



Intervention of the FRIENDS of Canadian Broadcasting in respect to the Canadian Broadcasting Corporation/Société Radio-Canada's applications to renew the licences for its English- and French-language broadcasting undertakings

Broadcasting Notice of Consultation CRTC 2019-379

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Summary of key recommendations and proposed conditions of licence

Cross-platform commitments

1. FRIENDS supports the Corporation's desire to develop programming on TV, radio, and digital platforms alike. Accordingly, FRIENDS urges the Commission to impose cross-platform expenditure commitments for news, with a designated minimum amount of spending for local news, and to consider the same for PNI and Canadian programming overall.
2. FRIENDS believes that cross-platform expenditure commitments would be the most appropriate for four reasons:
 - a) CBC has repeatedly stated that its news reporting is increasingly integrated and cross-platform within each of CBC and Radio Canada;¹
 - b) CBC has redirected financial resources from traditional local TV to digital platforms;
 - c) The use of cross-platform expenditure commitments would provide necessary accountability, along with appropriate flexibility on allocation of news resources; and
 - d) As the Commission concluded in its Create Decision, the value of an exhibition requirement on digital platforms is questionable. While "shelf space" and discoverability requirements can ensure the availability of Canadian content, exhibition takes on a whole new meaning in the on-demand context.
3. At minimum, given lack of disclosure and oversight over the Corporation's digital activities, we urge the Commission to decline all requested flexibility or reductions in licensed service commitments. Current TV exhibition requirements should be maintained.
4. The above should be requirements, not expectations, and the expectation to exceed minimum requirements should remain.
5. The Commission should require CBC to fully disclose its digital revenues (parliamentary appropriation and earned revenues) for audio and audio-visual services in English and French. Expenditures on local news, news, and Canadian content generally should also be provided for audio and audio-visual services in English and French.
6. To facilitate this cross-platform arrangement, the Commission should temporarily exclude CBC from the Digital Media Exemption Order, in anticipation of a comprehensive review of that order.

¹ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q 29 & 31.

Focus on news, especially local news

7. We urge the Commission to allow no further reductions in news spending in general, as well as on local TV stations in particular. 2019 levels should be the minimum.
8. **FRIENDS recommends that the Commission apply a cross-platform expenditure commitment to local news² of 15% of revenue, in aggregate, to all CBC local English TV stations and predominantly news and information sites** (branded CBC News, e.g., cbc.ca/news). An appropriate percentage would also be set for CBC local French TV stations and associated sites (branded Radio-Canada Premiere/Info, e.g., ici.radio-canada.ca). Consistent with the group flexibility constraints applied to private broadcaster groups, FRIENDS recommends that no more than 25% of required local TV news expenditures be permitted to be spent on digital.³

A 15% Canadian Program Expenditure (CPE) to local news would be consistent with, but slightly higher than, the commitments of the major privately held English TV groups. The higher commitment would reflect the clear need to make local news a greater priority and CBC's unique ability to provide it, thanks to its Parliamentary grant. It would also undo some of the cuts CBC made to news between 2014 and 2017.

We recognize that there are several acceptable variations on this news CPE proposal. We would support, for example, an appropriate cross-platform CPE commitment to local news that includes radio and all digital platforms. Such an approach may more appropriately reflect how CBC News operates.

The fact that the CRTC may not have financial detail on CBC's local news expenditures, or its digital news, should not preclude a decision to apply cross-platform expenditure commitments. This situation is entirely of the Corporation's making. The Commission can simply apply requirements that best serve the public interest, and if the Corporation needs some time to meet them, so be it.

9. Also, consistent with the commitments of the major private TV groups, an exhibition requirement for local programming on local TV stations should be retained. While we

² We have not used the term "locally reflective news," which is the case for private broadcasters, as it is unclear that such a strict definition is necessary or appropriate, given the Commission's historic acknowledgement of CBC's dual local and regional role.

³ Private TV groups have flexibility but also limits on how much conventional TV CPE can be shared with discretionary services. TV stations are allowed to share 100% of their CPE between themselves, as well as to count CPE from qualifying discretionary services within their group towards meeting up to 25% of their CPE requirements (the 25% cap). FRIENDS proposed rule is analogous to this, but would limit TV station sharing with digital platforms to 20% of expected expenditures, given the much higher revenue base of TV.

<https://crtc.gc.ca/eng/archive/2017/2017-148.htm>, para 20.

do not believe CBC should have a higher commitment than private local broadcasters, it should not be lower.

10. We recommend a cross-platform minimum news expenditure of 25%. No more than 25% of required news expenditures would be permitted to be spent on digital-first content. Generally speaking, the onus should be placed on CBC to explain why news expenditures should not be returned to at least pre-2016 levels, when its budget was materially smaller than it is today.
11. When allocating local services budgets, the Corporation should give priority to unserved or underserved markets. CBC should issue periodic reports on the state of local news in markets where they operate, and justify expansion according to market health.

De-commercialization

12. FRIENDS supports the Broadcasting and Telecommunications Legislative Review in calling for reduced commercialization of CBC/Radio-Canada, though we recognize that the English and French markets are very different and should be treated as such. We support the goal to make English TV ad-free by the end of this licence term. We believe that all CBC digital products, in all languages, should be ad-free by the end of the licence term.
13. The elimination of advertising should begin immediately, starting with news programming on both main TV networks. Discretionary services should be permitted to continue showing ads, except for programs that appear ad-free on the main network, like *The National*. All digital news, including online written news content and short clips, should be free of pre-roll ads, display ads, and all other advertising by 2021.
14. At minimum, there should be no ads for digital versions of content that is free to air on conventional platforms. If CBC wants to transition to digital, they would be wise not to penalize users for taking them up on that offer.
15. Paywalls are only acceptable if:
 - a) content is the same for paying and non-paying users (aside from advertisements); and
 - b) the content is not otherwise free to air (i.e. it is only found on a discretionary service).No content created for or exclusively exhibited on CBC's digital platforms should be paywalled.

Distinctiveness

16. The Broadcasting Act specifically mandates the Commission to define what constitutes a Canadian television program under section 10, a definition that currently uses a points system adopted in 1984.⁴ Pursuant to its general powers under the Act, the Commission more recently chose to define “locally reflective news programming” as the term is used for expenditure conditions of licence for local private broadcasters, which was first imposed in 2017.⁵

It would therefore be both legally appropriate, and in the public interest, for the Commission to provide greater clarity as to the characteristics necessary for CBC programming to comply with the requirements of the Act. Given their importance and nature, we propose that the emphasis be on defining “distinctively Canadian” programming and programming that “reflects Canada and its regions,” by introducing the following as conditions of licence.

17. Programming will be considered to be “distinctively Canadian” if it meets at least four out five of the following criteria:
 - a) the subject matter relates specifically to Canada, its history, stories, places and peoples, and their activities, issues, values, attitudes and interests;
 - b) the underlying material is Canadian (i.e., an adaptation of a Canadian literary work);
 - c) it demonstrates Canadian creativity, Canadian heritage and/or diversity;
 - d) it is set in Canada, and a majority of the scenes take place in Canada; and
 - e) the lead characters/participants are identifiably Canadian citizens or residents.
18. Programming should be considered to “reflect Canada and its regions” if it meets **all** of the following criteria:
 - a) the subject matter relates specifically to Canada and its regions
 - b) it portrays a diversity of onscreen local, regional and national images of Canada or Canadians; and
 - c) it is produced by the station's staff or by independent producers specifically for the Corporation.

⁴ A similar example would be the Commission’s definition of a Canadian using the MAPL system.

https://crtc.gc.ca/eng/info_sht/r1.htm

⁵ See <https://crtc.gc.ca/eng/archive/2016/2016-224.htm> & Broadcasting Decision CRTC 2017-148:

News programming will be considered locally reflective if it meets all of the following criteria:

- *the subject matter relates specifically to the market a station is licensed to serve;*
- *it portrays an onscreen image of the market by, for example, including its residents or officials or featuring coverage of its municipal or provincial government; and*
- *it is produced by the station's staff or by independent producers specifically for the station.*

Note also that there is no obligation in the Act for private local TV stations to provide “locally reflective news programming,” or even “local news,” for that matter. If applying a clear definition was deemed appropriate for private TV local news, it would seem doubly appropriate for programming that CBC is mandated to provide.

