

**Consideration of Bill C-11,
*An Act to amend the Broadcasting Act***

**Comments
of
BCE Inc.**

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1.0 INTRODUCTION

1. BCE Inc. (BCE) is pleased to submit the following comments concerning Bill C-11, *An Act to amend the Broadcasting Act (the Act) and to make related and consequential amendments to other Acts* (Bill C-11).
2. BCE is Canada's largest communications company, leading the industry in providing world-class communications services to consumers and business customers across the country. On the broadcasting side of our business, we operate Bell Media Inc. (Bell Media), Canada's leading television and radio provider in both English and French Canada, and Bell TV, Canada's largest broadcast distributor, comprised of the national direct-to-home (DTH) satellite service, Bell Satellite TV and the regional Internet protocol television (IPTV) service Bell Fibe TV, available in various communities across Manitoba, Ontario, Québec and Atlantic Canada. As a result, the amendments proposed by Bill C-11 have the potential to have a significant impact on our business and the environment in which we operate.
3. Bill C-11, and its predecessor Bill C-10,¹ represents the first major review of the *Act* in over 30 years. Bill C-11 is not focused on updating all aspects of regulation – it is focused on updating the regulatory regime to reflect the reality of the actual broadcasting landscape today. Three decades ago, the Canadian broadcasting system was a "walled garden". Government policies were focused on restricting market entry so that domestic broadcasters and broadcasting distribution undertakings (BDUs), whether radio stations, television channels or cable or satellite providers, could grow and succeed. In return, these services were required to make substantial contributions with respect to the promotion and development of Canadian audio and audiovisual content, which has helped to foster generations of Canadian musical artists, as well as a strong domestic television production sector.
4. However, over the last decade, the operating environment for Canadian broadcasters and BDUs has changed dramatically. Widespread adoption of broadband Internet has seen a closed system transition to an open one. Whereas in the past Canadians looked to domestic services for information and entertainment, they can now access a virtually unlimited array of music and video from a plethora of online over-the-top (OTT) streaming options, most of which are foreign-owned and controlled.
5. The emergence of these options has had a significant impact on Canadian broadcasters and BDUs alike. OTT services not only compete for the same programming rights as domestic

¹ Bill C-10 died on the Government's order paper when the Federal Election was called in October 2021.

broadcasters, but their global reach has seen a shift in how rights are licensed. Canada used to be treated as a discrete market. Now, programs are being licensed on a worldwide basis and Canadian companies are not even being given a seat at the negotiating table. This has also led millions of Canadians to either downgrade their BDU services or cut the cord entirely. In addition, the growth of the Internet and digital advertising has seen billions of dollars in revenues migrate away from traditional media.

6. All of these developments have had a severe financial impact on domestic broadcasters and BDUs, which has directly impacted support for Canadian creators and contributions to funds like the Canada Media Fund (CMF). However, the impact on local media has been the most acute. The local television sector has lost hundreds of millions of dollars over the last five years, and television and radio stations are on the verge of closing. The COVID-19 pandemic has exponentially worsened already untenable operating conditions. The situation is no longer sustainable.

7. With the introduction of Bill C-11, the Government clearly has recognized that change is needed. We are pleased to see this, as an outdated regulatory framework is not only unfair for our Canadian businesses, but it threatens Canadian jobs and undermines our ability to tell our stories. A background briefing document² prepared by Canadian Heritage that was supplied to industry stakeholders provides further context concerning Bill C-11's key objectives. These include:

- Clarifying that online broadcasting is within the scope of the Act;
- Updating broadcasting policy so it better reflects Canada's diversity;
- A renewed approach to regulation that ensures fair and equitable treatment as between online and traditional broadcasters;
- Modernizing enforcement powers by introducing an administrative monetary penalties regime as well as adding explicit information sharing and confidentiality provisions; and
- An updated approach to social media, which distinguishes between amateur and commercial programs.

