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REGULATORY

The Path Forward – Working Towards a Sustainable Canadian Broadcasting System

CRTC 2025-2-3
Requests For Information
CCSA

August 18, 2025

1 The CCSA was requested to provide information on three questions in the RFI provided by the Commission on July 23, 2025.

2 CCSA is responding to questions 25, 26, and 29. Given the sensitive nature of the information provided around question 25, CCSA will be providing that information in confidence to the Commission as a second document attached to this submission. Further, it will anonymize that information at the request of its membership.

Q25. Please submit information/data reflecting the types of signal transport costs incurred by your members. Where possible, please include cost variability across members/regions. If you believe that wide variability in costs reflects the lack of competition in the market, please explain.
A.

3 Commissioner Abramson questioned Access Communications (one of CCSA's members) regarding the ongoing increasing costs for transport services.[1] In response, Access Communications advised the Commission that transport contracts are fixed for the term of the contract.[2] Renewal discussions happen towards the end of a contract.

5 This is pertinent because CCSA can provide only limited information about negotiations that have taken place when contracts require renewal. All pre-existing contracts are snapshots in time from previous negotiations.

6 CCSA will provide examples of transport agreements in the market. Also attached will be an example of estimated costs (determined by a member) for transferring from one supplier to another.

7 CCSA would note that cost differences in contracts between members (whether highly variable or not) do not intrinsically demonstrate market failure. Back-haul to BDU head ends will change costs depending on geographic location.

8 The general issue of a lack of competition and willingness (or ability) to facilitate small independent BDUs in the market to distribute transport reflects the state of the market. For smaller independent BDUs to switch suppliers involves significant 'retooling' at significant cost.

9 It is a significant cost barrier that makes switching far more difficult. As an example, if a small BDU pays $20,000 a month for transportation costs, and the costs are set to increase to $40,000, that price increase might not be justifiable. However, even an unreasonable price increase would be significantly more affordable than switching to another supplier if retooling were to cost $2M just to enter a new three-year contract with another supplier.

10 This means that small independent BDUs may have to pick between unjustifiable price increases or cost-prohibitive retooling. In effect, actually making the choice and indeed any competition illusory.

11 As a separate issue from variability of costs being the lack of competition, CCSA would note that at least one member will lose access to its transport supplier when the supplier (an independent, not a VI-BDU)

[1] CRTC hearing 2025-2. Oral Presentation Transcript Volume 5. Line 6063 Found at: https://crtc.gc.ca/eng/transcripts/2025/tb0627.htm
[2] Ibid. Line 6064.

decided to terminate provision unless: (1). the CCSA member upgraded technology (which is extremely costly), (2). a new supplier was found (which is not possible in some locations), or (3). that member sold their business to the transport supplier. This termination of access to transport has impacted several small independent BDUs and cooperatives in Quebec, many of whom are not CCSA members. CCSA is aware that a few BDUs will be able to carry on through alternative transport suppliers, but not all. Many will be forced to sell to the supplier or shut down.

12 While this issue does not directly relate to a cost for transport, it is a clear expression of anti-competitive behaviour in the market that can only exist through what are effectively localized monopolies. While it may be a breach of section 78(1)(b),(e),(g), or (k) of the Competition Act, CCSA appreciates that the legislation is not binding on the Commission, but should still be concerning to the Commission.

13 CCSA would suggest the Commission, during its deliberation for this proceeding, should consider whether predatory practices should be discouraged by the regulator. The Commission could adjust existing or create appropriate policies to prevent future abuses.

Q26. Please provide recommendations on how the Commission could strengthen its dispute resolution process and the Wholesale Code to enhance enforceability and accountability. Specifically, what measures could be implemented to better support good-faith negotiations between parties?

A.

14 The answer to this question will be broken down into two subsections. First, the dispute resolution process, then the wholesale code.

Dispute Resolution - Mediation and FOA

15 CCSA requests that the Commission introduce clear and objective guidelines for all parties involved in the process – including mediators, and create a well-structured process. The guidelines should be implemented to the current bulletin regarding practices and procedures for dispute resolution.[3]

16 The Guidelines should denote an active role for mediators in that process, guiding parties through negotiations, as well as contributing input on positions. As a non-exhaustive list, mediators should be encouraged or empowered to:

- Offer feedback where it becomes apparent that one party is not taking the process seriously or has not come prepared to reach an agreement.
- Proactively provide input, raise issues, and offer suggestions to help parties close negotiations gaps while respecting their right to self-determination.
- Conduct an objective analysis of the parties' positions before a mediation session to determine whether a settlement is a legitimate possibility.
- Terminate a mediation session if the mediator deems it to be unproductive, should they believe the parties are not negotiating in good faith.
- Conduct pre-mediation discussions with the parties to ascertain and narrow the issues at play.

[3] CCSA is aligned with the intent of Corus' positions on this issue.

- Request information from the parties relevant to the issues and progress reports after mediation sessions to demonstrate good faith.[4]

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

18 CCSA believes that while it could be seen as implicit in the wholesale code, it could be included in that regulation because it requires updating already. Alternatively, or additionally, it could be inserted in section 9 of the Broadcasting Distribution Regulations SOR/97-555.

