Phase 3 of Let's Talk TV: A Conversation with Canadians (BNOC 2014-190)

Submission by Unifor

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Executive Summary

1. Unifor represents more than 12,500 workers in the Canadian media sector, approximately 5,000 in the television industry.

2. The television system offers superb quality production along with a wide range of flexible services to viewers. In many respects, television is as vibrant, engaging and entertaining as it has ever been.

3. Nevertheless, there are soft spots in the system. The economic model that underpins conventional (specifically local) television is suffering, in the face of declining advertising revenue, audience fragmentation and other matters.

4. The television system is also coming to grips with significant technological advancements that could have substantial economic consequences, if left unchecked. Many of these concerns can be addressed appropriately by the Commission, through sound policy decisions. What we fear is that the major regulatory changes being floated by the Commission (focused near-exclusively on enhancing 'consumer choice') in BNOC 2014-190 are overly-aggressive and would undercut the total architecture of the television system, thereby doing more harm than good.

5. An Environmental Scan commissioned by Unifor and other organization highlights the impact of the Commission's proposals to remove simultaneous substitution, introduce a regime of pick and pay, lower barriers to entry for non-Canadian programming services and the associated reduction in CPE. Altogether, these reforms could cost the 31,460 jobs (measured by full-time equivalents) and a $2.9 billion loss in Canadian GDP.

6. The impact of these changes could also lead to broadcast licensees requesting further regulatory relief from licensing obligations to remain viable, while undermining more local programming and Canadian in-house production.

7. Should the Commission move forward on these proposed regulatory reforms, we fear the entire television system could destabilize – creating new, unintended problems both in the short and long term.

8. Unifor recommends that the CRTC:
    a. Not adopt a pick and pay model, for its destabilizing effect on television revenues and, thereby, on Canadian programming services;

    i. If the Commission decides to force changes to how cable television services are packaged and sold it should do so in a progressive and measured way;

b. Maintain Canadian preponderance rules
c. Not impose its proposed “undue negative impact” test and instead require foreign programming services to prove their entry into the Canadian market will cause “no substantial harm,” especially with respect to ethnic and third-language television services;
d. Maintain simultaneous substitution;
e. Continue the Local Programming Improvement Fund, and explore alternative funding mechanisms to sustain it over time;
f. Clarify the definition of local programming, distinguishing between original and in-house production and re-broadcast segments;
g. Strengthen exhibition requirements for original local programming, requiring a minimum of 14 programming hours per week across all television broadcasters, instituted during the next Group-Based Licence renewal;
h. Establish minimum thresholds for reporters covering local news;
i. Ensure any regulatory changes have no adverse impact on third-language and ethnic broadcasting;
j. Undertake a hearing on the future of CBC subsequent to Phase 3 of Let’s Talk TV, but in a manner that’s connected to the broader consultative effort;
k. More robust data collection on OTT operators, including foreign services operating in Canada;
l. Update the definition of broadcasting revenues to reflect all broadcasting activities of licensees, in concert with imposing mandatory contribution requirements (10%) from OTT services to Canadian programming expenditures.

I - Introduction

9. Unifor is Canada's largest union in the private sector, representing more than 300,000 workers across a diverse range of economic sectors.

10. Unifor represents more than 12,500 members employed in the media sector. This sector includes the print newspaper, graphical/commercial printing, film and broadcast industries. Unifor members create and distribute Canadian programming content in communities and across the country. Our members work for radio and television stations serving local communities as well as national discretionary pay and specialty services, as well as distribution services that include cable, satellite and wireless telephony.

11. Approximately 5,000 Unifor members are employed within the Canadian television system and will be impacted, as can be expected, by regulatory decisions made by the Commission as a result of the current review process.

12. Unifor members are employed by large, private Canadian broadcasters and distributors, including Bell Media, Shaw and Rogers, as well as independent community-television stations (such as CHCH TV in Hamilton, Ontario) and public television stations (e.g. TV Ontario). It goes without saying, but Unifor members – as are many workers whose livelihoods are tied to this vital industry – are anxiously anticipating the results of the Commission's review.

The Future of TV

13. We appreciate the Commission's genuine effort to spark a national dialogue about television in Canada - how television (as a medium for entertainment) is consumed and enjoyed; how television (as a medium for reflection) supports diversity and contributes to the development of Canadian culture; and how television (as a medium for social and democratic engagement) helps build a more informed community of citizens.

14. There is no denying the central place of television in many households. It attracts millions of viewers, who tune into a wide range of quality Canadian (and non-Canadian) programs, that serve the interests of diverse communities (both geographically-based, third language and ethnic), across multiple genres, languages and platforms.

15. The superb quality and production value of television drama, the unprecedented range of television services on offer to consumers, the flexibility of services being offered, the

complementariness between television and other forms of social media and interaction (among other factors) have created new dynamic forms of communication between television and its audience. This helps engage, inform and entertain viewers.

16. But there's also no denying that the television system today faces challenges. Notably, the economic model that underpins conventional (specifically local) television programming is suffering. The Commission acknowledges the "long term pressure" facing local television as a result of "audience fragmentation, decreases in advertising revenues and competition."[1] This is alarming**.**

17. The television system is also coming to grips with significant technological advancements that (if gone unchecked) could have substantial economic consequences. To what degree (and at what pace) Internet-based, Over-The-Top (OTT) programming services will reform Canadian television viewing habits remains to be seen. However, early signs suggest change is happening now.[2]

18. This "Let's Talk TV" initiative arrives at a critical time for Canada's television system. For starters, conventional over-the-air and landline cable television – despite its extensive reach into Canadian households – faces structural challenges and "subdued" growth forecasts.[3] Viewership in conventional television has been in decline, alongside national advertising sales,[4] in part as a result of growing competition in other forms of media.

