

July 26, 2023

**FILED ELECTRONICALLY**

Mr. Claude Doucet  
Secretary General  
Canadian Radio-television and Telecommunications Commission  
Ottawa, Ontario, Canada  
K1A 0N2

**RE: Unifor reply regarding *BNOC 2023-138-1 - The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content***

Dear Mr. Doucet,

1. Thank you for the opportunity to submit this reply to *BNOC 2023-138-1 - The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*. Unifor has reviewed the interventions submitted by other interested parties, and would like to provide the following comments.

**The call for a regulatory “light touch,” “flexibility” and “adaptability”**

2. As they contemplate being brought under regulation as digital undertakings under the modernized regulatory framework, a number of foreign digital giants and streaming companies have expressed a similar call for a regulatory “light touch,”<sup>1</sup> and for “flexibility” or “adaptability.”<sup>2</sup> As Unifor has noted in a number of recent submissions to the Commission and the Department of Canadian Heritage on related topics, calls for a regulatory light touch, and for a flexible and adaptable approach, run the risk of undermining the very purpose of the modernized regulatory framework.
3. Plainly put, sometimes the parties being regulated do not like being regulated, and this is especially true for parties that are brought under regulation after enjoying operating for a long period with little to no active regulation. As we noted in our July 25<sup>th</sup> submission to the Department of Canadian Heritage regarding the draft policy

directions, *Canada Gazette, Part I, Volume 157, Number 23: Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*:

The union urges caution regarding the notions of “flexibility and adaptability,” as these can sometimes create loopholes that allow regulators to lower standards and abandon best practices. Both traditional broadcasters and digital undertakings – including the foreign digital giants – will no doubt emphasize the need for flexibility and adaptability.

However, in the quest for flexibility and adaptability, we must not stray from the foundational goals and principles of Canadian broadcast policy: the development and widespread distribution of Canadian cultural content, and the encouragement of Canadian expression through a wide range of available and accessible programming that reflects linguistic, regional and cultural diversity.

4. Unifor has consistently argued that leveling the playing field should be the priority for the new funding framework arising from both pieces of legislation and related regulations. Legislators and regulators should maintain consistent and high standards for broadcast policy, especially for funding and expenditure obligations, rather than watering them down to improve corporate bottom lines and shareholder returns.
5. In its intervention, in a section titled “Support for Canadian broadcasting undertakings,” the CBC shares a similar position in favour of maintaining a consistent and high standard for broadcast policy.

43. The first recommendation is that any new contribution framework should not result in an erosion of existing levels of funding and should result in increased, incremental, support for traditional Canadian broadcasters so they can offer a wide range of high-quality audio and video content that is made by and for Canadians.” Leveling the playing field doesn’t mean reducing the playing field.<sup>3</sup>

### **The call for regulatory relief**

6. In their interventions, a number of traditional broadcasters reiterated their calls for regulatory relief, usually in the form of the reduction or elimination of funding and expenditure obligations or the COL requirements for local programming. In fact, a

number of these traditional broadcasters have recently filed formal Part 1 applications with the Commission,<sup>4</sup> seeking such regulatory relief.

7. Unifor respectfully recommends that the Commission should wait until the *Online Streaming Act* and the *Online News Act* and related regulations have been in force before considering any applications for regulatory relief. It is premature to make long-term funding and expenditure decisions before the new funding streams begin to flow.
8. Granting the kind of relief sought by the traditional broadcasters would cause irreparable harm to the broadcast system. Again, Unifor believes that levelling the playing field with online undertakings should not involve watering down existing standards and conditions.

### **Exemption from Unique Transactions**

9. In its submission, Amazon writes

Amazon submits that any new contribution framework should:

(a) Exclude/exempt transaction-based services and online content storefronts. The Commission is correct to propose exempting transaction-based services from registration and regulation, recognizing that these represent the modern-day evolution of brick and mortar movie sale/rental and music record stores or app distribution arrangements. Similarly, online content storefronts should be exempted, given the distinctive global rights marketplace in which they operate;<sup>5</sup>

10. Unifor would like to note that changing technology allows us different ways to sell audio visual product. It is unclear why VOD should be exempt from regulation, when streaming is not. Unifor's contention is that given the fast pace of technological change, this is a distinction without a difference.
11. In Para 16 of its submission, Apple says its Apple TV app "enables Canadian customers to choose to subscribe, rent, buy or watch certain promotional content for free." In other words, Apple describes its business as a BDU, and therefore it should be categorised as such, and be subject to the same obligations as Canadian BDUs. Apple is also asking for relief from transactional services, but Unifor contends that video sales are video sales, streaming or otherwise. One wise Unifor local president, when talking about tech change and video distribution services, said, "I don't care if it comes in on a lily pad, it is all the same."

