

**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-LANGUAGE  
TELEVISION STATIONS AND DISCRETIONARY SERVICES –  
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-language television stations and discretionary services. In particular, the amendments we are seeking relate to our COLs for Canadian programming expenditures (CPE) and programs of national interest (PNI). These COLs were initially set out in Broadcasting Decisions 2017-149,<sup>1</sup> amended in Decision 2018-335<sup>2</sup> as a result of Cabinet appeals (the Reconsideration Decision), and revised once more in Decision 2020-154 through our acquisition of V Media.<sup>3</sup> Subsequently, our licences were administratively renewed until 31 August 2024 in Decision 2022-180.<sup>4</sup>

2. More specifically, we are seeking:

- a reduction in our CPE from 30% to 20%;
- a reduction in our PNI expenditures from 7.5% to 5%;
- an expansion of the current PNI categories to include programming categories 2(a) Analysis and interpretation, 8(a) Music and dance other than music video programs or clips, 9 Variety, 10 Game shows, and 11(a) General entertainment and human interest, and 11(b) Reality television;<sup>5</sup> and
- in return for the relief listed above, we propose to increase our obligation from 75% to 100% of our PNI expenditures to be made to an independent production company.

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 broadcasting industry is in crisis due in large part to a virtually unlimited array of foreign-owned digital 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

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<sup>1</sup> Broadcasting Decision CRTC 2017-149, *Bell Media Inc. – Licence renewals for English-language television stations and services*.

<sup>2</sup> Broadcasting Decision CRTC 2018-335, *Reconsideration of licence renewal decisions for the television services of large English-language private ownership groups*.

<sup>3</sup> Broadcasting Decision CRTC 2020-154, *V Interactions inc. – Change in ownership and effective control*.

<sup>4</sup> Broadcasting Decision CRTC 2022-180, *Various large English-language and French-language television ownership groups – Administrative renewals*.

<sup>5</sup> Television Program Categories, CRTC, <https://crtc.gc.ca/canrec/eng/tvcat.htm>.

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),<sup>6</sup> are intended to level the playing field so that DMBUs finally start contributing to the Canadian broadcasting system, 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%.<sup>7</sup> 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."<sup>8</sup> The report noted that between 1 April 2021 and 31 March 2022, media production in Canada generated \$11.69 billion in production volume and \$13.73 billion in GDP, with 240,760 jobs across Canada.<sup>9</sup> Notably:

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<sup>6</sup> 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/charte-charte/c11.html> (Online Streaming Act).

<sup>7</sup> Communications Marketing Report, Chart 1: Broadcasting Revenues from 2012 and 2021 (CMR).

<sup>8</sup> 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](https://cmpa.ca/wp-content/uploads/2023/05/Profile-2022-EN_v2.pdf) (Profile 2022).

<sup>9</sup> "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/>.

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.<sup>10</sup>

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 to 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 our television stations and discretionary services under existing COLs 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 BD 2017-149, and for which we have had licence conditions imposed on us through the Reconsideration Decision that we had opposed in the first place.<sup>11</sup>

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. Finally, we note that our proposed amendments would closely align with the requests made in the Part 1 Application filed by Corus Entertainment Inc. (Corus).<sup>12</sup>

10. Further, in conjunction with this relief application, we are filing a separate Application seeking amendments 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.

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<sup>10</sup> Profile 2022, page 5.

<sup>11</sup> BD 2018-335.

<sup>12</sup> Corus Part 1 Application – Appendix 1, Supplementary Brief, 17 November 2022, <https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?AppNo=202209460> (Corus Part 1).

11. We are filing certain information in this Application in confidence pursuant the directions provided by the Commission in the Appendix to BTIB 2010-961<sup>13</sup>. 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**

12. 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.

13. 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.<sup>14</sup>

14. 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.<sup>15</sup> 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.

