CCSA Final Submission

BNC 2025-2-4

The Path Forward – Working towards a sustainable Canadian broadcasting system

September 15, 2025

Table of Contents

Executive summary	3
Expansion of Exemption	4
Basic Packages	5
Wholesale Access to Streaming Services	5
Application of S 10(1)(h.1)	6
Good Faith Negotiations	8
MDUs	9
Supporting independent BDUs	10
Closing Loopholes	11
Creating a Fair System	12
Responses to other Intervenors	14
Conclusion	18
Appendix 1 - Legal and Regulatory Authority	21
Appendix 2 - Clarification from Oral Presentation	24
Appendix 3 - Supporting Evidence	30

E1. The CCSA is a national organization representing more than 100 small independent broadcasting distribution companies and ISPs that provide TV, internet, and telecommunications services to more than half a million Canadian residents and businesses in urban and rural communities, from coast to coast to coast.

E2. We thank the Commission for allowing CCSA to participate in this important process. Our members appreciate the significance of this hearing and are acutely aware that decisions by the Commission regarding competition and sustainability will impact their businesses for the next decade.

E3. CCSA's core message is that independent BDUs are prepared and hopeful to compete in a fair market. If the market supports fair competition, independent BDUs of all sizes will be able to contribute and play a vital role.

E.4 In light of the positions of other parties and our own submissions, the CCSA is ultimately making 8 recommendations for consideration in the Commission's final decision:

1- A re-determination of the exemption threshold for exempt BDUs. The current threshold should be increased from 2,000 subscribers to 20,000 subscribers per system for non-Vertically Integrated BDUs.
2- That 'basic' packages be made consistent in pricing and content with required offerings from VI-BDUs and Online Undertakings regarding 9.1(1)i. The Commission should not penalize small independent BDUs through ineffective regulation.[1]
3- CCSA is requesting the Commission require wholesale access to streaming services for independent BDUs
4- The Commission should more strictly apply s. 10(1)(h.1) and call for a hearing into new unreasonable self-dealing and undue preference rates that effectively abuse the regulatory process. Whether intended or not, these behaviours unduly harm small and medium-sized independent competitors.[2]
5- The elimination of anti-competitive business practices in MDUs that unfairly disadvantage customers. These are distinct concerns in apartment buildings compared to condos.
6- Wholesale transport Access at Tier 1 connection points.[3]
7- Appropriate funding for community programming to ensure the Broadcasting Act's objectives can be met.[4]

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[1] This is discussed more in Appendix 2.
[2] As discussed in Appendix 3
[3] Op. Cit.
[4] Ibid.

8- Modernizing the wholesale code to strengthen its effectiveness[5].

E.5 Aside from specific concerns, CCSA has more broad regulatory concerns which we deal with in the following sections of this submission:

Closing loopholes from Let's Talk TV

Creating a fair Canadian system

Responses to other intervenors

E.6 Finally, CCSA will further respond to, or clarify positions from its oral submission in Appendix 2. This is preceded by Appendix 1, which provides an analysis of authority for the Commission to make determinations in respect of Online Undertakings and CCSA's understanding of regulatory interpretation.

E.7 Addressing each issue in turn will hopefully provide the Commission with context and due consideration of concerns by CCSA's membership. The Commission seeks to have a resilient broadcasting system that meets the needs of consumers. That can only happen if there are changes to modernize the current frameworks and thereby providing opportunities for audiences to be engaged by the content.

Expansion of Exemption

1. CCSA sought in its submissions to change the regulatory exemption from 2,000 subscribers to 20,000. This has been a consistent position on behalf of its membership.[6]

2. There have long been competing CRTC policy objectives: supporting smaller BDUs versus consumer exposure to 9.1(1)h services. Historically, the Commission has favoured the latter priority by balancing the exemption rate for carriage at 2,000 subscribers. Given the change in market dynamics and the potential for the establishment of a 'Service of Exceptional Importance Fund' (SEIF), CCSA would propose that this threshold should be revised by the Commission and the priority reversed.

3. CCSA believes that the market is materially different from 2003 or 2009, and that the Commission's views on the acceptable level of exemption should be adjusted if small

[5] CCSA made recommendations to improvements to the wholesale code in its RFI response.
[6] CRTC broadcasting decisions 2003-23, 2006-23,2009-544, etc.

independent BDUs are to continue to compete in local and regional markets against VI-BDUs and foreign streamers.

4. CCSA would note the regulatory imbalance that currently exists. Crave has no requirement for carriage of 9.1(1)h services; other online platforms are currently exempt until the Commission renders a decision on this matter. If costs and availability were to be equally levied[7] against domestic DTC services, and the Commission were to include foreign streamers in appropriate ways, CCSA's members would be in a better position to compete on a level playing field.

5. Vice Chair Scott compared CCSA's members to a group trying to keep their heads above water when questioning AMI. From a regulatory standpoint, does it make sense to throw small independent BDUs a flotation device while the Commission provides VI-BDUs the regulatory equivalent of jet-skis, and foreign streamers yachts?

6. CCSA believes that exemption from carriage for small independent BDUs is the appropriate regulatory outcome given the current market.

7. A question could be raised about the reasonableness of CCSA members denying access to 9.1(1)h services if those members become exempt, and whether that is reasonable. Such a question would show a lack of understanding of the current market realities. Customers can and do already bypass 9.1(1)h services by choosing DTC products. Small BDUs are trying to compete with those products but the 'basic' package is cost-prohibitive. For a customer to get access to Crave, a small BDU has to charge $25 to be a BDU (Basic) and then the cost of Bell's Crave service at say $25 for a total of $50, whereas Bell simply has to sell Crave at $25. Customers can save $25 and not watch 9.1(1)h services.

8. For customers who want 9.1(1)h services, CCSA members are of course, prepared to provide them, but they can only do so if they continue to have customers, and having a doubly expensive product will continue to drive cord cutting.

Basic Packages

9. The proposal to increase exemption thresholds to 20,000 subscribers in a given system for non-VI-BDUs (smaller independent BDUs) would also have the added benefit of solving the problem of 'basic' packaging requirements for most small and independent BDUs. This issue will be discussed more in Appendix 2, point 6.

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[7] Even if the costs were put onto a SEIF as opposed to the traditional model.

10. CCSA appreciates that while the Commission prioritizes its focus on policy objectives, and the reasonable intent to meet regulatory requirements, when those directly conflict with market and technological realities, it is neither pragmatic nor logical to continue regulatory absurdities.

