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8 February 2016

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Ms. May-Cuconato:

**RE: Telecom Notice of Consultation CRTC 2015-134:
Review of Basic Telecommunications Services
Second Phase Intervention**

Introduction

1. The Canadian Media Producers Association (CMPA)¹ has been following the Commission's review of basic telecommunications services initiated by Telecom Notice of Consultation CRTC 2015-134 (TNC 2015-134)² and is concerned that key policy considerations relevant to this review are potentially being overlooked. With respect to the review of basic broadband services specifically, the CMPA considers that the focus of the discussion has been too narrowly focused on broadband as a purely telecommunications service when, in fact, it can increasingly be considered a broadcasting distribution service as well. Consequently, the CMPA submits that both telecommunications and broadcasting policy issues

¹ The Canadian Media Producers Association (formerly the Canadian Media Production Association) is Canada's leading trade association for independent producers, representing more than 350 companies engaged in the development, production and distribution of English-language television programs, feature films and digital media. The CMPA works on behalf of members to promote and stimulate the Canadian production industry. Our goal is to ensure the continued success of Canada's independent production sector and a future for content that is made by Canadians for both Canadian and international audiences.

² Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 9 April 2015, <http://crtc.gc.ca/eng/archive/2015/2015-134.htm>.



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are raised by the Commission's review of basic broadband service.

2. In what follows, CMPA provides our views on why the Commission should take into account or, at a minimum, acknowledge the convergence of telecommunications and broadcasting services in its review of basic broadband service and, as a consequence, properly reflect this reality in its decision in this proceeding.

Background

3. As set out in TNC 2015-134, this proceeding involves a review of regulatory measures intended to ensure that Canadians have access to basic telecommunications services.³
4. In the Commission's previous review of this same issue, concluded five years ago with Telecom Regulatory Policy CRTC 2011-291 (TRP 2011-291), the Commission established a narrow definition of the basic service objective – i.e., focusing on local and long distance voice services and low-speed (dial-up) Internet access.⁴ With respect to broadband Internet access, the Commission chose to establish target speeds of 5 megabits per second (Mbps) download and 1 Mbps upload that it expected should be available to all Canadians, through a variety of technologies, by the end of 2015.
5. In the present review, the Commission has stated that its intention is to “conduct a comprehensive review of its policies regarding basic telecommunications services in Canada and of the telecommunications services that Canadians require to participate meaningfully in the digital economy” and also “examine how these telecommunications services are used by Canadians, and

³ *Ibid.*, at par. 3.

⁴ Telecom Regulatory Policy CRTC 2011-291, *Obligation to serve and other matters*, 3 May 2011, <http://www.crtc.gc.ca/eng/archive/2011/2011-291.htm>.



what prices Canadians should be expected to pay for these services.”⁵

6. Specifically regarding broadband services, two major issues are being considered in this proceeding:
 - i) Universal Target Speeds for Broadband:
As noted, in TRP 2011-291, the Commission established universal target download/upload speeds for broadband Internet access in Canada of 5/1 Mbps. In recognition of the evolving nature of the Internet and consumer expectations, the Commission stated that it would revisit these target speeds.
 - ii) Availability of Broadband Access in Rural and Remote Areas and Possible Funding Mechanisms:
According to the Commission's estimates, as of 2013, approximately 1.2 million, or 9% of, Canadian households did not have access to broadband Internet service at the Commission's target download and upload speeds. The vast majority of these households are located in rural and remote areas of Canada. In view of this remaining gap, the Commission indicated that it would examine whether a telecommunications infrastructure funding mechanism of some form should be considered for rural and remote areas in Canada.⁶
7. As part of its review of basic telecommunications services, including broadband Internet services, the Commission asked for parties' input on Canadians' evolving needs for these services. Some of the examples provided by the Commission included e-commerce, e-



⁵ *Ibid.*, above note 2, at par. 32.

