



Sent via Intervention Form

16 September 2025

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Quebec
K1A 0N2

Re: Final written submission of the Canadian Association of Broadcasters with respect to Broadcasting Notice of Consultation CRTC 2025-2
The Path Forward – Working towards a sustainable Canadian broadcasting system

1. As the national voice of small, medium and large Canadian privately-owned and controlled radio, TV and discretionary broadcasters both independent and vertically integrated, including those operating under 9.1(1)(h) distribution orders, the Canadian Association of Broadcasters (CAB) is pleased to provide its final comments on the above noted notice of consultation.
2. The CAB acknowledges that the Commission now has the monumental and unenviable task of sifting through a voluminous record of vastly disparate positions, including somewhat unhelpful contributions from many foreign online undertakings who continue to argue that nothing further needs to be done to advance the objectives of the *Broadcasting Act* (the Act) and that key elements of the Commission's sustainability proceeding don't even apply to them. We disagree heartily and continue to believe the Commission must take steps to ensure **pride of place** for Canadian services and fair and competitive rules of engagement, including modernized dispute resolution, which were the three main recommendations of our original submission.
3. Rather than simply repeating our key arguments and recommendations, which remain unchanged, we wish to take this opportunity to urge the Commission to be guided by three key objectives in its design of a framework that ensures the sustainability and growth of Canada's broadcasting system. In our initial submission, we highlighted the key principles of **sustainability** and **equity**; based on the record of this proceeding, to those we wish to add a third, **simplicity**. Finally, our submission will address the Canadian Media Producers Association's (CMPA) proposed Production Code.

Key principles/objectives that must guide the Commission's deliberations

4. As the Commission considers various aspects of a new framework to govern the relationships between players in the Canadian broadcasting system and ensure the delivery and discoverability of diverse Canadian and Indigenous content, it should stop and consider the extent to which any contemplated rule or guideline would contribute to the following three key overarching objectives:
 1. Will it contribute to the viability and sustainability of Canadian owned and controlled broadcasters or undermine them?
 2. Will it increase fairness and equity in the system in terms of the competitiveness of Canadian broadcasting companies with global media businesses and help level the playing field?
 3. Will it be simple to implement and not create unwarranted administrative burden?
5. The following sections elaborate on each of these key objectives.

First – Contribute to the viability and sustainability of Canadian broadcasters

6. Although the *Online Streaming Act* amended Section 3(1)(a) of the *Broadcasting Act* to recognize that foreign broadcasting undertakings also provide programming to Canadians, the first clause of the “Broadcasting Policy for Canada” still declares that “*the Canadian broadcasting system shall be **effectively owned and controlled by Canadians.***” As a result, the Commission must ensure that Canadian owned and controlled radio and television broadcasters are able to continue to operate viable business, that they are available and visible to Canadian audiences on multiple platforms, and that they can continue to support Canadian broadcasting policy objectives.
7. As we have argued throughout this proceeding, we believe the Commission has sufficient authority under sections 9.1(1)(i) and 9.1(1)(e) of the Act to impose carriage and showcasing/discoverability obligations on those online undertakings that *provide the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking* (hereinafter referred to as vBDUs).

8. Although we believe the Commission need not adopt a complex set of criteria to determine what online undertakings are captured by section 9.1(1)(i) of the Act,¹ the record of this proceeding (and particularly the responses to the Commission's Requests for Information) provides the Commission with rich evidence for the design of a (simple) set of criteria for identifying – and naming – specific vBDUs.
9. Coming out of this proceeding, the Commission should issue proposed orders requiring the identified vBDUs to offer the greatest practical number of Canadian programming services, including certain priority services (identified below), Indigenous services (in support of section 3(1)(d)(iii.1)) of the Act, French services (in support of section 3(1)(d)(iii.2 and iii.3)), independent services (in support of section 3(1)(d)(iii.5)), and ethnic/third-language services (in support of section 3(1)(d)(iii.6)). While the Commission cannot impose terms and conditions with respect to their carriage, online undertakings should be required to negotiate with these services in good faith and offer reasonable terms for their carriage, packaging and retailing, in accordance with sections 9.1(9) and 3(1)(q)(ii) of the Act. As necessary, the Commission may facilitate those negotiations, applying, as appropriate, its dispute resolution practices and procedures.
10. Some foreign online providers have suggested that imposing different levels of distribution would be tantamount to imposing 'terms and conditions' on online undertakings, which the Commission cannot do under section 9.1(1)(i) of the Act. However, under Section 9.1(1)(e) of the Act, the Commission has the authority to make orders imposing conditions with respect to the *"the presentation of programs and programming services for selection by the public, including the showcasing and the discoverability of Canadian programs **and programming services**, such as original French language programs."*
11. Accordingly, the Commission has full authority to mandate different levels of presentation/showcasing/discoverability. In that context, the CAB has recommended a higher level of prominence/visibility for the following **priority services**:
 - services of exceptional importance, as identified by the Commission through its current practices and procedures – including national news services;
 - the CBC/SRC;
 - provincial educational broadcasters; and
 - local television stations that provide local news.

