



5 August 2022

Ms. Janice Charette
Interim Clerk of the Privy Council and Secretary to the Cabinet
Langevin Block
80 Wellington Street
Ottawa, Ontario K1A 0A3

BY EMAIL info@pco-bcp.gc.ca

Dear Ms. Charette,

Re: Petition to the Governor in Council concerning Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals

Petition of the National Pensioners Federation and the Public Interest Advocacy Centre (“NPF-PIAC”)

The following organizations hereby submit a petition to set aside an important decision by the Canadian Radio-television and Telecommunications Commission (the “CRTC” or “the Commission”):

- the National Pensioners Federation (“NPF”); and
- the Public Interest Advocacy Centre (“PIAC”)

—together, “NPF-PIAC”.

NPF-PIAC petition the Governor in Council to protect consumer-citizens, and in particular seniors, by ensuring affordability, availability and quality of linear and over-the-air (OTA) television services of Canada’s national public broadcaster, the Canadian Broadcasting Corporation/Société Radio-Canada (“CBC/SRC”) in Canada. NPF-PIAC therefore respectfully

NPF-PIAC - Petition to the Governor in Council pursuant to Section 28 of the Broadcasting Act
Re: Broadcasting Decision CRTC 2022-76, Shaw Communications Inc. – Change of ownership and effective control

request that the Governor in Council issue an Order pursuant to Section 28 of the *Broadcasting Act*, **setting aside the decision or referring it back to the CRTC for reconsideration and hearing with material details of our requested conditions and emphasizing the importance of exhibition requirements for, and affordable access to, linear and OTA TV services as the decision, as issued, derogates from the attainment of the broadcasting policy objectives in subsection 3(1) of the *Broadcasting Act*, in particular, subss. 3(1)(l), 3(1)(m) regarding the CBC/SRC's mandate and regarding accessibility and affordability of CBC/SRC's programming services.**

ALL OF WHICH is respectfully submitted this 5th day of August, 2022.

[original signed]

[original signed]

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cc: Canadian Radio-television and Telecommunications Commission (CRTC) (by email: demandegec-gicpetition@crtc.gc.ca)
Bev Kirshenblatt, Senior Vice-President, CBC/SRC (by email: bev.kirshenblatt@cbc.ca)

Enclosures

1. NPF-PIAC Petition (this document below the letter)

***Petition to the Governor in Council
pursuant to Section 28 of the Broadcasting Act
Re: Broadcasting Decision CRTC 2022-165 and Broadcasting
Orders CRTC 2022-166 and 2022-167, Canadian Broadcasting
Corporation – Various audio and audiovisual services –
Licence renewals***

**Petition of the National Pensioners Federation and the Public
Interest Advocacy Centre**



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The Nature of the Petition

1. The National Pensioners Federation and the Public Interest Advocacy Centre (“**NPF-PIAC**”) file this Petition to the Governor in Council **to set aside, or refer back for reconsideration and hearing**, the decision of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**” or the “**Commission**”) in Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals* (22 June 2022) (hereafter “**BD CRTC 2022-165**” or “**CBC Licences Decision**”).
2. NPF-PIAC specifically request that the Governor in Council issue an Order pursuant to Section 28 of the *Broadcasting Act*, **setting aside the decision or referring it back to the CRTC for reconsideration and hearing and set out the details, for consideration, as material to the reconsideration, of the importance of exhibition licence conditions and the importance of assuring affordable access to the CBC/SRC’s linear TV services for all Canadians.**
3. NPF-PIAC contend that the CBC Licences Decision **derogates from the attainment of the broadcasting policy objectives in subsection 3(1) of the *Broadcasting Act*, in particular, under subss. 3(1)(l) and 3(1)(m) regarding the CBC/SRC’s mandate, and the public interest in accessing CBC/SRC programming (especially CanCon) on linear TV, at affordable rates.**
4. The Commission renewed the broadcasting licences for the CBC’s English- and French-language linear audio and audiovisual services, set out in Appendix 1 to the decision, from 1 September 2022 to 31 August 2027, subject to several conditions of approval.¹

