
# Review of Bill C-10
# An Act to amend the Broadcasting Act and to make related and consequential Amendments to other Acts

**Brief submitted by Quebecor Media Inc., on behalf of Videotron Ltd. and TVA Group**

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## INTRODUCTION

1. On its own behalf and that of Vidéotron Ltd. ("**Vidéotron**") and the TVA Group Inc. ("**TVA**"), Québecor Média Inc. ("**Quebecor Media**") is submitting this brief as part of the hearings to review Bill C-10: *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* ("**the Bill**").[1]

2. The last significant amendments to the *Broadcasting Act* ("**the Act**") as we currently know it were made in 1991. It is clear that many aspects of the Act have been overtaken by the technological tsunami that has disrupted communications and transformed the media environment in recent years.

3. The advent of online video services in Canada, particularly the services provided by Web giants such as Google, Amazon, Facebook, Apple and Netflix, known collectively as GAFAN, has contributed to the major upheaval of the Canadian broadcasting system and created a serious imbalance between conventional and online broadcasters, which have until now been completely unregulated. In light of this, it is not surprising that Canada's main private conventional broadcasters have suffered a dramatic decline in earnings before interest and taxes – a total decrease of $336 million between 2010 and 2020.

4. For years, Quebecor has been calling for an easing of the regulatory and administrative burden on conventional broadcasting undertakings to enable them to better compete with the Web giants. However, in this Bill, Parliament is instead proposing that online broadcasting undertakings be subject to the Act. In practice, we have serious reservations about the ability of the Canadian Radio-television and Telecommunications Commission ("**the Commission**") to enforce this new regulation and restrict foreign online broadcasting undertakings.

5. Given the approach taken by Parliament, it is imperative that the Bill be amended to make Canada's broadcasting ecosystem more flexible and equitable for all stakeholders. In this brief, we will discuss Quebecor's main concerns, taking a pragmatic approach and providing concrete suggestions that would, in our view, mitigate the negative impacts of the changes proposed in this Bill. Our recommendations focus on three core areas that we believe should be the underlying theme of this Bill:

    a) restore equity among all players in Canada's broadcasting ecosystem;
    b) give the necessary regulatory flexibility to conventional broadcasting undertakings;
    c) lighten their administrative and financial burden by eliminating obligations that are not absolutely necessary to achieve the objectives of Canada's broadcasting policy.

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[1] Bill C-10: *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, first reading, November 3, 2020, 2nd session, 43rd Parliament, 69 Elizabeth II, 2020.

## SECTION 1 – EQUITY WITH MAJOR FOREIGN ONLINE BROADCASTERS

6. Quebecor believes that equity between all broadcasting undertakings, regardless of their services or technological medium used to transmit their content, must be the cornerstone of any Canadian broadcasting ecosystem.

7. Quebecor would certainly have advocated an approach aimed at deregulating traditional broadcasters as much as possible and reducing the regulatory burden to allow them to dedicate more resources to their programming and thus be able to compete more freely with the Web giants.

8. For illustration purposes, the following is a partial summary of the material obligations to which traditional broadcasting undertakings like TVA and Vidéotron are subject, along with examples of the practical application of these obligations: broadcasting quotas, obligations to spend on Canadian programming, obligations to spend on programs of national interest (dramas and documentaries), independent production programs, local production obligations, obligations to hours of local news, closed captioning and described video obligations, obligations to contribute to independent funds and the Canada Media Fund, regulated $25 basic service, obligations to carry certain programming services, a range of reports that need to be prepared (annual audit, financial, production, property, records and recordings, cultural diversity, women in production, etc.)

9. While we understand that Parliament's general intention for the Bill is to subject online broadcasting undertakings to the Act, it seems very unlikely to us that they will be subject to the same level of regulatory constraints.

10. Based on this finding, Quebecor has serious concerns about some of the proposals found in this Bill. Instead of restoring equity between conventional and online broadcasting undertakings, it seems to exacerbate the inequalities in the Canadian regulatory system. Quebecor is also concerned about the potential impact of several provisions that give the Commission wide discretionary power to establish the applicable rules. In our view, amendments should be made to the Bill to ensure that regulatory fairness is preserved through the conditions of licencing and conditions of service that will be imposed.