¹ As we stated in response to the Commission's RFIs: *In our view, any online undertaking that carries the programming service of another company is distributing the programming services of another broadcasting undertaking in a manner similar to a distribution undertaking. We do not believe that identifying additional characteristics or operating features is necessary. Once they offer the programming services of another broadcasting undertaking, they should be captured by section 9.1(1)(i) of the Act.*

12. Although we believe the Commission can issue proposed carriage orders as a result of the present proceeding, we believe that presentation/showcasing/discoverability orders should be a subject of the coming proceeding on tailored conditions of service. We fully recognize that different undertakings can support the discoverability and prominence of Canadian programming services in different ways and that a ‘one-size-fits-all’ rule will not work. That said, we believe the Commission could develop a set of guidelines or principles as a benchmark. For example, using the principles identified by the Independent Broadcast Group as a model, the Commission could establish a ‘benchmark’ set of principles against which individual vBDU discoverability proposals could be measured as part of the proceeding to consider tailored conditions of service. After that proceeding, the Commission could then impose individual discoverability orders that align with the unique business models of individual vBDUs.

Second – Increase fairness and equity in the system

13. As a general objective, the CAB urges the Commission to always keep in mind the massive impact of foreign online undertakings on the Canadian broadcasting system. As viewers, listeners and advertisers increasingly shift online, and revenues and profitability decline, the Commission must take every opportunity to recalibrate the obligations that apply to traditional broadcasters and work to level the playing field between Canadian broadcasters and their direct competitors. Generally speaking, the Commission must ensure that the rules applied to Canadian broadcasters are no more onerous than those applied to foreign online undertakings.
14. That said, the Commission must also ensure that any additional flexibility granted to Canadian broadcasting distribution undertakings does not undermine important public policy objectives. In this context, the CAB supports ending the skinny basic rules (as long as priority carriage and buy-through of basic remain in place) but recommends cautious consideration of other proposed amendments that might unduly disadvantage independent programming services, including ethnic/third-language services.
15. Ensuring fairness and equity in the system also involves developing fair and consistent rules of engagement, including by identifying appropriate and inappropriate commercial behaviours under the good faith provision in the Act (Section 9.1(9)), making and enforcing regulations respecting unjust discrimination, undue disadvantage & undue preference (UDP) under section 10(1)(h.1), and providing guidance as to the interpretation of section 3(q)(ii) of the Act, which states that:
- (q) online undertakings that provide the programming services of other broadcasting undertakings should:*
- (ii) when programming services are supplied to them by other broadcasting undertakings under contractual arrangements, provide **reasonable terms for the carriage, packaging and retailing of those programming services.***

16. As noted in previous comments, the CAB believes that in the present process the Commission should decide *whether* it will adopt new rules of engagement; however, the details of such rules should be worked out through further public processes.
17. In addition, the Commission must modernize its dispute resolution practices and procedures, including (most importantly) through **more timely disposition of disputes**. The CAB more specifically recommends:
- A more directive style of mediation where the mediators actively push the parties towards the exchange of meaningful offers, provide guidance on the application of any rules of engagement, and end the mediation if parties are not making progress or exchanging offers in good faith;
 - Time limited mediations of no longer than 60 days – unless both parties agree to an extension – with a faster path to arbitration (where necessary);
 - In-person mediation sessions and the application of a good faith lens with respect to their conduct;
 - The additional option of MedArb (or ArbMed), where both parties agree to such an approach; and
 - Guidelines respecting good faith negotiations and ‘reasonable terms for the carriage, packaging and retailing’ of programming services, and UDP regulations.

