



*Via GC Key*

November 7<sup>th</sup>, 2022

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

Dear Mr. Doucet:

**Re: Broadcasting Notice of Consultation CRTC 2022-272 – Call for comments on an application by TVA to remove the advertising time limit of 12 minutes per clock hour on its discretionary services and on the possibility of removing this limit for other discretionary services – Intervention by the Canadian Association of Broadcasters**

1. This is an intervention filed by the Canadian Association of Broadcasters (CAB) in response to the above-referenced Notice of Consultation (BNC 2022-272)<sup>1</sup>. For the reasons discussed herein, CAB supports the application by Quebecor Media Inc., on behalf of TVA Group Inc. (TVA), as well as the removal of the 12 minute per clock hour limit for all discretionary services. Answers to the questions posed by the Commission in BNC 2022-272 are attached as Appendix 1.

### **The TVA Application**

2. In 2020, TVA filed an application to amend the licences for its discretionary services to remove the standard limit of 12 minutes of advertising per clock hour. In its application, TVA notes that Canadian discretionary services are dealing with issues relating to audience fragmentation as the growth of digital platforms has had a significant impact on viewing habits. The 12-minute limit puts Canadian discretionary services at a disadvantage vis-à-vis foreign online platforms and removing it would help generate revenues to reinvest in the Canadian broadcasting ecosystem.
3. In the event the Commission is not prepared to remove the 12-minute limit, TVA proposed an alternative – that promotions for foreign programs and feature films not count toward the 12-minute limit (similar to how promotions for Canadian programs are not counted).

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<sup>1</sup> Broadcasting Notice of Consultation CRTC 2022-272, *Call for comments on an application by TVA to remove the advertising time limit of 12 minutes per clock hour on its discretionary services and on the possibility of removing this limit for other discretionary services* (October 6<sup>th</sup>, 2022).

4. As the issues raised in its application apply not just to TVA, but the entire Canadian broadcasting system, the Commission opted to consider it within the context of a notice of consultation and not a Part 1 application process and to broaden the question of removing the 12-minute limit on advertising time to all Canadian discretionary services.

### **The Changing Media Landscape**

5. As noted in BNC 2022-272, at present, discretionary services are the only programming services that are subject to restrictions pertaining to the amount of advertising that can be broadcast.<sup>2</sup> Advertising limits for AM and FM radio stations were removed in 1986 and 1993, respectively.<sup>3</sup> Furthermore, the Commission phased out advertising restrictions for conventional television stations on September 1<sup>st</sup>, 2009.<sup>4</sup>
6. When it eliminated advertising restrictions for conventional television stations, the Commission cited the uncertain financial outlook for that sector and the pressures that audience fragmentation would exert on advertising revenues.<sup>5</sup> Over a decade later, discretionary services find themselves in a similar situation.
7. Since the Commission last reviewed the 12-minute per hour advertising restrictions for discretionary services, both the Canadian broadcasting landscape and advertising market have changed substantially. As noted above, tuning to foreign online streaming services has grown exponentially in recent years. These unregulated providers compete with Canadian services for viewers, subscribers, and advertising revenue, but are subject to none of the same obligations. As TVA highlighted in its application, and the Commission acknowledges, audience fragmentation is impacting the entire Canadian broadcasting system, including discretionary services.<sup>6</sup> For example, the entire discretionary services market saw profitability decline from a high of \$1.07 billion in 2019 to \$958 million in 2021, a decrease of more than \$112 million.<sup>7</sup>
8. Furthermore, advertising has migrated online and away from traditional media. The following charts show how significant the shift has been:

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<sup>2</sup> *Ibid.*, at paragraph 7.

<sup>3</sup> Public Notice CRTC 1986-248, *Regulations respecting radio broadcasting* (September 19<sup>th</sup>, 1986); Public Notice CRTC 1993-38, *Policies for local programming on commercial radio stations and advertising on campus stations* (April 19<sup>th</sup>, 1993).

