



Communications 3.0:

**Where does Parliament want
Canada's communications system
to be in 2038?**

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I. Introduction

- 1 FRPC is a non-profit corporation that conducts research and policy analysis about communications. Our research and public submissions are online at frpc.net.
- 2 Very generally, the Forum believes the problems in Canada's communications systems centre on costs, content and governance.

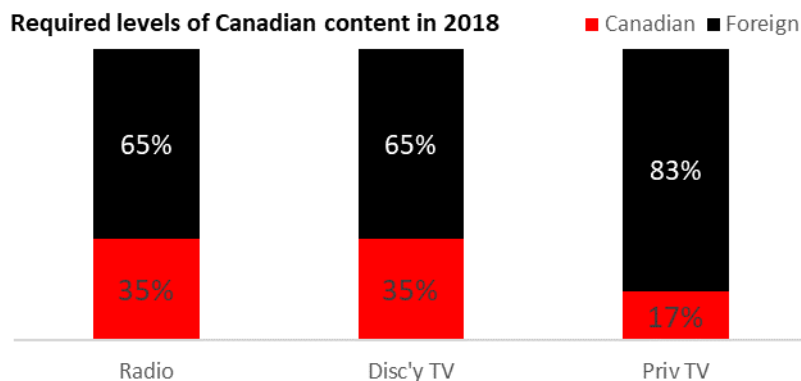
II. Challenges in Canada's broadcasting and telecommunications systems

A. Costs

- 3 For many families, cellphones and the Internet are now essential services: life-saving weather warnings sent to cellphones saved lives when Ottawa was hit by tornados in September.
- 4 Without regulation by the CRTC or the market, however, the prices paid by Canada's families – and the economy – for these services are too high, especially in rural areas and the North.

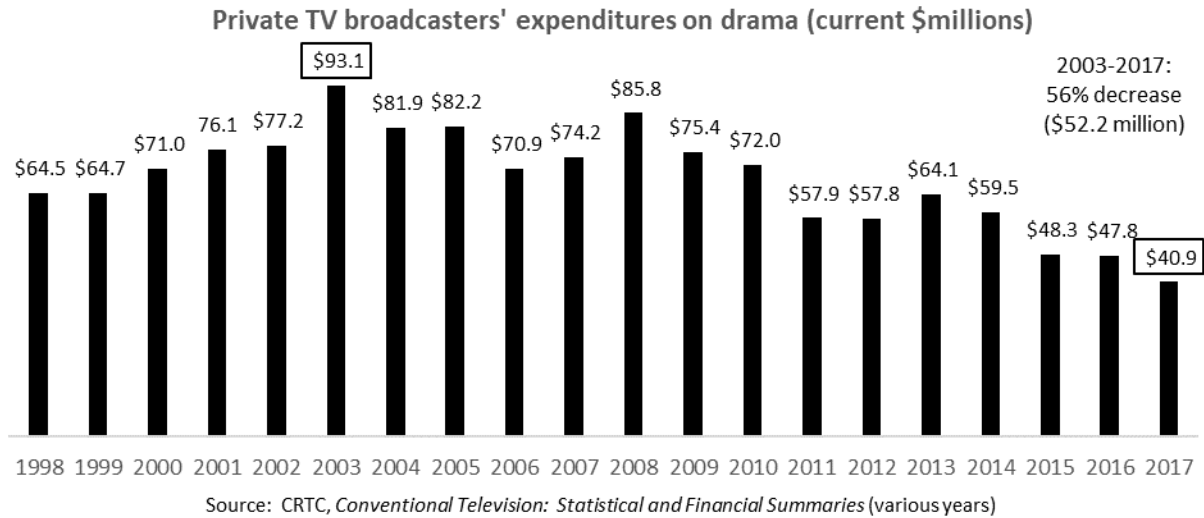
B. Content

- 5 As for content, most broadcast programming - fifty years after the CRTC's creation – is foreign.
- 6 Under its regulations only a third of private radio's music and discretionary TV programming need be Canadian, and in 2017 the CRTC lowered Canadian content requirements for private TV stations from 55%, to 17%.



Source: *Radio Regulations, 1986, s. 2.2(8); Discretionary Services Regulations, s. 2(1); Television Broadcasting Regulations, 1987, s. 4(7)(a)*

- 7 Under CRTC supervision, private TV stations reduced spending on Canadian drama from \$93 million in 2003, to \$41 million in 2017.