12. In its submission, the Canadian Association of Broadcasters, also clearly recommends that online BDU services should contribute to the Canadian broadcast system, although Unifor does not support the specifics detailed in its funding proposal.<sup>6</sup> The CBC makes a similar argument, though with different funding details. At Para. 18, the CBC says, “Similarly, BDU-like online video undertakings would be required to contribute 5% of their annual Canadian broadcasting revenues to the base. This percentage reflects the current BDU contribution level.”

### **The need to support and promote local news**

13. As noted in our intervention, Unifor believes our recommendations will level the playing field by treating all broadcasters fairly. The Commission must ensure that “leveling the playing field” means increasing the contributions to Canadian programming, by prioritizing news and especially local news. Adequate and sustainable funding for local news will inform Canadians, protect our democracy and build our communities.
14. One area where we agree with a broadcaster’s position is in Bell’s assessment of the underlying causes of the crisis facing Canadian broadcasters.

Another critical development is increasingly restricted access to key foreign (U.S.) content that is the primary driver generating advertising revenues for Canadian broadcasters. In particular, through historical partnerships, which the Commission's regulation encouraged, Canadian broadcasters have been able to acquire popular U.S. content to sell to advertisers thereby earning significant revenues. These revenues then allowed Canadian broadcasters to support local news and other Canadian programs. Unfortunately, due to increased competition from foreign online undertakings, and the outright denial by American studios to make their content available to Canadian broadcasters, traditional broadcasters are struggling. American studios are well into the process of establishing and expanding their streaming operations in Canada whereby they hoard all (or the most attractive) content for their own streaming services. As such, in our view, the new contribution framework must incentivize foreign rights holders to continue to partner with Canadian broadcasters.<sup>7</sup>

15. In its reply, Apple argues that the “support of production of certain specific types of programming, e.g. news and locally reflective content, might not be appropriate to require of all online undertakings.” Unifor’s position is that funding and expenditure obligations should apply to all undertakings, whether they are traditional or digital in nature, even if those undertakings don’t actively produce news and locally reflective content. One bedrock principle of Canadian broadcast has always been that since all broadcast undertakings benefit from participating in the system, they must contribute to the system. That contribution must include supporting local programming and especially local news.

16. Apple goes as far as opposing support for local news. In Para. 42, Apple directly opposes supporting local news.

42. While the general objectives set out by the Commission at paragraph 58 of BNC 2023-138 are laudable, Apple notes that the support of production of certain specific types of programming, e.g. news and locally reflective content, might not be appropriate to require of all online undertakings,...

17. FRIENDS makes compelling arguments as to why Apple and the other foreign streamers are not as different as they might want you to believe.

*Nature of the undertaking*

19. *The Commission has always drawn distinctions between the contribution requirements of different classes of broadcasting undertakings and then, within a class, typically imposed higher obligations on larger undertakings than smaller ones.*

20. *While each undertaking may well be unique in terms of its programming mix and editorial, there are a limited number of key distinctions from a regulatory perspective.*

21. *The first is as between audio and video undertakings. In the traditional broadcasting world, this started with over-the-air (“OTA”) radio and TV and evolved to include technologically-based distinctions – initially related to transmission medium and, more recently, reception (linear vs. on demand). Thus today, the three largest classes of traditional undertakings are radio, television (OTA and discretionary services) and cable/satellite (BDUs).<sup>7</sup> Within each class, the licence obligations of individual undertakings are very similar, if not identical.<sup>8</sup>*

22. *Unsurprisingly, online undertakings tend to replicate, while also co-mingling, traditional broadcasting business models. This has always been the case in the evolution of broadcasting. For example, broadcasters do not typically exhibit an entire schedule of original programming. They also provide syndicated, repeat and sub-licensed programming from other sources. In this respect, most traditional broadcasters are no different from online undertakings; they supplement their limited original programming with programming from other sources. For the purposes of comparison, then, the nature of programming between online and traditional undertakings – be it broadcast or streamed – forms a useful factor.*

