

## **Broadcasting and Telecommunications Legislative Review**

### **Comments**

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#### **Introduction**

St. Andrews Community Channel was incorporated as a non-profit organization in 1993 to operate community television activities in St. Andrews, New Brunswick. 25 years later, St. Andrews Community Channel holds the broadcasting licence for CHCO-TV, which telecasts an over-the-air signal in Saint Andrews and is distributed by Rogers Cable, Bell-Alaint FibreOP and Bell TV (satellite). We are unique as one of a handful of community channels in Canada distributed in the same market by competing television service providers. Furthermore, CHCO-TV is New Brunswick's only locally-owned and operated television service. As one of the few independent community-operated television services in Canada, we believe our story may shed light on the status of community television in Canada today.

As a licensed content creator we are very much interested how the Broadcast and Telecommunications Acts might be updated. We believe an Act should not address the 'changing' technology because technology is always changing, what doesn't change are the principles that the CRTC and the Act are there to uphold – the medium should be separate from the media.

The medium shouldn't dictate the focus of the act.

#### **History**

Our channel's operations were supported by Fundy Cable until 1999 when Fundy was sold to Shaw Cablesystems, which left the channel in limbo and again, the following year, the cable system in New Brunswick was sold to Rogers. By 2003, it became clear that Rogers would not support our operations and they planned to drop our channel when our town's cable TV service would be interconnected with

the City of Saint John (100km distant). It is important to note that, in the meantime, Rogers had its cable licence in St. Andrews exempted, which relieved Rogers of the requirement of having to maintain a community channel in our town.

In order to survive a seemingly bleak future, St. Andrews Community Channel applied for a new type of licence from the CRTC, created in 2002: a low-power community channel. This would achieve two things for our television service; one: mandatory carriage on cable as a broadcaster; and two: access to more viewers who were not cable subscribers.

### **CRTC Learning Curve**

Early on we found the CRTC staff to be helpful navigating the licensing process but unless you happen to know CRTC policy you would never know that there is a licensing class for (independent) community TV.

Almost two decades after the creation of the community TV policy there is no public-friendly information on the CRTC website to aid anyone to organize such a television.

At the time of our LPTV licensing eight other small rural communities were set to lose their independent community-run channels under Rogers. In almost every case those channels were removed with little notice or legitimate reasoning to the community other than the CRTC no longer required them to exist.

The CRTC also has an “independent” community licence without the low-power OTA broadcast, however, licence-exempt cable operators (like Rogers in St. Andrews and the eight other communities) are not required to carry them, which makes it impossible for any small community to establish a channel since most cable systems with less than 20,000 subscribers can be licence-exempt.

After receiving our licence, CHCO-TV, we found several shortcomings in the CRTC policy that were counter-productive to operating a community TV licence. CRTC staff explained sometimes policy and regulations had unforeseen outcomes and that it would take a policy review hearing to correct them. That hearing did not

happen for another decade, in 2016, and not one of our recommendations was ever acknowledged or corrected.

One point which was underscored with the 2016 review was funding for community television did not belong to the cable companies. Cable companies have only been managing community channels and the funding for 40 years. This might have been “okay” in the 1970s when there was only one foreseeable choice for a TV service provider- but this is the one thing that has definitely changed.

The one thing any successful TV station strives for is equitable carriage from ALL TV service providers. There is one unfortunate exception: the cable-branded community channel, which in-turn makes the point, that channel belongs to cable company not the community. This may be the main reason the cable-community channel’s popularity is decreasing. It is not a true community channel if it is not available to the entire community but only a subscription base.

## **Funding Evolution**

Our view of funding community television seems to have had good intentions.

Community LPTV licensing was new in 2002 and it was what would save our channel from going dark. The community TV policy was created to provide service where cable did not provide a channel, which would be typical in rural communities.

It is important to note that in 2002 small rural “Class/Part III” cable operators could always operate a community channel using the full 5% Canadian content contribution and sell advertising.

