



14 June 2023

Filed online

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: Applications 2022-0946-0 and 2022-0986-6 by Corus Entertainment Inc. and Québecor Média inc. (au nom de Groupe TVA inc.), respectively, to amend conditions of their licences

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in the *Broadcasting Act* to which Royal Assent was given on 27 April 2023. FRPC asks to appear before the CRTC should it hold a public hearing regarding this notice of consultation.
- 2 The Forum's intervention regarding the above-noted Part 1 applications by Corus Entertainment Inc. and Québecor is set out below. The context for this matter must include Bell's announcement today that it is laying off 1,300 people (6% of the people employed by its media division) and closing or selling 9 radio stations.¹
- 3 Briefly, the CRTC's reliance on stale and irrelevant evidence to postpone needed licensing decisions for years is inexplicable, has been unfair to the applicants and may have led to the Bell announcement of today's date. Meanwhile, evidentiary gaps make it difficult to for the CRTC to grant the applications.
- 4 Bell has essentially called the CRTC's regulatory bluff: a quasi-judicial tribunal that postpones its responsibilities by putting off complicated decisions for years can scarcely be surprised when broadcasters finally pick up their marbles and walk away.
- 5 In the pages that follow FRPC addresses the procedural unfairness according to Corus and Québecor by the Commission, explains how the CRTC's choice of process has unnecessarily burdened parties interested in this proceeding, and comments on the two applications. FRPC offers Corus qualified support for its application and opposes Québecor's application.

¹ Sammy Hudes (Canadian Press), "Bell cutting 1,300 positions, closing or selling 9 radio stations", [financialpost.com](https://www.financialpost.com/news/bell-cutting-1300-positions-closing-or-selling-9-radio-stations) (14 June 2023).

I. Procedural unfairness

- 6 In 2017 the CRTC renewed the licences of large English-language and French-language television ownership groups for five years, from September 2017 to August 2022.² In [August 2018](#), forced to reconsider these renewals by [an order from Cabinet](#), the CRTC confirmed much of the substance of its 2017 decisions. It based Broadcasting Decisions 2018-334 and -335 on evidence submitted describing large TV broadcasters' financial position in 2016/17.³
- 7 The global pandemic then hit, knocking much of the world's economic activity from early 2020 to mid-2022 off-kilter. Despite knowing that private broadcasters' licences would expire in August 2022, the CRTC did not initiate a process either in 2021 or in 2022 to invite offline broadcasters to apply to renew their licences.
- 8 Instead, in [August 2022](#) the CRTC renewed the licences of large Canadian private television ownership groups administratively until August 2024, re-imposing the 2018-334 and -335 conditions without change.
- 9 The CRTC could not have foreseen in 2018 that a global pandemic would strike in 2020 and last for two years or that inflation would increase by some 17% in Canada from 2018 to 2023.⁴
- 10 The CRTC could, however, have foreseen that during a period of significant economic uncertainty even large broadcasters – perhaps especially large broadcasters – would be hard pressed to meet requirements established by the CRTC years earlier based on financial evidence rendered largely irrelevant by circumstances beyond the broadcasters' control since that time. Corus' point at ¶20 of its *Supplementary Brief* – that it is not, in fact, seeking regulatory relief mid-licence term because the 5-year period for which its conditions of licence “were intended to apply expired on August 31, 2022” – is well-made.
- 11 What these applications demonstrate is that the CRTC's heavy reliance on its self-created 'administrative renewal' process has become unreasonable. Where the former *Act* at most allowed the CRTC to set licence terms of 7 years, the CRTC effectively gave the CBC a nine-year renewal, by renewing its licences administratively 5 times over 9 years (2013 to 2022).⁵
- 12 The true effect of the CRTC's administrative renewals is a type of enforcement chill: as the main purpose of licensing was to ensure that broadcasters meet the CRTC's requirements and their conditions of licence, repeated administrative renewals that extend licence terms indefinitely

² See *e.g.* Broadcasting Decisions CRTC 2017-144 and -149.

