January 11, 2019

The Broadcasting and Telecommunications Legislative Review Panel
c/o Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, Ontario
K1A 0H5

Submitted electronically at: ic.btlr-elmrt.ic@canada.ca

Re: Call for Comments on the Questions set out in the Legislative Review Panel Terms of Reference

Unifor welcomes the opportunity to submit its views as part of the Canadian Broadcast and Telecommunications Legislative Review process.

Unifor is Canada’s largest private sector union, representing 315,000 members in all major sectors of the economy, from coast-to-coast, including nearly 40,000 workers in Canada’s media (broadcast, film, and publishing) and telecommunications sectors.

Please find attached Unifor’s response to the call for comments on questions issued by review panel in September 2018.

We look forward to further engagement in this legislative review process, and available to answer any questions that may arise from our submission.

Sincerely,

Howard Law
Director, Media Sector

Tyson Siddall
Director, Telecommunications Sector
Unifor response to the call for comments and review of the Canadian communications legislative framework

January 2019

Submitted by:

Howard Law, Director, Media Sector
Tyson Siddall, Director, Telecommunications Sector
INTRODUCTION

Unifor welcomes the opportunity to submit its view in response to the Broadcasting and Telecommunications Legislative Review Panel’s call for comments and review of the Canadian communications legislative framework, announced September 2018.

Unifor is one of Canada’s largest labour unions, representing more workers in the private sector than any other.

Included within Unifor’s 315,000 members is a significant share of communications workers, working in both Media (broadcast, film, and publishing) and Telecommunications sectors. These two industries, together, represent 39,000 Unifor members, or 12 per cent of the union’s total membership. These members are primarily responsible for delivering daily communications services to Canadians, including the production of Canadian content (e.g. local news and journalism) as well as building and maintaining our nation’s telecommunications networks, among other jobs. As both consumers of Canadian communications services and workers who rely on these industries to sustain and improve their standard of living, Unifor members are doubly impacted by any legislative reform.

Workers know there is an undeniable need to modernize the framework of Canada’s communications sector, one that (as Chairperson Yale has expressed) “is being remade right around us” and has never faced such “profound disruption with such far-reaching impact.”¹ In her reflections, Chairperson Yale has chosen not to mince words. The consequences of inaction pose a tangible threat to Canada’s culture and democracy.

Unifor is emboldened by the strong and sturdy principles that underline both broadcast and telecommunications policy (spelled out in sections 3 of the Broadcasting Act and section 7 of the Telecommunications Act) but also in knowing that Canada has skillfully navigated previous epochs of industry “disruption.”

As commercial television was propagating throughout North America in the middle of the 20th century, Canadian legislators effectively forged a unique, national system – intended to guard against rising U.S. influence. As the development of new cable networks threatened to squeeze out audiences and revenues from Canadian broadcasters, policy-makers responded – embedding cable providers into the larger broadcasting eco-system and developing innovative policies (like simultaneous signal substitution, or “SimSub”, and imposing new requirements that broadcast distributors equitably contribute to Canadian content development). During these prior periods of disruption, Canadians – together – showed an unwavering commitment,

¹ Janet Yale comments to the Standing Senate Committee on Transport and Communications; October 31, 2018: https://sencanada.ca/en/Content/Sen/Committee/421/TRCM/54355-e
and much ingenuity, to defend the integrity of our distinct culture (and the various rich cultures within) as well as ownership of our modes of communications. Lawmakers ensured that new laws and regulations would address these threats.

Unifor approaches this legislative review with a set of specific recommendations that, we believe, will help improve Canadians’ accessibility to critical communications services, preserve quality jobs, the provision of local news and (as CRTC Chair Ian Scott has asserted) ensure “all players that benefit from participating in the Canadian broadcasting system... contribute to it in an appropriate and equitable manner.” Unifor remains optimistic that, through this process, we can build a stronger and more resilient communications industry, and usher in a bold new era of Made in Canada content.

UNIFOR’S CORE OBJECTIVES IN THE REVIEW OF CANADA’S COMMUNICATIONS LEGISLATIVE FRAMEWORK

Unifor takes heed of Chairperson Yale’s comments to the Senate Standing Committee on Transport and Communications, wherein she directed stakeholders to contribute representations and remedies that are specific, and practical, and designed to meet the challenges that technological change has brought (and will bring) to Canada’s communications system. As Chairperson Yale stated, bluntly, “it is not enough to simply hear about the challenges. Those are pretty well documented.”

We agree with this stated approach. However, we feel it is important to contextualize our submission by conveying, in broad terms, our underlying policy objectives – what we hope to see delivered as a product of this review exercise. These objectives serve as guideposts, framing our specific responses to the questions posed by the Panel and our associated recommendations.

Unifor’s objectives are as follows:

1. To preserve the core objectives in the Acts, and key elements of existing regulatory policy.
2. To ensure that all who benefit from the broadcast system contribute to it, in fair and equitable manner.
3. To ensure that citizens have the greatest possible access to essential communications services, which includes access to news and information.
4. To recognize the role that Canadian workers play in building and sustaining a successful and modern communications industry.

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2 Ian Scott comments to the Senate Standing Committee on Transport and Communications, October 30, 2018: https://sencanada.ca/en/Content/Sen/Committee/421/TRCM/54343-e
3 Janet Yale comments to the SCTC, Oct. 31, 2018; ibid.
5. To ensure that any immediate legislative or regulatory measures that can be taken, are taken.\(^4\)

**STRUCTURE OF SUBMISSION**

Unifor has provided responses and recommendations to various questions as outlined in the Panel’s terms of reference. We have divided our commentary into two parts. The first responds to select categories of questions related to the Telecommunications Act (listed as questions 1 through 7 in the Terms of Reference). The second responds to select categories of questions related to the Broadcasting Act (questions 8 through 14).

