Via GC Key

February 20, 2020

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2019-379 – The Canadian Broadcasting Corporation/Société Radio-Canada (CBC/SRC or "the Corporation") Licence Renewal Applications

1. This is an intervention filed by the Canadian Association of Broadcasters (CAB) on behalf of its private radio and TV members in response to the above-referenced Notice of Consultation (Notice). The CAB wishes to appear at the public hearing.

2. The CBC/SRC's renewal application raises significant issues about the extent to which the Corporation should:

   - Continue, and increase, its reliance on advertising
   - Have obligations and commitments that are lower than those of private broadcasters;
   - Reduce its television exhibition requirements in favour of less meaningful digital exhibition obligations; and
   - Have unfettered discretion to use its parliamentary appropriation to compete with private media in the digital space.

3. The CAB provides comments on these and other issues raised in the Notice below. At the opening of each section, we identify related CRTC questions, as appropriate.

General Comments
[CRTC Q.1-7]

4. Notwithstanding its mandate as a public broadcaster, an annual parliamentary appropriation of $1.2 billion (recently increased by $150 million), and the obligations

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imposed on both the Corporation and the CRTC pursuant to the *Broadcasting Act* (the Act), CBC/SRC's renewal applications are effectively asking the Commission to stand down on digital and step back on its oversight of radio and TV.

5. At a time when CBC/SRC's resources have increased, and private broadcaster revenues are declining, CBC/SRC is requesting that it be permitted to redirect more public funding into digital activities that would remain exempt from CRTC scrutiny. At the same time, they are asking to reduce their licensed service resources and commitments. In effect, CBC/SRC seeks to compete more with private broadcasters, both for programming and advertising, while at the same time having fewer regulatory requirements than private broadcasters.

6. Private broadcasters do not see how this is in the public interest.

7. The CAB accordingly urges the Commission to require CBC/SRC to adopt:

- As a baseline, the type and level of commitments the large private TV station groups assumed in their recent round of renewals, and subsequent reconsiderations;
- Incremental and additional commitments in programming areas of greatest priority (such as local news and PNI) appropriate to CBC/SRC's status as Canada's public broadcaster;
- A renewed commitment to distinctiveness and a more complementary, collaborative approach vis-a-vis private broadcasters, and private media generally; and
- More transparency and better accountability, particularly in respect of its digital activities.

CBC/SRC should, at a minimum, have at least the same, if not higher obligations than private broadcasters
[CRTC Q. 8-13, & 26]

8. Starting in 2010 through to 2018, the large private TV groups have had a series of increasingly stringent conditions of licence (COLs) imposed on them, including:

- Exhibition requirements for local programming and locally reflective news and information programming;
- Group Canadian Programming Expenditure (CPE), Programs of National Interest (PNI) and locally reflective news (expenditure) requirements;
- A mandated percentage of revenue contribution to FACTOR/MUSICACTION; and
- For French-language groups, an original programming expenditure requirement.[1]

9. Underlying these requirements was a conscious decision on the part of the Commission to shift emphasis from exhibition requirements to expenditure requirements. As stated by the Commission in the Create Policy:

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1 See Group Renewal Decisions: Broadcasting Decision CRTC 2017-148 & CRTC 2017-143 and Reconsideration Decisions: https://crtc.gc.ca/eng/archive/2018/2018-335.htm & https://crtc.gc.ca/eng/archive/2018/2018-334.htm

> To support the production of high-quality programming, the Commission is shifting the focus from a regulatory approach based on exhibition quotas (the number of hours of Canadian programming broadcast) to one based on expenditures (the amount of money spent on Canadian programming).
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> …
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> For decades, the Canadian broadcasting system was a relatively closed system in which it was possible to limit the supply of foreign programming in an effort to create a demand for Canadian programming through exhibition quotas. Today, with the emergence of new broadband platforms, the supply of foreign programming is seemingly limitless. This situation has rendered it difficult to sustain a quota-based approach to creating domestic demand for Canadian programming.
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> …
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> The Commission has used exhibition requirements as one of the means of achieving the Act's objectives set out in section 3(1)(*e*) and (*f*). It is apparent however, that 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.[2] (emphasis added)