### Conditions of licencing and conditions of service

11. The Bill contains few details or clear guidelines as to the nature of the conditions of service that could be required of online players and how Parliament intends to preserve equity between the various broadcasting undertakings in practice. However, Quebecor has reviewed the Draft Policy Direction to the Commission (the "**Direction**") that has been circulated by the Government and that contains some indications as to the direction the Commission should take if the Bill is passed into law. Among other things, it refers to preserving equity and

maintaining flexibility and regulatory latitude. We believe that this flexible, fair, and equitable approach should be enshrined directly in the Act by Parliament, rather than in a Direction issued by the Government, which can be changed or withdrawn at any time. These fundamental principles are entirely absent from the Bill, when they should be its cornerstone.

12. We also note that, as it stands, the Direction expressly stipulates, in clause 6(g), that foreign online broadcasting undertakings cannot be treated less favourably than comparable Canadian broadcasting undertakings. We are surprised by this choice by the Government, particularly since there is a fundamental duty to protect the interests of domestic businesses, first and foremost. Quebecor recommends that the Direction be amended to ensure, rather, that Canadian broadcasting undertakings are not treated less favourably than foreign online undertakings. For example, the Direction contains obligations to fund and promote under-represented groups, which should also apply to foreign undertakings.

13. Similarly, Quebecor submits that there is also unequal treatment under the regimes imposed on conventional broadcasting undertakings and online undertakings by the Bill, which we believe should be corrected by Parliament:

**i. Licence fees**

14. From the outset, the Bill establishes an inequitable difference in the treatment of conventional and online broadcasting undertakings with respect to the payment of fees set by the Commission under Part II of the Act. The Bill stipulates that the only fees that may be imposed on an online broadcasting undertaking are those related to recovery of the Commission's operating costs (Part I fees). Online undertakings would therefore be exempt from all other fees, including those stipulated in Part II of the Act.

15. Year after year, Quebecor pays enormous sums in Part II licence fees through its Videotron and TVA Group subsidiaries. Quebecor and other conventional Canadian broadcasting undertakings would therefore find themselves at a distinct disadvantage against major foreign players such as Netflix and Disney, which despite their far greater financial capacity would not be required to pay equivalent amounts. Given that Canada's conventional broadcasting undertakings have been further weakened in recent years, this difference in treatment cannot be justified and would further exacerbate the inequity between broadcasting undertakings, without any justification.

16. Therefore, to ensure a fair regulatory landscape, Quebecor believes all fees that are not related to recovery of the Commission's operating costs should be abolished. In our view, conventional broadcasting undertakings should not have to bear the burden of paying Part II fees alone. There are already a number of

other mechanisms in the Act for compelling broadcasting undertakings to contribute to Canada's broadcasting system.

17. Furthermore, the loss of revenue resulting from the elimination of Part II licence fees, which amounted to $117 million in 2019, would be offset, and indeed outweighed, by the introduction of requirements for foreign online undertakings to contribute to Canadian content. The Government of Canada has itself estimated that the Canadian broadcasting ecosystem could receive an additional $830 million per year between now and 2023 if the Commission required online undertakings to contribute to Canadian content at levels similar to those required of conventional broadcasting undertakings.[2]

18. Quebecor proposes that all broadcasting undertakings, regardless of the nature of their services, be required to pay only the Commission's operating costs. Specifically, here are the changes Quebecor proposes:

***Regulations: Fees***

*11(1) The Commission may make regulations*

*(a) with the approval of the Treasury Board, establishing schedules of fees to be paid by licensees of any class that relate to the recovery of the costs of the Commission's activities under this Act;*

*Exception — non-licensees*

*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.*

**ii. Equitable application of regulatory obligations**

19. It is well known that most of the Web giants have highly complex international corporate structures and sophisticated tax avoidance schemes that allow them to move revenue streams to jurisdictions with more advantageous taxation.

