BCE INC. SUBMISSION TO THE STANDING COMMITTEE ON CANADIAN HERITAGE
STUDY OF BILL C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*
22 March 2021

1.0 INTRODUCTION

1. BCE Inc (BCE) is pleased to submit the following comments concerning Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* (Bill C-10).

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-10 have the potential to have a significant impact on our business and the environment in which we operate.

3. Bill C-10 represents the first major review of the *Broadcasting Act* (the *Act*) in over 30 years. While Bill C-10 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 broadcast distributors, 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 broadcasting distribution undertakings (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 dramatic impact on Canadian broadcasters and BDUs alike. OTT services not only compete for the same programming rights as domestic 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 resulted in 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-10, the Government clearly has recognized that change is needed. On the day Bill C-10 was tabled in the House of Commons, the Minister of Canadian Heritage noted the following:

> One system for our traditional broadcasters and a separate system for online broadcasters simply doesn't work . . .
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> This outdated regulatory framework is not only unfair for our Canadian businesses, it threatens

Canadian jobs and undermines our ability to tell our stories.[1]

8. A background briefing note[2] prepared by Canadian Heritage that was supplied to industry stakeholders provides further context concerning Bill C-10's key objectives. These include:

- Clarifying that online broadcasting is within the scope of the *Act*;
- Updating broadcasting policy so it better reflects Indigenous peoples, persons with disabilities and 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; and
- Adding more explicit information sharing and confidentiality provisions.

9. In BCE's view, Bill C-10, as drafted, is relatively effective with respect to four of these five objectives. However, while BCE supports the bill and we also 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 would provide necessary clarity to the Commission as it implements a new framework and help to ensure the Government's policy intentions are met. This includes a specific focus on mechanisms to help support local broadcast news, as well as:

- A level playing field with respect to the payment of regulatory fees;
- Eliminating statutory conflict in the area of wholesale rate negotiations;
- Updating the rules and objectives for the BDU sector; and
- Moving to a regulatory construct that relies more on market forces.

10. We are also recommending certain changes to other sections of the *Act* to correct administrative issues, such as continuing to provide business certainty with respect to how long licence conditions will remain unchanged and giving the Commission greater powers relating to the process around public hearings. We discuss all our proposed amendments in detail below and a table summarizing our recommendations is attached.

2.0 ENSURING LOCAL RADIO AND TELEVISION NEWS IS SUSTAINABLE

11. As noted above, 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.[3] In fact, local private television has been unprofitable every year since 2013, with a cumulative pre-tax loss of over $1.1 billion dollars by the end of 2019. Over the course of the last 12 months, the situation has become dramatically worse as advertisers cut spending on traditional media by hundreds of millions of dollars. 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. The Canadian Association of Broadcasters released a study in the summer of 2020 that predicts that over a hundred radio stations and up to 40 television stations could close in the next three years.[4]

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1 Curry, Bill and Dickson, Janice. "Broadcasting bill targets online streaming services". *The Globe and Mail*, 3 November 2020, https://www.theglobeandmail.com/politics/article-ottawa-says-broadcasting-act-changes-will-raise-over-800-million-from.

2 Canadian Heritage, *Summary: Amendments to the Broadcasting Act* (November 2020).

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

4 *Ibid*., at pages vi and vii.

12. Numerous studies over the last decade have found that local news is one of the most important types of programming for Canadians.[5] Furthermore, Bill C-10, 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
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> (ii.1) include programs produced by Canadians that cover news and current events – from the local and regional to the international – and that reflect the viewpoints of Canadians, including the viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds;

13. While this reference makes news one of many criteria broadcasting regulation must balance, BCE submits 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, BCE is proposing the addition of the following Section 11.1(1)(d) in Bill C-10:

> 11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of
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> **(d) developing, financing, producing or promoting local 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.**

3.0 ESTABLISHING MARKET CONDITIONS IN WHICH CANADIAN BROADCASTING COMPANIES CAN SUCCEED

14. As noted above, one of the key objectives of Bill C-10 is to establish a regulatory framework that treats both traditional broadcasters and OTT streaming services fairly and equitably. Since Bill C-10 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.

3.1 Proposed Amendments to Encourage More Equity Between Traditional Broadcasters and OTT Services

15. Historically, the Canadian broadcasting system has been regulated in a manner that intentionally distorts market realities. As noted above, this resulted in a closed system, where competition was constrained so that domestic broadcasters and BDUs could be successful and, in turn, support public policy objectives, such as funding Canadian content.