⁶ *Ibid.*, at pars 33-34.

banking, e-health and distance education.⁷ The CMPA agrees these are important uses of broadband Internet services, along with e-mail and web access more generally. **However, the major, if not primary, use and driver of broadband Internet services and bandwidth requirements today from a consumer's perspective is audio-video information and entertainment. In fact, many of these services are broadcasting or broadcasting-like services that have an impact on the production and consumption of traditional broadcasting services.**

Video/Broadcasting Services are Key Drivers of Higher Bandwidth Broadband

8. There is overwhelming evidence that access to online video and broadcasting services is a key driver of consumer demand for broadband Internet services and also for higher bandwidth broadband capacity.
9. The Commission's 2015 Communications Monitoring Report (the 2015 CMR) provides clear evidence that consumers' use of Internet-based video technologies has grown rapidly in Canada. Among Anglophones, the 2015 CMR shows that the use of Internet TV has grown from 31% in 2011 to 47% as of 2014; the use of Internet video on smartphones has grown from 12% to 38% over the same period; and, as of 2014, the use of Internet video on tablets reached 26%. The use of each of these three categories of Internet video is only slightly lower in the case of Francophones.⁸
10. Moreover, the 2015 CMR also describes broadband bandwidth requirements largely, if not entirely, in terms of average broadband speed requirements for various

⁷ *Ibid.*, Appendix B, paragraph 1(a).

⁸ CMR 2015,

http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2015/cm_r.pdf, Table 5.3.14, Adoption of various video technologies in Canada, p. 212.



video or broadcasting services delivered over wireline and mobile broadband Internet connections. The examples provided include free and subscription-based VOD services such as Netflix, Shomi, YouTube, CBC TV, CTV TV and Global TV and also include consideration of different video quality levels (from UHD 2160P, 1440p, 1080P, 720P, 480P, among others).⁹ In addition, the 2015 CMR also reports the number of hours each video service could be used on a monthly basis before reaching usage caps applied to typical wireline and mobile broadband plans as of 2014.¹⁰ The broadband capacity analysis included in the Commission's 2015 CMR reflects the importance Canadian consumers place on their ability to access and watch video/broadcasting content over their broadband connections.

11. Based on data also collected for 2014, comScore reported that Canadians are among the most engaged users of the Internet in the world. It found that Canadians, on average, spend more time online monthly than users in all other G8 countries and also far more than the worldwide average.¹¹ comScore also reported that online video consumption by Canadians is growing rapidly – by a rate of 36% in 2014 compared to 2013.¹² In this respect, comScore also reported that Canadians watch roughly 25 hours of online video per month as of Q4 2014.¹³ In addition, comScore reported that video consumption by mobile users grew significantly in 2014 over the previous year, increasing by 22% in the case of web-based videos, 33% in the case of live/on-demand TV and 41% in the case of paid TV/video.
12. Subscriptions to online video services have also been growing rapidly in Canada. While relatively limited only a few years ago, according to the Media Technology

⁹ *Ibid.*, Figures 5.3.9 and 5.3.10., p. 203.

¹⁰ *Ibid.*, Figures 5.3.11 and 5.3.12., p. 204-5.

¹¹ comScore, Digital Focus in Future Canada 2015, p. 6.

¹² *Ibid.*, at p. 12.

¹³ *Ibid.*, at p. 13.



Monitor (MTM), close to half (45%) of Canadian TV viewers now subscribe to an over-the-top (OTT) video service such as Netflix, Shomi, Crave TV or Club Illico. MTM indicated that growth in subscriptions to these online video services increased by 32% compared to the previous year.¹⁴

13. Consequently, Canadians are clearly high and growing consumers of online video/broadcasting content accessed over their broadband Internet connections.
14. From a global perspective, similar trends exist with respect to consumers' use of online video/broadcasting services. For instance, during the second half of 2014 for the region of North America, Sandvine reported that roughly 68% of fixed access downstream Internet traffic was attributable to real-time entertainment (i.e., audio and video) services.¹⁵ All other measured traffic categories were minor in comparison. Further, for the same time period and region of the world, Sandvine reported that Netflix alone accounted for roughly 35% of peak period downstream Internet traffic, up from roughly 32% one year earlier. It attributed some of the traffic increase to the growing availability of high bit rate Super HD content.¹⁶
15. With respect to mobile access for the same time period and region, Sandvine reported that real-time entertainment accounted for roughly 40% of downstream traffic. In this case, YouTube accounted for the largest share of peak period downstream Internet traffic at roughly 20% for the second half of 2014 (up from roughly 18% the year before).