³ Broadcasting Decision CRTC 2018-335, paragraph 29:

29. In regard to interveners' objections to the use of certain data, the Commission notes that they had an opportunity to comment on the data as filed by the groups in financial appendices as part of this proceeding. The Commission considers they had sufficient data to prepare their submissions and that making reference to the data for the 2016-2017 broadcast year in this decision does not cause harm to the interveners or broadcasters.

30. In addition, the Commission considers that using the most recent data is appropriate given the changing nature of the broadcasting industry. Analyzing historical expenditures for the entire previous licence term rather than a portion of a term provides a better understanding of each licensee's financial situation.

⁴ According to [an inflation calculator](#) posted by the Bank of Canada, what consumers (including businesses) could have bought in 2018 for \$1.00 in 2018 would now cost \$1.17.

⁵ In Broadcasting Decisions CRTC 2017-269, 2018-407, 2020-201, 2021-266 and 2022-92,

mean the CRTC no longer provides the regular and ongoing regulation and supervision mandated by Parliament in the former and current *Broadcasting Acts*. As Corus points out at ¶120, the CRTC’s “standard practice” has been “to review regulatory requirements in full at licence renewal” – this has not been happening for Canada’s major broadcasters for some time.

- 13 The CRTC’s administrative renewals have instead become a type of bluff that pretends to provide stability and certainty while ignoring substantive problems and also, apparently, failing to review broadcasters’ programming and financial performance to ensure both actual compliance and ability to comply with their licence requirements. It is unfair, in FRPC’s view, that while Québecor promptly filed its application in August 2022 (¶122 of its application) after the CRTC issued 2022-180, and while Corus filed its application seeking regulatory relief in November 2022 (four months after 2022-180), the CRTC then took six to eight months to publish the company’s applications. Such delays make bad situations worse, not better: as the CRTC is not bound by its own policies or decisions⁶ and the *CRTC Act* specifically enables either of the CRTC’s two Vice-Chairpersons to act as Chairperson, very little should have prevented the CRTC or a panel of its Commissioners from performing its responsibilities in a far more timely manner.

II. Absence of relevant information held by CRTC imposes unnecessary and heavy burden on interveners

- 14 Unlike previous years – say, from 2017 to the end of 2022 – the CRTC’s current [Regulatory Plan to modernize Canada’s broadcasting system](#) establishes that 2023 and 2024 will be busy, with a number of consultations already announced. The Corus and Québecor application deadlines have overlapped with the deadlines set by the CRTC in three of the ‘modernization’ proceedings (2023-138, -139 and -140).
- 15 Since it is in charge of its own procedures and processes it is therefore unfortunate that the CRTC decided to post the Corus and Québecor requests as ‘Part 1’ applications. The CRTC could instead have issued the applications through a CRTC Notice of Consultation: it could have set out any relevant evidence that it (and it alone) has been able to identify. Such evidence could have included summaries of the applicants’ Canadian programming expenditures in real terms and as a percentage of their broadcasting revenues, information about the amount of first-run and repeat local news broadcast by the affected programming services, as well as (at least some) relevant evidence as to the impact of digital media broadcast undertakings operating in whole or in part in Canada: after all, the Commission has now two years’ worth of financial information about these undertakings through its *Annual Digital Media Survey*.
- 16 Instead, the only evidence available in these two related but separate proceedings is that provided by the applicants themselves. Part 1 proceedings essentially require interested parties to become miniature, do-it-yourself versions of the CRTC, providing evidence to counter that provided by the applicants. Again, had the CRTC acted more swiftly with respect to these two applications, this type of DIY work could have more readily been undertaken earlier this year – before the CRTC began to launch the numerous proceedings needed to implement the current

⁶ Meaning that the Commission should not consider its hands to be tied because the term of, say, its Chairperson is soon coming to an end – as nothing one Commission does actually ‘binds’ another.