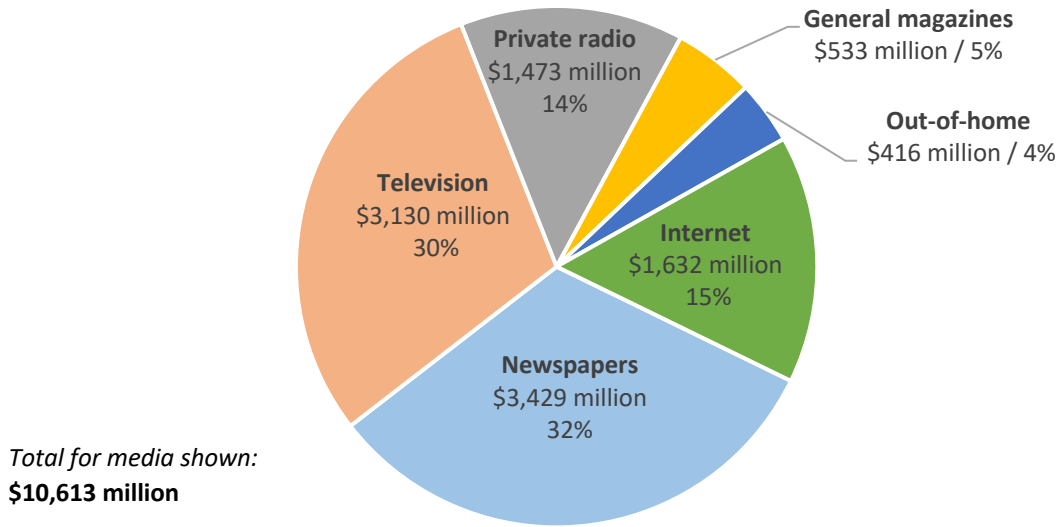
<sup>4</sup> Broadcasting Public Notice CRTC 2007-53, *Determinations regarding certain aspects of the regulatory framework for over-the-air television* (May 17<sup>th</sup>, 2007).

<sup>5</sup> *Ibid.*, at paragraph 12.

<sup>6</sup> *Supra*, Note 1, at paragraph 11.

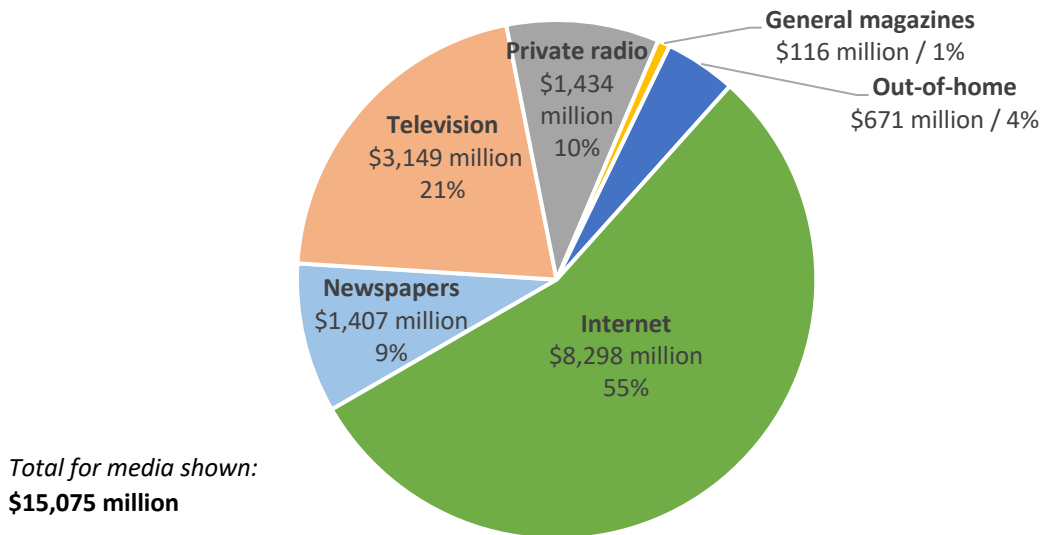
<sup>7</sup> CRTC Statistical and Financial Summaries, *Discretionary and On-Demand Services 2017-2021*.

**Figure 1.** Advertising market shares for selected media, 2009:



SOURCE: TVB Canada; Statistics Canada; Communications Management Inc.

**Figure 2.** Advertising market shares for selected media, 2019:



SOURCE: ThinkTV; Statistics Canada; Communications Management Inc.

9. In the last 10 years, the share of Canadian advertising on the Internet has grown to 55 per cent from 15 per cent and television advertising now represents 21 per cent, down from 30 per cent 10 years ago. And advertising online is not only restricted to media-like services, it appears everywhere – on search engines, on e-commerce sites and everywhere in between.
10. This situation is only going to get worse as streaming services that have historically been commercial free have begun to introduce lower priced advertising supported tiers. For

example, on November 1<sup>st</sup>, 2022, Netflix introduced a “Basic with Ads” plan at \$5.99 per month, a 40 per cent discount over its lowest priced advertising free tier.<sup>8</sup> Moreover, other top streaming services, like Disney+, are expected to follow suit, while numerous free ad-supported television (“FAST”) services, such as Paramount’s Pluto TV, will launch in the coming months.

