

Ottawa Office
301 Laurier Avenue West
Ottawa, Ontario K1P 6M6



Bureau d'Ottawa
301, av. Laurier Ouest
Ottawa (Ontario) K1P 6M6

JERRY DIAS
*National President
Président national*

MICHEL OUMET
*Quebec Director
Directeur québécois*

PETER KENNEDY
*National Secretary-Treasurer
Secrétaire-trésorier national*

5 November 2013

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

Re: *Call for comments on proposed changes to the measurement of local programming requirements for conventional television stations, Broadcasting Notice of Consultation CRTC 2013-529 (Ottawa, 1 October 2013)*

1. On behalf of Unifor, the new national union established on August 30, 2013, I am pleased to submit the attached comments with respect to Broadcasting Notice of Consultation 2013-529.
2. Created through the merger of the Communications, Energy and Paperworkers Union of Canada and the Canadian Autoworkers Union, Unifor has more than 300,000 members across Canada, in 20 industrial sectors.
3. Unifor looks forward to the CRTC's determinations in this matter.

Sincerely,

Howard Law
Director, Media Sector
howard.law@unifor.org
416-456-1875 (cell)
905-678-7868 (fax)



Averaging hours of local programming:

Oh, what a tangled web ...

Sir Walter Scott (*Marmion*, 1808)

Call for comments on proposed changes to the measurement of local programming requirements for conventional television stations,
Broadcasting Notice of Consultation CRTC 2013-529
(Ottawa, 1 October 2013)

Comments of Unifor

5 November 2013

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I Executive Summary

Introduction

- 1 Created by the August 2013 merger of the Communications, Energy and Paperworkers Union of Canada (CEP) and the Canadian Autoworkers Union, Unifor represents more than 300,000 people in 20 industrial sectors spanning the Canadian economy.
- 2 Thousands of Unifor's members work in Canada's broadcasting system, and at television stations. Unifor and its members support the strength and growth of the system and its programming and distribution services.
- 3 In 1991 Parliament required that the broadcasting system's programming be drawn from local sources, as well as from regional, national and international sources. Television and radio stations provide local communities with information for, and entertainment from, their communities.
- 4 Neither Parliament nor the public is able to assess the degree to which local news is being provided by Canada's broadcasting system, due to the lack of data published about local news and non-news programming in radio and TV.

Bell's proposal

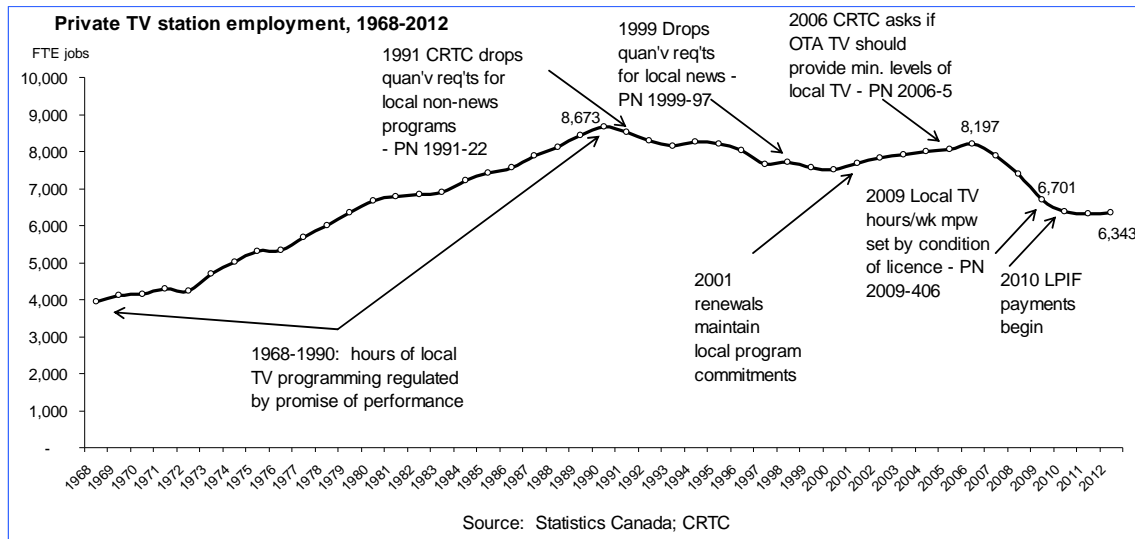
- 5 Bell is one of Canada's largest communications companies, providing wireless and wireless telephone, and internet service, as well as radio and television programming. It currently controls 30 English-language conventional television stations operating across Canada.
- 6 In 2011, when the CRTC renewed the licences for Bell's conventional television stations and for those controlled by Shaw and Rogers, it required the stations to broadcast no less than 14 hours of local programming in large, metropolitan markets, and no less than 7 hours of local programming in smaller markets, each week.
- 7 The conventional TV licences held by Bell¹ and Shaw expire in August 2016; Rogers' licences expire in August 2014.

¹ Two station licences expire in August 2017 – these were formerly owned by Astral (see *CJDC-TV Dawson Creek and its transmitters CJDC-TV-1 Hudson Hope and CJDC-TV-2 Bullhead Mountain, and CFTK-TV Terrace and its transmitter CFTK-TV-1 Prince Rupert – Licence renewals*, Broadcasting Decision CRTC 2012-244 (Ottawa, 26 April 2012)).

- 8 In February 2013 Bell submitted a 2-page application asking the CRTC to change its policy for standard conditions of licence to permit it to measure its compliance with this condition of licence by averaging the weekly local programming requirements “quarterly throughout the broadcast year”.
- 9 The CRTC denied a similar request by Bell in 2011 when it applied to renew the CTV licences, in part because of performance requirements of the soon-to-be-terminated LPIF, but also because broadcasters can plan for special holiday programming, and because weekly local programming matters to Canadian communities.
- 10 The CRTC has also denied similar requests from other broadcasters. In 2012 it denied the request by V Interactions to average its local programming requirements over the entire broadcast year. In 2013 it denied a local-averaging request from the CBC (although it permitted local-averaging for CBC stations operate as minority-language stations – that is, French-language stations in English-language communities, or English-language stations in French-language communities – because of a 20% decrease in the CBC’s forecast parliamentary appropriations in 2019 relative to its actual parliamentary appropriations in 2002).

Broadcast regulation and employment

- 11 Parliament requires the CRTC to regulate the broadcasting system “with a view to implementing” its policy for Canadian broadcasting, which includes a requirement that the broadcasting system to serve Canadian’s needs for employment opportunities.
- 12 Since 1991 the number of employment opportunities available from all private broadcasting undertakings – radio, television, cable, satellite, pay and specialty services – has increased 36%. Altogether, private and public broadcasters employed 57,507 people in 2012, and they received salaries totalling \$4.6 billion.
- 13 Employment opportunities in conventional private television have been steadily decreasing for twenty years. Between 1991 and 2012, private TV stations eliminated 26% or 2,181 of the jobs at those stations.
- 14 A strong link exists between the CRTC’s policies for local television programming, and employment levels in that sector. Policies that reduce local programming requirements also reduce local television employment:



- 15 Since 2006 private television broadcasters' decisions to reduce local staffing by 1,854 positions have deprived the communities they serve not just of local news and non-news programming, but of almost \$665 million worth of economic activity: this figure represents the salaries that would have been earned but for broadcasters' decisions to eliminate 1,854 positions.
- 16 While many of the 1,854 people who lost jobs in the private over-the-air television sector may subsequently have found work elsewhere, they did not find it in other Canadian television programming services: from 2006 to 2012 Canadian pay and television services generated just 877 new employment opportunities.
- 17 The Local Programming Improvement Fund created by the CRTC in 2008 temporarily stemmed the flow of employment opportunities out of the private conventional television sector in 2010, after payments to qualifying broadcasters (including Bell, Rogers and Shaw) began. The LPIF will terminate in August 2014, however.

Unifor's submissions

- 18 Contrary to the requirement in the CRTC's *Rules of Practice and Procedure* for "relevant facts", Bell's proposal contained no facts to support its application except the statements that the CRTC denied its first local-averaging request in 2011, and the LPIF will terminate in 2014.
- 19 Bell made its application based on five grounds:

- That until 2009 conventional TV broadcasters used local-averaging for local programming
- That in 2011 Bell's stations substantially exceeded their local programming requirements
- That Bell's stations exceeded their local programming requirements for the majority of the 2011/12 broadcast year, and are 'on track' to exceed their 2012/13 requirements
- That broadcasters no longer need measure local programming weekly because the LPIF will be ending in August 2014, and
- That it would be absurd for Bell to eliminate local programming for weeks at a time, and make up for the lost local programming weeks later through higher local programming levels, because this move would "be absurd from a competitive and advertising standpoint" and would "deprive and alienate our loyal viewers".

20 Bell's proposal should not be approved because it is seriously deficient in nine ways:

- 1 Bell is gaming the *Broadcasting Act's* appeal process by asking the CRTC to amend its policies instead of Bell's conditions of licence. Under the *Act* a CRTC decision to approve Bell's application would be subject to appeal; on their face, policy determinations are not "Decisions". The CRTC should not permit broadcasters to use its procedures in ways that limit the appellate review permitted by Parliament.
- 2 The CRTC usually grants broadcasters' requests for temporary suspensions of their conditions of licence, provided the suspension serves or does not harm audience interests. Bell has not explained why this route no longer works for Canada's major English-language private broadcasters. The CRTC should not grant Bell's application unless it clearly demonstrated that the CRTC's current approach to temporary suspensions of conditions of licence do not work.
- 3 Contrary to Bell's assertion, a review of cases from the mid-1980s on shows that the CRTC has evaluated weekly programming requirements by the week, and sometimes by the day. Changing the CRTC's practice in measuring local programming performance would therefore be a

significant departure from its past practices, and should not take place without a clear exposition of the costs and benefits of the change..

- 4 Bell has not provided any evidence about how much local programming is now being provided by its stations, or by any broadcaster affected by its application. The absence of this information makes it impossible for Canadians or the CRTC to assess the impact of granting Bell's application.
- 5 Bell has not made any commitments to maintain current levels of local programming. While Bell says that it would be 'absurd' for it to reduce local programming, the CRTC's analysis of local programming at the 2012 LPIF hearing showed that Bell reduced original and total local programming after the LPIF was introduced. Describing an action as 'absurd' does not prevent broadcasters from taking that action – only conditions of licence have the legal force to affect broadcasters' performance. The CRTC should not change its approach to measuring local programming on the basis of unenforceable statements.
- 6 Bell has not explained how its proposal to periodically reduce local programming to communities is consistent with its recent commitments to stabilize and maintain its current local television stations. Accepting a proposal that enables broadcasters to periodically reduce or eliminate local programming for weeks at a time, after hearing broadcasters' commitments to maintain or stabilize local station operations, would bring the CRTC's administration of its mandate into disrepute.
- 7 Bell has not demonstrated any economic need to substantiate its plea for regulatory 'flexibility'. The CRTC should not grant broadcasters' applications for policy amendments without clear and unequivocal evidence of serious financial need.
- 8 Bell has not explained how local communities will benefit from either random or scheduled periods of reduced local television programming. A review of Bell's program logs indicates that its stations produce very little non-news local programming – meaning that the main effect of Bell's proposal would be to reduce the level of regularly scheduled local news available to communities. The CRTC should not approve applications whose effect will be to reduce the news on which people rely for information about their communities, as this does not serve their interests.

- 9 Finally, Bell has not provided any evidence about the impact of this proposal on Parliament's objectives for employment opportunities in private conventional television. Thousands of jobs have been lost in this sector over the past decade. Bell's proposal will not reverse this trend, and is likely lead to more job losses: if 2012 employment levels at major English-language television stations decrease by only 10% (416 FTE jobs), local economies could shrink in the short term by \$36 million – the salaries represented by these job losses.

Conclusions

- 21 Unifor respectfully submits that the privilege granted to private broadcasters to use the public airwaves entails a responsibility to the communities they are licensed to serve.
- 22 Bell could have but chose not to provide facts to demonstrate how its proposal will benefit local communities.
- 23 Bell's failure to support its application with any relevant evidence means that the CRTC should deny it – unless it makes its decision based on evidence provided by other broadcasters (or Bell itself) in response to Broadcasting Notice of Consultation 2013-529. In our view, making a decision based on information unavailable at the time the Notice of Consultation was issued would be unfair, because the parties who participated in this process had no opportunity to review and comment on that evidence

Recommendations

- 24 Unifor recommends that the CRTC
- 1 Deny Bell's application due to its failure to provide the evidence required for this type of application.
 - 2 Use the opportunity presented by Broadcasting Notice of Consultation 2013-529 to reiterate the CRTC's position, as set out in Broadcasting Decision CRTC 2013-476, that the "local programming" referred to in Broadcasting Regulatory Policy 2010-442 consists of original local programming.
 - 3 Introduce a reporting requirement to collect the information necessary to evaluate Bell's proposal properly, by having local television stations report

every 12 weeks about the level of original local programming they offered in the preceding 12 weeks, or alternatively by requiring broadcasters to report in their licence renewal applications the number of original and repeat local news and non-news program hours they broadcast in each week of their licence term, and

- 4 Review local programming during the television consultation to develop a local programming policy that will raise the level of informative, entertaining and enlightening original local content available in Canada, that will remain in force for at least the next decade and that will not only serve Canadians' interests, but strengthen Canada's economy by creating new employment.

II Introduction: Unifor's interest in this proceeding

1 Unifor, Canada's largest industrial union, is pleased to submit the following comments concerning the way in which the Commission measures the level of local programming provided to local communities by over-the-air English-language television stations, described in Broadcasting Notice of Consultation 2013-486.

2 Created through the August 2013 merger of the Communications, Energy and Paperworkers Union of Canada (CEP) and the Canadian Autoworkers Union, Unifor has more than 300,000 members in 20 industrial sectors that span Canada's economy and its regions.

A Stronger Canadian broadcasting system benefits all

3 Unifor represents thousands of people whose work enables the creation and distribution of Canadian programming content produced in and for Canada's communities, its regions, and the country as a whole. Our members work for radio and television stations serving local communities, as well as national discretionary pay and specialty services, and distribution services that include cable, satellite and wireless telephony.

4 We support a strong and growing broadcasting system in Canada because of the importance of broadcast content to our culture and democracy, and this sector's capacity to generate employment opportunities for Canadians now, and going forward.