FRIENDS accepts that there will be occasions when CBC's programming does not fully meet these criteria. In using the words "should" and "predominantly" in respect of CBC's programming objectives, Parliament recognized that there would be exceptions. These criteria will, however, make those exceptions more clear, and, hopefully, more exceptional. CBC should accordingly also be required to report annually on programming that does not meet the criteria.

Expectation to maintain spending on radio

19. Given CBC's treatment of radio in the last licence term, which was to decrease investments despite a Commission authorisation for advertising that specifically prohibited such a move, FRIENDS believes that a specific expectation requiring the maintenance of relative investments in radio is warranted.

Introduction

20. FRIENDS of Canadian Broadcasting (FRIENDS) is pleased to support the Canadian Broadcasting Corporation/Société Radio-Canada's (the Corporation or CBC) application for a five-year licence term, including licences for its English- and French-language radio and television undertakings, and authorization, through appropriate regulatory mechanisms, for CBC's digital media undertakings.
21. FRIENDS is an independent watchdog for Canadian programming, supported exclusively by after-tax contributions from individual Canadians. FRIENDS is not affiliated with any broadcaster or political party. **FRIENDS asks to appear at the forthcoming public hearing** in order to discuss with the Commission our views on CBC's licence renewal applications, as outlined herein.
22. Since the November 2019 announcement of this public consultation, FRIENDS has brought the Commission's invitation to comment to the attention of interested persons throughout the country. As a result, to our knowledge, some 6900 people have submitted personal comments to your Commission, many of whom have indicated their interest in appearing at the public hearing.
23. These comments from those who submitted are typical of the views of FRIENDS' supporters concerning our national public broadcaster:

"The CBC is a force for unity, identity, education and understanding."

"The CBC is part of Canada's soul; it is an essential part of our DNA as a Nation."

"The CBC is the crown jewel of Canadian broadcasting. It should not be a copy of private broadcasting."

"CBC radio and TV is the core and the heart of Canada."

"My US friends who are caring and concerned individuals are envious of us because of the CBC, but they won't be if the CBC is constrained, polluted, or gutted. The CBC is a national treasure and must be preserved."

"CBC has made me a better person. I look forward to listening every day and being a more aware and compassionate Canadian."

"The CBC is an essential public service, a cultural treasure, and must be both properly funded and protected from those interests which want to destroy public broadcasting."

"CBC is the voice of Canada."

"CBC is a way to celebrate who we are."

"CBC is so woven into our hearts, minds and souls that it is truly the voice of Canada."

"CBC is Canada. CBC is home."

"We count on the CBC for unbiased information and, most importantly, for keeping Canadians talking to each other."

"CBC is an island of sanity, quality, and credibility in a sea of superficiality and marketing hype."

"As a taxpayer, I feel ample support for CBC it is an excellent and important expenditure of public funds with the priceless return of informed and connected citizens."

"CBC is one of the beacons of light in a very dark world."

24. In addition, FRIENDS surveyed more than 2700 supporters on issues related to this proceeding. These findings emerge:

- 94% of respondents agree with the statement "Local news is important to me". 5% somewhat agree; less than 1% disagree.
- 89% think CBC's proposal to broadcast less Canadian content during prime time, less local news and less children's programming on its conventional services is a bad (39%) or very bad (48%) idea. 4% think these proposals are a good (3%) or very good (1%) idea.
- More than half (51%) think these proposals are inconsistent with CBC's mandate; one-third (32%) think the CBC's proposals are consistent with its mandate
- Respondents place the highest levels of trust in CBC/Radio Canada to protect Canadian culture and identity on television; they place the least amount of trust in Netflix and other internet broadcasters
- 92% of respondents agree (69%) or somewhat agree (23%) that increasing funding for the CBC would strengthen Canadian democracy.

Précis of FRIENDS Submission

25. Our intervention reflects four main preoccupations. We accordingly and respectfully request that the Commission require that:

1. CBC provide greater immediate and ongoing disclosure of its plans, including financial details and projections, especially for digital activities for which scant detail has been publicly disclosed;
2. CBC adhere to more rigorous and demanding commitments and standards for its programming across all platforms, particularly local news, as reflected in new conditions of licence;
3. That CBC eliminate advertising from all English TV, as well as all digital services over the course of the licence term, and that all news programming should be ad-free by December 31 2021; and
4. CBC programming be always, as the Broadcasting Act requires, “predominantly and distinctively Canadian”. Further, we believe that CBC management’s wish to “increase the revenue we earn and find new revenue opportunities” is incompatible with the directive to remain predominatnly and distinctively Canadian.

26. In today’s and tomorrow’s media landscape, CBC’s role is and will become even more important than today. In many ways, the Canadian Broadcasting System is reverting to its original state; as more and more private publishers and broadcasters reduce service or shut down, CBC could soon find itself as the only truly national Canadian media organization of any consequence.⁶ While the complete demise of Canada’s private media sector is not a foregone conclusion, the clear reality is that private publishers and broadcasters are struggling, and often failing to survive.

27. In 2016, Parliament increased CBC’s annual appropriation by \$675 million over five years. Further increases may be forthcoming.⁷ CBC management proposes to use these funds to modernize the Corporation, and we support reforms to evolve and improve our national public broadcaster. But increased funding and the greater relative importance of CBC call

⁶ See, for example, <https://shatteredmirror.ca/wp-content/uploads/theShatteredMirror.pdf> on the demise of newspapers and http://mediacmi.com/downloads/Senate_Committee_KenGoldstein_031015.pdf “In 2025, there might be no local broadcast television stations in Canada.”

⁷ In its election platform, the Liberal government promised to “strengthen the regional mandate of CBC/RadioCanada, so that local stations can broadcast more local news; and require CBC/RadioCanada to open up its digital platform, so that journalism start-ups and community newspapers can access affordable technology to develop and distribute local content.” The new Minister of Canadian Heritage subsequently told iPolitics that “they would receive adequate funding for any new mandates.” See <https://ipolitics.ca/2019/12/30/heritage-minister-says-liberal-government-will-boost-local-journalism/>

for greater transparency, a heightened focus on Canadian programming, and a renewed commitment to distinctiveness, by which we mean both cultural distinctiveness and distinctiveness from private broadcasters and other ad-supported media platforms like Facebook and YouTube. The latter's unbridled and often unethical pursuit of advertising revenues has proven extremely detrimental to democracy worldwide. CBC should not try to compete on these terms.

28. As has happened at previous times in CBC's history, CBC's current management appears to equate increased relevance with increased popularity and advertising. Yet that strategy has failed repeatedly. Over the past 30 years, multiple attempts to increase commercial revenues with "ratings-bait" have failed to deliver audiences or ad revenues. In fact, the only major CBC audience turnaround in living memory occurred post-1974, when the Commission wisely prohibited CBC from running ads on Radio One. This led to a new wave of strictly public-interest programming leading to strong, enduring audience growth. CBC English TV is in need of a similar intervention.
29. It is time for CBC to step up on local news and make it a real priority on all platforms. Despite CBC's stated support for local news, and the priority accorded it by both the CRTC and the government, the financial resources that the Corporation devotes to news have been significantly reduced since 2014 and are projected to decline throughout the coming licence term. CBC has offered no explanation of why news resources, including local news resources, have been so decimated while other categories have not. Nor is there any appropriate rationale for requested reductions in local programming commitments, primarily local news, over the next licence term.
30. We generally agree with CBC management that the Corporation must develop its digital services to fulfil the tastes and expectations of today's and tomorrow's audience. Yet, while CBC's may intend to increase local news coverage on its digital platforms, the Corporation has provided no evidence to this effect, and has proposed no commitments that would guarantee this.
31. For greater certainty: FRIENDS has absolutely no philosophical objection to CBC's increasing emphasis on digital. Quite the contrary, we generally applaud and support CBC's pioneering moves into the digital space, as Canadians, and younger Canadians in particular, increasingly consume broadcasting online.
32. That said, it is in digital that CBC's combined lack of transparency, accountability and distinctiveness is most evident and inexcusable. Digital is no longer an experimental side project for CBC. It is a key part of CBC's offering to Canadians. In fact, resources allocated to digital appear to now rival those apportioned to CBC radio. If management believes, as we do, that digital services must be expanded and developed to equal or one day surpass the capacity of CBC's linear services, then its commitment to transparency and

accountability in the digital realm must at least match, if not surpass the Commission's expectations with respect to licensed services.