8. In our view, Bill C-11 is relatively effective with respect to four of these five objectives. To be clear, we support the bill, including the Standing Committee on Canadian Heritage's amendment to eliminate Part II fees. However, while we recognize that it is the Canadian Radio-television and Telecommunications Commission (the Commission) that sets most of the detailed rules that apply to the industry, we believe that certain amendments to Bill C-11 would provide necessary clarity to the Commission as it implements a new framework and help to ensure the Government's policy intentions

² Canadian Heritage, *Summary: Amendments to the Broadcasting Act* (February 2022).

are met. This includes a specific focus on mechanisms that would allow for the re-establishment of a strong and vibrant Canadian broadcasting system, including:

- Ensuring access to popular foreign content, which has been the foundation of the Canadian broadcasting system;
 - Ensuring that we do not have a two-tiered regulatory system;
 - Bringing online BDUs under the Commissions regulation, just as traditional BDUS are; and
 - Supporting local, regional and national broadcast news.
9. We discuss all our proposed amendments in detail below and an appendix summarizing our recommendations is attached.

2.0 ESTABLISHING MARKET CONDITIONS TO ENABLE CANADIAN BROADCASTING COMPANIES TO SUCCEED

10. As noted above, one of the key objectives of Bill C-11 is to establish a regulatory framework that treats both traditional broadcasters and OTT streaming services fairly and equitably. Since Bill C-11 was introduced, most of the focus in this area has been on what kind of requirements could be imposed on OTT services to support Canadian music, stories, creators and producers – a decision that will be determined by the Commission in response to a Direction issued by the Government after the bill is passed. However, fair and equitable treatment is not simply about empowering the Commission to require contributions from online broadcasters. In contrast, the approach needs to be holistic and look at all aspects of the current regulatory framework that provide advantages to foreign services over domestic players.

2.1 THE ABILITY OF CANADIAN BROADCASTERS TO ACCESS FOREIGN CONTENT IS A FUNDAMENTAL PRINCIPLE THAT ENSURES CANADIANS ARE WELL-SERVED

11. The current realities caused by OTT services delivering content directly to Canadians means a level playing field alone is not sufficient to ensure the success of Canadian broadcasters and thus success of the Canadian broadcasting system. Consequently, the Government and the Commission must ensure the regulatory regime continues to incent foreign content owners to partner with Canadian broadcasters, something which our regulatory system has historically supported.

12. In particular, Canadian broadcasters succeeded by acquiring and airing hugely popular U.S. shows that appeal to Canadian audiences and attract significant advertising and subscription revenue. These revenues are then used to fund the creation, production and showcasing of Canadian content, including news. At Bell Canada alone, we spend \$1 billion annually on Canadian productions, both

on our own and with independent producers; and this year alone, we have 150 projects with 75 independent production companies. To be clear, everything we are able to achieve is directly related to the profits we make by accessing foreign content, and through a regulatory regime that enabled this.

13. Several of the Commission's regulations and policies supported access to foreign content during the pre-OTT era. For example, licensing rules required partnerships between foreign and Canadian broadcasters, creating such success stories as Discovery Canada, a partnership between Bell Media and Discovery. Simultaneous substitution rules ensured that broadcasters could monetize all the Canadian viewership and generated revenues that could be funneled into news and other Canadian shows.

14. Unfortunately, current regulation and policy rules are no longer sufficient as foreign content owners take advantage of OTT opportunities in Canada, and Canadian broadcasters lose access to content they need to survive. Popular and distinctly Canadian programming and news cannot be sufficiently funded and promoted by the revenues they create, and advertising revenues are falling. Therefore, the ability of Canadian broadcasters to access foreign content is a fundamental tenet that ensures Canadians are well-served. If Canadian broadcasters are unable to harness the demand from Canadians for U.S. sports and entertainment, Canada's system will undoubtedly collapse.

15. Presently, accessing U.S. content is more difficult than ever. Major sports properties and studios are using OTT services to increase their market control. Owners of U.S. content are imposing higher costs on Canadian broadcasters by leveraging OTT bidding to drive up prices. In addition, and more importantly, many studio/network/cable conglomerates have their own OTT services that compete with Canadian broadcasters by delivering content directly to Canadians.³ These conglomerates also restrict the content they make available to Canadian broadcasters, keeping valuable and new content to be delivered exclusively on their own services.