20. Quebecor therefore has very serious concerns that the Web giants could use tax schemes to avoid or at least considerably reduce the scope of their regulatory obligations by not fully reporting all broadcasting revenues generated in Canada, as conventional broadcasting undertakings do.

21. Parliament should ensure that the Commission has access to all tax documents, including form RC4649 for country-by-country reporting, for Web giants with broadcasting revenues above the minimum thresholds, so that it can capture the

[2] Frequently asked questions, Government of Canada, Modernizing the Broadcasting Act for the Digital Age, accessed January 20, 2021. https://www.canada.ca/en/canadian-heritage/services/modernization-broadcasting-act/faq.html#a6

total revenues generated by foreign Web giants and base its regulatory requirements on actual eligible revenues. The accounting standards used to assess the revenues of online broadcasting undertakings should be the same as those used for conventional broadcasting undertakings.

22. Furthermore, although Parliament has mentioned that this issue will be the subject of a separate legislative amendment, Quebecor believes that tax linkage must be established as quickly as possible so that federal sales tax and income tax can be levied on all Canadian subscriptions to online video services, regardless of whether the companies offering these services are domestic or foreign, physical or virtual.

## SECTION 2 – CBC-SRC'S MANDATE

23. First of all, Quebecor finds it difficult to understand why Parliament did not take advantage of the current review of the Act to thoroughly revise the mandate of the Canadian Broadcasting Corporation and the Société Radio-Canada ("**CBC-SRC**"), since it is a cornerstone of the Act and a key player in Canada's broadcasting system. We further submit that the Yale Report made several recommendations to the effect that CBC-SRC's mandate should be clarified and updated in a timely manner. Again, it is disappointing that none of these recommendations concerning CBC-SRC's mandate has been considered in this process.

24. At the public hearings on the renewal of CBC-SRC's licences,[3] Catherine Tait, President and CEO of CBC-SRC, stated:

    *"Some stakeholders wanted to use these Hearings to challenge the public broadcaster's mandate and funding model. As I pointed out in our Opening Remarks, <u>these are matters for Parliament and related to the Broadcasting Act</u>, which is currently under review."*

25. Thus, CBC-SRC itself maintains it is up to Parliament to intervene and take advantage of the review of the Act to tighten the public broadcaster's mandate. We therefore believe it is important to note again the components of CBC-SRC's mandate that should be reviewed and updated, so that CBC-SRC complements the offerings of private broadcasting undertakings instead of competing with them and is required to take into account the impact that the introduction of a new service or new activity may have on competition, and in particular on private broadcasters, as the BBC is required to do in Britain. Our recommendations are listed in the following section.

[3] Broadcasting Notice of Consultation CRTC 2019-379 – Renewal of licences for Société Radio-Canada's English- and French-language services.

26. It should be noted that the vast majority of intervenors who appeared at the public hearings on the renewal of CBC-SRC's licences concurred with the observations made by Quebecor in this brief.

27. Quebecor recommends that the following provisions with regard to CBC-SRC's mandate be enshrined in the Act:

    a) Require that CBC-SRC complement private broadcasting undertakings, including by offering programming that is distinctive in the following respects:

        - **Focus on certain types of programming,** such as culture, education, youth, public affairs, science, etc.;
        - **Scope and diversity of audiences served,** specifically from geographic, linguistic, ethnic, socioeconomic, demographic and other points of view;
        - **Level of innovation and experimentation in programming,** taking advantage of the fact that the public broadcaster receives parliamentary appropriations that should enable it to reduce its dependence on ratings;
        - **Explicit requirement to broadcast national, regional and local news,** and to reflect Canadian perspectives on international news;
        - **Obligation to reflect local, regional and national communities** to local, regional and national audiences, to reflect Indigenous peoples and to promote **Indigenous cultures and languages**;