Digital Activities

33. CBC's application clearly reflects the Corporation's decision to continue to shift broadcasting resources to digital platforms:

- The first of five priorities in CBC's Strategic Plan Summary is "**customized digital services.**"
- Digital content expenses tripled from \$10.5 million in 2016-17 to \$35 million in 2017-18, and are projected to almost double again, reaching \$66 million by 2022-23.⁸
- In total, CBC now spends between \$200 million and \$300 million on digital activities, including over \$150 million in parliamentary appropriation⁹. This puts CBC's digital budget on the same order of magnitude as linear radio.

34. As noted by the Commission in the Notice, notwithstanding this shift, "The Corporation is bound by its mandate outlined in the Act." Remaining bound by the Act has three crucial ramifications:

1. CBC's digital activities are still "broadcasting undertakings," if not "radio and television services" as specified at section 3(1) Act. To consider them otherwise would mean they are outside the Corporation's mandate and we do not believe that to be the case;
2. The programming provided by these services must still conform to the objectives of the Act, specifically those set out in sub-sections 3(1)(l) & (m); and
3. Such programming must be "in accordance with the conditions of any licence or licences issued to [CBC] by the Commission and subject to any applicable regulations of the Commission," pursuant to sub-section 46(1).

35. The Corporation argues that "Section 3(1)(m) does not dictate how CBC/Radio-Canada is to achieve the elements of its mandate. This task is left to CBC/Radio-Canada to decide in light of relevant financial, technological, demographic and similar considerations, as currently outlined in CBC/Radio-Canada's Strategic Plan."¹⁰ This claim is simply false in law. To argue that the task is solely to be left to CBC—by inference, without any 'interference' from the CRTC – is to argue that the CRTC has no regulatory role. If one

⁸ DM#3755582 - Response - 9 October 2019 - CBC TV Financials, Appendix 9. Digital advertising does not however appear to be keeping pace with increased expenditures. It accounted for \$31 million in revenues in 2019, a decrease from \$42.6 million in 2018. 2018-19 Annual Report, p. 39.

⁹ Based on a comparison of the CBC 2018-19 Annual Report and CRTC Financial for the broadcast year 2018. Given different year ends (March 31st for the Annual Report and August 31st for the CRTC broadcast year), and the limited financial disclosure provided by CBC, it is, however, impossible to obtain a fully accurate picture.

¹⁰ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q 6.

accepts this argument, one must also accept that these proceedings are not just unnecessary but inappropriate.

36. Surely, Parliament did not establish the CRTC's jurisdiction over the CBC so the Commission could just rubber stamp the Corporation's internal decision making. By any reasonable interpretation of the Act, the CRTC is obliged to "regulate and supervise" CBC's broadcasting activities, including digital broadcasting. Nothing in the Act differentiates the Commission's regulatory powers or responsibilities as between radio and television services on the one hand and digital services on the other.
37. It is frankly dangerous for CBC to suggest that such a large and growing share of its operations should be carried on without sufficient regulatory scrutiny or oversight. To do so would irreparably undermine accountability and transparency for CBC, creating a precedent that other digital broadcasters, both foreign and domestic, would surely hold up as grounds to avoid regulation for themselves.
38. Instead of opposing CRTC oversight and regulation of its digital activities, CBC should welcome it. CRTC regulation would in effect bless the practice—a useful rebuttal to those who argue (often with brazen self-interest) that CBC has no business being in digital at all.
39. Finally, moving to "regulate and supervise" CBC's digital activities would be consistent with the prime ministers's November 2019 direction to the Minister of Canadian Heritage to "take appropriate measures to ensure that all content providers, including internet giants, offer meaningful levels of Canadian content in their catalogues, contribute to the creation of Canadian content in both Official Languages, promote this content and make it easily accessible on their platforms."¹¹ If the Commission accepts CBC's wish to operate its digital wing without scrutiny or conditions of any kind, how will the Commission be able to implement the government's direction?
40. Besides, if the Commission has no business regulating CBC's digital activities, then how can it reasonably apply credit for those activities to compensate for reduced linear obligations, as CBC is asking? The argument is both legally and rhetorically absurd. And it is a borderline insult to the intelligence and integrity of the Commission and its staff.
41. The Commission must categorically dismiss CBC's claim that it cannot "regulate and supervise" the Corporation's digital activities.

¹¹ <https://pm.gc.ca/en/mandate-letters/minister-canadian-heritage-mandate-letter> The Mandate letter specifically instructs the Heritage Minister to "work with the Minister of Innovation, Science and Industry to introduce legislation by the end of 2020 that will take appropriate measures" to achieve this end. While such legislation may be necessary or appropriate for of internet giants, it is not necessary for the CRTC to fulfil its mandate in respect of the CBC.

42. The Commission's statutory obligations to regulate CBC take precedence over a legally inferior, contingent exemption from licensing which the CBC claims through the Digital Media Exemption Order (DMEO). Rather than the DMEO being a reason not to regulate CBC's digital activities, CBC's quest to have its digital activities count towards its licence obligations provides yet another reason why the DMEO must be urgently reconsidered.
43. In the interim, recognizing the DMEO's myriad inadequacies, the Commission must decide not to apply it to the CBC's current licence,¹² in anticipation of a broader review that will apply to all players equally.
44. As the Corporation points out, the Act devotes a distinct and separate section and set of policy objectives to CBC. In this manner, it would not be inappropriate for the CRTC to "regulate and supervise" the digital activities of CBC in a distinct and separate way from that of private broadcasters and foreign digital undertakings, at least until the Commission completes its duty to overhaul the DMEO, at which time, regulatory parity should be restored.¹³ In fact, in light of CBC's proposals, and the process immediately before us, there is no other responsible approach.
45. CBC seeks "flexibility" to reduce licence obligations for TV with the suggestion of making up the difference on digital platforms. But CBC simultaneously argues that no obligations should be imposed on its digital activities. It wants the benefits of exemption without a *quid quo pro*.¹⁴
46. We accept that CBC's digital activities can count towards its licence obligations, as management is requesting. We even encourage the idea. But we reject CBC's claim that traditional standards of transparency and disclosure should not apply to digital.
47. This proceeding will consider the licence obligations of all CBC services. Given the CRTC's authority over all broadcasting, irrespective of distribution technology, and CBC's mandate under the Act, and the scope and sufficiency of public notice of this proceeding, the Commission is well within its power to impose appropriate conditions in respect to CBC's digital activities, as part of a comprehensive suite of conditions that take the whole of

¹² As has been done with small and hybrid VOD undertakings. <https://crtc.gc.ca/eng/archive/2015/2015-355.htm>

¹³ "CBC/Radio-Canada's role under the Broadcasting Act must be properly distinguished from that of community and private broadcasters. In particular, the regulatory framework for CBC/Radio-Canada should be tailored to its role as Canada's national public broadcaster and should not be ancillary to, or otherwise based upon, the regulatory regimes applicable to community or private broadcasters." (DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q 6.) When convenient, CBC attempts to distinguish itself from private broadcasters; at other times it seeks similar regulatory privileges. The reality, of course, is that it depends on the matter at hand. So while it is true that regulatory obligations on private broadcasters should not necessarily be applied to CBC, the lack of a particular obligation on private broadcasters (such as digital platform COLs) is not sufficient reason to not apply it to CBC.

¹⁴ DM#3720734 - InfoSupp-AddInfo - 30 September 2019 - 2019-02825_APP_CBC_Supplementary_Brief_EN_Sep_30, paras 17 & 21.

CBC's operations into account. If this requires CBC to be temporarily excluded from the DMEQ until such time as the DMEQ is corrected, so be it.

CPE Requirements

48. CBC's opposition to group-based expenditure requirements rests on two arguments, neither of which we accept:
1. A decade-old CRTC determination that the "CBC has never had difficulty in meeting its regulatory requirements with respect to Canadian programming or programs of national interest," which supposedly renders the requirements themselves unnecessary; and
 2. CBC's own view that "the type of regulatory flexibility offered under an expenditure-based group licensing approach would not be relevant to, or appropriate for, CBC/Radio-Canada."¹⁵
49. The first argument is ridiculous on its face. High compliance to rules does not invalidate the rules themselves. Most of us go through life without ever killing another person. Nobody suggests this makes the prohibition on murder unnecessary. The argument is also empirically false. In its applications, CBC asks for reduced exhibition requirements for PNI, children's programming, and local programming on TV, presumably because they anticipate "difficulty" in mustering the means, or the will, to uphold these obligations.
50. The second argument is both contrary to recent regulatory developments and mischaracterizes the matter as being about "flexibility." CBC already has expenditure requirements for CBC News Network, Documentary Channel, RDI, Explora, and ARTV. The fundamental issue at hand is the merit of imposing new CPE requirements; "flexibility" from group licensing is a separate and subsidiary issue.
51. Whether or not CBC would benefit from allocating mandatory CPE across its licenced TV services, it clearly seeks discretion to shift Canadian program spending from licenced services to digital platforms. Moreover, given the uncertainty of this minority parliament, CPE (as opposed to exhibition) commitments would help CBC to remain compliant with its regulatory obligations in the event of unexpected funding cuts or if advertising revenue continues to decline. Already, a leading candidate for the Conservative Party leadership has proposed to cut CBC English TV budgets by 50%.¹⁶ The licencing regime must be able to cope with fluctuations like this.

