

2018 11 08

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

Subject: Part 1 Application to amend Broadcasting Regulatory Policy CRTC 2015-436 – Revised standard conditions of licence for Canadian discretionary services operating as national news services (BRP 2015-436) and Broadcasting Regulatory Policy CRTC 2016-436 - Standard requirements for television stations, discretionary services, and on-demand services (BRP 2016-436); as well as Conditions of Licence with respect to advertising limits on mainstream sports services

Dear Mr. Doucet,

1. Bell Media Inc. (Bell Media), Corus Entertainment Inc. (Corus), Groupe V Media Inc. (Groupe V), Quebecor Media Inc. (Quebecor), on behalf of Groupe TVA Inc., and Rogers Media Inc. (Rogers Media) (collectively, the Broadcasters) are pleased to submit the following application to amend BRPs 2015-436 and 2016-436, as well as the Conditions of Licence with respect to advertising limits on mainstream sports services.

2. Specifically, the Broadcasters are seeking to remove advertising limits on discretionary services as set out in Condition of Licence 18 of Appendix 2 to BRP 2016-436 which currently reads:

18. In regard to the broadcast of advertising material:

- a. Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than 12 minutes of advertising material during each clock hour.
- b. Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.
- c. In addition to the 12 minutes of advertising material referred to in subparagraph a), the licensee may broadcast partisan political advertising during an election period.

- d. The licensee shall not broadcast any paid advertising material other than paid national advertising.
3. Our proposed Condition of Licence would read as follows:
 18. In regard to the broadcast of advertising material, the licensee shall not broadcast any paid advertising material other than paid national advertising.
 4. The Broadcasters are also seeking to remove advertising limits on national news services as set out in Condition of Licence 3 of the Appendix to BRP 2015-436 which currently reads:
 3. The Licensee
 - a. shall not distribute, subject to subsection (b), a daily average of more than 12 minutes of advertising material in each clock hour;
 - b. may broadcast partisan political advertising during an election period, in addition to the 12 minutes of advertising material referred to in subsection 3(a); and
 - c. shall not broadcast any advertising material other than national paid advertising.
 5. Our proposed Condition of Licence would read as follows:
 3. The Licensee shall not broadcast any advertising material other than national paid advertising.
 6. Finally, the Broadcasters are also seeking to remove any reference to advertising limits on mainstream sports services. For example, as set out in Decisions 2017-144¹ (specifically, Conditions of Licence 2(a) and 2(b) in Appendix 3 as it pertains to RDS); 2017-149² (specifically, Conditions of Licence 1(4)(a) and 1(4)(b) in Appendix 5 as it pertains to TSN); 2018-27³ (specifically, Conditions of Licence 1(4)(a) and 1(4)(b) as it pertains to TVA Sports) and Conditions of Licence 4(a), 4(b) and 4(c) contained in BRP 2009-562-2⁴.
 7. The Broadcasters respectfully submit that reliance on market forces to establish appropriate advertising limits would ultimately be more appropriate and beneficial to the broadcasting system. Furthermore, the removal of the above Conditions of Licence would not have a negative effect on any discretionary service operated by the Broadcasters or other licensees, nor would it preclude any discretionary service from meeting its' other regulatory requirements. The high standard of programming as required under subsection 3(1)(g) of the *Broadcasting Act* would be maintained.
 8. The Broadcasters note that no other programming services in the Canadian broadcasting system are subject to an advertising cap. Commercial AM radio stations saw such

¹ Broadcasting Decision CRTC 2017-144, *Bell Media Inc. – Licence renewals for French-language television services*.

² Broadcasting Decision CRTC 2017-149, *Bell Media Inc. – Licence renewals for English-language television stations and services*.

³ Broadcasting Decision CRTC 2018-27, *TVA Sports – Licence amendment*.