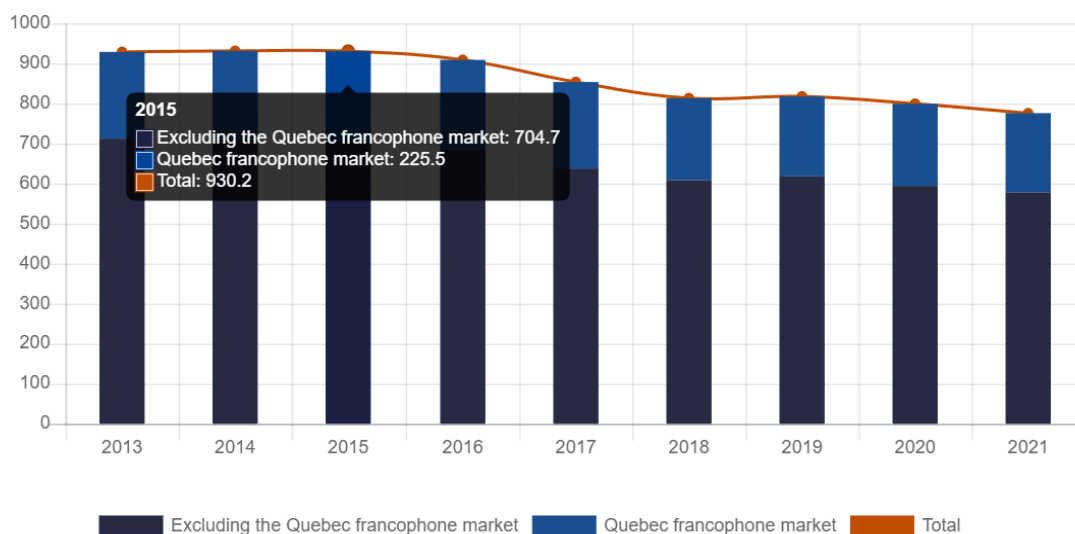
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<sup>13</sup> Broadcasting and Telecom Information Bulletin CRTC 2010-961, as amended in Telecom Information Bulletin CRTC 2010-961-1, *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*.

<sup>14</sup> 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.

<sup>15</sup> 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).

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



15. Moreover, as Corus notes in their Part 1 Application<sup>16</sup>, over one million fewer Canadians subscribed to traditional BDUs in 2022 than did in 2018.<sup>17</sup> 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.

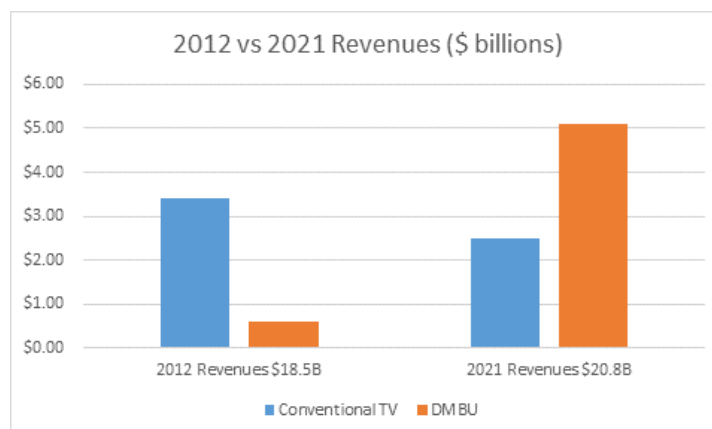
16. Further exacerbating this shift, the CMR also highlights that DMBUs continue to increase their share of total broadcasting revenues. The estimated revenues for DMBUs in 2012 were \$0.6B jumping to \$5.1B by 2021, a massive increase of 750%.<sup>18</sup> Conversely, conventional television revenues decreased by 26% over this same period.

<sup>16</sup> Corus Part 1.

<sup>17</sup> Annual Highlights 2020-2021.

<sup>18</sup> CMR.

Figure 2 - Estimated Revenues for DMBUs<sup>19</sup>



17. The broadcast industry is 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 Groupe TVA, wherein Corus cited "the post-pandemic climate and unexpected economic uncertainty"<sup>20</sup> and Groupe TVA said their decision was necessary for the survival of their businesses in today's economic and competitive environment.<sup>21</sup> 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.<sup>22</sup>

18. Corus also announced in March of this year that they were cutting its quarterly dividend to its shareholders.<sup>23</sup> 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

<sup>19</sup> CRTC Annual Returns; and CMR, Chart 1.