The Petitioners

5. The National Pensioners Federation (“**NPF**”)² is a democratic, non-partisan, non-sectarian organization which was established in 1945 and incorporated May 1st 1954. NPF is composed of 350 seniors chapters, clubs, groups, organizations and individual supporters across Canada with a collective membership of 1,000,000 Canadian seniors and retired workers. NPF’s mission is to stimulate public interest in the welfare of aging Canadians, and its goal is to help seniors and retirees have a life of dignity, independence and financial security.
6. The Public Interest Advocacy Centre (“**PIAC**”)³ is a non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and in particular, vulnerable consumer interests concerning the provision of important public services. PIAC has pursued work in communications services for over 40 years.

¹ See Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals* (22 June 2022); online: <https://crtc.gc.ca/eng/archive/2022/2022-165.htm>

² Online: <http://www.nationalpensionersfederation.ca/>

³ Online: <https://www.piac.ca>

7. NPF-PIAC participated actively in nearly all public stages of the CRTC's consideration of the CBC/SRC's licence applications.⁴ CBC/SRC applied for renewal (with changes) of licences for linear television (TV) and radio broadcasting on each of their English (CBC) and French (SRC) language services, for four sets of licences in all.

CBC Licence Applications were not for “Online” Licences

8. CBC/SRC could not apply for a “digital media broadcasting” (online) licences for Internet-based delivery of these services as the CRTC's Digital Media Exemption Order (DMEO) exempts all broadcasters' online or “digital media broadcasting” (“DMB”) under the *Broadcasting Act*. Instead, CBC/SRC proposed various conditions of licence and expectations for linear TV that would allow it to reduce linear TV exhibition (and thus expenditures)⁵ and therefore move money and resources from the linear TV services to support the online delivery of programming to Canadians (“cross platform flexibility” or “flexibility”).
9. On 22 June 2022, some 2 years and 6 months after the filing of the applications, the CRTC finally approved, with few conditions, the CBC's four applications in BD CRTC 2022-165. The CRTC did not, however, amend the Digital Media Exemption Order (DMEO)⁶ which to date had governed all broadcasters' online or “digital media broadcasting” under the *Broadcasting Act*.
10. The CRTC's ruling in BD 2022-165 allows CBC/SRC the ability to move its funds from its linear services to its online services (the two largest of these being CBC's “Gem” service and SRC's “ICI TOU.tv”). This regulatory *legerdemain* is achieved by removing nearly all exhibition requirements on linear TV and over-the-air TV (OTA).
11. The exhibition requirements were removed from linear and OTA TV services licences. However, no party to the proceeding, not even the CBC/SRC, asked that exhibition requirements be completely removed from linear and OTA TV services. Instead, several interveners responded to the CBC/SRC's call for flexibility by making proposals for expenditure requirements in addition to existing exhibition requirements, NPF-PIAC included. Most parties suggested waiting for a DMEO proceeding to change the online broadcasting rules for all broadcasters or to await long-anticipated legislative change in what is now Bill C-11.
12. Nonetheless, the majority reasons in the CBC Licences Decision removed these exhibition licence requirements – upsetting years of continuous and effectively similar exhibition requirements. The two dissenting Commissioners both called attention to this fundamental,

⁴ Please see NPF-PIAC's submissions for all stages of the proceeding at:

<https://applications.crtc.gc.ca/ListeInterventionList/Documents.aspx?ID=291246&en=2019-379&dt=f&lang=e&S=C&PA=b&PT=nc&PST=a> We did not file comments on what the CRTC termed “Phase 2” – a comment on additional financial information filed by CBC/SRC during the course of the proceeding.