10. Remarkably, despite an explicit determination by the CRTC that exhibition quotas are less effective in an on-demand environment, CBC/SRC proposes not only that it be exempted from this shift to expenditure requirements, but that its use of exhibition requirements be expanded to include its on-demand online services. Moreover, CBC/SRC asks to be credited for online exhibition that it also asks the Commission not to regulate.

11. Specifically as it affects TV:

- CBC/SRC has proposed reduced commitments to local TV programming including news, as well as PNI and children's programming;
- CBC/SRC has declined to accept expenditure commitments of any kind, including overall, on PNI, original programming, or on local news; and
- CBC/SRC has provided no information on historic local news expenditures or projections, no historic information on local programming exhibition[3]; and de minimus information on going forward plans.

12. CBC/SRC argues against expenditure requirements based on a 2010 CRTC quote that "the CBC has never had difficulty in meeting its regulatory requirements …". The irony that this argument is made in the context of asking for reductions in exhibition requirements is apparently lost.

13. Moreover, as is discussed below, over the licence term, there is at least one area where CBC/SRC did not maintain expenditure levels, either on an absolute or percentage of

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2 Broadcasting Regulatory Policy CRTC 2015-86.

3 Based on the information disclosed, it is not even clear whether the Corporation met local programming exhibition requirements over the last licence term. DM#3720736 - Response - 9 October 2019 - CBC Application Form TV and Radio, Q. 28.

revenue basis, this being precisely what expenditure requirements are designed to ensure: news, including local news.

Local/regional news and information programming [CRTC Q. 18-21]

14. As stated by the Commission in the Notice:

> Verifiable, reliable and trusted news and information made from a Canadian perspective is of paramount importance for Canadians to engage constructively with their national institutions be they public, not-for-profit or private. Canadians should have access to programming at the national, regional and local levels to help them participate in different spheres of civil society.[4]

15. In its 2016 Local TV Policy, the Commission laid out a framework for supporting private local TV news, including its expectations for locally relevant news and information. Locally reflective news expenditure requirements for private local TV stations were put in place starting with the 2017 Group renewals.

16. Also stated by the Commission in the Notice: "The Corporation is one of the key voices in Canada that is particularly well placed to provide such [national, regional and local news and information] services. In regard to the role of the Corporation's programming in contributing to the democratic life of Canada, the Commission is of the view that the Corporation should:

- Provide trustworthy, verified and non-biased news and information;
- Provide local, regional, national and international news from a Canadian perspective;
- Provide news and information on all platforms and services;
- Support the work of the Corporation's Ombudsmen; and
- Provide Canadians with timely, accurate and (where available) bilingual emergency alert warnings throughout Canada."[5]

17. Notwithstanding this heightened responsibility towards news, and local news in particular, CBC/SRC has:

- Significantly cut news spending over the last licence term – from $207 million in 2014 to $102 million in 2017, before increasing again slightly to $121 million in 2018.[6] Although some of this can be accounted for by the Corporation's inclusion of digital news spending prior to 2017, it has chosen not to disclose or update associated financial information;[7]
- Projects future declines in news expenditures – from $55.9 million in 2019 to $52.5 million in 2023 for English TV,[8] and from $69.2 million to $67 million over the same

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4 Para 24.
5 At para 24.
6 CRTC 2019 Monitoring Report, Figure 6.13.
7 In July 2018, CBC/SRC reported that it had changed its reporting of digital activities effective 2017; prior to this time, some digital news expenditures would have been included in TV news expenditure figures. As CBC/SRC has given no indication to the contrary, we assume that pre-2016 news figures have a relatively small digital component. See https://cbc.radio-canada.ca/en/media-centre/modernizing-conventional-tv-reporting.
8 DM#3755582 - Response - 9 October 2019 - CBC TV Financials. CBC Annual Returns place actual 2019 CBC TV news expenditures at $55.4 million.