16. However, the rules that Canadian broadcasters and BDUs are currently subject to go well beyond funding and promoting Canadian content. In contrast, the Commission oversees virtually all aspects of the operations

[5] 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.

of these undertakings – including, but not limited to, wholesale rate negotiations, how services are marketed and advertising limits. Online broadcasters are unlikely to be subjected to a similar level of oversight and, at most, will have some sort of spending or contribution obligations relating to Canadian programming.

17. Government regulation or intervention is, by definition, only required where the free market will not deliver a particular outcome. For example, Bill C-10 seeks to influence a market outcome by empowering the Commission to require OTT services to contribute to the system, which BCE supports. What it also does, however, is leave a large number of existing provisions in place that will continue to create an unlevel playing field between traditional domestic players and foreign online services, impairing the ability of Canadian businesses to compete.

3.1.1 A Level Playing Field With Respect to Regulatory Fees

18. At present, broadcasters and BDUs pay two separate licence fees. Part I licence fees are divided between industry players and underwrite the cost of the Commission's regulatory activities. Part II licence fees are assessed as a percentage of revenue and form part of the Government's consolidated revenues. They do not directly support the broadcasting industry.

19. Under Bill C-10, online undertakings would not be licensed as licensed broadcasters must be Canadian owned and controlled. Notwithstanding this fact, Section 11(3.1) of Bill C-10 gives the Commission the power to require online undertakings to pay Part I licence fees. However, it expressly prohibits the Commission from subjecting online undertakings to Part II licence fees.

20. Part II licence fees cost the Canadian broadcasting industry well over $100 million annually. These fees represent a significant hardship and we note they were waived for 2020 for certain broadcasting undertakings as part of a COVID-19 relief package. There is no rationale for continuing to charge traditional broadcasters Part II licence fees, which were established in a completely different era and business environment. In fact, given the ongoing decline in traditional industry revenues[6] it makes no sense to continue to place an additional tax burden on these operators. But, what is worse is the notion that only Canadian licensees should pay and foreign OTTs should be exempt. Far from creating a fair and equitable regulatory environment, this approach just further disadvantages Canadian businesses. As a result, BCE is recommending the following amendment:

> 11. (3.1) The only fees that may be established with respect to a broadcasting undertaking ~~that may be carried on without a licence~~ shall be fees that relate to the recovery of the costs of the Commission's activities under this *Act*.

3.1.2 Eliminating Statutory Conflict in the Area of Wholesale Rate Negotiations

21. Sections 9(1)(h) and 10(1)(g) and (h) of the *Act* give the Commission the power to order BDUs to carry certain programming services and to make regulations concerning BDU carriage of programming services and relating to resolving carriage disputes. These sections represented new powers for the Commission in 1991 (when the current *Act* was introduced) and were deemed necessary given the growing number of Canadians relying on BDUs to receive television services and fears over BDUs acting as "gate keepers". As a result, it was determined that the Commission should have powers to dictate what services BDUs carry in furtherance of the cultural objectives set out in the *Act*. However, over the last 10 years, these provisions have been used more to dictate the economic relationship between programming services and BDUs, often pursuant to terms that do not accurately reflect the market value of the service in question, or to force a programming service to continue providing its signal to a BDU against its will, than out of concerns over BDUs restricting access.

22. In the 2012 Supreme Court of Canada decision in *Reference re Broadcasting Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, the Court explained that the *Act* has a primarily "cultural aim"[7] and

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6 Communications Monitoring Report, 2020, page 17.
7 *Supra.*, Note 3 at page 32.

concluded that nothing in Section 10(1) can be construed as giving the Commission authority to "control the direct economic relationship between . . . BDUs and . . . broadcasters."[8] In fact, the Commission engaging in rate setting or mandating continued distribution where a programming service does not consent is in direct conflict with Section 3(1)(f) of the *Copyright Act*, which provides that a copyright holder has the exclusive right in the case of its programs "to communicate the work to the public by telecommunication". Notwithstanding these facts, the Commission continues to regularly involve itself in carriage negotiations between BDUs and programmers, engineering particular market outcomes.

23. This often results in artificially depressed wholesale rates for programming services, which further distorts the market. This puts broadcasters at an even greater competitive disadvantage against OTT competitors who are bidding on the same programming and have no restrictions on what they charge subscribers or an intermediary, such as a BDU or online aggregator (*e.g.,* Amazon Channels).[9] In addition, the Commission's involvement in this area has actually resulted in numerous BDUs showing little interest in negotiating commercially, knowing there is a chance they can get a better deal at the Commission. Even if that is not the eventual outcome, there is little downside in taking such an approach.