23. *By the same token, revenue models between online undertakings and traditional broadcasters are also substantially similar. They both derive revenue from advertising, subscriptions and, to a far lesser extent, sponsorships and other sources. Thus, the nature of the revenue model can also form a useful factor for regulatory comparison.*

24. *Finally, there are technological similarities. All online undertakings use the open Internet<sup>9</sup>, offer on-demand or scheduled programming, and are direct alternatives or substitutes for traditional broadcasting undertakings, which also offer programming in the same ways. The fact that most online undertakings are offered over the open Internet and most traditional broadcasters are linear services offered over closed networks may affect the type of contribution possible but should not alter the requirement for overall equity. This too forms a basis for comparison.*

25. *The reality is that the vast majority of online undertakings are analogous to, or some combination of, the three largest traditional broadcasting undertakings – radio, TV and BDU.<sup>8</sup>*

18. FRIENDS also continues to support news and Indigenous content as a priority for the modernized regulatory framework.

In keeping with the structure of the proposed 3-part contribution framework, the baseline contribution is the logical home for universally placed commitments to policy priorities. All online undertakings should have mandatory monetary commitments to

third party funds particularly supporting news and Indigenous content...<sup>9</sup>

19. Unifor also agrees with Bell's position that local news production is by far the most pressing need within the Canadian broadcasting system.

In our view, the need to support local news production is by far the most pressing need within the Canadian broadcasting system. Access to quality journalism has never been more important. While the spread of misinformation and disinformation surges, and the public becomes increasingly mistrusting, Canadian news outlets provide quality, fact-based news at the local and national levels. Strong national and local news organizations are essential to ensure that we have an informed citizenry, which is foundational to Canadian society, democracy, and sovereignty.<sup>10</sup>

20. In its submission, Corus makes similar claims regarding the need to prioritize and specifically earmark funding for news creation.

To support the continued production of local news in Canadian communities going forward, broadcasting regulatory policy must urgently prioritize this genre of programming through increased funding and incentive-based regulatory tools. Local news can no longer afford to place a distant second (or lower) to other programming genres. Corus recommends that a significant share of the category 1 (base) contributions derived from online undertakings – larger share than current amounts currently directed under the BDU-framework – should be directed to news funds like the ILNF in the future state.<sup>11</sup>

21. Quebecor also shares Unifor's position that local news must be a specific priority for funding under the modernized regulatory framework.

With regard to increased funding for the production of news and information content in Canada, Quebecor Media proposes the creation of a new fund, with broader accessibility criteria than those of the Independent Local News Fund, in order to allow the various actors financially affected by the transformations of the market to access it and to continue to produce and distribute this type of content vital to Canadian and Quebec democracy.<sup>12</sup>

22. Rogers also supports the prioritization of local news production, saying, “increased funding for conventional broadcasters to support local news production is a national priority and should be reflected in the Commission’s modernized contribution regime.”<sup>13</sup>
23. In their interventions, a number of digital streaming giants provided a list of the television and film productions they have supported in Canada. Unifor supports and applauds these productions, and we are proud of the work of thousands of highly trained, professional Canadian media sector workers. However, the existence of these Canadian productions cannot itself serve as a counter-argument to the need for fair, transparent, accountable and reasonable policies and rules, as set out in legislation and regulation developed by government.
24. Channel Zero makes an interesting proposal in its submission, one that Unifor believes could warrant further exploration. “There should be mandatory carriage on vBDUs for local broadcasters that produce local news. In addition, carriage of such broadcasters could be an option for other online undertakings with incentives related to how it can be applied to the third (intangible) category in the Commission’s proposed model.”<sup>14</sup> It is clear that there are a number of ways in which digital undertaking can support and promote local news.

### **Unifor’s recommendations**

25. Unifor would like to take the opportunity to reiterate our recommendations made in our intervention for BNOC 2023-138-1. Unifor respectfully recommends that the Commission should:
  - Establish a local news media fund attached to the *Online Streaming Act*, similar to the LPIF. Like BDUs, qualifying foreign streaming companies should be required to contribute a portion of their revenue generated in Canada to a fund that would, in turn, be distributed to qualifying news organizations in Canada;
  - Increase the Canadian content creation and production contribution from 5% to 7%. The additional contribution of 2% should go directly to the proposed local news media fund;
  - Integrate the ILNF with the new local news fund by adding the current % of funds already allocated to the ILNF to the new local news fund, with the caveat that under this new proposal, no current ILNF recipient should receive less funding than they receive under the current program;
  - Maintain current Canadian programming expenditure (CPE) requirements, and extend this obligation to online undertakings, also require that a portion of this



CPE money should be earmarked for the production of local news and programming, or the equivalent amount should be directed towards the local news media fund discussed above, if the online undertaking doesn't produce any news programming; and

- Reject all applications by broadcasters to relive them of their regulatory obligations to produce and fund Canadian content, including local news and programming. Unifor believes that “levelling the playing field” with online undertakings should not involve watering down existing standards and conditions.