time period for French TV.[9] While it is possible that these declines are made up for by increases in digital news spending, there is no disclosure or accountability to this effect;

- Proposed reductions in its local programming exhibition requirements;
- Refused to accept the Commission's new definition of locally reflective news; and
- Refused to accept any local news expenditure or exhibition requirements.

18. Incredibly, in opposing local news expenditure commitments, the CBC/SRC has argued that it "does not have a statutory mandate to provide local programming", even though a) it does have a mandate to "reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions"; b) private broadcasters have no statutory mandate to provide *either* local or regional programming; and c) most Canadians believe it is in fact the mandate of the public broadcaster to keep them informed about their communities and issues of national importance.

19. What the *Act* does say is that:

> 3(1)(i)the programming provided by the Canadian broadcasting system should
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> > (ii) be drawn from local, regional, national and international sources, and
> >
> > (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern;

20. Particularly, therefore, having seen the loss of over 200 newspapers in Canada over the last decade, and private local TV revenue declines of 30% from $2.14 billion in 2011 to $1.54 billion in 2018, CBC/SRC should be expected to play a bigger role in local news and should welcome the opportunity to provide relevant programming to Canadians.[10]

21. As an absolute baseline, CBC/SRC should be expected to adhere to the same exhibition commitments to local programming, exhibition commitments to locally reflective news and information, and expenditure commitments to locally reflective news as private broadcasters.

22. Incredibly, available data suggests that in English-Canada at least, CBC fell well below the local news contributions of private broadcasters over the last licence term. According to the Corporation's annual returns, CBC English TV expenditures on news (as a percentage of prior year revenues) over the last licence term ranged from a high of 21% in 2015 to a low of 8% in 2017, with each of the last three years (to 2019) falling at or below 11%. The new locally reflective news expenditure (LNE) requirement of English private broadcasters, alone, is 11%.[11]

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9 DM#3755615 - Response - 9 October 2019 - SRC TV Financials. SRC Annual Returns place actual SRC TV 2019 news expenditures at $66.7 million, suggesting a startling inability on the part of CBC/SRC to accurately project its own year-end news expenditures, a lack of reliability in CBC/SRC financial projections generally, and that most of the planned cuts to SRC TV news may have already taken place.

10 On newspapers, see generally https://shatteredmirror.ca/wp-content/uploads/theShatteredMirror.pdf. For private broadcaster financials, see CRTC Financial Summaries.

11 A 5% minimum LNE requirement was set for private French TV primarily because of the lower historic expenditures of Groupe V (which did not historically have significant news programming). SRC French TV expenditures on news over the last licence term ranged from a high of 16% in 2016 to a low of 9% in 2017, with 2018 and 2019 at 15% and 14% respectfully. It is not known what proportion of these expenditures would have

23. In other words, by standard CPE measures, **CBC English TV spends less on all news than English private broadcasters are required to spend on just locally reflective news.**

24. CBC/SRC's refusal to provide historic local programming or local news exhibition hours or expenditures on any basis may make it harder for the Commission to determine appropriate levels, but in the absence of such information, the Commission should reasonably set CBC/SRC's obligations significantly higher than those of private broadcasters, recognizing that different conditions in the French-language market may require more of a case-by-case approach.[12]

25. That said, the CAB would not oppose a recognition that, as part of CBC/SRC's statutory mandate towards "Canada's regions", incremental local programming and local news commitments over and above those of private broadcasters could include regional programming and regional news.