Broadcast Distribution regulations from 2006 stated: BDUs “may, if it provides service to an unserved community, distribute a maximum of 12 minutes of commercial messages during each clock hour of community programming”

We have never been given a clear answer from the CRTC why rural cable could use both the 5% funding and sell ads but independent Community LPTV is expected to survive only on ads – we could not benefit from both.

Another example of good intent is:

Broadcast Distribution regulations prior to August 31, 2011 stated: “A licensee that has less than 20,000 subscribers on August 31, 2009 shall make, for the broadcast year beginning on September 1, 2009, a contribution of **(a)** if the licensee does not distribute its own community programming on the community channel, 5% of its gross revenues derived from broadcasting activities in the broadcast year to **(i)** the community programming undertaking, if a community programming undertaking is licensed in the licensed area.”

The removal of this policy seems to have happened without any public notice or for any particular reason other than CRTC staff said the provision was no longer needed. The size of a BDU exempt-licence increased over time from 2,000 to 20,000 which may have contributed to another “unintended outcome” and could point to the unlikelihood of a BDU community channel being maintained in a system with less than 20,000 subscribers.

Our wait for the 2016 policy review ironically resulted in the CRTC approving 50% of cable/BDU community TV contributions to be re-directed into their own vertically-integrated commercial television stations. Which means 50% of New Brunswick community television funding can be re-directed into Rogers owned CITY-TV and OMNI which both do not serve NB with local programming. Also 0.3% contribution from all NB cable satellite and FiberOP subscribers fund independent local news but these stations serve communities outside New Brunswick, CHCO-TV is not permitted by the CRTC to access this fund either.

After a decade waiting for the local and community TV review, no loopholes were closed and now out of province commercial channels use funding once set aside for community TV in New Brunswick.

## **COMMUNITY TELEVISION POLICY**

We are grateful that CRTC policy existed to allow our community to operate a channel. We hope that shedding light on our experiences will help strengthen the community sector and mend the shortfalls. Future considerations should include:

- Equitable funding must be made available to independent community media

- Community content must be available to everyone regardless of the ISP/BDU
- Going forward, the organization of “channels” or “streams” must be considered; that is how content is discovered by consumers.
- Independent community media should be given equitable means to cross promote with distributors.
- Re-distributing local/community broadcasts should be maintained and be made equally as accessible as other available content.
- The highest quality of that media’s data should be maintained
- Re-distribution of local broadcasts should not be degraded or delayed

We would like to point out that the few channels that do exist might be due to the fact there is no educational information on the CRTC website on how to set up an independent community channel. In this era of fake news it would be important for the government to educate Canadians on the discoverability of the community media sector.

### **Community Television Re-Invented**

Since the invention immediate electronic distribution of media –broadcasting- there has always been a mechanism to ensure a fair balance of true information provided to the people in a modern democracy.

The spirit of the Act should transcend technological changes. The values it upholds should be the same regardless of the popular medium of the time.

Considering technology there is a limit to the number of broadcasts there can be in a community and the range those broadcasts can have.

The use of this “space” is a privileged use of the public-right-of-way; and users are licensed. What is important to note these users are organizations of people be it private companies, publicly funded and non-profit and for profit community groups.

It could be said that today there is a fourth source broadcasting information, from individuals, which has arguably turned traditional media on its head, but maybe

has only just temporarily confused media consumers until the new field is understood.

There is room for new individual digital media creators but without the simplest form of peer oversight it can prove to have a dark side perpetuating fake news. Though not necessarily stated this simply, immediate distribution of unvetted information by individuals has great potential of creating chaos.

One might argue for freedom of speech, and sure that is not new but what is new is the ability to essentially broadcast (or stream) any idea to the masses without fact checking.

Community media through the technologies of radio and television and newsprint are the platforms that allow individuals to connect and share information that typically is of a more local interest but checked by peers which aids as a trusted source of information.

For the moment we can easily say the print media industry has now entered the electronic age but understanding how it fits into the electronic media that TV and radio traditionally dominated may not be clear.