(but new) Act. Due to lack of time, FRPC’s intervention only addresses one problematic aspect of both applications –lack of relevant evidence to support some or all of their arguments.

III. Comments on the Corus and Québecor applications

- 17 Briefly, FRPC offers qualified support to Corus and opposes Québecor’s application.
- 18 The Corus and Québecor applications are governed by the *CRTC Rules of Practice and Procedure*. [Section 22\(2\)\(e\)](#) requires broadcasting applicants to set out “a clear and concise statement of the relevant facts” of their applications. While the CRTC may consider “insights” gained from previous proceedings and its regulatory experience, it must focus on the evidence set out in applications. As the Federal Court of Appeal explained [in *Bell Canada v. 7262591 Canada Ltd. \(Gusto TV\)*](#), 2016 FCA 123 (CanLII), at paragraph 14,

... some administrative decision-makers, like the CRTC in this case, operate in an ongoing regulatory context where multiple issues, often more general and polycentric, interrelate and evolve over time. Administrative decision-makers such as these continually see many of the same parties on issues that relate to or intersect with past issues. In making decisions, these administrative decision-makers will focus on evidence placed before them in the specific matter but, subject to any obligations of procedural fairness and disclosure owed to the particular parties before them, they may go further and draw upon broader industrial, economic, regulatory or technological insights they have gathered from past proceedings and regulatory experience.

- 19 Neither applicant fully supported each of its arguments with actual evidence and at times each omitted key evidence, particularly concerning the role being played by the applicants’ own online undertakings, that would have supported their applications.
- 20 As the CRTC presumably has this evidence, it is better placed than interveners such as FRPC to determine whether the applicants’ arguments hold water.

1 *Corus application*

- 21 Corus is applying to amend conditions of licence imposed by the CRTC’s administrative renewal ([Broadcasting Decision CRTC 2022-180](#)) on 4 July 2022 of the applicant’s television and discretionary programming services. Corus makes four arguments.
- 22 It says, first, that the CRTC’s blanket renewal of conditions the CRTC had previously imposed on its services in the absence of an actual renewal application will burden the company with “hundreds of millions of dollars in annual regulatory obligations without a formal opportunity to weigh in on their appropriateness” (Corus Supplementary Brief, ¶13). It cites the fact that revenues from HGTV and Food Network are included in the formula to calculate PNI although they offer “few of those types of programs” (¶137), and that it has discontinued 5 discretionary services – meaning that its services are less focused on PNI than in 2018 (¶149). These are compelling reasons that, if supported by actual figures from Corus’ annual returns (as Corus’ Supplementary Brief does not provide such data), should weigh in favour of the CRTC’s approving Corus’ application.