26. Given the clear priority that should be afforded news programming, the CAB also does not oppose CBC/SRC's request to delete its current COLs towards non-news local programming in its baseline commitments.[13]

27. The CAB notes the November 2019 mandate letter of the Minister of Canadian Heritage, which requires the Minister to "work with your colleagues and through established legislative, regulatory and Cabinet processes 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."[14]

28. Given this mandate, and the importance of public institutions like the CBC/SRC to help sustain the broadcasting system for the benefit of all Canadians, the CAB recommends that the Commission impose a requirement that CBC/SRC share its news feeds (video, audio and text) with private Canadian media on a non-discriminatory basis and at no cost to those that are in turn free to the public.

PNI and other "predominantly and distinctively Canadian programming"
[CRTC Q. 9]

29. The *Act* requires that the Corporation's programming be "predominantly and distinctively Canadian". No such requirement is placed on private broadcasters. The *Act* therefore requires a tangible differentiation between the CBC/SRC and private broadcasters as to both the amount and nature of its Canadian programming.[15]

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gone to locally reflective news. See, generally, Group Renewal Decisions: Broadcasting Decision CRTC 2017-148 & CRTC 2017-143, and Aggregate Annual Returns.

12 For example, while a benchmark minimum of five hours of local programming per week was established for French-language markets, TVA has a condition of licence of 25 hours of local programming on its station in Montreal and 18 hours in Quebec. Decision CRTC 2017-147

13 We note, however, that on a case by case basis such requirements may remain appropriate, as the Commission determined for French-language private broadcasters like TVA, supra.

14 https://pm.gc.ca/en/mandate-letters/minister-canadian-heritage-mandate-letter

15 Another analogy is the difference between regular discretionary services and must carry 9(1)(h) services, with their "exceptional contribution" requirements. CBC/SRC, with its statutory mandate and parliamentary appropriation, may be fairly characterized as a quasi 9(1)(h) service.

30. CBC/SRC's current TV licences implement this public policy objective through requirements such as:

- "[A] reasonably balanced schedule drawn from diverse categories of programming" – "original programs, programs from independent producers, and programs originating from and reflecting all regions of Canada, including official language minority communities" (COL 1);
- A minimum 75% broadcast day and 80% of prime time Canadian content exhibition requirement (COL 2); and
- Specific exhibition requirements related to PNI, children's and youth programming, regional programming and independent production (COL 12, 13, 15, 16, 19, 20, 22, 23).

31. In its renewal applications, CBC/SRC requests the maintenance of COLs 1 & 2, and reductions in many of the specific exhibition requirements (COL 12, 13, 19, 20). CBC/SRC's stated reasons for these reductions relate to the Corporation's increasingly "cross platform" programming approach.

32. As the Commission is well aware, private broadcasters are also increasingly adopting a "cross platform" programming approach. But instead of reducing their licence requirements as a consequence, the Commission *increased* them in the 2017 and 2018 renewal and reconsideration proceedings.

33. As such, rather than maintaining and/or decreasing CBC/SRC's Canadian programming commitments, the Commission should increase them for a number of reasons, including:

- CBC/SRC is now relatively better resourced than it has been in a decade. In 2011, CBC/SRC TV revenues were 62.6% of that of private TV; and in 2018, its TV revenues were 68.8% that of private TV.[16] From 2017 to 2018, CBC/SRC TV experienced 12.6% revenue growth, compared to a 4.2% decline for private broadcasters.[17] That increased strength can be expected to continue through the next licence term, with CBC/SRC receiving stable government funding and private broadcasters facing revenue declines;
- CBC/SRC has made the alarming pronouncement that it intends on "pursuing all available opportunities to increase its commercial revenues";[18] and
- CBC/SRC has recently made some questionable programming decisions, including commissioning *Family Feud*, a foreign format game show and filling CBC Gem, its streaming service, with commercial foreign titles, such as *Kung Fu Panda*, *Garfield*, and *Portlandia,* an IFC produced comedy series.