Internet technology has faded the lines between print, radio and television as they are no longer separate vehicles for consuming information, but that is not the danger that faces media consumers; it is the balance of the different creators: community, public, and private.

Electronic media can have an immediate effect on the public, and trusted sources should be obvious, in case of public safety which is in all intents is news.

## **Answers to Questions**

### **Telecommunications Act and Radiocommunication Act**

#### **3. Net Neutrality**

3.1 Are current legislative provisions well-positioned to protect net neutrality principles in the future?

It is concerning to us that wireless data subscriptions could be prone to favour media that is vertically integrated content. Your wireless provider might also own

media content that can be consumed without using up one's data plan which might deter users from watching other independent community media.

#### **4. Consumer Protection, Rights and Accessibility**

4.1 Are further improvements pertaining to consumer protection, rights, and accessibility required in legislation?

Advanced television broadcasting ATSC 3.0 would lend an excellent tool to consumers for reliable local media access. At the same time regulators must ensure devices are equipped, and open or "unlocked". We have already seen where telecom interests in selling data plans have locked up free use FM broadcast reception features in smart phones. Telecom giants should not be limiting technology that may suit the better needs of the public good.

#### **6. Effective Spectrum Regulation**

6.1 Are the right legislative tools in place to balance the need for flexibility to rapidly introduce new wireless technologies with the need to ensure devices can be used safely, securely, and free of interference?

Currently there is no protection for low-power community broadcasting. In the digital age it should be easier to guarantee space for community media. It should be considered that spectrum be reserved for public and community media and if not used that space could be conditionally leased to the private sector.

ATSC 3.0 digital television is essentially IP streaming of video and data to mobile devices. Reserving spectrum in communities would ensure free access to community information and emergency information independent of ISPs.

#### **7. Governance and Effective Administration**

7.1 Is the current allocation of responsibilities among the CRTC and other government departments appropriate in the modern context and able to support competition in the telecommunications market?

Yes.

7.2 Does the legislation strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

We have found current legislation is open to much interpretation and unforeseen outcomes, with no mechanism to quickly correct issues.

## **Broadcasting Act**

### **8. Broadcasting Definitions**

8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?

We are concerned that more efficient broadcast technologies will not be adapted in Canada because the majority of the traditional broadcasters are owned by telecom giants. ATSC 3.0 digital television is essentially IP streaming of video and data to mobile devices. Reserving spectrum in communities would ensure free access to community information and emergency information independent of ISPs. Remembering that wireless service in New Brunswick has been cut for days because of accidental fibre optic breaks in Ontario.

8.2 How can legislation promote access to Canadian voices on the Internet, in both official languages, and on all platforms? See 10.2

12.1 How can the principle of cultural diversity be addressed in a modern legislative context? See 10.2

10.2 How can the CRTC be empowered to implement and regulate according to a modernized *Broadcasting Act* in order to protect, support, and promote our culture in both official languages?

Policy should not legislate culture directly but ensuring diversity through solid community creation of content while also ensuring access to the distribution of community content will by nature promote access to Canadian voices.

### **9. Broadcasting Policy Objectives**



9.1 How can the objectives of the *Broadcasting Act* be adapted to ensure that they are relevant in today's more open, global, and competitive environment?

Realizing that robust collaborative community media is maybe more important now than ever before. Ensuring it can be created and shared in Canada and the world without commercial influence would best serve the public good.

## **10. Support for Canadian Content and Creative Industries**

10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?

We support the CRTC's proposal to migrate BDU Canadian content contributions to ISPs. Content is still being delivered via subscription through the same infrastructure of wires and radio spectrum, it is really just being marketed to consumers differently. Why would the contribution to the public good not be the same from the industry which virtually uses the same resources it always did? We would argue that 5% contribution should not be decreased and should be used to fund local community programming where it is collected.