<sup>20</sup> "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/>.

<sup>21</sup> Quebecor Part 1 Application, <https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?AppNo=202209866>.

<sup>22</sup> "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 shuts 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/>.

<sup>23</sup> "Corus Entertainment slashing quarterly dividend payment," *BNN Bloomberg*, 7 March 2023, <https://www.bnnbloomberg.ca/corus-entertainment-slashing-quarterly-dividend-payment-1.1892276>.



visibility with regards to the timing of a recovery"<sup>24</sup> 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."<sup>25</sup> Undoubtedly, these comments can be attributed to the industry as a whole.

19. 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

20. 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.<sup>29</sup>

21. 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.<sup>30</sup> Seventy per cent of private local television stations and 40% of private radio stations entered 2020 with a

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<sup>24</sup> CIBC Equity Research, Corus Entertainment Inc., Earnings Update 13 April 2023.

<sup>25</sup> Scotiabank Global Equity Research, Corus Entertainment Inc., Managing a Business Amidst Difficult Industry Trends, 13 April 2023.

<sup>26</sup> CMR, Section 1, Traditional Commercial and DMBU Broadcasting Sector Revenues.

<sup>27</sup> Corus Part 1, paragraph 25.

<sup>28</sup> Company Reports, TD Securities Inc. 7 March 2023.

<sup>29</sup> CAB, Written Submission for the Pre-Budget Consultations in Advance of the Upcoming Federal Budget, October 2022.

<sup>30</sup> CRTC Broadcasting Sector Communications Market Reports, 2022 August.

negative PBIT.<sup>31</sup> 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.<sup>32</sup>

## **2.2 Inability to Access Foreign Content**

22. 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).

23. 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.<sup>33</sup>

24. 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.

25. 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

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<sup>31</sup> 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>.

<sup>32</sup> Aggregate Annual Returns, CRTC, <https://crtc.gc.ca/eng/industr/ann.htm>.

<sup>33</sup> Canadian Association of Broadcasters, includes CRTC and Statistics Canada data for 2021.

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.

26. 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 costs 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 hoard 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+).

27. In his report, *The State of the Canadian Program Rights Market 2022 – The Demise of the Foundational Business Model of Private Television*,<sup>34</sup> author Peter Miller highlights these access issues, stating that:

...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**

# Filed in Confidence with the CRTC.

<sup>34</sup> 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).

**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.**<sup>35</sup> [Emphasis added]

28. 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.<sup>36</sup>

29. 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 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.<sup>37</sup> [Emphasis added]

30. 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.

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<sup>35</sup> Ibid, Precis.

<sup>36</sup> Ibid, paragraph 14.

<sup>37</sup> Ibid, paragraph 142.

### **2.3 Other Mitigating Factors to Support Regulatory Relief**

31. 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 will be extended further.

32. 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,<sup>38</sup> which will clearly take time to implement, it now appears likely that our licences will receive another administrative renewal.

33. 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 least 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 out-dated expectations of what we can reasonably afford to do during our licence term.

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<sup>38</sup> 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*.

## **2.4 The Perilous State of Local News**

34. 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.

35. 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).<sup>39</sup> 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.

36. 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) or national (78%).<sup>40</sup> 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%).<sup>41</sup>

37. 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

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<sup>39</sup> 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>.

<sup>40</sup> *Let's Talk TV: Quantitative Research Report*, Harris/Decima, 24 April 2014.

<sup>41</sup> *Canadian Consumers and Radio: Lessons from COVID-19*, Solutions Research Group, February 2021, page 13.

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.

38. Unfortunately, Bell Media has been losing tens of millions alone in the production and delivery of local news.<sup>42</sup> 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.<sup>43</sup> 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.

39. 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 broadcasting system.<sup>44</sup> However, immediate relief is necessary and to this end, as noted above, we have filed a separate Application seeking amendments 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.

### **3.0 OUR LICENCE AMENDMENT REQUESTS**

40. 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

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<sup>42</sup> CRTC Annual Returns (Form 1231).

<sup>43</sup> 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.