34. The CBC/SRC has made it clear that it aims to increase ratings and advertising revenues.[19] At a time when its increased resources should permit it to be more distinctive, and more complementary to private broadcasters, CBC/SRC appears to be

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16 CRTC Financial Summaries.

17 CRTC 2019 Communications Monitoring Report, Infographic 4.2. Note that CBC/SRC Radio also experienced significant growth between 2017 and 2018 of 10.9% (to private radio's 0.5% decline), but still remains far smaller than private radio on an overall revenue basis.

18 DM#3733727 - CBC Application Form TV and Radio, Q. 7

19 The CAB is not alone in making this observation. See, for example, https://www.theglobeandmail.com/arts/television/article-how-low-will-cbc-tv-bosses-go-in-search-of-ratings-and-ad-dollars/

embarking on a more competitive path with the private sector. We cannot see how such a path is in the public interest. Accordingly, the CRTC should impose COLs which ensure that CBC/SRC focusses on programming that properly reflects its complementary and non-commercial mandate, including:

- Maintaining all specific exhibition requirements related to PNI, children's and youth programming;
- Introducing a new CPE requirement on each of English- and French-TV, based on the Corporation's historic three year expenditures, as is the case for the large private TV groups;
- Introducing a new PNI expenditure requirement on each of English- and French-TV, based on the Corporation's historic three year expenditures, as is the case for the large private TV groups;
- Introducing a new original programming requirement for at least French TV of 75% of CPE; and
- Introducing a new overall independent production requirement of 100% of all non-news sports, and information programming.

35. The Commission should also consider new commitments in other areas of Canadian programming that it deems to be in the public interest.[20]

36. There are sound public policy reasons for all of these proposals, particularly those concerning independent production. As private broadcasters evolve to compete with an increasing number of foreign over-the-top (OTT) players, they must be in a position to own their programming and exploit it fully. CBC/SRC has no such need. It can and should therefore bear a large share of responsibility for supporting Canada's independent production sector. As a large broadcaster with stable and predictable funding CBC/SRC is in a unique position to advance the licence fees currently demanded by public funding agencies and the independent production community.

37. In addition, to further ensure that CBC/SRC's programming is "distinctively Canadian", additional criteria should be set out in its COLs , consistent with precedent set by the Commission in defining "locally relevant news" for private broadcasters.[21] These should include criteria such as the following:

- A prohibition on acquiring or commissioning programs based on a foreign format, such as *Family Feud;*

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[20] The CAB notes that a new percentage of revenue contribution to FACTOR/MUSICACTION of 0.17% was imposed on the major private TV groups in 2018. The Commission should examine whether this or other targeted commitments are warranted.

[21] In the private TV Group Renewals, the CRTC matched new locally reflective news requirements to a new definition of "locally reflective news" established in the local TV Policy, Broadcasting Regulatory Policy CRTC 2016-224:

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.

- A prohibition on acquiring foreign programs except those commissioned or produced by other public broadcasters;
- A requirement that coproductions involve at least one other public broadcaster
- A requirement that all non-news & information programming be "substantially different" than that provided by private broadcasters;[22] and
- A requirement that, in all programming, the subject matter relate specifically to Canada, the underlying material (e.g. book or play) be Canadian, or demonstrate Canadian creativity, Canadian heritage and/or diversity.[23]

38. The first three criteria would help prevent the CBC/SRC from acquiring or commissioning clearly commercially competitive programs either alone or in partnership with foreign private broadcasters or streaming services. The latter two criteria define key characteristics of "distinctively Canadian programming", based on international precedents such as the United Kingdom's "britishness" test.

Advertising

39. The CAB is pleased that CBC/SRC has not proposed the reinstatement of advertising on CBC Music and Espace Musique in its renewal applications. This is the best possible safeguard to ensure its radio stations provide predominantly and distinctively Canadian programming in a manner that is complementary to that of commercial radio broadcasters.