⁵ The CBC's initial proposals for licence changes are summarized in Canada's Forum for Research and Policy in Communications, in its initial intervention, para. 83. See online:

<https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?DMID=3815315>

⁶ *Exemption order for digital media broadcasting undertakings* (DMEO), being the Appendix to Broadcasting Order CRTC 2012-409 (26 July 2012). Online: <https://crtc.gc.ca/eng/archive/2012/2012-409.htm>

unexpected and unasked-for dropping of exhibition requirements. Commissioner Lafontaine listed them:

“List of Key Canadian Programming Licensing Measures NOT IMPOSED IN the Majority Decision:

- ***Broadcast of Canadian programming:*** the conditions of licence for the broadcast of a predominance of Canadian programming on the Corporation’s English- and French-language conventional networks and television stations as well as its three discretionary services ICI ARTV, the documentary Channel and ICI EXPLORA.
- ***Broadcast of French-language local programming in the metropolitan market of Montréal:*** the condition of licence for Radio-Canada’s conventional television network and station to broadcast a minimum number of weekly hours of French-language local programming, most of which is news programming, in the metropolitan market of Montréal.
- ***Broadcast of English-language local programming in metropolitan markets across the country:*** the conditions of licence for CBC’s English-language conventional television network and stations to broadcast a minimum number of weekly hours of English-language local programming, most of which is news programming, in the metropolitan markets of Calgary, Edmonton, Ottawa, Toronto and Vancouver, as well as in the English-language OLMC of Montréal.
- ***Broadcast of French- and English-language independently produced Canadian programming:*** the conditions of licence that provide minimum requirements for the broadcast of French- and English-language Canadian independently produced programs on CBC/Radio-Canada’s conventional television stations (networks and stations), ICI ARTV and the documentary Channel.
- ***Broadcast of programs of national interest in peak time:*** the conditions of licence for the broadcast of programs of national interest (PNI) during the peak viewing hours of 7 p.m. to 11 p.m. on CBC’s and Radio-Canada’s conventional television networks and stations, and the requirements regarding the broadcast of Canadian independently produced PNI content.
- ***Broadcast of French-language children’s and youth programming:*** the conditions of licence for the broadcast of French-language Canadian children’s and youth programming by Radio-Canada (conventional network and stations) in Quebec and across Canada. The conditions of licence include the obligation for Radio-Canada to broadcast at least 15 hours per week of Canadian programming for children under the age of 13, and the obligation for Radio-Canada to broadcast original Canadian French-language children’s and youth programs.
- ***Broadcast of English-language children’s and youth programming:*** the condition of licence for the broadcast of 15 hours per week of English-language

Canadian programming on CBC's conventional television network and stations aimed at children under the age of 13.

- **Broadcast of original and original first-run Canadian programs:** the condition of licence for Radio-Canada's conventional television stations to broadcast original French-language Canadian children's and youth programming, and the obligation for the documentary Channel to license from independent production companies not less than 75% of its original, first-run Canadian content hours.
- **Broadcast of Canadian feature films once per month on CBC:** the condition of licence for the broadcast of one Canadian feature film during each broadcast month on the CBC's conventional television network and stations."

13. These are not minor changes. They affect millions of Canadians in Canada's largest cities, and many vulnerable and isolated Canadians with particular linguistic, age-related or disability needs in rural and remote areas and therefore the accessibility and affordability of such linear and OTA TV and radio services for Canadians, and in particular, those Canadians who rely upon CBC/SRC linear and OTA TV for their democratic, community and social connections.

14. Exhibition of programming, much of it news or PNI in prime time linear TV viewing hours (7-11 p.m. local time), ensures that those Canadians who rely upon linear and OTA TV to receive their democratic (news and current affairs), entertainment (drama, documentary and comedy, much produced by independent producers) and specialty programming (kids, youth, etc.) will see the content. It will be displayed at a scheduled hour, such that the viewer does not need to seek out or select the programming. This increases exposure to the programs for: passive viewers; older viewers who may be accustomed to simply turning on the television to get news, or be in group home or other situations where they lack control of access devices to the Internet; and children and younger viewers who may not have control of the programming choices made by adults, etc. For consumer-citizens, exhibition on linear and OTA TV means exposure to, and viewing and benefitting from, programming.

