



10 November 2024

Filed online

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: Canadian National Society of the Deaf-Blind, Request for Extension on CRTC 2024-137 for DeafBlind Accessibility, Procedural request (5 November 2024)

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in the 1991 *Broadcasting Act*.
- 2 Parliament's broadcasting legislation encourages public participation in the proceedings of the federal regulatory agency entrusted with the *Act's* implementation, and this participation in turn strengthens the foundation of and potential for successful implementation of the decisions of the Canadian Radio-television and Telecommunications Commission (CRTC).
- 3 FRPC supports the procedural request made on 5 November 2024 by the Canadian National Society of the Deaf-Blind (CNSDB) to extend the deadline for submitting the results of its survey to 29 November 2024.
- 4 By way of context, Parliament first enacted legislation aimed at making Canada fully accessible – the Accessible Canada Act – in 2019,¹ 152 years after Confederation in 1867. Equality without discrimination based on physical disability was first granted constitutional protection in 1982.²

¹ S.C. 2019, c. 10.

² *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act, 1982*, s. 15:
(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Affirmative action programs
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The 1960 [Canadian Bill of Rights](#), S.C. 1960, c. 44, did not address disability or accessibility.

Canada’s communications and broadcasting statutes of 1905, 1913, 1932, 1936, 1958 and 1968³ made no reference to accessibility. The 1991 *Broadcasting Act*’s single reference to accessible programming was vague and uncertain.⁴ So matters stood until Parliament on 27 April 2023 enacted the *Online Streaming Act* to bring the 1991 *Broadcasting Act* into the 21st century: see Table 1.

Table 1

Accessibility in Canada’s broadcasting system	
Year	Event
1991	Parliament incorporates language regarding accessibility when it amends the 1968 <i>Broadcasting Act</i> ; section 3(1)(p) of the 1991 Broadcasting Act contains the statute’s only reference ‘accessible programming’
July 2016	Government of Canada begins consultations on accessibility in Canada ⁵
20 June 2018	The Minister of Public Services and Procure and Accessibility lays Bill C-81, An Act to ensure a barrier-free Canada , before the House of Commons
21 June 2019	Royal Assent is given to Bill C-81, An Act to ensure a barrier-free Canada , establishing the <i>Accessible Canada Act</i> , whose purpose under section 5 is to benefit all persons, especially persons with disabilities, through the realization, within the purview of matters coming within the legislative authority of Parliament, of a Canada without barriers, on or before January 1, 2040, particularly by the identification and removal of barriers, and the prevention of new barriers, in the following areas: ... (c) information and communication technologies;

³ *Wireless Telegraph Act*, 4&5 Edw. VII, c. 49; *Radiotelegraph Act*, 1913, 3-4 Geo. V, c. 43; *Canadian Radio Broadcasting Act*, SC 1 932, c. 51; *Canadian Broadcasting Act*, 1936, 1 Edw. 8, c. 24; *Broadcasting Act*, 7 Eliz. 2, c. 22; *Broadcasting Act*, S.C. 1967-68, c. 25;

⁴ *Broadcasting Act*, S.C. 1991, c. 11, s. 3(1)(p):
 It is hereby declared as the broadcasting policy for Canada that
 ...
 programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

⁵ Employment and Social Development Canada, [Summary of the Accessible Canada Act](#) [accessed 10 November 2024].