¹⁵ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q. 10.

¹⁶ See Erin O'Toole's statement: <https://twitter.com/ErinOTooleMP/status/1228288500350451713>

52. CBC's request entirely ignores the Commission's underlying thinking about the advantages of expenditure requirements since 2010, and the decreasing effectiveness of exhibition-based approaches.
53. In 2010, the Commission anticipated likely declines in conventional television, and highlighting the Act's objective of "adaptability of the broadcasting system to change" took "a step in adapting the broadcasting system to the digital age," deciding to "pursue a new approach regarding the requirements for the exhibition and creation of high-quality Canadian programming" by imposing general CPE and PNI expenditure requirements.¹⁷
54. In 2010, for similar reasons to those then applied to CBC, the Commission determined that "the imposition of a CPE requirement on French-language television broadcasters is neither necessary nor appropriate at this time."¹⁸ However, that decision was subsequently reversed with the imposition of CPE and PNI requirements in 2017¹⁹, and original French-language programming requirements in 2018.²⁰
55. In the Create Policy of 2015, the Commission accelerated its shift towards expenditure requirements, eliminating daytime exhibition requirements for private broadcasters, stating:
- "while content quotas of this type may have been useful in ensuring the presentation of Canadian programming in a fully linear television system, they will be a less and less effective tool in an increasingly on-demand environment"; and
 - "quotas can also have unintended detrimental effects" such as "excessive" repeat or recycled programming."²¹

These concerns apply equally to CBC.

56. Given the central importance of local news, information and analysis in the Act, the Commission imposed new locally reflective news expenditure requirements on local private broadcasters in 2017.²²
57. The Commission's shift in regulatory emphasis from exhibition requirements to group expenditure requirements, first with private English broadcasters, then private French broadcasters, is now right for CBC.

¹⁷ <https://crtc.gc.ca/eng/archive/2010/2010-167.htm>, para 42 & 45.

¹⁸ Ibid, para 112.

¹⁹ Broadcasting Decision [2017-143](https://crtc.gc.ca/eng/archive/2017/2017-143.htm)

²⁰ <https://crtc.gc.ca/eng/archive/2018/2018-334.htm>

²¹ <https://crtc.gc.ca/eng/archive/2015/2015-86.htm>, para 190 & 191.

²²As determined in <https://crtc.gc.ca/eng/archive/2016/2016-224.htm>, and established, for example, in the large English-TV group renewals, here <https://crtc.gc.ca/eng/archive/2017/2017-148.htm>

58. CBC's proposal that the Commission take it in the opposite direction—to greater emphasis on exhibition requirements—is inconsistent with this shift. This outdated approach would also inhibit the Corporation from being credited for non-linear digital content that cannot be properly measured in hours per week. It would also help the Corporation to adjust in the event of funding cuts of the kind some leading politicians now propose.

Flaws in CBC's Proposed Exhibition Approach

59. CBC's proposed exhibition quotas have two principal elements:

1. The use of "expectation" rather than requirement in the cross-platform commitment;
2. Notionally higher cross-platform commitments; and

The use of "expectation" in conditions of licence

60. FRIENDS finds the Corporation's request for "expectations," rather than requirements, in its cross-platform exhibition conditions of licence disappointing.

61. To some extent, the practical difference is negligible. If CBC fails to adhere to a COL, the Commission is not likely to revoke its licence. And if CBC fails to adhere to an expectation, it will (hopefully) be asked to explain.

62. The difference between the two—for CBC, and for FRIENDS—is more symbolic. CBC is proposing new "enhanced" commitments and simultaneously seeking legal permission to break them. This introduces serious doubts as to CBC's commitment to upholding its programming obligations. We are not speculating as to management's intent to go back on its commitments. We are simply concerned that they are asking for the ability to do so.

The addition of a notionally higher cross-platform commitment

63. CBC's proposed cross-platform exhibition requirements appear disingenuous. Though they are cast as a way to increase exhibition of PNI, children's programming, and local news, the loopholes are vast, even assuming that "expectations" are met. Approval of the Corporation's proposals would allow it to:

1. Reduce overall levels of production and exhibition in all three categories. Nothing in the proposed COL would prevent CBC from meeting increasing exhibition hours by placing TV programming online;²³

²³ In responding to a CRTC Information Request on point, CBC states:

2. Allow CBC to fill “above and beyond” TV exhibition quotas with lower-cost and/or lower-impact programming created for small screens, etc.

64. Typical Commission language around exhibition requirements, including CBC’s current exhibition requirements, do not preclude the use of repeat broadcasts in fulfillment of such conditions. This is both because the Commission recognizes that repeats are sometimes necessary, and because monitoring would be too onerous.
65. More importantly, the Commission has found other ways to encourage more original programming, such as CPE requirements and original programming requirements. In the case of local TV programming, while associated exhibition requirements could theoretically be met through repeats, given that virtually all CBC’s local programming is news, that would not likely occur.
66. But a permissive repeat regime has a fundamentally different consequence in the cross-platform context. The same content showing up on two platforms can be counted twice. For example, in the case of local programming (largely local news), the proposed 14.5 hour cross-platform commitment in metropolitan markets, could theoretically be met by decreasing local programming on TV from 14 hours to 12 hrs and repeating 2.5 hours of TV news online.²⁴ This would likely prove a failing strategy for cultivating a digital audience, and it would violate the spirit but not the letter of exhibition requirements.
67. Of course, the reality is CBC *should* be repurposing traditional broadcast content for digital applications, and vice versa, wherever appropriate. Doing so is both cost-efficient and helps CBC provide Canadians with content of equal quality, irrespective of the platform on which they choose to consume it. This is particularly so in news, where Canadians have distinct channel preferences, and CBC news is structured to feed all platforms.²⁵

For the purposes of the exhibition-based expectations, online audio-visual programming would be measured on the basis of incremental hours of programming made available to the public each week (i.e., hours of programming added to the library of available content each week). So, if five hours of drama programming that was previously unavailable online were made available online in a particular week that would be equivalent to broadcasting those hours on traditional television during the week and would count as five hours towards the total “exhibition” hours.

While “incremental” could be interpreted to mean non-repeat, the intent is unclear. In any event, the COL language would be operative. DM#3754953 Reply 2 - 30 October 2019 - CBC Application, Q. 1(a).

²⁴ CBC has requested that its current 1 hr of local non news requirement in metropolitan markets be deleted. For reasons discussed below, we support that proposal.

²⁵ A Pew Research Centre, now dated, found that 82% of Canadians got their news from TV; 51% from newspapers, 30% from radio and 25% from the Internet. <https://www.pewresearch.org/global/2007/10/04/chapter-7-where-people-get-their-news/> Today, 59% of Canadians get news from the Internet; including 42% who use social media. https://www.pewresearch.org/global/2018/01/11/people-in-poorer-countries-just-as-likely-to-use-social-media-for-news-as-those-in-wealthier-countries/?utm_content=bufferce337&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

68. Barring other legitimate considerations, however, such repurposing should not be a reason to reduce traditional broadcast exhibition commitments. If anything, the ability to display digital-first content on traditional TV (and vice versa) should require CBC to *increase* the amount of original content available on each platform.
69. The above merely reinforces the need for the Commission to convert CBC's exhibition requirements to expenditure-based requirements.