15. In our view, as well as that of the dissenting Commissioners, this unexpected dropping of exhibition requirements derogates from the *Broadcasting Act's* policy for broadcasting for Canada expressed explicitly in s. 3 of that Act, notably: 3(1)(d) (economic and social needs of all Canadians of all ages); 3(1)(l) (CBC/SRC's special duties to be the national public broadcaster that "provide[s] radio and television programming that informs, enlightens and entertains"); and 3(1)(m) (content of CBC/SRC programming should be diverse and inclusive, regional and national, in English and French, nation-building and multicultural and multiracial and available across Canada).

16. These aspects of Canada's broadcasting policy, though multifaceted, nonetheless are crystal clear as to its goal: the Canadian broadcasting system is "a public service essential to the maintenance and enhancement of national identity and cultural sovereignty" (subs. 3(1)(b)).

17. The lynchpin of the Canadian broadcasting system is indisputably CBC/SRC, as it has been since CBC/SRC's creation.

18. The CBC/SRC’s mandate is largely to show Canadian content (“CanCon”) to Canadians and the world. The CRTC itself emphasized this role and mandate in BD CRTC 2022-165:

[T]he CBC’s mandate under the *Broadcasting Act* is very clear: its programming must be predominantly and distinctively Canadian. While this mandate is not, in and of itself, a requirement, the CBC’s parliamentary funding is tied to the achievement of this mandate.

19. It is contrary to this mandate that CBC/SRC be effectively permitted to cease to serve as a public service delivering broadcasting to all Canadians, by effectively eliminating the requirement for it to deliver predominantly and distinctively Canadian programming to Canadians, thereby renouncing the broadcasting policy of Canada and the Act.

20. Yet the CRTC’s decision in BD CRTC 2022-165 invites the CBC/SRC to do just that, for most Canadians and for an overwhelming majority of seniors, by removing conditions of licence on CBC/SRC that ensure it reaches Canadians in the manner they need to access programming – that is, via linear and OTA TV.

21. CBC/SRC’s 2018-19 Annual Report,⁷ at p. 13, notes in an informative chart, the manner in which various age groups access CBC/SRC’s programming:

Traditionals (28%)	Testers (18%)*	Hybrids (11%)	Have It Alls (16%)	Online First (24%)
Mainly television services, through TV BDU, on TV sets Down from 59% in 2011 (53% decrease)	Starting to use DMB services Relatively stable over time	Choose legacy or DMB services to best suit their needs at the time Nearly doubled since 2011	Subscribe to TV BDU and OTT services (defined as OTT/SVOD) Tripled since 2011	Primarily DMB services Quadrupled since 2011
More likely to be: Older – average age 61	More likely to be: Middle aged – average age 50	More likely to be: Middle aged – average age 47	More likely to be: Younger – average age 39	More likely to be: Youngest – average age 37

22. In effect, CRTC has set the CBC/SRC a trap, an attractive nuisance, a seduction, to move all local programming (including local news) resources from linear and OTA TV to the uncharted waters of online digital media broadcasting. The result of this is to abandon especially older Canadians that access CBC programming on traditional linear and OTA TV – at least 28% of the viewer population and up to 73% if younger and more occasional users of linear and OTA TV are included.