<sup>44</sup> 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).

on 31 August 2022). In those decisions, the Commission set CPE at 30% (of previous year's revenues) and PNI at 5% for the English-language groups.<sup>45</sup> Subsequently, as a result of the Governor-in-Council's direction to reconsider the decision,<sup>46</sup> the Commission raised the PNI limits to 7.5% for Bell (and 8.5% for Corus but with no change for Rogers).<sup>47</sup>

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

42. In consideration of the industry issues we detailed 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 and discretionary services listed in Appendix 2 to this Application. This Appendix also lists all COLs that we are requesting to be deleted or modified, including ones that are impacted by the obligations outlined below.

(i) CPE

- Reduce the amount that Bell Media's English-language television stations shall in each broadcast year devote to the acquisition of or investment in Canadian programming from a minimum of 30% to a minimum of 20% of the previous year's gross revenues of the undertaking.<sup>49</sup>

(ii) PNI—Expenditures

- Reduce the amount that Bell Media's English-language television stations shall in each broadcast year devote to the acquisition of or investment in programs of national interest from 7.5% of the previous year's gross revenues of the undertaking to 5% of the previous year's gross revenues of the undertaking.<sup>50</sup> In return for such a relief, increase the amount of PNI expenditures that must be made to an independent production company from 75% to 100%.<sup>51</sup>

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<sup>45</sup> Broadcasting Decision CRTC 2017-148, *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, paragraph 28.

<sup>46</sup> 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>.

<sup>47</sup> BD 2018-335. Broadcasting Decision CRTC 2018-334, *Reconsideration of licence renewals decisions regarding the licence renewals for the television services of large French-language private ownership groups*, also made changes to Bell Media's French-language group licence.

<sup>48</sup> BD 2022-180.

<sup>49</sup> BD 2017-149, Appendix 3, COLs 2 and 3.

<sup>50</sup> BD 2018-335, Appendix, COL 7(b).

<sup>51</sup> BD 2017-149, Appendix 3, COL 9.



(iii) PNI—Definition

- Expand the definition of PNI as set out in BRP 2010-167<sup>52</sup> to include programming categories 2(a) Analysis and interpretation, 8(a) Music and dance other than music video programs or clips, 9 Variety, 10 Game shows, and 11(a) General entertainment and human interest, and 11(b) Reality television.

43. As discussed above, the old underlying assumptions of a healthy vibrant and protected Canadian broadcast industry that can afford to sustain these requirements is simply not true any more. Regulatory relief is urgently required. Further, we note that if this relief is granted now, it will not have an immediate impact; this is because programming decisions are made years in advance. Thus, even relief granted in two year's time will not have a benefit for another two years beyond that date (i.e., in 4 years from now). As Corus stated, "...content greenlit today cannot be placed on air and amortized tomorrow, and program investment decisions must thus be made months or years in advance."<sup>53</sup>

44. In the sections that follow, we explain our rationale for each of these changes. Notably, 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.

