CANADIAN ASSOCIATION OF BROADCASTERS

ASSOCIATION CANADIENNE DES RADIODIFFUSEURS

CAB | ACR

Supporting and sustaining Canadian choices and voices in the Canadian broadcasting system

COMMENTS
of the
Canadian Association of Broadcasters
with respect to

The Path Forward – Working towards a sustainable Canadian broadcasting system
Broadcasting Notice of Consultation CRTC 2025-2

24 February 2025

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As the national voice of small, medium and large, Canadian privately-owned and controlled radio, television and discretionary broadcasters, both independent and vertically integrated, including services operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its initial comments on *The Path Forward – Working towards a sustainable Canadian broadcasting system,* Broadcasting Notice of Consultation CRTC 2025-2 (the Notice). **The CAB wishes to appear at the public hearing, in person in Gatineau, in order to elaborate on its position and the interests of private Canadian radio and television broadcasters.**

Key principles for the support of Canadian voices and choices

1. In its submission on the definition of Cancon in response to Broadcasting Notice of Consultation 2024-288 (the Cancon notice), the CAB identified four key principles that it believes must guide the Commission's deliberations in establishing a modernized broadcasting framework under the revised *Broadcasting Act* (the Act), namely: sustainability, equity, flexibility and simplicity. These principles are similarly important in the design of a framework to govern the relationships between players in the Canadian broadcasting system. Most importantly, the design of a modernized framework to govern the delivery and discoverability of diverse Canadian and Indigenous content must be guided by two of the key principles, as follows:

    - ***Sustainability*** –The Commission must prioritize the viability and sustainability of Canadian owned and controlled broadcasters as the cornerstone of the Canadian broadcasting system. Canadian private radio and television broadcasters make significant contributions – including almost $3 billion of spending on Canadian programming, but also in a myriad of other ways, such as creating jobs, paying taxes, and undertaking charitable work in their communities to name just a few. In addition, almost all of the expenditures of Canadian radio broadcasters and almost all non-programming expenditures of Canadian television broadcasters are spent in Canada. Indeed, the value of Canadian broadcasters' combined contributions to the Canadian economy and to Canadian culture are incontrovertible. However, Canadian broadcasters will only be able to continue to make meaningful ongoing contributions to the economy and to the many cultural and public policy goals identified in the Act if they are able to operate viable businesses.

    - ***Equity*** – The Commission must, therefore, ensure equitability in the system. Regulatory frameworks must be adapted to the reality of the massive growth of foreign online undertakings, with a recalibration of the obligations that apply to traditional broadcasters and a levelling of the playing field with their direct competitors. The Commission will have to balance the competing interests of many players and design tools that will ensure the growth and sustainability of the Canadian broadcasting system in a way that recognizes and supports the fundamental cornerstone role of Canadian-owned broadcasters in that system.

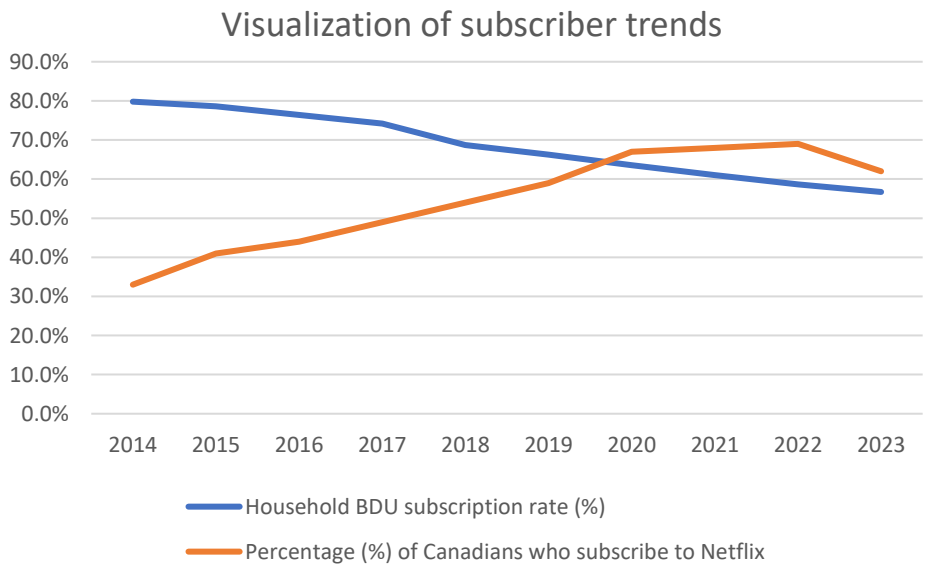
2. To that end, the CAB recommends that the Commission take action to ensure:
    - pride of place for Canadian programming services;
    - fair and competitive rules of engagement; and
    - modernized dispute resolution mechanisms

