

February 15, 2024

Mr. Marc Morin
Secretary-General
CRTC
Ottawa, ON
K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2023-138-2 (the “Notice”) – final written comments on Step One of a modernized regulatory framework regarding contributions to support Canadian and Indigenous content

1. Friends of Canadian Media (“FoCM”) (formerly known as FRIENDS) is pleased to provide these final written comments in respect of the above referenced proceeding. We have structured these comments as a direct response to the questions initially set out by the Chair at the commencement of the oral hearing on November 20, 2023.

(i) Should streaming services make base contributions and how much?

2. The record of this proceeding confirms that Canadian participants and advocates for the broadcasting system overwhelmingly support initial base contributions from foreign streamers of a minimum of 5% of their Canadian revenues.
3. We believe that a 5% initial base contribution is significant enough to be material, but low enough that that it can be applied in advance of the Commission making all determinations necessary to implement a full and equitable contribution regime.
4. Foreign streamers have, not surprisingly, opposed the imposition of any initial base contribution as premature, unnecessary or unsuited to their business models.¹

¹ To its credit, at the oral hearing, Netflix did accept the notion of an initial base contribution. Nevertheless, Netflix indicated that if the Commission proceeded with an initial base contribution, it should be no more than 2%. Transcript, Volume 9, Line 7297. Contrary to Netflix’s assertions, however, the fact that 2% may be the median levy imposed by other countries around the world does not make it an appropriate level for Canada. As discussed by FoCM at the oral hearing, not only has Canada always had significantly more extensive broadcast regulation than most other countries, but the EU (which has done more than most other jurisdictions in this regard) has chosen to emphasize different policy tools than we have in Bill C-11. The primary tool in the *Audiovisual Media Services Directive* is an “exhibition” requirement that a minimum 30% of a video library must be European works. Even though expenditure requirements are ancillary, France has set its financial levy at

5. FoCM submits that the Commission should reject these claims as nothing more than stale, self-serving arguments originally advanced to contest the passage of Bills C-10 and C-11. The Government and Parliament undoubtedly turned their minds to these considerations in proposing and passing the *Online Streaming Act*. By formally bringing foreign streamers into the Canadian broadcasting system, and requiring them to make “equitable contributions”,² Bill C-11 clearly recognized:

- a) the urgent need to re-balance contributions in the Canadian broadcasting system;
- b) the fact that any pre-existing “contributions” of foreign streamers were insufficient; and
- c) that the test for appropriateness of contributions is whether they are “equitable”.

Each of these arguments are further addressed herein.

6. In particular, we urge the Commission to not be distracted by the many “red herrings” the foreign streamers have raised in an attempt to delay and defer the implementation of initial base contributions.
7. Specifically, as FoCM discussed at the oral hearing, the Commission does not need a new definition of Canadian programming to impose initial base contributions.³ The Commission is fully entitled to require foreign streamers to direct initial base contributions to support designated genres of Canadian programming under current definitions – both because they are deemed policy priorities and as an initial step towards equity with Canadian broadcasters.
8. The record of the proceeding suggests that the foreign streamers acquire and commission very little programming that meets current Cancon definitions.⁴ In such circumstances, therefore, an initial base contribution of 5% towards third-party Canadian programming (as defined by Canadians for Canadians) can hardly be considered unreasonable.
9. The Commission must not allow itself to be distracted by foreign streamer “regulatory credit” arguments – namely, that they should receive credit for investments in service production, or for support of Canadian film festivals, or for sponsorship of training or talent programs. Leaving aside

5.15% and Denmark at 6%. Canada, by contrast, is making financial contributions the priority. Transcript, Volume 9, Lines 9116 to 9124.

² The requirement for contributions to be “equitable” as between Canadian and foreign undertakings is clearly set out in s.(1)(f.1) of the Act. See FoCM Intervention, para 17. This requirement was not generally disputed by foreign undertakings at the hearing, but glossed over and interpreted to their advantage.