Accessibility in Canada's broadcasting system	
Year	Event
	(c.1) communication, other than information and communication technologies;
11 July 2019	Except for section 205, all sections of the Accessible Canada Act enter into force (see Note following section 206]
3 November 2020	The Minister of Canadian Heritage lays Bill C-10 , <i>An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts</i> , before the House of Commons; sections 1(2), 2(6), 4(1), 11 and 23 propose to amend the 1991 <i>Broadcasting Act</i> by including new language regarding accessibility and enforcement through administrative monetary penalties
15 August 2021	Governor General dissolves Parliament and calls for an election that is held on 20 September 2021; ⁶ consideration of all bills ends
2 February 2022	The Minister of Canadian Heritage lays Bill C-11 , the <i>Online Streaming Act</i> , before the House of Commons; sections 2(2), 3(7), 5(2), 15 and 28 propose to amend the 199 <i>Broadcasting Act</i> by including new language regarding accessibility and enforcement through administrative monetary penalties
6 February 2023	Canada's Heritage and ISED Ministers wrote the CRTC Chairperson and Chief Executive Officer to say that "hearing from marginalized communities is essential to achieving a fairer and inclusive communications system that is reflective of Canadian society" and that the that the <i>Online Streaming Act</i> proposed legislative changes that would make the <i>Broadcasting Act</i> "more inclusive of Indigenous peoples, persons with disabilities, Black and other racialized Canadians, and ethnocultural communities, among others. These communities deserve a seat at the table in these discussions. ..."
13 February 2023	In responding to the letter from the Heritage and ISED Ministers , the CRTC's Chairperson and Chief Executive Officer confirms that the Commission is "... seeking ways to enhance our timeliness, accessibility, and openness. We appreciate that our success will depend on ensuring that all interested parties have an opportunity to participate in our proceedings. As an independent, quasi-judicial administrative tribunal,

⁶ Wikipedia, [2021 Canadian federal election](#) [accessed 9 November 2024].



Accessibility in Canada’s broadcasting system	
Year	Event
	the CRTC will consult with Canadians to build as diverse a public record as possible. We will hold consultations that are open, transparent, and respectful, and will rely on the evidence to make our decisions.”
27 April 2023	Bill C-11 receives Royal Assent ; Canada’s <i>Broadcasting Act</i> now includes new language regarding accessibility and enforcement through administrative monetary penalties
8 May 2023	CRTC issues <i>Regulatory Plan to modernize Canada’s broadcasting system</i> and explains that Modernizing Canada’s broadcasting system will require multiple steps. Every step will include open and public consultations. The <i>Regulatory Plan</i> explains that the CRTC “will make decisions based on consultations” and “... will adjust our plans as needed. ...”; it does not refer to captioning
18 December 2023	CRTC staff send Request for information – Closed Captioning of audio-visual programs to a Distribution List; answers to the 19 questions [requests for information or RFIs] are due 44 days later, on 31 January 2024; the letter is posted on the “Commission Letters – 2023” page of its website and lists 19 broadcasters as recipients: Accessible Media Inc., Amazon, Apple, APTN, Bell, CBC/RC, Cogeco, Corus, Disney, Eastlink, Google, Netflix, Paramount, Québecor, Roku, Rogers, Sasktel, Shaw and TELUS
6 May 2024	CRTC’s <i>Regulatory Plan</i> now includes a “consultation on described video and audio description” in Spring 2024, and a “Consultation on closed captioning” in Summer 2024
25 June 2024	CRTC issues <i>Call for comments – Development of a regulatory policy for the distribution of described video and audio description</i> ; Broadcasting Notice of Consultation CRTC 2024-137 (Ottawa, 25 June 2024) CRTC posts 33 documents comprising broadcasters’ 31 January 2024 answers to the CRTC’s 18 December 2023 questions Dirigeant principal, Consommation et recherche Chief, Consumer Research, CRTC, “Faites part de votre point de vue au sujet du sous-titrage codé par les services de diffusion continue Share your views about closed captioning by streaming services” e-mail received by FRPC on 25 June 2024 (3:05 pm ET): ... We are asking you to share this email with the members of your



Accessibility in Canada's broadcasting system	
Year	Event
	community. We want to learn from the experiences of people who rely on these services. All comments received will help the CRTC in making decisions to ensure that the needs and interests of all Canadians are met.
16 August 2024	DWCC files procedural request asking that deadlines in BNoC 2024-137 be extended
19 August 2024	Initial deadline to file comments on the BNoC 2024-137
10 September 2024	CRTC extends deadlines in BNoC 2024-137 (in 2024-137-1)
18 September 2024	Initial deadline for replies to comments filed in BNoC 2024-137
1 November 2024	CRTC Staff Letter re: Broadcasting Notice of Consultation 2024-137 – Request for additional information regarding closed captioning provided by online undertakings , asking 1 question of “advocacy groups and industry organizations” and 8 questions of online undertakings
13 November 2024	2024-137-1 deadline for interventions
13 December 2024	2024-137-1 deadline for replies