B Serving Canadian communities – local television in the 21st century

5 The local programming services provided by conventional television and radio stations play a vital role in Canada's cultural, political, social, and economic fabric. They can provide communities not only with informative, entertaining and enlightening programming from and about their communities,² but also employment opportunities.

3(1) It is hereby declared as the broadcasting policy for Canada that ...
(d) the Canadian broadcasting system should
(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada
Broadcasting Act, 1991, c.11, s. 1

² In 1957 the Royal Commission on National Development in the Arts, Letters and Sciences introduced the idea that the role of electronic communications media is to inform, enlighten and entertain audiences:

Radio broadcasting is akin to a monopoly. Any man who has the impulse and the means may produce a book, may publish a newspaper or may operate a motion picture theatre, but he may not in the same way operate a radio station. The air-channels are limited in number and normal competition in any air-channel is impossible.

- 6 The CRTC recognized the important role played by local television stations almost forty years ago. In renewing the licence of CHLT-TV Sherbrooke the Commission said that one of its
- ... most important objectives ... is the establishment and development of local and regional television stations. The policies and decisions of the Commission have always been directed at strengthening the resources of local stations, including a sufficient number of qualified staff, to enable them to produce an adequate number of quality programs to meet the needs and aspirations of the population.³
- 7 Parliament specifically highlighted the importance of local programming in 1991, when it required for the first time that programming provided by the broadcasting system should “be drawn from local, regional, national and international sources”⁴
- 8 After studying the state of Canada’s broadcasting system at the beginning of the 21st century, however, the House of Commons Standing Committee on Canadian Heritage concluded that it was “extremely difficult ... to say much about overall trends in the production of local news or non-news programming in Canada.”⁵ Among other things it criticized definitional inconsistencies and a lack of data about local news and information.⁶
- 9 In 2008, the House of Commons Standing Committee on Canadian Heritage voted unanimously to recommend that the government tell the CRTC that

Throughout the world these channels are recognized as part of the public domain; and radio stations may operate only with the permission of the state.

The state, having the right and the duty of issuing licences, must impose certain conditions on radio broadcasting. There are, it seems to us, two alternative views between which every country must choose. First, radio may be regarded primarily as a means of entertainment, a by-product of the advertising business. Such a view does not imply that it may not be used for education, for enlightenment and for the cultivation of taste; all these bring entertainment to many people. On the other hand, radio, as one of the most powerful means of education, may be regarded as a social influence too potent and too perilous to be ignored by the state which, in modern times, increasingly has assumed responsibility for the welfare of its citizens. This second view of radio operation assumes that this medium of communication is a public trust to be used for the benefit of society, in the education and the enlightenment as well as for the entertainment of its members.

Royal Commission on National Development in the Arts, Letters and Sciences, *Report*, Ch. XVIII (Broadcasting – Radio Broadcasting) at 276-277.

³ Decision CRTC 75-373.

⁴ S. 3(1)(i)(ii). When the new legislation was being discussed conventional television services substantially outnumbered discretionary television services delivered by satellite, 93 to 17.

⁵ House of Commons, Standing Committee on Canadian Heritage, *Our Cultural Sovereignty*, (June 2003) at 347.

⁶ House of Commons, Standing Committee on Canadian Heritage, *Our Cultural Sovereignty*, (June 2003) at 361-362. The Committee therefore concluded that “the time has come to rationalize and harmonize the many CRTC policies that address various elements of community, local and regional broadcasting.”

“conventional television must support a basic level of information services, including quality regional information services and local production.”⁷

- 10 Since then, however, local programming expenditures by Canadian private television services have decreased in real terms by \$20 million, or 5.9% (see Table 1). Four of Canada’s five largest private broadcasters have reduced their local programming expenditures by 11.2%.

Table 1 Private OTA television stations: local program expenditures, 2008-2012

Local programming expenditures, controlling for inflation	2008	2009	2010	2011	2012	Change 2008 to 2012
CPI = 200	1.141	1.144	1.165	1.199	1.217	
Rogers	\$16.0	\$ 47.7*	\$ 41.8	\$ 38.5	\$ 49.3	207.0%
CW/Shaw	\$89.2	\$ 81.6	\$ 66.0	\$ 62.6	\$ 85.1	-4.6%
CTV/BCE	\$ 125.8	\$ 120.9	\$ 120.1	\$ 124.0	\$ 119.9	-4.7%
Remstar	\$16.0	\$ 0.9**	\$0.0	\$-	\$-	-100.0%
Quebecor	\$37.0	\$ 32.2	\$ 30.0	\$ 29.3	\$ 33.1	-10.6%
Subtotal, top 5	\$ 284.1	\$ 283.3	\$ 258.1	\$ 254.4	\$ 287.3	1.1%
Subtotal, excl’g Rogers	\$268.0	\$635.6	\$216.2	\$215.9	\$238.1	-11.2%
Total local programming expenditures in Canada	\$ 337.7	\$ 301.0	\$ 288.6	\$ 286.8	\$ 317.6	-5.9%
Top 5 as % of total	84.1%	94.1%	89.4%	88.7%	90.5%	6.4

*: Acquired the City TV stations in Broadcasting Decision CRTC

** : Acquired the TQS stations in Broadcasting Decision CRTC

Source: CRTC, Aggregated Financial Summaries

- 11 It is within the context of Parliament’s continuing strong support for local television, and large private broadcasters’ reduced spending on local programming, that Bell’s application for measuring local television performance must be considered.

⁷ House of Commons, Standing Committee on Canadian Heritage, *Minutes Of Proceedings: Meeting No. 27* (6 May 2008):

The question was put on the motion and it was agreed to, by a show of hands: YEAS: 10; NAYS: 0.

The motion, as amended, read as follows:

That, pursuant to Standing Order 108(2), that the following be reported to the House at the earliest opportunity:

The Standing Committee on Canadian Heritage recommends that the government point out to the Canadian Radio-television and Telecommunications Commission that conventional television must support a basic level of information services, including quality regional information services and local production.

C Bell and its proposal for measuring local television performance

12 Bell describes itself as

... Canada's largest communications company, providing residential, business and wholesale customers with a wide range of solutions to all their communications needs.⁸

13 Along with its wireline and wireless telephone business, Bell owns 30 over-the-air television stations, and many discretionary television services and radio stations.

14 Only 22 of Bell's TV stations offer stand-alone local newscasts to the communities they serve. According to the information filed by Bell for the 2012 LPIF hearing detailing the local content in its stations' newscasts, four communities in Northern Ontario, and another four other communities in New Brunswick and Nova Scotia receive one newscast that includes snippets of information about the individual communities.

Table 2 Communities that Bell's conventional TV stations are licensed to serve

Province	Bell's conventional TV stations and the communities they are licensed to serve	LPIF report on local news?
British Columbia	1. CIVI-DT Victoria	Yes
	2. CIVT-DT Vancouver	Yes
	3. CFTK-TV Terrace	[Astral filed]
	4. CJDC-TV Dawson Creek	[Astral filed]
Alberta	5. CFCN-DT Calgary	No
	6. CFCN-DT-5 Lethbridge	Yes
	7. CFRN-DT Edmonton	No
	8. CFRN-TV-6 Red Deer	No
Saskatchewan	9. CFQC-DT Saskatoon	Yes
	10. CICC-TV Yorkton	Yes
	11. CKCK-TV Regina	Yes
	12. CIPA-TV Prince Albert	Yes
Manitoba	13. CKY-TV Winnipeg	Yes
Ontario	14. CHRO-TV Pembroke	No
	15. CHRO-DT-43 Ottawa	No
	16. CHWI-DT Wheatley	Yes
	17. CHBX-TV Sault Ste. Marie	Yes - Joint newscast
	18. CICI-TV Sudbury	
	19. CITO-TV Timmins	
	20. CKNY-TV North Bay	
	21. CJOH-DT Ottawa	No
	22. CFPL-TV London	Yes
	23. CFTO-TV Toronto	No
	24. CKCO-DT Kitchener	May be 'Southwest Ontario'

⁸ BCE Inc., 2012 Annual Report, at 23.

Province	Bell's conventional TV stations and the communities they are licensed to serve	LPIF report on local news?
	25. CKVR-DT Barrie	Yes
Quebec	26. CFCF-DT Montreal	Yes
New Brunswick	27. KKCW-DT Moncton	Yes - Joint newscast
Nova Scotia	28. CKLT-DT Saint John	
	29. CJCB-TV Sydney	
	30. CJCH-DT Halifax	

- 15 Bell's ownership of a variety of television media is not a charitable undertaking, of course: in fact, as it noted in its 2012 report to shareholders, Bell's control of television programming rights enables it to offer its wireless subscribers local and discretionary television content, and to sell access to this content to other wireless service providers:

Bell Media also offers a mobile TV service with live and on-demand access to content from its conventional TV networks, CTV and CTV Two, as well as real-time access to BNN, TSN, RDS, MTV and other top brands in news, sports and entertainment. This mobile content is offered on commercial terms to all Canadian wireless providers.⁹

- 16 Bell's television services are now operating in the second year of five-year CRTC licences. The CRTC renewed the licences in 2011;¹⁰ they expire at the end of August 2016.

- 17 When it renewed Bell's licences, the CRTC imposed conditions of licence regarding local television programming. The CRTC also applied these conditions to other large, and smaller, broadcasters:

Broadcaster	# of stations affected	Decision
Bell	30	
Shaw		
Rogers		
Corus		
Thunder Bay		
Newcap		

⁹ BCE Inc., *2012 Annual Report*, at 27.
¹⁰ Broadcasting Decision CRTC 2011-444.

18 The CRTC set out these conditions of licence for local television hours in a policy statement that it issued in 2011.¹¹ The conditions are based on the CRTC’s definition of local programming, which it defined in 2009 as:

... programming produced by local stations with local personnel or programming produced by locally-based independent producers that reflects the particular needs and interests of the market’s residents.¹²

19 The CRTC did not define how much locally-produced content is required for a program to be ‘local’. It also did not address the related question of whether a program with local content produced by a location station, which is then packaged with other content by a central hub and transmitted to local stations for subsequent re-broadcast, is a ‘local’ program.

20 Apart from being vague with respect to the definition of a ‘local program’, the wording of their current conditions of licences permit Canada’s largest private English-language television stations to count repeat broadcasts as part of local television stations’ programming. This is because the conditions refer to “programming”, not to “original programming”.¹³

21 The absence of a requirement for original local programming allows broadcasters to include repeat broadcasts of local programs towards their weekly local programming requirements. Bell’s local news reports for CKVR-TV Barrie and CHWI-TV Wheatley show that on weekdays, each station repeated the previous day’s local news – six times in a row, in the case of CHWI-TV (see Table 3).

Table 3 CHWI-TV Wheatley – 13 February 2012 morning local news consists of 6 repeats of 12 February 2012 11pm evening news

Section	Start Time of Segment	Title of Story or Segment	Source of Segment	Length of Segment
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14

¹¹ *Standard conditions of licence, expectations and encouragements for conventional television stations*, Broadcasting Regulatory Policy CRTC 2011-442 (Ottawa, 27 July 2011).

¹² Broadcasting Regulatory Policy CRTC 2009-406 (Ottawa, 6 July 2009) at ¶43.

¹³ ‘Original’ is generally understood as a program’s first broadcast.

CHWI

6a - 9a (repeat)

13-Feb-12

Section	Start Time of Segment	Title of Story or Segment	Source of Segment	Length of Segment
	03:47	memorial for Cruise ship victims	international	00:30
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
	05:47	ice wine show	Windsor	01:57
Coming Up	07:44	promo for motorcyle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			#####
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14
	03:47	memorial for Cruise ship victims	international	00:30
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
	05:47	ice wine show	Windsor	01:57
Coming Up	07:44	promo for motorcyle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34

CHWI

6a - 9a (repeat)

13-Feb-12

Section	Start Time of Segment	Title of Story or Segment	Source of Segment	Length of Segment
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			#####
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14
	03:47	memorial for Cruise ship victims	international	00:30
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
	05:47	ice wine show	Windsor	01:57
Coming Up	07:44	promo for motorcycle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			#####
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14
	03:47	memorial for Cruise ship victims	international	00:30

CHWI

6a - 9a (repeat)

13-Feb-12

Section	Start Time of Segment	Title of Story or Segment	Source of Segment	Length of Segment
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
	05:47	ice wine show	Windsor	01:57
Coming Up	07:44	promo for motorcycle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			#####
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14
	03:47	memorial for Cruise ship victims	international	00:30
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
	05:47	ice wine show	Windsor	01:57
Coming Up	07:44	promo for motorcycle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15

CHWI

6a - 9a (repeat)

13-Feb-12

Section	Start Time of Segment	Title of Story or Segment	Source of Segment	Length of Segment
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			#####
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14
	03:47	memorial for Cruise ship victims	international	00:30
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
	05:47	ice wine show	Windsor	01:57
Coming Up	07:44	promo for motorcycle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			
		Total length of newscast		2:19:00
		Total local news content		15:06

22 Even when local TV stations' broadcasts are original, their content is not entirely 'local'. In 2012 Bell's local newscasts included segments from the area served by the station in question, as well as regional, provincial, national and international news segments. In Wheatley, for example, the 11pm half-hour local

newscast broadcast by CHWI-TV on 12 February included 20:39 minutes of non-local news, and 2.5 minutes of local news about Windsor¹⁴ (see Table 4):

Table 4 CHWI-TV Wheatley - local newscasts and local content in February 2012

Section	Start Time of Segment	Title of Story or Segment	Source of Segment	Length of Segment
News Open	00:00			01:11
Headlines	01:11	Fatal accident	London	00:10
	01:21	Whitney Houston death	international	00:10
	01:31	local art show	London	00:10
News Segment	01:41	Crash kills two	London	00:40
	02:21	Snow squalls hit city	London	00:21
	02:42	memorial for migrant workers killed in crash	regional	00:26
	03:08	Whitney Houston death	international	00:25
	03:33	Grammys	international	00:14
	03:47	memorial for Cruise ship victims	international	00:30
	04:17	riots in Greece	international	00:39
	04:56	opening of local art show	London	00:51
		05:47	ice wine show	Windsor
Coming Up	07:44	promo for motorcycle show story	London	00:14
	07:58	promo for weather forecast	regional	00:20
Advertising	08:18			02:10
Weather	10:28	forecast	regional	03:10
More News	13:38	Fighting in Syria	international	01:00
	14:38	Motorcycle show	London	02:17
Coming Up	16:55	promo for sports segment	regional	00:10
Advertising	17:05			02:35
Lotteries	19:40	Lottery numbers	national	00:30
Sports	20:10	NHL - Detroit vs. Philadelphia	international	00:59
	21:09	Figure Skating - ice dancing event	international	00:19
	21:28	Ontario Mens' Curling championship	regional	00:50
	22:18	OHL - London vs. Kitchener	London	01:02
	23:20	OHL - Windsor vs. Mississauga	Windsor	00:34
	23:54	OHL - Sarnia vs. Sault Ste. Marie	regional	00:34
	24:28	Jr B hockey roundup	regional	00:18
	24:46	NHL roundup	international	00:15
	25:01	Davis Cup tennis	international	00:24
	25:25	PGA golf	international	00:25
	25:50	NBA - LA vs. Toronto	international	00:26
	26:16	NBA - Detroit vs. Washington	international	00:11
Close	26:27	Weather recap and chat	regional	00:20
Kicker	26:47	snow in Venice	international	00:48
	27:35	credits		00:20
Advertising	27:55			
		Total length of newscast		23:10
		Total local news content		02:31

Source: Bell, LPIF local news reports

23 Altogether, during the week of 12-18 February 2012, local news items made up 7.15 hours, or 42%, of the local news programs broadcast by Bell's Wheatley and Barrie stations. Wheatley audiences enjoyed as much as 33 minutes (0.55

¹⁴ CHWI-TV has a transmitter in Windsor.

hours) of local content on February 15th, or an average of 21 minutes (0.34 hours) of local content per day, on average during that week (Table 5).

