BEFORE THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

IN THE MATTER OF AN APPLICATION BY BELL MEDIA INC. PURSUANT TO PART 1 OF THE *CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION RULES OF PRACTICE AND PROCEDURE*

TO AMEND CERTAIN CONDITIONS OF LICENCE APPLICABLE TO BELL MEDIA'S ENGLISH- AND FRENCH-LANGUAGE TELEVISION STATIONS – APPENDIX 1, SUPPLEMENTARY BRIEF

14 JUNE 2023

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1.0 INTRODUCTION AND EXECUTIVE SUMMARY

1. Bell Media is filing this Part 1 Application to request that the Commission approve, until the Commission's next full Group Licence Renewal proceeding, amendments to certain conditions of licence (COLs) applicable to our English- and French-language television stations.[1] In particular, the amendments we are seeking relate to our COLs for expenditure and exhibition requirements applicable to certain of our local television stations for locally reflective news, as well as local programming exhibition requirements in metropolitan markets.[2] These COLs were initially set out in Broadcasting Decisions 2017-144[3] and 2017-149,[4] amended in Decisions 2018 334-1[5] and 2018-335[6] as a result of Cabinet appeals (the Reconsideration Decisions), and revised once more in Decision 2020-154 through our acquisition of V Media.[7] Subsequently, our licences were administratively renewed until 31 August 2024 in Decision CRTC 2022-180.[8]

2. More specifically, we are seeking to:

- Delete the requirement for an expenditure level on locally reflective news;
- Delete the exhibition requirement for locally reflective news;
- Delete the exhibition requirement for local programming in metropolitan markets; and
- Delete the exhibition requirement for local programming specific to CFJP-DT Montreal.

3. The requested relief we are seeking would allow us to better manage our regulatory obligations through the evolving competitive landscape of the Canadian broadcasting industry in the face of competition from digital media broadcasting undertakings (DMBUs). As detailed in section 2.1 below, labelled "State of the Traditional Broadcasting Industry," the Canadian broadcast industry is in crisis due in large part to a virtually unlimited array of foreign-owned digital

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1 Under the revised *Broadcasting Act* (S.C. 1991, c. 11), as a result of the changes from Bill C-11, COLs can be replaced by Conditions of Service. As the Commission has not made this change at this point, we refer to them as COLs in this application.

2 "Metropolitan markets" are defined as markets with a population exceeding one million (Toronto, Montréal, Vancouver, Edmonton, Calgary, and the English-language market of Ottawa/Gatineau).

3 Broadcasting Decision CRTC 2017-144, *Bell Media Inc. – Licence renewals for French-language television services*.

4 Broadcasting Decision CRTC 2017-149, *Bell Media Inc. – Licence renewals for English-language television stations and services*.

5 Broadcasting Decision CRTC 2018-334-1, *Reconsideration of licence renewals decisions regarding the licence renewals for the television services of large French-language private ownership groups – Correction*.

6 Broadcasting Decision CRTC 2018-335, *Reconsideration of licence renewal decisions for the television services of large English-language private ownership groups*.

7 Broadcasting Decision CRTC 2020-154, *V Interactions inc. – Change in ownership and effective control*.

8 Broadcasting Decision CRTC 2022-180, *Various large English-language and French-language television ownership groups – Administrative renewals*.

media broadcasting undertakings (DMBUs) being present in the Canadian market for several years without any regulatory obligations. In addition, the growth of the Internet and digital advertising has siphoned billions of dollars in revenue away from traditional broadcasters; viewing to traditional television broadcasters has fallen and broadcasting distribution undertakings (BDUs) are grappling with a corresponding drop in television subscribers.

4. The amendments to the *Broadcasting Act* (the *Act*), through the passage of the *Online Streaming Act* (Bill C-11),[9] are intended to level the playing field so that DMBUs finally start contributing to the Canadian broadcasting sector, including making financial contributions to the Canadian production industry. While we support this objective, and the Commission's commencement of public consultations to implement Bill C-11, we are concerned that the competitive pressures facing the traditional broadcast sector are not being dealt with quickly enough. Of the three industry sectors impacted by Bill C-11 – foreign streamers, Canadian producers, and Canadian broadcasters – it is clear that only one is in crisis: Canadian broadcasters.

5. It is trite to state that streamers (i.e., the DMBUs) are thriving. As shown in the Commission's most recent Communications Marketing Report (CMR), estimated revenues for DMBUs in 2012 were $0.6B jumping to $5.1B by 2021, a massive increase of 750%.[10] Conversely, conventional television revenues decreased by 26% over this same period. As discussed below, the broadcast industry is in the middle of substantial retrenchment with significant staff reductions and, for some broadcasters, reductions to dividends.

6. With respect to the production industry, they are in a very different position than traditional broadcasters as the Canadian production industry is performing extremely well. A recent report by the Canadian Media Producers Association (CMPA) provides a detailed look at the state of film and television production in Canada, highlighting that "[I]n almost every way, 2021-/22 was a record year."[11] The report noted that between 1 April 2021 and 31 March 2022, media production

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9 Bill C-11: *An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make related and consequential amendments to other Acts*, Charter Statement, 2 December 2022, https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c11.html (*Online Streaming Act*).