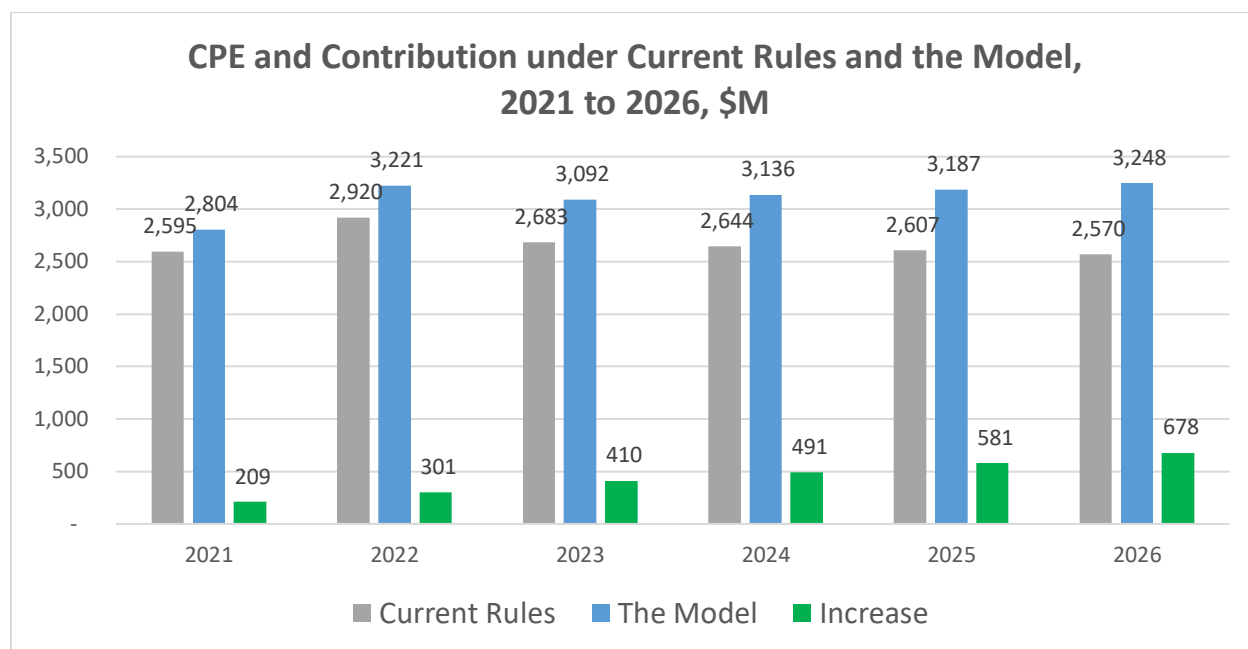
### 3.1 **Reducing CPE**

45. The most significant and direct way to support traditional broadcasters is simply to reduce our CPE obligations. However, we understand that the Commission and the production industry need assurances that reductions in CPE by broadcasters can be made up and even exceeded by the inclusion of contributions from foreign online undertakings. To that end, we commissioned Armstrong Consulting to prepare a report (Armstrong Report) to demonstrate the impact resulting from a rebalancing of the CPE obligations in an equitable manner as between legacy broadcasters, BDUs and online undertakings (attached as Appendix 3). This analysis demonstrates that a reduction in CPE from 30% to 20%, in tandem with a similar requirement for DMBUs that offer audiovisual programming, as well as a reduction in BDU contributions from 5% to 4%, would still result in significant increases in CPE spending and other Canadian programming contributions. In 2026 alone, Armstrong Consulting estimates that an extra \$678M would be added into the Canadian broadcasting system.

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<sup>52</sup> Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*, paragraphs 71 to 73.

<sup>53</sup> Corus Part 1, paragraph 32.



46. As highlighted in the Armstrong Report, we note that even if the CPE requirement for all Canadian television programming services were to be reduced to 20% of previous year revenues, some Canadian television programming services would be unlikely to implement such a reduction, including French-language private conventional and discretionary services as well as English-language mainstream news, sports and weather services. When calculations are undertaken based on this assumption, the projected CPE for Canadian linear television programming services under our proposal is considerably greater than would result from a straight-line reduction by all services.

47. While at first blush, it may seem that reducing our English-language CPE obligations would undermine the Canadian broadcast system, we submit that it will actually enhance it. New obligations can be imposed on foreign DMBUs requiring them to contribute to production funds (as the Commission has proposed in BNC 2023-138).<sup>54</sup> As demonstrated in the Armstrong Report, this will lead to an influx of new money that will be available to Canadian producers. The Canadian production industry, which is already setting new records each year, will likely experience even more explosive growth. By requiring contributions to production funds that benefit Canadian producers, the Commission can be assured that the Canadian production sector will flourish. In light of this, the reduction we are proposing to our CPE obligations will ensure that broadcasters are better able to sustain themselves and compete. Such an approach

<sup>54</sup> BNC 2023-138, paragraphs 20 to 25.

may improve broadcasters' prospects allowing them to better invest in the long term in Canadian productions. Healthy broadcasters are important to the overall health of the Canadian broadcast system.