Table 5 Total local news in local newscasts in Wheatley and Barrie, in February 2012

Decimal hours/day				
Station	CHWI-TV Wheatley		CKVR-TV Barrie	
News	Local news items	Total local news	Local news items	Total local news
12-Feb-12	0.09	0.77	0.47	0.91
13-Feb-12	0.42	1.23	0.73	1.50
14-Feb-12	0.40	1.23	0.83	1.47
15-Feb-12	0.55	1.23	0.65	1.48
16-Feb-12	0.36	1.21	0.85	1.50
17-Feb-12	0.43	1.23	0.79	1.48
18-Feb-12	0.16	0.77	0.43	0.98
Total, week	2.40	7.64	4.75	9.31
Avg/day	0.34	1.09	0.68	1.33
Local as %	31%		51%	

1 Amendment proposed by Bell

24 In early February 2013 Bell Media Inc. (Bell) submitted a two-page application to ask the CRTC to change its 2011 policy for standard conditions of licence for private English-language over-the-air TV stations, to permit them to average these requirements “quarterly throughout the broadcast year”.¹⁵

25 Bell wants the CRTC to change the wording of the conditions of licence

from this:

11. If the licensee operates in a metropolitan television market, the licensee shall broadcast no less than 14 hours of Canadian local

to this:

11. If the licensee operates in a metropolitan television market, the licensee shall broadcast no less than 14 hours of Canadian local

¹⁵ Kevin Goldstein, Vice President – Regulatory Affairs, Bell Media Inc., *Broadcasting Regulatory Policy CRTC 2011-442 – Standard conditions of licence, expectations and encouragements for conventional television stations*, (2 February 2013), Application 2013-0389-1 [Bell Media Application], at ¶1. Specifically, Bell asks the Commission to change the conditions of licence now in force for over-the-air television stations, by adding the underlined text below:

11. If the licensee operates in a metropolitan television market, the licensee shall broadcast no less than 14 hours of Canadian local programming per broadcast week, averaged quarterly throughout the broadcast year.

12. If the licensee operates in a non-metropolitan television market, the licensee shall broadcast no less than seven hours of Canadian local programming per broadcast week, averaged quarterly throughout the broadcast year. The licensee will not be eligible to receive funding from the Local Programming Improvement Fund if it is not in compliance with this condition of licence.

Broadcasting Notice of Consultation 2013-529 at ¶2.

programming in each broadcast week.

12. If the licensee operates in a non-metropolitan television market, the licensee shall broadcast no less than seven hours of Canadian local programming in each broadcast week. The licensee will not be eligible to receive funding from the Local Programming Improvement Fund if it is not in compliance with this condition of licence.

programming per broadcast week, *averaged quarterly throughout the broadcast year.*

12. If the licensee operates in a non-metropolitan television market, the licensee shall broadcast no less than seven hours of Canadian local programming per broadcast week, *averaged quarterly throughout the broadcast year.* The licensee will not be eligible to receive funding from the Local Programming Improvement Fund if it is not in compliance with this condition of licence.

26 This application is the second in which the CTV local television stations have asked to average measurement of their weekly local programming performance. CTV made the same request in November 2010, just two months after the LPIF launched, when it applied to renew the CTV licences.¹⁶ (By this time Bell had already announced its intention to acquire CTV,¹⁷ and the CRTC approved the purchase in March 2011.¹⁸)

27 CTV offered no facts to support its 2010 local-averaging request, but said that averaging local programming hours over the broadcast year

... would simply give CTVgm the flexibility to temporarily reduce the amount of local programming on its stations during holiday periods (to take into account staffing issues) or to cover special events.¹⁹

28 The CRTC denied Bell's 2010 local-averaging request for three reasons. It said the measurement change could affect the administration of the LPIF, that broadcasters are able to plan ahead for holidays and that special events and weekly local programming are important to Canadian communities.²⁰

¹⁶ CTVgm, *CTVglobemedia Inc. Broadcasting Group 2011 Licence Renewal*, Application 2010-1261-6-CTVgm-Group (1 November 2010), s. C.1 (Television stations, Standard COLs), at 29.

¹⁷ BCE Inc., "Bell to acquire 100% of Canada's No. 1 media company CTV" (Montreal, 10 September 2010) < <http://www.newswire.ca/en/story/600033/bell-to-acquire-100-of-canada-s-no-1-media-company-ctv>>.

¹⁸ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163 (Ottawa, 7 March 2011).

¹⁹ CTVgm, *CTVglobemedia Inc. Broadcasting Group 2011 Licence Renewal*, Application 2010-1261-6-CTVgm-Group (1 November 2010) at 29.

²⁰ Group-based licence renewals for English-language television groups – Introductory decision, Broadcasting Decision CRTC 2011-441 (Ottawa, 27 July 2011), at ¶¶ 122-124:

29 In denying CTV's local-averaging request, however, the CRTC also said that it would consider the issue in its then-upcoming review of the Local programming Improvement Fund (LPIF).²¹ When it announced the LPIF review in December 2011, however, the CRTC did not invite comments on measuring over-the-air English-language TV station local programming performance on a quarterly basis.²² Bell neither raised the local-averaging issue in its written submissions nor when it appeared before the CRTC at its 2012 LPIF public hearing.²³ The CRTC's July 2012 announcement about the termination of the LPIF did not mention the local-averaging issue either.²⁴

2 CRTC discussion of Bell's proposal

30 The only information provided by the CRTC in its request for comments on Bell's local-averaging proposal is that it partially approved a similar request by the CBC, this past May. CBC also asked to average its weekly local programming over each broadcast year.²⁵

31 The CRTC did not grant CBC's request – but did permit CBC to allow its French-language stations in English-language markets to average their weekly programming commitments over the broadcast year.²⁶

123. The Commission notes that any change to the measurement of local programming could have an impact on the way in which the LPIF is managed and administered. Measuring local programming over the broadcast week permits periodic monitoring and evaluation to verify compliance with local programming obligations, whereas measurements done annually can only be verified at the end of the broadcast year. The Commission further notes that broadcasters can plan ahead for holiday periods and special events, and schedule types of local programming other than live news. Finally, the Commission's decision to measure local programming over the broadcast week is a reflection of the importance of local programming to Canadian communities. Accordingly, the Commission determines that it is appropriate to continue requiring that local programming obligations be measured over the broadcast week for the immediate future.

²¹ *Ibid.*, at ¶124:

As noted above and in the group-based policy, the Commission has committed to a review of the LPIF in the 2011-2012 broadcast year. The Commission intends to issue a notice of consultation later this year to address such issues, and interested parties will have an opportunity to comment at that time.

²² *Review of the Local Programming Improvement Fund*, Broadcasting Notice of Consultation 2011-788 (Ottawa, 19 December 2011).

²³ Bell Canada, *Broadcasting Notice of Consultation CRTC 2011-788 - Review of the Local Programming Improvement Fund: Comments*, (15 February 2012); CRTC, *Transcript of Proceeding: Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2*, Vol. 1 (Gatineau, 16 April 2012) at 82-177; Bell Canada, *Broadcasting Notice of Consultation CRTC 2011-788 - Review of the Local Programming Improvement Fund: Final Comments of Bell Canada*, (2 May 2012).

²⁴ *Review of the Local Programming Improvement Fund*, Broadcasting Regulatory Policy CRTC 2012-385 (Ottawa, 18 July 2012).

²⁵ *Canadian Broadcasting Corporation – Licence renewals*, Broadcasting Decision CRTC 2013-263 (Ottawa, 28 May 2013) at ¶112,

²⁶ *Canadian Broadcasting Corporation – Licence renewals*, Broadcasting Decision CRTC 2013-263 at ¶112 (Ottawa, 28 May 2013).

32 To explain its decision about the CBC the CRTC referred to “the inherent difficulties associated with the broadcast of local programming for French-language stations located in English-language markets”.²⁷ The CRTC also noted that CBC’s parliamentary appropriations over the next six years were forecast to decrease by as much as 20% compared to 2002.²⁸

3 Potential impact of Bell’s proposal

33 Averages are generally a convenient way to summarize the performance of a group. Using an average means that individual high or low performances are ignored. When used across a period of time, averages smooth out performance highs and lows.

34 Averaging Canadian program hours over long periods has enabled broadcasters to maximize audiences to popular and inexpensive foreign programming. In the 1980s, the CRTC found that when broadcasters scheduled their Canadian programming over the broadcast year, Canadian content was shuffled into the low-viewing summer months, while less expensive foreign content was given prime place in the higher-audience fall season.²⁹

35 The CRTC ultimately did not require broadcasters to schedule Canadian content more equitably throughout the broadcast year,³⁰ and in 2010 also reduced annual requirements for Canadian content from 60% to their pre-CRTC level of 55%.³¹ The CRTC’s current regulations require conventional private television stations to broadcast 55% Canadian content over the broadcast year, unless otherwise required by condition of licence:

... a licensee shall devote not less than 55 per cent of the broadcast year and of any six-month period specified in a condition of licence to the broadcasting of Canadian programs.³²

²⁷ *Canadian Broadcasting Corporation – Licence renewals*, Broadcasting Decision CRTC 2013-263 at ¶112 (Ottawa, 28 May 2013).

²⁸ Broadcasting Decision CRTC 2013-263 at ¶20.

²⁹ See, *Canadian Content in Television*, Public Notice (Ottawa, 25 August 1981), “Summary of submissions”; *Policy Statement on Canadian Content on Television*, Public Notice CRTC 83-18 (Ottawa, 31 January 1983) at 16.

³⁰ See *AMENDMENT TO THE TELEVISION BROADCASTING REGULATIONS - RETENTION OF THE TWELVE-MONTH REPORTING PERIOD FOR THE MEASUREMENT OF CANADIAN CONTENT*, Public Notice CRTC 1986-270 (Ottawa, 29 September 1986).

³¹ *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167 (Ottawa, 22 March 2010) at ¶¶61-65.

³² *Television Broadcasting Regulations*, s. 4(6).

36 Unifor respectfully submits that approving Bell’s local-averaging application has the potential to dramatically reduce the level of original local programming now provided to Canadian communities.

4 [Unifor position on Bell’s proposal](#)

37 Unifor strongly opposes Bell’s proposal. In our view, adoption of the proposal will mark the beginning of the end for original, professionally produced local television news and information in Canada.

38 Our reasons for this position are set out below, followed by recommendations as to the approach the CRTC should take in this matter.

39 In brief, Bell’s simple proposal to use local-averaging conceals a tangled web of commitments, decisions and policies whose effect has been to harm, not strengthen, local television programming in Canada.

40 We begin with an overview of the linkage between the CRTC’s regulatory policies in broadcasting, and employment levels.

III Broadcast regulation and employment

41 Parliament requires the CRTC to “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing” its section 3(1) broadcasting policy,³³ while being flexible with respect to the language of broadcast, regional needs and concerns and scientific change, facilitating the provision of broadcasting and Canadian programs to Canadians, and being sensitive to the “administrative burden” that regulation may entail.³⁴

42 With over forty sections and subsections, Canada’s broadcasting policy is “broad, multifaceted and complex”,³⁵ and responsibility for its supervision and implementation lies with the CRTC.³⁶

³³ S. 5(1).

³⁴ S. 5(2).

³⁵ *Rogers Communications Inc. v. Canada (Attorney General)*, 1998 CanLII 7494 (FC), per Nadon J. for the Court, at ¶27. In this case Rogers asked the Federal Court to make an order invalidating a Governor-in-Council (GIC) order whose effect was to deem then-BC Tel (now Telus) to be Canadian for the purposes of the *Broadcasting Act*. Mr. Justice Nadon, as he then was, held that the order was within the GIC’s jurisdiction and denied Rogers’ application. (Justice Nadon has since been nominated for the Supreme Court of Canada – “PM announces nominee for Supreme Court of Canada” (30 September 2013) <<http://pm.gc.ca/eng/news/2013/09/30/pm-announces-nominee-supreme-court-canada>>.)

³⁶ S. 5(1).

A *CRTC bears responsibility for employment opportunities*

- 43 Though broadcasting is often viewed purely in terms of its cultural significance, it is a significant economic sector. Since 1991 Parliament has emphasized the importance of employment in this sector of the Canadian economy.³⁷ Specifically, its policy requires the broadcasting system to serve Canadians' needs for employment opportunities.³⁸
- 44 The number of employment opportunities that have been created by Canada's broadcasting system is unknown. This is largely because these opportunities include direct and indirect jobs, levels of which are inconsistently reported. For example, while it is estimated that each job in the film and television production industry creates 1.17 jobs "in other industries supplying goods and services to film and television production",³⁹ no estimates exist for indirect employment opportunities created by over-the-air radio and discretionary television and radio services, or by broadcasting distribution undertakings (BDUs) such as cable or direct-to-home satellite systems.⁴⁰
- 45 As for direct employment opportunities, data from the CRTC indicate that the broadcasting system as a whole employed 57,507 people in 2012 (see Figure 1).