10 Communications Marketing Report, Chart 1: Broadcasting Revenues from 2012 and 2021 (CMR).

11 Profile 2022: Economic Report on the Screen-Based Media Production Industry in Canada, page 5, https://cmpa.ca/wp-content/uploads/2023/05/Profile-2022-EN_v2.pdf (Profile 2022).

in Canada generated $11.69 billion in production volume and $13.73 billion in GDP, with 240,760 jobs across Canada.[12] Notably:

> Every segment of the Canada's film and television production industry contributed to this growth, although the biggest contributions came from foreign location and service (FLS) production, increasing 27.3% to $6.71 billion, and Canadian television production, increasing 38.9% to $3.51 billion.[13]

7. These record performances for both foreign streamers and Canadian producers stand in stark contrast to the crisis facing traditional broadcasters as further detailed below. Thus, while it is important now that Bill C-11 has passed that the Commission turn its attention to capturing the contributions from foreign-owned DMBUs, in our view that is not the most critical issue to address. Regulatory relief for the traditional broadcasting industry is the most pressing issue.

8. Notably, absent this relief, we will be required to continue operating these stations in an environment of significant regulatory uncertainty while the Commission works to implement Bill C-11's policy directives. The CRTC consultations to implement C-11 will very likely delay the next full Group Licence Renewal proceeding beyond 31 August 2024, which is already two years past the original licence expiry as established in BDs 2017-144 and 2017-149, and for which we have had licence conditions imposed on us through the Reconsideration Decisions that we had opposed in the first place.[14]

9. Given this delay, we believe that the amendments we now seek should not wait until the Commission completes its consultation processes and is able to turn its attention to our existing regulatory obligations. As we noted above, the traditional broadcasting industry is in crisis, which is why the Commission must act now and grant the regulatory relief we are seeking.

10. Finally, we note that our proposed amendments would match the Commission's initial approach to regulating the Canadian Broadcasting Corporation and Société Radio-Canada's (CBC/Radio-Canada) as determined in their 2022 licence renewal and are similar to the requests made in the Part 1 Application filed by Québecor Media Inc. on behalf of Groupe TVA (TVA).[15] We note that in the case of the former, those conditions are under review by the Commission due

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12 CMPA's Profile 2022 reports on health of Canada's film and TV production sector, *CMPA*, 3 May 2023, https://cmpa.ca/press-releases/cmpas-profile-2022-reports-on-health-of-canadas-film-and-tv-production-sector/.
13 Profile 2022, page 5.
14 BD 2018-334-1; and BD 2018-335.
15 TVA Part 1 Application – Appendix 1, Supplementary Brief, 2 June 2023, https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?AppNo=202209866 (TVA Part 1).

mostly to CBC/Radio-Canada's public broadcaster role. We submit that regardless of the outcome of that proceeding, it is appropriate to apply these changes to private broadcasters such as ourselves.

11. Further, in conjunction with this relief application, we are filing a separate application seeking amendments to our COLs for Canadian programming expenditures (CPE) and programs of national interest (PNI).

12. We are filing certain information in this Application in confidence pursuant the directions provided by the Commission in the Appendix to BTIB 2010-961.[16] Release of this information would provide our competitors and potential competitors with invaluable competitively sensitive information that would not otherwise be available to them and cause specific direct harm to us. An abridged version of this Supplementary Brief is provided for the public record.

2.0 BACKGROUND

2.1 State of the Traditional Broadcasting Industry

13. Over the last decade, the operating environment for traditional, private Canadian broadcasters has changed dramatically. Whereas in the past, Canadians looked to domestic services for information and entertainment, they can now access a virtually unlimited array of DMBUs such as Netflix, Disney+, Amazon Prime Video, and Apple+, most of which are foreign-owned and controlled.

14. The emergence of these streaming options has had a significant impact on traditional Canadian broadcasters, and the growth of the Internet and digital advertising has seen billions of dollars in revenues migrate away from traditional media. The Commission itself has recognized the negative impact on the broadcasting system, noting that the growing popularity of digital platforms has resulted in a significant impact on Canadians' viewing habits, with traditional television viewership declining and OTT viewing increasing, ultimately resulting in audience fragmentation.[17]

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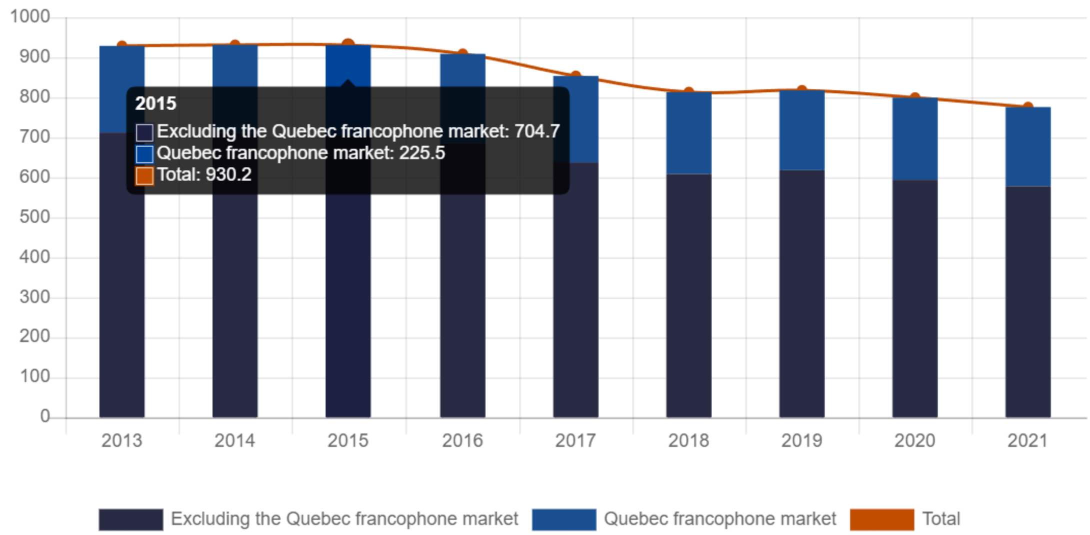
[16] Broadcasting and Telecom Information Bulletin CRTC 2010-961, as amended in Telecom Information Bulletin CRTC 2010-961-1, *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*.