News should be CBC's highest programming priority, especially local news

70. The Broadcasting Act requires that CBC "provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains." 'Inform', 'enlighten' and 'entertain' are not stated in alphabetical order.
71. Beyond that hint, the Act gives very little direction as to the genres of programming CBC should emphasize to fulfil its mandate, leaving that job to the Commission via COLs. Absent COLs, the CBC has broad discretion to interpret its programming mandate.²⁶
72. While FRIENDS has no concern that CBC will suddenly replace *The National* or *Le Téléjournal* with a new *Battle of the Blades*, CBC's support for local news has been inconsistent.
73. According to the 2019 CRTC Communications Monitoring Report, total CBC/SRC conventional station news spending fell from \$207 million in 2014 to \$102 million in 2017, increasing to \$121 million in 2018.²⁷ It is noteworthy that these reductions occurred despite local programming exhibition conditions of licence, which the Corporation states they "continue to meet."²⁸ If that is so, then quality is surely the victim.

However, 70% still use traditional media sources for their online news. <https://nmc-mic.ca/news/research/majority-canadians-get-online-news-traditional-media-sites/>

²⁶ While CBC reports to parliament, the only clear leverage government has over the CBC is in establishing its Parliamentary Appropriation. Politicians may express views on CBC programming matters, but the programming and editorial independence of the Corporation, as set out in at 35(2), 46(5) & 52(1) of the Act, is intended to limit such influence.

²⁷ Figure 6.13. We understand that CBC changed its reporting of digital activities in 2016; prior to this time, some digital news expenditures would have been included in TV news expenditure numbers. As CBC has given no indication to the contrary, we assume that pre-2016 news numbers have a very small digital component.

²⁸ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q. 27(a).

74. In one year alone (from 2016 to 2017), CBC English news expenditures dropped 43%, from \$92.6 million to \$52.9 million.²⁹ Radio-Canada news spending dropped 39%, from \$80.9 in 2016 million to \$49.2 million in 2017.³⁰ In November 2019, the Corporation announced the elimination of up to 30 English news positions “to manage a decrease to the CBC News operating budget.”³¹

75. On her appointment, the current CBC President declared local news a clear priority:

“There is nothing more important than local stories and local news. That's what will tie us together going forward as a country. It is absolutely central to democracy and dialogue in this country. So, you can rest assured that it will be absolutely central in everything that we do going forward.”³²

76. Public statements made a few months later similarly stressed the pre-eminence of local news and other local programming:

“First off, local and regional CBC content, across the board, is the heart of the organization...If we don't reflect Canadians where they are, wherever they are, we are not doing our job.”³³

77. We welcomed these promises and were disheartened to see that CBC’s application did not live up to them.

78. The CBC Strategic Plan Summary states that the Corporation will:

- be a beacon for truth and trust against “fake news” and algorithms that put democracy and the respect for different perspectives at risk;
- strengthen its role as Canada’s most trusted media brand; and
- strengthen its connection with Canadians with significant local and regional content that is relevant to people in their communities.

79. These are good words, but not the same as before. Now, rather than being most important—“the heart of the organization”—local news is one of five other priorities. Actually, not even that. It has been abstracted—some might say degraded—to “local

²⁹ DM#3755582 - Response - 9 October 2019 - CBC TV Financials.

³⁰ DM#3755615 - Response - 9 October 2019 - SRC TV Financials.

³¹ <https://www.nationalobserver.com/2019/11/15/news/layoffs-hit-cbc-news-amid-operating-budget-decline>.

³² <https://www.macleans.ca/culture/television/catherine-tait-named-as-cbc-president-first-woman-to-hold-role/>, as retweeted by the then Minister of Canadian Heritage. Full Quote <https://ipolitics.ca/2018/04/03/catherine-tait-to-become-cbc-president-the-first-woman-to-hold-role/> April 3, 2019.

³³ <https://www.cbc.ca/news/canada/british-columbia/catherine-tait-future-of-cbc-the-early-edition-1.4836696> , September 24, 2018.

connections,” a term that could mean just about anything and therefore, by extension, means nothing.

80. The Corporation’s Supplementary Brief speaks to “enhanced commitments for programs of national interest (PNI), children’s and youth programming, and local programming spanning traditional and digital audio-visual platforms.” The aforementioned sleight of hand in the framing of proposed exhibition commitments aside, there is again little sense of priority, and not even one mention of “local news” in the two-page “Strategy Summary.”
81. Also, remarkably, when asked by the Commission about the possible application of spending requirements for locally-reflective news, the Corporation stated “CBC/Radio-Canada does not have a statutory mandate to provide local programming.”³⁴ Surely, the Corporation’s lawyers have not forgotten that private broadcasters have no such statutory mandate either. But that has not prevented the Commission from regulating in the public interest and imposing such obligations as COLs.
82. Despite respectful prodding from FRIENDS, CBC has been at best parsimonious in providing information on its local news plans. While the Commission recently imposed local news expenditure commitments on private broadcasters, CBC opposes any such requirements for itself, and refuses to reveal neither current nor future spending levels for local news. Hopefully, the secrecy does not foretell cuts. Were CBC planning to meaningfully increase local news expenditures, we imagine they would advertise the fact.
83. What little financial information we have on overall TV news paints a picture of ongoing reductions. While CBC English TV news expenditures grew 4.3% to \$55.2 million between 2017 and 2018, they are projected to fall below 2017 levels by 2022-23.³⁵ Radio-Canada TV news spending grew to \$65.4 million in 2017-18 and \$69.2 million in 2018-19, with projected reductions to \$67 million in 2022-23.³⁶ **This would mean that by 2023, total CBC conventional TV news expenditures will have decreased 42%, or by \$87 million.**
84. This, despite the fact that government increased CBC funding by \$675 million over five years starting in 2016. Private publishers and broadcasters are closing their doors in alarming numbers. News Media Canada estimates that more than 250 outlets have closed in the past ten years, resulting in 16,000 fewer Canadian journalists in the field. CBC’s budget is insulated from market forces. It should use this protected position to compensate for reductions in privately broadcast local news.

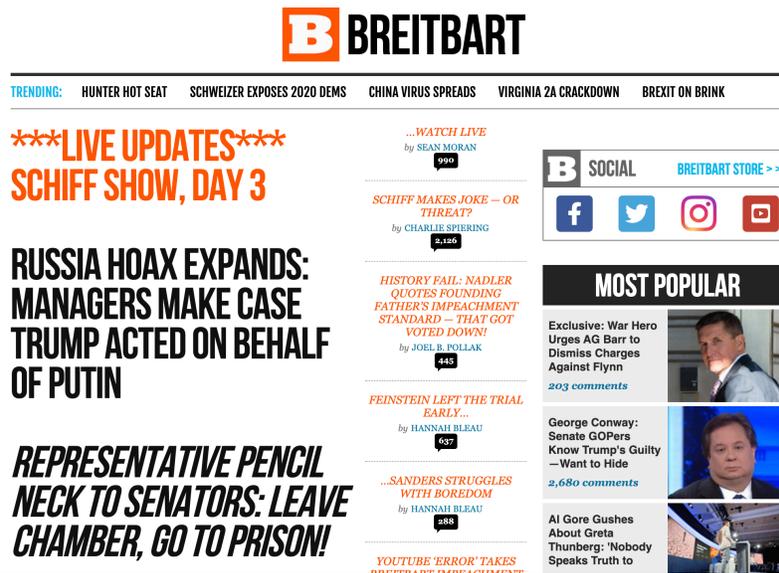
³⁴ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q 28.b.

³⁵ DM#3755582 - Response - 9 October 2019 - CBC TV Financials.

³⁶ DM#3755615 - Response - 9 October 2019 - SRC TV Financials.

85. And while CBC reduces news spending, more Canadians get their news from Facebook than any other source. According to Abacus Data, more Canadians check Facebook daily than read a newspaper. This is true of every demographic, including those over sixty. And news is the top reason for Canadians use of Facebook.³⁷

86. Yet, Facebook is not a trustworthy news source. Its CEO has implemented an explicit policy of accepting funds from politicians to advertise messages that even the company’s own fact checkers deem false.³⁸ Canadian journalist Craig Silverman has documented how “fake election news stories generated more total engagement on Facebook than top election stories from 19 major news outlets combined.”³⁹ Facebook recently launched a News Tab in the United States, where select news outlets could post supposedly reliable content and be paid for it. Yet one of the partners was Breitbart, the far-right tabloid founded by former Trump adviser Steve Bannon.⁴⁰ If you wish to gauge Breitbart’s credibility as a news source, here is a screenshot of the site’s homepage at 4:50 p.m. on January 23, 2020.



87. Given the fact that Facebook is notoriously riddled with misinformation, that it explicitly invites politicians to pay to spread false information advertising, and that professional Canadian journalism is disappearing in many parts of the country, FRIENDS believes that CBC must pursue news as its unambiguous top priority, so that Canadians can remain informed citizens.