11. Against this backdrop, programming costs will continue to rise. According to a recent report published by the Commission regarding the state of the programming rights market, “availability and cost of foreign program rights are an increasing issue” for discretionary services.<sup>9</sup> Put simply, it costs broadcasters more to program their channels today than it did in the past, and it will cost more in the future.

### **Eliminating the 12 Minute Limit is Unlikely to Have a Material Negative Impact on any Service or Subscribers**

12. In the past, the Commission has been unwilling to lift the 12-minute restriction due to concerns over how it may impact conventional television stations. However, as TVA notes in its application, there is no evidence to suggest that removing advertising restrictions on conventional television while maintaining them on discretionary services had a material impact on conventional television advertising revenues. Conversely, eliminating the 12-minute restriction on all discretionary services would allow operators to sell their advertising inventory more efficiently, better monetize their increasingly costly investments in programming, and retain more revenue within the regulated broadcasting ecosystem. As a result, it is evident that the policy benefits of eliminating these restrictions significantly outweigh the policy benefits of maintaining them.
13. Most discretionary services continue to have advertising inventory available, but not for all programs. When a particular show is sold out, advertisers rarely go to another discretionary service or purchase time in a program that does not meet the needs of the target demographic. Instead, more often than not, they will choose to buy online advertising. Consequently, removal of the 12-minute restriction is unlikely to impact any regulated Canadian broadcasting service materially. It will help with a small subset of programs. What it will do is give Canadian private broadcasters a new tool to retain revenue within the regulated broadcasting ecosystem.
14. Finally, it is unlikely to have any impact on subscribers because it will not affect the viewer experience. Program length will continue to be 44 minutes per clock hour on average. The only potential change that viewers will notice will be less filler content within program breaks.

### **Conclusion**

15. To summarize, the CAB supports the elimination of the advertising time limit of 12 minute per clock hour for discretionary services. As noted earlier, the rationale for maintaining this

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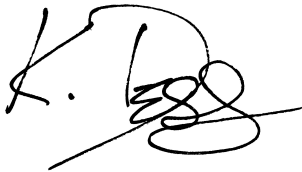
<sup>8</sup> Friend, Dave. “Netflix and other streamers bring back ads after disrupting TV landscape”. *The Globe and Mail*. October 30<sup>th</sup>, 2022.

<sup>9</sup> Miller, Peter, “The State of the Canadian Program Rights Market 2022”, *Commissioned by the Canadian Radio-television and Telecommunications Commission* (March 25<sup>th</sup>, 2022) at paragraph 147.

restriction is outdated and its removal will not have a material impact on any Canadian service, nor on subscribers. However, it will help to keep revenue within the regulated broadcasting ecosystem.

16. The CAB would like to thank the Commission for providing the opportunity to file these comments.
17. All of which is respectfully submitted.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. Desjardins', with a stylized flourish at the end.

Kevin Desjardins  
President  
Canadian Association of Broadcasters

## Appendix 1 – CAB Responses to the Questions in BNC 2022-272

*Q1. Is this an appropriate time to address the issue of the current limit on advertising time for discretionary services? Explain your reasoning.*

A1. In 2022, we no longer have the luxury of basing broadcasting policies on the assumption of a closed broadcasting system. It is long past time to eliminate advertising restrictions on all Canadian discretionary services for this reason. These limits originated during a time when licensed Canadian programming undertakings only competed with one another. But this is no longer our industry's reality. Today, every Canadian programming undertaking – including discretionary services in both languages – competes with digital platforms for viewership, revenues, and programming rights. Going forward, discretionary services must be afforded a fair opportunity to compete with digital platforms, which have no restrictions whatsoever.

Time is of the essence. The entire discretionary services market saw profitability decline from a high of \$1.07 billion in 2019 to \$958 million in 2021, a decrease of more than \$112 million. And the situation is only going to get worse. Streaming services that have historically been commercial free have begun to introduce lower priced advertising supported tiers, with more expected soon.