³⁷ S. 5(3).

³⁸ S. 3(1)(d)(iii):

(d) The Canadian broadcasting system should ...

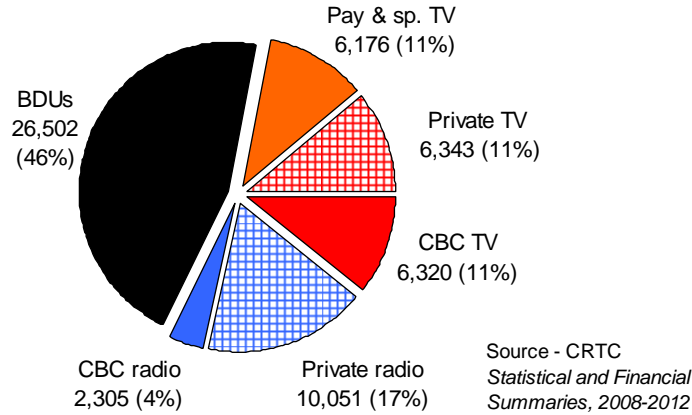
(iii) through ... the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children

³⁹ CMPA, *Profile 2012*, at 89.

⁴⁰ See e.g. Vik Singh, *Economic Contribution of Culture in Canada* (December 2004) Cat no 81-595-MIE2004023, at 15.

Figure 1 Employment in Canadian broadcasting, 2012

Average staff count, by medium and element, in 2012



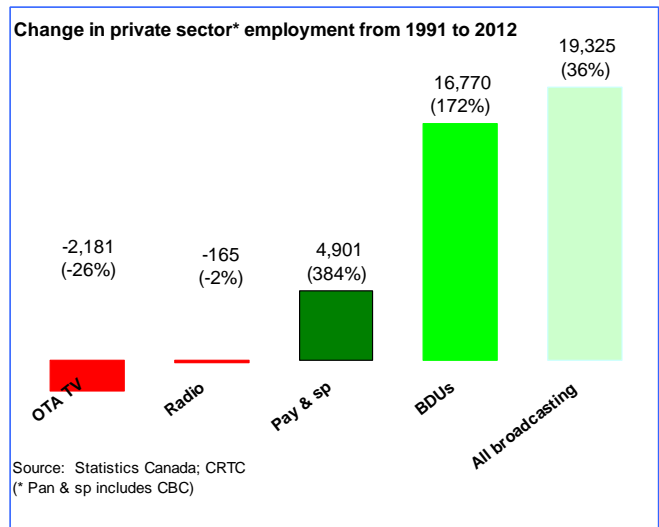
46 In 2012, the salaries of these employees represented \$4.6 billion. (To put this figure into perspective, the total profits of Canada's ten largest broadcasters in 2012 came to \$3.04 billion.)

47 As this proceeding applies solely to private conventional television broadcasters,⁴¹ it is likely to have its greatest impact on the employment opportunities available from private television stations in Canada.

B *Abysmal record on local television employment opportunities*

48 In the 21 years since employment opportunities became part of the CRTC's responsibilities the number of jobs or their full-time equivalents available at privately owned broadcasting undertakings in Canada has grown by 36%.

49 Employment opportunities in local private conventional television have decreased sharply, however. Between 1991 and 2012 private TV stations eliminated 2,181 jobs, or 26% of the positions at those

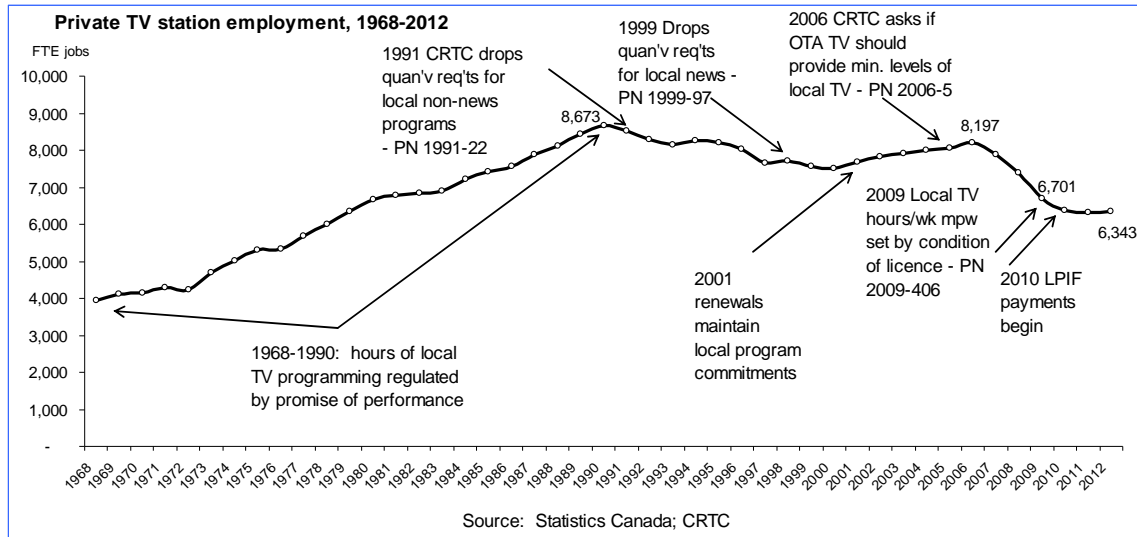


⁴¹ See *Standard conditions of licence, expectations and encouragements for conventional television stations*, Broadcasting Regulatory Policy CRTC 2011-442 (Ottawa, 27 July 2011) at ¶1.

stations.

- 50 CRTC policies have been critical to the loss of local television employment opportunities. In 1991, the CRTC's decision to drop quantitative commitments for local non-news programming triggered a long decline in private OTA employment levels. The decline continued after the CRTC dropped quantitative commitments for local news programming in 1999, was temporarily reversed between 2001 and 2006 after TV station licences were renewed – and then increased sharply in 2007.
- 51 Local programming employment continued to fall even after the CRTC set conditions of licence for local programming in 2009. Employment levels only held steady beginning in 2010, when a new fund established by the CRTC to support local programming kicked into action (see Figure 2).
- 52 In the past six years Canada's private television stations eliminated 1,854 jobs – and the opportunities represented by those jobs (Figure 2).

Figure 2 Impact of CRTC policies on private TV station employment, 1968-2012

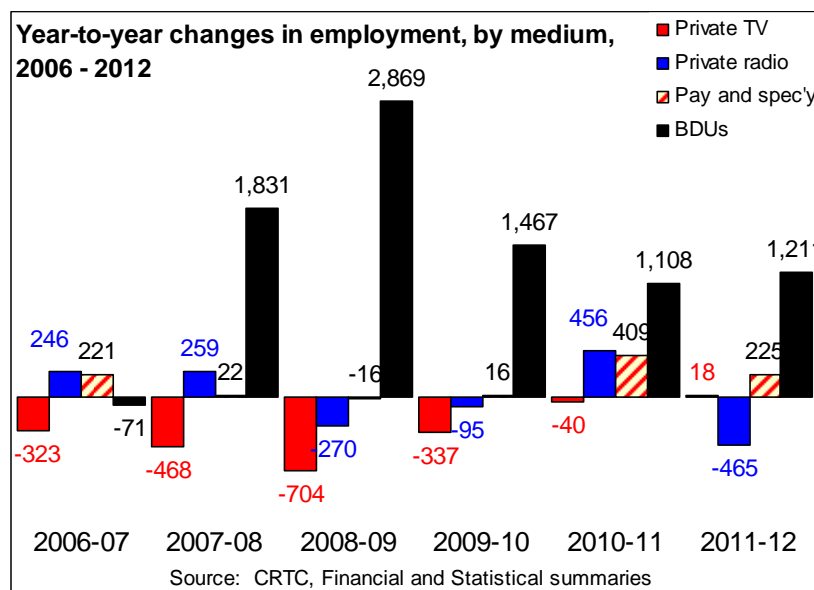


- 53 Since 2006 private television stations have reduced local staffing, reduced or eliminated local news, local information and local entertainment programs, and deprived the communities served by those stations of almost \$665.8 million worth of economic activity.⁴²

⁴² This figure was calculated as follows:

- 54 Of course, many of the 1,854 people who lost their over-the-air television jobs between 2006 and 2012 may have found new work elsewhere. To achieve Parliament’s employment-opportunities objective, the CRTC should know whether these people had access to employment opportunities in Canada’s broadcasting system.
- 55 The main source of employment opportunities in broadcasting is from BDUs, not content producers. This is because conventional radio and television stations have lost jobs in the past six years, while pay and specialty television services have created just 877 new employment opportunities.

Figure 3 Employment opportunities in Canadian broadcasting, by sector: 2006-2012

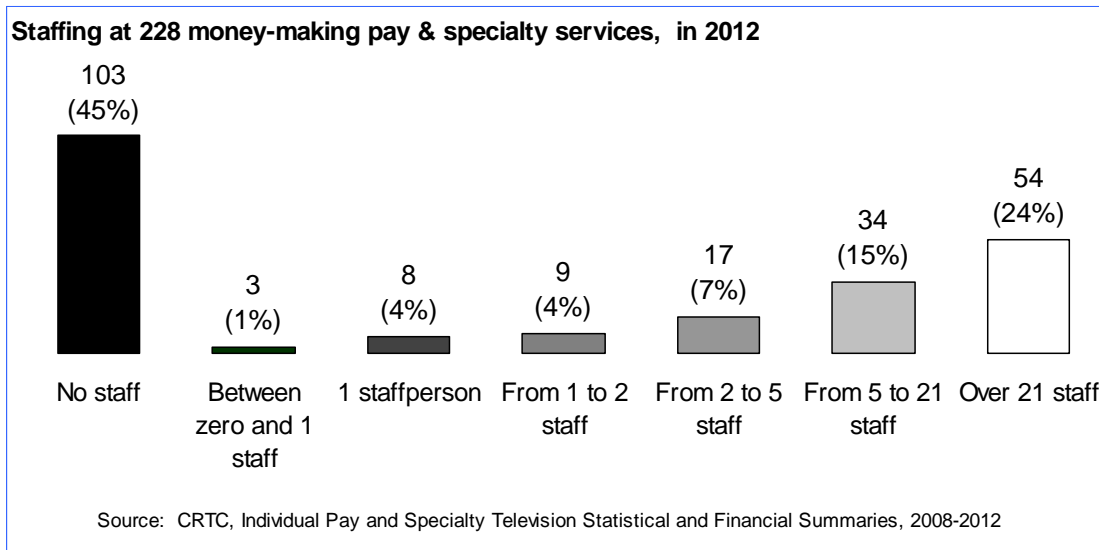


- 56 The low level of employment opportunities in pay and specialty services may seem incongruous, considering that the services reporting revenues in 2012 employed an average of 21 people. Unlike Canada’s hundred-plus over-the-air television services, however, most pay and specialty services rely almost entirely on purchased programming due to the nature of the licences they have been granted by the CRTC.
- 57 Unlike conventional television stations very few pay and specialty services produce programs weekly, let alone daily. They rely primarily on purchased,

1. Multiplying the staff level in 2006 by average salaries in each of the following years,
2. Subtracting the result of step 1, from actual total salaries in each year, and
3. Summing the total 'lost salaries' from 2006 to 2012.

non-original programming. This is why half of the 228 pay and specialties that reported revenues in 2012 were able to generate that income – \$341 million – with 1 or fewer employees (Figure 4). The pay and specialty service sector, therefore, is not a substitute for conventional television when it comes to employment opportunities.

Figure 4 Content-producing employment at revenue-generating pay and specialty services in 2012



- 58 Few pay and specialty services even offer local television content, however.⁴³
- 59 Most local broadcasting opportunities in Canada are instead generated by local radio and television stations and broadcasting distribution undertakings (BDUs) such as cable services. As shown by Figure 3, radio and television stations are losing jobs, not creating them – meaning that the main source of employment opportunities in the regulated broadcasting system is with BDUs.
- 60 CRTC data from 2012 show, however, that BDUs rely on volunteers to produce programming for their community access channels.

⁴³ Rare exceptions include CablePulse 24, a specialty service licensed to provide news and information about Toronto, which employed 94 people in 2012 (presumably mostly in Toronto).

61 Even if each cable company matched the number of volunteer person-years with an equal number of full-time staff, the number of employment opportunities available at cable companies in relation to local programming is relatively small.

62 Unifor respectfully submits that the absence of true employment opportunities for people at risk of losing their jobs in local over-the-air television is a serious challenge to the CRTC's fulfillment of its mandate under the *Act*.

Six largest BDUs	# channels in 2012	# of volunteers	Total volunteer hours	Equivalent Person-years
Rogers	39	2,391	228,773	117
Shaw	27	1,629	76,277	39
BCE	9	62	462	0.24
Cogeco	29	1,809	74,999	38
Quebecor	36	535	22,653	12
Bragg	29	8	68	0.03
Total,	169	6,434	403,232	207 ⁴⁴

63 The absence of a true substitute for the employment opportunities of

conventional over-the-air television is also why Bell's local-averaging proposal must be considered in terms of its potentially grave implications for employment opportunities in Canada's broadcasting sector.

C *Loss of OTA television employment opportunities temporarily stemmed by LPIF*

64 In 2008 the CRTC created the Local Programming Improvement Fund (LPIF),⁴⁵ after private television broadcasters announced they were cutting or eliminating local programming.⁴⁶ The LPIF's purpose was "to improve the quality of local programming in non-metropolitan markets,"⁴⁷ and to

- to ensure that viewers in smaller Canadian markets continue to receive a diversity of local programming - particularly local news programming;

⁴⁴ le, 403,232 volunteer hours divided by 37.5 to generate a work-week, and then by 52, to generate a person-year.

⁴⁵ The LPIF was not raised in the notice announcing the hearing and the issues to be discussed: *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing 2007-10 (Ottawa, 5 July 2007). The CRTC added the FFC issue to the hearing's agenda in November 2007 – see Broadcasting Notice of Public Hearing 207-10-3 (Ottawa, 5 November 2007), at ¶16.

