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22 January 2024

Marc Morin  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

By e-mail

Dear Secretary General,

**Re: *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content, BNoC 2023-138 (Ottawa, 12 May 2023) – Request for clarification regarding timing of Regulatory Plan consultations in 2024***

1 Pursuant to subsection 13(1)(b) of the *Canadian Radio-television and Telecommunications Communication Rules of Practice and Procedure* ([SOR/2010-277, current to 2021-04-08](#)) the following organizations representing a diverse range of interests and communities are respectfully requesting that the CRTC clarify the timing of the consultations that the Commission will be holding in 2024 in connection with its [Regulatory Plan to modernize Canada's broadcasting framework](#):

Forum for Research and Policy in Communications (FRPC)  
Friends of Canadian Media | Les Amis des médias canadiens  
National Campus and Community Radio Association (NCCRA) | L'Association nationale des radios étudiantes et communautaires (ANREC)  
OpenMedia  
Public Broadcasting in Canada for the 21<sup>st</sup> Century (PBC21) / Diffusion publique canadienne (DPC)  
Public Interest Advocacy Centre (PIAC) | Le centre pour la défense de l'intérêt publique  
Quebec English-language Production Council | Conseil québécois de la production de langue anglaise (QEPC)  
Unifor, and  
Union des consommateurs (UC).

2 The nine parties to this request note that, in addition to the final stages of the Consultation on contributions to the Canadian broadcasting system<sup>1</sup> (2023-138), the [Regulatory Plan](#) sets out

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<sup>1</sup> Including the responses to the CRTC's 21 December 2023 and 4 January 2024 requests for information (RFIs) and interveners' final replies.



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five consultations that the CRTC “may include” in the Winter 2023-2024 period:

- Consultation on definitions of Canadian and Indigenous content
- Consultation on tools to support Canadian music and other audio content
- Consultation on programming and supports for video content
- Consultation on local markets access [*sic*] and competition, and
- Consultation on protecting Canadian consumers.

- 3 The CRTC’s [Regulatory Plan](#) says that the Commission is also “looking at how [it] can tailor [its] expectations of and requirements for different broadcasting services, including” the following three issues that at this time do not fit clearly within any of the six CRTC consultations either underway or waiting to be launched in 2024:
  - Funding to improve public participation in broadcasting processes;
  - CRTC’s approach to licensing and
  - Broadcasting industry fees.
- 4 This list of proceedings for 2024 also excludes [Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals](#), Broadcasting Decision CRTC 2022-165 (Ottawa, 22 June 2022), referred back to the CRTC by the Governor in Council on 16 September 2022 for [reconsideration and hearing](#).
- 5 The requestors are asking that the CRTC by 1 February 2024 publish clearer guidance about the timing of its 2024 proceedings. This guidance should include the *estimated* dates when the CRTC will issue its consultation notices as well as an indication as to which if any of the consultations will include a public-hearing component. The requestors understand that the CRTC may decide to vary this guidance after it is published: sections 7 and 10(a) of its [Rules of Practice and Procedure](#) provide for such changes, and the Federal Court held just over forty years ago that the Commission is “master of its own procedures” as long as it acts in good faith and considers fairly the views of all parties.<sup>2</sup> The parties to this request ask the Commission to provide guidance about the estimated timing of the proceedings it has already announced it may hold in 2024, so that all parties are able to manage their limited resources more efficiently and effectively, thereby strengthening the procedural fairness of the CRTC’s proceedings.
- 6 To this end – that of fairness – the parties to this request are also asking the CRTC to bear in mind the unfairness and disadvantage caused to some when the CRTC sets deadlines that are simultaneous or overlap each other. On 12 May 2023, for instance, the CRTC announced the first three of its [Regulatory Plan](#) proceedings. Table 1 sets out their dates for interventions, replies and final replies, and shows that the deadlines in all three proceedings were either identical or overlapping.