Our twenty-five year experience has shown the CRTC needs an ombudsman office and better direction to consider that independent community media should be the cornerstone of Canadian culture. It should be realized that community licensees are community groups that directly represent the people for the public good.

10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?

As mentioned in 8.1 devices should be open and industry powerhouses simply should not be allowed to suppress technology to suit their own business models, products and content.

## **11. Democracy, News and Citizenship**

11.1 Are current legislative provisions sufficient to ensure the provision of trusted, accurate, and quality news and information?

No. CHCO-TV is the only independent television service in New Brunswick and after 15 years of disputing we are only equitably distributed in our immediate area on cable while other community programming and out-of-province programming is readily available throughout New Brunswick.

11.2 Are there specific changes that should be made to legislation to ensure the continuing viability of local news?

Contributions funding Canadian content and news from New Brunswick TV subscriptions are not made available to CHCO-TV, however, do fund local content and news in other provinces. This loophole must be closed. All community channels should be distributed equitably as other distributor-owned channels.

## **13. National Public Broadcaster**

13.1 How should the mandate of the national public broadcaster be updated in light of the more open, global, and competitive communications environment?

As mentioned in question 8.1, ATSC 3.0 technologies might be shared by multiplexing content. This would create more open subscription-free access to CBC/Radio-Canada content in rural Canada.

13.2 Through what mechanisms can government enhance the independence and stability of CBC/Radio-Canada?

To serve the public interest better a stronger independent community sector would be in a better position to support local media that in-turn could collaborate with CBC/ Radio-Canada. This relationship by nature would be much better than the current private monopolies strangle-hold has on the majority of community channels.

## **14. Governance and Effective Administration**

14.1 Does the *Broadcasting Act* strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

Our experience has proven that private industry interests are favored. The CRTC concluded in Broadcasting Regulatory Policy 2016-224 “the Community Television Policy, is commendable and remains important. However, the Commission considers that allowing an independent company to be allocated funding from a BDU, despite BDUs being regulated and accountable entities, introduces a destabilizing element into the broadcasting system.” We feel as a licensed community broadcaster we are in fact accountable.

14.2 What is the appropriate level of government oversight of CRTC broadcasting licensing and policy decisions?

We have found area is lacking and the CRTC should have some amount of expertise and not look to industry for direction.

14.3 How can a modernized *Broadcasting Act* improve the functioning and efficiency of the CRTC and the regulatory framework?

The Acts protect Canadians from commercial misuse of media content and distribution. If independent community content can be re-imagined it should inherently work by and for the people directly.

14.4 Are there tools that the CRTC does not have in the *Broadcasting Act* that it should?

It should likely encompass spectrum management.

14.5 How can accountability and transparency in the availability and discovery of digital cultural content be enabled, notably with access to local content?

As cable provided a channel to communities, a collaborative effort should be made between Canadian ISPs for community content to be stored and streamed to consumers within Canada. This would uphold the rights of the creators and not hand the content rights over to an international organization like YouTube.

## **Conclusion**

To the naked eye it might seem we consume media differently but consumers still watch “television” content from the same providers (now ISPs) using the same cables and airwaves. Marketing this as internet seems to have allowed a new

telecom industry avoid complying to the regulated public-good contributions of broadcast and cable TV industry.

If all media (print, tv and radio) is now electronic, instead of confusing the landscape with all the technology developments, simply mandate ISPs to provide a 5% contribution to Canadian Content AND fund community media ensuring support of independent local operations. Wireless data plans use the former broadcast TV airwaves (frequencies) which should trigger community media benefits.

Community media should be in the hands of locally managed organizations licensed nationally and overseen by the CRTC and industry associations not much differently than the many former small private TV stations were. These community organizations should be provided “streaming carriage” through subscription services and able to maintain local independent broadcast streams for public safety and free access.

We were disappointed to learn we may have been left out of discussions leading up to this point in the review of the Acts. We hope this sample of our story can serve as a real case study that will help better position the community media sector in Canada’s future. We would look forward to contributing in any other way to help this important process.

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