11. Traditional BDUs should not have to charge more than Online Undertakings to simply compete in offering broadcasting content. TVE offerings are fair because 9.1(1)(h) costs and display requirements are already included in the costs of the package. But small independent BDUs are more frequently competing against DTC products from VI-BDUs, and those do not compete on a level playing field.

12. The simplest solution to remedy these problems is to increase the exemption threshold.

Wholesale Access to Streaming Services

13. CCSA believes that the Commission can and should mandate access to streaming services by independent BDUs. This can be done through an updated Wholesale Code (Appendix 2), but also under existing jurisdiction in section 10(1)(h.1) of the Broadcasting Act.

14. If streamers argue they are regulated under the Telecommunications Act, CCSA would refer the Commission to section 28(1)b of that Act.

> "The Commission shall have regard to the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act* in determining whether any discrimination is unjust or any preference or disadvantage is undue or unreasonable in relation to any transmission of programs, as defined in subsection 2(1) of that Act, that is primarily direct to the public and made through the terrestrial distribution facilities of a Canadian carrier, whether alone or in conjunction with facilities owned by a broadcasting undertaking."

15. Streaming services are of exceptional importance in the Canadian market from a competition standpoint. As CCSA stated in its oral submission, our members and all independent BDUs are at a competitive disadvantage if they are unable to offer comparable services to their competitors. CCSA asks the Commission to eliminate an unjustifiable and arbitrary competitive disadvantage that exists in the marketplace.

Application of s. 10(1)(h.1) and Hearing Request

16. Though not a specific request of CCSA's initial submission, the market has shifted since the first submissions were made. CCSA has already made comments regarding increasing the wholesale code.[8] As discussed in Appendix 3 of this document, Section 10(1)(h.1) of the Broadcasting Act, is seemingly being insufficiently regarded. The VI-BDUs appear to be disproportionately favouring themselves in their Online Undertakings. To this end, CCSA would request the Commission resolve this issue in this proceeding by… setting a standardized 'wholesale' rate for domestic streaming costs of 40% above the rate the VI-BDU charged itself the previous year. If however the Commission believes that the record is insufficient to take that action, it should hold an ancillary public hearing to make that determination.

17. In CCSA's initial submission, it raised concerns regarding undue preference within the Canadian market.

18. One element of the undue preference is related to the transport of signals. In the Quebec market, CCSA is aware of several small independent BDUs that will go out of business in the next year, pressured to shut down or sell to another BDU, which also acts as their transport supplier, because that supplier said it would no longer support the provision of transport services as had been historically done.

19. Issues around transport have increased significantly because of the sale of Shaw, leading to an effective transport duopoly, which was discussed in CCSA's oral submission. The transport system needs intervention. This will be further discussed in Appendix 2.

20. As an additional point, many intervenors highlighted the anti-competitive concerns they have regarding VI-BDUs. While an update to the wholesale code would be a significant improvement, the Commission should be prepared to take action under section 33b of the Broadcasting Act as it relates to the current wholesale code, sections 5a, 6a and 6d.[9]

21. This can be best demonstrated by Crave, and Rogers Xfinity (as well as offers for Warner Brother Discovery (WBD) channels launched on January 1st by Rogers) packages being offered by Bell and Rogers respectively to competitors. The rates that these companies are offering in the market for whole/re-sale appear unreasonable[10]. To that end, we would ask the Commission to formally investigate.

22. As recently reported in Cartt.ca on Aug 28,2025, the domestic streamers are offering multiple bundles including foreign streaming services.[11] While not intrinsically a problem, when

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[8] CRTC 2025-2-3 RFI. CCSA submission response to Question 26.

[9] The Wholesale Code. BRP 2015-438. September 24, 2015 https://crtc.gc.ca/eng/archive/2015/2015-438.htm

[10] Please refer to Appendix 3.

[11] Cartt.ca "Rogers joins Telus and Bell with streaming bundle offer". August 28, 2025 https://cartt.ca/rogers-follows-telus-and-bell-with-streaming-bundle-offer/

the Commission removes the foreign streaming platforms from the bulk prices, it may find that the rates for certain in-market products are very near or exceeding the in-market wholesale price.

23. CCSA recognizes that even at wholesale prices, the owners of licenses and products should make a reasonable rate of return. That being said, wholesale rates are not intended to create merely the appearance of competition. These 'sale' prices were raised during CCSA's oral discussion with the Commission.[12]

24. Independent BDUs currently must compete against 'traditional' and online undertakings provided by VI-BDUs. To do so, independent BDUs should not be put at a competitive disadvantage by VI-BDUs that can bypass the regulatory requirement of a 'basic package' cost through their OU's, as well as being forced to offer products to customers from 'wholesale' rates for OU's that are drastically undermined by tied-selling practices by the VI-BDUs. CCSA's Appendix 3 gives examples of concerns CCSA has come across in the last year alone.

Good Faith Negotiations

25. CCSA notes three elements to support our submissions regarding good faith negotiations. First, CCSA continues to support the proposed adoption of the standard terms for good faith negotiations on the record.[13]

> "Negotiation in good faith from the courts and so on, and they talk about requiring an honest and open mind generally trying to reach agreement, not acting arbitrarily, stonewalling and negotiating merely for appearance, considering reasonable proposals and offering reasoned responses, avoiding conduct designed to delay, derail or frustrate the negotiation process, but not agreement at all costs, not yielding to the other side's terms, not that the negotiation succeed, only that it be genuine and procedurally fair."[14]

26. An intervener suggested that only one of these elements was sufficient to meet the threshold of good faith negotiations. Their statement demonstrates a worrying desire in their outlook on the market.

27. Second, there cannot be good faith negotiations if no negotiations can take place. In the case of the streamers, they are competitors to independent BDUs but not willing to engage in negotiations to have their services distributed by independents. CCSA questions the good faith

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[12] Lines 4873, 4909, 4913-4919 of transcript volume 5 https://crtc.gc.ca/eng/transcripts/2025/tb0626.htm.

[13] When CCSA said they were from other jurisdictions, we meant beyond the codified standards of the CRTC in the Broadcasting Act, not to say they were taken from other foreign jurisdictions.

[14] Line 1337 volume 2 Hearing transcript BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0619.htm

toward the Canadian market and regulatory system. This then leads the CCSA's regulatory arguments for the application of section 10(1)(h.1) of the Act relating to foreign streamers' behaviour as an unreasonable disadvantage imposed in contravention of section 3(1)d(iii.5).

28. This application of section 10(1)(h.1) would require parties to come to the table to ensure equivalent services have been offered to BDUs in the market to allow negotiations to take place in good faith.