³⁷ <https://abacusdata.ca/matters-of-opinion-2017-8-things-we-learned-about-politics-the-news-and-the-internet/>

³⁸ <https://apnews.com/90e5e81f501346f8779cb2f8b8880d9c>

³⁹ <https://www.buzzfeednews.com/article/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>

⁴⁰ <https://www.theguardian.com/us-news/2019/oct/25/facebook-breitbart-news-tab-alt-right>

88. Yet, it appears to be doing the exact opposite. News expenses were cut by almost half from 2014 to 2017, and while modest reinvestments have now been made, they do not make up for what has been lost—not even close—and will soon be eroded by inflation.
89. There is no valid rationale for further reductions, unless they are more than offset by legitimate and commensurate increases in local news on digital platforms. At present, we see no indication of this.
90. In the 2016 proceeding where the Commission imposed new expenditure requirements for local news on private broadcasters, the CBC correctly recognized that small markets are “where the need is greatest.”

While the evidence before the Commission indicates that local news does not pay for itself in any market, the challenges facing small market broadcasters are the greatest. This fact was acknowledged by most parties addressing this point at the oral hearing.⁴¹

91. No such recognition is evident here. In fact, CBC’s application provides no indication on how news expenditures are spent between local markets, or any general indication of priorities, such as between different markets, and between TV, radio and digital platforms.
92. In an April 19, 2019 letter, FRIENDS urged CBC to publish its strategic plan for local news, and provide greater transparency and understanding of the Corporation’s plans. No substantive response was provided to the FRIENDS letter, nor has CBC ever disclosed its full strategic plan.
93. FRIENDS does not have to remind the Commission how important local news is, and of CBC’s crucial role in producing it. We do note, however, the November 2019 mandate letter to the Minister of Canadian Heritage assigning as one of his “top priorities” to work “through established legislative, regulatory and cabinet processes” such as the CRTC, to “strengthen the regional mandate of CBC/Radio-Canada to broadcast more local news and require CBC/Radio-Canada to open up its digital platform.”⁴² The minister has since suggested that funding will be increased to facilitate this.⁴³

⁴¹ See Broadcasting Notice of Consultation CRTC 2015-421, Final Comments of CBC/Radio-Canada 16 February 2016 (para 21) and CBC/Radio-Canada Opening Statement. Stated in the context of arguing for a new LNIF fund for local news that would be open to all licensed OTA television stations serving small markets (i.e., less than 300,000) only. CBC estimated that sixty-five small market stations would be eligible for the proposed fund, including fourteen of its own.

⁴² It is not clear at this time if “strengthening” would entail additional resources or be expected with current resources. The Minister of Canadian Heritage is, however, reported to have said that he would “ensure they [CBC] receive adequate funding for any new mandates.” <https://ipolitics.ca/2019/12/30/holiday-brief-guilbeault-promises-to-boost-local-journalism/>

⁴³ See <https://ipolitics.ca/2019/12/30/holiday-brief-guilbeault-promises-to-boost-local-journalism/>

94. Surely, there can be no greater priority in this proceeding than ensuring that CBC continues, first and foremost, to keep Canadians informed. It is all the more important for CBC to indicate what its plans are in this regard, and have them available for the oral hearing.

95. FRIENDS accordingly urges the Commission to:

1. Require CBC to present specific plans for the production and dissemination of more local news, in writing, with full financial details, no later than two weeks prior to the hearing on May 25, 2020. These should include:
 - a. A plan for expanding or restoring service to smaller and underserved markets, especially provincial capitals and other areas of particular civic importance;
 - b. A plan for increasing the prevalence of quality news on its digital platforms and ensuring it is accessible, for free, without excessive advertising;
 - c. A plan for becoming a more collaborative, catalytic player in the greater media ecosystem; and
 - d. A preliminary plan or views on what it would do with any increased resources from parliament or other sources.
2. Put the onus on CBC to explain why news expenditures should not be returned to earlier (2014) levels; and
3. Impose specific local news expenditure requirements on CBC TV, radio, and digital services. This could be done on a cross-platform basis, provided each platform was subject to equal transparency requirements.

96. FRIENDS proposes potential conditions of licence for news and other programming matters in the penultimate section of this brief.

Advertising, Paywalls and the Corporation's Mandate

97. In an interview with the *Toronto Star*, six months into her tenure, CBC President Catherine Tait was asked about advertising. Her response:

Aspirationally, we would love to be ad-free. Consumers have already voted with their feet. They love Netflix not just because of the programming but because it's ad-free and they're willing to pay for it. However, \$300 million of advertising pays for a lot of the mandate. That includes services to the north, services in local communities that we couldn't pay for if we were looking for a commercial model to pay for itself. I'm not going to walk away from that revenue. We're going to manage it. We're going to see over time how we move away from it. And hopefully replace it with subscription fees from the paywall or from other services that we might generate distribution fees on.

We're exploring ways we can generate revenue to bolster the services and, over time, move out over being dependent on pure ad revenue.⁴⁴

98. These comments are noteworthy on a number of levels:

1. The claim of \$300 million in advertising revenue is incorrect. In 2019, CBC ad revenues were about \$250 million, continuing a steady decline.⁴⁵ In fact the Corporation's 2019 Annual Report revealed a 21.8% decline from 2018 to 2019, noting "[t]he long-term prospects of the advertising market remain a concern."⁴⁶
2. Notably, digital advertising revenues were not spared from the decline.
3. Moreover, these are gross advertising revenue figures which do not include the Corporation's cost of sales, reported by CBC to be just over \$100 million. This means advertising doesn't "pay for a lot of the mandate," as Ms. Tait suggested, but rather about 10% of it.⁴⁷
4. We expect CBC advertising revenues to continue declining, as with all other Canadian media advertising;
5. FRIENDS has commissioned an opinion on trends in CBC advertising that forecasts a point in the not too distant future (2023) when the cost of CBC TV ad sales will equal revenues earned from advertising. We are pleased to append this report by Canadian Media Research Inc. as part of FRIENDS' submission, for your information.
6. There is no practical evidence that CBC is looking to "move away from [advertising]." In fact, CBC's Strategy Summary cites a "business imperative" that suggests the opposite. CBC appears to be pursuing commercial revenue more aggressively, including by imposing on users extensive pre-roll ads online, including for radio content that is supposed to be ad-free, producing commercially-oriented programs like *Family Feud Canada*, and by collecting more and more data through its digital platforms.⁴⁸ FRIENDS notes that even the free tier of CBC Gem requires a user account, the principal utility of which is regular data collection.
7. The notion of a greater reliance on paywalls is also troublesome. User fees of any kind, including for the purpose of avoiding advertising, reduce universality. It is

⁴⁴ <https://www.thestar.com/entertainment/television/2018/12/28/cbc-boss-catherine-tait-on-advertising-streaming-the-four-headed-news-show-and-more.html>

⁴⁵ Financial information filed in this proceeding only provides projected radio and TV advertising revenue for 2019 forward. Consolidated advertising revenues (for all platforms) are provided for the fiscal year in the Corporation's 2018-19 Annual Report, p. 43 & 73. CRTC statistical summaries note historic declines in CBC advertising revenue.

⁴⁶ 2018-19 Annual Report, p. 39 & 43. Even digital advertising declined from \$42.5 million in 2018 to \$31 million in 2019.

⁴⁷ CRTC Statistics for 2018 indicate that CBC TV received \$240 million in ad revenues with a cost of sales and promotion of \$102 million. The \$150 million estimate assumes CBC has a relatively small third party promotion budget, and that digital has similar overhead to that of TV.

⁴⁸ See, for example, <https://www.theglobeandmail.com/business/commentary/article-the-cbc-has-no-business-chasing-ad-dollars-with-low-brow-game-shows/>

unsettling to hear CBC management speak about increasing fee revenue as though universality and accessibility were not relevant considerations.

99. There is one flaw in the plan: CBC is not particularly good at generating advertising revenue. They have tried to do so, and failed, for the better part of 30 years. Worse than detracting from the mandate, these decisions have alienated audiences, leading to record low ratings, especially for English TV.⁴⁹

Advertising

100. FRIENDS was surprised to see not a single reference to advertising in the Broadcasting Notice of Consultation. The issue of advertising is directly related to CBC's ability to fulfill its mandate; both in terms of the incremental funding it may provide, and the unfortunate tendency it has to drive the Corporation away from "distinctively Canadian" public-interest programming.