- 8 As for online programming services, the CRTC's 20-year old *Digital Media Exemption Order* means no rules at all, even for collecting data, let alone ensuring that Canadian programs are available, discoverable and recommended.

C. Governance

- 9 Some of these problems arise from governance issues.
- 10 First and foremost, the CRTC lacks direction and meaningful oversight. Just five of the forty policy objects in the *Broadcasting Act* are mandatory; none of the ten policy objects in the *Telecommunications Act* is mandatory (see Appendix)
- 11 The CRTC publishes very few data showing whether these objects are being met. When it deregulated basic cable rates in the late 1990s, for instance, it stopped collecting data on basic cable costs – preventing evaluation of their affordability.
- 12 The statutes' grant of discretion to the CRTC has tied the courts' hands; lack of data hinders Parliament.
- 13 A second critical problem is that the current laws do not require the CRTC to place the public interest first. This may explain why the CRTC seems to care more about regulated companies' financial standing, than subscriber costs.



- 14 As for content, the CRTC has said that news is critical to democracy. Yet when Rogers cancelled Canadian news on its ethnic TV stations five months before the 2015 federal election, the CRTC waited until 2016 to announce it would not act.¹
- 15 Its *Let Talk TV* policy weakened all local TV news, by re-defining it to include² talk shows and documentaries.³
- 16 Whose interests, then, will the CRTC place first if faced with a new crisis - if broadcasters close stations altogether?

III. Three steps for legislative change

- 17 The Forum suggests that Canada's communications systems be placed on a new path, in three steps.

A. Short term: 2018-2019

- 18 In the short term, the Governor in Council should revise the 20-year-old foreign ownership direction so the CRTC may authorize non-Canadian online programming services' operation in Canada, and set appropriate contributions to the country's broadcasting system.

Current direction on foreign ownership:
2 The Canadian Radio-television and Telecommunications Commission is hereby directed that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian.

Direction to the CRTC (Ineligibility of Non-Canadians), SOR/97-192 (underlining added)

¹ *Requests that Rogers Media Inc. reinstate local third-language newscasts on its OMNI stations*, Broadcasting Decision CRTC 2016-18 (Ottawa, 12 January 2016), <https://crtc.gc.ca/eng/archive/2016/2016-8.htm>.

² *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224 (Ottawa, 15 June 2016), <https://crtc.gc.ca/eng/archive/2016/2016-224.htm>, at para. 57: "...the Commission considers it appropriate to allow broadcasters to draw from both categories 1 News and 2(a) Analysis and Interpretation to meet their local news exhibition and expenditure obligations".

³ CRTC, "Television Program Categories", <https://crtc.gc.ca/canrec/eng/tvcat.htm> <accessed 24 October 2018>:

"Category 1 News: Newscasts, newsbreaks, and headlines. Programs reporting on local, regional, national, and international events. Such programs may include weather reports, sportscasts, community news, and other related features or segments contained within 'News Programs'; "Category 2a) Analysis and Interpretation: Programs on various topics that include analysis or discussion, for example, talk or panel shows, consumer affairs or reviews, newsmagazines and documentaries that do not fall under category 2b). This category excludes programs presenting information primarily for entertainment value."

- 19 Until the *Direction* is changed, the CRTC cannot revise its outdated, discriminatory digital exemption order; it cannot even collect data from these services.

10 (1) The Commission may, in furtherance of its objects, make regulations...
(i) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or ... the conduct and management of their affairs as the regulations may specify
Broadcasting Act, (S.C. 1991, c. 11) (underlining added)

B. Medium term: 2019-2020

- 20 In the medium term, Parliament should amend the *Income Tax Act* to require non-Canadian programming platforms to pay sales taxes on Canadian subscriptions, and to eliminate the deductibility of foreign Internet advertising.

C. Longer term: 2020-2024

- 21 In the longer term – say, by 2024 – Parliament should amend its communications legislation, focussing its policy objectives on, measurable and mandatory goals that serve the public interest.
- 22 It should also require the collection and publication of relevant data about its goals, and mandate decision-making transparency by regulatory authorities.

IV. Conclusion

- 23 To conclude, Mr. Chairman and Senators, our key message today is that, unless Parliament begins to act quickly, Canadians could very well lose control over their communications systems. Without professional news gathering, and stories by and for Canadians, whose values will our children adopt? What will the world know of Canada?
- 24 By enacting communications legislation for the 21st century Parliament will ensure that Canada retains its cultural sovereignty, it will promote new sources of revenue and more employment opportunities, and it will strengthen Canada's global brand.