29. Finally, in its written submissions, CCSA advocated a 'Bottom-Up' Approach. In contrast to that, we have seen intervenors request the elimination of the wholesale code, claiming that it is 'burdensome'[15]. The regulations specifically enacted to protect small and independent BDUs are not burdensome – they are a necessary regulatory intervention to ensure that smaller providers are not crushed by dominant players.

30. If the largest VI-BDU is not inclined to apologize for being a 'strong Canadian company' (regarding their actions in the market), CCSA would seek clarification from the Commission on when leveraging dominance in vertically integrated industries to prevent competition by other operators became the definition of 'strong Canadian company'.

31. Increasing competition and creating downward pressure on the market demonstrates sound regulatory application in a tight domestic oligopoly. CCSA would request the Commission facilitate that outcome.

MDUs

32. There are two distinct issues regarding MDUs.

33. The first applies to apartment buildings and seniors' residences, where the cost of a given supplier (telecommunications and/or broadcasting) is included in the rent. In these instances, should a renter choose to use an alternative provider, they are paying the additional cost for services on top of their full rent.

34. This creates a clear disincentive that is financially punitive for exercising free choice in the market based exclusively on their address. The Commission should not allow this practice to continue going forward.

35. The second issue is relevant to MDUs like condo buildings. If enough residents adopt a 'package' provided by a VI-BDU/ISP, everyone gets a discounted benefit. . CCSA does not object to these terms in principle, if they do not overlap across sectors. Telecommunications

[15] Line 3909 of the transcript, BNC 2025-2

agreements based on residence quotas should not bind or limit Broadcasting competition in buildings.[16] This will be further discussed in relation to Commissioner Abramson's question on the matter in Appendix 2.

36. Ultimately, CCSA wants consumers to have choice about who provides them with broadcasting services. We ask the Commission to make a regulatory decision regarding the allowable terms for MDUs that promote consumer choice and competition

Supporting Independent BDUS, Cogeco/Eastlink

37. CCSA notes that many of the points raised by Cogeco and Eastlink are common problems across the broadcasting market for independent BDUs. CCSA believes that the Commission should therefore treat those shared issues as impediments to furthering the policy objective set out in section 3(1)(d)(iii.5) of the Act. Further, the Commission should view them not as isolated incidents, but as common market problems that need redress.

38. These issues include:

1) Wholesale access to distribute foreign and domestic streamed content.
2) Resolving anti-competitive practices by VI-BDUs.
3) Basic and skinny basic packages which create a competitive disadvantage in market when competing against DTC Online Undertaking offerings from domestic competition.
4) Inequalities that lead to effective 'make-whole' in PBRCs.

39. Independent BDUs do not have conversations about 'winning' in the market like the biggest VI-BDUs.[17] Instead, victories are measured in the ability to stay in the market and, perhaps, in limited circumstances, being able to compete fairly.

40. As Commissioner Abramson said when discussing market failure vs goals of the Broadcasting Act:

> "…our job is to, at the end of the day, come up with concrete solutions. So, anything that you direct us towards that's a concrete proposal will certainly help advance us in our

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[16] As examples, limiting access to resident lists to competitors, having the property manager be required to notify a company of which residents in a building have changed providers, offering benefits or rewards to the property manager for signups etc.

[17] Rogers mentioned this in line 2585 of the transcript https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm , and Bell's CEO talked about winning in market in a recent podcast: https://m.youtube.com/watch?v=PsQCg4T9rQ0

thinking. And we are, of course, and I'm sure the other guys are always happy to be looked to, for those proposals."[18]

41. CCSA believes the updates to the Wholesale Code (as submitted in its RFI submission response to 2025-2-3) may be appropriate solutions when combined with a reinvigorated application of the existing regulatory framework if applied to 'traditional', and all Online Undertakings alike.

42. CCSA's members recognize there will never be a true equilibrium of power within the marketplace, given the scale and scope VI-BDUs and foreign streamers can wield. The wholesale code is vital to attempt to level that dynamic enough to ensure competition can indeed take place in a more equitable way.

Closing the Loopholes – Lessons Learned From Let's Talk TV- OTT Exemption

43. The Let's Talk TV hearing (LTT) allowed the OTT market to remain exempt from CRTC regulation. Between 2015 and 2025, the Canadian Broadcasting market has seen internet delivery of foreign and domestic Online Undertakings dominate the broadcasting market in terms of revenue and market share.

44. CCSA urges the Commission to learn from that outcome. In creating and potentially continuing exemptions, the regulated system, has become too comfortable with broadcasting exemptions masquerading as 'innovation'. In that time, large, well-funded organizations have maximized the benefit of unregulated parts of the market to the detriment of the system as a whole. Despite an overall increase in content hours watched, and there being approximately 4 million more Canadians since 2014[19], funding for Canadian programming has declined.

44. Creating a myriad of different loopholes for the best-resourced players in the market to abuse regulatory exemptions is not to the benefit of consumers, the regulator or the regulated system. Exemptions for foreign streamers, foreign vBDUs, DTCs, etc, are a template for more problems in the future, which can be prevented now if swift action is taken.

45. In a broad sense, broadcasting is "the transmission of programs."[20] At its core, debating the means of distribution of broadcasting is obfuscation through pedantry. Broadcasting should be uniform in its regulatory expectations and competition in the Canadian market.

A Leveling of the Domestic and Foreign Systems to Create a Fair Canadian System

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[18] Line 2273 of the transcript. BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm
[19] 35.4M in 2014 and 39.4M in 2025. https://www.macrotrends.net/global-metrics/countries/can/canada/population
[20] Broadcasting Act 1991. Section 2(1), Definition of Broadcasting.

46. The Commission has a mandate to apply the updated Broadcasting Act. According to the Act: "Online undertakings" are defined in Part I, section 2(1) of the Broadcasting Act:

> "***online undertaking*** means an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus; (*entreprise en ligne*)"

47. The only exclusions from this regulation, according to the Act, are found in Sections 2.(2.1-2.3).[21] The Policy Direction reinforces the exemption in section 10 and also extends regulatory requirements to video games.[22]

48. Other interveners might point to section 8(a) of the Policy Direction as justification:

> **"(a)** where appropriate, minimize the regulatory burden on the Canadian broadcasting system"[23]

but after LTT, CCSA would argue that there should be no automatic assumption of appropriateness to extend that far. Rather, section 8(d) of the Policy Direction is the appropriate tool to apply when warranted:

- "**(d)** where appropriate, use tools that are based on incentives and **outcomes;**"[emphasis added for effect]

49. CCSA suggests the Commission apply the Broadcasting Act and the Wholesale Code to all BDUs[24], foreign vBDUs, DTC services, and Online Undertakings.[25] The only exceptions should be for OU's that solely distribute community programming, the public broadcaster, and those that fall below the financial threshold set by the Commission. This will remove any ongoing regulatory imbalance that currently exists.