Our submission elaborates on each of these three key actions.

Ensure pride of place for Canadian programming services

3. Given the significant shift of viewers from the traditional programming distribution environment – where broadcast distribution undertakings (BDUs) were the primary mechanism for accessing programming services in Canada – to an environment characterized by greater and greater access to programming via the Internet, the Commission must shift its focus to ensuring that Canadian services and Canadian content have pride of place in the online viewing options of Canadians. Without access to audiences, Canadian-owned services will find it increasingly difficult to serve those audiences and might even cease to exist.

4. As the following visualization shows, BDU penetration is on the decline and streaming penetration (using Netflix subscription as a proxy) is on the rise – with an inflection point occurring some five years ago. This makes it all the more important for the Commission to create opportunities for the distribution of Canadian programming services online and ensure the maximization of Canadian voices and choices.



Source: CRTC open data, broadcasting distribution sector tables U-T7 and U-T2

5. Although the *Broadcasting Act* (the Act) was amended (by the *Online Streaming Act*) to recognize that foreign broadcasting undertakings also provide programming to Canadians, the first clause of the "Broadcasting Policy for Canada," section 3(1)(a) of the Act, still declares that *"the Canadian broadcasting system shall be* ***effectively owned and controlled by Canadians****."* Therefore, in implementing the broadcasting policy set out in section 3(1) of the Act – as it is required to do under section 5(1) – the Commission must ensure that Canadian owned and controlled radio and television broadcasters are able to continue to operate viable businesses, that they are available and visible to Canadian audiences, and that they can continue to support Canadian broadcasting policy objectives.

6. One important way to ensure ongoing support for Canadian broadcasters is through guaranteed **pride of place** in today's broadcasting ecosystem. We believe pride of place can be achieved through four mechanisms, as follows:

   - First, the Commission should require foreign streamers to make meaningful and equitable contributions to Canadian program production, including programming that is "risky to produce and hard to monetize" such as news;
   - Second, the Commission should require *online undertakings that provide the programming services of other broadcasting undertakings*[1] (hereinafter vBDUs) to make the greatest practical number of Canadian services available to their Canadian subscribers, on a non-discriminatory basis;
   - Third, the Commission should require vBDUs to make these Canadian services visible and easily discoverable to Canadians; and
   - Fourth, the Commission should adopt a "prominence" rule that ensures that certain specified Canadian services are prominently available and visible to Canadians.

7. The CAB continues to support the Commission's initial conceptualization of the new framework, as set out in paragraphs 20 to 24 of Broadcasting Notice of Consultation CRTC 2023-138. In that notice, the Commission proposed:

   > *that all broadcasting undertakings (traditional as well as online) be required to support the Canadian broadcasting system (audio and video elements) through a standardized contribution framework that allows for specific requirements to be tailored to a particular undertaking or group of undertakings. In particular, the Commission is considering an approach whereby it would establish an overall contribution commitment that would apply to a particular undertaking or group of undertakings and that could be allocated among three broad categories of requirements…*

[1] As identified in section 3(1)(q) of the Act.