19. Concern has also been raised that Canada's Pay TV market is nearing a point of maturity, signalled by a recent slowing of annual subscription growth rates and the forthcoming slowdown in digital service conversions (i.e. digital television transitions/upselling in programming packages have given Pay TV providers the opportunity to increase household subscription levels).[5] In BNOC 2014-190, the Commission also notes that 2013 marked the first time BDU subscriptions had fallen, "as some Canadians choose to opt out of the traditional system entirely."

[1] BNOC 2014-190 [66]
[2] See: http://www.cbc.ca/news/business/cord-cutting-continues-as-canadians-ditch-tv-landlines-1.2601373; and http://www.theglobeandmail.com/report-on-business/more-canadians-cutting-the-cord-tv-subscriber-numbers-fall-for-first-time/article18685129/
[3] ***Progress Amid Digital Transformation: A Macro Perspective on the Trends Impacting Investments in the Media Sector***; Scotia Capital Inc – Canada (November 2013); page 30
[4] Ibid; 30
[5] Ibid; 38/39

20. These trends will naturally create unfavourable conditions for media workers throughout the system, including Unifor members. Downsizing operations to meet revenue targets has not only lead to significant job losses in recent months[6] but puts downward pressure on the provision of services, and creates the conditions that could limit the quality of programming on offer.

21. Through creative and innovative solutions in collective bargaining, our union has weathered cyclical challenges of the past. However, today's revenue challenges are compounded by significant technological shifts that are taking place within the television distribution and broadcasting system.

22. There is hardly a week that goes by without a report, commentary or news item published that raises the spectre of new forms of media, especially the growing prevalence of Internet-based and OTT services, and the potentially disruptive effect these will have on the current economic model for television[7]. A model that was built to support (partly through exhibition and funding rules) the development of Canadian expression, multiculturalism, cultural sovereignty among other principles and goals set out in the *Broadcasting Act*.

23. These examples highlight the soft-spots that exist in the current system. There is real concern about the future of conventional television and local programming. We believe these concerns can be addressed appropriately by the Commission, through sound policy decisions (with respect to its broadcast policy guidance as well as licensing requirements). We fear the Commission could take an overly-aggressive approach to reforming television policy, undercutting the system's architecture. This would do more harm than good.

24. Our comments to the Commission's BNOC 2014-190 will mostly filter through this critical (and cautious) lens, as the Commission will read below. It is heartening to see the Commission take a fulsome approach and review of the regulatory and competitive landscape for television at this particular (and critical) moment in time. However, we are concerned there is a dearth of meaningful proposals and recommendations put forward

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[6] Over the last twelve months, significant job cuts have been announced by major Canadian broadcasters, including at Rogers (94 job cuts announced in November, 2013 which following 62 job cuts announced in May, 2013); Shaw Media (400 job cuts announced in April, 2014); CBC (announced 657 job cuts in April, 2014 following a budgetary reduction of $130 million); and Bell Media (announced up to 120 job cuts from Toronto television operations in June, 2014)

[7] The Commission offers a pertinent example of the advertising-driven funding model that underlies local television programming (BNOC 2014-190 [29])

by the Commission on how to effectively sustain and expand the revenue pie (so to speak), in light of what we view as destabilizing regulatory reforms.

Unifor's Engagement with Let's Talk TV

25. Our union has followed closely Phases 1 and 2 of the Let's Talk TV proceedings, since they were launched in October 2013. We actively encouraged our members from across the country to review and comment on the 'Choicebook' questionnaire. It is difficult for us to make an accurate determination on the number of members who participated, but can safely say that our outreach and awareness efforts reached thousands of interested individuals from coast to coast.

26. We also received feedback directly from members, many of whom took the time to offer a candid, personal reflection of what the future of television might hold for them and others on the front-line – those workers delivering the programming services that Canadians enjoy. In an effort to bring these voices to the forefront, we have included excerpts from a selection of responses received and trust the Commission will find them informative.

    a. *"I began my local news career in the 1980's, working in a well-funded operation that covered all the news of the day. We also initiated and investigated important issues in society, seven days a week, with news programming throughout the day. I now work for a poorly funded morning show operation that only has enough resources to react to some of the news of the day… This often leaves us at a press conference getting just part of the story. This change of commitment to local programming funding has been most visible during last years' provincial election coverage. [Employer] didn't have a journalist on the campaign bus, deciding instead to only cover media availabilities held in the Vancouver and Victoria areas. Reacting to very controlled political messages instead of directly engaging voters on issues identified by the public. No special coverage of the election, not even on election night... What is missing is a connection to the community by having feet on the street and that takes a funding commitment that is not effectively captured by a policy model that dictates hours of local programming with little to no accountability of what's in those hours."* ***Stephen, Cameraperson (Vancouver, British Columbia)***

    b. *"When I started at the station in 1979 it was a vibrant place to work. Sadly our station, like so many others, is just a shadow of what it once was. The master controls have been centralised making us no more than elaborate news bureaus.*

When regulations changed, I'm not sure what the CRTC thought would happen, but virtually all local programming with the exception of news was cancelled across this country. Every year we produced telethons, variety and music specials, public affairs programs and drama featuring local talent. It was at stations like the one I work at that some of Canada's greatest talents cut their teeth. Gordon Lightfoot and Stompin' Tom Connors got their start [here].
Our once proud station of 120 employees has been reduced to a shell of 38. Yes we still do two news packages a day down from 3… Local news is important however it's just one aspect of a local community's landscape.
You must ask yourself where are the next generation of television craftpersons going to come from?" ***Jim, Television Technician (Barrie, Ontario)***

II: Framing the Conversation

If consumers are first, then who's second?