¹⁴ Media Technology Monitor, *The MTM's Most Recent Survey Results Find Nearly Half of Canadians Using OTT Services Such as Netflix, Up 32 Percent vs. Past Year*, CNW Press Release, 28 January 2016.

¹⁵ Sandvine, *Global Internet Phenomena Report: 2H 2014*, p. 5.

¹⁶ *Ibid.*, at p. 6.



16. As well, Cisco's 2015 Visual Networking Index Report provides a forecast of annual IP traffic growth covering the period 2014 to 2019.¹⁷ At the global level, Cisco reports that IP traffic has increased more than fivefold in the past 5 years, and is forecast to increase nearly threefold over the next 5 years – i.e., at a compound annual growth rate (CAGR) of 23% from 2014 to 2019.¹⁸ Growth in North American IP traffic is expected to be slightly lower over the same period, increasing at a CAGR of 20%.¹⁹
17. Focusing on the consumer segment of the market, Cisco forecasts that consumer IP traffic over fixed and mobile networks is expected to grow at CAGRs of 24% and 59%, respectively. Moreover, whereas Internet video accounted for 64% of all consumer IP traffic in 2014, Internet video is forecast to account for 80% of consumer IP traffic by 2019. In other words, Internet video already accounts for the bulk of all consumer Internet traffic and is forecast to dwarf all other uses in the next few years.
18. In his dissenting opinion in the Commission's recent wholesale wireline services decision, Commissioner Shoan observed: “however we may have defined retail Internet service in the past, the evidence ... is clear that the lion’s share of Internet bandwidth has evolved, in the last ten years, from being dominated by primarily alphanumeric text-based services focused on private communications to one increasingly dominated by audio and visual programming intended for reception by the public.”²⁰ Commissioner Shoan went on to question whether retail broadband Internet service is a

¹⁷ Cisco Visual Networking Index: Forecast and Methodology, 2014–2019, 27 May 2015.

¹⁸ *Ibid.*, p. 1 and pp 5-6.

¹⁹ *Ibid.*, p. 5.

²⁰ Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*, 22 July 2015, <http://www.crtc.gc.ca/eng/archive/2015/2015-326.htm>, Dissenting Opinion of Commissioner Raj Shoan.



telecommunications service or, in view of the evolution of the Internet, more a broadcasting service or, at least, a hybrid telecommunications/broadcasting service.

19. The CMPA agrees with the latter position that retail broadband Internet service is increasingly more a broadcasting rather than telecommunications service. Consequently, any definition of "basic" broadband service the Commission may adopt as a result of this proceeding must ultimately be established on the basis of its ability to provide access to high-quality video/broadcasting services, including (as a forward looking matter) 4K Ultra HD video content.
20. High speed broadband presents a wealth of opportunities for Canadian creators to produce new, innovative and attractive programs (both linear and non-linear) for Canadian and global audiences. For Canadian audiences, high speed broadband will provide greater access to high quality informative and entertaining programming made by Canadians on the platform(s) of their choice. The challenge we face, however, is ensuring that the new broadband-based delivery ecosystem continues to support the creation and presentation of Canadian programming – a fundamental objective of Canada's broadcasting policy. Consequently, this proceeding must necessarily consider broadcasting policy implications in addition to addressing telecommunications policy issues.

Broadband Internet as an Opportunity for Canadians to Create and Deliver Innovative Programming

21. As noted in the previous section, demand for video content is by far the most important driver of faster broadband. Canadian independent producers are key creators of this video content – whether that content is more traditional broadcasting programming or original web-borne, non-traditional content. This new and innovative content produced by Canadians does not simply rely on broadband for delivery: the technology in



fact shapes the format, opportunities and direction of how this content evolves.