    b) Include an obligation for the public broadcaster to take into account the impact of its actions on the other members of Canada's broadcasting ecosystem, particularly private broadcasting undertakings. In this regard, we believe that the legislator should draw inspiration from the British model. There is a strict obligation enshrined in the BBC's Charter to analyze any change in its service offerings through the lens of the potential impacts on the competition. Ofcom, the British broadcasting regulator, has also adopted a comprehensive analytic grid to ensure, at an early stage in the process, that any change or addition to the BBC's service offerings is not detrimental to private broadcasting undertakings;

    c) Parliament should provide the Commission with tools to support accountability and give it increased power to more closely monitor the public broadcaster's compliance with its regulatory obligations;

    d) Prohibit all advertising on all CBC-SRC platforms; and

    e) Lastly, we believe CBC-SRC's digital platforms should be limited to providing Canadians with complementary ways to watch the public broadcaster's content. In no event should they be a substitute for its

traditional platforms and access to them should be free at all times, given that CBC-SRC already receives significant public funding. Furthermore, we consider it imperative that Parliament ensure the public broadcaster cannot evade its regulatory obligations by transferring its programming to its digital platforms.

28. The following are the specific amendments that Quebecor wants to see included in the Bill:

| **Current *Broadcasting Act* (or as amended by the Bill)** | **Amendments proposed by Quebecor** |
|---|---|
| **Amendment to subparagraph 3(1)(m)(ii)**<br><br>**3(1)(m) the programming provided by the Corporation should**<br><br>(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,<br><br>Add new subparagraphs 3(1)(m)(ix), (x), (xi), and (xii). | **3(1)(m) the programming provided by the Corporation should**<br><br>(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,<br><br>(ix) carry local, regional, national and international news that reflect Canadian perspectives;<br><br>(x) reflect Indigenous peoples and promote their cultures and languages;<br><br>(xi) include creative risks, be distinctive and complement the programming offered by private broadcasting undertakings;<br><br>(xii) be offered freely to all Canadians on all platforms without advertising. |
| Add a new paragraph 9(1)(g) to the Act | 9(1) Subject to this Part, the Commission may, in furtherance of its objects,<br><br>(g) in the case of licences granted to the Corporation, set sufficient minimum conditions to reflect its status as a public broadcaster and ensure that the Corporation respects its mandate and provides the programming set out in paragraphs 3(1)(l) and (m); |
| Add a new paragraph 9.1(1)(k) to the Act | 9.1(1) The Commission can, in the fulfillment of its mission, make orders setting conditions for the operation of broadcasting undertakings that it deems necessary to the implementation of broadcasting policy for Canada, including the following conditions:<br><br>(k) analyze the public interest test carried out by the Corporation under subsection 46(6) to determine whether the Corporation may launch a new service or engage in a new activity based on the criteria set out by the Commission by regulation under paragraph 10(1)(k). |
| Add a new paragraph 10(1)(l) to the Act | 10 (1) The Commission may, in furtherance of its objects, make regulations<br><br>(l) regarding the relevant criteria used to determine whether the Corporation meets the public interest test set forth under subsection 46(6); |
| Add a new subsection 46(6) to the Act | **46(6) Public interest test**<br>(6) The corporation must, before launching any new service or engaging in any new activity, ensure that the proposed new service or activity fulfills its mission as set out under subsection 46(1) and passes the public interest test by showing in particular that:<br>(a) the proposed new service or activity helps the Corporation to fulfill its mission and to implement broadcasting policy for Canada;<br>(b) the Corporation has taken action to mitigate the harmful impact of the new service or activity on healthy competition;<br>(c) if needed, the harmful impact on healthy competition resulting from the proposed new service or activity is justified in the greater public interest; |

| | |
|---|---|
| | The Corporation must submit the completed public interest test to the Commission, which will analyze it in accordance with paragraph 9(1)(i). |
| Add a new subsection 71(3) to the Act | 71(3) The annual report of the Corporation shall include<br><br>(f) detailed information showing that the Corporation acts in compliance with its mandate and the objectives of broadcasting policy for Canada. |

## SECTION 3 – ABSENCE OF REGULATORY FLEXIBILITY

### a) Removal of regulatory flexibility

29. In the era where the broadcasting landscape is in constant flux and where broadcasting undertakings are boldly competing by constantly pushing the boundaries of technology to meet the expectations of their subscribers, it is clear that Parliament must drop its rigid and restrictive framework of standards and move towards more flexible regulations that give broadcasting undertakings the leeway to move through the broadcasting ecosystem according to their own business model.

