



PUBLIC INTEREST ADVOCACY CENTRE

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July 11, 2023

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON
K1A 0N2

By GCKey

Dear Mr. Doucet:

Re: FRPC and PIAC Part 1 Application re: "The emerging crisis in local television"

Also styled by Commission staff as: "Request by FRPC AND PIAC to reconsider the approach to applications by Bell Media, Corus, Québecor and Rogers"

No Commission file number yet assigned

In relation to the following Part 1 Applications: 2023-0379-1 and 2023-0380-9 (Bell Media Inc.), 2022-0946-0 and 2023-0300-9 (Corus Entertainment Inc.), 2022-0986-6 and 2023-0307-2 (Groupe TVA Inc.) and 2023-0373-3 (Rogers Media Inc.)

COMMISSION STAFF HAVE MISCHARACTERIZED OUR PART 1 APPLICATION AS A PROCEDURAL REQUEST

The Forum for Research and Policy in Communications and the Public Interest Advocacy Centre (PIAC) filed a Part 1 Application on 30 June 2023 (amended to include additional parties in the subject line on 1 July 2023) under the [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#). The FRPC-PIAC application fully complies with section 22 of those *Rules*. The *Rules* then state at section 23 that "The Commission [*sic*] **must post on its website all applications that comply with the requirements set out in section 22.**" [Emphasis added.]

Neither FRPC nor PIAC has received any communication from the CRTC regarding this application that, as of 11 July 2023, remains unposted as a Part 1 application. Nor has the CRTC notified either FRPC or PIAC about any concerns the Commission may have with their jointly-filed Part 1 application.

Rather, on 10 July the CRTC's staff wrote to FRPC and PIAC on 10 July 2023 to inform us that they had chosen to re-style our Part 1 Application as a procedural request. It appears from the CRTC's 'open Part 1 broadcasting applications page' that the CRTC has re-opened previously closed proceedings to post this alleged procedural request in the record of those proceedings.

In reality, FRPC and PIAC did not file procedural requests regarding 7 separate proceedings (some of which had already closed for comment).

FRPC and PIAC submitted a Part 1 application. We did so as provided by section 3 of the *Rules*: "A matter may be brought before the Commission by an application".

The *Rules* then provide the CRTC – being the members of the Commission itself – with three options regarding applications before it decides on them.

Option 1 Section 8 of the *Rules* permits the CRTC to return the application if it "does not comply with a requirement of" the *Rules*. The CRTC staff letter did not allege that the FRPC-PIAC application was non-compliant with the *Rules*.

Option 2 Section 9 of the *Rules* permits the CRTC to accept applications if they have "a defect in form". The CRTC staff letter did not allege that the FRPC-PIAC application was in any way defective and even if it had been, section 9 precludes the possibility of rejecting the application based solely on form.

Option 3 Section 7 of the *Rules* permits the CRTC to dispense with or vary its *Rules* if it thinks that "considerations of public interest or fairness permit" it to do so. The CRTC staff letter did not claim that the CRTC had dispensed with or varied its *Rules*.

The status of the CRTC's staff letter is therefore unclear. The letter does not state, for instance, that the Commission has delegated its decision-making authority in section 7 to its staff (nor does the current *Broadcasting Act* appear to make this possible, in this matter). If the CRTC had so delegated its responsibility, the appropriate avenue of appeal of FRPC and PIAC would be to the CRTC.

In this case, the CRTC staff letter purports to be 'disposing' of a properly filed Part 1 Application as a procedural request. A procedural request is a request related solely to the procedures used by the CRTC in a specific proceeding. The purpose of the Part 1 application filed by FRPC and PIAC is different: it seeks to provide private broadcasters with an efficient, effective and coherent route for dealing with the financial crisis in which many of them find themselves.

FRPC and PIAC do not agree that their Part 1 Application – styled as “**Re: *emerging crisis in local television – application by FRPC AND PIAC for the CRTC to reconsider its approach to applications by Bell Media, Corus, Québecor and Rogers***” is a procedural request because we agree that private broadcasters require clarity and support from the CRTC rather than changes in the procedures being used by the CRTC to deal with their applications.

As a non-defective Part 1 application that complies with the CRTC’s requirements, the CRTC is required by its *Rules* to post the application. After such posting, the Commission (not staff) may well have discretion and jurisdiction to treat the Application as being an effective procedural request.

We contend, however, that our application is not a procedural request but a Part 1 Application. To reiterate, it asks the Commission to consider the totality of Part 1 Applications filed by private broadcasters holistically, as an overarching issue affecting the Canadian broadcasting system even as the Commission works towards implementing the *Online Streaming Act*.

We did not, as stated by staff in their letter, call for the suspension of the 7 proceedings. We are aware that the private broadcaster applications deserve to be treated in accordance with natural justice. At this point, the many months that some of these applicants have been required to wait already raises questions of procedural fairness. Moreover, some of these proceedings are now closed for comments and others have imminent intervention dates. What we therefore asked was to make these proceedings part of a larger record in a procedurally fair consideration of the contributions and conditions on traditional broadcasters during the transition period to the *Online Streaming Act*.

Indeed, trying to effect a procedural request for seven non-coordinated Part 1 Applications is inefficient and difficult. We therefore do NOT wish to have the Commission treat our Part 1 Application as a procedural request and ask that the Commission (not staff) clarify that parties to these proceedings and other interested parties NOT comment on the procedural aspects as styled by the staff letter. Our goal is not to complicate existing proceedings, but to obtain a single, efficient, effective and fast process for private television broadcasters whose financial circumstances are constrained. This is why, in particular, we proposed a preparatory conference to enable parties to agree on a stripped-down process that meets their concerns fairly.

Therefore, as provided by the CRTC’s own *Rules* FRPC and PIAC ask that its joint Part 1 application be posted for comment by all parties – preferably today. Should the Commission (not staff) decide to take the application’s suggestions to convene a preparatory conference on the application so as to streamline the process and enable the CRTC to meet its deadlines for the 2013-138, -139 and -140 proceedings, we would be pleased to and in fact request the opportunity to apply.

The CRTC – defined by the *CRTC Act* as the members of the Commission – should then decide the application, particularly as the current *Act* now defines decision: “**decision** includes a

determination made by the Commission in any form”.¹ In our submission, the downgrading of our Part 1 to a procedural request is a disposition of our Part 1 by the CRTC’s staff, rather than a decision that can only be made by the Commission.²

We ask that this situation be rectified in accordance with the law at the CRTC’s earliest opportunity.

Sincerely,

[Original signed]

[Original signed]

Monica Auer
Executive Director, FRPC

John Lawford
Counsel to PIAC

End of Document

¹ *Broadcasting Act*, s. 2(1), “Decision”.

² In turn defined by the *Broadcasting Act*, s. 2(1) as: “Commission means the Canadian Radio-television and Telecommunications Commission established by *the Canadian Radio-television and Telecommunications Commission Act*” and the Commission under s. 3(1) of that Acts: “There is established a commission, to be known as the Canadian Radio-television and Telecommunications Commission, consisting of not more than 13 members, to be appointed by the Governor in Council.” Staff are not the Commission. Commissioners are the Commission.