³ Transcript, Volume 12, Dec 5, 2023 at 9096-9098. <https://crtc.gc.ca/eng/transcripts/2023/tb1205.htm>

⁴ Disney states that it has not acquired or commissioned Canadian programming under current definitions. Disney Response to RFI dated January 26, 2024, at p. 5 & 6. Paramount points to some Canadian programming acquisitions and development plans for Canadian programming announced in June 2023. Paramount Response to RFI dated January 26, 2024, at p. 7-10. Netflix states that it does have some Canadian content expenses that qualify under existing CRTC criteria but did not identify any specific programs. Netflix Response to RFI dated January 26, 2024, at p. 4-5.

monies spent on foreign service production, which is not remotely rooted in any Canadian cultural or policy objectives, the sum total of all foreign streamers' support for festivals and training programs would likely not amount to the production budget of a single hour of scripted television programming. Furthermore, Canadian broadcasters have been supporting festivals and training programs for decades and they receive no regulatory credit for doing so.

10. Regardless, the question of the regulatory weight of such support can reasonably be set aside for the purposes of establishing initial base contributions. If the Commission ultimately decides to give credit for this kind of support, it can be done at the same time as the implementation of a full and equitable contribution regime.
11. Finally, the foreign streamer arguments about deferring questions of contribution threshold and type of contribution requirements should be similarly dismissed as delay tactics.⁵ An initial base contribution is just that: "initial". It is a starting point. Perfection is not required. The Commission can tweak and change whatever parameters it feels appropriate when full contributions to Canadian programming are established.

Imposing initial base contributions is a matter of urgency

12. As FoCM noted in its appearance, the 2020 report from the *Broadcasting and Telecommunications Legislative Panel* ("BTLP") was so concerned about the urgency of the situation that it recommended that the CRTC be directed to act immediately under the 1991 (pre-Bill C-11) *Broadcasting Act* (the "Act"). **That was over four years ago.**⁶
13. The decline in Canadian broadcaster and BDU revenues has further accelerated since 2020. When adjusted for inflation, contributions from BDUs and broadcasters have declined by over 30% since their high point in 2014. The consequences have been felt in all genres of Canadian programming, with the state of local news rapidly emerging as one of crisis.
14. By failing to impose contribution requirements on foreign streamers, we have handed them a decade-long market advantage. Any further delays in contributions risk allowing parts of the Canadian owned and controlled broadcasting system to deteriorate beyond recovery. While revenue declines may be recovered from, when stations and newsrooms close the damage is irreversible.

⁵ For example, Google and Netflix argue that decisions on contribution thresholds should be deferred. Amazon argues for a holistic review. Apple speaks to "too many unknowns" etc. Google Response to RFI dated January 26, 2024, at p. 4. Netflix Response to RFI dated January 26, 2024, at p. 3. Appendix to Amazon Response to RFI dated January 26, 2024, at p. 4. Apple Response to RFI dated January 26, 2024, at p. 4.

⁶ [Canada's Communications Future: Time to Act](#), the final report of the Broadcasting and Telecommunications Legislative Review Panel, presented January 29, 2020. Referenced by FoCM at Transcript, Volume 12, Dec 5, 2023 at 9080.

15. Notwithstanding this fact, the foreign streamers still assert that initial base contributions are unnecessary and/or will do harm. Paramount is particularly brazen in this regard, stating:

The evidence in this proceeding to date supports our position that a mandatory initial base contribution would do lasting harm to Canadian creators and viewers. There is no denying that an initial base contribution would undercut the current and growing contributions of Paramount and other foreign streamers.⁷

16. FoCM notes that no evidence has been provided by Paramount to support its assertion of “lasting harm to Canadian creators and viewers”. But perhaps the more interesting clue to Paramount’s position is how the second sentence follows the first. The issue, for Paramount and other foreign streamers, is that they know a contribution framework will remove their unfair market advantage. They know it will cut into their growth and possibly their market share – all for the betterment of Canadian undertakings and Canadian programming generally. They want to convince the Commission that their corporate interests, their view of what a valid contribution is, and their unbridled growth, should prevail. To accept that view would be to give up on everything that Bill C-11 stands for.