**Part 1: THE TELECOMMUNICATIONS AND RADIOCOMMUNICATION ACT**

**Universal Access and Deployment**

1.1 Are the right legislative tools in place to further the objective of affordable high quality access for all Canadians, including those in rural, remote and Indigenous communities?

1.2 Given the importance of passive infrastructure for network deployment and the expected growth of 5G wireless, are the right provisions in place for governance of these assets?

Unifor views basic telecommunications services as public utilities since they play an essential and universal role in society. As such, all Canadians should have access to high quality and affordable services, no matter where they live. The Canadian Radio-television and Telecommunications Commission (CRTC) made the correct decision to establish voice services and broadband Internet access services (on both fixed and mobile wireless networks) as a universal service objective in 2016.

Further to that decision, the CRTC established the Broadband Fund, a much-needed mechanism and injection of funding to support the objective of establishing broadband infrastructure in underserved areas. This industry-funded mechanism is part of an important legacy that ensured a standard of telephone service across the country (through the National Contribution Fund).

Currently, the legislative mechanisms are in place to empower the CRTC to establish universal access standards and create tools to achieve them, as demonstrated by these recent developments. However, the regulator’s decisions must be complemented by appropriate government action. Smart and adequate investments by the government must be part of any real commitment to build an innovative and “connected Canada.”

\(^4\) The anticipated timeframe for implementing legislative reform is years away, according to Douglas Barrett, yet the impacts of technological disruption (and their associated impacts on Canada’s communication system) continue unabated. See: Douglas Barrett (September 20, 2018). “Why we’re still seven years away from new Acts”, in Cartt: [https://cartt.ca/article/analysis-why-were-still-seven-years-away-new-acts](https://cartt.ca/article/analysis-why-were-still-seven-years-away-new-acts)
The federal ‘Connect to Innovate’ program and the establishment of the Broadband Fund are welcome and important steps in bringing broadband services to rural and remote communities in Canada. One way to build on these positive steps is to focus on the minimum speed targets for supported broadband Internet projects.

The CRTC had revised its targets to 25 Mbps download and 5 Mbps upload when designing the Broadband Fund. However, the regulator had initially set targets of 50 Mbps download and 10 Mbps upload in its 2016 decision regarding the universal service objective. Government supported projects should be held to the higher speed standards in order to ensure that Canadians are able to access high quality services that are required to meaningfully participate in this digital economy.

Despite the needed focus on rural and remote areas, government should not ignore opportunities in urban centres. For example, there is a movement for establishing free public Wi-Fi infrastructure in cities around the world. Major cities across the globe have developed the infrastructure that enables citizens to access free Wi-Fi services and Canada is arguably behind the trend. Canadian cities like Fredericton and Montreal have led the charge in providing free public Wi-Fi, while several other cities provide varying degrees of access within public facilities and locations.

Despite the higher density of broadband services being provided in urban centres (compared to rural and remote areas), these services may not be affordable or accessible for many urban residents. An effective urban digital strategy and targeted investments could help improve basic access by developing Canada’s public Internet infrastructure. In this digital age, access to free public Wi-Fi has become a benchmark for modern cities.

**Recommendations:**

- The federal government must continue building on current investments to broadband Internet infrastructure in rural and remote areas, including the targeted goal of establishing minimum service speeds of 50 Mbps download and 10 Mbps upload.
- The federal government must establish an effective urban digital strategy and targeted investments to develop Canada’s public internet infrastructure and make internet services available and affordable for Canadians living in urban centres.

**Competition, Innovation and Affordability**

**2.1 Are legislative changes warranted to better promote competition, innovation and affordability?**

Unifor supports a modern telecommunications landscape that encourages innovation, choice and affordable options for all Canadians. The *Telecommunications Act* does provide the CRTC with tools to achieve these goals. For example, the CRTC developed the Wireless Code, which
encourages a more dynamic wireless market and helps empower consumers with their wireless service options.

Affordability of high quality services still remains a pressing issue for the sector. The CRTC’s analysis of pricing through its Communications Monitoring Report has found that low-income households continue to experience issues related to affordability and spending on services takes up a significantly larger percentage of their annual incomes (compared to higher-income households). There also remains a gap in pricing for and availability of services between urban and rural areas of the country.

The federal government and the CRTC have the ability to take measures to ensure that broadband Internet and other telecommunications services are affordable for all Canadians. The Connecting Families initiative – which aims to develop an online portal for families to access high-speed Internet service packages for $10 per month – is a good first step. However, this initiative may not guarantee affordable access to high quality services since consumers are still relying mainly on market forces to establish pricing.

Other initiatives to ensure that services are affordable should be explored. For example, in 2016 the CRTC mandated that cable companies offer a “skinny basic” TV package for $25 per month or less. A similar model could be explored for an entry-level tier for broadband internet services that would ensure that customers have affordable services available to them.

Unifor supports the assertion made in this Review’s terms of reference that the “Government is not interested in a proposal that reduces Canadian ownership of broadcasting.” However, this intention should also be extended to the telecommunications sector. There is no strong evidence that suggests more foreign-based providers would lead to lower prices or better services.

Canada has a healthy number of telecommunications service providers when compared to other Organization for Economic Co-operation and Development (OECD) countries. The number of providers would most likely decline if more foreign companies – typically larger corporations – enter the market. In such a scenario, the likely acquisitions of smaller companies by large foreign companies would lead to the further consolidation of the telecommunications market.

In 2012, the federal government amended the Telecommunications Act that changed the rules around foreign ownership of telecommunications carriers. The Act requires that telecommunications carriers are at least 80% owned. The amendment created an exception to this rule, which now allows carriers to be less than 80% owned as long as they represent less than 10% of the total annual revenue of the industry. The companies’ market share can be allowed to rise above 10% if their business grows, but not as a result of mergers or acquisitions.