24. In order to remedy these issues and create a more level playing field, BCE submits that certain sections of the *Act* should be amended to clarify that the *Copyright Act* takes precedence in the event of a conflict. That said, we do recognize that situations may arise where the Commission legitimately needs to have the power to order a BDU to carry a programming service (consistent with the original intent of Sections 9(1)(h) and 10(1)(g) and (h)). Therefore, BCE is proposing the following:

> 5. (1) Subject to this *Act*, **the *Copyright Act*** and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this *Act*, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).
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> 9.1 (1) (e) **Notwithstanding section 11.2, on application by a programming service,** a requirement for a person carrying on a distribution undertaking to carry, on the terms and conditions that the Commission considers appropriate, **that** programming service~~s specified by the Commission~~;
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> 10. (1) (g) **subject to section 11.2,** respecting the carriage of any foreign or other programming services by distribution undertakings;
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> (h) **subject to section 11.2,** for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings concerning the ~~carriage~~ **packaging** of programming originated by the programming undertakings;
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> **11.2. Commercial arrangements between programming undertakings and distribution undertakings shall be governed by the *Copyright Act*.**

3.1.3 Outdated Rules and Objectives for the BDU Sector

25. Section 3(1)(t) of the *Act* sets out broadcasting policy objectives for BDUs. These include giving priority to the carriage of Canadian programming services and providing efficient delivery of programming at affordable rates. In addition, Section 3(1)(t)(iii) provides that BDUs:

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8 *Ibid*., at page 29.

9 The Commission has already exempted foreign-owned traditional television services from these rules.

> (iii) should, 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;

26. Pursuant to policies introduced by the Commission in 2015, virtually all programming services that negotiate carriage arrangements with BDUs (as opposed to local channels that are mandatory carriage services at no cost) no longer have carriage rights.[10] Furthermore, for the most part, BDU retail pricing is not regulated. Online services also have no carriage or pricing regulation. Therefore, BCE submits that it would be appropriate to update this policy objective as follows:

> (iii) should, 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;

27. Bill C-10 also seeks to give the Commission various powers to regulate by order (as opposed to by imposing conditions of licence or enacting regulations) under new Section 9.1(1). The introduction of this section appears to be driven by the fact that online undertakings will not be licensed and BCE has no issue with this approach. However, Section 9.1(1)(f) provides that:

> 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
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> (f) terms and conditions of service in contracts between distribution undertakings and their subscribers;

28. This obligation does not exist in the current *Act* and subscribers are already safeguarded by consumer protection legislation. Moreover, online aggregators such as Amazon Channels will not be subject to this requirement as Bill C-10 excludes online undertakings from the definition of distribution undertakings. For these reasons, BCE submits that Section 9.1(1)(f) should be deleted in its entirety.

3.1.4 Greater Reliance on Market Forces

29. Section 5(1) of the *Act* establishes the Commission's mandate as it pertains to broadcasting:

> 5. (1) Subject to this *Act* and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this *Act*, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

30. Section 5(2) establishes the approach to regulation the Commission must follow. Bill C-10 amends this section by adding the following:

> (2) Regulatory policy. – The Canadian broadcasting system should be regulated and supervised in a flexible manner that
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> (a.1) is fair and equitable as between broadcasting undertakings providing services of a similar nature, taking into account any variation in size and any other difference between the undertakings that may be relevant in the circumstances.

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[10] Broadcasting Regulatory Policy CRTC 2015-96, *Let's Talk TV: A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market* (19 March 2015).

31. While BCE strongly supports this amendment, in order to avoid domestic services continuing to be subject to a competitive disadvantage, we recommend the addition of the following new subsection 5(2)(i):

> **(i) relies on market forces to the maximum extent feasible as the means of achieving the objectives of the broadcasting policy set out in subsection 3(1).**

32. In addition, Section 5(3) currently provides that should a conflict arise between the broadcasting policy objectives in Section 3(1) of the *Act* and the regulatory policy outlined in 5(2), the Commission should give primary consideration to the former. In the past, this may have been acceptable as the privileges granted to broadcast licensees afforded the Commission the flexibility to impose commensurate obligations to support various public policy objectives. Bill C-10 takes a different approach. The inclusion of Section 5(2)(a.1), reproduced above, makes clear that fairness and equity must be principal considerations as the Commission exercises its regulatory authority. The proposed addition of Section 5(2)(i) is designed to reinforce the Government's intent in this regard.