27. The Commission's broadly-defined 'Future of TV' review appears far narrower in scope after reading its 'intended outcomes' outlined in the notice of consultation.[8] Specifically, the Commission is seeking input on ways to improve the Canadian television system in a manner that fosters greater "choice and flexibility," that "creates compelling and diverse Canadian programming" and "empowers Canadians to make informed choices".[9]

28. In the BNOC, the Commission does acknowledge (although to a far lesser degree) the economic importance of television (paragraph 12) and that the needs of the "public interest" should drive its decision to regulate or not regulate (paragraph 35). The Commission also raises important questions regarding support for local programming, diversity and inclusivity throughout the notice, which is welcome. Nonetheless, the scale of reform being contemplated in an effort to address matters of consumer concern would undermine all subsequent considerations.

29. The Commission's decision to explore consumer-focused reforms of television certainly respond to comments made by Prime Minister Stephen Harper in a subsection of his 2013 Speech from the Throne entitled, *Defending Canadian Consumers*:[10]

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[8] There is a noticeable departure in the language of the 'intended outcomes' listed in the notice of consultation from the "goals" laid out by Commission in Let's Talk TV: A report on comments received during Phase I, wherein the Commission noted its goal to situate Canadians "firmly at the centre of their television system" as "citizens, consumers and creators."
[9] BNOC 2014-190 [36 i, ii, iii]
[10] Speech from the Throne, October 2013: http://speech.gc.ca/eng/full-speech

> "Our Government has already taken action to achieve greater competition. Canadians know that competition is good for everyone. Competition lowers prices and keeps businesses from becoming complacent. As a result, wireless rates have fallen nearly 20 per cent since 2008. But there is much more work to do.
>
> Our Government will take steps to reduce roaming costs on networks within Canada. *Our Government believes Canadian families should be able to choose the combination of television channels they want.* It will require channels to be unbundled, while protecting Canadian jobs. Our Government will continue enhancing high-speed broadband networks for rural Canadians."

30. It should be noted that the notion of consumerism is conspicuously absent from the terms and conditions set out in the *Broadcasting Act,* as is the notion of price competition. There is an important distinction to be made between the latest expression of political will by an incumbent government and upholding the tenets of the governing statute. Unifor appreciates the Commission's attempt to appease the wishes of certain television viewers who seek greater flexibility in channel and programming selection, access to view (in real time) U.S. television commercial premieres, and other notable issues. However, what must drive these decisions, ultimately, is consideration for the public interest as well as the stability and development of the system in line with the goals of the *Broadcasting Act,* above all else.

31. It is also worth noting that greater flexibility does not necessitate an "a la carte" approach to selecting programming services. In fact, to whatever extent the Commission is taking direction from the Prime Minister's speech, he never refers specifically to "a la carte" or "pick and pay". There are alternative, less destabilizing, forms of flexibility – including "pick a pack" that the Commission should consider in their deliberations as well.

Neglect of the Canadian Broadcasting Corporation

32. Noticeably absent from Let's Talk TV has been an acknowledgement of the role (and challenges) faced by Canada's public television broadcasters. The discussion has centred entirely on matters relating to the private television sector.

33. With all due respect, it is incongruous that in the Commission's brief summation of entities that comprise the Canadian television system (BNOC 2014-190 [14]) there was no reference to the CBC. As Canada's national public broadcaster the CBC generates more than $500 million in revenues through television broadcasts, contributes fully one-

quarter of total Canadian program expenditures[11], and plays a distinct role in promoting Canadian culture and identity *(as referenced in the Broadcasting Act*). Its role in the future of conventional television is as central as that of the private broadcasters, not peripheral.

34. The CBC is susceptible to changing political tides. Budgetary cutbacks have resulted in underfunding and that has led to program cuts and downsizing. Just yesterday, the CBC announced a significant scaling back of in-house production that will result in more than 1000 fewer jobs by 2020[12]. Today, CBC budget levels are about half of what they were in 1990. Since 2008, the CBC has shed more than 2000 jobs. We cannot help but view this as the slow and steady dismantling of our national broadcaster, with an eye to greater private sector involvement in the delivery of services. It is hard not to view this as a product of political and ideological motivation. And that is cause for great concern for the future of quality Canadian programming, and the vibrancy of Canada's democracy.

35. Surprisingly, CBC cutbacks are coming at a time when Canadians still value the Corporation's role in strengthening Canadian culture and identity.[13] Yet, for reasons we cannot comprehend, it is a non-entity within this current conversation.

36. As we are unaware of any parallel or subsequent conversation regarding the future of 'public' television, we consider the Let's Talk TV initiative incomplete.

Television as an Economic Driver

37. Canada's television sector plays an important economic as well as cultural role in this country. Nearly 60,000 people are employed in the television sector,[14] with more than 12,000 jobs focused on developing in-house production content, including local news and sports programming.[15] Broadcast jobs are by various measures considered "good jobs" and that provide above average wages that range from $24.73-$26.66 per hour.[16]

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[11] CRTC Communications Monitoring Report, 2013

[12] http://www.cbc.ca/news/canada/cbc-to-cut-back-supper-hour-news-in-house-productions-1.2688409

[13] A 2013 Nanos Research poll commissioned by Friends of Canadian Broadcasting (http://www.friends.ca/poll/11549) found 80% of Canadians polled believe the CBC plays an important role in strengthening Canadian culture and identity.