⁴⁶ For example, when it applied to purchase the TQS network and its 5 TV stations in Quebec Remstar proposed to eliminate local news – see ¶18 in *Change in the effective control of TQS inc. and licence renewals of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network*, Broadcasting Decision CRTC 2008-129 (Ottawa, 26 June 2008). The CRTC approved Remstar's purchase, but mandated a minimum of 15 hours/week of local programming, including a minimum of three hours of news – see conditions of licence 1 and 2 in Broadcasting Decision CRTC 2008-129.

⁴⁷ BDU 2008-100, at ¶355.

- to improve the quality and diversity of local programming broadcast in these markets; and
- to ensure that viewers in French-language markets are not disadvantaged by the smaller size of those markets.⁴⁸

65 (We note in passing that in this relatively recent, five-year old decision, the CRTC again chose not to discuss the implications of broadcasters' local programming reductions or the LPIF on employment opportunities, staffing levels or jobs. The CRTC merely summarized interveners' concerns about decreases in journalistic staff.⁴⁹)

66 The CRTC set out its current requirements for local television hours in July 2009, in conjunction with its decisions about the LPIF's administration.⁵⁰

67 The CRTC acknowledged that it was allowing broadcasters to reduce local programming levels, but said this was temporary. It expected local programming levels to increase – “to be adjusted upward to reflect market conditions where appropriate.”⁵¹ As the CRTC does publish local programming hours by television station, however, the public does not know whether this has happened.

68 From 2010 to 2012 television broadcasters received \$247 million from the LPIF. Bell's LPIF stations receiving a little more than a fifth (22.2%) of the total (see Table 6).

Table 6 LPIF funds received from 2010 to 2012

Broadcasters receiving LPIF	2010	2011	2012	2010-12
Rogers		\$ 1.1	\$1.1	\$ 2.1
Canwest/Shaw	\$8.7	\$ 9.2	\$7.1	\$ 25.1
CTV/BCE	\$23.6	\$ 23.6	\$ 23.7	\$ 70.9
Remstar	\$2.1	\$ 2.7	\$2.5	\$ 7.3
Quebecor	\$6.1	\$ 6.4	\$6.4	\$ 19.0
Subtotal, five largest broadcasters	\$40.5	\$ 43.1	\$ 40.8	\$ 124.4
All other broadcasters	\$60.2	\$63.5	\$71.1	\$194.8
Total LPIF	\$100.7	\$106.6	\$112.0	\$319.2
Five largest broadcasters as %	40.2%	40.4%	36.5%	39.0%
Bell as %	23.4%	22.2%	21.2%	22.2%
Source: CRTC – BDU <i>Statistical and Financial Summaries, 2008-2012</i> and Aggregated Annual Returns for Rogers, Canwest, CTV, Shaw, Remstar and Quebecor.				

⁴⁸ *Ibid.*, at ¶359.

⁴⁹ *Ibid.*, at ¶¶340, 164 and 168.

⁵⁰ *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406 (Ottawa, 6 July 2009).

⁵¹ *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406 (Ottawa, 6 July 2009) at ¶52.

- 69 It is sadly ironic, however, that in establishing a fund to support local television programming the CRTC simultaneously allowed broadcasters to reduce their local programming levels. The year before the LPIF was implemented private TV stations were broadcasting “more than 22 hours per week” of local programming.⁵² After the LPIF’s creation the CRTC generally required just 14 hours per week of local programming in metropolitan cities,⁵³ and only 7 hours per week of local programming in non-metropolitan centres.⁵⁴
- 70 When LPIF disbursements began, however, the steady decrease in private television employment which started in 2006, levelled off (see previous Figure 2).
- 71 The CRTC decided in 2012 to terminate the LPIF as of August 2014, however. From September 2012 to August 2013 LPIF funding for local broadcasters will decrease by one-third, and by another third from September 2013 to August 2014.
- 72 Until August 2014, however, LPIF funding will continue to be provided to TV stations, as long as they report the level of local programming they are providing.⁵⁵
- 73 In terminating the LPIF the Commission did not provide any evidence about current levels of local television programming in Canada, and did not discuss the impact of terminating the LPIF on local programming levels or on employment. Instead it said broadly that

[t]he broadcast industry as a whole will need to evolve and innovate in order to continue to provide high-quality local programming whether through the traditional types of programming offered by local stations or by other means.⁵⁶

⁵² See *National high definition over-the-air digital television service*, Broadcasting Decision CRTC 2008-75 (Ottawa, 3 April 2008) at ¶¶1 and 9. The CRTC based its calculation of local program levels on TV stations in Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Ottawa, Montréal and Halifax.

⁵³ Montréal, Toronto, Calgary, Edmonton, Vancouver, Anglophone Ottawa-Gatineau (see Broadcasting Regulatory Policy CRTC 2008-100 at ¶360).

⁵⁴ Cities other than the metropolitan cities identified in 2008-100; see *Broadcasting Regulatory Policy CRTC 2009-406*, at ¶53.

⁵⁵ The CRTC created exceptions, for minority-language stations in majority-language communities That is, English-language stations operating in French-language markets, and French-language stations operating in English-language market, and for TV broadcasters whose licences had not been renewed recently, which were required to maintain the local programming levels set out in their most recent renewal decisions. *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406 (Ottawa, 6 July 2009) at ¶¶29-30, and ¶59.

⁵⁶ *Ibid.*, at ¶15.

- 74 In our view, those most affected by the ‘need to evolve and innovate’ are the staff that broadcasters may release from employment if the CRTC’s approach to local programming permits broadcasters to reduce the minimum levels of original local content they now provide.
- 75 This linkage between policies and employment is why the CRTC must consider the serious implications of Bell’s request for employment in the conventional television sector – just as the CRTC has brought its authority to bear on negotiations regarding terms of trade that affect independent producers’ employment.⁵⁷

IV Should the CRTC approve Bell’s request?

- 76 The CRTC’s *Rules of Practice and Procedure*, which are part of its regulations, require applicants to provide a “clear and concise statement of the relevant facts” and the “grounds of the application”.⁵⁸ The *Rules* do not set out specific requirements for applications to amend either the terms or conditions of broadcasting licences, or CRTC policies.
- 77 The CRTC has, however, denied requests for amendments to broadcasters’ licences on the grounds of insufficient evidence. In 2001, it denied Global’s request to be relieved of a condition of licence that prohibited the broadcast of local advertising by CKMI-Quebec City.
- 78 Global had provided monitoring evidence demonstrating that over a two-week period local Montréal advertisers were broadcasting ads on US border television stations,⁵⁹ and said that if its application were approved “there would be no danger that the service would move away from its regional mandate to become a more Montréal-oriented service”.⁶⁰ The CRTC found, however, that Global “...

⁵⁷ S. 3(1)(i)(v) of the *Act* says that the “broadcasting system should ... include a significant contribution from the Canadian independent production sector”.

In *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310 (Ottawa, 27 June 2013), for example, the CRTC directed Bell to report on its negotiations with French-language producers in Quebec (¶91):

... expects that a terms of trade agreement will be promptly reached with the APFC and directs BCE to file by no later than 29 July 2013 a report on the progress of the negotiations. ...

⁵⁸ S. 22(2)(e).

⁵⁹ *Ibid.*, at ¶89.

⁶⁰ *Licence renewals for the television stations controlled by Global*, Broadcasting Decision CRTC 2001-458 (Ottawa,), “Request for local advertising on CKMI-TV Quebec City”.¶88.

offered no indication of the magnitude of the potential impact”,⁶¹ and denied its application.

- 79 In 2010 the CRTC denied Rogers’ application to reduce Canadian content levels on its conventional television stations, not just because of insufficient evidence about financial need, but also because it wanted its group licensing policy to be implemented in a wholesale – not piecemeal – manner:

...

The Commission is of the view that approach set out in the Policy is comprehensive and meant for implementation with the group renewals of the large television broadcasters. It considers that it would not be appropriate to implement the Policy on a piecemeal basis, for example by approving a reduction in Canadian programming without imposing expenditure requirements, as set out in the Policy. It is also of the view that it would be unfair to implement aspects of the Policy for some licensees without similar action for competitors.

The Commission further notes that Rogers has not provided evidence of the financial necessity required to make the proposed changes a year in advance of their anticipated effective date.⁶²

- 80 More recently, the CRTC denied Bell’s request to amend the conditions of licence for Book TV. Again, the CRTC referred to the lack of evidence to support the application: it said that Bell had

... not provided any concrete proposals to demonstrate how the proposed changes to its conditions of licence would be in keeping with the nature of service for which Book Television was licensed or benefit Canadian programming, and in particular, Canadian drama. It is also of the view that Bell has not presented convincing assurances (such as a sample programming grid) that the proposed amendments would not make the service directly competitive with any other Category A service, and furthermore, would not compromise its genre.⁶³

- 81 Unifor respectfully submits that examples such as these establish the criteria that applications to amend policies must meet. Policies, after all, are even more significant than individual licensing decisions, as they affect more than one broadcasting undertaking or licensee. Changes to the policies therefore have an impact on the broadcasting industry as a whole.

⁶¹ *Ibid.*, at ¶92

⁶² Citytv and OMNI stations – Licence amendments, Broadcasting Decision CRTC 2010-745 (Ottawa, 7 October 2010) at ¶¶14-15.

⁶³ At Book Television – Licence amendments, Broadcasting Decision CRTC 2013-339 (Ottawa, 17 July 2013) at ¶17.

82 In our view, applications to amend policies must include significant and unequivocal evidence addressing several key issues. Policy amendment applications should demonstrate that a specific policy is not achieving its intended effect, that changing the policy will not unfairly advantage or disadvantage some broadcasters compared to others, that the broadcasting system would benefit from the change, and that audiences do not lose programming services on which they have come to rely.

83 The grounds and facts that Bell offered in support of its application are set out below.

A *Five grounds set out by Bell*

84 Bell says that the CRTC should approve local-averaging for Bell, Shaw and Rogers because:

- a until 2009 conventional TV broadcasters could “average their local programming obligations over the course of the broadcast year”⁶⁴
- b when they were renewed, Bell’s stations “far exceeded” their local programming requirements⁶⁵
- c Bell’s commitment to local programming is “exemplary”:⁶⁶ its local stations exceeded local programming requirements in the 2011/12 broadcast year “for the majority of the broadcast year”⁶⁷ and are “on track” to exceed local programming requirements for the 2012/13 broadcast year⁶⁸
- d the LPIF is not a factor for the CRTC to assess local programming compliance because it will end in August 2014,⁶⁹ and
- e it would “be absurd from a competitive and advertising standpoint” to “eliminate local programming for weeks at a time from the programming schedule and then try to make it up at the end of the broadcast year”, because this would “only serve to deprive and alienate our loyal viewers from watching the high quality local programming they have come to expect from Bell Media for many years”⁷⁰

B *Two facts set out by Bell*

85 Bell’s two-page application contains very few facts to support its request for local-averaging: it notes only that

⁶⁴ CTV application 2013-0389-1-App-130208-BM-Local Programming Letter (2 February 2013) at ¶5.
⁶⁵ *Ibid.*, at ¶6.
⁶⁶ *Ibid.*, at ¶9.
⁶⁷ *Ibid.* at ¶7.
⁶⁸ *Ibid.*, at ¶7.
⁶⁹ *Ibid.*
⁷⁰ *Ibid.*, at ¶8.

1. the CRTC denied its previous request for local-averaging in 2011, and that
2. the LPIF will terminate in 2014.⁷¹

86 The facts set out by Bell do not support the grounds on which its application is based. Specifically, Bell made claims, but has not provided facts about

- a Conventional TV broadcasters' past practice of averaging local programming obligations over the course of the broadcast year
- b The degree to which Bell's stations actually exceeded their local programming requirements in 2011, 2012 and 2013
- c The impact of the loss of the LPIF on Bell's local programming, or
- d Audience attitudes towards irregularly scheduled local programming

87 Bell's application is also silent about several other issues that are important to this application, namely:

- a The CRTC's current approach to temporary suspensions of conditions of licence
- b Bell's rationale for asking for a policy amendment rather than changes to its own conditions of licence
- c Private broadcasters' commitments to local programming
- d Impact of the proposal on levels of original local programming, and original local news and information
- e Any economic need by Bell, Shaw or Rogers to justify periodic reductions in local programming
- f Impact of irregularly scheduled local programming on local community audiences
- g Benefits of the proposal for the Canadian communities affected by the changes Bell is proposing
- h Impact of the proposal on the more than four thousand people who work at Bell, Rogers and Shaw television stations

88 We discuss these issues below.

V Nine serious problems with Bell's application

89 Bell's application suffers from nine serious deficiencies.

⁷¹ Bell letter ¶7.

A *Bell is gaming the system's appellate review process*

- 90 Bell has said that it is not applying “to amend the licences of any Bell media conventional station”⁷² – but “only” asking for the CRTC to amend its policy.
- 91 Bell’s argument is specious. Since each of its television licences is each subject to the conditions of licence set out in Broadcasting Regulatory Policy 2011-445,⁷³ changing the policy changes the conditions of licence to which each station is subject.
- 92 Bell has not explained why it has not applied to amend the conditions of licence of its own television stations. We think that the reason lies in the *Broadcasting Act’s* appellate remedies. CRTC decisions are clearly subject to appeal; changes to the CRTC’s policies are not.⁷⁴
- 93 If the CRTC grants Bell’s request, a serious risk exists that parties such as Unifor will be deprived of the appellate remedies Parliament created in the *Broadcasting Act*. The CRTC should not allow broadcasters to game the system in this manner.

B *It is not clear why current CRTC procedures for temporary suspensions of conditions of licence are burdensome or inadequate*

- 94 The CRTC has frequently accommodated broadcasters’ requests for temporary programming changes.⁷⁵ In June 2012, for example, the CRTC approved Bell’s application to “reduce its local programming requirement from a minimum of 14 hours to a minimum of 7 hours per week from 27 July through 12 August 2012, inclusively”, because of Bell’s coverage of the 2012 Olympic Games in the United Kingdom.⁷⁶ The Commission’s reason was that “it is of value to viewers to

⁷² Bell letter at ¶2.

⁷³ We note in passing that the legality of using a policy to apply conditions of licence wholesale to a number of different licensees with different circumstances could be questioned as being contrary to the spirit, if not the language, of s. 9(1)(b)(i) of the *Act*, which permits the CRTC to apply conditions “related to the circumstances of the licensee” – not to the ‘circumstances of a group of licensees’. As the CRTC determined that the circumstances of Rogers’ TV stations merited renewal of their licences in 2014, while those of Bell and Shaw merited renewal in 2016, it is not clear why all three groups had circumstances that warrant the application of identical conditions of licence. (S. 10, which provides the CRTC with authority to set regulations that apply to one or more classes of licensee, would on its face appear to be the more appropriate mechanism for enforcing programming standards of this type.)