<sup>2</sup> *Lipkovits v. CRTC*, 1982 CanLII 5250 (FCA), [1983] 2 FC 321-331 at 331.



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| Table 1                    | Announced             | Intervention deadline  | Reply deadline   | Final-reply deadline      |
|----------------------------|-----------------------|--|--|---------------------------|
| <a href="#">2023-138</a>   | 12 May 2023           | <del>27 June 2023 (Am. on 9 June)</del><br><b>11 July 2023</b> | <del>12 July 2023 (Am. on 9 June)</del><br><b>26 July 2023</b> | Not yet announced by CRTC |
| <a href="#">2023-139</a>   | 12 May 2023           | <i>12 June 2023</i>  | <i>27 June 2023</i>  | <b>12 July 2023</b>       |
| <a href="#">2023-140</a>   | 12 May 2023           | <i>12 June 2023</i>  | <i>27 June 2023</i>  | <b>12 July 2023</b>       |
| <i>Red italicized font</i> | Same deadlines        |  |  |                           |
| <b>Black bolded font</b>   | Overlapping deadlines |  |  |                           |

7 Announcing three important consultations regarding the entire broadcasting system on the same date with the same or overlapping deadlines mattered to parties with limited resources including the requestors because it takes time to develop ideas, to discuss these, to gather and analyze the evidence relevant to those ideas and to set these ideas out in well-argued submissions. Evidence mattered because BNoC 2023-138, for example, asked “that, whenever possible, parties provide evidence in support of their comments or proposals” (paragraph 87). Meanwhile the CRTC in February 2023 had announced it would not publish any subscriber or programming data from online digital media services,<sup>3</sup> constraining the empirical evidence available to the requestors. The CRTC also clarified that parties could not file new evidence in their replies to interventions if that evidence addressed issues they did not raise in their initial interventions.<sup>4</sup>

8 The CRTC’s use of the same or overlapping deadlines that are relatively short – a month – was also disadvantageous to parties with limited resources including the requestors because their small numbers of staff effectively gave them less time to devote to any one of the consultations. Very few individuals with the necessary expertise work in this sector who are not already employed by other interested parties and, in the case of public-interest participants the instability of funding to remunerate such individuals placed even more limits on smaller organizations’ ability to retain outside assistance within the CRTC’s deadlines. Two CRTC proceedings with the same deadlines effectively cut in half the time available to individual organizations to consult on, gather evidence and draft interventions on each proceeding; tripling the number of submissions due at the same time or at overlapping times reduced available time by two-thirds. Better-resourced organizations – broadcasters such as Bell Media, Québecor or Netflix – did not share this disadvantage because their size enabled them to engage additional staff or consultants as needed.

<sup>3</sup> Publication of aggregate data collected in response to the Annual Digital Media Survey, [Broadcasting Decision CRTC 2023-34](#) (Ottawa, 15 February 2023), paragraphs 26 to 41.

<sup>4</sup> Executive Director, Broadcasting, CRTC, [Re: Broadcasting Notices 2023-139 and -140 – Procedural request to allow parties to submit new information or evidence in their replies](#), (Ottawa, 15 June 2023).



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- 9 One way to alleviate participants' disparities in advantage and disadvantage is to grant all parties more time. The requestors note that the CRTC gave parties the same 31 calendar days to submit interventions in its 2023-139 and -140 proceedings dealing with the broadcasting system in general – but granted an average of 53 days (41% more time) to submit interventions in four *Let's Talk TV* consultations focussed solely on audiovisual matters and issued in four separate months over a year and a half.<sup>5</sup>
- 10 The parties to this request are therefore asking the Commission to schedule proceedings one by one over a longer period time to ensure that all parties have the same reasonable opportunity to come up with ideas, to develop their arguments, to collect evidence, to review what may be dozens or hundreds of comments and to formulate informed replies.
- 11 That said, the requestors are cognizant of the CRTC's desire to begin implementation of its new policies in 2024. As Table 2 shows, though, it would be possible for the CRTC to issue decisions in four proceedings before the end of July 2024 (that is, a month before the 2024-2025 broadcast year begins) even if the CRTC issued one written-only notice of consultation roughly every four weeks.