101. CBC recently caused significant controversy when it declined to broadcast live coverage of the 2018 Ontario municipal elections on television, airing *Murdoch Mysteries* instead. A CBC spokesperson described advertising and elections coverage as "competing priorities."⁵⁰ If the CBC's obligations to citizens conflict with its obligations to advertisers, citizens should always come first. The fact that CBC chose advertisers over democracy demonstrates the insidious impact of the advertising imperative on our public broadcaster.

102. FRIENDS is not calling for CBC to immediately eliminate all advertising. This is neither practically nor financial feasible right now. But just because CBC still depends on commercial revenues does not mean that all content should be subject to management's "business imperative."

103. As an immediate first step, FRIENDS calls on the Commission to prohibit CBC from advertising during news programming of any kind—TV, radio, or digital platforms—including video embedded in online articles. This is a limited, reasonable measure that aligns with the recommendations of the Broadcasting and Telecommunications Legislative Review.

104. We are concerned that commercial considerations could lead CBC programmers to take actions that would compromise public trust. For example, thoughtful speculation suggests

⁴⁹ Per note 41 infra, of \$240 million in 2018 ad revenues, almost half – \$114 million – comes from Quebec, with a significantly lower cost of sales and promotion (\$36 million). Assuming minimal promotion, English TV gets \$138 million in advertising revenues at a cost of approximately \$76 million.

⁵⁰ REFERENCE CHUCK THOMPSON STATEMENT

that a recent series on Paul Bernardo was conceived as click bait for TV—a play to draw audiences for advertisers.⁵¹

105. Along with expenditure requirements in respect of local news, noted above, the removal of advertising from news content will free CBC’s exceptional journalists to pursue their craft, in service of our democracy, without regard for the interests of advertisers.

Distinctiveness

106. In respect of non-news programming, FRIENDS calls on the Commission to exercise greater oversight of the Act’s requirement that CBC’s programming be “predominantly and distinctively Canadian.”

107. The Broadcasting Act specifically mandates the Commission to define what constitutes a Canadian television program under section 10 of the Act, a definition that currently uses a points system adopted in 1984.⁵² Pursuant to its general powers under the Act, the Commission more recently chose to define “locally reflective news programming” as the term used for expenditure conditions of licence for local private broadcasters, first imposed in 2017.⁵³

It would therefore be both legally appropriate, and in the public interest, for the Commission to provide greater clarity as to the characteristics necessary for CBC programming to comply with the requirements of the Act. Given their importance and nature, we would propose that the emphasis be on defining “distinctively Canadian” programming and programming that “reflects Canada and its regions” by introducing the following as conditions of licence.

108. Programming will be considered to be “distinctively Canadian” if it meets at least four out five of the following criteria:

- a) the subject matter relates specifically to Canada, its history, stories, places and peoples, and their activities, issues, values, attitudes and interests;

⁵¹ See <https://www.theglobeandmail.com/arts/television/article-how-low-will-cbc-tv-bosses-go-in-search-of-ratings-and-ad-dollars/>

⁵² https://crtc.gc.ca/eng/cancon/c_cdn.htm. A similar example would be the Commission’s definition of a Canadian using the MAPL system. https://crtc.gc.ca/eng/info_sht/r1.htm

⁵³ See <https://crtc.gc.ca/eng/archive/2016/2016-224.htm> & Broadcasting Decision CRTC 2017-148:

News programming will be considered locally reflective if it meets all of the following criteria:

- *the subject matter relates specifically to the market a station is licensed to serve;*
- *it portrays an onscreen image of the market by, for example, including its residents or officials or featuring coverage of its municipal or provincial government; and*
- *it is produced by the station’s staff or by independent producers specifically for the station.*

Note also that there is no obligation in the Act for private local TV stations to provide “locally reflective news programming”, or even “local news”, for that matter. If applying a clear definition was deemed appropriate for private TV local news, it would seem doubly appropriate for programming that CBC is mandated to provide.

- b) the underlying material is Canadian (i.e., an adaptation of a Canadian literary work);
 - c) it demonstrates Canadian creativity, Canadian heritage and/or diversity;
 - d) it is set in Canada, and a majority of the scenes take place in Canada; and
 - e) the lead characters/participants are identifiably Canadian citizens or residents.
109. Programming should be considered to “reflect Canada and its regions” if it meets **all** of the following criteria:
- a) the subject matter relates specifically to Canada and its regions;
 - b) it portrays a diversity of onscreen local, regional and national images of Canada or Canadians; and
 - c) it is produced by the station's staff or by independent producers specifically for the Corporation.
110. FRIENDS accepts that there will be occasions when CBC’s programming does not fully meet these criteria. In using the words “should” and “predominantly” in respect of CBC’s programming objectives, Parliament recognized that there would be exceptions. These criteria will, however, make those exceptions more clear, and, hopefully, more exceptional. CBC should accordingly also be required to report annually on programming that does not meet the criteria.
111. There have been a number of comments in the media that CBC strays from its mandate when it exhibits non-distinctive popular fare like *Family Feud Canada*, *Battle of the Blades*, and *Murdoch Mysteries*.⁵⁴ *Family Feud* is a foreign game-show format. *Murdoch Mysteries* is a Canadian drama with no Canadian angle.
112. Under no circumstances should the Commission micromanage CBC’s programming decisions. But we urge the Commission to provide CBC with guidance as to how “distinctively Canadian” should be properly interpreted.
113. In particular, as stated above, we note that the strictly industrial definition of Canadian content, as employed by CAVCO, is separate and distinct from CBC’s imperative under the Act. “Predominantly and distinctively Canadian” means more than just produced by Canadians. There should be substantive cultural criteria as well, such as whether the characters, setting, attitudes, references, or issues depicted in the programming are Canadian or directly relevant to Canadians. We recommend the Commission look to the precedent of the UK in this regard, and in particular at the “Britishness” test, for which a comparable Canadian framework must be developed.

⁵⁴ <https://www.theglobeandmail.com/arts/television/article-how-low-will-cbc-tv-bosses-go-in-search-of-ratings-and-ad-dollars/> <https://www.theglobeandmail.com/business/commentary/article-the-cbc-has-no-business-chasing-ad-dollars-with-low-brow-game-shows/>

114. For more detail concerning our proposed “predominantly and distinctively Canadian” test, please see the attached research on the subject, commissioned by FRIENDS to assist the Commission on this occasion.

Paywalls

115. CBC uses digital paywalls for advertisement-free versions of Gem and TOU.TV. With Gem, the advertisement-free and paid versions are very similar in content, with the paid version including CBC News Network. That does not appear to be the case with TOU.TV, however, which is now “offering a first look at exclusive content to our premium subscribers”.⁵⁵

116. In FRIENDS’ view, it is wrong for CBC, a universal public service, to restrict content to fee-paying users only. CBC paywalls are only acceptable if:

- The content is the same for paying and non-paying users (with the exception of advertising), and has been exhibited or is directly associated with content exhibited⁵⁶ on free CBC radio or TV services; or
- The content has been exclusively exhibited, or is directly associated with content exclusively exhibited on a discretionary TV service.

In other words, CBC should not be permitted to reduce universal access beyond what is already permitted. This is consistent with how the CBC operates its discretionary services. Further, FRIENDS submits that no content created for or exclusively exhibited on CBC’s digital platforms should be paywalled.

Radio

117. We are pleased that the Corporation is not repeating its 2011 request to advertise on radio.

118. We are also pleased that in the last few years, CBC has reversed previous reductions in radio expenditures. After the Commission called them out for decreasing total radio operating expenses from \$283 million to \$261 million between 2013 and 2015, CBC’s total radio operating expenses steadily increased, reaching \$292 million in 2018.⁵⁷

⁵⁵ 2018-19 Annual Report, p.6. We note that Quebecor has filed an undue preference complaint with the CRTC on this matter, which is currently before the CBC. Part 1 Application - Québecor versus Radio-Canada - ICI TOU.TV EXTRA - Application # [2019-1113-1](#)

⁵⁶ This would include outtakes or published news developed in anticipation of possible broadcast stories.

⁵⁷ CRTC Financial Summaries, per <https://crtc.gc.ca/eng/archive/2016/2016-353.htm>, para 19.