⁷⁴ Under sections 28 and 31 of the *Broadcasting Act* only decisions and orders of the CRTC may be appealed – not “policies”.

⁷⁵ The CRTC referred to these case-by-case exceptions in its 2013 renewal of the CBC’s licences, at ¶¶110-111.

⁷⁶ Bell Media Inc. conventional television stations - Licence amendments related to coverage of the 2012 Olympic Games, Broadcasting Decision CRTC 2012-350 (Ottawa, 27 June 2012), at ¶6.

receive broadcast coverage of special international events such as the Olympic Games, in which Canadians compete and participate in many ways.”⁷⁷

95 Bell has not explained whether it has lost its capacity to plan ahead for holidays and special events, to which the CRTC referred when it denied Bell’s 2011 local-averaging request.

96 Bell has also not said why the CRTC’s temporary application route does not provide it or other broadcasters with “the flexibility to temporarily reduce the amount of local programming on its stations during holiday periods (to account for staffing issues) or to cover special events.”⁷⁸

97 The CRTC should not amend its policies in the absence of evidence that its practices are not working, or that they are unduly burdensome for broadcasters in the context of the benefits for Canadian audiences that the practices should safeguard.

C It is untrue that stations are accustomed to averaging local programming over the year

98 Bell has said that until 2009, “... conventional licensees had the ability to average their local programming obligations over the course of the broadcast year.”⁷⁹

99 A number of cases contradict Bell’s claim. For example,

- When the CRTC renewed the licence for CJPM-TV Chicoutimi in 1985, the Commission noted that while the station’s weekly local production commitment of 9 hours 40 minutes/week was met before 1984, it was not met in late April 1985, when a review of the station’s program logs “indicated that only 9 hours 35 minutes of local production were being broadcast each week.”⁸⁰
- When the CRTC renewed the licence for CFCN-TV Calgary in 1985, it commended the station’s licensee for the comprehensive local news and information programming it broadcast each week, which included 12 hours per week of regularly scheduled local news programs, early and late evening newscasts seven days a week, an 11:00 am weekday newscast, and "cut-ins" for local insertion in the CTV network weekday program "Canada AM".⁸¹ Nevertheless, the CRTC noted the station’s admission that it had failed to achieve the 17 hours 15 minutes per week of local programming specified in its Promise of Performance.

⁷⁷ *Ibid.*, at ¶11.

⁷⁸ Bell, at ¶6.

⁷⁹ Bell **proposal** at ¶5.

⁸⁰ Broadcasting Decision CRTC 1985-519.

⁸¹ Broadcasting Decision CRTC 89-126.

- When the CRTC renewed CFER-TV's licence in 1986 it noted the licensee's failure to a public affairs program at least 30 minutes in length be produced every week, and imposed the requirement as a condition of licence⁸²
 - When the CRTC renewed CFCM-TV's licence in 1986⁸³ the CRTC granted its proposal to reduce local production to 21 hours/week, because "the new level was a minimum commitment and was comparable to the level of other television stations serving comparable markets, and ... the budget for local production would be maintained"
 - The CRTC renewed CFER-TV's licence in 1992⁸⁴ for three years because of the station's failure "to meet its programming commitment to broadcast a weekly 30-minute or longer local public affairs program", which was contained in the station's Promise of Performance and was also a condition of licence. The Commission set out its expectation that the station would "broadcast 2 hours and 59 minutes of local news programming weekly, as proposed in its renewal application [and] increase its local news programming as soon as its financial situation improves"
 - In 1992 the CRTC renewed CFCM-TV's licence for three years⁸⁵ because of its failure "to broadcast a minimum of 21 hours of local productions per week, which was a condition of licence", and
 - In 1995 the CRTC threatened CFCM-TV with a mandatory order after the licensee did not meet its condition of licence for weekly hours of local programming "during one week in January 1994 containing a statutory holiday, during two to three weeks in February 1994 while broadcasting the Winter Olympic Games, and during the program schedule changes between late August and early September 1994", and on three other occasions between 5 September and November 1994.⁸⁶
- 100 Bell has also not mentioned that at times, the CRTC has measured local program production requirements from one day to the next. In 1995 it noted the failure by CKWS-TV-1 Brighton and CKWS-TV-2 Prescott "to provide 12 minutes of original local news daily, Monday to Friday"⁸⁷
- 101 The CRTC should not grant applications to amend its policies when available facts directly contradict an applicant's claims.

⁸² Broadcasting Decision CRTC 86-
⁸³ Broadcasting Decision CRTC 86-977.
⁸⁴ Broadcasting Decision CRTC 92-546.
⁸⁵ Broadcasting Decision CRTC 92-545.
⁸⁶ Decision CRTC 95-62.
⁸⁷ Broadcasting Decision CRTC 95-104.

D It is not clear how much original and repeat local programming is now being broadcast

102 The CRTC has previously asked broadcasters asking for amendments to their conditions of licence for local programming to provide information about the level of that programming being provided. For example, when the CRTC considered a request by V Interactions to change its local programming, it asked for and reviewed tapes of its local programming to measure levels of local content:

Local programming

25. At the hearing, the Commission asked V Interactions to submit logger tapes of all newscasts aired during the course of one broadcast week by each of its stations. Analysis of these newscasts revealed that while complying with its conditions of licence concerning local news, V Interactions' stations broadcast on average only a few minutes of local segments originating in the markets in which the newscasts are broadcast. The Commission notes in particular that, for the sample week, the newscasts of the stations in Québec, Saguenay, Sherbrooke and Trois-Rivières contained no segments covering local arts and shows or local sports.

26. The Commission notes, however, that V Interactions' commitments will allow a considerable increase in the broadcast of segments of local news per broadcast week ...⁸⁸

103 The Bell stations are currently required to broadcast 728 and 364 hours per year of local programming, depending on whether they serve large or smaller communities. Are they meeting this objective? The public does not know because Bell has not provided this information.

104 The CRTC should not amend its policies when it is unclear what the policies have achieved.

E Bell has not made any commitments to maintain levels of original local programming

105 Bell says that it is "not proposing a reduction in the amount of local programming hours that conventional stations are required to broadcast."⁸⁹ It has said it would be "absurd" for it to eliminate local programming for weeks at a stretch.

106 With respect, saying that a step is 'absurd' is not a commitment not to take the step. Who would have thought that broadcasters that received the LPIF would subsequently reduce their local programming? Yet this is what happened with Bell, as the CRTC found when it reviewed the average amount of local

⁸⁸ Broadcasting Decision CRTC 2012-243, at ¶25-26.

⁸⁹ Bell application, ¶1.

programming broadcast per week by LPIF recipients, in the context of reviewing the LPIF policy in 2012. Bell reduced its overall local programming after receiving the LPIF.⁹⁰

Table 7 Bell's local programming levels before and after receiving LPIF funding

Bell Media (CTV)	Average hours per week	
	Pre-LPIF	With LPIF
Local news programming	17:57:38	17:44:00
Local non-news programming	1:59:46	1:44:37
Total local programming	17:57:38	17:44:00

- 107 Bell has also not said how much local programming – or original local programming – the broadcasters affected by Bell's proposal will or will not provide each week, every twelve weeks, or in each broadcast year of its remaining licence term.
- 108 Yet Bell's local-averaging proposal only makes business sense if the benefits to private broadcasters of periodically reducing and increasing local programming outweigh their costs – in other words, if they can reduce local programming expenditures.
- 109 The CRTC should not amend its measurement approach to local programming without clear evidence about the amendment's impact on the level of access to original weekly, local news and information that the change will affect.
- F** ***Bell's intention to maintain local programming levels contradicts its statements at the LPIF hearings***
- 110 Bell has not explained how its proposal to periodically reduce the level of local programming available to the local communities it serves is consistent with its many public commitments to those communities.

⁹⁰ CRTC, *Review of the Local Programming Improvement Fund: Additional information added to the public file - Weekly Local Programming Averages*, Broadcasting Notice of Consultation CRTC 2011-788-2. The Commission explained that it used

... TV log data filed with the Commission as part of stations' regulatory reporting requirements. The Commission took this information from a representative sample of TV broadcast logs submitted by TV stations in receipt of LPIF monies. Appendix 1 of Broadcasting Notice of Consultation 2011-788-2 provides further information regarding this representative sample. On the basis of this sample, average weekly programming levels were calculated on a consistent basis for the two-year period prior to and the two-year period following the implementation of LPIF.

111 In buying CTV, BCE promised to support “more local programming”, to enable Canada’s broadcasting system to “be better able to stand out in a fragmented and highly competitive market.”⁹¹ Specifically, it agreed to increase the CTV A-Channel stations’ local programming expenditures by \$30 million,⁹² to spend \$28.8 million on enhanced local news in Winnipeg, Regina, Saskatoon, Edmonton, Calgary and Vancouver;⁹³ and to “keep the A-Channels in operation for at least three broadcast years starting 1 September 2011.”⁹⁴ Bell’s local-averaging application does not address the impact of its proposal on these tangible benefits.

112 Last year, for example, Bell told the CRTC at the LPIF hearing that audiences in small communities deserve the same level of service as those in larger centres:

508 It doesn't matter that Bell is vertically integrated. Being vertically integrated doesn't make the small towns we serve any bigger. We still need feet on the street to gather and deliver news, we still need local production equipment and facilities, and we still need to provide our viewers with a locally relevant perspective, in a high-quality, professional manner.

509 As we mentioned earlier, viewers in smaller communities are just as deserving as those in metropolitan centres of having access to local programming. In the same spirit, viewers served by vertically integrated small stations are just as deserving as those served by non-vertically integrated small stations. A viewer is a viewer, wherever they reside and wherever they are, and whatever the corporate structure of their local television station.⁹⁵

113 Bell submitted its local-averaging application in February 2013 and did not refer to the commitments it later made in the context of buying Astral. In May 2013 Bell made a “very big intangible commitment” to the effect that “... all of Bell Media's local television stations, as well as Astral's two local TV stations in British Columbia, will remain open, with current levels of programming maintained”:⁹⁶

2239 MR. BIBIC: -- when we acquire[d] CTV, we, of course, acquire[d] conventional stations and we acquired radio, and we acquired specialty services. So we acquired the entire mix. The conventional stations, as you appreciate, are stations that struggle, particularly in smaller communities, and we've had these

⁹¹ Transcript (Gatineau, 1 February 2011) at ¶106.

⁹² *Ibid.*, at ¶41.

⁹³ *Ibid.*, at Appendix 1.

⁹⁴ *Ibid.*, at ¶45.

⁹⁵ *Ibid.*, at ¶¶

⁹⁶ CRTC, *Transcript - Application by Astral Media Inc. for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc.*, Vol. 5 (Montreal, 10 May 2013), at ¶114.

debates several times. And then LPIF came in to help support them, and then LPIF is going to be phased out. So these stations tend to be, you know, at risk, and what we're saying is we will step up and guarantee that they will not be shut erred in any of the communities in which we operate them and we'll add the two Astral stations to that commitment. So it is a very big intangible commitment, in our view, particularly –⁹⁷

- 114 Bell also spoke of its “deep commitment” to local television service, in the same hearing:

95 Of course, there is no easy or perfect answer to this question, but having strong Canadian broadcasters who can confidently navigate an uncertain future is a great start and it's an absolutely necessary element.

96 Those broadcasters must show a deep commitment to viewers, listeners and local communities, and to developing and promoting homegrown content and artists. That's what a combined Astral and Bell Media will deliver.⁹⁸

- 115 Finally, Bell hinted that approval of its purchase of Astral would make local television stations more stable:

88 [Mr. Cope:] Fundamentally, we sharpened our approach. A focus on more production and promotion of Canadian programming in both official languages; more investment in Canadian radio; more stable local television stations, which we commit to keep open [T]his transaction ensures stability going forward.⁹⁹

- 116 In applying to buy two more over-the-air television stations, however, Bell did not specify whether they would continue to deliver original local programming. It spoke only about maintaining station “operations”:

114 [Mr. Krull:] ... all of Bell Media's local television stations, as well as Astral's two local TV stations in British Columbia, will remain open, with current levels of programming maintained.¹⁰⁰

...

7790 THE CHAIRPERSON: Thank you.

⁹⁷ CRTC, *Transcript - Application by Astral Media Inc. for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc.*, Vol. 5 (Montreal, 10 May 2013), at ¶2239.

⁹⁸ CRTC, *Transcript - Application by Astral Media Inc. for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc.*, Vol. 1 (Montreal, 6 May 2013)

⁹⁹ CRTC, *Transcript - Application by Astral Media Inc. for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc.*, Vol. 5 (Montreal, 10 May 2013), at ¶188.

¹⁰⁰ CRTC, *Transcript - Application by Astral Media Inc. for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc.*, Vol. 1 (Montreal, 6 May 2013)

7791 **One of the intangible benefits you have provided was the continued operations** of the conventional television services to 2016, if I'm not mistaken.

7792 MR. BIBIC: And I think 2017 for the two Astral conventional over-the-air.

7793 THE CHAIRPERSON: In Abbotsford and the smaller ones.

7794 Now, when we discussed this last time it was eight months ago and if I recall the discussion we had at the time, it was, well, we can't predict the future, it's going to be difficult. Since we are eight months later, why wouldn't the undertaking or the benefit be all the way to 2017 for all the stations then?

7795 MR. BIBIC: We just tried to make it coterminous with the expiry of the license.

7796 THE CHAIRPERSON: Things happen, licenses get renewed on different schedules.

7797 MR. BIBIC: If that's not a procedural problem we would accept that.¹⁰¹

[bold font added]

117 Our concern is that accepting Bell's February 2013 amendment application effectively permits Bell to renege on its May 2013 commitments to maintain the service its local television stations now provide across Canada.

118 The CRTC should not grant applications that contradict the applicant's relatively recent public statements to the CRTC, without clear if not overwhelming evidence that sudden, unforeseen changes in the broadcasting environment require immediate change.