[14] BNOC 2014-190 [12]

[15] Economic Report on the Screen-based Media Production Industry in Canada, 2013 (page 97)

[16] Statistics Canada, Survey of Employment, Payroll and Hours. Hourly wage rates include overtime pay, are based on annual averages (drawing on the most recent available data) and listed for NAICS 5151 (radio and television) and 5152 (pay and specialty television).

Overall, the film and television sector in Canada generated more than $12.5 billion in labour income and contributed over $20 billion in GDP in 2011.[17]

38. The threat of negative economic consequences of the regulatory reforms being contemplated by the Commission in this framework review is real. The negative outcomes of these changes must be considered. Despite assurances from the federal government that jobs will be protected,[18] in the event the Commission agrees to move forward with any of their reform proposals, there has been scant evidence provided throughout the Let's Talk TV process to reinforce that claim.

39. In fact, there has been no impact assessment among any of the policy reforms currently under consideration by the Commission in BNOC 2014-190, including the potential elimination of simultaneous substation, removal of Canadian preponderance rules, fewer controls over non-Canadian services, and others.

40. Unifor, along with the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Friends of Canadian Broadcasting ("Friends"), the Canadian Media Production Association (CMPA), the Canadian Media Guild (CMG) and the Writer's Guild of Canada, jointly commissioned an Environmental Scan of Canadian TV (a report that is appended to this submission) that explores, in part, the possible employment consequences in further detail across a range of scenarios, as well as revenue-related impacts to Canadian programming expenditures and other matters.

41. We hope this Environmental Scan serves to fill the gap in research and analysis on how employment might suffer as a result of regulatory reform. We will cite elements of that document throughout our submission, but also encourage the Commission to carefully consider it in their deliberations.

III-Balancing Consumer Choice with Economic Viability

42. Principally, Unifor does not oppose the notion of consumer choice. Empowering consumers to make more informed choices and enabling them to select programming services more akin to their interests is a good thing. And to a large degree, the current television system provides flexibility. VOD services, for instance, perform this function.

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[17] Nordicity, The Economic Contribution of the Film and Television Sector in Canada (July 2013) (see Executive Summary, page ii)

[18] Statement by Minister of Canadian Heritage and Official Languages issued on April 24, 2014: http://www.marketwired.com/press-release/statement-shelly-glover-minister-canadian-heritage-official-languages-on-crtc-report-1902904.htm

The growing prevalence of Netflix and OTT providers offer much of the same. Many BDUs also provide consumers the option to add channels to established packages.

43. Let's be clear in the fact that consumers do have choice in the television they watch – with more programming options and platforms than has ever been afforded to viewers, in this "Golden Age" of television.

44. The framing of this discussion has centred on the word "choice" and the concept of consumer empowerment, related to a consumer's ability to exercise greater influence over the television they watch, whenever, wherever, and however they choose.

45. In our view, the more appropriate concept to consider in this discussion is "balance", not runaway **"**choice."

46. Technological evolution is restructuring the Canadian television system – a system, as noted above, that aims to achieve very clear and specific goals under the *Broadcasting Act*. And it is incumbent on the Commission to isolate the system's centre of gravity, so to speak, to ensure the system can sustain itself.

47. It's clear that politically, the federal government has established 'job protection' as the pivot upon which balance must be struck (a point emphasized recently by the Minister of Canadian Heritage and Official Languages). ***If we start from the assumption that it was the political will of government that drove the current exploration of 'pick and pay' services (among other changes to the TV system) then we should also view the issue of job protection with the same degree of importance.***

There Will Be Losses

48. Should the Commission choose to remove simultaneous substitution, introduce a system of pick and pay and lower barriers to entry for non-Canadian programming those decisions will fundamentally disturb the revenue model for television (in turn affecting production financing of Canadian content)[19] and significantly impact jobs in the sector.

[19] See appended report, pages 51 to 57 for a breakdown of economic impacts resulting from regulatory changes and an explanation of the modelling/baseline assumptions on pages 60 to 69.

Table 1

	Removal of Simultaneous Substitution		Pick-and-Pay + Lower Barriers (BDUs)		Pick-and-Pay + Lower Barriers (Pay/Specialty/VOD)		Loss in production financing (CPE)		Totals	
	2015	**2020**	**2015**	**2020**	**2015**	**2020**	**2015**	**2020**	**2015**	**2020**
Employment (FTEs)	*-530*	*-1,050*	*-6,610*	*-13,230*	*-2,330*	*-4,630*	*-7,420*	*-12,550*	***-16,890***	***-31,460***
Direct	*-170*	*-330*	*-3,350*	*-6,700*	*-740*	*-1,470*	*-2,920*	*-4,940*	***-7,180***	***-13,440***
Spin-Off	*-360*	*-720*	*-3,260*	*-6,530*	*-1,590*	*-3,160*	*-4,500*	*-7,610*	***-9,710***	***-18,020***

Source: Canadian Television Environmental Scan: 2014 – Peter H Miller, P. Eng., LL.B.

49. Table 1 consolidates the job impact findings of the Environmental Scan.

50. Across the three major reform proposals, there is a net negative impact on employment – as measured in full-time equivalents (and consistent with the employment analysis provided under the annual Economic Report on the Screen-based Media Production Industry in Canada).[20]

51. Taken together, these findings should spark a great deal of concern. Full adoption of the Commission's reform proposals could bleed more than 31,000 jobs from the broadcast system by 2020 – the bulk coming from the BDU segment.