33. It is important to highlight that broad policy statements such as the declaration of Canadian broadcasting policy found in Section 3(1) of the *Act* are not jurisdiction conferring provisions.[11] As the Supreme Court of Canada has noted, they are designed to "elucidate, not to frustrate, legislative intent".[12] As a result, it would be inappropriate to continue to specify that Section 3(1) takes precedence over the principles outlined in Section 5(2). At best, the provisions of the two sections should be given equal weight. Consequently, BCE is proposing the following amendment to Section 5(3) of the *Act*:

> (3) The Commission shall give ~~primary~~ **equal** consideration to the objectives of the broadcasting policy set out in subsection 3(1), if any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

4.0 OTHER ADMINISTRATIVE ISSUES

4.1 Amending Licence Conditions

34. At present, Section 9(1)(c) of the *Act* prohibits the Commission from amending a licensee's conditions of licence on its own motion until five years after issuance or renewal. When read together with Section 31, which provides that Commission decisions are final and binding, Section 9(1)(c) provides licensees with a measure of operational certainty that allows them to appropriately manage their businesses.

35. Bill C-10 proposes to eliminate the seven-year term limitation on broadcast licences currently contained in Section 9(1)(a). In connection with this change, the Commission is being authorized to amend a licence on its own motion at any time. What this effectively means is that licence conditions could become a moving target and Section 31 is rendered moot. We trust this was not the Government's intention in introducing this proposed change. As a result, BCE recommends the following amendment to Section 9(1)(d):

> 9. (1) Licences, etc. – Subject to this Part, the Commission may, in furtherance of its objects
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> (d) amend a licence other than as to its term, on the application of the licensee or**, where five years have expired since the issuance or renewal of the licence,** on the Commission's own motion;

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11 *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 [2012] S.C.R. 489 at page 22.

12 *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476 at page 42.

4.1.1 Requirement for a Public Hearing

36. While the Commission is generally the master of its own procedure, there are certain circumstances where the *Act* requires it to hold a public hearing. For example, pursuant to Section 18, a public hearing is required to issue a licence. Often, the Commission needs to issue licences in connection with corporate reorganizations that raise no policy concerns. In practice, the Commission will schedule an application of this nature on a public hearing and it will be designated as a non-appearing item. Unfortunately, this extends the process by a number of months. In contrast, similar applications that do not require the issuance of a licence can be dealt with administratively in a matter of weeks. Therefore, for administrative efficiency, BCE recommends the addition of a new Section 18(5) that states:

> **18. (5) Exception. – Where the Commission deems that a matter under subsection (1) does not raise any policy concerns, it may proceed without a public hearing.**

37. BCE would like to thank the Standing Committee for the opportunity to submit these written comments.

APPENDIX – SUMMARY OF PROPOSED AMENDMENTS

1	**3(1)(t)** distribution undertakings … **(iii)** should, 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;
2	**5(2)** The Canadian broadcasting system should be regulated and supervised in a flexible manner that … **(i) Relies on market forces to the maximum extent feasible as the means of achieving the objectives of the broadcasting policy set out in subsection 3(1).**
3	5(3) The Commission shall give ~~primary~~ **equal** consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).
4	9(1)(d) Subject to this part, the Commission may, in further of its objects…amend a licence other than as to its term on the application of the licensee or, **where five years has expired since the issuance or renewal of the licence**, on the Commission's own motion.
5	9.1 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 ~~(f) terms and conditions of service in contracts between distribution undertakings and their subscribers;~~
6	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 promotion local news and information programming, including through contributions made by distribution undertakings either to a related programming undertakings or by distribution undertakings or online undertakings to an independent fund.**
7	11(3.1) The only fees that may be established with respect to a broadcasting undertaking ~~that may be carried on without a licence~~ shall be fees that relate to the recovery of the costs of the Commission's activities under this Act.
8	**18 (5) Where the Commission deems that a matter under subsection (1) does not raise any policy concerns, it may proceed without holding a public hearing.**
9	**5 (1)** Subject to this Act, ***the Copyright Act*** and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2). 9.1 (1)(e) **Notwithstanding section 11.2, on application by a programming service**, a requirement for a person carrying on a distribution undertaking to carry, on the terms and conditions that the Commission considers appropriate, **that programming service**~~s specified by the Commission~~; **10(1) (g) subject to section 11.2**, respecting the carriage of any foreign or other programming services by distribution undertakings; **(h) subject to section 11.2**, for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the ~~carriage~~ **packaging** of programming originated by the programming undertakings;

	11.1 Commercial arrangements between programming undertakings and distribution undertakings shall be governed by the *Copyright Act*.

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