40. In respect of television and digital activities, private broadcasters are not only concerned about current CBC/SRC advertising practices, but now have ample reason to fear that the Corporation plans to increase its reliance on advertising. CBC/SRC's bold and unambiguous statement in its licence application that it "is pursuing all available opportunities to increase its commercial revenues and will continue to do so over the next licence term" leaves no room for doubt.[24]

41. An increased emphasis on advertising, immediately after receiving a $150 million annual increase in parliamentary appropriation is both unnecessary and unreasonable. Strong stable funding is a luxury that private broadcasters don't enjoy. But instead of taking advantage of the opportunity presented to reduce reliance on advertising, CBC/SRC management has decided to compete directly private broadcasters, and other private

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22 The BBC Charter (January 2017) defines "distinctive output and services" as:
"output and services, taken as a whole, that are substantially different to other comparable providers across each and every UK Public Service both in peak time and overall, and on television, radio and online, in terms of-
(a) the mix of different genres and output;
(b) the quality of output;
(c) the amount of original output produced in the UK;
(d) the level of risk-taking, innovation, challenge and creative ambition; and (e) the range of audiences it serves."
Such criteria would also appear appropriate for the CBC/SRC. We also note that the Broadcasting and Telecommunications Legislative Review Panel similarly proposed that CBC's mandate include "reflecting Indigenous Peoples and promoting Indigenous cultures and languages" and "taking creative risks", Canada's Communications Future: Time to Act, January 29, 2020, para 81.

23 These are elements of the UK's "britishness" cultural test. https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-film-cultural-test-guidance-notes-2019-11.pdf

24 DM#3733727 - CBC Application Form TV and Radio, Q. 7.

Canadian media, for a bigger share of an ever decreasing Canadian media advertising pie.

42. Advertising on the Corporation's services has always carried two associated risks: (a) it causes CBC/SRC to lean away from its mandate towards a more market-driven (and advertising friendly) programming strategy to the detriment of other public interest programming; and (b) it results in unfair competition with private media. These risks are in evidence more now than ever.

43. Given the declining advertising revenues and market share of private broadcasters, CBC/SRC's decision to increase its reliance on advertising is also contrary to the views the Corporation itself put forward in the government's "Creative Canada" review process, and the Commission's subsequent "Harnessing Change" consultation, where it proposed an advertising free model.[25] It is also contrary to the views expressed by the Broadcasting and Telecommunications Legislative Review Panel, which recommended that the Corporation "gradually eliminate advertising on all platforms over the next five years, starting with news content."[26]

44. With advertising revenue continuing to decline, CBC/SRC moving to an advertising free model is an idea whose time has finally come. As the CBC/SRC referenced in its Creative Canada submission, an advertising-free funding model would allow the CBC/SRC to "become a stronger and more valued partner to … the sector's commercial players."[27]

45. Moreover, contrary to the Corporation's advertising free proposal developed in 2016, no additional funds would be required to "produce and procure additional Canadian content" to simply fill the programming gaps caused by the loss of advertising. Public service announcements (PSAs) and news bulletins can do this without any need of incremental funding.

46. The CAB therefore fully supports the move to an advertising free CBC/SRC, and urges the Commission to establish a timeline and process for so doing, in this proceeding.

47. As a first step, analogous to the way the CRTC restricted advertising on CBC Music and Espace Musique, the Commission should restrict CBC/SRC to national advertising only. In addition, CBC/SRC must demonstrate that its advertising, particularly in the digital space, is not having an undue negative effect on private broadcasters.

Digital activities [Q. 15, 22-28]

48. CBC/SRC proposes to increase its emphasis on exempt digital platforms over the next licence term, using undisclosed and unchecked amounts from its parliamentary appropriation, while at the same time shifting certain regulatory obligations from conventional television to digital.

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25 https://www.cbc.ca/news/canada/cbc-radio-canada-ad-free-proposal-1.3871077 and Broadcasting Notice of Consultation CRTC 2017-359.