### **3.2 Reducing PNI Obligations and Expanding the Definition of PNI**

48. Currently we have an obligation to spend 7.5% of our revenue on PNI, of which 75% must be spent with an independent production company (i.e., 5.625% of our total revenue). The current definition of PNI is quite restrictive as in the English-language market, it is limited to programming from program categories 2(b) (Long-form documentary) and 7 (Drama and Comedy), as well as Canadian award shows that meet the criteria set out in Broadcasting Regulatory Policy 2010-808.<sup>55</sup>

49. We submit that the requirement and definitions associated with PNI are based on outdated assumptions of viewership and the importance of regulation to ensuring production of Canadian drama that were made in 2010 when the PNI rules were first established. As discussed above, the source that Canadians obtain their broadcast content from has completely changed since PNI was originally mandated. The most successful streamers in Canada – Netflix, Amazon Prime, Disney+, Apple+, and Crave – all focus on the drama and documentary genres. That is the bulk of their content. While they may provide sports (e.g., Major League Soccer and Major League Baseball on Apple+) or limited reality programming (e.g., RuPaul's Drag Race All Stars), drama is clearly at the heart of their success. With foreign streamers having to contribute to production funds, it will allow them to focus on what they do today – producing dramas and documentaries. Given this reality, we believe that the need to impose such a restrictive definition of PNI on Canadian broadcasters is no longer necessary.

50. Moreover, adjusting our PNI requirements will allow us to support additional programming that are just as culturally relevant as the PNI programs that we currently air. For example, *The Amazing Race Canada*, now on its 9th season, showcases our vast and diverse country and its culture. This hugely popular show hosted by Olympic champion Jon Montgomery features 10 teams who embark on the race of a lifetime, all vying for the grand prize at the finish line. Other examples include *Farming for Love* and *Canada's Drag Race*.

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<sup>55</sup> Broadcasting Regulatory Policy CRTC 2010-808, *Definitions for television program categories*, paragraphs 22 and 23.

51. In return for being granted this greater flexibility, we propose that our obligation to spend on independent production be increased from 75% to 100%. In this manner, the Commission can be assured that Canadian producers will not be impacted in the short term as the Commission considers longer-term changes, as our proposal would only result in a small decrease to our commitment for Canadian producers.

52. By design, the PNI obligations force broadcasters to spend their production budgets on dramas and documentaries, in a manner that is not aligned with their overall business interest. Given that streamers focus on those genres, broadcasters have found more success in focusing on other genres including reality television. However, they are limited from pursuing other genres (including news) by having to spend on CRTC-dictated PNI. Given the lack of need for regulatory intervention to protect these genres today, and the harsh business realities of traditional broadcasting, we submit that it is time to expand the definition of PNI to be more inclusive and one that reflects traditional broadcasters' business realities.

53. Finally, when the Commission raised Bell Media's PNI obligations in the Reconsideration Decision, it benchmarked our obligations based on our historical PNI spending levels even though, in the past, programming choices were dictated by COLs that limited it to specific genres, which is no longer the case as genre protection was eliminated in BRP 2015-86.<sup>56</sup> Thus, a service's actual spending was not reflective of what it would have chosen to expend had it enjoyed complete strategic and scheduling discretion.

### **3.3 The Policy Direction Supports our Request**

54. 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.<sup>57</sup> While not finalized 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 the financial support to the Canadian broadcasting system must be equitable as between foreign DMBUs and Canadian undertakings. In particular:

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<sup>56</sup> Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, paragraphs 242 to 254.

<sup>57</sup> Order Issuing Directions to the CRTC.

### **Supporting Canadian programming**

4. The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign broadcasting undertakings that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings.

### **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;

55. Consequently, these provisions support our proposed relief for our CPE and PNI obligations and we urge the Commission to take them into consideration in their determination of our application.

### **3.4 Transitioning from COLs to Conditions of Service (COS)**

56. The *Online Streaming Act* has transitioned from the use of COLs to impose regulatory obligations and has instead moved to COS imposed through orders. In particular:

- 11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of
  - (a) developing, financing, producing or promoting Canadian audio or audio-visual programs, including independent productions, for broadcasting by broadcasting undertakings;....
- 11.1 (2) The Commission may make an order respecting expenditures to be made by a particular person carrying on a broadcasting undertaking for any of the purposes set out in paragraphs (1)(a) to (d).<sup>58</sup>

57. We therefore request that in approving our application for relief that the Commission replace the above-noted COLs with orders.

#### **4.0 CONCLUSION**

58. 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.

59. 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.

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

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