52. The report also finds that the revenue drain these reforms will have on private conventional and discretionary services will reduce overall CPE contributions by more than $1 billion in 2020. These staggering losses are coupled with a $176.5 million decline in BDU contributions in the same period, removing a total of $1.2 billion in programming expenditures that would have otherwise been captured within the system.

53. Two-thirds of the CPE losses are expected to come from in-house production spending or acquired programming. The remaining (approximately $400 million) would come from unrealized spending on original Canadian content.[21]

[20] Conducted in partnership with the Canadian Media Production Association, l'Association québécoise de la production médiatique, Nordicity Group and the Department of Canadian Heritage.
[21] Miller also reports the loss of CPE spending from broadcasting would negatively impact federal and provincial tax credit payments in 2020, totalling $179 million.

54. Altogether, the regulatory impact on the television sector is staggering: an annualized loss of 31,460 jobs in 2020 (or about 12% of 2011 industry FTEs) along with a $2.9 billion loss in GDP (or 14.5% of 2011 industry contributions to Canada's GDP).

The Downward Spiral

55. It is not unreasonable to assume that a significant decline in television revenues as a result of regulatory reform will create the conditions for broadcasters to request further regulatory relief (e.g. relief from licensing obligations) to protect their balance sheets.

56. Recent requests for regulatory relief, including those made by Rogers Broadcasting Limited (RBL) earlier this year (regarding programming requirements for ethnic OTA television) are illustrative of what the future might hold within a more cost-competitive broadcast environment, built on revenue floor that is unstable. The integrity of the television system, and the goals of the *Broadcasting Act*, will face intense pressure in a climate that encourages a ratcheting down of regulatory standards.

Regulatory Risk with Little Reward

57. There is a lot at stake in the Commission's decision. In the opening line of BNOC 2014-190, the Commission considers television a "thriving industry." This is a bold – and exaggerated – statement, but that at some level rings true.

58. There are soft spots within the system to be sure, and they deserve attention.

59. Access to (and funding of) quality, original local news and non-news programming, is a clear weak link in the television system. There are revenue challenges facing the conventional television sector (including OTA) that needs addressing. Funding constraints faced by the CBC and other public broadcasters are of major concern. Ensuring the television system meets the needs of a growing and diverse population is paramount. The steady rise of OTT distribution must be carefully monitored, with the Commission considering a range of options that can bring these services into the regulatory fold.

60. Far from solving these problems, should the Commission decide to move forward on the proposed regulatory reforms that could destabilize the system (as highlighted above) they will have effectively created a series of new concerns and perhaps unforeseen problems in both the short and long term.

61. Quite simply put: If the industry is “thriving” then why risk tearing it apart?

IV-Recommendations

Consider the Unintended Consequences of Pick and Pay

62. In its Response to Order in Council P.C. 2013-1167 the Commission recognized that “pre-assembled packages have provided a stable source of revenues for distributors and programming services over the years.”[22]

63. In broad terms, the Commission also recognized the strong likelihood of some channels “not surviving” in a pick-and-pay world and that fewer discretionary programming services would negatively affect funding of Canadian programming. [23]

64. The Commission acknowledged the potential impact unbundling would have on the production sector, although indicated that “producers” (presumably those consulted on the matter of pick-and-pay) provided “limited evidence” of those impacts. We hope the appended study will prove useful to the Commission, offering evidence to reinforce the concerns over production.

65. The Commission also stated that “options such as pick-and-pay or build-your-own-package are not prohibited by the current regulatory framework.”[24] The Commission pointed to experiences in Quebec[25] and Atlantic Canada, where pick-and-pay options are available through certain providers.

66. There is obvious value in the utilization of pre-packaged bundles, not only for its revenue-generating potential (and the associated revenue-certainty that underlines the television system), but also to increase exposure among viewers to a diverse range of program offerings – programs (Canadian and non-Canadian) that may not otherwise seem appealing at first glance. In fact, ‘bundling’ has been fundamental to the overall system.

[22] CRTC Response to OIC P.C. 2013-1167 (April 24, 2014)
[23] Ibid
[24] Ibid
[25] It is very difficult to draw conclusions based on the experiences within the Quebec television market’s adoption of pick and pay that would guide expectations on the English television side, given the higher concentration of francophone programming services (and relatively limited penetration of the U.S. English language television programming market).

67. This tangible consumer benefit of bundling is perhaps the reason why the Commission has proposed to retain optional package offerings in its proposal as well as the 'skinny-basic' package of channels.

68. There is obvious detriment to an aggressive roll-out of a pick-and-pay model wherein consumers bear 100% of the channel cost. In fact, two of the publicly available reports (U.S.-based) cited by the Commission in footnote 6 of OIC 2013-1167 offer damning critiques of unbundling on the broader television ecosystem.

69. In one report entitled "Pricing Strategies in a Digital World", the authors argue that bundled packages are not "bad" for consumers. The authors note:

> *"This supply-constrained ecosystem funds far more voices (channels) than would survive in an a la carte world. The 80/20 rule that is prevalent in the analog world suggests that only 20-30 channels would survive (and at lower cost structures) in an a la carte world compared to >150 channels today. Minority and special interest channels would be unlikely to survive."*[26]

70. The other report entitled "The Future of TV", concludes that:

> *"Despite calls for unbundling because it would give consumers more choices, our math concludes that approximately 50% of total TV ecosystem revenue would evaporate and fewer than 20 channels would survive because a la carte forces consumers to bear 100% of the cost of the channel, whereas today TV advertisers bear 50% of the cost."*[27]

71. We understand that any analysis on the impact of unbundling must consider the extent to which consumers migrate toward an exclusive pick-and-pay service (and away from existing package offerings). The Commission has rightly pointed this out in OIC 2013-1167. On this note, we encourage the Commission to review the relatively conservative modelling assumptions (pertaining the anticipated subscription losses and other matters) used for the TV Environmental Scan, available on pages 56 to 65.