23. NPF-PIAC note that the CBC/SRC did not even request this “flexibility” to effectively have the power to abandon linear and OTA TV. Instead, the CRTC, in the Notice of Consultation (at paras. 15, 31, 39 and question 23) and at various points during the hearing incessantly raised

⁷ Online: <https://site-cbc.radio-canada.ca/documents/impact-and-accountability/finances/2018-2019-annual-report.pdf> This chart was not repeated in following Annual Reports. NPF-PIAC believes that the variances between age groups likely persist to the present day.

the prospect of regulatory flexibility (without detailed definition of what such flexibility entailed). The CBC/SRC's initial applications did not request such broad "flexibility", although the CBC/SRC did request slight exhibition reductions in some areas and did note many challenges of being a national public broadcaster primarily responsible for CanCon delivery to the entire population in a world of increasing online broadcasting delivery and monetization.

24. The CRTC, in BD CRTC 2022-165 nonetheless interpreted its own insistence on fulsome "flexibility" to take the form of removal of licence conditions guaranteeing exhibition and drastically reducing expenditures on linear and OTA TV, which removal was not requested by CBC/SRC nor argued for by any other party, and which likely will derogate from linear and OTA TV services and thus from achieving the goals of the broadcasting policy for Canada for those Canadians relying upon linear and OTA TV services to receive their democratic, entertainment and specialty programming.
25. It is clear from the reaction of key stakeholders in the Canadian broadcasting system – including independent producers (represented by trade associations like CMPA and AQPM), consumer groups (NPF, PIAC and FRPC), labour unions (Canadian Media Guild), and creators including writers, actors, and directors (Represented by trade associations like ACTRA (actors), Directors Guild of Canada (DGC), and Writers Guild of Canada (WGC)) – that this ill-considered policy shift from the bedrock protection, on the CBC/SRC's linear channels, of all Canadians' access to clearly Canadian programming ("CanCon"), is unexpected, shocking, painful and destructive.
26. Apart from the derogation from the broadcasting policy for Canada, as represented by the opportunity for CBC/SRC to avoid its mandate in subss. 3(1)(l) and 3(1)(m), that the decision creates, it also poses an additional problems for Canada's seniors: access and cost.
27. The *Broadcasting Act*, subs. 3(1)(b) states the Canadian broadcasting system "provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty). Subsection 3(1)(d)(i) notes the system should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada"; while subs. 3(1)(d)(iii) notes the system should "through its programming and 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, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society".
28. Whatever the "efficiency" of reaching certain Canadians via online digital media broadcasting, the fact is that many seniors do not use, and do not wish to use, such online services to access programming that they obtain daily, already, on linear and OTA TV and radio distribution services from CBC/SRC.⁸ Therefore, removing programming from linear television (e.g., by starving local stations' programming budgets, in particular local new budgets, which are the most expensive programming services) directly harms seniors by reducing what programming can be accessed. It also means that seniors who wish to continue to have local news and programming may have to soon subscribe to Internet service (many will not be able to afford

⁸ See [Transcript, Virtual Hearing, January 26, 2021](#), at paras. 11010 – 11013, per Tish McAuliffe, President, NPF.

this additional expense and even for those that can afford a new expense, Internet service may be unaffordable or unavailable in their area at a quality sufficient to receive online digital media broadcasting).⁹

29. We also note the technical challenges for many seniors in using the Internet generally and, in particular, in logging into online services such as CBC's "Gem" (English) and SRC's "ICI TOU.tv" (French).¹⁰ This reduces accessibility of CBC/SRC's programming content to seniors.
30. We submit that in ignoring these access and affordability issues for seniors, the CRTC has derogated from the achievement of the objectives of the broadcasting policy of Canada, in particular, subs. 3(1)(t)(ii), in not achieving affordability of BDU services for all Canadians, by inviting the CBC/SRC to abandon proven, functioning linear and OTA TV services used by millions of Canadians daily with no transition plan and compelling reason for such abandonment.