119. The financial projections filed with this application show a slight decrease in total radio operating expenses to \$291 million in 2019, rising to \$301 million in 2023.⁵⁸ All-important CBC Radio One is expected to see a rise of \$9 million in its operating expenses to \$174 million in 2023.
120. FRIENDS applauds this proposed ongoing increase—modest though it is.
121. But given that CBC decreased radio investment during the last licence term, despite a Commission authorisation for advertising that specifically prohibited such cuts,⁵⁹ FRIENDS believes that a specific expectation requiring the maintenance of relative investments in radio is warranted.
122. An expectation, rather than a condition of licence, would appear to be appropriate for such a measure. In this way, should CBC not comply for a *bone fide* reason, it would not be found in breach of its conditions of licence.
123. CBC Radio One is a distinctive, much-loved, and vital source of news and information programming for Canadians. ICI Radio-Canada Première is the second most popular French-language radio format, with 19% of French-language tuning share, while CBC Radio One is the most popular English-language radio format with 15% of English-language tuning share.⁶⁰ CBC Radio One and ICI Radio-Canada Première prove that audience success can be had, not in spite, but rather *because* of distinctive, high quality, value-added, public service programming. This is an instructive lesson for CBC English TV and for all digital services to bear in mind.

Digital Audio Platforms

124. In Spring 2019, CBC officially launched *CBC Listen*, the Corporation's "unified, consolidated digital audio experience where listeners can stream live radio, find all of our CBC original podcasts in one location, check out over 150 CBC Music playlists and choose audio on-demand featuring some of our biggest current affairs stories, radio

⁵⁸ DM#3755576 - Response - 9 October 2019 - CBC Radio Financials and DM#3755574 - Response - 9 October 2019 - SRC Radio Financials, Tabs 1 & 2

⁵⁹ "The burden of proof was on the CBC to justify that it had maintained its investment in radio following the Commission's decision to authorize the broadcast of paid national advertising on Radio 2 and ICI Musique until 31 August 2016. However, the Commission finds that based on the evidence provided, the CBC has not satisfied the criterion set out above with regard to maintaining its investment in radio. The flexibility to broadcast paid national advertising was granted to help the CBC mitigate the effects of reductions in its parliamentary appropriations and to help it sustain investments in radio. Given the declines in operating expenses relating to production and programming, the Commission cannot conclude that the CBC has maintained its investment in radio."

<https://crtc.gc.ca/eng/archive/2016/2016-353.htm> Para 21. It is worth noting that private broadcasters have had licence terms shortened, and/or penalties imposed, for far less egregious breaches of Commission requirements. [Cites, CCD]

⁶⁰ CRTC 2019 Communications Monitoring Report, page 125.

programs and special events.”⁶¹ An analogous “integration of all audio content (talk and music) produced by Radio-Canada,”⁶² *OHdio*, was launched November, 2019.

125. Going forward, the Corporation states:

Radio-Canada intends to fully roll out its digital audio strategy in the next few years and in so doing develop all of its digital properties while maximizing integration of talk and music content. Radio-Canada will also proceed with the continuous improvement of its terrestrial radio networks, and that content will continue to be accessible online as well.⁶³

126. No such analogous statement about “continuous improvement of its terrestrial radio network” is made in respect to CBC Radio One and CBC Music.

127. Indeed, statements about plans for CBC English radio are cautious, even circumspect:

CBC Radio One which is largely talk programming and predominantly journalistic based will continue to broadcast *The Current*, *As it Happens*, *Ideas* and *Sunday Edition*. In addition, we will launch a new business show out of Calgary this year.

CBC Music (formerly CBC Radio Two) is a multi-genre radio network service that will continue to privilege Canadian music.

128. Queried by the Commission to describe its plans for its CBC English radio networks, CBC said more about its new digital platform, streaming, and plans for podcasts than the actual licensed networks the Commission asked about.

129. This increasingly apparent emphasis on digital audio platforms is echoed in the limited digital financials the Corporation released. Of \$10.5 million in total digital content-related expenses in 2017, \$8.1 million or 77% were audio-visual Cancon related expenses. By 2023, of \$65.9 in total digital content-related expenses, \$35.2 million or 53% are expected to be audio-visual Cancon related expenses. Assuming that non-Cancon expenses are negligible, digital audio content expenses seem set to rise from approximately \$2 million in 2017 to \$30 million in 2023.

130. The reason for this apparent fifteen-fold increase in digital audio content expenses in six years is nowhere provided. Nor is any explanation, or strategic analysis, provided on the extent to which digital audio content should or would be different or synergistic with radio.

⁶¹ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q 85.

⁶² Ibid.

⁶³ Ibid.

131. While up to now, with the exception of some podcasts, most of the content on CBC's audio platforms has been clearly synergistic with traditional radio, the projected fifteen-fold increase in audio content expenses from 2017 to 2023 suggests a major shift into original or different programming.
132. No explanation is provided, but whatever the motive, we see no reason why this content (or most of it) cannot be repurposed for radio to, among other things, reduce much-loathed repeats, but also to introduce traditional radio listeners to the wealth of superb content available on CBC's digital audio platforms. This could enrich conventional CBC radio considerably, while supporting management's multi-platform approach.

Rate increases for ICI RDI and CBC News Network

133. CBC has proposed modest rate increases for ICI RDI and CBC News Network. We note that despite these rate increases, overall revenues are still expected to decline over the next term, meaning a decline in news spending. Without the proposed rate increases, however, revenues would decline even more.
134. For CBC News Network, the difference is a decline from a \$58.8 million in news programming expenses to \$52.9 million with the rate increase, or \$51.2 million without the increase.⁶⁴
135. FRIENDS agrees with the Corporation that CBC News Network continues to meet the Commission's test for mandatory distribution in French-language markets, that it makes an exceptional contribution, and that it merits the proposed rate increase.⁶⁵
136. We note that the Commission asked the Corporation about the merits of extending CBC News Network's mandatory distribution order to BDUs operating in both language markets. In light of the potential benefits in increased news program funding, we would support this approach should the Corporation choose to pursue it.⁶⁶

Distinctiveness

137. To end the controversy as to whether CBC is sufficiently Canadian, the Commission should provide CBC with clear guidance as to how "distinctiveness" should be interpreted and assessed.

⁶⁴ DM#3700221- Response - 9 October 2019 - CBCNN Financials, Tabs 1 & 2

⁶⁵ DM#3733727 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q 38.

⁶⁶ Ibid, Q 39.

138. If CBC is to play the role it needs to play, it is more important than ever that its programming be “predominantly and distinctively Canadian.”
139. We, therefore, recommend that the Commission include language such as the following in CBC’s licences, and note that this also applies to digital programming:

For the purposes of compliance with its mandate under the Broadcasting Act, CBC programming must be predominantly and distinctively Canadian.

140. Programming will be considered to be “distinctively Canadian” if it meets at least four out five of the following criteria:
- a) the subject matter relates specifically to Canada, its history, stories, places and peoples, and their activities, issues, values, attitudes and interests;
 - b) the underlying material is Canadian (i.e., an adaptation of a Canadian literary work);
 - c) it demonstrates Canadian creativity, Canadian heritage and/or diversity;
 - d) it is set in Canada, and a majority of the scenes take place in Canada; and
 - e) the lead characters/participants are identifiably Canadian citizens or residents.
141. Programming should be considered to “reflect Canada and its regions” if it meets all of the following criteria:
- a) the subject matter relates specifically to Canada and its regions
 - b) it portrays a diversity of onscreen local, regional and national images of Canada or Canadians; and
 - c) it is produced by the station's staff or by independent producers specifically for the Corporation.

Use of Commitments rather than Expectations

142. FRIENDS opposes the use of expectations in CBC conditions of licence, unless there is a clear need for some leeway. In particular, any overall cross-platform commitments should be unequivocal conditions of licence, not malleable, negotiable expectations.
143. For requirements that would be unachievable if CBC’s funding were cut, expectations are appropriate. CBC should not be found to be in non-compliance if a *bone fide* reason exists.
144. The following are conditions for which FRIENDS believes expectations would be appropriate.

Expectation of priority to underserved small/medium markets

145. CBC's current local market service areas date back decades and do not necessarily reflect where priorities might lie today.
146. There are two ways CBC can potentially address this over the next licence term: first, in its allocations of digital resources and secondly, in re-allocations of conventional TV and radio resources.
147. CBC has appropriately not proposed closures of any local stations over the next licence term. However, as private media closures affect more and more small and medium sized markets, CBC has a key roll to play in filling the void.
148. In particular, priority for any new local services (digital or otherwise) should go to markets that are underserved by other media. The Commission should set an expectation in this regard.

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