26 Broadcasting and Telecommunications Legislative Review Panel final report, Canada's Communications Future: Time to Act, January 29, 2020, para 81.

27 "A Creative Canada: Strengthening Canadian Culture in a Digital World", page 29.

49. CBC/SRC's approach is effectively to accept digital commitments when it suits its purposes, and oppose them when it does not.

50. The result is a clear distortion of the intent of the *Act*. Instead of providing all its programming, including digital, "contemplated by paragraphs 3(1)(l) and (m) [CBC/SRC's mandate] in accordance with the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission"[28], CBC/SRC seeks unlimited discretion to:

- Divert resources from licensed radio and TV services to digital activities, subject only to a continuing obligation to maintain all current local TV and radio stations;
- Allocate as much of its parliamentary appropriation as it wants to those digital activities, including as little or as much as it wants to Canadian or foreign programming; and
- Compete with private media, including local radio and television stations, with whatever programming it chooses, and regardless of whether that programming is consistent with the Corporation's mandate as set out in subsection 3(1)(l) and (m) of the *Act*.[29]

51. In the case of CBC/SRC TV, the Corporation is proposing that its digital activities count in reducing its conventional TV exhibition requirements, but unlike on conventional TV, on digital there would be:

- No specific exhibition obligations;
- No potential expenditure obligations;
- No commitment to original news or other programming; and
- No oversight over which markets CBC/SRC serves and to what extent.

52. At the time of CBC/SRC's last renewal, the Corporation's digital activities were still nascent. This is no longer the case. Indeed, projections filed by the Corporation suggest that increasing amounts to exceed $200 million a year of parliamentary appropriation will go to digital activities over the next licence term.[30]

53. Therefore, at a minimum, if the Commission accepts CBC/SRC's argument that its digital activities remain subject to the Digital Media Exemption Order (DMEO), it must reject CBC/SRC's proposed reductions in conventional TV exhibition requirements. It must be recognized that this proceeding is about the renewal of CBC/SRC's licensed services and its regulatory obligations must reflect this.

54. Furthermore, we question whether the current exhibition requirements on CBC/SRC's conventional TV services are a sufficient safeguard. The Corporation has made clear that it intends to deploy a significant portion of its parliamentary appropriation to its digital activities. This is a cause for concern.

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[28] Section 46(1) of the *Act*.

[29] This is the logical consequence the Corporation proposing that its digital programming be provided pursuant to the digital media exemption order, and yet it clearly cannot be what Parliament intended.

[30] CBC/SRC has not reported the parliamentary appropriation allocated to digital services. This estimate is based on the difference between an estimated ongoing total parliamentary appropriation of $1.2 billion annually and CBC/SRC's reported projected parliamentary appropriations for radio and TV services, English and French.

55. CBC/SRC's discretionary television services have always adhered to a strict rule that the Corporation's parliamentary appropriation should form no part of the revenue base. That strict rule was put in place for a very sound policy reason, namely, "The risk that the new service could be developed at the expense of the CBC's existing services."[31] By contrast, CBC/SRC now seeks the freedom to allocate any portion of its parliamentary appropriation to digital services, which would be free from regulatory oversight. Without checks and balances, public dollars will form an increasing part of the Corporation's digital revenue base.

56. In allowing CBC/SRC Radio to accept advertising from 2013 to 2016, the Commission required, as a condition of renewal, that the CBC's level of investment in radio be maintained.[32] When CBC/SRC failed to demonstrate that it had adhered to this criterion, permission to maintain advertising on Radio 2 and ICI Musique was denied.[33] By the same logic, should CBC/SRC wish to continue to operate its digital services pursuant to the DMEO and in compliance with its mandate, the CAB submits that such permission should only be granted on the condition that CBC/SRC's level of investment in conventional radio and television services be maintained.