30. With this in mind, Quebecor was surprised to find that the Bill did not contain any additional flexibility for the traditional broadcasting undertakings and did not provide for any significant changes to grant them more flexibility in the application of existing rules.

31. What is more concerning is that Quebecor found that Parliament has proposed withdrawing important provisions that rightly give the Commission the flexibility to apply certain regulatory requirements to the benefit of the traditional broadcasting undertakings. We thus noted that the Bill proposes to amend paragraphs 3(1)(k), 3(1)(o), and 3(1)(p) in the following manner:

| Current provision | Provision as amended in the Bill |
|---|---|
| *(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;* | *k) a range of broadcasting services in English and in French shall be extended to all Canadians* |
| *(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;* | *(o) programming that reflects the Indigenous cultures of Canada and programming that is in Indigenous languages should be provided within the Canadian broadcasting system, including by programming undertakings that are carried on by Indigenous persons;* |
| *(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;* | *The system should provide programming that is accessible without barriers to persons with disabilities;* |

32. Quebecor believes that the removal of the expression "*as resources become available*" in the above three provisions is a significant step back for broadcasting undertakings and takes some regulatory flexibility away from them, while the Bill should instead seek to give them more.

33. Although Quebecor supports the achievement of the inherent objectives supported by these provisions, their accomplishment must be tempered with the commercial reality with which broadcasting undertakings must deal, as well as the development of technologies and the financial context in which they exist. The removal of the expression "*as resources become available*" in fact creates an obligation for broadcasting undertakings to achieve results and unduly penalizes them at a time when the broadcasting industry is going through major upheavals that are exacerbated by the current pandemic situation.

34. Quebecor recommends amending the new paragraph 3(1)(a) proposed in the Bill in order to provide regulatory flexibility to broadcasting undertakings by adding the following:

| Provision added by the Bill | Quebecor recommendation |
|---|---|
| *3(1)(a) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;* | *each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking as resources become available;* |

## b) Unilateral amendment of licence conditions

35. Quebecor is also concerned by the addition of new provisions 9(1)(c) and (d) to replace the previous paragraph 9(1)(c):

| Current provision | Provision amended by the Bill |
|---|---|
| 9(1) Subject to this Part, the Commission may, in furtherance of its objects,<br><br>(c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion; | 9(1) Subject to this Part, the Commission may, in furtherance of its objects,<br><br>(c) amend a licence regarding its validity on application of the licensee;<br><br>(d) amend any condition of a licence, except for its validity, either on application of the licensee or on the Commission's own motion; |

36. These new powers assigned to the Commission allow it to unilaterally and at any time amend any condition of a licence held by a traditional broadcasting undertaking.

37. Under this new system, the traditional broadcasting undertakings would be carrying on their activities with a Sword of Damocles constantly hanging over their heads, since the Commission would be likely to change the conditions of

their licences substantially and at any time and increase their regulatory burden in a totally unexpected and unpredictable way. Quebecor, however, believes that broadcasting undertakings need predictable regulation in order to carry on their operations and establish longer-term strategic plans.

38. Quebecor recommends amending paragraph 9(1)(d) of the Act as amended by the Bill so that the licensing conditions imposed on a traditional broadcasting undertaking remain set and predictable for a minimum of ***four years***, instead of five years, in order to allow them to make financial forecasts.

## SECTION 4 – ADMINISTRATIVE AND FINANCIAL BURDEN

39. The Canadian broadcasting system is dealing with unprecedented upheaval, forcing broadcasting undertakings to constantly review how they carry on business and to develop new business strategies to remain relevant and ensure their financial sustainability. However, it cannot be denied that a strict and inflexible regulatory framework only harms the development and competitiveness of Canadian broadcasting undertakings.