G *There is no evidence of economic need by local television broadcasters*

119 As noted previously, the CRTC assesses 'economic necessity' when considering broadcasters' requests for licensing amendments. In 2001, for example, the CRTC denied Global's request for the elimination of a local-advertising prohibition, because the licensee did not demonstrate that the prohibition was causing harm: the CRTC instead noted Global's statement that "it is "comfortable with the current position" and "comfortable with the past performance."¹⁰² Similarly when the CRTC considered CBC's local-averaging

¹⁰¹ *Ibid.*

¹⁰² *Licence renewals for the television stations controlled by Global*, Broadcasting Decision CRTC 2001-458 (Ottawa,), "Request for local advertising on CKMI-TV Quebec City", at ¶190.

- request, it considered not only the Corporation's past but also its forecast financial performance: it reviewed the CBC's performance from 2002 to 2019.¹⁰³
- 120 Neither Bell nor Broadcasting Notice of Consultation 2013-529 provides this information, for Bell's stations or for those of any other broadcaster.
- 121 We note, however, that in 2012 Shaw told the CRTC that the broadcasting system has "ownership stability, an improving advertising market and less financial uncertainty for local stations."¹⁰⁴
- 122 Bell's peers agreed that the 2008 crisis in broadcasting has passed:
- 8333 THE CHAIRPERSON: Okay.
- 8334 I want to come back to a couple of statements you made in your remarks today. On page 2 you say:
- "The crisis in local television that was the backdrop to the creation of the LPIF in 2008 and 2009 has now ended."
- 8335 Do you have evidence from an advertising perspective that the market has returned and advertising revenues have tried up and are growing at a proportional rate beyond what happened in '08-'09 and I guess '10 started to turn around?
- 8336 MS DINSMORE: You have asked that question of others, Mr. Chair --
- 8337 THE CHAIRPERSON: Yes.
- 8338 MS DINSMORE: -- and we have pretty much the same response as the others in that we have equally looked at the CRTC reports, we have read the analyst reports. But I will pass it on to Susan Wheeler just to speak a little bit about our own experience with medium.
- 8339 MS WHEELER: Certainly with respect to the City stations our advertising revenues have come back from where they were in 2008, so based on our own experience that is the case, but again, in terms of an industry trend we can only rely on the CRTC's financial summaries that do indicate that revenues have recovered from the pre-recession levels.
- 8340 THE CHAIRPERSON: So on page 5 towards the end where you say:
- "Today, things are looking up for the future of local television in small markets."

¹⁰³ Broadcasting Decision CRTC 2013-263 at ¶20.

¹⁰⁴ CRTC, Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2, Vol. 1 (Gatineau, 16 April 2012) at ¶50.

8341 Is that the basis for that statement, that your City TV markets revenue have come back, because you are focusing on local television and small markets and obviously that's part of the position that you' have taken in fact that small markets, independent small markets should continue to phase out, I guess, or sunset.

8342 MS DINSMORE: Yes. The basis for that statement really was more the fact that, you know, since 2008 the Commission had its policy hearing for DTH. Out of that hearing came an obligation on the part of the DTH providers to carry many more of the small-market stations and in terms of that carriage once they are carried -- because they are not all up yet because the obligation doesn't fully kick in until 2013, but those stations who were not being carried therefore were challenged in terms of having the entire market in terms of selling advertising will be up on both satellites and both providers will be carrying them and ergo -- I mean already it has begun but it's not completed, but we think that is certainly a factor in terms of making that statement.¹⁰⁵

123 Indeed, Bell told the CRTC just last year that the stations now supported by the LPIF were doing well in terms of audience performance:

764 CONSEILLÈRE POIRIER: Oui.

765 Les cotes d'écoute, madame Lamarre en a parlé. Mais effectivement, ce ne sont pas tous les marchés qui peuvent aller dans ce sens-là.

766 Est-ce que vous avez des bonnes cotes d'écoute dans les 19 stations qui obtiennent un LPIF actuellement?

767 M. BIBIC : Oui, en effet oui, présentement. Mais c'est aujourd'hui. Et avec la méthodologie qu'on propose, on serait obligés de garder notre positionnement comme le premier ou le deuxième pour être assurés de recevoir le financement du fond.¹⁰⁶

124 Even if Bell had established that its local television stations were financially precarious – and it has not – this situation may be due to accounting methods rather than the inability of Bell's local television stations to make money. In 2012, Rogers explained how cost allocations affect large broadcasters like Bell:

8223 MS DINSMORE: Industry consolidation has ensured that most television stations operating today, including many in small

¹⁰⁵ CRTC, Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2, Vol. 4 (Gatineau, 19 April 2012) <<http://www.crtc.gc.ca/eng/transcripts/2012/tb0419.html>>.

¹⁰⁶ CRTC, Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2, Vol. 1 (Gatineau, 16 April 2012) <<http://www.crtc.gc.ca/eng/transcripts/2012/tb0419.html>>.

markets, have the resources they need to sustain a strong local presence going forward without the LPIF.

8224 The fact that Bell and Shaw agreed to purchase the local television stations of CTV and CanWest as the recession continued to take its toll on profit margins indicates that they view these stations as extremely valuable assets.

...

8268 MR. ENGELHART: Thanks, Pam.

8269 I don't have ready access to all of Bell's books, but I suspect that what they were talking about was fully allocated costing. I suspect that they're absolutely right, that when you fully allocate your costs, these number of stations, 10 or 16 or whatever it was, are losing money.

8270 But remember what that means. They have huge fixed costs, if you will, of, say, "CSI." You're buying "CSI" as a national show. You're going to pay the same money for "CSI" whether you air in Wingham or not.

8271 So when you look at Wingham, you're allocating a certain amount of costs to Wingham, and when you make those allocations, sure it's underwater.

8272 Mr. Crull's salary, Mr. Bibic's salary, these all get allocated to the different stations and when you make those allocations the stations are under water.

8273 But if you are asking yourself as a rational businessperson do I shut the station down, that's a different calculation. Because if I shut that station down I'm still paying the same price for CSI. I don't get to reduce Mr. Crull's salary.

8274 So the decision that a business makes about whether to shut a station down or not is: Are the incremental costs in excess of the incremental revenues? That is quite a different thing.

8275 So I suspect that on incremental cost basis, I'm going to guess that none of those stations are under water and I'm going to say if they were they would have shut them down already, but I'm guessing.

8276 The other thing to remember is, its coverage, right. When you are selling a network you are selling eyeballs, and if you are like Rogers and you don't have network in Atlantic Canada it hurts you, it hurts you with the advertisers. So if they have stations, say in Atlantic Canada, where the incremental costs are less than the incremental revenues and that increases their eyeballs and increases their abilities to sell advertising, they would be foolish to shut them down now.

8277 That having been said, you know, some of these stations are probably not huge contributors to the Bell empire so they could close some of them down, particularly to make a point with a government agency. So I think that's what's going on here, but I don't think that -- I don't think that the fact that they are underwater on a fully allocated basis means that they would be shut down to a rational businessperson.¹⁰⁷

...

- 125 Even if cost-allocation and accounting methods did not explain the current position of Bell's stations, the CRTC should want to know why the innovations that conventional broadcasters have promised to protect and maintain original local programming have not achieved this objective.
- 126 In October 2007, for example, it was reported that Canwest was using a technique known as centralcasting to consolidate stations' local news productions across the country" in four "broadcast centres."¹⁰⁸ At the time, CEP asked the CRTC to consider the implications of Canwest's actions for its compliance with the *Act's* employment opportunities requirement, Canwest's licences and the CRTC's policies. (The CRTC has traditionally required television stations to produce local programming in the communities from which they accept advertising revenues.)
- 127 The CRTC decided that it lacked the evidence needed to address the situation, but said it would continue to monitor it.¹⁰⁹ In 2012 Shaw testified to the CRTC that it

... now employs centralized news production facilities in Toronto, Calgary, Edmonton and Vancouver. Staff members in these facilities control all the "back-shop" work -- cameras, audio, graphics and switching -- for newscasts in every Global station. It is one of the most innovative and efficient systems in North America.

¹⁰⁷ CRTC, Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2, Vol. 4 (Gatineau, 19 April 2012) <<http://www.crtc.gc.ca/eng/transcripts/2012/tb0419.html>>.

¹⁰⁸ Cartt.ca, "Global cutting 200 jobs as local news production retrenched" (4 October 2007), quoting from an internal memo that stated, "Once the new system is fully implemented and changes are made in Quebec and the Maritimes, our overall staffing levels will be reduced by approximately 200 positions across the country."

¹⁰⁹ *Licence Renewals*, Broadcasting Decision CRTC 2009-409 (Ottawa, 6 July 2009), at ¶9:
... there is insufficient evidence on the public record of this hearing to conclude that the licensee was operating in non-compliance with the terms and conditions of its licences during the last licence term. However, the Commission will continue to monitor the situation.

How efficient? Our 5:00 news hour in Kelowna goes to air every night using a crew in Toronto and at 5:30 is seamlessly handed off to another crew in Vancouver with zero disruption for the anchor team or the audience.

These efficiencies allow us to spend less on overhead, and more where it belongs, in the community, with reporters and cameras on the streets. They have allowed us to introduce new programming, like "The West Block" with Tom Clark.¹¹⁰

128 Bell has not said whether it has implemented centralcasting, though it explained the technique in detail to the CRTC in 2012:

705 MR. GRAY: There is an opportunity in newsrooms today to innovate in such a way that you automate control rooms. The net effect of that potentially could be to reduce your staff complement by as many as 20 people and it --

706 COMMISSIONER LAMARRE: Assuming you have at least 20 people in your news staff.

707 MR. GRAY: Yes, and let me explain sort of where that number comes from.

708 So if you have got two news crews on, okay, at a station doing noon and six, six and eleven, seven nights a week there is an opportunity through the utilization of technology called overdrive to reduce your control room complement from somewhere between 12 and 14 people potentially to as few as two.

709 So in the station that I described there is an opportunity to reduce your staff complement by 20. In the situation that you describe let's say that number is 10.

710 What you could do is reinvest half of those monies on the street. You could hire five video journalists. You could hire five reporters, five cameras.

711 You could substantively improve the quality of your product in both of those cases while at the same time spending significantly less overall on news production. So that is the flaw in the current model.

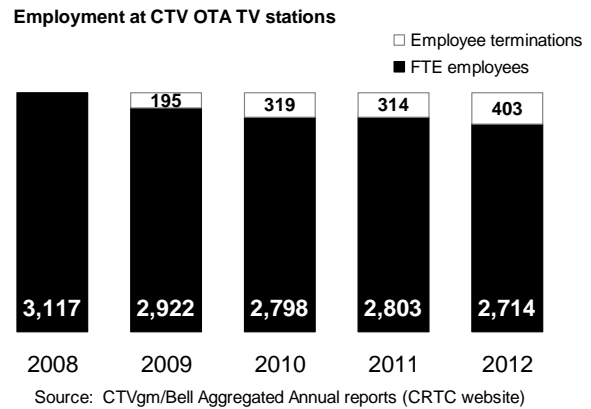
129 In brief, Shaw and Bell each said that centralcasting would create financial savings to hire more reporters and journalists.

130 Has this happened?

¹¹⁰ CRTC, Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2, Vol. 1 (Gatineau, 16 April 2012) at ¶72-74.

Figure 5 Employment and job losses at CTV, 2008-2012

131 We do not know. The CRTC does not appear to know how many reporters or journalists work in broadcasting,¹¹¹ and if it does know, has not published this information. According to the aggregated financial summaries published by the CRTC, however, employment at CTV has decreased in each of the past five years (see Figure 5). Unifor’s concern is that Bell’s proposal will accelerate job losses at English-language private television stations.



132 Even if the CTV stations had maintained their employment levels – and they have not – it is unclear why the CRTC should effectively change an important aspect of its group licensing policy when the policy has only been in force for a just over a year. Broadcasters will not even be reporting their financial results for the 2012/13 broadcast year until November 30, 2013.

133 It would be premature for the CRTC to grant Bell’s request to amend an important aspect of conventional television station performance, without a clear understanding of the proposal’s benefits for the broadcasting system.

H Bell has not explained how this change will benefit Canadian communities

134 Bell has said that its proposal will not “deprive and alienate” its loyal viewers,¹¹² but has not explained why periodic reductions in the “high quality local programming they have come to expect from Bell Media for many years”¹¹³ will not affect its loyal viewers’ ability to follow local events.

135 The CRTC has previously considered the impact of programming changes on audiences. In 2012, for example, it denied a request to change the level of ‘balance’ programming on religious stations because of its impact on audiences:

... The Commission is of the view that the provision of balance programming during peak hours is an important part of its approach to religious broadcasting by conventional television stations in that it serves

¹¹¹ In CRTC, Letter to the Office of the Information Commissioner of Canada, CRTC reference A-2010-00016 (Ottawa, 6 October 2010) at 1, the CRTC confirmed that it does “not collect staffing data on full-time journalists or their equivalents.”

¹¹² Letter At ¶8.

¹¹³ At ¶8.

to ensure that such programming is available at times when the potential audience is the greatest.

Accordingly, the Commission considers that approval of CTS's application would result in a significant change to the Commission's approach to achieving balance in programming and that it would be more appropriate to consider such a change at the time of licence renewal, when the Commission can explore all aspects of these stations' programming.¹¹⁴

- 136 The CRTC should not grant an application to amend a policy that will have a significant impact on the availability of local news and information, without considering the full ramifications of this change for affected audiences, and the audiences that serve them. Bell's proposal neither addresses these ramifications, nor provides basic audience data to establish whether audiences will remain loyal to local programming whose levels fluctuate randomly from one week to the next.¹¹⁵
- 137 The CRTC has previously required broadcasters seeking reductions in their local programming, to explain the effect of these changes on the communities they serve. Bell has not explained how its proposal will benefit audiences, however.
- 138 The CRTC should not grant applications to amend policies that do not clearly demonstrate the benefits of the change for audiences.