Third – Ensure simple rules and limit administrative burden

18. Finally, consistent with comments we have made in other *The Path Forward* proceedings, the CAB calls upon the Commission to take every opportunity to reduce administrative burden, consistent with its obligations under section 5(2)(g) of the Act and paragraph 8(a) of the *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*.
19. For example, while we recognize that the Commission may need to collect additional information from broadcasting undertakings to measure the achievement of the various diversity objectives set out in the Act, we are very nervous that the Commission may create too many new reporting requirements, over and above an already onerous set. As noted by Rogers in response to the Commission’s RFIs:

The above series of questions relating to the collection and publishing of data to assess the diversity of ownership in broadcasting raise a number of concerns, not the least of which is the considerable administrative burden that it would add to the reporting obligations currently imposed on Canadian broadcasting ownership groups. Today, Rogers is required to file more than 20 different types of reports with the Commission, which are in addition to the 700+ annual returns filed for the licensed and exempt broadcasting undertaking we operate, the monthly television logs, and annual radio performance evaluations. A number of these annual reports –

including the Cultural Diversity Report, the Annual Production Report and the Women in Production Action Plan and Annual Report – provide extensive (and often duplicative) information about diversity both on and off the screen.

20. Therefore, before adding any new reporting obligations, we call upon the Commission to conduct a thorough internal review of its current reporting requirements to ensure that the information collected by the Commission is actually necessary for the supervision of the broadcasting system, that legacy reporting requirements are dropped, and that duplication and redundancy is removed. We also call upon the Commission to update its woefully outdated and inadequate data collection system. The CAB stands ready to support the Commission in such an exercise in any way we can.

21. In general, the Commission must ensure that its reporting requirements are proportionate to their ostensible purpose, namely meaningfully measuring the achievement of the Act's policy objectives.

Finally – Do not adopt the CMPA's proposed Production Code

22. We note that, at the request of the Commission, the CMPA provided a detailed set of proposals for amendments to the Commission's Wholesale Code to implement a new "Production Code." We do not support the adoption of this code for three key reasons:

- **First**, we do not believe such a code is necessary. Indeed, the Commission acknowledged this when it decided to drop the obligation to sign terms of trade agreements in 2015.² Producers have many potential broadcasting partners with different programming needs and monetization models and the ability to negotiate different kinds of rights arrangements.
- Further, we are concerned that the CMPA's proposed codes of practice (or terms of trade) would have a negative impact on broadcasters' willingness and incentive to invest more significantly in compelling Canadian content. Limits on the ability of broadcasters to recoup their investments and otherwise benefit from ownership of broader rights packages, longer licence terms, or increased revenue-sharing opportunities will have a chilling effect on their level of investment.
- **Second**, while we are sympathetic to some of the issues raised by the production sector, specifically their concerns about ensuring fair arrangements with foreign online companies, the need to ensure the retention of IP in Canadian hands, and the importance of partnerships between foreign online undertakings and Canadian producers and broadcasters, we do not agree that the Commission has any jurisdiction over the commercial relationships between broadcasting undertakings and program suppliers or over the negotiation of program supply agreements.

² *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* Broadcasting Regulatory Policy CRTC [2015-86](#), 12 March 2015.

- **Third**, it would be procedurally unfair to move forward with the CMPA's proposed production code when it was only introduced at the tail end of this process, at a point where parties have barely had any time to review it. For the CAB in particular, given other CRTC filing deadlines and our preparation for the audio hearing that will start on September 18th, we have been completely unable to canvas our members on the proposals filed by the CMPA.

23. For all of these reasons, we believe the CMPA's proposal should be rejected.

24. If, nevertheless, the Commission wishes to proceed with the development of a production code, we recommend the Commission launch a separate (paper) process to consider the possibility, including perhaps, the CMPA's proposal.

25. We thank the Commission for the opportunity to file these final comments on this important notice of consultation, all of which is respectfully submitted.

Yours sincerely,

Original signed by

Kevin Desjardins

President | Canadian Association of Broadcasters

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