Foreign streamers have known for a long time that contribution requirements would be likely

17. A number of foreign streamers claimed that the imposition of initial base contributions would cause them to have to revisit their business model in Canada.

18. While no foreign streamers made explicit threats to leave the country should obligations be imposed,⁸ they argued that their current support for Canadian programming and talent would have to be reduced in return for paying into funds. For example, appearing on the MPA Panel, Keith Murphy of Paramount argued that “there are consequence for us, as a company that is new to this market, that is in essentially start up mode, we have a budget to spend on Canadian programming, and if we are faced with redirecting those funds to the CMF, that necessarily has to come at a cost. And for us, that is the cost of our own investments in Canadian programming.”⁹

⁷ Paramount Response to RFI dated January 26, 2024, at p. 1.

⁸ FoCM considers this significant. We have just gone through a process with Bill C-18 where Meta made explicit threats to exit the news market; threats it followed through on. The most foreign streamers have done in this proceeding is make general threats. For example, Disney, has argued that “applying the [contribution] threshold at the level of the broadcast ownership group could deter services from entering the Canadian market, push existing services to leave the market, and serve as a disincentive for certain companies to launch new or niche services, if such services are required to make contributions.” Disney Response to RFI dated January 26, 2024, at p. 3. In any event, threats by foreign streamers to exit the Canadian market should be taken with a grain of salt. The principle underlying business interest of studios is to export their programming. One way or other, Disney programming will be made available to Canadians online.

⁹ Transcript, Volume 1, Line 649

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19. Tubi, a large international streaming service, went so far as to argue that its “unique and innovative business model” simply could not accommodate any mandatory contributions, and that they should be given “the necessary breathing room to scale and to develop and to grow” until they reach \$100 million in Canadian revenues and can “be successful and compete against Netflix ...”.¹⁰
 20. While Tubi’s verbalization of its request is particularly extreme, what the foreign streamers are effectively asking for is to maintain their regulatory advantage over Canadian broadcasting services, while they take greater and greater market share, and the system loses more and more support for Canadian programming.
 21. If ongoing Canadian broadcaster revenue declines are not counteracted by support from foreign streamers, Canadian programming investments will continue to deteriorate. This runs contrary to the whole point of Bill C-11. The Commission must, therefore, ignore these scare tactics as disingenuous arguments put forth by the foreign streamers in an attempt to lock in their market advantage.
 22. Moreover, the notion that foreign streamers have not factored in potential Canadian regulatory costs is simply not credible. They have known for years that Canada has been looking actively at imposing regulatory obligations in support of Canadian programming, and that these could be material. The foreign streamers have come to Canada, launched, marketed, and grown their services in full knowledge of that possibility, if not probability.
 23. The fact is that contributions to Canadian programming *should* ultimately have a material impact on the business models of foreign streamers. They certainly do on the business models of Canadian broadcasters. That’s the point; it is the cost of doing business in this country. For the purposes of initial base contributions, however, there is no evidence that a 5% of revenue contribution would be overly burdensome. Given the Commission’s goals to increase support for Canadian programming and talent, it should have confidence that the Canadian programming priorities it chooses to benefit from initial base contributions will support those goals.

An initial base contribution of 5% would be a small but material step towards equity

24. As FoCM outlined in its intervention, when a monetary value is assigned to broadcaster non-monetary contributions such as exhibition, promotion and access requirements, it becomes apparent that current broadcaster contributions to Canadian programming are all in the range of 30% of revenues – be they from TV stations and services, radio stations or BDUs.¹¹ It is only fair and reasonable, therefore, to consider a 30% of revenue contribution to Canadian programming as the ultimate benchmark for streamers.

¹⁰ Transcript, Volume 12, Dec 5, 2023 at 9518, 9530 and 9572.