22. That is to say, broadband is providing an enormous economic opportunity for Canadian independent producers. Innovation in web-specific content is the new frontier for Canadian producers – and they are already fully engaged in the creation and exploration of new content business models. The following is a brief overview of some of their innovative products – largely enabled by the spread of broadband:

- **Slugterra** (produced by Nerd Corps Entertainment) is a boys’ action animated series seen on Family Channel in Canada and Disney XD internationally. The TV series (launched in 2012) is a western set in underground caves where the showdowns involve slinging slugs at your opponents. But the content has evolved to encompass a variety of interactive and online products that in some countries have become more popular than the TV series that spawned them. For example, “Slug it Out” is highly successful iOS game which has also been adapted for Android. It continues to grow in complexity and applications as it continues to spread across the globe. When the series and app were launched in Latin America, the game shot to number one in the app store of several South American countries.
- **Canada’s Smartest Person** (from Media Headquarters) is a Canadian production that has been embraced internationally. This CBC trivia show has highly integrated social media and digital properties. In fact, contestants for this game-show are discovered through its digital integrations. Audiences play online challenges in the lead up to the broadcast and can also play live during the broadcast. There are prizes not only for the on-air contestants but also those playing along at home. The app is one of CBC’s most popular interactive



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experiences, with over 1,000,000 intelligence tests completed over the first season.

- **Fangbone** (from Radical Sheep Entertainment) is based on a third grade barbarian from another dimension. Entrusted with the task of keeping Skullbania's greatest weapon safe, he finds himself in a third grade class in the modern world with his new friend, Bill. This project has been built from the ground up on an interactive model. As a first step, the producers engaged audiences through an interactive online voting and testing process. This process introduced the concept and characters of the show and, after 42,000 votes, the producers knew how to shape their series to suit fans. The producers used that feedback to create a pilot episode that was also tested with audiences. Full production on a TV series and interactive digital media are now underway.
- **Guidestones** (from iThentic Entertainment) is a scripted strictly-online video series that has won an International Digital Emmy. This suspense-filled drama rolled out its first season with an accompanying app enabling the audience to try to solve the mystery with the characters through hidden clues and codes that appeared throughout the series. Additionally, for those who signed up, the episodes were pushed out to viewers in real-time as they happened within the storyline of the series. The series has been available on multiple digital platforms including CTV Extend.
- **Songs of Freedom** (from Rhombus Media) is a 4-part documentary production that follows internationally acclaimed Canadian opera singer Measha Brueggergosman. The singer's journey from Africa to Canada is captured as she performs a collection of 'Freedom Songs' that emerged from Africa via the slave trade to America, then to Canada



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via the Underground Railroad. The series was enhanced through interactive participation, including on a website and songbook app featuring performance of her songs in 360 degree video. Additional historical material on the slave trade, African American Spiritual music and black communities in Maritime Canada are also accessible through the online platform. The 360 degree immersive videos, also available in virtual reality, allow users to experience the performances as though the audience is standing right next to the singer.

- **Played/Interference** (from Back Alley Films/Muse Entertainment/Secret Location) is the winner of the 2015 Canadian Screen Award for Best Cross-Platform Fiction. The interactive digital series features characters from the undercover cop TV series “Played”. Audiences connect using their mobile phones, computers and Facebook accounts to help the undercover team navigate out of deadly circumstances. The interactive video experience integrates elements of users’ Facebook profiles to provide a personalized experience.

23. The point we wish to emphasize with the description of these innovative Canadian productions is not just the importance of broadband in creating these opportunities – but to recognize the leadership role of Canadian independent producers in the new interactive, online video market.
24. Canadian independent producers have rapidly expanded into web-based online content and have fully embraced the new world outside of traditional programming. Independent producers are not only a major creative force in the “new technology” expression of Canadian culture, they are also vital contributors to the broadband digital economy.



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Broader Strategic Implications of the Proceeding

25. The Canadian broadcasting system, like all economic sectors, needs to adapt to the challenges and opportunities presented by technological change. The ability of the system participants (e.g. independent producers, programming undertakings and distribution undertakings) to deal with the fundamental market shift taking place is not just an issue of individual adaptability and self-reliance. It will also be determined by how well the participants are able to work together as well as by the mechanisms that are (or will be put) in place to incent and support domestic content creation and delivery.
26. In that regard, the Commission plays a pivotal role in addressing the challenges and opportunities facing the broadcasting system. To that end, the Commission should acknowledge in this proceeding the critical relationship between faster broadband networks and the broadcasting services that are increasingly utilizing those networks.
27. As an example of cross-over regulatory impacts, we would note that technological change in the form of programming delivered over broadband networks has also allowed the entry into the Canadian broadcasting system of parties that are currently not required to make any contributions to the system (e.g., Netflix). While the innovations of all players are welcome, this lack of participation in the system – and the detrimental consequences for other elements of the system – need to be addressed.
28. The decisions of the Commission resulting from this proceeding are likely to hasten the expansion of broadband networks. This could occur as a result of increased targets for traffic speed or by drawing new physical broadband infrastructure funding into the system. The expansion of broadband in Canada, while bringing important benefits (which the CMPA recognizes and supports), can also provide expansion opportunities



for non-contributing Internet-delivered programming services.