40. In revisiting the Act for the first time in more than 30 years, Quebecor was hopeful that Parliament would take advantage of this opportunity to reduce and clean up the regulatory burden for traditional broadcasting undertakings by relying on the fundamental principle of regulating only where necessary and deregulating where market forces are working effectively.

41. Upon reading the Bill, it must be noted that instead, the opposite is occurring: Parliament has introduced many additional provisions that will impose new obligations on broadcasting undertakings and further increase the administrative and regulatory burden that they face without gaining any tangible benefits for the Canadian broadcasting system. We will in turn comment on the new provisions that to us seem the most problematic.

### a) Administrative monetary penalties

42. First, we noted that Parliament is proposing to create a system of administrative monetary penalties that appears to be in line with the system that has already been put in place under the *Telecommunications Act*. In fact, the Bill is introducing new sections 34.4 to 34.995 that provide for penalties that can reach up to $10 million for an initial violation and $15 million for repeat offences.

43. We believe that these potential monetary penalties are totally disproportionate and do not consider the flagrant disparities between the broadcasting industry's current financial situation and that of the telecommunications industry. The pandemic that we are currently dealing with is only further exacerbating the precarious economic and financial situation of current traditional broadcasters,

while in general, telecommunications undertakings have been less affected by the crisis that is gripping the whole world.

44. In particular, broadcasting and telecommunications undertakings operate in fundamentally different ways due to the fact that all traditional broadcasting undertakings need to obtain a broadcasting licence from the Commission in order to carry on broadcasting activities, which is not the case for telecommunications undertakings. Thus, the Commission already has an extremely powerful penalty and deterrent: the possibility of revoking or not fully renewing the licence of a station or programming service in the event that they refuse to comply with regulatory obligations.

45. Quebecor recommends that the system of administrative monetary penalties only apply to foreign online broadcasting undertakings. As mentioned, the Commission already has significant powers to penalize Canadian broadcasting undertakings that operate under the licence model. The system of administrative monetary penalties, however, could prove useful in that it would be a disincentive for foreign undertakings.

46. The amount of the penalties should also be adjusted in order to account for the revenue of each undertaking and its ability to pay.

**b) Mandatory financial contributions to public interest groups**

47. Similarly, through the new subsection 11.1(1) in the Bill, Parliament is introducing an obligation for broadcasting undertakings to contribute to the funding of public interest groups. Like the system of penalties proposed by the Bill, this new proposal once again seems to be copied from the *Telecommunications Act* and Quebecor is reiterating its concern that the financial situation of broadcasting undertakings is drastically different from that of telecommunications undertakings.

48. In addition, Quebecor believes that the regulatory process implemented by the Commission already favours significant participation by various public interest groups and organizations. For example, during Commission hearing 2019-379 regarding the renewal of the CBC-SRC's licence, more than 20,000 submissions were sent in total to give proposals,[4] thus illustrating that the current system works and clearly does not suffer from a lack of funding.

49. In summary, we find that Parliament is attacking a false problem, which will translate into an increased financial and administrative burden for broadcasting undertakings at a time when they are already under major financial pressure.

[4] See paragraph 9 of the transcript of hearing CRTC 2019-379: https://crtc.gc.ca/eng/transcripts/2021/tb01_11.htm.

50. For the reasons cited above, Quebecor recommends keeping the current system and not including any obligations for funding public interest groups.

51. Alternatively, if Parliament feels it necessary to fund these interest groups, it should ensure that the eligibility criteria are clearly set out in order to receive this funding for each instance and ensure that these groups genuinely and significantly contribute to the public interest by applying the criteria set out in sections 60 to 68 of the Commission's Rules of Practice and Procedure.[5] Before receiving funding, each interest group should demonstrate that this case has sufficient interest for the members that it represents, that it can help the Commission to better understand the issue being examined, and that it does not already have enough financial resources to support its involvement in the matter.