50. In creating a new truly agnostic system, the Commission can, at its discretion, adjust discoverability requirements or funding contributions based on criteria it deems appropriate,

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[21] Part I, Section 2. Broadcasting Act 1991
[22] Policy Direction 2023-239. "Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework) SOR/2023-239" dated 09/11/2023 https://laws-lois.justice.gc.ca/eng/regulations/SOR-2023-239/page-1.html
[23] Ibid
[24] Above 20,000 subscribers and generating $25M or more from online broadcasting distribution.
[25] Rogers asked for what the streamers had in transcript line 2343 and 2344. BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm

and make them contingent on types of services. This would align with the Policy Direction, sections 12(b,c,e,i):[26]

> “**(b)** recognize the diversity of services provided by broadcasting undertakings;
>
> **(c)** consider providing flexibility for all broadcasting undertakings in meeting expenditure requirements;
>
> **(e)** where appropriate for a given business model and set of objectives, prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming;
>
> **(i)** support broadcasting undertakings that offer programming services that are of exceptional importance to the achievement of the broadcasting policy set out in subsection 3(1) of the Act;”

51. What is fundamentally important is that there are as few blanket exemptions based on delivery type or technology as possible. The Commission can then balance the system through flexible and adjustable regulations on a more frequent basis than every decade.[27]

52. If the Commission adopts this approach, it will facilitate a Service of Exceptional Importance Fund (SEIF), provide futureproofing in the system, and prevent the Commission from being accused of giving unreasonable advantages to any group.

53. Every intervenor claims to want fair competition. CCSA would urge the Commission to apply the regulations as intended.

Responses to other Interveners

Amazon

54. In responding to Commissioner Paquette, Amazon started discussing its desire to make the app as discoverable as possible.[28] Amazon went on to say they wanted to be available on set-top boxes.[29]

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[26] Policy Direction 2023-239 “Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework) SOR/2023-239” dated 09/11/2023 https://laws-lois.justice.gc.ca/eng/regulations/SOR-2023-239/page-1.html

[27] Ibid. s8(a) or s8(d) as appropriate.

[28] Line 7253 of the transcript. BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0703.htm

[29] Ibid. Line 7369 of the transcript.

55. While this has not previously been CCSA's, (or apparently other independent BDUs) experience, CCSA welcomes this change of strategy. While it appears to be voluntary for some, like Amazon, Independent BDUs still need regulatory intervention for those foreign streamers who refuse to support a fair market.

56. Additionally, there has been a consistent, if incorrect, argument put forward by foreign streamers that was reiterated by Amazon in its oral presentation. Amazon and others conflate the notion of a competitive market with an imbalanced market.[30] Both situations can coexist simultaneously, and fixing the imbalance would not require that the competitive market cease to exist or even be impacted.

Rogers

57. Rogers made its positions quite clear on smaller BDUs and fair competition in the market during its appearance at the hearing.[31] [32] In the first instance, Rogers appears to be arguing that being a "strong Canadian company"[33], is somehow different from being one that "supports fair, transparent, competitive rules of engagement, and ensuring that Canadian independent broadcasting undertakings continue to play a vital role within the system."[34]

58. The second instance was when being asked by the Chair about power imbalances and asymmetry in the domestic market with smaller Canadian BDUs. Rogers instead discussed trying to compete with foreign streamers.[35]

59. CCSA recognizes Rogers' desire to compete with foreign streamers as all Canadian BDUs in the market are also trying to compete with those Online Undertakings. Rogers is not unique in that ambition; however, it is unique in its significant market power as the biggest Canadian VI-BDU. It is concerning that the industry player in the market wanting the most regulatory relief is the most dominant Canadian company in the market.

60. Independent BDUs need a strong wholesale code so that, as VI-BDUs chase foreign streamers, they do not trample or intentionally target smaller independent competition for abuse.

61. Regarding Rogers RFI responses, CCSA notes Rogers' paragraph 58:

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[30] Line 7188 of the transcript BNC 2025-288. https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm
[31] Lines 2334 through 2344 of the transcript BNC 2025-2.
https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm. Rogers bafflegab avoided the question of independent competition and focused solely on foreign streamers, which is telling because it was asked about independent competition.
[32] Lines 2455-2473 of the transcript BNC 2025-2. https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm
[33] Ibid. Line 2344 of the transcript. BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0620.htm
[34] Ibid. Line 2338 of the transcript.
[35] Ibid. Lines 2455-2473 of the transcript

> "Moreover, continuing to impose the price cap solely on BDUs, while exempting their primary competitors – the US streaming giants – will maintain competitive imbalances that distort the market and ultimately harm Canadian consumers."[36]

Rogers is apparently speaking for BDUs (plural), while referring to 'their' primary competitors. For the majority of Canadian BDUs by number, Canadian VI-BDUs are the primary broadcasting competitors in the market. Those same VI-BDUs all partner with Disney and Netflix.[37]

62. Canadians can have a single 'cable service' and streaming services, at the same time, or multiple streaming services and no cable service, but they have never had multiple cable services at the same time. That is why VI-BDUs, and their OU's are primarily competing with other BDUs.

63. CCSA agrees with Rogers that imbalances should be corrected, but extends that logic to all the 'competitive imbalances that distort the market'.

Quebecor

64. Some Intervenors were concerned about any strengthening of the wholesale code and any form of codification of good-faith negotiations. CCSA disagrees.

65. Quebecor in their oral submission advised the Commission that, in their belief, the wholesale code would not be applied to online streamers and there was a matter of fairness that required the wholesale code be eliminated. CCSA believes the Commission has the authority to and indeed must apply the wholesale code to streamers[38]. This would resolve Quebecor's concerns of fairness around the wholesale code.

66. Quebecor also believes that the concerns addressed by the wholesale code, if abolished, could still be resolved by undue preference arbitration. That is an ex-post solution that would apply on a case-by-case basis. A strengthened uniform wholesale code provides an ex-ante solution that will preclude much of that need for future arbitration.

67. Another idea raised was that changes to the wholesale code, **can/could** favour 'independent' (contractors), which could be a matter of fairness. (Note: there is a difference in translations between the written transcript and oral translation).[39]

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[36] Rogers RFI submission to CRTC 2025-2

[37] "Rogers joins Telus and Bell with streaming bundle offer" Cartt.ca. Date Aug 28, 2025 https://cartt.ca/rogers-follows-telus-and-bell-with-streaming-bundle-offer/

[38] Sections 10(1)(h.1),(k) Broadcasting Act 1991.