16. A recent report by the Commission, *The State of the Canadian Program Rights Market 2022 – The Demise of the Foundational Business Model of Private Television*, underscores the risks and urgency.⁴ The Canadian program rights market has suffered serious declines in the last three to five years. A viable separate Canadian program rights market is now at serious and relatively imminent risk, and the Canadian system only has three years left to combat current trends. The author of this report provides the following outcomes:

³ For example, Disney+, Paramount+ and Hulu.

⁴ Peter Miller (Ottawa: CRTC, March 25, 2022) paragraphs 141 and 142.

Worst Case: ...broadcast rights to the most popular foreign TV programming become either unavailable or cost prohibitive, and major Canadian broadcasters lose so much must watch entertainment programming, that they're bleeding audiences and advertisers, and the system loses critical mass;

Best Case: ...Canadian broadcasting policy starts turning around, starts to reintroduce and strengthen material measures that advantage Canadian broadcasters over foreign broadcasters in the Canadian market (access and content funding, in particular)...

17. Unfortunately, the unregulated OTT services, that are mostly foreign owned and controlled, are now the market leaders in Canada. Since 2015, OTT services' cumulative revenue increased \$11.8B, while regulated Canadian broadcasters' revenue declined \$1.8B. In the years 2011 and 2012, 7% of total viewing time for adults between ages 18-54 was spent on unregulated OTT services, which has increased to 47% between 2020 and 2021, and we estimate that 60% of total viewing time will be spent on OTT services by 2023 and 2024.⁵

18. We can slow this negative trend by ensuring that the Canadian broadcasting system places Canadian broadcasters at its centre, and this means ensuring our access to foreign content. This is critical as the integral role Canadian broadcasters play in the Canadian broadcasting system, cannot and will not be matched by foreign broadcast undertakings, including OTT services, regardless of how much money they contribute to Canadian programming. As noted above, the foreign content we air attracts significant advertising and subscription revenue, that are used to fund the creation, production and showcasing of Canadian content, including news. Importantly, only Canadian broadcasters produce news from a Canadian perspective; foreign OTT services will never produce Canadian news for Canadian audiences. Additionally, Canadian broadcasters play a central role in developing a diverse Canadian culture and are essential for nurturing Canadian talent and telling our unique Canadian stories.

19. Consequently, regulatory intervention that supports access to foreign content is necessary to fulfill Canadian broadcast policy. As such, we recommend that the following clauses be added to Bill C-11:

3.(1) (s.1) foreign broadcasting undertakings should

- (i) make their programming available to Canadian programming undertakings pursuant to contractual arrangements on reasonable terms; and**
- (ii) be encouraged to partner with Canadian undertakings in the distribution of their programming throughout the Canadian broadcasting system.**

5.(2) The Canadian broadcasting system should be regulated and supervised in a flexible

⁵ Numeris, ComScore, eMarketer, Activate plus Bell estimates.

manner that

- (i.1) **Ensures foreign broadcasting undertakings make their content available on reasonable terms to Canadian broadcasting undertakings; and**
- (i.2) **Foreign broadcasting undertakings are incented to partner with Canadian broadcasting undertakings in the distribution of foreign programming in Canada.**

2.2 LEVELING THE PLAYING FIELD: ALLOWING CANADIAN BROADCASTERS AND BDUS TO COMPETE EQUITABLY WITH FOREIGN OTT SERVICES

20. As noted by the Canadian Association of Broadcasters (CAB) in their submission, certain clauses in Bill C-11 create a two-tiered approach as between traditional broadcaster undertakings and foreign OTT services. This is in contrast to the Bill's stated objective of fair and equitable regulation as between traditional and OTT broadcasting services.⁶ Continuing to allow large foreign streaming services to operate in a different regulatory framework than Canadian broadcasters gives them a competitive edge, which they do not need considering their size and resources. It would continue to put Canadian broadcasters, and thus local news content and Canadian programming, at risk.

21. In order to achieve its objective of equity between broadcasting undertakings, the legislation must create a single standard for everyone. This would incent foreign streamers to utilize Canadian resources and collaborate with Canadian broadcasters in their Canadian-based media activities, rather than bypass us altogether.

