



15 December 2025

Marc Morin  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: *Call for comments – Consumer protections in the event of a service outage or disruption*, [Telecom and Broadcasting Notice of Consultation CRTC 2025-227](#) (Gatineau 4 September 2025) and *Call for comments – Consumer protections in the event of a service outage or disruption – Changes to procedure*, Telecom and [Broadcasting Notice of Consultation CRTC 2025-227-1](#) (Gatineau 3 October 2025) – Reply by FRPC: *ubi jus ibi remedium*\***

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established a decade ago to undertake research and policy analysis about communications, including broadcasting and telecommunications. FRPC supports a strong Canadian communications system that serves the public interest.
- 2 The Forum intervened in the first phase of this proceeding (*Cents and Sensibility*) and its reply to other interveners is set out below.

## **I. Introduction**

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications including broadcasting, whether offline or online. In our view, a strong Canadian communications system is one that serves the public interest as described by Parliament, in the case of broadcasting, in the *Broadcasting Act*.
- 2 FRPC intervened in the comment phase of this proceeding. We argued that while compensation in the form of dollars and cents must be provided to BDU users both for outages and disruption, it is necessary and sensible to ensure that notifications are made in a way that will reach as many BDU subscribers and users as possible and that reporting on complaints about outages and disruptions be made more coherent.

\* Where there is a legal right there is a remedy.

- 
- 3 The Forum’s reply to other interveners in the 2025-227 proceeding is set out below, and focuses on the issue of jurisdiction.

## II. BDU arguments regarding jurisdiction

- 4 Several interveners have argued that the CRTC lacks jurisdiction to require telecom or BDU companies to refund subscribers for disruptions caused by the failure of their services. Rogers’ view is that the *Broadcasting Act* is “not identified as being a legal basis for this proceeding despite the equal focus on broadcasting services” (¶19). TELUS considers (¶13) that the CRTC’s “[p]roceeding without a clear legal basis for this kind of regulation is an overreach of the Commission’s powers under the *Telecommunications Act* and *Broadcasting Act*.”
- 5 Though not clearly stated, FRPC assumes this argument refers to the fact that the CRTC’s notice of consultation states at paragraph 3 that its “decisions must advance the policy objectives set out in section 7 of the *Telecommunications Act*”, while referring to the *Broadcasting Act* solely at question 27 (“... In the case of BDUs, should they be imposed as a condition of service under paragraph 9.1(1)(j) of the *Broadcasting Act*?”).
- 6 The fact that a CRTC notice of consultation does not refer specifically to the *Broadcasting Policy for Canada* does not, in our view, remove the CRTC’s jurisdiction regarding broadcasting in this proceeding. FRPC agrees with Eastlink (Bragg) (¶113) that
- ... [a]s matter of public policy and procedural fairness, the Commission should always be clear about the basis of its jurisdiction since doing so fosters legally rigorous, intelligible, and transparent decision making. ...
- 7 The CRTC should have taken the time to clarify its jurisdiction regarding the approach to take concerning BDU outages by referring to section 3(1) of the *Act*. The TBNOC 2025-227 proceeding has not yet concluded, however: the CRTC is free to could and (in our view) should clarify its jurisdiction in this matter in its decision.
- 8 The Forum disagrees with those who claim that BDU rates are sacrosanct, because the *Broadcasting Act* does provide the CRTC with jurisdiction in this area. In 1991 Parliament clarified in section 3(1)(t) that the CRTC should consider whether programming is delivered by BDUs to their subscribers at affordable rates, using the most effective technologies available at reasonable costs:

3(1)(t) distribution undertakings

...

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

---

....

- 9 Parsed word by word, Parliament's text means that the only way for the Commission to agree with the 'no-jurisdiction-in-broadcasting' argument would be if it concluded that
- a) subscribers agree to pay for the delivery of programming even when the programming is not delivered due to BDU outages,
  - b) rates are affordable even when BDU subscribers are paying for service that they do not receive, and that
  - c) BDU distribution technologies are effective even when they fail to deliver programming due to outages.
- 10 In our view, this outcome would be absurd, defeating Parliament's purpose in adding the terms, 'efficient', 'affordable' and 'effective', to the *Broadcasting Act*. The Commission would have to deem BDUs to be delivering programming when outages prevent this delivery. It would have to deem BDU rates to be affordable even when subscribers do not receive the service for which they pay. It would have to deem BDU distribution systems as being technologically efficient even when they are unfit for purpose.
- 11 Rather than further clarify the *Broadcasting Policy for Canada*, Parliament has recently offered more precision about the Commission's powers regarding BDUs. In Part II of the April 2023 *Broadcasting Act*, subsection 9.1(1)(j) now enables the CRTC to impose conditions of service regarding the contracts between BDUs and their subscribers:
- Conditions
- 9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting
- ...
- (j) terms and conditions of service in contracts between distribution undertakings and their subscribers;
- ....
- 12 As Parliament cannot be assumed to speak in vain or superfluously, the CRTC must be able to use this section to give teeth to subsection 3(1)(t)(ii) in the legislature's *Broadcasting Policy for Canada*.
- 13 The Forum also notes that Parliament amended the 1991 *Broadcasting Act* to clarify the types of expenditures that the CRTC may regulate. It may, for example, require that broadcasters (including BDUs) make expenditures to support the development of tools to achieve the objectives of the Broadcasting Regulatory Policy CRTC:

---

11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of

....