[39] Line 1025 of the transcript. BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0619.htm does not exactly align with the oral translation: timestamp 36.51 https://www.cpac.ca/crtc-hearings/episode/june-19-2025--quebecor-media-inc?id=6cf8eab4-06a6-4ab0-9d84-b51959814ba4 CCSA will endeavor to merge the response.

68. “Could” favour is not a reasonable or justifiable concern for the Commission to predicate its decisions on if that concern should be applied to independent BDUs. However, if Quebecor meant that undue preference could favour billion-dollar streamers – whether foreign or domestic- differently in the wholesale code, the CCSA supports that interpretation.

69. There has been actual past and present evidence of VI-BDUs being able to bully smaller independents. As Eastlink presented in their submission, three-quarters of their content costs are from VI-BDUs, with that accounting for only 40% of viewership. While CCSA’s numbers are not identical to Eastlink/Bragg, we do see similar disparities. ‘Could’ lead to undue preference favouring independent BDUs is a distinct departure from the reality of the last decade of the wholesale code or any proposed improvements.

RFI responses

Q:1-5

70. CCSA would note that many intervenors responded to Questions 1-5 regarding s. 9.1(1)(i) which is a relatively new addition to the Broadcasting Act.

71. More broadly s. 9.1(1)(i) seems to have two potentially relevant applications. The first is carriage for ‘must carry’ services, traditionally called 9.1(1)h services. The latter would be financial support for production funds.

72. Depending on the decisions taken by the Commission, a Services of Exceptional Importance Fund (SEIF) could resolve all issues regarding financial support. As previously stated, CCSA endorses that approach. An alternative decision by Commission, would likely have ‘less optimal’ results for the Broadcasting Industry, and consumers long term.

73. CCSA believes that domestic OUs should be required (unless exempt) to carry ‘must carry’ services. However, CCSA notes some potential exceptions. As Bragg/Eastlink notes in its response to Q1 of the RFI, three exemptions would be appropriate: community channels distributed by OU’s, a service that only distributes its own content – presumably like CBC-RC, or TVE services which are tied to conventional BDU services already.

74. If a SEIF is employed properly, all v-BDUs and OUs would be able to distribute those 9.1(1)i signals (or not) at their discretion. It might not make sense for a foreign OU that distributes only its own content to include content on its platform, while another that is an aggregator might choose to. Given that most VI-BDU owned OUs are currently in market bundled with both types of services, customers would be well served to find and watch ‘must carry’ services.

75. Another point often raised in Questions 1-5 was the authority of the Commission regarding definitions of Online Undertaking and Broadcast Receiving Apparatus. This will be addressed in Appendix 1

IBG – Provision of basic service

76. CCSA disagrees with IBG's position taken in its response to question 8 of the RFI. It does not disagree with the spirit or intent of IBGs position that independent Broadcasting should be supported; CCSA's objection is with how that is done. IBG argues for the wholesale rates, CCSA argues for a SEIF.

77. For independent BDUs having to compete against OUs, having a basic package 'to start' automatically makes independent BDUs $25 less competitive than other offerings that now might cost $22 total.

78. CCSA is supportive of the policy objectives, but believes a SIEF is the <u>only</u> effective way to move forward while ensuring financing of independent programmers. As noted in the discussion of CBC's positions above, s. 3(1)(d)(iii.5) has two elements. The must-carry costs on traditional distribution will likely eliminate the 'Broadcasting Undertaking' element of that regulation for no appreciable gain to the Programming Undertaking elements. Alternatively, the SEIF option would protect the programming undertaking component while assisting the broadcasting element.

79. CCSA would finalize that point by highlighting that the section of the Act, with its current lack of clarity, prioritizes 'vital' outcomes for all independent sectors.

CBC

80. CBC referenced s. 3(1)(d)(iii.5) in its response to question 8 of the RFI. There seems to be two divergent elements to:

> "ensure that Canadian independent **broadcasting undertakings** continue to be able to play a vital role within that system,"[40] [emphasis added for effect].

81. The first is the programming element, and the second is the distribution element. Independent Programming elements provide critical voices to the experiences of Canadians from across the country, languages, cultural identities, abilities, etc. They are key to the heritage of Canada. Of equal but distinct importance are independent distributors that play a different role, acting as a downward market pressure on VI-BDUs.

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[40] Broadcasting Act 1991, section 3(1)(d)(iii.5)

82. As CBC states in response to question 9:

"Canadian BDUs – primarily vertically-integrated BDUs – are still in 9 million Canadian households, and only 3 BDUs hold roughly 90% of BDU subscribers in the Anglophone and Francophone markets, respectively."

Conclusion

83. In 2013, approximately 85% of Canadian households had a subscription to Cable, with penetration into nearly 12 million homes.[41] Of those 12 million homes, 85% of the subscribers were served by five companies.[42] Today the three biggest companies provide service to 90% of the subscribers, with significantly fewer total households having subscriptions, and there being approximately 2 million more households in Canada.

84. In the last 12 years, the regulatory and policy directions employed have not sufficiently encouraged a sustainable broadcasting system. This hearing is essential to start to 'right the ship'.

85. The Commission needs to consider how best to achieve sustainability both for broadcasting distribution undertakings and Canadian cultural identity (through programmers). The walled garden has been thoroughly mulched, and audiences can easily view foreign content – as typified by the Vice-Chair Telecommunications' mention of David Mitchell and Britbox during the course of this hearing.

86. Broadcasting as a medium is about sharing ideas and content. From a programming perspective, content needs to be seen and of at least equivalent quality to compete long-term in that medium. From the distribution side of the business, the marketplace needs to be fair. These are not just arguments exclusively for independents, but for VI-BDUs as well.

87. Competition is supposed to drive down prices, create innovation, and elevate the best products. Regulation is supposed to protect the public interest and meet policy objectives. If everything is working properly, we will see less consolidation, more growth, and increased Canadian interest in our own content.[43]

88. While CCSA's members certainly appreciate competition in the market, they also understand that competition, discoverability, and 'access' are not the only issues to resolve in order to

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[41] https://publications.gc.ca/collections/collection_2014/crtc/BC9-9-2014-eng.pdf Table 4.3.0

[42] Ibid page 10.

[43] Something that VI-BDUs, independent BDUs, and independent programmers were all supported.

achieve sustainability in the marketplace. The largest VI-BDUs talked about 'winning', but we could all be doing better collectively – programmers and BDUs.

89. Currently, less than 50% of Canadian households have a conventional TV service.[44] That's a far cry from 85% 12 years ago.