[17] Broadcasting Notice of Consultation CRTC 2022-272, *Call for comments on an application by TVA to remove the advertising time limit of 12 minutes per clock hour on its discretionary services and on the possibility of removing this limit for other discretionary services*, paragraphs 10 and 11.

15. The Commission's most recent CMR notes, as seen in Figure 1 below, that the average hours spent watching traditional television services has decreased by a compound annual rate of 2.2% or a total of 16.5% since 2013.[18] The Commission acknowledges that this is consistent with the Media Technology Monitor Fall 2021 Adoption Report that shows increasing use by Canadians of DMBU services: 22% of Anglophones and 15% of Francophones aged 18+ watch TV exclusively online, up from 5% and 2% respectively in 2012.

Figure 1 - Average Weekly Hours Spent Watching Traditional Television Services (in millions)



16. Moreover, as Corus notes in their Part 1 Application[19] currently before the Commission, over one million fewer Canadians subscribed to traditional BDUs in 2022 than did in 2018.[20] These cord cutters are turning to a wealth of foreign-owned DMBUs readily available in Canada. Netflix, Amazon Prime Video, Disney+, Apple TV+, and Paramount+ are all growing, and these services compete with Canadian broadcasters for the same subscribers, programming acquisitions, and related rights, without being subject to the same regulatory obligations as the traditional broadcasting industry.

17. Further exacerbating this shift, the CMR also highlights that DMBUs continue to increase their share of total broadcasting revenues. The estimated revenues for DMBUs in 2012 were

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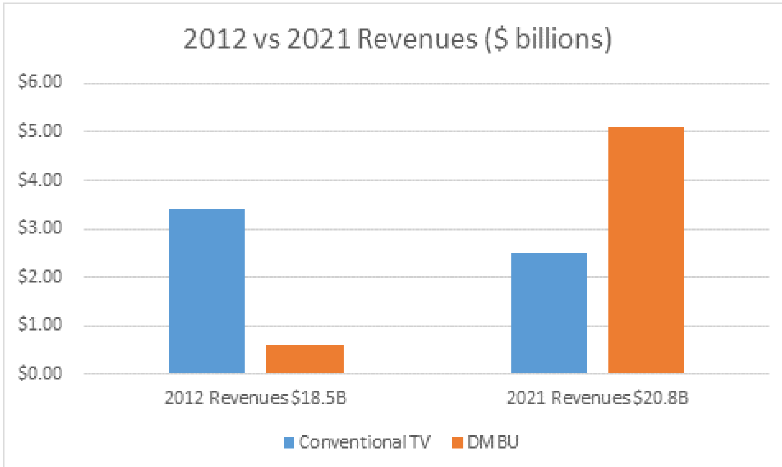
18 Annual highlights of the broadcasting sector 2020-2021, 7 October 2022, https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2022/rad.htm (Annual Highlights 2020-2021).

19 Corus Part 1 Application – Appendix 1, Supplementary Brief, 17 November 2022, https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?AppNo=202209460 (Corus Part 1).

20 Annual Highlights 2020-2021.

$0.6B jumping to $5.1B by 2021, a massive increase of 750%.[21] Conversely, conventional television revenues decreased by 26% over this same period.

Figure 2 - Estimated Revenues for DMBUs[22]



18. The broadcast industry is in the middle of substantial retrenchment with significant staff reductions and, for some broadcasters, reductions to dividends as a result of these shifts in viewing habits and revenues. For example, recent layoffs at Corus and TVA, wherein Corus cited "the post-pandemic climate and unexpected economic uncertainty"[23] and TVA said their decision was necessary for the survival of their businesses in today's economic and competitive environment.[24] For our part, Bell Media has not been immune to these downturns and has also had to make very significant staff reductions in order to streamline operations.[25]

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21 CMR, Chart 1: Broadcasting Revenues from 2012 and 2021.

22 CRTC Annual Returns; and CMR, Chart 1.

23 "Corus confirms layoffs as part of 'enterprise-wide cost review'," *Broadcast Dialogue*, 2 March 2023, https://broadcastdialogue.com/corus-confirms-layoffs-as-part-of-enterprise-wide-cost-review/.

24 Quebecor Part 1 Application, https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?AppNo=202209866.

25 "Sweeping executive layoffs hit Bell Media," *Media in Canada*, 6 January 2021, https://mediaincanada.com/2021/01/06/breaking-sweeping-executive-layoffs-hit-bell-media/; "Second round of layoffs hits Bell Media," *Media in Canada*, 21 January 2021, https://mediaincanada.com/2021/01/21/second-round-of-layoffs-hits-bell-media/; "Bell Media shutters CJAD newsroom," *Media in Canada*, 2 February 2021, https://mediaincanada.com/2021/02/02/bell-media-shutters-cjad-newsroom/; "More job cuts hit Bell Media," *Media in Canada*, 3 February 2021, https://mediaincanada.com/2021/02/03/third-round-of-job-cuts-hit-bell-media/; " Bell Media consolidates in-house prodcos amid more layoffs," *Media in Canada*, 5 February 2021, https://mediaincanada.com/2021/02/05/bell-media-consolidates-in-house-prodcos-amid-layoffs/; "People Moves: Bell makes another round of layoffs," *Media in Canada*, 19 November 2023, https://mediaincanada.com/2021/11/19/people-moves-bell-makes-another-round-of-layoffs/.