- 5 As Table 1 shows, the 2024-137 proceeding is the first opportunity that people in Canada – including, critically, Deaf, Deaf-Blind and Hard of Hearing people (DDBHH) – have ever had to participate in the design of a regulatory framework to reflect, address and enforce their needs regarding broadcasting under laws made to ensure that Canada – and Canadian broadcasting – become fully accessible in a specific period of time: in this case, 15 years (by the end of 2039). The 2024-137 proceeding is also the first opportunity that people in the DDBHH community have been given by the CRTC to make their positions about accessible broadcasting known in the 17 months since Parliament clearly stated its requirement that Canada's broadcasting system be fully accessible in the *Online Streaming Act* and enacted new powers for the CRTC to ensure this happens: see Table 1, 27 April 2023.
- 6 Given that Canada's DDBHH community has been waiting 152 years since the country's Confederation in 1867 for Canada to enact legislation with the express intent of making the country fully accessible, FRPC considers it reasonable that the Commission grant CNSDB's request for an additional 14 days⁷ to ensure that all those interested in affected by the CRTC's

⁷ Or more – see paragraph 15 concerning the days between CNSDB's request and a CRTC decision about the request.

ultimate decisions about BNoC 2024-137 have the best chance possible not merely to participate, but to present the evidence they are working to provide so as to make their case regarding accessibility in online broadcasting.

- 7 The Forum considers that the reasonableness of an additional two-week delay in the 2024-137 comment deadline should be weighed against the inequity in notice granted by the Commission to different stakeholders in this proceeding. At least 19 broadcasters – Accessible Media Inc., Amazon, Apple, APTN, Bell, CBC/RC, Cogeco, Corus, Disney, Eastlink, Google, Netflix, Paramount, Québecor, Roku, Rogers, Sasktel, Shaw and TELUS – knew of the CRTC’s interest and its questions about closed captioning 11 months ago. They knew because the CRTC on 18 December 2023 sent them 19 questions about their captioning practices (see Table 1, 18 December 2023). The CRTC only made these questions and the broadcasters’ answers public half a year later, when it released BNoC 2024-137 at the end of June 2024. The effect of this timing was to give broadcasters a six-month head start – relative to accessibility organizations – to consider, develop proposals regarding and gather evidence about closed captioning.
- 8 The disparity in notice is all the more striking because even if members of the DDBHH community, their friends, families or co-workers had closely read the CRTC’s *Regulatory Plan to modernize Canada’s broadcasting system* when it was published on 8 May 2023, they could not have known about the CRTC’s interest in closed captioning because this first version of the CRTC’s Regulatory Plan did not mention accessibility. The CRTC appears to have first referred to closed captioning when it amended its *Regulatory Plan* on or around 6 May 2024.⁸ Even then, the notice that the CRTC provided was vague as to the specific questions of the CRTC – see Figure 1 – making it difficult, if not impossible, to develop an appropriate survey questionnaire.

Figure 1

Summer 2024

- **Consultation on closed captioning**

This consultation will study how Canadians who rely on closed captioning can have access to barrier-free programming on traditional and online platforms. Comments in American Sign Language (ASL) and *Langue des signes québécoise* (LSQ) will be accepted.

- 9 The Forum also notes that when the CRTC did invite the general public to comment on [Development of a regulatory policy for closed captioning provided by online streaming](#)

⁸ The 21 March 2024 version of the *Plan* did not address accessibility or captioning.



undertakings it published the call for comments on 25 June 2024 – four days after the solstice marking the arrival of summer. Many people in Canada who do not work at the CRTC, in broadcasting or in public advocacy organizations tend to vacation in June and July and as a result, do not necessarily check the CRTC’s Open Notices of Consultation page daily to determine whether the Commission has launched a proceeding that may affect their interests; some may not even read business e-mails until their holidays end. It is therefore unclear when people in the DDBHH community or in accessibility organizations actually became aware of the opportunity to comment.