90. There are over 2 million more households than there were in 2014, and yet fewer households have cable or IPTV.

91. That's the sustainability we should be working towards fixing as an industry; millions of extra households returning to the Canadian Broadcasting system would be a collective win for BDUs and programmers.

92. The problem is that the outcomes of this hearing cannot address fixing those concerns.

93. Canada has a content problem. It is important to highlight that this is not intrinsically a programmer problem, a BDU problem, or even a problem the Commission can resolve. Canadian content has a policy, funding and credibility problem with audiences. That is to say, policy objectives and market realties are not sufficiently interacting.

94. British programming consistently performs well domestically and internationally. Canadian content does not perform as well or as consistently. What is the UK doing right that we are not?

95. Canadians have more discerning tastes, which to date has been a problem, but can also be a benefit. Canada is a multicultural country; if Canadians love Canadian products, so too will the rest of the world.

96. The system has recently been updated for technological change, with Bill C-11, but it hasn't been modernized to address global competition of content and tastes washing over Canadian audiences.

97. While this is not within the Commission's regulatory remit, CCSA would urge the Commission to impress upon the government to redevelop approaches to collective national identity (English and French). Canadian audiences can find what they want when they want. Let's redevelop a Broadcasting system that makes Canadians want Canadian content.

98. That's what is required to ensure there is long-term sustainability in the market.

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[44] https://broadcastdialogue.com/canadian-ott-subscription-growth-up-15-per-cent-in-2024-suggests-convergence-report/#:~:text=As%20of%202024%20year%2Dend%2C%20it%20approximates%207.35,and%20access%20revenue%20are%20currently%20not%20seeing

The CCSA thanks the Commission for allowing its involvement in this important regulatory process.

Yours Sincerely,

John P. Roman
Director, Legal & Regulatory
Canadian Communications Systems Alliance (CCSA)

Appendix 1 – Legal and Regulatory Authority

A.1.1 There have been several opinions put forward by foreign streamers regarding the Commission's 'authority over online undertakings'. CCSA would offer a differing interpretation for the Commission to consider.

A.1.2 The Commission has considerable, but not unlimited, authority to regulate OUs.

A.1.3 MPA-C argued that "*Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*," 2012 SCC 68 (CanLII), and copyright decision Bell v 7262591[45] apply as the relevant case law that binds and limits the Commission.

A.1.4 CCSA believes this is an incorrect interpretation of the relevant case law for the former and irrelevant for the latter.

A.1.5 Regarding the SCC decision MPA-C appears to rely on, paragraph 28, and the argument that open-ended regulatory language could lead to unfettered discretion. This was the SCC's justification to curtail the Commission's authority around section 10(1)(k).

A.1.6 Viewed in isolation of any changes in the industry, that decision would still be applicable. However, in combination: Bill C-11, Policy Direction 2023-239 s4, s8(f)(g), s13(e),(f), and changes to the Broadcasting Act 3(1)(a),(f.1),(q),(r), 9.1(1)(i) and 10(1)g; the reliance on that decision is incorrect. The recent direction and governmental changes in law, policy, and regulation give a clear direction with fettered[46] but intentional discretion by the government.

A.1.7 On the second case, and court direction limiting the protection of control of access to copyrighted content, CCSA suggests Supreme Court Case CBC V SODRAC 2003, paragraph 85 applies instead:

""…as a whole is to be read having regard to the principles of technological neutrality and balance, unless its text indicates otherwise" Or to put it another way: "[t]echnological neutrality is determined by functional equivalence"".[47]

A.1.8 We would suggest the Commission applies sections 3(1)d(iv), and 5(2)c of the Broadcasting Act, which have very common elements to state (generally):

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[45] *Bell Canada v. 7262591 Canada Ltd.*, 2018 FCA 174 (CanLII), para. 169.

[46] Exceptions and limitations in Commission powers are now in the Act around OUs eg. s4.1(3) and 9.1(1)(f) Broadcasting Act 1991

[47] https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/15646/index.do Canadian Broadcasting Corp. v. SODRAC 2003 Inc. Paragraph 85. Date 2015-11-26. Case number: 35918 Report: [2015] 3 SCR 615

"promotes innovation and should be readily adaptable to technological change."

A.1.9 CCSA would argue that the online element has been in market for over a decade, and it is time for the Commission to adapt to the technological change in the market.[48] To this end, CCSA believes the Commission has considerable but not unlimited authority to deal with online undertakings of various types.

A.1.10 The Commission has been directed to adapt policy and regulations to how online streaming services work, and the request from independent BDUs for wholesale access is not to gain access to control of works but to act as an additional distribution source to connect the foreign online undertaking to the end user who is still a subscriber of that service.

A.1.11 With that caselaw addressed, CCSA would also contend that the arguments by various interveners claiming that foreign Online Undertakings are exempt because of their delivery through telecommunications is undermined by s4(4) of the Broadcasting Act, and s28 of the Telecommunications Act. These combined allow the Commission to apply s3(1) of the Broadcasting Act, and s10, including 10(1)(h.1) of that Act to further those objectives.

A.1.12 Regarding the Commission's authority for defining Broadcasting Receiving Apparatus (BRA), and its technological differentiation from an Online Undertaking, CCSA has given this much thought.

A.1.13 Software and Hardware are often distinct. CCSA would contend that apps are examples of online undertakings. A cellular phone is not intrinsically a BRA until it has the software downloaded onto it by the user. CCSA does not recommend the Commission regulate user choices.

A.1.14 When hardware comes pre-loaded with software, however, it can potentially be considered a BRA and if it has proprietary software for the distribution of programming an OU. An example of this might be Apple TV or certain smart TVs.

A.1.15 Other intervenors suggest the Commission lacks jurisdiction to clarify distinctions of where a BRA ends and OU begins, or whether the Commission can regulate BRAs at all. CCSA would suggest those arguments ignore sections: 3(1)(d)(iv), and 5(2)(c), which clearly give the Commission authority to consider and adapt to technological change. Apple TV came to market in 2007, around the same time as smart TVs. It is reasonable for the Commission to consider whether such technologies deserve further regulatory consideration.

[48] CCSA will be relying on this argument later in this submission.

Appendix 2 – Response to Commissioner's Oral Questions

Commissioner Paquette's Questions to CCSA

1). Community Programming

A.2.1 CCSAs Director of Legal and Regulatory Affairs misunderstood a question that the Commissioner asked. There are two points CCSA would like to address from that conversation.

A.2.2 CCSAs earlier submissions[49] were highlighting the desire by some of its membership to do more community content, and the appetite for it from those communities. That could only be achieved with additional funding support.