[26] Needham Insights; Pricing Strategies in a Digital World (March 8, 2011); page 2
[27] Needham Insights; The Future of TV (July 11, 2013); page 20

Unifor recommends:

- **No to Pick and Pay**

72. The risk to jobs, production financing and the ongoing sustainability of the system caused by this regulatory change is high. The Commission would be well served to focus on enhanced quality program offerings within the current system, than risk undermining its revenue structure under an ambitious and destabilizing pick and pay regime that could very likely (as noted above) contribute to the elimination of Canadian channels and programming. Further, Unifor does not support the unnecessary disruption of the current broadcasting system by combining a "skinny basic" package with pick and pay (as the CRTC considers in BNOC 2014-190).

- **If the Commission Moves Forward with Changes to BDU TV Bundles, Then Consider a Progressive and Measured Roll-Out**

73. Should the Commission decide to force changes to how cable television services are packaged and sold (whether that "pick and pay", "pick a pack", or others) Unifor thinks it imperative that this program be rolled out progressively and under the Commission's close scrutiny, including:
    a. Selected trial locations across Canada, followed by a procedure of public filing and detailed economic analysis;
    b. Public accounting of price impacts;
    c. Data collection to assist the Commission to more accurately forecast revenue implications and possible impacts on CPE and PNI contributions

- **Maintain Canadian Preponderance**

74. The proposed elimination of Category A regulations is essentially linked to existing rules ensuring genre protection. In the event that Category-A regulations are dismantled, Unifor believes that Canadian preponderance rules become a policy tool that carries even greater importance. The absence of Canadian preponderance (coupled with the authorization for all non-Canadian services to be distributed in Canada) will open the door to more foreign (particularly U.S.-based) competition that could potentially overwhelm Canadian services, to the detriment of Canadian programming.

75. Maintaining these preponderance rules (in the event the Commission pursues pick and pay) could also mitigate the negative job and economic impacts outlined above and in the TV Environmental Scan.

76. Further, we feel the proposed “undue negative impact” test (proposed in BNOC 2014-190) as a buffer against potential damaging consequences resulting from full-on entry of foreign services to Canada is completely insufficient. Not only is it too subjective and unpredictable a test, it analogously closes the stable doors after the horse has left. Demonstrable evidence to prove an undue negative impact would likely require proof of severe programming cuts, job losses, pricing disruptions and other factors to have already occurred (and perhaps irreversible). What use would this test have on rectifying a bad situation? In our opinion, the Commission should reverse the onus for this test and require distributors to demonstrate that non-Canadian services will cause ‘no substantial harm’ to the system (this test is particularly relevant for ethnic broadcasting in Canada). The Commission would also be required to propose a clear monitoring schedule, along with clear metrics (subject to a rigorous public consultation process) to identify what constitutes a “negative impact” on the system.

❖ **Maintain Simultaneous Substitution**

77. Simultaneous substitution has been a useful revenue-generating policy for the Canadian television system, and should be maintained. Enabling Canadian broadcasters to secure advertising revenues by swapping (what are often) U.S. programming feeds to air commercials geared to the Canadian market makes good sense. Given the advertising challenges facing conventional television today, it makes even better sense to maintain the policy – one that has worked well for decades.

78. We see no good reason for the Commission to restrict or eliminate the employment of simultaneous substitution, at a time when conventional television is already struggling for survival.

79. The Commission valuates the annual benefit of simulcast as approximately $200 million – or about double the amount of annual revenue generated under the (soon-to-be-dismantled) Local Programming Improvement Fund. We think this is a significant amount of revenue that makes an important contribution to the sustainability of the system. As noted in the TV Environmental Scan estimates above, the elimination of simultaneous substitution would result in a loss of nearly 500 jobs in 2015. We fear revenue losses on this scale could put smaller TV stations at risk too.

80. We appreciate that there has been some level of irritation expressed to the Commission by viewers because of programming schedule conflicts, errors in the simulcast and the inability to watch first-run Super Bowl advertisements, for instance. On balance, the policy still makes good sense for the Canadian television market.

TV System Reforms Must Not Inadvertently Undermine Local Programming and Canadian Content

81. We are heartened by the Commission's findings during both Phase I and Phase II of Let's Talk TV that the strong majority of Canadians view local news programming as an important part of the broader television ecosystem. In fact, based on the 'Let's Talk TV Quantitative Research Report" (released in April 2014), "local news" ranked as the most important type of programming, as cited by survey respondents.[28]

82. Even more heartening was that most young participants (between the ages of 18-34) viewed local news as the most important type of programming. More than half of all respondents viewed both 'Canadian programming' and 'local programming' as important as well.