When it eliminated advertising restrictions for conventional television stations, the Commission cited the uncertain financial outlook for conventional television and the pressures that audience fragmentation would exert on advertising revenues.<sup>10</sup> Over a decade later, discretionary services find themselves in a similar situation.

As noted in the CAB's intervention, the reasoning used by the Commission in the past to justify maintaining the 12-minute limit no longer apply. There is no evidence to suggest that removing this restriction will negatively impact conventional television stations.

What eliminating the caps on discretionary services will do is increase their flexibility to maximize the value of their most popular (and most expensive) programs and help slow the migration of advertising revenues to foreign online services, including many providers who have started (or will soon start) offering lower priced, advertising supported subscription tiers.

*Q2. In general, is the 12-minute per clock hour limit on advertising time currently imposed on discretionary services still relevant. Explain your reasoning.*

A2. Please refer to A1 above.

*Q3. Is the requirement that discretionary services not broadcast any paid advertising material other than paid national advertising still relevant? Explain your reasoning.*

A3. CAB does not put forward a position on this issue.

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<sup>10</sup> *Supra*, Note 4, at paragraph 12.

*Q4. If the advertising time limit were removed, should the few discretionary services authorized to broadcast local advertising still be limited in terms of the amount of local advertising that they can broadcast?*

A4. CAB does not put forward a position on this issue.

*Q5. Should the Commission consider removing the limit on advertising time for discretionary services other than those covered by TVA's application (e.g., French-language, English-language, bilingual and third-language discretionary services, whether these services are independent or owned by a licensee of a large ownership group, or exempt discretionary services)?*

- *If yes, please specify which ones (which types of services) and describe the impacts that your proposal could have on both services that would be affected and those that would not be.*
- *If not, would the approval of TVA's application have an impact on other discretionary services? Please specify which ones and provide supporting evidence.*

A5. CAB supports removing the limit on advertising time for all discretionary services. As noted in BNC 2022-272, audience fragmentation has implications for the entire Canadian broadcasting system, not just some players. Revenues and profitability are declining for all types of discretionary services in all languages. As noted in the CAB's intervention, the inability to efficiently sell advertising is simply driving advertisers away from traditional media toward online advertising. And the inability to fully monetize investments in increasingly expensive programming is threatening the viability of discretionary services.

*Q6. If the Commission were to remove the limit on advertising time for some or all discretionary services, should this be done in a phased manner, as the Commission did for conventional television stations, in order to assess impact on other services? Explain your reasoning.*

A6. As noted, eliminating advertising time limits for discretionary services will benefit some programs where inventory is sold out, but is unlikely to have a material impact on any one player. Moreover, the key benefit in removing this restriction is deterring advertisers from moving spending online. As a result, the CAB submits that limits should be removed for all discretionary services all at once.

As the Commission observed, there was no evidence that eliminating the caps on conventional stations materially impacted other broadcasting mediums. Given that, and the sweeping changes discussed in A1 above, there is no basis to proceed in a phased manner.

*Q7. What possible impact would removing the limit on advertising time have on subscribers?*

A7. Removing advertising limits for discretionary services is unlikely to have any impact on subscribers and the viewing experience. Program length will continue to be 44 minutes per clock hour on average. The only potential change viewers will notice will be less filler content within program breaks. The removal of such limits for conventional television stations did not lead to an overwhelming number of commercial messages. Moreover, foreign discretionary services have no limits today and do not broadcast an excessive number of advertisements. As broadcasters want their programming to be appealing to viewers, the

issue of how much advertising should be broadcast in each program is effectively self-regulated.

The distinction between regulated and non-regulated programming services has become barely noticeable for BDU subscribers on modern distribution platforms. Systems like Ignite TV seamlessly integrate linear channels, VOD content and streaming applications like Disney+ and Netflix within a single interface. In many cases, viewers can consume the same content on a streaming application and a linear discretionary channel. Along the same lines, the distinction between discretionary and conventional channels is barely noticeable for subscribers, and many of the same programs appear on both. It is difficult to imagine that marginally increasing the number of advertisements on discretionary service would impact subscribers' viewing experiences in the current environment, at least not sufficiently to justify the negative impact these limits continue to have on broadcasters.

*Q8. How would removing the limit on advertising time serve the public interest?*

A8. Removing advertising limits will help keep revenues in the Canadian broadcasting system, support investments in Canadian programming (by increasing the revenue base for Canadian programming expenditures) and employment of Canadians. As a result, it is in the public interest.