- 10 Additionally, while the CRTC subsequently extended the deadlines for 2024-137 by 12.3 weeks in BNoC 2024-137-1 (10 September 2024), the true effect of the initial head start granted to broadcasters is that they have had as of today (10 November 2024) 46.8 weeks to plan for the CRTC’s closed-captioning no-hearing proceeding, while groups such as CNSDB have had 19.7 weeks. This significant disparity in preparation time helps to explain why these groups today require more time. The absence of a public-hearing component in this process heightens the importance of participants’ written submissions and evidence. The Forum’s position is that additional preparation time for CNSDB is one way of alleviating the impact of the otherwise significantly disparate timing of notice granted by the Commission to different parties, and of its decision not to hold a public hearing at which parties such as CNSDB may actually address and answer questions from CRTC Commissioners on behalf of the full Commission.
- 11 FRPC notes, moreover, that CNSDB is seeking an extension in the 2024-137 deadline because it is undertaking survey research that is very likely to strengthen the public record of the proceeding. It is unclear why the CRTC itself did not undertake such a survey – say, between May 2023 (when the CRTC began to plan its implementation of its new responsibilities under the *Online Streaming Act*) and 25 June 2024 (when it issued BNoC 2024-137). After all, the CRTC has experience in research of this kind: from 2016 to 2024 it made 25 contracts with a value of \$2.24 million for public-opinion and survey research (see Table 2).

Table 2

Year	Number of contracts	Total “contract_value”
2016	2	\$64,915.53
2017	3	\$ 164,896.32
2018	2	\$ 288,025.33
2019	6	\$ 545,452.58
2020	6	\$ 499,082.68
2021	3	\$ 186,529.92
2023	2	\$ 245,585.63
2024	1	\$ 246,379.84
Total	25	\$2,240,867.83
Average value per contract		\$89,634.71



Year	Number of contracts	Total “contract_value”
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Source: Open Government’s [Proactive Disclosure page describing “Government Contracts over \\$10,000”](#) for “survey” and “public opinion” work contracted by the CRTC; excludes two cases that appear to involve other, unspecified business (Déménagement Outaouais; OML)

- 12 While it is unclear whether any of this research was directed at eliciting the needs and interests of people in the DDBHH community, research undertaken on behalf of the CRTC in 2022 found that stakeholders in the accessibility community were then stressing “the need for the CRTC to be proactive in its approach to accessibility.”⁹ Since the CRTC apparently did not proactively undertake its own survey research regarding BNoC 2024-137, granting CNSDB’s request for a brief extension of the intervention deadline would help to ensure that important, and possibly the only evidence, from those relying on the CRTC’s accessibility requirements is placed on the record of this proceeding. Indeed, the CNSDB has explained that it requires an extension because it did not “anticipate such large interest” by people in this community about the issue of captioning.¹⁰ Results from CNSDB’s survey would therefore be especially valuable if the extension were granted because a survey based on a larger number of respondents can only improve the reliability and utility of its results – and as these respondents in particular may need to rely on interpreters to respond to the survey, more time is needed than might be needed for a ‘conventional’ voice-only telephone survey. Again, the Forum considers that these facts warrant approval of CNSDB’s extension request.
- 13 FRPC acknowledges that extending the CRTC’s deadline by two weeks could theoretically affect the Commission’s ability to reach a final determination in this important proceeding. Respectfully, a minor delay of a few weeks to ensure procedural fairness is inconsequential in comparison to the time that members of accessibility communities have been waiting for Canada’s broadcasting system to be fully accessible. Moreover, the invaluable benefit of actual objective survey research evidence from people in accessibility communities *in an accessibility proceeding* must surely outweigh any minor disadvantage yielded by a brief delay in the close of its public-participation phase. That said, the CRTC’s staff itself has also recently introduced a change to the 2024-137 proceeding through their letter of 1 November 2024: [Broadcasting Notice of Consultation 2024-137 – Request for additional information regarding closed captioning provided by online undertakings](#) seeks new evidence for the 2024-137 record which would be filed by 13 November 2024, the day when comments are also due. Given the *de minimus* impact of an extension in the current deadline for comments and the benefit of providing all interveners time to assess the impact of the new, 13 November 2024 evidence for their initial comments, FRPC supports CNSDB’s request.
- 14 Additionally, FRPC considers that granting CNSDB’s request is unlikely to disadvantage any party in this proceeding, provided the timing now used in the 2024-137 and 2024-137-1

⁹ Left Turn Right Turn, [Accessibility Report](#) (4 November 2022), at page 8.