Currently, only three companies (Bell, Telus, Rogers) individually represent over 10% of the Canadian market. This means that any other Canadian telecommunications company can be purchased, wholly owned and managed by foreign companies. The federal government should
support a Canadian-based telecommunications industry – which would rely on domestic competition and create local jobs – rather than encouraging foreign-owned carriers to enter the market. This includes removing or reversing the amendments made to the Act around foreign ownership in the 2012 Budget Implementation Bill.

**Recommendations:**

- Explore the possibility of a mandatory entry-level tier of broadband internet services, in order to provide more affordable options for Canadians.
- Restrict foreign ownership and encourage more domestic competition by reversing amendments made to the *Telecommunications Act* around foreign ownership in the 2012 Budget Implementation Bill.

**Consumer Protection, Rights and Accessibility**

4.1 Are further improvements pertaining to consumer protection, rights and accessibility required in legislation?

To protect consumers, the best direction would be to establish appropriate legislation and regulations that directly address service rules and pricing. These rules should apply regardless of which companies are providing the service. The CRTC has the ability and authority to protect consumers through regulatory measures, as demonstrated by the creation of the Wireless Code, for example.

The Wireless Code established new requirements for service providers and addressed issues around wireless contracts, cancellations fees, bill shock and other industry practices. A positive development has been the CRTC undertaking consultations and acknowledging the need for similar regulations around Internet services through a new code of conduct for service providers.

On the issue of accessibility, there should be no question that Canadians with disabilities should have equitable choices in the marketplace to meet their needs. The CRTC recently took the right step in direct wireless service providers to offer mobile wireless service packages that meet the needs of Canadians with disabilities. The federal government also took positive steps in addressing accessibility issues for regulated entities that are carriers or service providers in Bill C-81, *An Act to ensure a barrier-free Canada*.

These measure will only be effective, however, if appropriate resources to undertake active monitoring and enforcement are allocated.
Recommendations:

- To protect consumers and ensure that Canadians with disabilities have equitable choices in the marketplace to meet their needs, effective mechanisms and proper resources for monitoring and enforcement of regulations must be established.

Safety, Security and Privacy

5.1 To what extent should the concepts of safety and security be included in the Telecommunications Act/Radio communication Act?

The concepts of safety and security should certainly be included in the Telecommunications Act, especially in the context of ownership in the telecommunications industry.

Earlier in the submission, it was stressed that the federal government should support a Canadian-based industry and further limit foreign-owned carriers to enter the market. Increased foreign control in telecommunications has raised issues around national security and consumer privacy. Canadian laws regulate the activity of companies and protect the privacy and security of Canadians. However, these laws are much harder to enforce for companies that are based outside of the country.

Canada’s Privacy Commissioner has already ruled that once data leaves Canada, it is in the hands of other countries and subject to their laws. Several countries monitor individual citizens’ communications in the name of national security. For example, the United States government monitors domestic communication and existing legislation does not set limits on surveillance of non-American citizens or companies. Legislation in other countries may also permit the acquisition of foreign intelligence information from or with the assistance of telecommunications providers.

Similar issues around security and privacy also exist for Canadian telecommunications companies who outsource work outside of the country. The practice of “offshoring” operations outside of Canada is an escalating and disturbing trend, which raises the concern that once data and information travels out of the country, that information is governed by that country’s legislative framework.

Canada could look at developments from other countries like France, who adopted a duty of vigilance law in 2017 requiring large French multi-national companies (and their subsidiaries) who carry out all or part of their activity in France, to establish mechanisms to prevent human rights violations and environmental impacts through their chain of production. The federal government should consider similar legislation that not only speaks to human rights and environmental standards, but also the specific concerns around privacy and security as they relate to telecommunications operations.
The consideration of duty of vigilance legislation would complement a shift toward decreased foreign-ownership in the industry, when addressing issues around the safety, security and privacy of Canadians and the operations of telecommunications carriers and service providers within and outside of the country.

Recommendations:

- Acknowledge the impact of foreign ownership in the telecommunications sector on the security and privacy of Canadians, and develop a strategy to minimize foreign ownership.
- Explore the possibility of duty of vigilance legislation applicable to companies carrying out telecommunications operations in Canada that would address concerns around the security and privacy of Canadians.

Governance and Effective Administration

7.1 Is the current allocation of responsibilities among the CRTC and other government departments appropriate in the modern context and able to support competition in the telecommunications market?

7.2 Does the legislation strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

The Telecommunications Act does enable government to set overall policy direction while allowing the regulator (CRTC) to maintain its functional independence. Ensuring that a level of accountability to government by regulatory bodies like the CRTC is important, including public scrutiny over the decisions and reporting requirements to the Governor-in-Council.

One administrative area that warrants further review is the ability for the CRTC to enforce regulations and decisions that are made by the body. For example, if companies break the rules, the CRTC is limited in its enforcement mechanisms beyond revoking licenses. In the past, the CRTC has called for a larger ability to impose stronger disciplinary measures such as monetary penalties and currently has the ability to do so in order to enforce the Unsolicited Telecommunications Rules.

Broadening the use of financial penalties for the regulator to enforce the rules would be an easy and effective way to tackle issues more quickly and efficiently. The CRTC’s role in developing regulations and policies in the public interest is important. However, rules are only effective if appropriate regulatory tools are in place to enforce them.
Recommendations:

- Broadening the CRTC’s ability to impose administrative monetary penalties to enforce regulations beyond the Unsolicited Telecommunications Rules (see additional proposals as they relate to administrative monetary penalties in the broadcast sector, below).