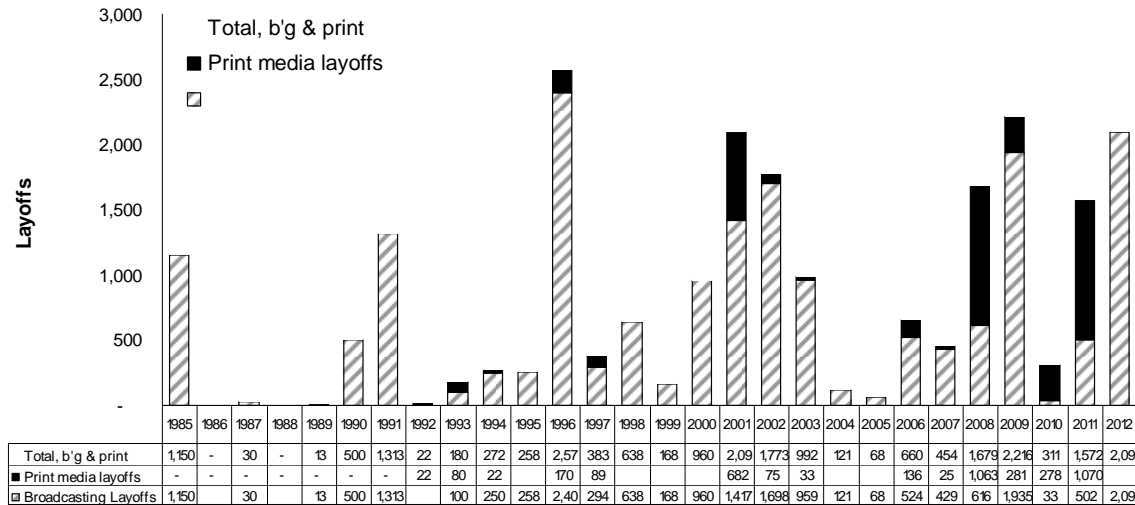
1 Bell has ignored the amendment's impact on Parliament's objectives for employment opportunities and Canada's economic fabric

- 139 Even if Bell had addressed all of the other points we have noted above, the CRTC should deny Bell's proposal because of the potentially grave impact it could have on employment opportunities in Canadian television. Figure 2, provided earlier, showed employment in private conventional television over the past several decades. Figure 6, below, shows long-term trends in the number of layoffs announced by Canadian broadcast and print media – thousands of positions have been eliminated in almost every one of the past six years.

¹¹⁴ Broadcasting Decision CRTC 2012-88, at ¶¶11-12.
¹¹⁵

Figure 6 Layoffs reported in Canada’s print and broadcast media, 1985-2012

Layoffs in print and broadcast media: 1985 - 2012



140 Bell has not provided any evidence about the impact of its proposal on employment opportunities – but unless Bell claims otherwise, we believe it is safe to assume that local-averaging will permit it to reduce staff numbers or hours, as it will be able to reduce local programming levels for several weeks at a time. In 2012 Canada’s private over-the-air television stations employed 6,343 people in 2012 – or 69 people per station, on average.

141 Suppose employment at English-language television stations decreased by 10% (or 416 FTE jobs) as a result of this amendment – how will local communities benefit if jobs worth \$36 million disappear from their economies?

Owner	Number of FTE employees in 2012	Average salary	Assumption of 10% decrease in # of jobs	Direct loss to communities in terms of lost salaries
Rogers	887	\$88,658	89	\$ 7,890,612
Canwest/Shaw/Corus	1,123	\$83,863	112	\$ 9,392,691
CTV/BCE	2,146	\$91,480	215	\$ 19,668,204
Total	4,156			\$ 36,951,506

142 Bell has provided no evidence about potential job losses, or how these losses affect the broadcasting system and local communities.

- 143 The CRTC should deny Bell's proposal for all the reasons we have set out above – but in particular it should not take steps at this time that will jeopardize the economies of many large, medium and small economies across Canada.

VI Conclusions and recommendations

- 144 Unifor respectfully submits, as the CRTC has said in the past, that the privilege granted to broadcasters to use the public airwaves entails a responsibility to the people in the communities that broadcasters are licensed to serve.¹¹⁶ One reason for this responsibility is, as Bell told the CRTC in 2012, is that “[t]hese stations are integral to the local identity of these communities.”¹¹⁷
- 145 The CRTC accepted Bell's position on the importance of local television stations, when it approved the company's purchase of the Astral television stations:

Other issues relating to television: Status of CJDC-TV Dawson Creek and CFTK-TV Terrace, and other conventional television stations

88. The Commission has acknowledged in previous proceedings that the overall viability of conventional television stations is in question.[14] In the current proceeding, BCE stated that local television stations continue to struggle, particularly in smaller markets, and committed to keep open until 2017 all of its current conventional television stations as well as the two television stations acquired from Astral (CJDC-TV Dawson Creek and CFTK-TV Terrace), and to maintain the current levels of local programming for all of these stations. The Commission is of the view that the continued operation of these conventional television stations is critical to providing Canadians with access to a significant amount of locally relevant programming, to the overall benefit of the Canadian broadcasting system. These are important commitments from BCE given the many financial and operational challenges faced by conventional television stations. But for these commitments, the Commission would not have approved the

¹¹⁶ *Policy for Local Television Programming*, Public Notice CRTC 1991-22 (Ottawa, 15 February 1991):

... While each television licensee must ensure that it meets the Canadian content requirements set out in the regulations, it also has a special responsibility to serve the public residing within the particular geographic area it is licensed to serve. Licensees should do so through programs directed towards local concerns as well as through the provision of programs of regional, national or international interest.

This concept of local reflection is founded on the principle that the right to use the public airwaves entails a responsibility to those members of the Canadian public resident in a licensee's service area.

¹¹⁷ CRTC, *Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2*, Vol. 1 (Gatineau, 16 April 2012), at ¶43.

transaction. As a result, the Commission directs BCE to adhere to these commitments.¹¹⁸

- 146 As television broadcasters have often stated their commitment to the local communities they serve, we would have expected to see more, not fewer, employment opportunities at local television stations over time. This has not happened.
- 147 The CRTC's policies and regulations should strengthen Canadians' opportunities for employment in Canada's over-the-air television system. It should neither adopt nor maintain policies and regulations that weaken or reduce those opportunities, unless it has evidence to establish the way in which these changes will actually (not hypothetically) benefit Canadians.
- 148 Insofar as the evidence required is concerned, the CRTC bears a duty to make its determinations based on the evidence that applicants submit. Bell has not provided the CRTC with the required evidence.
- 149 Bell should have, but did not, provide relevant facts to support its application. For instance, in 2012 Bell claimed during the CRTC's proceeding about the LPIF policy that "... CTV has a greater commitment to local television, in terms of stations, local programming hours, viewers, employees, and expenditures, than any other private broadcaster."¹¹⁹ It supported this statement as follows:
- ...
- 490 Bell Media operates 26 local TV stations, and 19 of them are in LPIF-eligible markets.
- 491 We provide 155 hours of original local news programming every week, when our local programming commitment is 91 hours.
- 92 We spend \$45 million annually on local programming, and employ 890 people in the communities that these stations serve.¹²⁰
- ...
- 150 The simple truth is that Bell could have, but did not provide any solid evidence or facts to support its request that the CRTC substantially change an important aspect of its local television policy. Evidence is critical in this application,

¹¹⁸ Broadcasting Decision CRTC 2013-310.

¹¹⁹ CRTC, *Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2*, Vol. 1 (Gatineau, 16 April 2012) at ¶488.

¹²⁰ CRTC, *Transcript - Review of the Local Programming Improvement Fund - Broadcasting Notice of Consultation CRTC 2011-788, 2011-788-1 and 2011-788-2*, Vol. 1 (Gatineau, 16 April 2012) at ¶¶ 490-493.

because its absence mocks meaningful public participation in this process. As the Federal Court of Appeal held in the CRTC's early years,

... at the very minimum, what the statute required, by requiring a "public hearing", was a hearing at which, subject to the procedural rules of the Commission and the inherent jurisdiction of the Commission to control its own proceedings, every member of the public would have a status "to bring before" the Commission anything relevant to the subject matter of the hearing so as to ensure that, to the extent possible, everything that might appropriately be taken into consideration would be before the Commission ..., when the application for the amendment was dealt with. To be such a public hearing, it would, in my view, have had to be arranged in such a way as to provide members of the public with a reasonable opportunity to know the subject matter of the hearing, and what it involved from the point of view of the public, in sufficient time to decide whether or not to exercise their statutory right of presentation and to prepare themselves for the task of presentation if they decided to make a presentation. **In other words, what the statute contemplates, in my view, is a meaningful hearing that would be calculated to aid the Commission, or its Executive Committee, to reach a conclusion that reflects a consideration of the public interest as well as a consideration of the private interest of the licensee; it does not contemplate a public meeting at which members of the public are merely given an opportunity to "blow off steam"**¹²¹

[bold font added]

- 151 As Bell is proposing a change that could deprive hundreds of people of their employment and weaken the dozens of local economies that rely on those jobs, it should have provided the relevant facts mentioned in Unifor's submission above – including actual and forecast hours of original local news and non-news programming – to enable the CRTC and the public to assess its proposal.
- 152 Equally telling is the fact that Bell has not explained how its proposal will strengthen local television stations' service to the communities they are supposed to be serving.
- 153 Will the amount of original local programming increase if this proposal is approved? Bell is silent on this point.
- 154 Will private television stations hire more reporters and journalists in local communities if this proposal is approved? Bell does not say.

¹²¹ *Re Canadian Radio-Television Commission and London Cable TV Ltd.*, [1976] 2 F.C. 621, (sub nom. *Canada (Canadian Radio Television Commission), Re*) 13 N.R. 292, (sub nom. *London Cable TV Ltd. v. Canada (Canadian Radio Television & Telecommunications Commission)*) 29 C.P.R. (2d) 268, 67 D.L.R. (3d) 267, 1976 CarswellNat 44, at ¶16.

- 155 Will private television stations ever restore the hours of original local news and non-news programming that have been eliminated since the beginning of the 21st century? No one knows.
- 156 Bell's silence about these important questions, and its failure to adduce the relevant facts needed for Canadians and the CRTC to consider its application mean that the CRTC lacks the evidentiary foundation on which to base a decision in this matter.
- 157 Unifor regrets that Bell has placed the CRTC in an awkward, if not untenable, position. If the CRTC approves the application on the information submitted by Bell, the CRTC will be holding Bell to a substantially lower standard of proof than it has applied and applies to other broadcasters. On the other hand, if the CRTC approves Bell's application on the basis of information submitted by other broadcasters, the CRTC will have effectively denied interveners such as Unifor the opportunity to challenge that information, and will therefore have conferred an unfair and unjust procedural advantage to the licensees it regulates.
- 158 The CRTC should hold Bell – a communications company that aspires to a leadership position in Canadian broadcasting and telecommunications – to at least the same standards to which it holds other broadcasters. It should also treat those who have an interest in this outcome fairly.
- 1 [Deny Bell's proposal due to insufficient evidence](#)
- 159 In our view, Bell's failure to provide facts and well-reasoned arguments demonstrating how this proposal will strengthen Canada's broadcasting system and increase employment opportunities for Canadians does not allow the CRTC to approve it under the CRTC's current *Rules of Procedure*.
- 160 The CRTC should therefore deny Bell's application.
- 161 Other broadcasters may well decide to supply the elementary facts that Bell failed to provide. If that is the case, the CRTC should still not grant the application – because other interested parties, including Unifor, will not have had the opportunity to review and if necessary challenge those facts.
- 162 If other broadcasters provide the evidence and argument that Bell chose not to provide, the CRTC could establish a reply phase to enable all parties to review and comment on that new information. In our view, however, such a move stretches procedural fairness towards Bell and other private broadcasters to a

dangerous degree: it invites the view that the CRTC will take any steps necessary to accommodate private broadcasters – even when broadcasters’ applications on their own are so deficient that they cannot stand on their own.

- 163 Unifor therefore again recommends that the CRTC deny Bell’s application.
- 164 In denying Bell, however, the CRTC should clearly state its own reasons for its decision, to provide other broadcasters with a detailed understanding of the case they must meet if they wish to pursue the matter in the future.

2 Clarify existing condition of licence

- 165 Unifor respectfully submits that the CRTC should take this opportunity to clarify Broadcasting Regulatory Policy 2011-442, by explaining that the term, “local programming”, actually refers to “original local programming”.
- 166 This clarification would reflect the CRTC’s statement in Broadcasting Decision CRTC 2013-467, when it discussed the applications by Thunder Bay and Newcap, to combine local programming on their twin-stick operations. The CRTC approved these applications, writing that:

[i]f approved, this would, for example, permit Thunder Bay to broadcast a combined total of 14 hours of ***original*** local programming on both of its stations in Thunder Bay without having to ensure that at least seven hours of local programming was broadcast on each individual station. Newcap would be permitted to do the same on the stations that it operates. ...

...

The Commission notes that the new requirement to offer a minimum of seven hours of local programming per week would result in a significant increase to the overall amount of local programming broadcast by these stations in their respective markets in comparison to the commitments both licensees made for the current licence term. ***The proposed combined requirement of 14 hours of original, local programming on both stations combined would also increase the amount of local programming provided in these markets*** by the same amount while providing increased flexibility to the licensees to choose how to allocate the local news programming on their respective stations.¹²²

[emphasis added]

¹²² Various independent conventional and community-based television programming undertakings – Licence renewals, Broadcasting Decision CRTC 2013-476 (Ottawa,) at ¶¶6 and 10.

167 Explaining that 'local programming' means 'original local programming' will ensure that broadcasters are guided by a common understand of the CRTC's expectations.

3 [Collect data: require local television stations to report every 12 weeks about the level of original local programming they offered in the preceding 12 weeks](#)

168 Among the many deficiencies of Bell's proposal is the absence of information about the programming that is or is not being produced and distributed by local television stations.¹²³ As noted previously, Parliament itself has commented on the absence of facts about local programming.

169 The CRTC should invite broadcasters that support Bell's proposal to report annually about the level of original local programming they produce about, in and for local communities. If reporting to local communities about the ways in which they serve those communities is too onerous, the CRTC should require local television stations to report the levels of original local news and non-news programming they provided, for each week of their licence term, using the electronic log data they submit twelve times each year to the CRTC.

4 [Review local programming during the television consultation](#)

170 The nearly-annual disparity between Bell's commitments to local programming, and its desire to reduce that programming, warrants serious consideration by the CRTC, if only to ensure that its administration of its responsibilities under the *Broadcasting Act* are not brought into disrepute.

171 The coming public consultation on television provides the CRTC with a unique and important opportunity

- to obtain a clear record about the state of local television in Canada,
- to provide Canadians with an opportunity to comment on this sector, and
- to develop a policy for local programming that will not only strengthen local programming and increase original local content that informs, enlightens and entertains, but that will also stand, if not the test of all time, at least for the next decade.

*** End of document ***

¹²³ Centralcasting as it is commonly understood removes the transmission function, and much of the production functions, from local television stations.