19. Corus also announced in March of this year that they were cutting its quarterly dividend to its shareholders.[26] Some investment analysts who commented on the state of Corus' financials stated that "[a]dvertising demand is expected to remain weak in Q3 and there remains limited visibility with regards to the timing of a recovery"[27] and "[r]egulation has been slow to provide Canadian broadcasters with breathing room and Bill C-11 is likely to take many quarters to provide flexibility to Canadian programming spending."[28] Undoubtedly, these comments can be attributed to the industry as a whole.

20. The economic erosion of the industry has been further exacerbated by the COVID-19 pandemic from which the industry has not fully recovered. For example, the CMR states that in 2021, the traditional broadcasting sector revenues saw a small decrease of 0.4% from the previous broadcast year, but were still 6.9% lower than the 2019 broadcast year – the last complete pre-pandemic broadcast year.[29] In addition, as Corus pointed out, the macroeconomic environment became increasingly uncertain in the fourth quarter of the 2022 broadcasting year, characterized by high inflation and supply chain constraints.[30] We now find ourselves amidst an advertising recession and some have estimated that there will be high single digit percentage declines in advertising revenue for all of 2023.[31]

21. In addition, in their October 2022 submission to the Government in advance of the Federal Budget, the CAB highlighted the impact of the pandemic:

> For Canada's private conventional television, revenue fell from $1.89 billion in 2015 to $1.67 billion in 2019 – a decline of about $217 million. In the first pandemic year (2020), it fell a further $279 million. There was some recovery in the second pandemic year (2021), but the total revenue was still about $140 million less than it had been in 2019. Compared to the figure for 2019, private conventional television had a revenue loss of $419 million in the pandemic years of 2020 and 2021. For private discretionary (specialty and pay) services, revenue fell from about $4.1 billion in 2015 to about $4.0 billion in 2019. It then declined by $256 million in 2020, and a further $21 million in 2021. Compared to the figure from 2019, private discretionary services had a revenue loss of $533 million in the pandemic years of 2020 and 2021.[32]

[26] "Corus Entertainment slashing quarterly dividend payment," *BNN Bloomberg*, 7 March 2023, https://www.bnnbloomberg.ca/corus-entertainment-slashing-quarterly-dividend-payment-1.1892276.
[27] CIBC Equity Research, Corus Entertainment Inc., Earnings Update 13 April 2023.
[28] Scotiabank Global Equity Research, Corus Entertainment Inc., Managing a Business Amidst Difficult Industry Trends, 13 April 2023.
[29] CMR, Section 1, Traditional Commercial and DMBU Broadcasting Sector Revenues.
[30] Corus Part 1, paragraph 25.
[31] Company Reports, TD Securities Inc. 7 March 2023.
[32] CAB, Written Submission for the Pre-Budget Consultations in Advance of the Upcoming Federal Budget, October 2022.

22. The stark reality is that local television has been unprofitable since 2012 with PBIT declining to -18.6% in 2020, -12.4% in 2021 and dropping even further to -17.7 in 2022.[33] Seventy per cent of private local television stations and 40% of private radio stations entered 2020 with a negative PBIT.[34] For Bell Media, 90% of our television stations had a negative PBIT in 2018 and while this "improved" to only 84% having a negative PBIT in 2019, 94% of our stations had a negative PBIT in 2020. As of 2022, our local television stations have reported an aggregate loss of $583.7M since 2012.[35]

2.2 Inability to Access Foreign Content

23. Access to key foreign content is another critical issue. The essence of the business model for the English Canadian broadcast industry has always been to acquire Canadian rights to foreign (mostly American) content and to monetize those programs in Canada. Bell Media has longstanding relationships with U.S. studios and broadcasters, allowing us to obtain popular content, which drives viewership to our channels, and which in turn drives advertising revenues. These revenues have then allowed us to invest and produce Canadian content that resonates with audiences and contributes to local economies (e.g., Crave's Thunder Bay and the recently released Little Bird, a co-production with APTN).

24. Almost all English Canadian broadcasters engage in this practice to the benefit of the entire industry and culture. In fact, on an industry basis, approximately $2.5B is spent each year on original programming and copyright payments, with approximately $680M spent annually on news and community information programming (both on TV and radio), resulting in over 60,000 jobs in communities across the country.[36]

25. Further, access to key foreign content helps prevent the Canadian broadcasting system from being bypassed. As noted above, a strong private Canadian broadcasting system benefits Canadians and contributes to local economies. But achieving these outcomes has been a direct result of Canadian broadcast policy; in particular, Commission policy has long been constructed around this reality of access to foreign content.

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33 CRTC Broadcasting Sector Communications Market Reports, 2022 August.
34 The crisis in Canadian media and the future of local broadcasting, *Communications Management Inc.*, 24 August 2020, https://www.cab-acr.ca/resources/cmi-report/.
35 Aggregate Annual Returns, *CRTC*, https://crtc.gc.ca/eng/industr/ann.htm.
36 Canadian Association of Broadcasters; includes CRTC and Statistics Canada data for 2021.