22. Our specific concerns are with respect to sections 3(1)(f) and (f.1), section 5(2)(a.1) and section 9.1(1)(i) as each of these sections condone a higher set of regulatory obligations for Canadian undertakings. First, with respect to the creation, production and presentation of Canadian programming, as presently drafted in section 3(1)(f) and (f.1), Canadian undertakings would be required to "make a significant contribution" whereas foreign online undertakings would only be required to "make the greatest practical use" of Canadian resources. This distinction would only serve to further harm Canadian undertakings vis-à-vis foreign OTT, from whom we are losing significant ground to in terms of subscribers, revenue and audience. Consequently, we support the CAB's proposed amendment of Section 3(1)(f) and (f.1):

3(1)(f) each Canadian broadcasting undertaking, shall employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources make a significant contribution to in the creation, production and presentation of Canadian 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 contribution impracticable, in which case the

⁶ We are supportive of levelling the playing field but as noted above, this alone is insufficient to ensure the success of Canadian broadcasters and thus success of the Canadian broadcasting system.

undertaking shall make an appropriate contribution;

~~3(1)(f.1) each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, in accordance with the objectives of the broadcasting policy set out in this subsection and taking into account the linguistic duality of the market they serve;~~

23. Second, it is essential to codify the principle that the Canadian broadcasting system should treat all broadcasting undertakings in a "fair and equitable" manner. Such addition to the text would reinforce the objective of Bill C-11, while allowing the Commission to take into account the relevant differences of undertakings when implementing a new regulatory framework. Accordingly, the following amendment proposed by the CAB should be made to section 5(2)(a.1):

5 (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

~~(a.1) is fair and equitable as between takes into account the nature and diversity of the services provided by broadcasting undertakings, taking into account the nature of the services they provide as well as their size, their impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming, their contribution to the implementation of the broadcasting policy set out in subsection 3(1) and any other difference between the undertakings characteristic that may be relevant in the circumstances;~~

24. Third, in the current regulatory framework, the Commission has the ability to set terms and conditions under which BDUs provide carriage to programming undertakings. The current text of C-11 maintains this authority, however, in section 9.1(1)(i), online BDUS are excluded from its scope. The Commission itself has pointed out this weakness during its appearance before this Committee, stating that:

This provision of the *Broadcasting Act* has served Canadians and the system as a whole very well, as evidenced by channels such as APTN and AMI-tv. In our view, the CRTC should have a similar ability to ensure that Canadian programming services are able to gain access to online streaming platforms under fair and equitable terms.⁷

25. In order to ensure that Canadian programming services are able to access online BDUs under fair and equitable terms and conditions, the Bill should provide the Commission with the ability to set the terms and conditions under which online broadcasting services distribute Canadian programming services as it has for traditional broadcasting undertakings. Guaranteeing fair treatment to Canadian programming on online BDUs is essential to foster the distribution of Canadian content across a variety

⁷ <https://www.canada.ca/en/radio-television-telecommunications/news/2022/06/ian-scott-to-the-senate-standing-committee-on-transport-and-communications.html>

of platforms. For this reason, we agree with the CAB that the Commission's position should be adopted by making the following amendment to Section 9.1(1)(i):

9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting

(i) a requirement, without terms or conditions, for a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services, specified by the Commission, that are provided by a broadcasting undertaking;

3.0 ENSURING LOCAL RADIO AND TELEVISION NEWS IS SUSTAINABLE

26. Local media in Canada is in crisis. Pre-pandemic, combined annual advertising revenues for local television and radio stations declined over the last decade by approximately \$700 million, from \$3.8 billion in 2010 to \$3.1 billion in 2019.⁸ In fact, local private television has been unprofitable every year since 2013, with a cumulative pre-tax loss of nearly \$1.5 billion dollars by the end of broadcast year 2021.

27. Notably, these losses have occurred despite local news' popularity among Canadians as popularity does not guarantee advertising revenues. These losses have put immense pressure on local media's ability to continue to deliver local news. While private local television and radio delivered on their commitment to their local viewers to provide timely coverage of the COVID-19 health crisis throughout much of 2020, this is no longer possible and these operators were forced more recently to make significant cuts to remain afloat.