29. The implications are straightforward: if programming services that do not contribute to the creation of Canadian-made programs take business away from the services which do, there will be reduced support for the production and delivery of such programs²¹ and fewer rather than greater opportunities for Canadian and global audiences to experience the best programming that Canada has to offer.
30. As our above comments demonstrate, it is important to cast a wide net with respect to broadband policy considerations so as to avoid unintended consequences. In particular, this proceeding has the potential to advance the agenda of non-contributing, Internet-delivered programming services into the Canadian broadcasting space at the undue expense of contributing Canadian broadcasting entities.
31. Consequently, the CMPA encourages the Commission to undertake a separate, comprehensive review of the online broadcasting landscape. It is coming on five years since the Commission undertook such a review, including with respect to whether it remains appropriate to continue to maintain exempt status for digital media broadcasting undertakings.²² While the Commission

²¹ The CRTC has stated: “*The Canadian production sector plays an essential role in the ultimate success of the future television system. A robust Canadian production sector will be better able to offer compelling high-quality content to Canadians and to global audiences. The creation and promotion of Canadian programs must be supported by appropriate funding models and tools.*” Broadcasting Regulatory Policy CRTC 2015-86, *Let’s Talk TV: The way forward – Creating compelling and diverse Canadian programming*, 12 March 2015, <http://www.crtc.gc.ca/eng/archive/2015/2015-86.htm>, Introductory paragraphs, part A.

²² CRTC – Convergence Policy, Policy Development and Research October 2011, *Results of the fact-finding exercise on the over-the-top programming services*, <http://www.crtc.gc.ca/eng/publications/reports/rp1110.htm>.



considered the impact of digital media broadcasting undertakings' activities on the Canadian broadcasting system through the *Let's Talk TV* hearing process, it was unable to do so in a comprehensive manner, by virtue of the refusal of Netflix and Google to provide information that would enable the Commission to make a full assessment. The CMPA would accordingly urge the Commission to make full use of its powers under the *Broadcasting Act* to compel disclosure of this information and thereby ensure sound, evidence-based policymaking resulting from a thorough review of the regulatory regime applicable to digital media broadcasting undertakings.

Broader Implications for Future CRTC Proceedings

32. On a final note, the CMPA would reiterate that this proceeding should not adopt a narrow, telecom-only perspective. In fact, the issues we have raised highlight the convergence of telecom and broadcasting regulation *today*. In our view, the Commission should not attempt to partition these issues as either telecom or broadcasting when they relate to both sectors in a very real and substantive way.
33. To only address the telecom side would inappropriately disregard the broadcasting market-place realities of 2016.
34. As Commissioner Shoan has noted: "In essence, under the current legislative framework, the Internet, through market forces, consumer use, and industry development, is evolving from a telecommunications service *into a broadcasting service*".²³
35. The two areas cannot be divorced in this proceeding and, perhaps more importantly, they should not be separated in future regulatory proceedings without sufficient and due consideration. We have entered a new era and while



²³ *Ibid.*, above note 20 (emphasis in original).

the Commission must work with two different statutes, the marketplace realities require an integrated regulatory approach.

36. The CMPA encourages the Commission to adopt a forward-looking integrated approach in future proceedings that will span matters impacting on both the telecom and broadcasting communities.
37. Given that we offer what appears to be a unique perspective regarding the importance and the proper scope of this proceeding, the CMPA wishes to appear at the public hearing scheduled to commence 11 April 2016.

Sincerely,

[original signed by]

Jay Thomson, LL.B, LL.M
Vice-President
Broadcasting Policy & Regulatory Affairs

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