> *The first category of contributions, referred to as a base requirement, could require broadcasting undertakings or ownership groups to make a financial contribution to specified funds that support Canadian artists or programming and the policy objectives outlined above.*
>
> *The second category, referred to as a flexible financial requirement, could require broadcasting undertakings or ownership groups to contribute an additional amount, with undertakings choosing where to direct their contributions from among a number of options. The specific options would be the subject of a future public process as part of Step 2, but the Commission envisions that these could include direct expenditures on certain types of programming (for example, original French-language programs, programs of national interest (PNI), local news, community programs and independent productions), spending on training and internships, or additional contributions to funds.*
>
> *The third category, referred to as intangible requirements, could require broadcasting undertakings or ownership groups to make additional, less quantifiable commitments to support Canadian programming and creators. Again, the specific options would be the subject of a future public process as part of Step 2, but these requirements could include specific commitments to the promotion, discoverability or prominence of Canadian or Indigenous content, the carriage of services in French, Indigenous, or other languages, maintaining a certain percentage of Canadian and Indigenous content in an on-demand catalogue, commitments to achieving public policy objectives, or other commitments proposed by an undertaking and deemed acceptable by the Commission.*

8. The CAB's proposed "pride of place" mechanisms are vitally important additional ways in which online undertakings must contribute to the objectives of the *Broadcasting Policy for Canada* as set out in the Act.

Impose meaningful and equitable contributions to Canadian programming

9. The CAB looks forward to the Commission's upcoming public hearing on the definition of Canadian programming and specifically to addressing the lack of commitment by foreign streamers to advancing the objectives of the *Broadcasting Act*, and their disappointing unwillingness to make meaningful commitments to the production and distribution of Canadian programming that makes significant use of Canadian resources, and over which Canadians exercise creative and financial control.

10. We will not focus in this submission on what meaningful and equitable programing contributions look like, which is the subject of that other proceeding. However, we urge the Commission to remain steadfast in its pursuit of a modernized definition of Canadian content that emphasizes Canadian ownership and control, and in the application of requirements that support the creation and distribution of diverse Canadian content.

11. It is critically important that foreign online undertakings make contributions to Canadian programming objectives at levels commensurate with the revenues they remove from the Canadian broadcasting ecosystem and also in light of the fact that (a) the bulk of their operations are not Canadian, and (b) the vast majority of their spending happens outside Canada.

12. As a key element of the new regime, foreign streamers/platforms should continue to be required to contribute to funds at levels no lower than the initial requirements imposed in Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194.

Mandate the availability of the greatest practical number of Canadian services

13. A second way to ensure pride of place for Canadian services in the online space and to ensure a broad range of Canadian choices serving diverse audiences is to require vBDUs to offer the greatest practical number of Canadian services to their Canadian subscribers on a non-discriminatory basis. Since online services are generally already geo-specific (largely for copyright reasons), there should be no impediment to ensuring that Canadian services (or apps or online undertakings) – both audiovisual and audio – are maximized on their platforms in Canada.

14. At the public hearing, the Commission should ask each platform to provide specific evidence of any capacity considerations and the cost (if any) of adding channels to their platforms. This would assist the Commission in assessing whether there are any limits to the ability of vBDUs to add Canadian channels.

15. The Commission should also ask each platform to describe the specific ways in which they meet their carriage obligations in other countries, for example, in France, which has some of the most stringent local content requirements. These could then become models for the Canadian market to ensure the continued availability of Canadian choices.

16. The intent of this proposal is not to limit the number of non-Canadian services made available by streaming platforms, but to ensure that a broad array of Canadian services (or their apps or online versions) are also made available as choices for Canadians.

17. As part of this carriage obligation, the Commission should also ensure the greatest practical carriage of French and Indigenous services, as well as independent services (in support of section 3(1)(d)(iii.5) of the Act) and ethnic/third-language services (in support of section 3(1)(d)(iii.6)).