### **Initial Contributions**

26. Unifor supports the call from several broadcasters for a priority placed on initial contributions from digital undertakings. In its submission, the CBC rightly notes

This interim measure would help support the long-term viability of Canadian broadcasting undertakings and in particular, traditional Canadian broadcasting undertakings, which face accelerating unfavorable market trends. It would also begin to address an uneven regulatory regime.<sup>15</sup>

27. In a variation of this approach, Rogers suggests a new news fund for initial contributions, in order to expedite the flow of funding under the new framework.

Funds: The initial base contributions made by foreign and unaffiliated online undertakings should flow only to existing funds (the Canada Media Fund and the Certified Independent Production Funds), as well as to a new fund to support local news, which Rogers proposes as an interim measure until such time as the Commission reviews the funding mechanisms for local news and information programming and introduces long-term, sustainable supports.<sup>16</sup>

### **Broadcasting Participation Fund (BPF)**

28. Unifor supports the continued and sustainable funding of the Broadcast Participation Fund (BPF), as do a number of other intervenors including the Canadian Association of Broadcasters. The Forum for Research and Policy in Communications (FRPC) continues to provide a vital service for Canadians from coast to coast, and the BPF is a critical support vehicle for that group's critical work.

## Conclusion

29. Local news is essential to our democracy. In an age of disinformation, Canadians will depend on trusted news sources more than ever. The decline of local television news is not simply a function of a change in television viewing habits, it is a result of the systematic failure to regulate and properly fund and support. The Commission has the opportunity to create a new regulatory regime to address these concerns.
30. Given the union's longstanding participation in the development of the Act and related regulations, and given the huge impact these matters have on the union's media membership, Unifor wishes to appear at the public hearing in November 2023. Unifor is available if the Commission has further questions or seeks additional comments.

Thank you again for the opportunity to comment on this important matter.

Sincerely,

*Randy Kitt*

Randy Kitt  
Media Director, Unifor

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- <sup>1</sup> Submission by Apple Canada Inc. (July 11, 2023). CRTC website, Interventions. Para. 8.
- <sup>2</sup> Submission by the Motion Picture Association-Canada (“MPA-Canada”). (July 11, 2023). CRTC website, Interventions. Para. 11.
- <sup>3</sup> Submission by the CBC. (July 11, 2023). CRTC website, Interventions. Para. 43.
- <sup>4</sup> Part 1 applications to the CRTC by Bell Media Inc. (2023-0379-1 and 2023-0380-9). (June 14, 2023).; Part 1 application to the CRTC by Quebecor Media Inc./ TVA Group Inc. (2023-0307-2). (June 2, 2023).
- <sup>5</sup> Submission by Amazon. (July 11, 2023). CRTC website, Interventions. Para. 17.
- <sup>6</sup> Submission by the Canadian Association of Broadcasters. CRTC website, Interventions. Para. 39.
- <sup>7</sup> Submission by BCE Inc. (July 11, 2023). CRTC website, Interventions. Para. 6.
- <sup>8</sup> FRIENDS submission. (July 11, 2023) CRTC website, Interventions. Paras. 19-25.
- <sup>9</sup> FRIENDS. Para. 37.
- <sup>10</sup> BCE Inc. Para. 92.
- <sup>11</sup> Submission by Corus Entertainment Inc. (July 11, 2023). CRTC website, Interventions. Para.77.
- <sup>12</sup> Quebecor. Para.88.
- <sup>13</sup> Rogers. Para.91.
- <sup>14</sup> Submission by Channel Zero. (July 11, 2023) CRTC website, Interventions. Para. 8.
- <sup>15</sup> CBC. Para. 8.
- <sup>16</sup> Submission by Rogers Communications Inc. (July 11, 2023). CRTC website, Interventions. Para 8c.

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