26. The requirement for Canadian BDUs to implement simultaneous substitution is the clearest example of how the Canadian regulatory model has ensured this model is successful. Other examples include the licensing rule that encouraged joint ventures between Canadian-owned and controlled broadcasters with foreign programmers (such as Crave and HBO, as well as the Discovery Canada partnerships), access to local availabilities to promote Canadian content instead of foreign commercials, and eligibility rules that require a Canadian partner to sponsor a foreign network that seeks carriage in Canada. These tools were immensely successful in the past, but new approaches are needed in today's digital environment to ensure that foreign studios continue to provide access to their content through partnerships with Canadian broadcasters.

27. More specifically, the days of having exclusive rights and access to key content from U.S. providers is rapidly eroding through the expansion of DMBUs into the Canadian marketplace. The first and most obvious manifestation of this issue is simply the increased cost that Canadian broadcasters have to pay for American content. # # But the second and more problematic manifestation is the outright denial by American studios to make their content available to Canadian broadcasters. American studios are well into the process of establishing and expanding their streaming operations in Canada so that they horde all (or the most attractive) content for their own streaming arm. Disney now provides much of its content only to its Disney+ Canadian streamer. Other studios have taken content that they used to sell to Canadian broadcasters and repatriated it to their own streaming arm. For example, Paramount has taken a number of properties, including new Star Trek series and popular older services like South Park from Crave and CTV Sci-Fi, and moved them on to its own streamer, Paramount+.

28. In his report, *The State of the Canadian Program Rights Market 2022 – The Demise of the Foundational Business Model of Private Television,*[37] author Peter Miller highlights these access issues, stating that:

Filed in Confidence with the CRTC.

[37] Miller, Peter. The State of the Canadian Program Rights Market 2022: The Demise of the Foundational Business Model of Private Television, *CRTC*, 25 March 2022, https://crtc.gc.ca/eng/publications/reports/rp220714.htm (Miller).

> …the arrival in the last two to three years of US studio-network-cable-OTT conglomerates, is now significantly eroding the ability of private broadcasters to acquire rights to US programming. Specifically, Canadian video on demand (pay TV & OTT) services are at high risk of losing the ability to acquire premium movie & series TV rights, and discretionary services, particularly in the drama genre, are at material risk of losing the ability to acquire US programming rights, while conventional TV stations and networks are only at minimum to moderate risk, given the strength of the US conventional TV business model and enduring structural support measures in Canada (including the retransmission regime and simultaneous substitution). **New public policy approaches currently being contemplated, such as requiring foreign OTT services to contribute to Canadian programming, may, in part, make up for the impact of these developments, but they will not combat them. If a Canadian broadcasting system with a strong private Canadian element is deemed to be in the public interest, new structural measures which could incentivise and prioritize Canadian broadcasting without restricting entry of foreign services, should be implemented.**[38] [Emphasis added]

29. Further, Mr. Miller cites the Commission's 2018 Harnessing Change Report in which he states the following:

> However, while the Commission's 2018 Harnessing Change Report forecast that traditional television would hold 86% of total TV revenues (compared to 14% for online television) in 2020 through 2022 the actual market share decline has been much faster – standing at 21% for online television in 2020, a number that could easily hit 25%-30% in 2022 given current trends. And even that fails to tell the real story, which is that of a less than $16 billion Canadian broadcasting industry competing directly with global OTT platforms whose revenues are over five times as high.[39]

30. Mr. Miller then concludes his report by highlighting what in his view are the worst and best case scenarios for the future of the Canadian Program Rights Market:

> Worst Case: Public policy continues to do little to nothing to shore up the Canadian owned and controlled broadcasting system, meaning 3 years before HBO Max, NBC Universal etc. have established their own DTC plays in Canada, **broadcast rights to the most popular foreign TV programming become either unavailable or cost prohibitive, and major Canadian broadcasters lose so much must watch entertainment programming, that they're bleeding audiences and advertisers, and the system loses critical mass**;
>
> Best Case: The lumbering ship of Canadian broadcasting policy starts turning around, starts to **reintroduce and strengthen material measures that advantage Canadian broadcasters over foreign broadcasters in the Canadian market (access and content funding, in particular),** increases the relative cost of the direct-to-consumer Canadian plays over historic wholesale plays for the major US networks and studios, and

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38 Ibid, Precis.
39 Ibid, paragraph 14.

> combined with a cluttered, confused, and diminishing returns Canadian OTT market, causes (a) the remaining US players that have not yet entered the Canadian market with DTC plays, to stand down (b) marginal foreign OTT entrants (perhaps Discovery+ and Paramount+) to retreat, (c) the major Canadian players to reinvest rather than harvest change and (d) Canadian programming and independent broadcasters to thrive.[40] [Emphasis added]

31. In our view, it is clear from the above that the state of the traditional broadcasting industry in Canada is such that immediate regulatory relief is needed from certain obligations in order to continue to both develop and foster programming by and for Canadians.

2.3 Other Mitigating Factors to Support Regulatory Relief

32. As we noted earlier, in light of the passage of Bill C-11, we acknowledge the Commission's recently launched consultations to modernize the broadcasting system and ensure that online streaming services make meaningful contributions to both Canadian and Indigenous content. While Bill C-11 brings streaming services into the regulated system, a new framework may not be established until the fall of 2025. In the meantime, as we noted earlier, traditional broadcasters continue to be in crisis while Canadian producers are flourishing. We recognize that is important for the Commission to move forward with implementing Bill C-11, but regulatory relief for the traditional broadcasting industry is the most pressing issue. Without regulatory relief, our competitive disadvantage with the various DMBUS (as well as potentially with CBC/Radio-Canada depending on the Commission's reconsideration decision) will be extended further.

