB reports on funding received and disbursed with respect to the Small Market Local Programming Fund (SMLPF) and the Independent Local News Fund (ILNF)					
Broadcast year for which report submitted	Amount received	Disbursed	Received less disbursed: difference	Difference as % of amount received	2% of amount received
ILNF begins	4 July 2017 letter from CAB to CRTC: "None of the contributions received from BDUs shall be spent on ILNF administration. The CAB will invoice recipients directly for their share of the direct costs of administering the fund."				
2017-2018	\$21,670,780.41	\$21,670,780.41	\$ -	0.00%	\$433,416
2018-2019	\$21,216,218.27	\$21,216,218.27	\$ -	0.00%	\$424,324
2019-2020	\$20,919,792.87	\$20,919,792.87	\$ -	0.00%	\$418,396
2020-2021	\$19,965,013.30	\$19,965,013.30	\$ -	0.00%	\$399,300
2021-2022	\$19,216,475.90	\$19,216,475.90	\$ -	0.00%	\$384,330
2022-2023	\$18,076,949.10	\$18,076,949.10	\$ -	0.00%	\$361,539
Yellow highlighting	CAB filed several documents this year, due to reductions in payments from BDUs, and did not clearly state the total amounts received and disbursed – leading to questions as to whether the data are reliable				

27. If the CRTC were to determine that the Collective could perform its work for less than 2% of the Contribution, FRPC and PIAC propose that some or all of the remaining amount be allocated to support public-interest participation, provided this yields at least \$500,000 per year, by directing its remittance to the BPF-FPR for the purpose of reimbursing applications for public-interest organizations' costs in *Online News Act* proceedings. (We would propose that funding not used in a given year be 'rolled over' into the next, with the provision that funding in excess of \$500,000 be returned to Google upon completion of the *Contribution Agreement*, the amount remaining would be held by the BPF-FPR in case the CRTC were to initiate a proceeding under the *Online News Act* regarding a new contribution agreement.)

FRPC and PIAC have appreciated the opportunity to reply to other parties in this proceeding, and look forward to the CRTC's decision in this matter.

Sincerely,



John Lawford  
Counsel to PIAC



Monica Auer  
Executive Director, FRPC

cc Scott Shortliffe, Executive Director, Broadcasting, CRTC  
Broadcasting Participation Fund (BPF) Board of Directors, via  
[aauger@welchlp.com](mailto:aauger@welchlp.com)  
The Honourable Pascale St-Onge, Minister of Canadian Heritage

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