- 23 Second, it notes that Corus’ “larger over-the-top (“OTT”) competitors will continue to have no regulatory obligations whatsoever” (*Ibid.*, ¶14), a condition likely to endure for the “years” required “to fully implement a new framework (¶14). It says that 2022-180 will worsen the disadvantages it faces in competing with OTT programming services (¶¶14 and 22). The information that Corus has provided generally appears to describe Canadian broadcasters in general, rather than Corus specifically. Nor has Corus provided any information about the impact of its own OTT services: do these generate profits and, to the extent that audiences to Corus are drifting to online services, are Corus’ offline audiences going to Corus’ online services? More evidence is required to ensure that this argument bears consideration.
- 24 Third, Corus says that the CRTC’s decision to approve Rogers’ purchase of Shaw’s broadcasting assets has led to the loss of financial support from Shaw that Corus had previously enjoyed (*Ibid.*, ¶15). It notes that its financial support from the Canada Media Fund (CMF) is almost 27% lower in 2022/23 than in 2017/18 (¶145), and that the \$13 million reduction in annual local expression funding brought about by the CRTC’s approval of Rogers’ purchase of Shaw “will better position Corus to maintain news production at current levels until the CRTC can conduct a full review of our licence conditions” (¶159). Corus proposes that the Commission permit the company to reduce its Canadian Programming Expenditure (CPE) requirement by 5% (although it is unclear what this means in dollar amounts) and to temporarily credit the amounts it is required to direct to FACTOR and MusicAction in the 2022/23 broadcast year to its CPE expenditures, although it is unclear what this means in dollar amounts).
- 25 Canadians rely on local news and FRPC welcomes Corus’ commitment to use funding from its proposed 5% CPE reduction to “help offset the loss of annual expression monies”. Corus has not specified the precise dollar amounts involved, however, and it is somewhat unclear whether its proposals will nevertheless result in the same, more or less news. If actual figures from Corus’ annual returns (as Corus’ Supplementary Brief does not provide such data) support this argument and provided Corus agreed to a condition of licence of licence with respect to news programming expenditures (and first-run news programming hours), FRPC supports this aspect of Corus’ application. FRPC takes no position on Corus’ proposal that its payments to FACTOR and Musicaction be credited towards its required CPE payments – except to note that as the requirements were to end in the 2021/22 broadcast year and if the impact of 0.17% of Corus’ gross broadcasting revenues on the two funds is *de minimus* (Corus having provided no evidence to that effect), the CRTC should accept this proposal.

2 Québecor application

- 26 Granting Québecor’s application will permit Québecor to cut its spending on news and the amount of news it broadcasts, by changing 7 conditions of licence imposed when the Commission last renewed the company’s TV station licences. Specifically, it asks the CRTC to drop:
- a. Condition of licence (service) 25 – 5% of gross broadcasting revenues from the previous year to local news investment or acquisition
 - b. Condition of licence (service) 26 – timing related to condition of licence 25
 - c. Condition of licence (service) 27 – 5% collective investment in all TVA TV stations in local news investment or acquisition

- d. Condition of licence (service) 28 - % reallocation of condition of licence 27's expenditures over time
- e. Condition of licence (service) 29 (CFTM-DT) – 25 hours of local programming / week and 6 hours / week of local reflection news
- f. Condition of licence (service) 31(a)(iii) (CFCM-DT) - 3.5 hours of local news reflection each week, and to drop
- g. Condition of licence (service) 34(b) (CHEM-DT, CHLT-DT, CFER-DT and CJPM-DT - Condition of licence (service) 2.5 hours of local news reflection each week (Annex à la demande de Québecor Média).

- 27 While Québecor has not said so, it is clear that the CRTC's approval of these changes will also affect the company's employment levels.
- 28 The current *Broadcasting Act* includes Canadian programming, news and employment in Canada's broadcasting policy. In fact Parliament expanded on its concerns about employment when it enacted the current Act in April 2023. Subsection 3(1)(f) states that
- ... each Canadian broadcasting undertaking **shall** employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources in the creation, production and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources; ...⁷
- 29 While subsection 3(1)(d) of the current *Act* continues to say that Canada's broadcasting system "should" serve Canadians' interest in employment opportunities, moreover, subsection 5(2)(a.1) now also says that the CRTC should regulate and supervise the broadcasting system to 'take into account' the impact of broadcasting services on "employment in Canada". Rather than minimizing the importance of news in the current *Act*, Parliament has affirmed its importance.
- 30 FRPC therefore expected that as Québecor is asking the CRTC to delete five conditions of licence and to delete part of two other conditions of licence, all related to local news, it would explain how these changes would either enable Québecor to meet other programming requirements or would not negatively affect either employment or the availability of news, particularly local news. It did not: while Québecor argues that these changes will give it management flexibility (¶123) it does not explain how Canadians or the broadcasting system will either benefit from or not be disadvantaged by reduced spending on and hours of local news.
- 31 Québecor's application has not quantified the impact of its proposed changes in terms of programming hours, full-time or equivalent employment positions or programming expenditures. Its arguments, in other words, are unsupported by relevant evidence. This makes it impossible to evaluate the impact of Québecor's proposed changes on the broadcasting