Require vBDUs to ensure visibility and discoverability

18. As a third measure of support for Canadian programming services, the Commission should require vBDUs to make Canadian services visible and discoverable to Canadians – in accordance with section 3(1)(q) of the Act – including through prominent placement on home-screens, online program guides, and other user interfaces. Further, the Commission should seek specific commitments from individual vBDU operators (as part of their tailored contributions) on the ways in which their particular platform can best support the discoverability of Canadian audio and audiovisual services, including independent services and ethnic/third-language services, as well as Indigenous and French-language services.

Ensure the availability and visibility of key services through prominence

19. Finally, a fourth mechanism for ensuring "pride of place" lies in the articulation of a new prominence regime for certain designated Canadian services.

20. The CAB believes that the Commission should adopt a model that takes inspiration from the examples of the United Kingdom (UK), Australia and the European Union (EU) all of which require online platforms to ensure the prominence of certain services.

    - In the UK, the new *Media Act 2024* extended the previous prominence regime for public service broadcasters (PSBs) beyond linear TV to include online viewing. The objective is to ensure that PSB content is carried and easy to find on major online platforms and connected devices. The framework requires particular TV platforms to give appropriate prominence to designated PSBs to support the latter's ability to meet their public policy objectives.[2]
    - The Australian Government has also legislated a television prominence framework to ensure that local tv services are easy for Australian audiences to find so that those services can continue to contribute to Australian's public and cultural life. While mostly focused on the provision of services on connected devices, we believe there are still lessons of relevance to be gleaned from the Australian approach.[3]
    - Recognizing the challenges of standing out in a crowded market, the EU's Audio Visual Media Services Directive sets out prominence obligations to ensure the findability and discoverability of European content and services.[4]

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[2] https://www.gov.uk/government/publications/prominence-specifying-internet-television-equipment-a-policy-statement/prominence-specifying-internet-television-equipment-a-policy-statement

[3] https://www.infrastructure.gov.au/media-communications-arts/television/prominence-connected-tv-devices

[4] https://rm.coe.int/iris-special-2022-2en-prominence-of-european-works/1680aa81dc

21. In the early days of television distribution, there was a limited number of channels, and only one distributor of content in any market. Today's distribution environment is marked by nearly unlimited numbers of channels and services, and multiple ways to access them, as well as numerous ways to access content directly. In this vast ocean of content, the Commission must ensure that there are ways to find Canadian programming and Canadian services.

22. Therefore, in addition to the general requirement to maximize distribution of Canadian services as described above, the Commission should establish a prominence framework that ensures that certain "designated" Canadian services have priority access to distribution, as well as discoverability on user interfaces, home screens, and online program guides.

23. Under the CAB's proposed prominence regime, the Commission would, in accordance with section 9.1(1)(i) of the Act, require online undertakings that provide the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services,[5] specified (or "designated") by the Commission. We recommend that the Commission designate or "specify" the following services:

    - services of exceptional importance, as identified by the Commission through its current practices and procedures – including national news services;
    - the CBC/SRC;
    - provincial educational broadcasters; and
    - local television stations that provide local news.

Establish fair and competitive rules of engagement

24. Over the years, the CRTC has adopted a range of tools to support the fair distribution of Canadian programming services by BDUs, including:

    - **access rules** i.e. the obligation to carry OTA television stations, services of exceptional importance (aka 9.1(1)(h) services), and national news services (Category C's)
    - **distribution rules**, including the 1:1 ratio for independent services, packaging rules as set out in the Wholesale Code, and the preponderance rule (as described at paragraph 38 of the notice)
    - **fair negotiation rules,** i.e. the Wholesale Code and its companion interpretation bulletin

[5] Whether this is the linear channel itself, an app, or an online undertaking should be left to agreement between the parties (and subject to good faith negotiations).

- dispute resolution processes, including staff-assisted mediation (SAM), final offer arbitration (FOA), and the "120 day" rule for identifying and tracking ongoing negotiations
- the **standstill rule** – the obligation to continue distribution during a dispute subject to the same terms and conditions that applied before the dispute, and
- the prohibition of **undue preference/undue disadvantage**.