52. In addition, the financial contributions of each broadcasting undertaking should be adjusted equitably as a prorate of their respective revenues regardless of whether it is a traditional or online broadcasting undertaking.

### c) Reviews of Commission decisions

53. Quebecor is particularly concerned about the proposal in the Bill that would extend the time limit for review of a Commission decision by the Governor in Council from 90 days to 180 days. Quebecor believes that the current timeframes are already very long and may unduly delay the review of a decision that a party has deemed without merit. It must be understood that at the same time, there is an urgency for an aggrieved party to act within its rights and it is essential for the Governor in Council to rule on review applications as quickly as possible. Further extending the deadline for a decision on a review application would render this tool totally ineffective and would harm the proper functioning of the Commission's rules of procedure.

54. Of all the pressing matters that deserved to be reviewed as part of this revision of the Act, Quebecor has difficulty understanding what the final outcome would be, as pursued by Parliament, by prioritizing this issue, all the more since little explanation has been given by Parliament to justify the amendment of the review time limit. Parliament should keep the time limit for review of a Commission decision at 90 days to ensure that urgent cases are handled promptly.

55. Section 28(1) should also be amended to ensure that review applications can be submitted by a party in the event of the sale or transfer of shares in a broadcasting undertaking that includes a broadcasting licence and not only when there is a sale and transfer of assets:

*28(1) Where the Commission makes a decision to issue, amend, renew <u>or in any way transfer a licence</u>, the Governor in Council may, within <u>ninety days</u> after the*

[5] Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (SOR/2010-277), sections 60 to 68.

*date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).*

**d) Dispute resolution procedure**

56. Quebecor believes that Parliament should take advantage of the review of the Act to re-examine the dispute resolution mechanism provided in the various regulations stemming from paragraph 10(1)(h) of the Act.

57. In fact, the current system rests on the rule of the status quo, which ensures that disputes between a programming service and a cable operator, the programming service remains obliged at all times to continue providing its service at the same rates and according to the same terms and conditions that applied to the parties before the dispute.[6] Conversely, a cable operator may decided to stop distributing a programming service at the expiry of a contract and according to the terms and conditions provided for.

58. Although this rule of the status quo can prevent interruptions of services distributed to Canadians, it creates an imbalance in the power relationship between programming services and cable operators. We find that eliminating this rule is necessary for negotiating power to be fairly distributed and to allow the parties to stop providing a programming service if the terms and conditions proposed in the agreement do not reflect the fair market value of said service.

59. Quebecor recommends eliminating the status quo principle and removing subsection 15.01(1) of the *Broadcasting Distribution Regulations* and subsection 15(1) of the *Discretionary Services Regulations*.

**e) Conditional, provisional, and *ex parte* decisions**

60. Because the broadcasting industry is constantly changing, it is crucial that the Commission have the rules of procedure that give it the agility to act effectively when necessary. With this in mind, Quebecor believes that Parliament should follow recommendation 75 of the Yale Report to amend the Act by replicating the model from the *Telecommunications Act* that allows the Commission to make conditional and provisional decisions, and to make *ex parte* decisions when the circumstances of the case warrant it.

61. *Ex parte* applications allow the Commission to make decisions without public notices and solely on the basis of briefs submitted by the applicant when certain

[6] Section 15.01(1) of the *Broadcasting Distribution Regulations* (SOR/97-555) and section 15(1) of the *Discretionary Services Regulations* (SOR/2017-159).

criteria based on public interest are met.[7] We believe that this would be a way to reduce the administrative burden for many cases requiring decision and accelerate the application process for the parties.

62. Quebecor thus recommends replicating and incorporating the model in the *Telecommunications Act* regarding rules of procedure and subsections 61(1) to 61(3) in the Act regarding provisional and *ex parte* decisions.