Appendix

Discretionary and mandatory objects in Canada's communications legislation

<i>1991 Broadcasting Act</i>		<i>1993 Telecommunications Act</i>	
	3. (1) It is hereby declared as the broadcasting policy for Canada that		7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives
1.	(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;	1	[see s. 16, which permits non-Canadian companies to operate as 'Canadian carriers' but only if they have less than 10% of total annual telecommunications service revenues]
	(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;	2	(a) to <i>facilitate</i> the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
2.	(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and <i>may</i> have different requirements;	3	(b) to <i>render</i> reliable and affordable telecommunications services of high quality <i>accessible</i> to Canadians in both urban and rural areas in all regions of Canada;
	(d) the Canadian broadcasting system <i>should</i>	4	(c) to <i>enhance</i> the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
3.	(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,	5	(d) to <i>promote</i> the ownership and control of Canadian carriers by Canadians;
4.	(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,	6	(e) to <i>promote</i> the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
5.	(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and	7	(f) to <i>foster</i> increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
6.	(iv) be readily adaptable to scientific and technological change;	8	(g) to <i>stimulate</i> research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;



1991 <i>Broadcasting Act</i>		1993 <i>Telecommunications Act</i>	
7.	(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;	9	(h) to <i>respond</i> to the economic and social requirements of users of telecommunications services; and
8.	(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;	10	(i) to <i>contribute</i> to the protection of the privacy of persons.
9.	(g) the programming originated by broadcasting undertakings <i>should</i> be of high standard;		
10.	(h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;		
	(i) the programming provided by the Canadian broadcasting system <i>should</i>		
11.	(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,		
12.	(ii) be drawn from local, regional, national and international sources,		
13.	(iii) include educational and community programs,		
14.	(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and		
15.	(v) include a significant contribution from the Canadian independent production sector;		
	(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;		
16.	(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;		
17.	(l) the Canadian Broadcasting Corporation, as the national public broadcaster, <i>should</i> provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;		
	(m) the programming provided by the Corporation <i>should</i>		
18.	(i) be predominantly and distinctively Canadian,		
19.	(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,		
20.	(iii) actively contribute to the flow and exchange of cultural expression,		



1991 <i>Broadcasting Act</i>		1993 <i>Telecommunications Act</i>
21.	(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,	
22.	(v) strive to be of equivalent quality in English and in French,	
23.	(vi) contribute to shared national consciousness and identity,	
24.	(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and	
25.	(viii) reflect the multicultural and multiracial nature of Canada;	
26.	(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);	
27.	(o) programming that reflects the aboriginal cultures of Canada <i>should</i> be provided within the Canadian broadcasting system as resources become available for the purpose ;	
28.	(p) programming accessible by disabled persons <i>should</i> be provided within the Canadian broadcasting system as resources become available for the purpose ;	
29.	(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French <i>should</i> be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;	
	(r) the programming provided by alternative television programming services <i>should</i>	
30.	(i) be innovative and be complementary to the programming provided for mass audiences,	
31.	(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,	
32.	(iii) reflect Canada's regions and multicultural nature,	
33.	(iv) as far as possible, be acquired rather than produced by those services, and	
34.	(v) be made available throughout Canada by the most cost-efficient means;	
	(s) private networks and programming undertakings <i>should</i> ,	



<i>1991 Broadcasting Act</i>		<i>1993 Telecommunications Act</i>	
	to an extent consistent with the financial and other resources available to them,		
35.	(i) contribute significantly to the creation and presentation of Canadian programming, and		
36.	(ii) be responsive to the evolving demands of the public; and		
	(t) distribution undertakings		
37.	(i) <i>should</i> give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,		
38.	(ii) <i>should</i> provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,		
39.	(iii) <i>should</i> , where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and		
40.	(iv) <i>may</i> , where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.		
40 objectives; 35 are discretionary (should or may) 14 “shoulds” 4 “mays” 8 “shalls” What does “as resources become available for the purpose” mean? Whose resources? Who makes these available? What does “become” (as compared to “are”) mean? Must the resources be specifically allocated for the purpose, or may they be resources in general?			No specific requirements in the ten objectives: “facilitate” orderly development “render” telecommunications services affordable “enhance” efficiency and competitiveness “promote” Canadian ownership & control “promote” use of Canadian transmission facilities “stimulate” research to “encourage” innovation “respond” to users’ economic and social requirements “contribute” to privacy

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