25. Establishing fair and competitive rules of engagement that also cover the online environment will be critical if the Commission wishes to achieve its two key goals, namely:

- ***a sustainable model for the delivery and discoverability of diverse Canadian and Indigenous content:*** *A broadcasting system in which Canadians have access to and can discover a diversity of audio-visual and audio content; and*
- ***a fair and competitive marketplace:*** *A broadcasting system in which fair, transparent, and competitive rules of engagement support interactions between programming services and distributors, which provides timely and effective mechanisms for resolving commercial disputes.*

26. Although the Commission cannot impose specific *terms and conditions* for the distribution of Canadian programming services by vBDUs under section 9.1(1)(i) of the Act, it can identify appropriate and inappropriate commercial behaviours under the good faith provision (Section 9.1(9)), make regulations respecting unjust discrimination, undue disadvantage & undue preference (UDP) under section 10(1)(h.1), and provide guidance as to the interpretation of section 3(q)(ii) of the Act, which states:

> ***(q)*** *online undertakings that provide the programming services of other broadcasting undertakings should:*
>
> ***(ii)*** *when programming services are supplied to them by other broadcasting undertakings under contractual arrangements,* ***provide reasonable terms for the carriage, packaging and retailing of those programming services***

27. The FCC's good faith regime for the negotiation of retransmission consent agreements could provide a useful starting point for defining standards of good faith negotiation.[6] Using the FCC's rules as a model, the CRTC could specify that, in negotiating with services designated under section 9.1(1)(i) of the Act, the following would violate section 9.1(9) of the Act:

- refusal to negotiate carriage;
- refusal to designate a representative with authority to make binding representations on carriage;

[6] https://www.ecfr.gov/current/title-47/chapter-I/subchapter-C/part-76/subpart-D/section-76.65

- refusal to meet and negotiate carriage at reasonable times and locations, or acting in a manner that unreasonably delays carriage negotiations;
- refusal to put forth more than a single, unilateral proposal;
- failure to respond to a carriage proposal of the other party, including the reasons for the rejection of any such proposal;
- execution of an agreement with any party, a term or condition of which, requires that parties not enter into a carriage agreement with any other programming service or vBDU; or
- refusal to execute a written carriage agreement that sets forth the full understanding of the programming service and the vBDU.

28. Although we have no specific proposals at this time, we also believe that clear guidance on what would (or would not) constitute a UPD could also reduce the number of disputes that are brought before the Commission.

Modernize dispute resolution mechanisms

29. We believe that the Commission's dispute resolution procedures must be improved to increase the speed and efficiency of resolution and reduce burden for the Commission. We recommend four actions, as elaborated on below:
    - adopt a more directive ("evaluative") style of mediation, rather than relying on facilitative mediation, and add Med-Arb as a dispute resolution option;
    - impose deadlines on the different phases of dispute resolution and adhere to service standards;
    - adopt expedited decision-making processes for standstill disputes, UDP complaints and Final offer arbitrations (FOAs); and
    - considering making strategic use of expedited hearings.

Pivot to evaluative mediation rather than facilitative and introduce Med-Arb

30. Over the last few years, the Commission has prioritized a facilitative mediation style, where the mediation team creates a structured process through which parties can seek to understand each other's positions and points of view and exchange offers with the goal of reaching a mutually acceptable middle ground. In these difficult times, however, parties are increasingly far apart and are less willing to seek compromise or make significant movements from one offer to another. In such cases, mediations can often drag on with limited movement on either side.

31. In such an environment, we believe the Commission should adopt an "evaluative" approach to mediation (sometimes also referred to as directive).

32. Under an evaluative model, the mediators would play a more proactive role by: identifying the strengths and weaknesses in each party's positions, providing advice on the proper interpretation of Commission policies, making educated guesses about the likelihood of success (or failure) should the matter to go the Commission; and, where mediation will not resolve the dispute, helping the parties to narrow the scope of issues to be considered in any arbitration.

33. In the current business environment, a more proactive and directive style of mediation has become necessary and would be more productive.[7]

34. Building on this, the CAB also recommends that the Commission consider adding Med-Arb as an option to its dispute resolution toolkit.