19 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 statute and Broadcasting Act, s.34.4(1)(b).[5]

20 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?[6] 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?"[7]

21 In CCSA's first submission, when answering Question 52 of the Notice of Consultation, CCSA stated its position that the Commission should not make FOA mandatory. We believe the Commission may have misunderstood our position.

22 The point CCSA 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 could be used if the parties agree to be bound by the result. Furthermore, a contiguous mediation-FOA process, 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.

23 The Commission should broaden the scope used for FOAs beyond wholesale rates to include bulk discounts and any other elements that significantly determine 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.[8]

24 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.

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[4] Ibid.
[5] CCSA would note Corus also discussed the application of this regulation.
[6] CRTC hearing 2025-2 Oral Presentation Transcript, Volume 5, Line 4900. Found at: https://crtc.gc.ca/eng/transcripts/2025/tb0626.htm
[7] Ibid. Line 4902
[8] These arguments are in line with Eastlink's positions.

25 To the Commissioner's second question, CCSA would propose there is only one possible justification for mandating mediation that leads to binding FOA. If one party starts the negotiations and mediation process from an unreasonable position in obvious breach of sections 4, 5, or attempting to circumvent section 6 of the wholesale code.

26 In that case, the party in question is either setting up any mediation to fail or acting in bad faith. Rather than have mediation be a performative display instead of meaningful, the Commission should have the ability to implement FOA when that mediation would inevitably break down or stall.

27 CCSA hopes that even the shift in policy and regulations to allow for such escalation would be sufficient to deter bad behaviour.

Wholesale Code

28 As mentioned in the body of its first submission, CCSA believes the wholesale code is still vital for independent BDUs to be able to compete in the market. Its expansion is important to ensure that independent BDUs of all sizes can continue to play an important role in the future of the Canadian Broadcasting system.

29 CCSA would propose that the new wholesale code should exclude VI-BDUs from initiating final arbitration against independent BDUs. The size and power dynamic make such actions oppressive if abused.

30 Additionally, CCSA would ask for the following sections to be added to or amended in the Wholesale code:

Section 3 additions:
Section 3: Clarify that the Code applies to exempt programming services and Online Undertakings.
3(1): VBRC's are classified into two categories:
3(1)(a): VI-BDUs, Online Undertakings, and large independent BDUs above 700,000 subscribers, and
3(1)(b): Independent BDUs below 700,000 subscribers.

Section 4 additions:
4(h): If a programming service is in market, VI-BDU cannot withdraw or withhold programming services from a BDU during the course of a negotiation if it previously had access to it.
4(i): Programmers are prohibited from charging wholesale rates for programming services that exceed the retail rates for comparable direct-to-consumer services (as determined on a monthly basis, including all discounts offered direct-to-consumer)
4(j): For VBRCs, the setting of wholesale rates on class 3(1)(b) above that of class 3(1)(a) shall be prohibited, and any advantages provided in market to class 3(1)(a) shall be prohibited from not being applied automatically to wholesale rates to class 3(1)(b).
4(k): PBRCs shall be structured so as to prohibit VI-BDUs from imposing a make-whole structure within PBRCs when dealing with class 3(1)(b).
4(l): PBRCs shall be structured so as to prohibit a burden that places more than a 50% of make-whole structures when involving negotiations between class 3(1)(b)
4(m): PBRCs shall be structured to prohibit make-whole structures if the programming service is available in market direct-to-consumer.

Section **6(c)** should have its language updated from:

"rates paid by unaffiliated BDUs for the programming service;"

to read:

"the average per subscriber revenue received from unaffiliated BDUs for the programming service in Anglophone and Francophone markets."

And add a new clause: Section 16, to the Wholesale Code that would require benchmark data for each of the VI programming entities.

31 Additionally, CCSA supports the position of Eastlink regarding the elimination of rate retroactivity for VI-programmers to incentivize them to conclude negotiations promptly.

32 CCSA believes that collectively, these modifications of the wholesale code will meet the current needs of independent BDUs to promote fairness and competition in the market.

Q29. If time limits were introduced for staff-assisted mediation, final offer arbitration, and the standstill rule, what would constitute an appropriate duration for each? Under what circumstances, if any, should exceptions to these time limits be considered?

A.

33 The following table, without disclosing any confidential information, summarizes CCSA's experiences with those proceedings:

Year	**Applications**	**Duration in Dispute Resolution**	**Disposition**	**Retroactive Liability During CRTC DR**
2011	Mediation Request	11 months	FOA Decision 2012-393	$8,876,354
2016	Mediation Request	17 months	Settled	$5,260,000
2017	FOA	17 months	Settled	$1,315,519
2019	Mediation Request	9 months	Settled	$810,000
2020	Mediation Request	22 months	Settled	$6,400,000

As a result, CCSA welcomes the Commission's consideration of strict timelines.

33 CCSA believes that, between its previously submitted comments on timelines and the recommendations (above) to Question 26, sufficient measures would be in place to meet the foreseeable needs of the Commission and industry.

34 If the Commission feels that timelines could be too brief to effect fair negotiations if strict timelines are implemented, it could extend the precursor period before a contract expires, to start negotiations. That timeframe could be set to 180 days.

The CCSA thanks the Commission for its consideration during this phase of the process.

Sincerely,

John P. Roman
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Canadian Communications Systems Alliance (CCSA)