¹¹ FoCM Intervention, pars 41 - 45.

25. In light of this, an initial base contribution to designated third party (policy priority) funds of 5% of revenues from foreign streamers would constitute an entirely reasonable baseline *starting point*. When the Commission seeks to introduce the full equitable contribution regime, it will have the equivalent of 25% revenues to explore for new contributions, which could include introducing more flexible Canadian Programming Expenditure requirements and giving “regulatory credit” for other non-monetary contributions. For now, however, the Commission can safely proceed in the knowledge that a 5% initial base contribution is an important step towards equity.

(ii) Which services specifically should make contributions?

26. FoCM believes that, as a starting point, initial base contributions should be applied on an entity basis to all foreign streamers with annual revenues of more than \$10 million, for the following reasons:

- a) Given the far greater level of contributions of Canadian broadcasters, applying initial base contributions to foreign streamers only would be a crucial first step towards equity. By contrast, applying initial base contributions to Canadian streamers would only further current inequities;
- b) \$10 million is the threshold the Commission has already established for registration; and
- c) No evidence has been introduced to suggest that setting a similar threshold for contribution would create an undue administrative burden.

27. Setting a threshold higher than \$10 million would mean that hundreds of licensed or exempt Canadian broadcasting undertakings in the traditional system, with annual revenues of \$10 million or less – including smaller market private radio and TV stations and ethnic discretionary services – would continue to be regulated and make contributions while similar sized competing foreign services like Acorn TV, Britbox, DAZN, and Fubo, would remain unregulated. This would not be a fair or equitable outcome.

28. If FoCM is incorrect on 26.c) above, however, as stated in our Reply Intervention, for the purposes of introducing initial base contributions *as quickly as possible*, FoCM would be prepared to support a more limited initial application – namely only to the largest foreign streamers.

29. As a longer-term goal, however, we remain of the view that the contribution threshold should be lower than \$10 million to ensure equity with lower revenue Canadian broadcasters.

30. Finally, we oppose proposals that thematic services should not be subject to contribution requirements. This argument, articulated in particular by Disney, is simply an attempt to avoid contribution requirements.¹² There is absolutely no public policy rationale for it given that:

- a) The Commission has never before exempted services from regulation on the basis of theme and there is no regulatory basis for doing so now. In fact, the CRTC has a history of regulating specialty services on the basis of theme for several decades;
- b) While contribution requirements may differ based on theme, the requirement for a contribution should not. All Canadian thematic services contribute to the system. When foreign thematic services take market share, they too should contribute; and
- c) Carving out thematic services creates more potential loopholes to avoid contribution obligations. For example, larger platforms may be incentivized to break apart their services into smaller themes to avoid regulatory obligations.

(iii) Where should the funds be directed?

31. As we stated in our appearance, assuming an overall a 5% of revenue initial base contribution, we would propose an allocation along the following lines for video streamers:

- a) 2% local news – radio, community, television
- b) 2% CMFs, non-equity CIPFs
- c) 1% other certified funds like the ISO, BSO, CISF and other public policy funds like BAF, BPF, etc.¹³

32. For audio streamers, we recommend an overall contribution of 4% - 5%¹⁴, broken down as follows:

- a) 2% should go to local news, similar to the amount currently going to discretionary CCD initiatives
- b) Remainder should go to:
 - CCD, including FACTOR, Musicaction and the Community Radio Fund
 - BAF, BPF¹⁵

¹² Disney argues for both a high contribution threshold and that it be applied on an undertaking basis. “A higher contribution threshold applied at the level of individual services would avoid capturing thematic, niche or nascent undertakings that when considered on their own, are well below the threshold.” Disney Response to RFI dated January 26, 2024, at p. 3.

¹³ Transcript, Volume 12, Dec 5, 2023 at 9092 - 9095.

¹⁴ We believe 5% is justified, but understand the logic of matching the current % level of Sirius/XM financial contributions, per <https://crtc.gc.ca/eng/archive/2005/pb2005-61.htm>

¹⁵ Transcript, Volume 12, Dec 5, 2023 at 9155 - 9162.