Part 2: THE BROADCASTING ACT

Broadcasting Definitions

8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?

The definition of “broadcasting” as referenced in Section 2 of the Act has maintained its relevance over time, and broadly captures (in our view) a sufficiently wide range of current and potential iterations and modalities of program transmission.

Although not explicitly spelled out in the Section 2 definitions of “broadcasting” and “program”, the CRTC has confirmed (as far back as 1999, in its initial public consultation on matters arising from digital media) that “digital audio services and audio/visual signals” fall within the scope of the above Broadcasting Act definitions. As such, we believe the CRTC to have jurisdictional coverage over digital media services under the Act, and reserves the right to establish necessary regulations (or licence conditions) to ensure online broadcasters and programming services meet Section 3 (1) objectives.

Each year, more Canadians engage with digital media platforms to access programming services, both online and through mobile devices. In fact, some project that more Canadians will subscribe to digital media services (or “Over-the-Top”, OTT) in 2020 than traditional television. It is important not to lose sight of the fact that these services are currently exempt from Canadian programming obligations and other associated regulations, under various and consecutive exemption orders issued by the Commission. As more Internet-based broadcasting services become available to Canadians, and as programming continues its shifts to digital platforms, it is imperative that any jurisdictional ambiguity over Internet television be removed and that this Panel re-confirm the CRTC’s legislative oversight of digital online services.

The exponential rise in online-based television services couples with the concomitant growth in demand for high-speed, broadband Internet access.

Part of this growth in broadband capacity is a result of an expansion of network access throughout Canada, helped along by significant federal telecommunications infrastructure

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investments to extend high quality Internet access to more rural and remote regions (as noted above).

However, part of this growth reflects the replacement effect that Internet (and mobile) services continue to have on existing forms of television distribution (i.e. cable, DTH satellite). The quality and integrity of digital television services has improved tremendously in recent years, which has led to a steady decline in TV subscribers, including through consumer cord-cutting and cord-nevering. The corollary to this trend is that Internet and wireless service providers (ISPs and WSPs), the gatekeepers to online television services, are reaping the revenue windfall driven by data-hungry consumers. The CRTC reports that average monthly residential Internet bills increased by over 30% between 2013 and 2017, while monthly mobile bills increased by nearly 9 per cent.

In light of these trends, it is apparent that ISPs and WSPs provide an important (and increasingly critical) distributive service within the Canadian broadcasting system – one that is currently competing in the market with traditional cable broadcast undertakings, as the CRTC’s own evidence shows. For an increasing number of households, ISPs and WSPs are the sole point of access to broadcast television and radio services, yet these providers are under no obligation to contribute back into the broadcast system, in support of the Act’s objectives.

Unifor acknowledges the 2012 Supreme Court of Canada decision, wherein the Court rejected the argument that ISPs should constitute a “broadcast undertaking” as defined by the Broadcasting Act. We accept the reasoning behind the Court’s decision, given the parameters of the appeal. However, we believe the Panel must recognize the vital role that ISPs and WSPs play in modern (and future) broadcast distribution. It is also imperative that the Panel acknowledge that ISPs and WSPs are presently, and will continue, to compete in a common market for television distribution with traditional (and licenced) broadcast undertakings. Any “equitable” contributory framework in broadcasting must include those elements providing the access to programming.

The Panel may choose to expand the definition of “broadcast undertaking” under Section 2 (1) to include ISPs, (a proposal contemplated by at least one expert). The panel may choose, instead, to establish an entirely new definition that is exclusive to broadband distributors, and that recognizes them as operating within the broadcasting system. Whatever the path, it is crucial that the Panel offer direction on whatever legislative amendments are necessary that

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7 Convergence Research Group estimates that the numbers of Canadian television subscribers have declined by more than 200,000 in both 2016 and 2017, and anticipates that decline to accelerate between 2018 and 2020.

8 CRTC Communications Monitoring Report, 2017. Sources of retail revenue growth – fixed Internet and mobile: https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr3b.htm#s4iv1

9 In the well-cited text, Broadcasting Policy in Canada (2nd edition), Robert Armstrong states: “if the political will were found to amend the (Broadcasting) Act by, for example, adding ISPs to the definition of a ‘broadcasting undertaking,’ then ISPs could be integrated into the regulatory regime for BDUs and (with appropriate caveats and exemptions) ISPs could then be required to make appropriate contributions to the financing of Canadian programs.” (pp. 261)
ultimately oblige Internet and wireless service providers to contribute an equitable share to 
Canadian programming, in line with current, licenced broadcast distributors.\textsuperscript{10}

\textbf{Recommendations:}

\begin{itemize}
  \item Confirm that the CRTC maintains regulatory authority (and jurisdictional coverage) of all 
online and Over-the-Top digital media broadcast services, both foreign and domestic.
  \item Make the appropriate amendments to the Broadcasting Act that ensure Internet and 
Wireless Service Providers are considered part of the Canadian broadcast system, and 
that they shall be expected to participate in an equitable contributory framework 
supporting Canadian programming.
\end{itemize}

\textbf{Broadcasting Policy Objectives}

\textbf{9.1 How can the objectives of the Broadcasting Act be adapted to ensure that they are 
relevant in today’s more open, global and competitive environment?}

\textbf{9.2 Should certain objectives be prioritized? If so, which ones? What should be added?}

Unifor believes that the current objectives of the \textit{Broadcasting Act}, specifically those spelled 
out in Section 3 (1) are generally well suited to advance the interests of Canadians. However, 
we do acknowledge that the current language of Section 3 (1) (o), as regards to the provision of 
programming that is reflective of Indigenous Peoples\textsuperscript{11} is wholly inadequate.