Canadian Consumer-Citizens Want and Need CanCon from CBC/SRC

31. NPF-PIAC know that Canadians, in their capacity as consumer-citizens, want and need CanCon. Canadians get the majority of their audio-visual CanCon (especially news and local programming) from CBC/SRC via linear and OTA TV.
32. In NPF-PIAC's written intervention at para. 3,¹¹ we outlined this dependence of Canadians on CBC/SRC to the CRTC:

3. PIAC/NPF believes that CBC has a critical role to play in the 21st century. Canada needs a strong national public service broadcaster more than ever to reflect and meet the needs of all Canadians and as a benchmark for high-quality Canadian programming ("Cancon") and broadcasting services, both radio and television ("legacy") and digital media ("digital media broadcasting" or "DMB"). CBC best serves the public interest by providing universal access to its programming and by maximizing delivery – to Canadian (primarily) and foreign audiences – of Cancon in categories that are of the greatest interest to Canadians as consumer-citizens:

- original, high-quality, independent, distinctively Canadian, and distinct from private Canadian broadcasters (i.e., across all genres); and
- genres that are valued by Canadians and/or under-served, specifically news (all levels), local, PNI, kids', and Canadian diversity.

⁹ See Dissent of Commissioner Lafontaine in BD CRTC 2022-165, which cites evidence from the hearing that 11% of Canadians have no access to high-speed broadband. We note that this figure does not include seniors and other Canadians who have access to high-speed broadband but do not subscribe due to affordability concerns.

¹⁰ See [Transcript, Virtual Hearing, January 26, 2021](#), at para. 11011, per Trish McAuliffe, President, NPF.

¹¹ Online: <https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?DMID=3815778>

33. NPF-PIAC commissioned a public opinion survey during the prior broadcasting policy hearing “Let’s Talk TV” that showed a high support of, and approval for, CanCon in general by the Canadian public.
34. The 2014 survey conducted on behalf of PIAC/NPF by Environics¹² (“PIAC/NPF Environics Survey”) revealed strongly held views of Canadians about the importance of Cancon *obligations for television broadcasters and broadcasting distribution undertakings* (“TV BDUs” or “BDUs”) – with levels of support ranging from 75% to 83%, depending on the kind of CanCon requirement being measured. Few believed broadcasters and BDUs should not have any requirement at all to support Canadian television programs (20%) (see Table below).

Significant support for Canadian programming obligations	
Item	Support
Having to help promote and market Canadian programs	83%
Having to seek out, train and promote more Canadians in the television broadcasting industry	80%
Having to direct a certain percentage of their annual revenues to funding Canadian television production	79%
Having to financially contribute to funds that support independent Canadian producers	75%
Broadcasters should not have any requirement at all to support Canadian television programs	20%

35. Canadians want CanCon and get the overwhelming majority of their CanCon from CBC, including local news.
36. It is NPF-PIAC’s contention that the CRTC’s sudden, wholesale removal of exhibition and expenditure and related licencing requirements (as outlined in para. 12, above) will lead inexorably to reduced CanCon delivery by CBC/SRC to Canadians relying upon linear and OTA TV. This result derogates from the broadcasting policy for Canada expressed in s. 3(1) of the *Broadcasting Act* and in particular, subss. 3(1)(l) and 3(1)(m) regarding the mandate of the CBC/SRC.

CRTC Conducted a “Stealth Policy Hearing”

37. The Commission undertook a “stealth policy hearing” in the guise of CBC/SRC’s licence renewals. The result is an effective policy of permitting broadcasters, and importantly the national public service broadcaster, to transfer resources used previously to ensure delivery of

¹² BNC CRTC 2014-190, Let’s Talk TV, Intervention of the Groups for the Public Interest, Appendix C – Environics Survey. Online: <https://applications.crtc.gc.ca/DocWebBroker/OpenDocument.aspx?DMID=2157541>

programming via established, linear broadcasting models (linear and over-the-air (OTA) TV, radio) to effectively unregulated online distribution.