¹⁰ CNSDB e-mail letter of 5 November 2024, at page 1.



consultation notices with respect to replies continues to be respected. Each notice granted interveners 30 days to reply to comments. If the CRTC grants CNSDB's request – as the Forum believes it should for the reasons set out above – to extend the 13 November 2024 deadline by 14 days to Thursday, 27 November 2024, it should extend the deadline for replies by the same time. Where the CRTC has at times extended deadlines for replies concerning specific rather than all interventions, FRPC considers that this case is different: it is reasonable to assume that the results of the survey being undertaken will deal with the 2024-137 subject matter overall, and as a consequence, are more likely than not to be of interest to all interveners. Hence, a general extension to the reply deadline (rather than a narrow extension solely regarding replies to CNSDB's survey results) is required.

- 15 Moreover, because CNSDB submitted its extension request on 5 November and it is unlikely that the Commission will render its decision on the request before Monday, 11 November, CNSDB and its staff will have been operating in a situation of uncertainty as to the timing of their work. It would therefore be reasonable to compensate for this uncertainty by extending the deadline for CNSDB by the number of days between its extension request and the CRTC's determination of the request in addition to the 14 days sought. For example, if the CRTC were to issue its decision on the extension request on Monday, 11 November, it should extend the deadline for all comments by 14+5 – or 19 – days: from 13 November to Monday, 2 December 2024.
- 16 Extending the deadline for comments to 2 December 2024 would normally mean the filing of replies 30 days later, by Wednesday, 1 January 2025. However, the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* exclude the 18-day period from 21 December 2024 to 7 January 2025 from the calculation of time periods in its notices of consultation.¹¹ The appropriate deadline for replies based on the *Rules* and a 19-day extension for comments would be Monday, 20 January 2025 (since, under section 35 of the *Interpretation Act*, Sunday, 19 January 2025 is a holiday.) FRPC will not be disadvantaged by this new timeline and none of the four responses to CNSDB's request which were posted on the CRTC's website as of 9 November 2024 stated any disadvantage that they would incur.

¹¹ S. 12(1)(c):
Time
Computation of time
12 (1) Sections 26 to 29 of the Interpretation Act apply to the computation of a time period set out in these Rules or a decision, notice of consultation, regulatory policy or information bulletin, except that
...
(c) the period beginning on December 21 in one year and ending on January 7 in the following year must not be included in the computation of a time period.



- 17 Granting CNSDB's 14-day+ extension request would exemplify the respectful approach to consultation to which the CRTC's Chairperson committed in February 2023 (see Table 1, 13 February 2023) and would provide all parties with a stronger evidentiary record. Ensuring continuity with respect to the time afforded for replies by respecting the Commission's *Rules* for computing time also provides all parties with certainty.
- 18 For these reasons and those set out above, FRPC supports CNSDB's request, asks that the Commission grant this request and that it also set the deadline for final replies (failing a public hearing) as 22 January 2024.

Monica Auer, M.A., LL.M.

execdir@frpc.net

Executive Director

Forum for Research and Policy in Communications (FRPC)

Ottawa, Ontario

cc:

Kimberly Wood, Canada Deaf Grassroots Movement, canadadeafgrassrootsmovement@gmail.com

Megan McHugh, Canadian National Society of the Deaf-Blind, mchugh.mm@gmail.com

Jeffrey Beatty, Deaf Wireless Canada Committee, regulatory@deafwireless.ca

Tahira Dawood, Public Interest Advocacy Centre, tdawood@piac.ca

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