28. Numerous studies over the last decade have found that local news is one of the most important types of programming for Canadians.⁹ Canadian local, regional and national news organizations have "boots on the ground" and are integral to the communities they serve. Foreign broadcasters do not and cannot match Canadian news coverage. Local, regional and national news support Canadian sovereignty and democracy. Every week, approximately 16 million Canadians watch CTV and Noovo for news that matters to them. Furthermore, Bill C-11, as currently drafted, recognizes the importance of local broadcast news by adding the following clause:

3. (1) (i) The programming provided by the Canadian broadcasting system should

⁸ Communications Management Inc. "The crisis in Canadian media and the future of local broadcasting". 24 August 2020 at pages 8 and 18.

⁹ See, for example, Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV – The way forward – Creating compelling and diverse Canadian Programming* (12 March 2015) at paragraph 261.

- (ii.1) include programs produced by Canadians that cover news and current events — from the local and regional to the national and international — and that reflect the viewpoints of Canadians, including the viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds;
29. While this reference makes news one of many criteria broadcasting regulation must balance, we submit that the situation merits further legislative attention. At present, most required regulatory contributions by broadcasters and BDUs are focused on supporting Canadian programming such as dramas and documentaries. While these genres of programming and the creators that make them remain important, finding new ways to support the production of local news programming must be a key priority. This could include allowing BDUs to redirect some or all of their required contributions to community programming or production funds to support local news on related broadcasting services or empowering the Commission to require independent BDUs and online undertakings to contribute to a fund to support local news. Consequently, we are proposing the addition of the following Section 11.1(1)(d):¹⁰
- 11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of
(d) developing, financing, producing or promoting local, regional and national news and information programming, including through contributions made by distribution undertakings either to a related programming undertaking or by distribution undertakings or online undertakings to an independent fund.

30. We would like to thank the Standing Committee for the opportunity to submit these written comments.

¹⁰ We note that Unifor has proposed a nearly identical amendment.

APPENDIX – SUMMARY OF PROPOSED AMENDMENTS

1	<p>3. (1) (s.1) foreign broadcasting undertakings should</p> <p class="list-item-l1">(i) make their programming available to Canadian programming undertakings pursuant to contractual arrangements on reasonable terms; and</p> <p class="list-item-l1">(ii) be encouraged to partner with Canadian undertakings in the distribution of their programming throughout the Canadian broadcasting system.</p>
2	<p>5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p class="list-item-l1">(i.1) Ensures foreign broadcasting undertakings make their content available on reasonable terms to Canadian broadcasting undertakings; and</p> <p class="list-item-l1">(i.2) Foreign broadcasting undertakings are incented to partner with Canadian broadcasting undertakings in the distribution of foreign programming in Canada.</p>
3	<p>3(1)(f) each Canadian broadcasting undertaking, shall employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources make a significant contribution to in the creation, production and presentation of Canadian 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 contribution impracticable, in which case the undertaking shall make an appropriate contribution;</p> <p>3(1)(f.1) each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, in accordance with the objectives of the broadcasting policy set out in this subsection and taking into account the linguistic duality of the market they serve;</p>
4	<p>5 (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p class="list-item-l1">(a.1) is fair and equitable as between takes into account the nature and diversity of the services provided by broadcasting undertakings, taking into account the nature of the services they provide as well as their size, their impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming, their contribution to the implementation of the broadcasting policy set out in subsection 3(1) and any other difference between the undertakings characteristic that may be relevant in the circumstances;</p>
5	<p>9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting</p> <p class="list-item-l1">(i) a requirement, without terms or conditions, for a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services, specified by the Commission, that are provided by a broadcasting undertaking;</p>
6	<p>11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of</p> <p class="list-item-l1"><u>(d) developing, financing, producing or promoting local, regional and national news and information programming, including through contributions made by distribution undertakings either to a related programming undertaking or by distribution undertakings or online undertakings to an independent fund.</u></p>