With respect to question 9.1, we also believe that the objectives, in fact, sufficiently 
contemplate the international nature of broadcasting – and that citizens should have access to 
international sources of programming.\textsuperscript{12} The objectives also explicitly consider the need for 
adaptability to “technological change,”\textsuperscript{13} which (as we know) is fuelling disruption in the 
Canadian broadcast sector and led by increasingly dominant international online services.
When reflecting on Section 3 (1) of the \textit{Broadcasting Act}, Unifor is more concerned that the 
rising influence of unlicensed, foreign broadcasters (unrequired to uphold or satisfy rules

\textsuperscript{10} In our submission to BNOC 2017-359 (report on future distribution models) Unifor proposed a 5\% tithe on both 
ISP and WSP, a rate aligned with current BDU contributions. In the event that ISPs and WSPs download the cost of 
this tithe on to customers, we have also proposed the Commission introduce an exemption threshold for those 
subscribers that access only a basic level of service. The goal of the tithe would be to capture revenue generated 
by excessive and “unlimited” data packages, geared toward streaming rather than accessing basic news and basic 
personal services.

\textsuperscript{11} For instance, reference to Canada’s Indigenous population appears in Section 3 (1) (o), which appears to 
subordinate the delivery of programming that is culturally and linguistically reflective to English and French 
language offerings. The Act’s expectation, that Indigenous programming be provided “as resources become 
available” is an entirely inadequate objective.

\textsuperscript{12} Section 3 (1) (i) and (ii)

\textsuperscript{13} Section 3 (1) (d) (iv)
designed to meet the goals of the Act) only serve to undermine these important objectives, and less about any potential deficiencies in the objectives themselves.

That said, Unifor believes that Section 3(1) can be strengthened with the addition of an explicit requirement that the Canadian broadcast system deliver high quality and accurate local news programming.

Professional and high-quality news is the lifeblood of democracy. News reporting is the bedrock of informed citizen engagement. It enables us to understand the world around us, hold our lawmakers and influential powerbrokers to account, and guides our engagement in community life. Unfortunately, news is a rich, but scarce, resource.

Unifor is pleased to see that the Panel is exploring questions related specifically to local news, journalism and democracy in question 11. It is an acknowledgement that Canadians have deep concerns about the lack of availability of quality and diverse news coverage, and the structural challenges Canadian news organizations are facing in delivering this service. It also acknowledges that Canada’s broadcast system has a critical role to play.

We have provided our views on question 11 in future detail below. However, as it relates to the question at hand, we believe that the authors of Canada’s Broadcasting Act could not have contemplated the threats currently facing our local news media, even thirty years ago.

Currently, under the terms of Section 3(1)(i) the Canadian broadcasting system should provide “information” programming (subsection (i)) that should be “drawn from local, regional and international sources” (subsection (iii)). The language in this objective fails to match the gravity of the crisis Canada’s news media is facing, one that has already resulted in the closure of 262 local media outlets, including a dozen-and-a-half TV and radio broadcasting stations since 2008.14

In its recommendations, the Panel can take a positive first step in proposing that the delivery of high quality local news form a specific broadcasting objective under Section 3 of the Act.

**Recommendation:**

- Amend the objectives outlined in Section 3 of the Broadcasting Act to establish equitable treatment of resources provided to programming that is reflective of Indigenous Peoples in Canada.
- Insert references to Indigenous languages alongside “English” and “French” languages, where appropriate, throughout Section 3.
- Amend the objectives outlined in Section 3 of the Broadcasting Act to include reference to high standard, professional local news programming.

Support for Canadian Content and Creative Industries

10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production and distribution of Canadian content?

10.2 How can the CRTC be empowered to implement and regulate according to a modernized Broadcasting Act in order to protect, support and promote our culture in both official languages?

10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?

The suite of regulatory obligations attached to broadcast license holders and other system players has developed carefully over time. These obligations have evolved carefully, and designed to help Canada’s broadcast system adapt to changing technologies and other economic circumstances – all with an eye to meeting the objectives of the Act.

Canadian Programming Expenditures (CPE), for instance, ensure that a portion of revenues generated by broadcasters in Canada are recycled back into the system – enabling public, private and independent creators to continue generating topical, timely and quality Canadian content, for a variety of audiences. Broadly speaking, this approach has served Canada well for many years.

Even in the earliest days of TV regulation, the primary concern among those looking to cultivate Canada’s distinct identity and culture has been the ever-looming presence of the United States – a broadcasting and content-generating goliath, in terms of market size and influence – in contrast to Canada’s David.

Today is no exception. Online digital media services (almost entirely American-based) pose a significant (and to some degree existential) threat to the ecosystem of Canadian broadcasting and the financing of Canadian programming. Unlike in the past, U.S. broadcasters have penetrated the Canadian market by transmitting outside of licenced and regulated distribution channels and over the Internet instead. Like other disruptive technologies, these OTT providers occupy a regulatory grey zone – and often agitate, vociferously, that they are wholly unlike their traditional and regulated competitors and therefore not subject to existing regulations – as can be expected of any profit-oriented enterprise.

This poses two distinct challenges for Canada. The first is that allowing foreign entities to broadcast direct-to-Canadians undermines the entire character of broadcasting regulation. It allows catalogues of foreign content to stream onto screens in Canada, without any reciprocal obligation to recycle funds back into the Canadian system. As more Canadians shift toward foreign OTT programming services, and away from the regulated industry, dedicated Canadian content financing will dry up – making it far more difficult to achieve the objectives of the Act.