Table 2

| If consultation announced every 4 weeks | One-month intervention deadline | One month for replies | One month for decisions |
|---|---------------------------------|-----------------------|-------------------------|
| February 1, 2024                        | March 1, 2024                   | April 1, 2024         | May 1, 2024             |
| February 29, 2024                       | March 29, 2024                  | April 29, 2024        | May 31, 2024            |
| March 28, 2024                          | April 26, 2024                  | May 27, 2024          | June 27, 2024           |
| April 25, 2024                          | May 24, 2024                    | June 24, 2024         | July 24, 2024           |
| May 23, 2024*                           | June 21, 2024                   | July 22, 2024         | August 19, 2024         |

\* If this proceeding began in May it is unlikely that the Commission would be able to implement its determinations for the beginning of the 2024-25 broadcast year

- 12 The CRTC could still issue notices of public hearing from February 1<sup>st</sup> to the end of July 2024 as long as, in the interest of fairness, the deadlines for intervention and reply follow with little or no overlap the deadlines of other notices of consultation already issued. The requestors note, though, that the insufficiency of one month to review, collaborate on, research and draft submissions with ideas for different CRTC proceedings with the detail and evidence required by the CRTC remains highly problematic.
- 13 Finally, in the alternative, the parties to this process propose that the CRTC consider holding the preparatory conference provided for in section 37 of its [Rules of Practice and Procedure](#) with respect to matters to be addressed at a public hearing. Participating in such a conference

<sup>5</sup> BNoC 2014-190 was issued on 24 April 2014; BNoC 2015-87 on 12 March 2015; BNoC 2015-421 on 14 September 2015 and BNoC 2015-467 on 20 October 2015.



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would provide the requestors, other interested parties and the CRTC's staff an opportunity to consider the issues and the timing that the CRTC is contemplating, at any time before the public hearing or hearings.

Thank you for your time; the parties to this request look forward to the Commission's response to this request.

Sincerely,

[Originals signed by]

Monica Auer  
Executive Director  
Forum for Research and Policy in Communications (FRPC)  
[execdir@frpc.net](mailto:execdir@frpc.net)

Marla Boltman  
Executive Director  
Friends of Canadian Media | Les Amis des médias canadiens  
[marla@friends.ca](mailto:marla@friends.ca)

Barry Rooke  
Executive Director  
National Campus and Community Radio Association (NCCRA) |  
L'Association nationale des radios étudiantes et  
communautaires (ANREC)  
[Barry@NCRA.ca](mailto:Barry@NCRA.ca)

Matt Hattfield  
Executive Director/Directeur Exécutif  
OpenMedia  
[matt@openmedia.org](mailto:matt@openmedia.org)

Kealy Wilkinson  
Principal  
Public Broadcasting in Canada for the 21<sup>st</sup> Century (PBC21) /  
Diffusion publique canadienne (DPC)  
[canada.pbc21@gmail.com](mailto:canada.pbc21@gmail.com)

John Lawford  
Executive Director  
Public Interest Advocacy Centre |  
Le centre pour la défense de l'intérêt publique  
[jlawford@piac.ca](mailto:jlawford@piac.ca)

Kirwan Cox  
Executive Director  
Quebec English-language Production Council |  
Conseil québécois de la production de langue anglaise  
(QEPC)[QEPCCouncil@gmail.com](mailto:QEPCCouncil@gmail.com)

Randy Kitt  
Director of Media  
Unifor  
[Randy.Kitt@unifor.org](mailto:Randy.Kitt@unifor.org)

Julia Atack  
Analyst  
Union des consommateurs  
[jatack@uniondesconsommateurs.ca](mailto:jatack@uniondesconsommateurs.ca)

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