A.2.3 The desire to increase production does not eliminate the fact that the current community element is at a tipping point financially. Those CCSA members already doing it cannot sustain their current levels without support. If they have their financial burdens offset, then they would want to expand their contributions to the community element.

A.2.4 As an additional point, CCSA was hoping the Commission was looking for a vision on how CCSA's members could contribute to the Commission's mandate regarding the community element.

A.2.5 CCSA is ultimately hoping that through a stable funding stream[50], CCSA's members currently doing community programming can continue to provide those services at at least current levels. It knows that our membership, which is already making content, wants to do more, not less.

A.2.6 If sufficient funds are reserved for the independent community element, CCSAs membership and other independent BDUs will be able to start new community channels where none existed before. Rather than consolidation and supporting existing services, which CCSA supports, it is looking at 3(1)s of the Broadcasting Act and suitable funding as an opportunity to grow Canadian cultural identity at the local and regional levels.

A.2.7 Through the implementation of a new fund, the Commission could[51] find itself with a reversal of the decline. Instead it could create the opportunity for dozens, if not hundreds of new channels serving hundreds or thousands of communities across the country.

2). vBDUs (independent vs domestic)

[49] Including the final submission from BNC 2024-288.

[50] Whether through a SEIF or CMF.

[51] In the span of a few years, as staffing and funding ramp up.

A.2.8 The Commissioner asked CCSA about potential competitive advantages that (foreign) vBDUs and online distributors have in the market.

A.2.9 Trying to differentiate the difficulties independent BDUs have faced from Netflix, Amazon, Apple etc, compared to domestic competitors is challenging because competitive issues are not linked to their foreign nature intrinsically. One advantage foreign vBDUs have is not having to contribute to 9.1(1)h services. A balanced market in terms of contributions and/or discoverability would be welcome and prudent as long as it is applied appropriately across all sufficiently resourced entities in the Broadcasting system.

A.2.10 Conversely, a significant disadvantage our members have is the lack of access to distribution as opposed to pricing issues and effective 'make whole'. CCSA discussed in the body of its submission regarding 10(1)(h.1) of the Broadcasting Act and its relevance.

A.2.11 In CCSA's first round submission, in response to Question 57, in paragraph 57.2, CCSA referenced 9(1) & (2) of the Broadcasting Distribution Regulations SOR/97-555. Those references were related to domestic vBDUs and DTC services. If the Commission decides that a domestic vBDU should be exempt from contributing to the Canadian Broadcasting system[52] CCSA would ask the Commission to ensure that such an exemption would not extend to regulations like Broadcasting Distribution Regulations SOR/97-555, and the wholesale code.

3). Wholesale Code – 'Adding Teeth' and Pick pack

A.2.12 This was addressed in CCSA's RFI submission.

4). Clarify our regulatory points around good faith negotiations Q32? (Commissioner Paquette)

A.2.13 The Commissioner asked how the CCSA thought the points of good faith negotiations could be codified in regulation.

A.2.14 CCSA believes that while it could be seen as implicit in the wholesale code, it could be included in that regulation as it requires updating already. Alternatively, or additionally, it could be inserted in section 9 of the Broadcasting Distribution Regulations SOR/97-555. Complaints alleging breaches of the duty of good faith may be filed under Part 1 of the CRTC's *Rules of Practice and Procedure*. With respect to how to treat instances of non-compliance, the Act empowers the Commission to impose administrative monetary penalties for violations of the duty to bargain in good faith imposed under section 9.1(9) of the statue. *Broadcasting Act*, s.34.4(1)(b).[53]

5). Final Arbitration - ADR

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[52] An idea CCSA does not support for VI-BDU vBDU services.

[53] We would note Corus also discussed the application of this regulation.

A.2.15 Commissioner Paquette asked the CCSA two questions on FOA being mandatory. "And you propose making final offer arbitration mandatory. Can you explain why it should be mandatory?[54] And "Your position is that if they end up at mediation, parties are not able to come to an agreement, they shouldn't have the choice but to go in final offer arbitration?"[55]

A.2.16 In CCSA's first submission, when answering Question 52, CCSA said "No, the Commission should not make FOA mandatory." We believe the Commission may have misunderstood our position.

A.2.17 The point Mr. Roman was trying to make in the oral submission was that if mediation started from a fair standpoint and the two parties did not come to an agreement, that is sometimes reasonable. Both parties can go back to their shareholders or members (as the case may be) and explain why mediation was unsuccessful. FOA, should the parties agree to be bound by the result, could be used. Furthermore, a continuous mediation process-FOA, with a fixed timeline and the same dedicated team, could be more effective in motivating parties to negotiate in good faith and ultimately resolve disputes. It will be critical that the person/panel that conducts the mediation-FOA process has both: (a) the necessary business and policy expertise to properly evaluate the parties' offers against the various fair market value and public policy factors set out in the Wholesale Code, and (b) the process be conducted by one or more Commissioners (or other high-ranking officials from the Commission's broadcasting team who possess the necessary expertise and decision-making authority).[56]

A.2.18 The Commission should broaden the scope it selects for FOAs beyond wholesale rates to include bulk discounts and any other elements that play a significant role in determining the amount the BDU pays the programmer. Without this change to the process, FOAs cannot achieve their goal of ensuring that all BDUs are paying commercially reasonable wholesale fees for programming services.

A.2.19 FOAs between independent BDUs and large programmers (VI programmers and any independent programmers that operate more than 10 Canadian discretionary services) should encompass all of the programmer's services.

A.2.20 The mediation, as discussed in the oral presentation by Mr. Roman was based on 'fair' starting points. However, if one party comes to mediation from an unfair position – in breach of the wholesale code - and mediation does not succeed, FOA should be automatic and binding.

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[54] Line 4900 Volume 5 of Transcript BNC 2025-2 https://crtc.gc.ca/eng/transcripts/2025/tb0626.htm
[55] Ibid Line 4902
[56] These arguments are in line with Eastlink's positions.

Commissioner Abramson's Questions to CCSA

6). 'Skinny basic'

A.2.21 The CCSA's positions on Basic or Skinny basic were challenged by Commissioner Abramson. CCSA reflected on the concerns raised.

A.2.22 Presently, DTC services have a competitive advantage in the marketplace by not having to offer 'extra' (basic package) channels. This unfairly reduces the starting prices those DTC services come to market at. This creates an unreasonable anti-competitive preference favouring those services.