38. NPF-PIAC warned the CRTC not to take this path, which was an obvious risk given the CRTC's drafting of the Notice of Consultation, slow pace, and lax attitude to CBC/SRC's evidence and submissions, and the CRTC's acceptance of a mere sketch of a strategic plan from the CBC – one that effectively allows them to do anything. Our written Intervention presciently foresaw the CRTC's eventual direction in BD CRTC 2022-165:

4. PIAC/NPF strongly supports a renewed licence for CBC, for a five (5) year term. However, we have three major and inter-related concerns. First, PIAC/NPF is concerned this "licence renewal" proceeding is a stealth policy proceeding on the regulation of the Corporation's DMB services, in that CRTC is proposing a new regulatory – specifically licensing – approach to CBC that is multi-platform (i.e., covers legacy and DMB services) and has elements that are cross-platform (i.e., apply across legacy-DMB services), including cross-platform programming licence commitments that are fundamentally problematic. [Emphasis added.]

39. Permitting CBC/SRC the "flexibility" to move resources from linear and OTA TV channels (by removing exhibition requirements on linear and OTA TV) without concomitant online programming requirements to substitute for the dropped licence conditions on linear means the CBC/SRC can focus on building/growing its exempt DMB services and abandon linear and OTA TV.

40. This is contrary to the understanding of all parties to the CBC/SRC licensing proceeding that revision of the DMEO was not under consideration.

41. The CRTC was adamant in both the Notice of Consultation (at para. 30) and at many points in the proceeding, including the oral hearing, that it would not be amending the DMEO in this proceeding. On this basis, many parties refrained from considering, and commenting upon, the "flexible" licensing structure ultimately granted by the CRTC to the CBC/SRC that effectively revises the DMEO.

42. As noted by many commenters in the ecosystem, the granting, unbidden, of "flexibility" to the CBC/SRC to move resources to online delivery not only prematurely and unfairly favours CBC vis-à-vis its commercial competitors (private broadcasters, who still have exhibition conditions of licence), but also establishes an irresistible path for these private broadcasters to demand the same deregulatory treatment of their legacy services as CBC/SRC. As noted in the dissents, the removal of licence conditions also removes the CRTC's powers to enforce the stated goal of its ruling - to ensure adequate exposure of Canadians to CBC/SRC's CanCon - through 'flexibility'. As a result, all Canadian linear and OTA TV viewers may soon experience the rapid impoverishment of linear and OTA TV services offered by Bell, Rogers, Quebecor, Corus and others as they request similar ability to satisfy former linear and OTA TV exhibition and expenditure requirements with DMEO-exempt services, in a race to migrate resources to online, where greater advertising returns and viewer behavioural monitoring and monetization opportunities exist, and no effective enforcement by the CRTC under 'flexible regulation'.

43. The CRTC will not be able to establish system-wide rules for online broadcasting until Bill C-11, the so-called “Online Streaming Act”, is enacted and the CRTC establishes a new policy framework followed by holding hearings into the details of its implementation for each broadcaster. However, meanwhile, private broadcasters will likely petition the CRTC to grant them the same “flexibility” as CBC/SRC to move their resources, previously committed to linear and OTA TV broadcasting, to unregulated DMB services.
44. NPF-PIAC expects that these calls for flexibility by Canadian private broadcasters will be brought soon and will be successful. In the meanwhile, CBC/SRC will implement its new licences by commencing the aforementioned transition and reducing if not eliminating costly local programming on linear and OTA TV, especially local news.
45. The result is predictable, especially for seniors: what they watch, whether on CBC/SRC or eventually on private TV channels, will become reduced in quantity and quality; they will struggle to adapt to and afford the new, unfamiliar online delivery method; and many will not be able to navigate this transition, and thus be cut off from local and national news, and other CanCon.
46. These are the results that NPF-PIAC warned the Commission about, in an effort to protect these consumers from such a fate, in accordance with subs. 3(1) of the *Broadcasting Act*. These changes clearly will derogate from the broadcasting policy for Canada and satisfy the test for Cabinet’s ability to set aside the CBC Licences Decision or to instruct the CRTC to rehear it.