83. The development of quality Canadian and local programming is a function of the resources put into it. This includes financing programs like the $300 million Canada Media Fund (among other development funds); public investments in the CBC; and the Local Programming Improvement Fund. The Canada Media Fund, for instance, helped support $1.15 billion worth of television production in 2012/2013, including more than 26,000 jobs (as measured in full-time equivalents).[29]

84. Nevertheless, resources devoted to strengthening Canadian and local programming are under pressure. Budget cuts to the CBC and the demise of the LPIF in August 2014 place strain on the television system's ability to deliver quality local and regional content to viewers. Proposed changes to the revenue model under pick and pay would also reduce financing contributions to the production sector (as noted above and in the TV Environmental Scan).

85. The Commission is right to point out the structural challenges faced by local television stations. Downward pressure on advertising revenues has disrupted the entire business model, with no clear sense that these trends will be reversed. In BNOC 2014-190, the Commission highlights private local TV station revenue has dropped by $100 million from 2011 to 2012. A structural adjustment is taking place – and it will negatively impact the programming services that so many Canadians hold dear.

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[28] http://www.crtc.gc.ca/eng/publications/reports/rp140424.htm (conducted by Harris/Decima for the CRTC)
[29] Profile 2013: Economic Report of the Screen-based Media Production Industry in Canada

86. Local television is at a crossroads.

87. The response to these changing trends has so far been discouraging. To address these revenue pressures, licensees are (perhaps not surprisingly) requesting regulatory relief over current programming obligations. In the past twelve months, for instance, requests have been made to adjust the way in which local programming requirements are measured[30] as well as to lower the regulatory thresholds on ethnic and third-language programming services.[31] In other cases, jobs and programs are being cut.[32]

88. We fully expect further pressure to be placed on the Commission to ease local programming exhibition requirements in future license renewals unless measures are taken to address these funding challenges. We also expect these pressures will be compounded through a reduction in monies directed at CPE in the event pick and pay is introduced.

89. The Commission has raised useful questions in its notice of consultation [Q23-Q27] that are top of mind for most stakeholders, including Unifor. “Are there alternative ways of fostering local programming?” “What role, if any, should the Commission play to ensure the presence of local programming?” “What measures could be put in place?” These are fundamental questions. Nevertheless, it is discouraging to see the Commission has spent extensive amount of time and attention during the Let’s Talk TV consultation mapping out solutions to address issues around consumer choice (by way of an elaborate proposal on flexible packaging), but relatively little attention on the much more significant problem (in our view) regarding local programming.

90. The only tangible solution floated by the Commission in the BNOC was to consider the elimination of OTA transmission. This, ostensibly, would free up capital that *might* be redirected towards shoring up depleted revenues at local stations. The money this proposal would generate could serve to offset some of the losses suffered when the LPIF ceases to exist. However, this new revenue would not be guaranteed to flow back into in-house production and programming and would also come at the expense of important television access, particularly for remote, rural and low-income audiences. The cost of eliminating OTA transmission is too steep a price to pay.

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[30] Amendment to a condition of licence (local programming obligations), Application 2013-1475-7

[31] Rogers’ application for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty services, BNOC 2014-26

[32] http://www.caj.ca/cuts-at-rogers-and-cbc-will-hurt-canadians-caj/

Unifor recommends:

- **Continuation of the LPIF**

91. Ultimately, any conversation around the protection and enhancement of local programming must come to grips with the revenue challenges local television faces. On one level, this is a conversation about access and inclusivity. There are innovative ways that local stations (in coordination with their larger VI organizations) can explore to deliver services to audiences, whether that's a question of content or platform. On another level, enhancing local television is a question of money and resources. And in our view this is the immediate challenge that must be faced.

92. The Commission's decision to phase out the LPIF was predicated on the Pollyannaish belief that the revenue slump faced by local television services was cyclical, not structural.

93. Declining advertising revenues in conventional television appear irreversible[33]. New funding models must be considered in the short-term, before the system further contracts; to avoid the further loss of "boots on the ground" news reporting, the cutting of more original local programs (replaced with nationally syndicated programming), and potentially further pressure from licensees to cut back on exhibition rules. Local television is a soft spot in the broader TV framework, and must be secured.

94. Now is not the time to end the Local Programming Improvement Fund, and Unifor recommends the Commission provide reprieve to local stations accessing the Fund. The LPIF should be extended temporarily, by restoring the 1.5% BDU revenue diversion fee. The Commission should consider long-term LPIF funding through alternative means, perhaps by capturing revenues from BDUs benefitting (as ISP providers) from the expanded use of online video streaming [34] (dedicating a share of newly captured CPE expenditures to the LPIF) in addition to funds captured per a local programming share of future tangible benefits.[35]

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[33] Peter Miller emphasizes this argument in TV Environmental Scan, 2014 [10.22]

[34] Ibid, see Miller's argument in 4.15, suggesting BDUs gain a higher margin business as ISP providers to an increasing number of consumers streaming video online.

[35] See Unifor submission, January, 2013: *Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction, Broadcasting Notice of Consultation CRTC 2013-558 (Ottawa, 21 October 2013)*

- **Clarifying the Definition of Local Programming**

95. We urge the Commission to undertake a process of clearly defining local news and non-news programming, ensuring that it distinguishes (among other things) between original "in-house" and re-broadcast segments, to help achieve clear and unequivocal outcomes. Spending on original in-house local programming (with separate distinction for original local news programming) should be monitored carefully by the Commission, reported annually by broadcasters (on a service by service basis) and reviewed as part of regular license hearings.

96. We express similar frustration and concern as raised in the intervention of the Writer's Guild of Canada. The absence of detailed (i.e. disaggregated) and accurate spending date on matters such as original local in-house programming expenditures as well as CPE and PNI spending only increases the difficulty in pulling together relevant, evidence-based research as well as economic modelling during license renewals and other public consultations. We support the WGC in its urging of the Commission to address this issue.