The second challenge is the pace that OTT programming services are coming online, a trend that has far exceeded expectations. Some have estimated that OTT services (domestic and
foreign) will generate $1.58 billion in Canadian revenue by 2020. Once viewed as complementary to the Canadian broadcast system, OTT programming services appear destined to become the dominant form of household TV subscription in the near term, as noted above. This creates substantial competitive challenges for existing Canadian broadcasters, as OTT firms not only avoid the cost of having to fulfill regulatory requirements but these firms also compete for the same programming rights as domestic broadcasters. Foreign OTT firms scoop lucrative programming (e.g. English Premier League and Champions’ League soccer purchased by DAZN) away from Canadian broadcasters, and have the ability to broadcast those same programs back into Canada – with no associated Canadian programming obligations. This drains important financing resources from the broadcast system and undermines the objectives of the Broadcasting Act.

So far, the CRTC has taken a soft approach to OTT regulation. As noted above, the Commission has expressed a view that Internet-based broadcasting falls within its jurisdiction – although that proclamation could be more explicit and unambiguous. At the same time, the Commission has opted to “exempt” digital media and mobile TV broadcast undertakings from licensing conditions through consecutive exemption orders, dating back to 1999. Unifor has previously recommended the amendment or revocation of these exemption orders, thereby subjecting digital media services to appropriate Canadian programming obligations and conditions of licence. Regardless if either of these previous Unifor proposals comes to fruition, it is incumbent on this Panel to recommend that Canadian programming expenditures be attached to all digital broadcast service offerings in Canada, and those obligations must be harmonized across all service providers – whether domestic or foreign-based.

The CRTC, in its 2018 Harnessing Change report, contemplated the introduction of comprehensive and binding service agreements, in lieu of licensing. While we do not necessarily advocate for service agreements to replace all existing broadcast license, such an approach could ensure that domestic and foreign digital services are bound by Canadian programming obligations, in line with Broadcasting Act objectives. Such an approach could also offer sufficient flexibility in defining various online broadcast undertakings (e.g. live-stream sports, video-on-demand, user-generated content, etc.)

In devising a set of Canadian programming requirements for domestic and foreign digital broadcasters that meet the objectives of the Act, Unifor proposes the following:

15 Convergence Research Group, Ibid.
16 Ibid. Convergence Research Group projects that “in 2020 there will be more OTT subscriber households than TV subscribers in Canada.”
Recommendations

- Assign digital media broadcasters that produce and deliver original programming, a 30 per cent Canadian Programming Expenditure requirement, as a share of annual revenue, per year. This threshold roughly approximates to CPE conditions required of conventional television service providers. The CPE can be satisfied proportionally and through each of the following contributory mechanisms:
  - The production value of original, CAVCO-certified Canadian programming broadcast by the digital media undertaking in question;
  - Contributions made to the Canada Media Fund; and
  - Contributions made to existing BDU-sponsored funding vehicles (excluding the CMF), such as various other independent production funds and the Independent Local News Fund.
- Establish fair and equitable exhibition requirements for OTT broadcasters that house Video-on-Demand, VOD, programming catalogues in line with existing, licenced, VOD services, including:
  - That 20 per cent of non-feature film programming available to subscribers be Canadian; that no less than 5 per cent of English language feature films be Canadian; and that no less than 8 per cent of French-language features films be Canadian.
  - Additional exhibition rules (not currently established under VOD licencing) should contain requirements for Indigenous language film.
- Encourage the CRTC to move expeditiously. In our view, none of the aforementioned recommendations necessitates amendment to the Broadcasting Act. In fact, the Act provides sufficient tools to ensure equitability in broadcast system contributions among OTT players. The Commission must undertake to devise these new constructs immediately, and through the appropriate public consultation.

Democracy, News and Citizenship

11.1 Are current legislative provisions sufficient to ensure the provision of trusted, accurate and quality news and information?
11.2 Are there specific changes that should be made to legislation to ensure the continuing viability of local news?

As stated in our response to question 9, above, Unifor believes quality and professional local news plays an essential role in Canadian democracy.

Over the past years, Unifor has advocated, strongly, for stringent regulatory obligations of broadcasters to both produce and exhibit local news programming in Canada. In 2016, the CRTC established new local programming regulations for conventional broadcasters under its policy framework for local and community television. Unifor welcomed these measures and viewed
them as necessary stopgaps to prevent the pending closure of local TV stations, particularly in small communities. In other areas, the new framework failed to deliver the level of ambition needed to strengthen the local TV news industry, moving forward.

Our advocacy of the local news industry comes at a critical time.

The rise of digital media has hit news organizations very hard. A business model that has sustained itself, for decades, on advertising revenue is falling apart. In print news (Unifor represents thousands of workers in the Canadian newspaper industry), aggregate revenue for dailies have plummeted by 56 per cent since 2006, draining approximately $1.5 billion from industry coffers. U.S. online giants Google and Facebook have siphoned off much of this ad revenue, a trend predated by major classified advertising losses to online services like Craigslist, Kijiji and EBay. Loopholes in the Income Tax Act that allow Canadian advertisers to deduct the cost of foreign, online advertising expenses have only contributed to this revenue drain.

The delivery of professional, high-quality news has suffered in recent years, resulting from these industry revenue pressures. As noted above, more than 260 local news outlets have closed in Canada since 2008, affecting 190 communities. The decline in the breadth of local, civic affairs coverage over the same time span (as charted by the Public Policy Forum) is equally concerning. In a 2018 research report, the PPF found that not only did the quantity of civic affairs articles (covering courts, city hall and legislatures) decline by nearly half within a representative sample of Canadian communities, but the quality of coverage declined as well.

Unifor has long cautioned that the decline of print news media in Canada will foreshadow a drastic decline in television news coverage, as small-to-medium sized stations will face similar revenue pressures. In fact, since 2011, Canada’s private conventional television industry has witnessed a sizeable 25 per cent revenue decline, and falling. Three-quarters of all local programming revenue generated by private local TV stations is derived through news production.