⁴ Broadcasting Regulatory Policy CRTC 2009-562-2, *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Definition of "broadcast day" for mainstream sports services*.

limits removed in 1986⁵ and the same occurred for FM stations in 1993.⁶ In BPN 2007-53⁷, the Commission announced it would eliminate the number of advertising minutes that over-the-air (OTA) television stations may broadcast effective 1 September 2009. In making that ruling, the Commission acknowledged the uncertain financial outlook for conventional television and that audience fragmentation will continue to put pressure on advertising revenues. Further, all of these changes were made at a time when other media outlets competing for viewers and listeners (Netflix and SiriusXM being just two examples) either did not exist or were in their infancy, and the same could be said for digital advertising.

9. Over a decade later, discretionary services find themselves in a similar situation, particularly when it comes to advertising revenues. When the Commission issued BNC 2016-195⁸, which resulted in the issuance of BRP 2016-436, the Commission opted not to propose any amendments to remove advertising limits. Nonetheless, in response to BNC 2016-195 Corus submitted several arguments in favor of the removal of advertising limits on discretionary services. In addition to noting that limits were eliminated across other Canadian regulated media as highlighted above, Corus stated the following:

Existing advertising limit restrictions on discretionary services have effectively caused domestic broadcasters, including Corus, to turn away advertising revenues on popular, high-demand programming. While revenues may be lost to any number of electronic or non-electronic media, we expect the lost revenues associated with these artificial regulatory restraints to increase, especially as unlicensed, advertising-dependent new media proliferate in the marketplace. Loss of advertising revenues to unlicensed media, of course, has a knock-on effect on CPE.

The deletion of these conditions of licence would be consistent with subsection 5(2)(g) of the *Broadcasting Act* which states: "*The Canadian broadcasting system should be regulated and supervised in a flexible manner that . . . is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.*"

The current "stopwatch approach" to advertising on discretionary services is an administrative burden that requires additional monitoring, tracking, and reporting with particular impact on our Sales and Traffic departments. Given that no other sector in the Canadian broadcasting system, unlicensed service, foreign station or cable network is subject to such restrictions and reporting requirements, we believe that the administrative burden alone is sufficient justification to phase out current advertising minute restrictions.⁹

10. It is the opinion of the Broadcasters that the positions Corus took in 2016 are still relevant today, and even more so. According to ThinkTV, net advertising revenues on television in Canada between 2007 and 2016 had a compound annual growth rate (CAGR) of 0.1% while internet advertising during the same period had a CAGR of 17.9%. Further, as shown in the

⁵ Public Notice CRTC 1986-248, *Regulations Respecting Radio Broadcasting*.

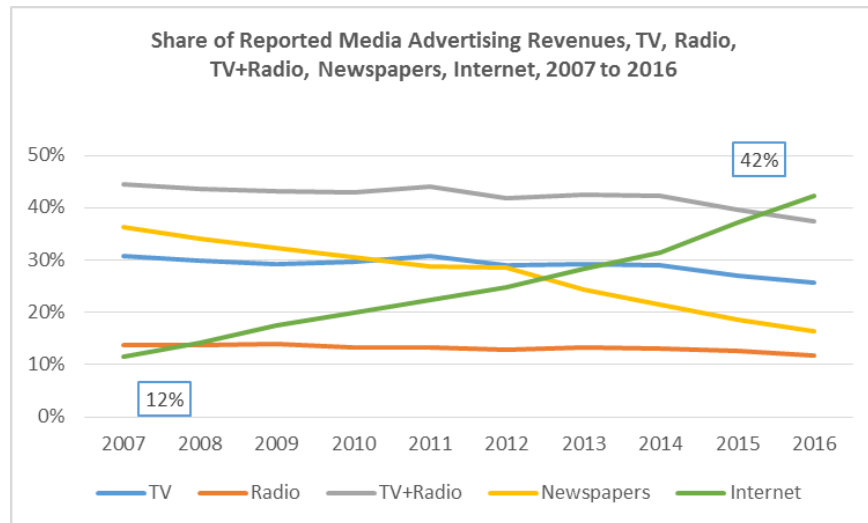
⁶ Public Notice CRTC 1993-38, *Policies For Local Programming On Commercial Radio Stations And Advertising On Campus Stations*.

⁷ Broadcasting Public Notice CRTC 2007-53, *Determinations regarding certain aspects of the regulatory framework for over-the-air television*.