A.2.23 CCSA would provide three options (that are not mutually exclusive) for the Commission to consider:

1) That Small independent BDUs[57] below 20,000 subscribers be deemed exempt to the regulatory expectations currently placed on BDUs with 2,000 or fewer subscribers as it relates to 'basic packages'.
2) That Small independent BDUs may choose to offer a basic package, but its cost and content are not mandated.[58] In this instance, CCSA would expect that this would be applicable if there would be similar burdens put on all domestic services, whether online or traditional. This option would require a SEIF to be instituted to ensure support for 9.1(1)h services.
3) That The Commission should consider using section 4(4) of the Broadcasting Act to regulate VI-BDUs appropriately when they offer tied-selling packages (cross-subsidizing) between their internet, BDU, and (critically) programming services that collectively result in abuse of their vertical integration if not regulated.[59]

A.2.24 Independent BDUs should not be disadvantaged for being in the system as small BDUs, because larger BDUs could benefit from similar rules. The Commission has the power to create a provision exempting small independent BDUs specifically or tailoring regulatory tools to mitigate undue advantages.

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[57] This avoids the previous issue determined by the Commission in paragraph 57 BPN 2006-23 https://crtc.gc.ca/eng/archive/2006/pb2006-23.htm#archived

[58] This suppports the Quebecor proposal.

[59] Currently, Rogers is in market with a discounted package. If a customer takes internet from Rogers, they can get a 'special offer' for a set of (mostly) Rogers channels without a 'basic package' for $25. Of those, the recent WBD channels controlled by Rogers are included at a greatly reduced in price compared to what Rogers has offered those services for redistribution to independent BDUs.

A.2.25 For Online Undertakings, the current maximum threshold before exemption ends is $25M in revenues.   For the traditional market, it has been subscriber numbers broken down by systems, CCSA would propose the 20,000 subscribers threshold remain in place, as well as a requirement of company scale.[60]

A.2.26 On the second point, CCSA needs to reiterate that the goal is to ensure that traditional broadcasters are not left with a default anti-competitive product (due to cost) to offer consumers by default. If the Commission sees a fair way to level the playing field using regulations, CCSA supports it.

A.2.27 However, if the Commission determines that domestic VI-BDU vBDU/OU/streaming packages, including when tied to internet distribution sales, will be exempt from 'basic package pricing, it creates an artificial two-tiered market, thereby disproportionately harming the traditional market. CCSA could not reasonably support such regulations as enacted.

A.2.28 Presently, there is an offer in-market from Bell, including Crave Netflix and Disney with two payment options: $22 for the basic service, or $49 for the premium service.[61] Rogers is also offering a special deal with 72 channels (mostly Rogers-owned/controlled), and Netflix for $25.[62]

A.2.29 Both of these offerings make any 'basic' package traditional TV is forced to offer, automatically uncompetitive. Commissioners asked select intervenors during the oral submissions if 'traditional broadcasting is dead'. CCSA would suggest that it's uncompetitive and doomed if the Commission continues to allow an outdated and uneven regulatory ecosystem to exist.

A.2.30 CCSA's members compete with VI-BDUs in the market against their traditional BDU service and their online offerings. There has been no reasonable justification why one service offered by a VI-BDU deserves a significant regulatory advantage in the market over its own other services and those of competing companies.

A.2.31 Ultimately, the playing field is not even. CCSA believes that one effective tool to keep competition in the traditional BDU market is not to further disadvantage small independent BDUs. This can be most efficiently remedied by exempting small independent BDUs when they are in systems below 20,000 subscribers in non-licensed systems.

7). MDUs

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[60] At the time the request for exclusion failed because: "Rogers, Shaw, Vidéotron or Cogeco" could unintentionally benefit. CCSA would propose the modern definition exclude from exemption Bell, Rogers/Shaw, Vidéotron or Cogeco, to mirror that previous position taken by the Commission.
[61]"Bell launches streaming bundles with Crave, Netflix, Disney+" Published in Cartt.ca Aug 18, 2025 https://cartt.ca/bell-launches-streaming-bundles-with-crave-netflix-disney/
[62] Rogers' offer was found on its website as a bundled offer with a basic internet package.

A.2.32 Commissioner Abramson asked CCSA where does telecommunications end and Broadcasting begin?

A.2.33 CCSA would contend that this is resolved through s4.4 of the Broadcasting Act:

> "**(4)** For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the *Telecommunications Act*, **when acting solely in that capacity."** [emphasis added for effect]

A.2.34 Conversely, the same level of burden is not placed on broadcasting in the Telecommunications Act's section 4:

> "**4** This Act does not apply in respect of broadcasting by a broadcasting undertaking."

A.2.35 Additionally, Section 28(1)b of the Telecommunications Act states:

28 (1) The Commission shall have regard to the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act* in determining whether any discrimination is unjust or any preference or disadvantage is undue or unreasonable in relation to any transmission of programs, as defined in subsection 2(1) of that Act, that is primarily direct to the public and made

- **(b)** through the terrestrial distribution facilities of a Canadian carrier, whether alone or in conjunction with facilities owned by a broadcasting undertaking.

A.2.36 The Commission must view the Telecommunications Act as subordinate to the Broadcasting Act, according to the language of both laws. That does not mean that jurisdictions of both Acts cannot overlap, but that, as written, prominence of any solution must favour the cultural element of the Commission's jurisdiction.

A.2.37 In MDUs, when contracts for telecommunications also impact broadcasting (whether through design or incidentally, but in a clear way) then section 4(4) of the Broadcasting Act applies and the Commission should draw that distinction.

8). Transport

A.2.38 The Commissioner asked if CCSA was concerned with signal delivery, transcoding, and different formats for transcoding.

A.2.39 CCSA is most concerned with signal delivery. Though different formats of transcoding are issues for some members, CCSA proposes Commission should future-proof its decision by regulating transcoding in a broad, flexible way, and not make any narrow regulatory decisions that might need updating as technology shifts.

A.2.40 In its decision, CCSA asks the Commission to ensure that all wholesale signals offered be equivalent to those used commercially in market by the incumbent seller if they are a VI-BDU.

A.2.41 CCSA does not expect that market discipline can be achieved long-term in a duopoly without regulatory intervention. It would imply that once discipline was re-established, regulatory intervention in the market could be lifted. CCSA does not foresee an instance where that could be the outcome. The Commission's continual intervention in the transport market could act as sufficient downward pressure.

A.2.42 While requiring delivery to Tier 1 locations may not remedy the outcome for more remote BDUs requiring satellite delivery, CCSA is hopeful that through intervention to provide access to Tier 1 locations, there can be downward pressure in the transport delivery market.

Appendix 3- Evidence to Support CRTC Investigation for a Hearing.

A.3.1 CCSA is filing this evidence in confidence with the Commission because it is of a commercially sensitive nature.

CONFIDENTIAL