The broadcast industry is a key driver of news and information to Canadians. In its survey of Canadians (during the first phase of Let’s Talk TV consultations), the CRTC found that four in every five respondent considered local news programming important to them. This is significant. The lion’s share of original local programming provided by conventional television stations in Canada is local news. At most stations, it is the only programming produced “in-house.”

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17 See Public Policy Forum’s Shattered Mirror report for 2006-2015 revenue figures. See updated revenue losses from News Media Canada online reports, [https://nmc-mic.ca/](https://nmc-mic.ca/)

18 See Close the Loophole! The Deductibility of Foreign Internet Advertising, by Peter Miller and David Keeble. Published by Friends of Canadian Broadcasting, March 2018.


20 CRTC financial summaries: conventional television.

There are few, credible measuring sticks with which to chart the decline of local news programming in Canada (at least not comparable to recently published studies on print news). However, and for the benefit of CRTC, Unifor has surveyed its private conventional TV broadcast units in an effort to chart employment changes within various private local TV stations and newsrooms, over time. The results of our latest survey shows a net loss of 480 jobs between 2014 and 2018, with the category of “in-house editorial workers” (i.e. news writers, associate producers, assignment desk editors, etc.) representing the largest share of job losses.

These trends are important to note. Not only do they serve as a proxy measure for the capacity of our broadcasting system to produce quality local programming, but they reflect another worrying trend among private conventional television stations: the loss of “localness” in programming.

In a 2015 submission to the CRTC, we highlighted a growing trend of so-called ‘central casting’ that Unifor members were experiencing in the local television industry. As a response to persistent downward revenue pressures, broadcasters have undertaken to centralize various editorial functions of local news programming to hubs located far from the community that is receiving the local news broadcast. This includes the writing of local scripts and, in some cases, the anchoring of news in faraway studios with no connection to the locality it is representing.

To correct this, Unifor submitted a series of proposals, including that the CRTC include – within its conditions of licence for local broadcasters an obligation to ensure “local presence” in its local programming (currently, “local presence” is no more than an encouragement for broadcasters). The rationale behind this proposal is straightforward. It aims to ensure local news producers have a direct and physical connection to the community they service and that the integrity of local news is upheld by sufficient local news generating capacity.

Our proposal was also to amend an existing definition for “local presence” that currently resides in BRP 2009-406, and would require that licenced broadcasters of local news provide:

- Seven-day-a-week original local news coverage distinct to the market;
- Full-time journalists on the ground;
- A fully operational news bureau or news gathering office in the market.

Such an obligation would affect all private conventional local television stations, the majority of whom belong to one of the three major group-based licence holders in Canada (Bell Media, Rogers and Corus). These vertically integrated firms (that maintain sizeable operations as telecommunications and cable service providers) must deliver in-depth, quality and original local news coverage within all of the markets they serve. And, unlike their print news media peers, these local news stations have the added benefit of being housed within well-resourced (and profitable) parent firms. The CRTC must consider the totality of financial resources at the VI firm’s disposal.
**Recommendations:**

- Require that the Commission establish “local presence” requirements in all local television licences, particularly those held by large vertically-integrated licence-holders.
- Require the Commission develop a comprehensive monitoring guideline for private conventional local television news licence-holders, to properly benchmark and monitor the breadth of local news content delivered, the integrity of local coverage, the capacity of local news production, local presence, and other relevant variables. The CRTC should conduct this assessment annually, and publish its findings in the Communications Monitoring Report. The CRTC should be required to review the conditions of licence for TV stations if local news coverage is falling.
- The Canadian broadcast system demand more from its large, vertically integrated elements that serve as local TV licence-holders. In the course of this review of the Broadcasting Act, the Governor in Council should direct the CRTC to consider the financial status of the entire VI media company (including cable, satellite, Internet and wireless distribution operations) in all future licensing of local TV stations.
- Through new funding measures, including our proposed ISP and WSP tithe and new Canadian programming obligations for online digital services, instruct the CRTC to undertake a re-examination of the Independent Local News Fund. The Commission should consider how the ILNF (or other relevant funding mechanism) can provide sufficient financial resources to incentivize the expansion of local news-gathering capacity at existing stations, or to incentive the establishment of new independent community news stations not currently serviced by a private conventional television broadcaster or CBC/Radio-Canada local news bureau.
- Instruct the CRTC to examine a growing shift toward online local news delivery from broadcast licence holders, including the CBC, Corus (Global) and others. Progressively, broadcasters are expanding their web-presence to broadcast text-based and audio/video-based local news stories – in some communities that have no licenced local TV provider – and on platforms that, we believe, fall outside standard broadcast licence terms. As more original local news content is broadcasted (and potentially exclusively) through these online platforms, it is incumbent on the Commission to ensure these broadcast entities are adequately regulated, (possibly licenced) and that revenues are sufficiently captured within the broadcasting system. The Broadcasting Act should ensure that the legislative framework allows these digital platforms to fall under the Commission’s jurisdiction.
National Public Broadcaster

13.1 How should the mandate of the national public broadcaster be updated in light of the more open, global and competitive communications environment?

13.2 Through what mechanisms can government enhance the independence and stability of CBC/Radio-Canada?

Public broadcasting is a critical component of the Canadian broadcast system, and there is no more critical element of public broadcasting than CBC/Radio-Canada. The Corporation and its Board benefit from a sufficiently strong mandate, and broad discretion to execute it, enabling it to deliver on the programming objectives to Canadians as spelled in Section 3 (1) (l)-(m) of the Broadcasting Act. In our view, the mandate does not prevent CBC/Radio-Canada from operating in an increasingly globally competitive environment (in fact, Section 46 (1) grants sufficient powers to engage with international partners), or precludes the Corporation from meeting its programming objectives.