Support for local news

33. As stated in our interventions and at our appearance,¹⁶ FoCM believes strongly that what must emerge from these proceedings is a sustainable flow of local news funding based on initial base contributions from foreign streamers.
34. Local news shines a light on the stories of the people in those communities. It keeps communities connected and informed on the issues that directly affect them and provides space for a diversity of voices and perspectives.
35. Local news is what our supporters tell us again and again that they value the most. They have signed countless petitions and sent thousands of letters to their MPs, even to the CRTC, about why local news matters to them.
36. Sadly, Canadians are seeing, hearing, and reading less of it every year. Over the last few years, we have witnessed waves of cuts in Canadian private media directly affecting news, the most recent being last week's devastating layoffs at Bell Media¹⁷. The local news deserts that we have seen in print now risk coming to broadcast news, with holes being filled by more and more special interest groups, misinformation and disinformation.
37. This looming crisis in broadcast news is, in part, the result of the inequitable regulatory treatment as between foreign streamers and Canadian broadcasters. Foreign streamers do not provide local news and their unrestrained market growth has come at the expense of rapidly declining Canadian broadcaster revenues. Taken together, the entire business model for Canadian news has been undermined.
38. It is, therefore, entirely appropriate and consistent with the Commission's powers and obligations under the Act to identify local news as a policy priority and require foreign streamers to contribute to it. This is particularly the case for local news in smaller and medium sized markets – as costs have to be amortized over a smaller advertising base.
39. Furthermore, there is little doubt that Parliamentarians had support for news and information programming in mind when they made the importance of news journalism explicit in section 3(1)(i) of the Act.
40. Finally, with the Government of Canada capping broadcaster support from Google under Bill C-18 at \$30 million and continuing to reserve the Journalism Tax Credit and various other funds and initiatives for newspapers and magazines, it is clear that the CRTC and Bill C-11 are being seen as the primary vehicles for appropriate measures to support broadcast news.

¹⁶ See, in particular, FoCM Intervention, para 54 – 58. Transcript, Volume 12, Dec 5, 2023 at 9088 - 9091.

¹⁷ <https://www.cbc.ca/news/business/bce-cuts-1.7108658>

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41. Supporting local news through initial base would ensure that those who benefit from the Canadian broadcasting system are contributing to it as a whole, not just to those parts that help increase bottom lines and shareholder value.
42. Our proposal for 2% of foreign streamers' revenue to be directed to support local news would bring in on the order of \$100 million annually. We understand that the Canadian Association of Broadcasters, versed in administering the Independent Local News Fund, would be able to rapidly put in place a broader fund based on criteria established by the Commission. FoCM would support such an approach, subject to ensuring that smaller independent broadcasters in smaller markets receive sufficient funding, in recognition of the need to ensure a diversity of news in underserved markets.

Support for programming of national interest (PNI)

43. The CRTC has routinely and historically prioritized underrepresented genres of programming, such as PNI, which, in its view, needed additional support.
44. Initial base contributions are the logical place to fund Canadian program priorities that advance the objectives of the Act and cannot otherwise be sufficiently addressed using other regulatory tools. Third party funds that support Canadian such programming priorities, such as the CMF and non-equity CIPFs, are appropriate recipients.¹⁸
45. FoCM does not support entities being permitted to create their own independent production funds for the purposes of initial base contributions. Such a practice would limit the Commission's ability to direct funding to priority areas and leads to the potential for self-serving decision making.¹⁹

(iii) How can the modernized system ensure support for diverse and accessible content?

46. As the Commission stated in the public notice, there is a need for funds that would better support programs that serve the needs and interests of Indigenous peoples, people from equity seeking groups, and the diversity of Canadians generally.²⁰
47. FoCM strongly supports this priority, which is why we have recommended that foreign streamers contribute as part of their initial base contributions fully 1% of revenues to certified funds including ISO, BSO, CISF, which provide such programs.