⁷ The changes Québecor is proposing involve five over-the-air television programming services that serve local communities with general and also specific local programming in French, meaning that Parliament's qualifying wording regarding specialized content, format and languages is inapplicable.

system. In fact, the only benefit that Québecor specifically envisages from its proposed changes is a ‘minimum’ degree of flexibility in managing its activities:

23. ... Québecor Média est d’avis que la modification rapide des CDL telle que demandée par Groupe TVA dans la présente demande et présentée en annexe, permettrait au Conseil d’octroyer à Groupe TVA un degré minimum de flexibilité dans la gestion de ses activités, en attendant le renouvellement des licences et le réexamen complet du cadre réglementaire applicable.

- 32 Québecor's application does say, however, that it eliminated 240 positions in February 2023 (¶19). Based on its 2021/22 average salary in conventional television of \$90,387⁸ this would have amounted to \$21,692,880 in savings: were these directed to Québecor’s local newscasts or to any other new Canadian programming?
- 33 Québecor also argues that ‘virulent competition’⁹ from foreign online platforms (¶15), declining audiences due to cord-cutting and -shaving (¶13), and declining advertising revenues (¶15) support its request for more supportive regulation (¶21). It is unclear whether these arguments should be given any weight, however, as the applicant has not provided any evidence establishing the degree to which – individually and collectively – its five television stations have been *specifically* affected financially by these three factors.
- 34 As for Québecor’s argument that the CRTC has not taken any initiatives to help private broadcasters by dropping ‘obsolete’ conditions of licence (¶12), this ignores the fact that the CRTC and the federal government alike offered private broadcasters some financial respite during the pandemic¹⁰ – and Québecor’s application does not state that it was denied this support. Québecor also does not acknowledge that when the CRTC made Broadcasting Decision CRTC 2022-180 a different statute was in force which granted the CRTC fewer powers than it has now. Finally, it is difficult to see how the CRTC will become yet more flexible and act more swiftly (¶23, ¶¶24-27) if its administrative costs are reduced (as implied by ¶21 and stated more clearly at ¶47).
- 35 Insofar as the ‘obsolete’ conditions of licence (conditions of service, under the current *Act*) are concerned which Québecor wants the CRTC to drop wholly or in part, discussion of such requirements’ obsolescence is premature, as the Commission has only just invited comments on the approach it should take to Canadian programming in Broadcasting Notice of Consultation CRTC 2023-138. That said, subsections 3(1)(3)(ii) and (i)(ii.2) clearly establish that under the current *Act*’s broadcasting policy for Canada, news and information remain important policy objectives in Canada’s broadcasting system.
- 36 Finally, Québecor has also asked the CRTC to reconsider the number of reporting requirements it has imposed on the company (¶150-55). FRPC agrees that the Commission must re-evaluate the nature and manner in which broadcasters now report to it: it should do so through consultations with the public, rather than solely with industry as Québecor proposes (¶156).

⁸ Québecor, [Aggregated Annual Return, Conventional Television, 2021/22](#), page i, line 24 (“Effectifs moyens et Rémunération”: “Totaux”).

⁹ Translated from original: “la concurrence virulente”.

¹⁰ See *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic*, [Broadcasting Decision CRTC 2021-274](#) (Ottawa, 12 August 2021) at ¶¶102-134.



- 37 Our overarching concern with Québecor's applications is that once the CRTC grants regulatory changes that reduces programming levels and expenditures, it is extremely rare for higher levels to be imposed at a later date. Reductions tend to be permanent.

In summary, FRPC supports Corus' application with qualifications, and opposes Québecor's application.

FRPC looks forward to reviewing other parties' interventions in this process.

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