## SECTION 5 – REFLECTING RACIALIZED COMMUNITIES AND DIVERSITY

63. We find that the Bill enshrines new guiding principles that programming and job opportunities provided by broadcasting undertakings must reflect the interests of all Canadians, including those from racialized or diverse communities due to their ethnocultural background, socioeconomic status, abilities and disabilities, sexual orientation, gender expression or identity, and age. Quebecor has little information at this stage regarding the legislative process to determine what the practical impact may be or the regulatory requirements that may result from this new framework of principles.

64. However, we would like to point out that Quebecor already makes it a point of pride to adopt, implement, and update cultural diversity policies and practices both in its programming and in its workforce in order to properly reflect and serve the Canadian public. In addition, Quebecor is constantly taking new action to be more inclusive and welcoming to members of ethnocultural and Indigenous communities and Canadians with disabilities. In this regard, Quebecor favours and promotes cultural diversity at all levels, in all sectors of the undertaking, and at all stages of the job, recruitment and hiring process. In addition, Quebecor tries to be present at events or places that allow it to be more visible, namely among ethnocultural and Indigenous communities and, at the same time, to be proactive in the recruitment process. This visibility has allowed and continues to allow Quebecor to develop and consolidate close ties to cultural communities. Lastly, since 2003, Quebecor has prepared a report that it submits every year to the Commission detailing its efforts regarding cultural diversity.

65. If Parliament's intention is in fact to grant the Commission the power to turn this new principle regarding representation of racialized groups and people from diverse backgrounds into new regulatory obligations, Quebecor believes that an incentivizing approach, instead of a punitive one, should be advocated to encourage broadcasting undertakings to comply with new regulatory measures that are being implemented.

66. In addition, such new obligations should mainly fall to the CBC-SRC. In fact, due to the nature of its mandate as a public broadcaster, it is part of its mission to

[7] The criteria are set out in Telecom Decision CRTC 94-19 (https://crtc.gc.ca/eng/archive/1994/dt94-19.HTM): *These would include traditional public interest concerns, such as the procedural rights to notice of*

promote Canadian diversity. Therefore, we reiterate that the mandate of the CBC-SRC should be reviewed and set out in the Bill and that this new mandate should encompass the new guiding principles proposed by Parliament regarding the representation of racialized groups and people from diverse backgrounds.

## CONCLUSION

67. Ever since the publication of the Bill, Quebecor has strived to contribute to the thought and public debate about what form the new Act and its content should take, due to Quebecor's central role in the landscape of Quebec broadcasting and culture. The comments and recommendations made by Quebecor in this brief are therefore part of this desire to contribute to Parliament's considerations in order to adopt a more modern Act that is flexible and fair to all broadcasting undertakings.

68. Amended most recently in 1991, it is undeniable that the Act is now outmoded in several regards and it is essential that Parliament act to restore balance between all stakeholders in the broadcasting ecosystem and allow them additional flexibility. Unfortunately, in its current state, the Bill does not fulfill these objectives.

69. However, the inclusion of foreign online broadcasting undertakings and their potential contribution to the Canadian broadcasting ecosystem should allow for a reduced regulatory burden for traditional Canadian broadcasting undertakings, along with greater flexibility. It is therefore essential that Parliament incorporate the amendments proposed by Quebecor so that traditional Canadian broadcasting undertakings can continue to fulfill their indispensable role as a medium for our culture and heritage.

70. Indeed, Canadian production is a key aspect in our broadcasting ecosystem and we must consider the positions taken up by Canadian television producers regarding the Bill. However, we must not lose sight of the fact that the Act was first and foremost created to govern broadcasting undertakings. It is therefore crucial for Parliament to first consider the suggestions provided by these undertakings when adopting the Bill. Ignoring their concerns regarding the Bill could lead to the demise of many of them and, ultimately, greatly decrease the number of television productions and amount of content from here.

71. Lastly, Quebecor finds that it is crucial that Parliament amend the Bill to incorporate a restriction of CBC-SRC's mandate. For far too long now, CBC-SRC has been competing directly with private broadcasting undertakings for listeners and viewers while benefiting from massive funding from the public treasury, which gives it an intrinsically unfair advantage.