Unifor shares the view of many other public broadcasting advocates that CBC/Radio-Canada’s independence from both government and competitive market forces is of vital importance. CBC/Radio-Canada must not be a tool of the state, but rather a persistent reflection of a diverse Canada – rich in opinion (including balanced political opinion), language, talent and information. It is imperative that, at all times, Canadians are able to interrogate CBC/Radio-Canada’s structures of governance and managerial appointment to ensure the Corporation is as free from political interference as possible. It is imperative, too, that the CRTC impose meaningful conditions of licence to ensure that the Corporation is delivering full value on diverse local programming and local news to Canadians.

It is Unifor’s view that any efforts to “enhance” CBC/Radio-Canada’s independence, must focus on two areas: financial sustainability and corporate governance.

It has been widely acknowledged that Canada’s funding of public broadcasting lags other Western countries, and falls far below the per capita funding average. Between 1990 and 2014, parliamentary appropriations to the CBC declined in real terms, a growing funding challenge some had argued was “becoming untenable.” Recent increases to CBC funding under the Trudeau government of $150 million per year (until 2021) have helped to reverse some of this funding decline. However, this time-limited commitment represents a stopgap measure in funding, and government appropriations to CBC/Radio-Canada still fall below levels.

seen in the early 1990s. This Panel should consider the recommendation of a 2008 Standing Committee on Canadian Heritage that CBC’s parliamentary grant rise to $40 per capita (according to Nordicity, per capita funding for public broadcasting in Canada was estimated at $29 in 2014), with appropriate adjustments for inflation²⁴.

On the matter of corporate governance, Unifor recognizes recent steps taken by the Department of Canadian Heritage to ensure greater independence in the appointment process of CBC/Radio-Canada’s Board of Directors, including the establishment of an Independent Advisory Committee.²⁵

Unifor shares the view of Friends of Canadian Broadcasting, that amendments be made to the Broadcasting Act so as to “entrench the role of a qualified appointment committee, the qualifications of Board members, and the ability of the Board to hire and fire the President without the Government’s permission.”²⁶ Unifor also supports the Friends of Canadian Broadcasting’s recommended amendments to the Broadcasting Act, designed to establish a new appointment process for the CBC/Radio-Canada Board and President.

**Recommendations:**

- The Panel should acknowledge the relative under-funding of Canadian public broadcasting (compared to other jurisdictions) and propose the federal government increase its annual appropriations to CBC/Radio-Canada.
- The Panel should implement the proposals to reform the appointment process for CBC/Radio-Canada executives and Board members, as outlined by the Friends of Canadian Broadcasting.

**Governance and Effective Administration**

14.1 Does the Broadcasting Act strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

14.2 What is the appropriate level of government oversight of CRTC broadcasting licencing and policy decisions?

14.4 Are there tools that the CRTC does not have in the Broadcasting Act that it should?

In Unifor’s view, there are no substantive concerns with the degree of regulatory independence held by the Commission, under the terms of the Act, at this time. The Act contemplates an

²⁴ See CBC/Radio-Canada submission in support of the Government’s public consultation on the future of Canadian content in a digital world: [http://future.cbc.ca/images/acreativecanada.pdf](http://future.cbc.ca/images/acreativecanada.pdf) The Corporation suggests that the Committee’s $40 per capita funding figure, after being adjusted for inflation, totals $46 (at the time the submission was filed).


²⁶ See Friends of Canadian Broadcasting submission to this review.
active role for the Federal Cabinet in directing broad public interest policy in broadcasting, but also establishes important checks and balances as well as consultative mechanisms aimed at ensuring the Commission’s independence.

Unifor does wish to make the following recommendations, to expand the CRTC’s “toolkit” to ensure greater enforcement of the Act, and its various objectives.

Recommendations

- Unlike the *Telecommunications Act*, the *Broadcasting Act* does not appear to provide the CRTC power to issue administrative monetary penalties (including for contraventions of conditions of licence) as that power rests with a criminal court upon summary conviction. In Sections 32 and 33, it also appears that the liability for a person found to broadcast without a licence or found to contravene a regulation or order is far greater than for licence holders found in contravention of conditions of licence. The enforcement process for summary convictions is “burdensome”, according to a Department of Justice study. 27 Administrative monetary penalties may provide a more efficient and appropriate measure to enforce the obligations of licence holders, up to and including the prescribed summary conviction for egregious violations. Administrative monetary penalties for contraventions of conditions of licence should be set at a reasonably high level, and higher than the maximum $5,000 penalty that current federal law prescribes for summary conviction offences (the Criminal Code also prescribes a six-month prison sentence, but it’s difficult to see that as a practical remedy for a broadcast licence violation). In fact, a $5000 penalty for a COL contravention is far lower than other penalties currently prescribed in the *Broadcasting Act* for contraventions of regulations or orders under Section 32 (2) (a) and (b) of the Act, which can result in a maximum $50,000 and $500,000 fine, respectively. 28 Any new administrative monetary penalty applied to licence holders that contravene their conditions of licence should meet, or exceed, the thresholds set in Section 32 (2) (a) and (b).

- The *Broadcasting Act* grant the CRTC greater powers of data collection, beyond those pertaining to licence holders. The Commission must assert data collection authority, and commit to ensure public accessibility of data (wherever possible), for all entities within the broadcast system, including those operating under exemption order. Greater access to request data from all broadcast players will ensure more effective regulatory decisions and policy direction, set by the Commission and Federal Cabinet.

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27 [https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/10/ca-lc/p5.html](https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/10/ca-lc/p5.html) (see section 5.1.2)

28 Similar thresholds are applied to broadcasters that have improperly charged a subscriber for the provision of a paper bill, as per Section 34.1 and 34.2 of the Act.