(d) supporting the development of initiatives — including tools — that, in the Commission’s opinion, are efficient and necessary for the achievement of the objectives of the broadcasting policy set out in subsection 3(1).

- 14 Tools, in the Forum’s view, could be read as including mechanisms for detecting BDU service outages and issuing rebates to BDU subscribers. Rogers (¶19) and TELUS (¶¶16, 29) argue that the CRTC lacks clear jurisdiction to order refunds or credits for outages, but do not explain why expenditures consisting of refunds or credits are not tools available to the Commission under subsection 11.1(1)(d). Granted, Parliament has not explicitly empowered the CRTC to order BDUs to ‘regulate affordability retroactively’ (Rogers, ¶19) or to make retroactive refunds (Rogers, ¶10; TELUS, ¶26): nothing, however, prevents the CRTC from ordering that refunds be made in the future when, in the future, BDU service outages occur, so as to ensure that in the future subscribers receive the service for which they have paid or are about to pay. Arguing that subscribers should pay for services they do not receive is tantamount to paying for goods that are not fit for purpose and with generally few exceptions, is not generally affordable for the half of Canada’s population whose income lies at the median (50%) mark.
- 15 Moreover, according to Rogers “service providers want to do right by their customers for competitive and commercial reasons” (¶12): those service providers should therefore also already be ensuring that their distribution systems are as efficient and effective as possible, minimizing the risk and quantum of service-outage rebates. The impact of service-outage rebates would therefore not fall equally on all BDUs, but on the BDUs that have not invested in their system to the extent required by prudent management.
- 16 FRPC also notes that in its November 2023 [Order Issuing Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\)](#) Cabinet directed the Commission to minimize the regulatory burden on the broadcasting system by using tools based on incentives and outcomes:

Flexible and adaptable regulatory framework

8 To support flexibility and adaptability in its regulatory framework, the Commission is directed to

(a) where appropriate, minimize the regulatory burden on the Canadian broadcasting system;

...

(d) where appropriate, use tools that are based on incentives and outcomes;

....



- 
- 17 Even quite sternly worded admonitions lost their effectiveness as a CRTC regulatory tool decades ago. If BDU subscribers are assumed to make subscription decisions based on costs, it seems reasonable to assume that BDUs also make business decisions based on costs. (After all, Parliament chose to add the power to levy administrative monetary penalties to the CRTC’s regulatory toolkit, presumably intending to discourage performance contrary to the *Broadcasting Policy for Canada*.)
- 18 Knowledge that BDUs will be required to reimburse subscribers for undelivered service seems more likely to encourage BDUs to design, build and – importantly – maintain their distribution systems with even greater care, than instead permitting the current *laissez-faire* approach to continue. FRPC also notes in passing the argument by Eastlink (Bragg, ¶127) that section 3(1)(a.1) of the Broadcasting Regulatory Policy CRTC “clearly require[s] the Commission to regulate similar services in a like manner”. Subsection 3.1(a.1) does not make this statement: it requires, rather, that each undertaking contribute towards the implementation of the Broadcasting Regulatory Policy CRTC “in a manner that is appropriate in consideration of the nature of the services provided by the undertaking”. Appropriate implementation is fundamentally different from “similar services .... like manner”.
- 19 FRPC supports the CRTC in its conclusion that in 2025 regulation is needed to protect the interests of BDU (and telecommunications) subscribers. The two-day long, major service outage of Rogers in 2022 exposed a key weakness of the highly concentrated structure of BDU systems in Canada: while there are many tiny, small and medium-sized BDUs, nearly all of the monthly payments made by BDU subscribers find their way to a few – seven – large BDUs.
- 20 The absence of meaningful competition as a spur for improved service to subscribers is why regulation today is not the ‘disease’ it once was, but a necessary cure for an anti-competitive industrial structure. Quite apart from the fundamental principle of fairness, investments that strengthen the communications distribution system of Canada will benefit the nation and ensure that in times of crisis, Canadians can continue to communicate through broadcasting, from coast to coast to coast.

Sincerely,

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

Executive Director

Ottawa, Ontario

[www.frpc.net](http://www.frpc.net)

[execdir@frpc.net](mailto:execdir@frpc.net)