33. Bell Media's television licences were set to expire on 31 August 2022. However, in July 2022, the Commission administratively renewed these licences until 31 August 2024, subject to the terms and conditions in effect at that time. Given the recent launch of new proceedings to implement Bill C-11 and the Commission's three-step process,[41] which will clearly take time to implement, it now appears likely that our licences will receive another administrative renewal.

34. Continuing to adhere to regulatory requirements that are based on market conditions that are not reflective of the current competitive environment is concerning. Critically, over at the least

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40 Ibid, paragraph 142.

41 Broadcasting Notice of Consultation CRTC 2023-138, *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*; Broadcasting Notice of Consultation 2023-139, *Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations*; and Broadcasting Notice of Consultation 2023-140, *Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*.

the next two years, this means expending hundreds of millions of dollars in annual regulatory obligations (i.e., mandated spending and exhibition levels) until the Commission conducts the next full Group Licence Renewal proceeding, all while still facing overwhelming competitive pressure from DMBUs. These DMBUs will continue to have very limited regulatory obligations until a new regulatory framework is fully implemented. But regardless of their obligations, ours will continue unaltered, based on outdated expectations of what we can reasonably afford to do during our licence term.

2.4 The Perilous State of Local News

35. We must also draw the Commission's attention to the state of local news in Canada. Canadians turn to national and local news organizations as trusted sources of news and information. However, the financial challenges they face are massive. These financial challenges ultimately disadvantage the Canadian public. As news broadcasters struggle to maintain the resources necessary to continue to inform Canadians, Canadian news organizations have had to make difficult decisions to cut staff, limit coverage, or close altogether, and unfortunately, local news has been negatively impacted.

36. Access to quality journalism has never been more important. While the spread of misinformation and disinformation surges, and the public becomes increasingly mistrusting, Bell Media supports Bill C-18, *An Act respecting online communications platforms that make news content available to persons in Canada* (Bill C-18).[42] If Bill C-18 passes, it has the potential to have a positive impact on our business and the environment in which we operate. However, Bill C-18 is far from a complete remedy for the industry; but in tandem with the regulatory relief we are seeking and the regulatory obligations to be imposed on DMBUs, it has the potential to ease the regulatory burden under which we operate our local television stations.

37. The health of broadcast news and journalism are intrinsically linked to the financial health of local stations, whose profits (or lack thereof) support the production of local news. Survey after survey bears out the importance of Canadian news and information. In 2014, as part of the findings of a Commission public opinion survey, news programming was considered the most important type of television programming to Canadians, whether local (81% saying it is important)

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[42] Bill C-18, *An Act respecting online communications platforms that make news content available to persons in Canada*, 22 November 2021, https://www.parl.ca/legisinfo/en/bill/44-1/c-18.

or national (78%).[43] The importance of news transcended all demographic groups, with 78% of Canadians aged 18 to 34 also considering local news to be the most important. A more recent survey from Solutions Research Group also demonstrated that television is the source most often mentioned for local news by respondents (76%), followed by radio (58%).[44]

38. As the Commission is aware, Bell Media is one of the largest publishers of broadcast local news in Canada, proudly operating 35 local television stations (branded as CTV, CTV Two, and Noovo), each of which provides local news to the communities we serve. We are present in markets of all sizes, including 14 markets where we are the only local television news voice. In addition, we operate three discretionary television services that also provide news to Canadians: CP24, our Toronto region news service; CTV News Channel, our national news service; and BNN Bloomberg, our financial news service. While CTV News Channel is a national news service, it is our local television news that forms the backbone of this service, as the news content and stories gathered and produced by our local stations are often shown on CTV News Channel.

39. Unfortunately, Bell Media has been losing tens of millions alone in the production and delivery of local news.[45] In the four-year period between 2016 and 2019, the average annual news operating loss was $28.4M. In 2020 and 2021, due to advertising revenue declines attributable to the COVID-19 pandemic, this jumped to an average operating loss of $51.2M. In 2022, despite advertising revenue recoveries, the operating loss was approximately $40M. Moreover, web giants have had a drastic impact on the advertising market in Canada, capturing a massive share of advertising revenue from Canadian businesses that rely on that revenue to make news. The Internet now has a 68% share of the advertising market in Canada.[46] Without a doubt, delivering local news is a very costly undertaking, and as described above, this has negatively impacted the health of our local television stations.

40. While we provided the data for Bell Media, it is highly likely that all other legacy broadcasters face the same issues. The state of the local news industry is something that must be addressed by the Commission and we are pleased to see that the proposed Policy Direction speaks to the importance of sustainable support for local and regional news by the Canadian

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43 *Let's Talk TV: Quantitative Research Report*, Harris/Decima, 24 April 2014.
44 *Canadian Consumers and Radio: Lessons from COVID-19*, Solutions Research Group, February 2021, page 13.
45 CRTC Annual Returns (Form 1231).
46 CAB, Submission to the Senate Committee on Transport and Communications, *Recognizing the value of news Bill C-18, the Online News Act*, 9 May 2023.

broadcasting system.[47] However, immediate relief is necessary and to this end, as noted above, we are filing a separate application in conjunction with this relief application seeking amendments to our COLs for Canadian programming expenditures (CPE) and programs of national interest (PNI).

2.5 CBC/Radio-Canada's Licence Renewal

41. We now turn to CBC/Radio-Canada's 2022 licence renewal in the context of our application for immediate regulatory relief. As we noted earlier, the Commission administratively renewed Bell Media's television licences until 31 August 2024. As such, our television stations must continue to operate for the next year or more under the same licence conditions first set out in the 2017 Group Licence Renewal decisions. However, the transformation of the broadcasting environment continues at a fast pace, further exacerbating the inequity between private Canadian broadcasters and DMBUs, which have yet to have conditions of service applied to them.