¹⁸ FoCM Intervention, p. 19.

¹⁹ FoCM Intervention, p. 18-19.

²⁰ FoCM Intervention, para 59 – 67.

Conclusion

48. The passage of the *Online Streaming Act* in April 2023 represented the most substantial revision to the Act since 1991. Its passing ended years of debate as to how Canada should deal with increasingly popular foreign streaming services and other online undertakings. Despite opposition from the foreign streamers, Canadian internet freedom fighters and a host of other critics, Bill C-11 decisively asserts that foreign online undertakings are subject to regulation and shall be required to “contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming”.²¹
49. Through these years of debate, the Commission’s jurisdiction over foreign online undertakings was never in serious doubt. The Commission’s first digital media exemption order of 1999 recognized that digital audio and video services delivering programs on the internet were “broadcasting” within the definition of the 1991 Act.²² The significance of Bill C-11 is therefore not whether the Commission *can* impose obligations on foreign online undertakings, but *that it must*. The clarifications of the Commission’s powers in Bill C-11 may well be helpful, but the real value of Bill C-11 is the signal from Government to act.
50. Foreign streamers would have the Commission ignore the plain meaning of the Act, ignore its legislative history, ignore the passing of Bill C-11, and continue to do nothing. This ‘approach’ is unacceptable and must be soundly rejected.
51. The Commission’s plan to implement Bill C-11 was released 12 May 2023. It launched a decisive three-step process designed to phase in obligations on online undertakings as quickly as possible. Completion of Step One, this step, is designed to permit the establishment of initial base contribution requirements for online undertakings – ideally by Fall 2024 in advance of a full contribution framework.
52. On November 11, 2023, the Commission issued its final Policy Direction to the CRTC on implementation of Bill C-11,²³ which included an overall time frame for implementation of two years.²⁴ The accompanying Regulatory Impact Analysis Statement cites the January 2020 BTLR report which “highlighted the pressing need to ensure that those who benefit from broadcasting in Canada — including large foreign companies — contribute to ensuring continued support for the creation, production and discovery of Canadian content.”²⁵

²¹ Broadcasting Act, s.3(1)(f.1)

²² Broadcasting Public Notice [CRTC 1999-84; Exemption order for new media broadcasting undertakings, Public Notice 1999-197](#)

²³ [Order Issuing Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\) https://laws-lois.justice.gc.ca/eng/regulations/SOR-2023-239/page-1.html](#)

²⁴ Section 19, *supra*.

²⁵ <https://canadagazette.gc.ca/rp-pr/p1/2023/2023-06-10/html/reg1-eng.html> Accompanying the Draft Order.

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53. If the Government had any major concerns with the timing of the CRTC's planned three-step process, it would have directed the Commission to make changes. It did not. It is therefore clear that the Government is expecting the CRTC to treat the implementation of Bill C-11 as an urgent priority – as the Commission has been – and that other Policy Direction priorities can be dealt with within this planned process (at Steps Two and Three).²⁶
54. But, at the end of the day, no matter what process or timeline the Commission chose to implement Bill C-11, the foreign streamers would have objected. As they can no longer defeat Bill C-11, unsurprisingly, their goal now is to delay as long as possible to sustain the unfair competitive advantage they currently enjoy.
55. Any further delays will only serve to worsen the looming crisis in Canadian local news. As the Canadian broadcasting revenues continue to deteriorate, more job losses will follow along with increased applications to reduce current Canadian programming obligations, including to news and PNI.
56. We urge the Commission to proceed with due haste and implement initial base contributions to help support local news, PNI and other Canadian programming priorities by the Fall of 2024.

All of which is respectfully submitted.

Yours sincerely,



Marla Boltman
Executive Director

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²⁶ Priorities in the Order are identified at s.13 to 16. They include engagement with indigenous peoples, equity-seeking groups and OLMCs as well as examining the definition of Canadian programming.