35. Med-Arb is a recognized dispute resolution technique that blends mediation and arbitration. If parties agree to a Med-Arb approach, they start by trying to resolve their dispute through mediation. If mediation proves ineffective, with the permission of the parties, the mediator then steps into the role of arbitrator to make a binding decision.

36. As an alternative, under Arb-Med, an arbitrator hears the party's positions, makes a decision without sharing it, and then engages in mediation, only providing the arbitration decision if mediation proves unsuccessful.[8] The benefit of Med-Arb/Arb-Med is that the transition from one to the other is fast and efficient and the arbitrators are fully seized of the issues before them, shortening the time it might take to come to a decision. Further, such an approach may force parties to be more reasonable in their initial exchange of offers, since the final outcome may be determined by the same person hearing their initial positions.

Ensure more timely disposition of disputes with specific deadlines

37. Some of our members have expressed concern about the time it takes to navigate the Commission's dispute resolution processes. We believe that the Commission can improve timeliness by establishing more specific deadlines in the dispute resolution process, taking inspiration from the bargaining process established by the Commission under the *Online News Act*.[9] The Commission must also respect and meet its own service standards.

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[7] For a discussion on mediation styles see: https://imimediation.org/resources/styles-of-mediation/, https://www.pon.harvard.edu/daily/mediation/types-mediation-choose-type-best-suited-conflict/, https://weberdisputeresolution.com/2023/02/styles-of-mediation/

[8] *Ibid*, https://adric.ca/ufaqs/what-is-med-arb/, https://adric.ca/the-med-arb-option/, https://www.crdsc-sdrcc.ca/eng/dispute-resolution-med-arb

[9] *Framework under the Online News Act (formerly Bill C-18)*, Online News Regulatory Policy CRTC 2024-327, 12 December 2024.

38. Therefore, the CAB recommends that the Commission adopt processes and timelines as follows:

    - A **120 day bargaining period** – Parties should be required to engage in *meaningful* bilateral discussions for a period of at least 120 days before requesting assistance from the Commission. Consistent with paragraphs 8 and 9 of the Commission's current *Practices and Procedures for dispute resolution,*[10] parties should only be permitted to trigger staff-assisted mediation (SAM) after demonstrating that they have made reasonable efforts to resolve their dispute bilaterally *before* requesting Commission involvement. (This bargaining period should replace the Commission's current "ADR-120" practices and reporting requirements under the Wholesale Code.)
    - A **60-day mediation period** – Should parties not be able to complete their negotiations through bilateral negotiations, either party should be able to request SAM, providing evidence of their prior efforts to resolve bilaterally.
    - Parties engaged in SAM should be required to exchange offers prior to the start of the mediation session (the exchange of initial offers could be done via a virtual meeting) and then be convoked to an **in-person 2-day mediation session** at the Commission's offices. In-person mediations have the marked benefit of focusing the parties, both respectively and collectively, on finding mutually acceptable resolution.
    - Parties to a mediation should be required to arrive with a full mandate to consider and make counter offers, with key people able to make binding decisions, and must negotiate in good faith.
    - If the parties are unable to resolve their dispute through mediation within 60 days of the initial request, they should move to arbitration, whether Med-Arb (or Arb-Med), as described above, or FOA in accordance with current Commission practices, unless both parties agree to continue SAM.

39. Although the Commission generally requires parties to engage in SAM before requesting (or moving) to FOA, we have heard that, in some cases, mediation (especially virtual mediations) can often take too much time and result in insignificant movement toward resolution. Further, we recognize that there are cases where parties can reasonably predict that mediation will be unlikely to resolve their dispute and that FOA will be required. In such cases, the Commission may wish to skip the process described above.

[10] *Practices and procedures for dispute resolution* Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019.