57. Finally, to ensure that the Corporation's local news priorities are directed to markets of greatest need, and as a check on the launch of unnecessarily competitive local services, we submit that a clear expectation should be placed on CBC/SRC that new local digital services be targeted to underserved local communities.[34] Given the significant number of private local media closures and rationalizations, CBC/SRC should be focusing new local news efforts on markets that have suffered such losses rather than those that are already relatively well served. Consistent with a new requirement to share its news feeds, CBC/SRC should be mandated to work with private local media in any market where it is seeking to expand its local newsgathering. The Corporation's objective should be to enhance overall coverage and the health of the local media sector, rather than undercut private competitors, as has happened with CBC digital launches in places like London and Hamilton .

Summary of CAB Recommendations

58. For convenience, the CAB summarizes its recommendations for new requirements or expectations to be imposed on CBC/SRC's services below:

Conventional TV – local programming including news

i. Maintain current local programming exhibition requirements, with no reductions or offsets for digital activities;
ii. Impose new locally reflective news exhibition and expenditure requirements;

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31 Original licencing decision for CBC News Network. Decision CRTC 87-904, December 1, 1987. The rule has been consistently been applied ever since.
32 https://crtc.gc.ca/eng/archive/2016/2016-353.htm
33 Broadcasting Decision 2013-263.
34 We note by way of example, CBC/SRC's launch of a digital-only local news operation serving the city of Hamilton on May 9, 2012. Despite the fact that this operation would have been primarily funded through CBC/SRC's parliamentary appropriation, there was no opportunity for public input into (a) whether, in light of the 9 private media outlets already serving Hamilton, this was the best use of CBC's limited resources, and (b) the competitive impact on local private media.

iii. Generally set such obligations significantly higher than those of private broadcasters, recognizing that different conditions in the French-language market may require more of a case-by-case approach;
iv. Accept that incremental local programming and local news commitments can include regional programming and regional news;
v. Accept request to delete current COLs towards non-news local programming in baseline commitments; and
vi. Impose a requirement that CBC share its news feeds (video, audio and text) with private Canadian media on a non-discriminatory basis and at no cost to those that are in turn free to the public.

<u>Conventional TV – other programming</u>

vii. Maintain all specific exhibition requirements related to PNI, children's and youth programming;
viii. Introduce a new CPE requirement on each of English- and French-TV, based on the Corporation's historic three year expenditures, as is the case for the large private TV groups;
ix. Introduce a new PNI expenditure requirement on each of English- and French-TV, based on the Corporation's historic three year expenditures, as is the case for the large private TV groups;
x. Introduce a new original programming requirement for at least French TV of 75% of CPE;
xi. Introduce a new overall independent production requirement of 100% of all non-news sports, and information programming; and
xii. Consider new commitments in other areas of Canadian programming that the Commission deems in the public interest.

<u>Conventional TV – "distinctively Canadian"</u>

xiii. Prohibition on acquiring or commissioning programs based on a foreign format;
xiv. Prohibition on acquiring foreign programs except those commissioned or produced by other public broadcasters;
xv. Requirement that co-productions involve at least one other public broadcaster
xvi. Requirement that all non-news & information programming be "substantially different" than that provided by private broadcasters; and
xvii. Requirement that, in all programming, the subject matter relate specifically to Canada, the underlying material (e.g. book or play) be Canadian, or demonstrate Canadian creativity, Canadian heritage and/or diversity.

<u>Digital Safeguards</u>

xviii. Maintain current levels of investment in conventional radio and television services;
xix. Expectation that new or increased local digital news services be targeted to underserved local communities; and
xx. Expectation that the Corporation work with private local media in any market where it is seeking to expand its local newsgathering, with the objective of enhancing overall local coverage.

59. Should the Commission require any additional information, we would be pleased to provide it upon request.

Yours truly,

Lenore Gibson

Lenore Gibson
Chair
CAB Board of Directors

cc. CBC/SRC