42. More recently, the Commission issued licence renewals for CBC/Radio-Canada's English- and French-language television and radio services, which exclude certain COLs that Bell Media's television stations must continue to abide by. In contrast to Bell Media, at present, CBC/Radio-Canada's television stations do not have any expenditure requirements on local news, nor any exhibition requirements on local programming in metropolitan markets.

43. Bell Media's local television stations (as well as TVA and other private broadcasters who produce news) are now operating at a disadvantage as compared to CBC/Radio-Canada. In the CBC/Radio-Canada licence renewal, the Commission chose to move their television services away certain requirements, viewing these both as an inappropriate regulatory tool for a multiplatform approach and unnecessary for the public broadcaster given its mandate. The chart below outlines the current key differences between CBC/Radio-Canada's obligations and those of Bell Media's, as it pertains to our current Application:

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47 Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework), *Canada Gazette*, Part I, Volume 157, Number 23, 10 June 2023, https://canadagazette.gc.ca/rp-pr/p1/2023/2023-06-10/html/reg1-eng.html, section 12(i) (Order Issuing Directions to the CRTC).

Figure 3 – Comparison of Bell Media and CBC/Radio-Canada Current Local Programming and Local Reflective News Obligations

	CBC/Radio-Canada	**Bell Media**
Locally reflective news expenditures	None	CTV/CTV2: 11% Noovo: 5%
Locally reflective news exhibition requirements in metropolitan markets	None	CTV/CTV2: 14 hours each broadcast week incl. 6 hours locally-reflective news Noovo Montreal: 8.5 hours each broadcast week incl. 4.25 hours locally-reflective news
Local programming exhibition requirements	Local programming exhibition requirements only in non-metropolitan markets (English-language markets: 7 hour per week; French-language markets: 5 hours per week)	CTV/CTV2 Metropolitan markets: 14 hours per week including 6 hours locally-reflective news Noovo Montréal: 8.5 hours per week including 4.25 hours of locally-reflective news

44. In the CBC/Radio-Canada licence renewal, the Commission stated that:

> [w]here the Commission is removing certain exhibition requirements, it finds that the risk of the CBC no longer performing as it has been during the current licence term is low given the CBC's mandate. The Commission further finds that as audiences change their viewing habits, the risk of continuing to rely solely on exhibition requirements would be to the detriment of both the CBC and Canadian viewers.[48]

And further, that

> an expenditure requirement is a more adaptable and appropriate regulatory tool for certain types of programming than an exhibition requirement for providing the CBC with the flexibility it requires in order to tailor its programming strategies to the needs of evolving audiences swiftly in the years to come on multiple platforms, and for ensuring that the public broadcaster fulfills its mandate.[49]

45. CBC/Radio-Canada currently has programming flexibility for which there is no valid policy reason that this same flexibility should not be applied to us. As we stated earlier, we are concerned that our obligations that are based on outdated market realities will persist for another two years or more. We cannot wait until the Commission conducts the next full Group Licence Renewal proceeding for regulatory relief.

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48 Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals*, paragraph 59.

49 Ibid, paragraph 60.

46. While we recognize that CBC/Radio-Canada's licence renewal decision has been referred back to the Commission for re-evaluation,[50] we note that this consideration will be made in light of CBC/Radio-Canada's public broadcaster status. Such considerations do not apply to Bell Media (or TVA and other private broadcasters for that matter). As such, we strongly believe that regardless of the outcome of the reconsideration of CBC/Radio-Canada's licence terms, the Commission should grant us the required immediate regulatory relief as these COLs are no longer sustainable in the current economic and competitive environment. To have them continue to be imposed for another year (or longer) while the Commission addresses less urgent issues related to streamer contributions is simply unfair.

3.0 OUR LICENCE AMENDMENT REQUESTS

47. As noted earlier, originally the Commission gave Bell Media's (and the other large English-language groups') television licences a 5-year renewal in 2017 (which was set to expire on 31 August 2022). In those decisions, the Commission confirmed our exhibition requirements for local programming and locally reflective news, as well as the expenditure requirement on local news.

48. In July 2022, the group licences were administratively renewed until 31 August 2024.[51] As mentioned above, given the Commission's planned three-step process for regulatory reform, it appears likely that that the Commission will administratively renew our licences beyond August 2024.

49. In consideration of the industry issues that we detail above, we are seeking to delete immediately and until the Commission's next full Group Licence Renewal proceeding, the following COLs applicable to our various television stations listed in Appendices 2 and 3 to this Application. These Appendices also list all COLs that we are requesting to be deleted, including ones that are impacted by the obligations outlined below.

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[50] Order Referring Back to the CRTC Decisions CRTC 2017-143 to 2017-151 to Renew the Broadcasting Licences: SI/2017-42, *Canada Gazette*, Part II, Volume 151, Number 18, 6 September 2017, https://gazette.gc.ca/rp-pr/p2/2017/2017-09-06/html/si-tr42-eng.html.