40. In some cases, it may be more appropriate to require parties to engage in mediation only *after* they have submitted their final offers. This truncated approach may permit parties that are extremely far apart to have more meaningful exchanges based on the final offers they have presented to the Commission, rather than engaging in multiple unproductive mediation sessions where parties may remain positional.[11]

41. One of the underlying reasons for choosing baseball style arbitration (where the adjudicator picks one or other offer in its entirety) is to encourage the parties to make more moderate proposals *"for fear that an extreme position would lead to that of the other side being selected by the arbitrator."*[12] The risk of the Commission picking the other offer can also encourage parties to come to resolution via mediation, rather than relying on the Commission. This has often been the case in past FOA proceedings before the Commission where the parties have been able to resolve after the exchange of offers, but before the Commission issued its FOA decision.

42. Therefore, in the interests of speeding up the process, and limiting burden on the Commission and disputing parties, if both parties agree that mediation is unlikely to resolve their dispute, and that an FOA *will* be required, the CAB believes that the Commission should consider immediately initiating final offer proceedings rather than requiring parties to engage in mediation first. If necessary, a short (virtual) mediation session could be held in advance to attempt to limit the scope of issues to be addressed via FOA.

43. In terms of the potential scope of FOAs, the CAB recommends that the Commission not constrain parties who wish to set rates for multiple services and permit them to bear the risks of multiple or more complex FOA considerations.

Expedite decision-making on formal disputes

44. The standstill rule continues to be a valuable tool to ensure, first, that subscribers are not "held hostage" when programmers and distributors are negotiating terms of carriage (e.g. with blackouts), and second, that the threat of dropping or pulling a channel is not simply a bargaining tactic to pressure the opposing party. That said, it should only be a temporary mechanism of limited duration and not applied over long periods of time. Therefore, in any standstill dispute and specifically in dealing with any request to lift the standstill, the Commission must follow an expedited process to minimize the commercial impact on parties.

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[11] Positional bargaining usually has parties staking out extreme positions making finding "win-win" resolution somewhat difficult. See, for example, this description from the Havard Law School Program on Negotiation: https://www.pon.harvard.edu/tag/positional-bargaining/

[12] *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008, para 165.

45. The CAB recommends that the Commission consider naming a standing sub-committee of the Commission (of say, three Commissioners or the Chair and two Vice-Chairs) that would be empowered to make decisions on standstill disputes. (This same Panel could also conceivably be tasked with considering all FOAs and, as discussed below, possibly even UDP files, especially where a UDP complaint has triggered the standstill.) Properly empowering a panel of Commissioners would permit the development of expertise and the rendering of more timely decisions since normal internal processing requirements would not need to apply (e.g. scheduling items to the next available Full Commission Meeting rather than simply scheduling a virtual meeting of the standing committee).[13]

Proposed process for standstill disputes

46. As noted above, the standstill rule is an important tool to ensure that parties engage in fair and good faith commercial negotiations, should they wish to renew their carriage agreements. Given, however, that the standstill has a direct and immediate impact on business decisions, the Commission must act quickly if a party requests that the standstill be lifted.

47. The Commission should continue to require parties seeking to lift a standstill to demonstrate (a) whether fair commercial negotiations have taken place (which could include at least one in-person mediation session before Commission staff, with a report from the mediation team as to whether meaningful negotiation took place or not), (b) whether the party wishing to drop or withdraw a service has valid commercial reasons for wishing to do so (to demonstrate that this is not simply a bargaining tactic), and (c) whether the other has demonstrated that continued Commission intervention is warranted.

48. In our view, a simple standstill dispute (i.e. one not attached to a UPD complaint) could conceivably be resolved in five to eight weeks, as follows:

- A party requesting that the standstill be lifted must provide evidence demonstrating whether (or not) points a and b above have been met.
- The responding party would then have seven days to respond with evidence demonstrating whether (or not) points b and c have been met.
- The standing committee should meet no later than three weeks after submissions have been filed, and a letter decision should be issued one week after that.
- At that point, the Commission should either lift the standstill or send the parties to mediation (for no longer than 60 days as set out above).

[13] Empowering such a panel to make FOA decisions (or at least consider FOA applications) should also permit the Commission to rule on scoping issues and issue conduct letters more quickly.