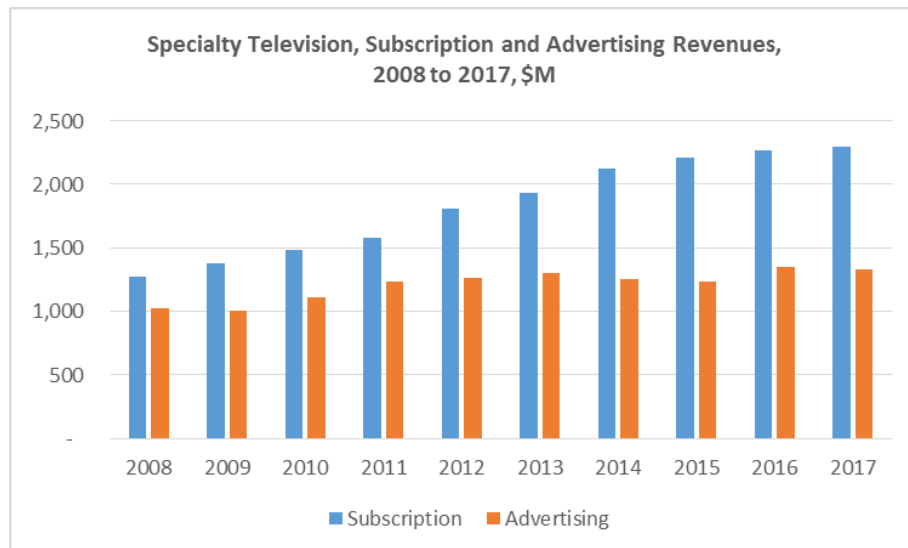
⁸ Broadcasting Notice of Consultation CRTC 2016-195, *Call for comments on standard requirements for television stations, discretionary services, and on-demand services*.

⁹ Corus letter in response to BNC 2016-195, 20 June 2016.

graph below, in 2007, television's reported share of advertising revenues was 31%; in 2016 it was 26%. However, the numbers for internet went from 12% in 2007 to 42% in 2016.¹⁰ Those differences paint a bleak picture of what may come in the years ahead for television advertising revenues in Canada.



11. In addition, the Commission's own financial summaries for discretionary services only serve to bolster the Broadcasters' position that change is needed. Subscription revenues from 2013-2017 have a CAGR of only 4.4% demonstrating a flattening of those numbers. With respect to advertising revenues, the numbers are even less encouraging. During 2013-2017, there has been an extremely slim CAGR of 0.6%. Clearly, these numbers alone demonstrate that change is needed in order for discretionary services to compete for advertising dollars in an era where these services are the only form of regulated media in Canada that are still subject to limits on the amount of advertising they can air.



¹⁰ https://thinktv.ca/wp-content/uploads/2018/05/thinktv-NAV-Advertising_Revenue_2016.pdf, 5 September 2017

Conclusion

12. Readily available financial data clearly demonstrates that the advertising revenue levels of discretionary services are essentially flat. However, as noted earlier, no other sector in the Canadian broadcasting system, let alone unregulated sources, is subject to an advertising cap. The removal of advertising limits on discretionary services will also allow these services to set limits based on market forces and maximize their opportunities to generate advertising revenue, to their benefit as well as that of the broadcasting system.

13. The Broadcasters submit it is time for the advertising cap to be eliminated and allow market forces to establish appropriate advertising limits that would ultimately be beneficial to the broadcasting system. The high standard of programming as required under subsection 3(1)(g) of the *Broadcasting Act* would be maintained, and the elimination of these Conditions of Licence would not preclude any discretionary service from meeting its other regulatory requirements. Lastly, the deletion of advertising limits would have no impact on our respective services to air Canadian promotional material or public service announcements. Taken together, it is the view of the Broadcasters that all of the preceding arguments clearly demonstrate that the 12-minute per hour cap on advertising for all discretionary services should be eliminated.

14. Should the Commission require any additional information, we would be pleased to provide it upon request.

Yours truly,

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and Distribution
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