CRTC Decision pre-empts Bill C-11, risks undermining Policy Renewal

47. The Commission’s decision, being in effect a stealth policy decision, effectively grants CBC/SRC a head start on, or exemption from - depending on the effects of Bill C-11 - the *Online Streaming Act*. This “special licence” for CBC/SRC with minimal regulatory requirements sets a bad example, not only for Canada’s Canadian-based private broadcasters, but also for all “over-the-top” foreign digital broadcasters, which the Government at present is proposing to include in the Canadian broadcasting regulatory scheme via Bill C-11.
48. The Commission’s decision means that Netflix, Amazon Prime, Apple TV+, Disney+, YouTube and any other foreign-based audio-visual online service can argue for a similar deregulatory treatment as CBC/SRC, whatever the eventual shape of Bill C-11 and the attendant rulings and regulations eventually produced by the CRTC to implement the new legislative policy.
49. Foreign broadcasters will be able to point to the CBC/SRC licensing framework, which allows nearly unlimited online spending with little to no concomitant linear and OTA TV spending or exhibition requirements as analogous to their situation. For example, a “foreign streamer” may highlight the CBC/SRC’s new lack of exhibition requirements to resist efforts to define an online discoverability regime under Bill C-11, while another foreign streamer may point to the CBC/SRC’s lack of licence conditions to commission a certain amount of (expenditure on) independently produced programming, to resist any requirements to cooperate with, or provide funds for, independent producers as a condition for entering and servicing the Canadian market.

50. Finally, the Governor in Council should consider that the Commission has not sufficiently considered the potential effects on consumer-citizen accessibility and affordability when trying to watch CBC/SRC programming in the future. We urge Cabinet to set aside or refer for reconsideration this decision, as a clear signal to the CRTC and Parliament that going forward, the *Broadcasting Act* must be interpreted or amended to make consumer-citizen interests, and in particular, consumer access and affordability issues, a requirement, especially for CBC/SRC.
51. Consumers now pay for nearly all broadcasting distribution (TV) services, with the exception of OTA TV, no matter the BDU technology. Those considerable consumer costs, in an environment where the government is seeking to make the Canadian broadcasting system stronger despite Internet- and IP-based delivery methods and new, often foreign content challenges, should not be unreasonably borne by consumers.
52. Should the Governor in Council, given the statutory or other context, simply opt to refer the CBC Licence Decision back to the Commission for reconsideration and hearing rather than to set it aside, we respectfully request that Cabinet in its order set out the details, for consideration, as material to the reconsideration, of our concerns as to the importance of the continued linear and OTA TV licence conditions on CBC/SRC to ensure it delivers on its mandate under subss. 3(1)(l) and 3(1)(m) as well as seriously considering consumer accessibility and affordability of CBC/SRC linear and OTA TV services, and in particular, for seniors.

Conclusion and Relief Requested

53. NPF-PIAC respectfully requests, for the reasons given above, that Cabinet grant our petition, and set aside the CBC Licences Decision. **If Cabinet does not consider it appropriate to set aside the decision, we request Cabinet refer the CBC Licences Decision back to the CRTC for reconsideration and hearing and to include in the details of its order as material to the reconsideration and hearing our concerns regarding the importance of linear and OTA TV exhibition licence requirements (in particular, to ensure Canadians including in particular seniors, see CanCon, including specifically local news programming), and CBC/SRC's key role in delivering such programming as noted above. Also material, in our view, is the risk of affordability and accessibility issues for seniors who might be forced to transition to online programming delivery methods that are not responsive to their budgets, needs, desires or abilities.**
54. Finally, we note that the Governor in Council may wish to consider that the CRTC has the power to issue administrative renewals of broadcaster licences, on previous terms of licence, and recently has done so for the major private broadcasters for two years, presumably to allow Parliament, the CRTC and the Department of Canadian Heritage sufficient time to implement Bill C-11.

End of Submission