- If the dispute is not resolved via such mediation, the mediation team should then be required to confirm to the Commission committee whether fair commercial negotiations have now taken place, and if so, the standstill should be lifted.

49. These deadlines should be established as service standards and be respected by the Commission.

50. We note that standstill disputes (other than those associated with undue preference claims) are generally treated confidentially and recommend that this continue to be the case.

Proposed process for unjust discrimination, undue disadvantage and/or undue preference (UDP) complaints

51. When the Commission set out its current rules of practice and procedure (in 2010), it was decided that undue preference/disadvantage complaints would be handled as Part 1 applications. We believe that this approach is neither necessary nor appropriate. We recommend that, going forward, UDP complaints be handled differently (perhaps under Part 2 of the rules of practice and procedure, which sets out the rules applicable to complaints and dispute resolution). In particular, we recommend that such complaints be subject to shorter timelines, for example, 10 days for an Answer and 5 days for a Reply.

52. Given that UDP complaints often trigger the standstill, the comments made above apply – such complaints must be resolved on a timely basis. Therefore, we recommend that the standing committee also be empowered to consider UDP complaints (at least when they have triggered the standstill rule).

53. Taking into consideration the Commission's current approaches, we believe the process for UDP complaints should be as follows:

- a UDP process starts with the filing of a UDP complaint with the Commission, copied to the opposing party;
- the complaining party should be required to demonstrate, with evidence, that there is UDP – they should also demonstrate why Commission involvement is necessary, both in terms of the impact of the UPD on them *and* on the attainment of the objectives of the Act. They should also propose a remedy.
- The opposing party should respond ("Answer") within 10 days, providing evidence as to whether there is a UDP or not, whether (or not) there is a compelling reason for the Commission to intervene, and whether any discrimination, disadvantage or preference is unjust or undue. They should also comment on the proposed remedy.
- The complainant would then have 5 days to reply.

54. The Commission should be required to issue a decision within three months of close of record – and ideally sooner (perhaps relying on the standing committee proposed above, as a mechanism to shorten internal processing times). The Commission may also wish to consider issuing rulings more quickly with "reasons to follow."

Consider making use of expedited hearings

55. To the best of our knowledge, the Commission has not used expedited hearings as a dispute resolution tool since 2012. However, we believe that there is value in considering this approach in more complex disputes. Expedited hearings could also be used in standstill disputes and for UDP complaints as a mechanism to get the key issues before Commissioners as quickly as possible.

56. We note, with interest, in the 2012 dispute between Bell Media and a group of distributors (the Canadian Independent Distributors Group) regarding the distribution of Bell Media services,[14] the complaint was filed in January 2012; the Commission held an expedited hearing in March, and a decision was issued in April. This is quick turnaround on what appears to have been a complex set of issues. This was followed by an FOA which resulted in a final decision in July.

57. Rather than relying on Commission staff to analyze and summarize complex submissions into detailed memos for consideration by the Commission, the onus would be on the complainants and respondents to put concise arguments, with evidence, before the Commissioners both in writing and at a brief oral hearing (which could be virtual) and respond to any questions they may have directly. As an additional mechanism to speed up the decision-making process, the Commission may also wish to consider "rulings from the bench," with reasons to follow.

Conclusion

58. As detailed in this submission, through pride of place and fair and competitive rules of engagement, the Commission can support and sustain Canadian choices and voices in the Canadian broadcasting system and help ensure the sustainability of the cornerstone of that system, namely Canadian owned and controlled broadcasting companies. Modernized and expedited dispute resolution and UDP processes will also support ***a sustainable model for the delivery and discoverability of diverse Canadian and Indigenous content*** *and* ***a fair and competitive marketplace***.

59. All of which is respectfully submitted.

*** End of Document ***

[14] *Request for dispute resolution by the Canadian Independent Distributors Group relating to the distribution of specialty television services controlled by Bell Media Inc.*, Broadcasting Decision CRTC 2012-208, 5 April 2012.