[51] Broadcasting Decision CRTC 2022-180, *Various large English-language and French-language television ownership groups – Administrative renewals.*

(i) Locally Reflective News—Expenditures

- Delete the COL requiring that Bell Media's English-language television stations shall in each broadcast year devote to the acquisition of or investment in locally reflective news 11% of the previous broadcast year's gross revenues of the undertaking.[52]

- Delete the COL requiring that Bell Media's French-language television stations shall in each broadcast year devote to the acquisition of or investment in locally reflective news at least 5% of the previous year's gross revenues of the undertaking.[53]

(ii) Locally Reflective News—Exhibition

- Delete all COLs requiring the exhibition of specific amounts of locally reflective news during each broadcast week in both English- and French-language metropolitan and non-metropolitan markets.[54]

(iii) Local Programming—Exhibition

- Delete the COL requiring Bell Media's English-language television stations broadcast in metropolitan markets no less than 14 hours of local programming in each broadcast week.[55]

- Delete the COL requiring that Bell Media's French-language television station CFJP-DT Montréal shall broadcast at least 8 hours and 30 minutes of local programming in each broadcast week.[56]

3.1 <u>Rationale for our Requests</u>

50. As noted earlier, Bell Media is one of the largest publishers of broadcast local news in Canada, proudly operating 35 local television stations, each of which provides local news to the communities we serve. The Commission does not need to maintain COLs, which mandate that we must invest minimum amounts in our local news operations, air minimum amounts of locally reflective news or minimum amounts of local programing in metropolitan markets. Our local television stations, without codified COLs, will continue to cover a wide range of quality news that our viewers in markets large or small have come to expect from us.

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52 BD 2017-149, Appendix 3, COLs 14, 15, 16, 17(a), 17(b), and 17(c).
53 BD 2020-154, Appendix 2, COLs 20, 21, 22, 23(a), 23(b), and 23(c).
54 BD 2017-149, Appendix 3, COLs 13(a), 13(b), 35, 38, 43, 47, and 49; BD 2020-154, Appendix 2, COLs 24(b) and 25(b).
55 Broadcasting Regulatory Policy CRTC 2016-436, *Standard requirements for television stations, discretionary services, and on-demand services*, Appendix 1, COL 5 which is carried through to BD 2017-149, Appendix 3, COL 1.
56 BD 2020-154, Appendix 2, COL 24(a).

51. In the 2016 Policy Framework for Local and Community Television, the Commission stated that it wanted to ensure that local broadcasters continue to reflect the communities they are licensed to serve by covering municipal and provincial politics, local cultural events and local professional and amateur sports.[57] Bell Media's local television stations have always been committed to ensuring the coverage of such stories and if our Application is approved, we will continue to do so. Having the flexibility on how to achieve those goals rather than Commission mandated rules will allow us to provide a better news service to the local communities that we serve. As such, we believe the COLs listed above are unnecessary in light the current economic environment in which we must operate and the flexibility accorded CBC/Radio-Canada.

52. In addition, such COLs have the unintended consequence of forcing our stations to make editorial choices that prevent them from providing our viewers with the most relevant news possible at all times. Events that occur outside a local market, whether nationally or internationally, may still be of importance to our viewers in those markets. For example, relevant news from a neighbouring community could be excluded from a newscast in order to ensure that we remain compliant with our obligation to provide a set number of hours of locally reflective news.

53. Coverage of such stories should not be discouraged in favour of meeting outdated regulatory obligations. Bell Media's local television stations must have the freedom to adequately cover these types of events to meet our viewers' information needs and expectations. In order do that, they must have the flexibility to operate without fear of regulatory non-compliance.

54. The amendments that we have requested will still permit us to invest in Canadian programming that is attractive to our viewers while still upholding key policy outcomes of the now outdated regulatory framework within which we currently operate.

3.2 The Policy Direction Supports our Request

55. On 10 June 2023, the Government's proposed Policy Direction providing direction to the Commission on how to implement the *Online Streaming Act* was gazetted.[58] While not finalized

[57] Broadcasting Regulatory Policy CRTC, 2016-224, *Policy framework for local and community television*, paragraph 55.
[58] Order Issuing Directions to the CRTC.

and not yet in force, we note that our application is consistent with the proposed directions that the Government is expected to issue to the Commission. Notably, the Government highlights the critical need to minimize the regulatory burden as well as ensure that there is sustainable support for local news. In particular:

> **Regulations and orders — section 11.1 of the Act**
>
> **12.** In exercising its powers under section 11.1 of the Act, the Commission is directed to
>
> …
>
> **i.** 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;
>
> **Flexible and adaptable regulatory framework**
>
> **8.** To support flexibility and adaptability in its regulatory framework, the Commission is directed to
>
> **a.** minimize the regulatory burden on the Canadian broadcasting system;

56. Consequently, these provisions support our proposed relief for our locally reflective news and local programming obligations and we urge the Commission to take them into consideration in their determination of our application.

4.0 CONCLUSION

57. The requested relief we are seeking would allow us to better manage our regulatory obligations through the evolving competitive landscape of the Canadian broadcasting industry in the face of competition from DMBUs. As we have detailed throughout our Application, the traditional broadcasting sector is in crisis while foreign DMBUs and the Canadian production industry are thriving. Viewing to traditional television broadcasters has fallen and BDUs are grappling with a corresponding drop in television subscribers. Moreover, the growth of Internet and digital advertising has siphoned billions of dollars in revenue away from traditional broadcasters. While the Commission's implementation of Bill C-11 has the potential to ease the regulatory burden for by rebalancing our obligations, we simply cannot wait for the Commission's processes to run their course before obtaining relief.

58. Consequently, we urge the Commission to immediately grant relief for the COLs outlined in this Application. These changes are critical in light of the uncertainty that lays ahead for private Canadian broadcasters until such time that the Commission is able to conduct its next full Group Licence Renewal proceeding.

59. Should the Commission require any additional information, we would be pleased to provide it upon request.

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