- **Strengthen Exhibition Requirements for Original Local Programming**

97. The Commission should provide minimum requirements of 14 programming hours across local television broadcasters during the next group-based licence renewal proceedings in 2016 (regardless of the market size in question), and that also includes mandatory "original" programming hours. These new, more aggressive, original local programming requirements might also be satisfied across a range of broadcast platforms, including online content.

- **Mandatory "Boots on the Ground"**

98. In future license renewals, the Commission should establish minimum thresholds for reporters covering local news. Earlier this year, Unifor raised concerns over Rogers' license renewal applications for CJEO (OMNI-Edmonton) and CJCO (OMNI-Calgary) noting the broadcaster does not operate a news bureau that is charged with reporting original local ethnic news in the province of Alberta, despite being granted licenses to operate two over-the-air ethnic television stations. If local programming and local news are as important to Canadians as has been reported, this practice should be viewed by the Commission as completely unacceptable and rectified through this television review. The Commission should also require broadcasters report on these staffing levels annually.

- **Preserving (and Strengthening) Ethnic Broadcasting**

99. The Commission must ensure any current and future regulatory reforms do not limit or restrict access to third language and ethnic programming that services communities across the country. The regulatory changes proposed in BNOC 2014-190 could adversely affect Category A ethnic broadcasters, creating space for non-Canadian services to potentially displace important Canadian services. This is unacceptable. Any regulatory changes that would have an impact on ethnic broadcasting should be put on hold pending a forthcoming review of the CRTC's *Ethnic Broadcasting Policy*.

100. Any reforms the Commission undertakes (e.g. offering a 'skinny basic' programming package in conjunction with pick and pay), must:
    a. Require OMNI stations be carried within the basic package regardless of whether it is "local" or not; and
    b. Reserve space on the 'skinny' dial for other ethnic services that do not fill the same programming niches.

- **Address the Future of CBC**

101. As was mentioned above, the noticeable absence of any reference to the CBC in BNOC 2014-190 is concerning. Unifor believes in a strong, well-funded, non-commercial and dynamic national public broadcaster. The CBC is a vital piece of the broader TV ecosystem, and (for all intents and purposes) is under threat.

102. Unifor encourages the Commission to undertake a hearing on the future of CBC that occurs subsequent to Phase III of Let's Talk TV consultation and that is connected to the broader effort.

Rethinking Television and Revolutionizing Broadcast Regulation: An Active, Forward-Looking CRTC Approach is Needed

103. It is encouraging to know the Commission is willing to consider bringing programming services for online and VOD content into the larger regulatory fold (with respect to CPE contributions). Unifor sees this as a step in the right direction and an effort to modernize the television regulatory framework that is on the cusp of fundamental transformation, over the long term.

104. To some, the emergence of reliable (and affordable) OTT and Internet-based television services will lure a critical mass of consumers, threatening the existence of the conventional television system. In fact, a November 2013 Scotia Capital media sector market report flags the shift to OTT services "the biggest risk for Canadian pay TV broadcasters."[36] We agree that there is significant risk to the Canadian television system of unchecked growth in unlicensed OTT services.

105. Nordicity reports that one-third of Canadians, 18 years of age and older, watch television programs over the Internet in 2011. The share of adults watching television online has more than doubled in five years.[37] OTT service providers like Netflix, YouTube, iTunes, Apple TV and others are growing in popularity[38], although to what degree consumers are effectively "cutting the cord" on conventional television services, and its short-term detrimental impact remain unclear.[39]

106. In fact, the immediacy of the impact OTT services (as well as the presence of online content programmers and aggregators) will have on the TV ecosystem is not our primary concern. Although there's no denying the threat is real, and impending.

107. The success of this Let's Talk TV consultation could very well hinge on how the Commission approaches the question around OTT inclusion. Not only are the lines between traditional broadcasters and distributors and OTT services like Netflix becoming increasing blurred, there is an assured impact on the former by the latter. The question is when will be the tipping point, and will the system as we know it today be sufficiently prepared?

108. The Commission declares "broadcasting services delivered over the Internet or on mobile devices… form part of the television system" (paragraph 15), and acknowledge its mandate to" regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy objectives set out in section 3(1) of

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[36] Scotia Capital Inc. Progress Amid Digital Transformation: A Macro Perspective on the Trends Impacting Investments in the Media Sector; November 2013
[37] Nordicity, The Economic Contribution of the Film and Television Sector in Canada; July 2013
[38] As of 2012, Netflix now has more Canadian subscribers (3.5 million) than pay TV, and is projected to hit more than 4.5 million by the end of 2014 (OTT – Nearing an Inflection Point, Canaccord Genuity, Aravinda Galappatthige and Haesu Lee, June 3, 2014).
[39] See Deloitte, "The Reality of Cord Cutting in North America." http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Technology-Media-Telecommunications/dttl_TMT_Predictions2013_RealityofCordCuttingNA.pdf Report notes less than 1% of pay TV subscribers in North America will have discontinued their subscription in 2013.

the Act" (paragraph 33). Yet the Commission appears strangely comfortable in continuing its exemption of OTT services.

109. As Miller points out in his TV Environmental Scan, OTT in Canada represents approximately 2.5% of system revenues currently. In 2020, that could "easily be 10%." We agree with Miller that the implications of this cannot be ignored. Not the least of which is the below average contributions OTT services, like Netflix, make to Canadian content and Canadian programming. Much is made of Netflix's voluntary contribution to exhibiting CanCon, while evidence shows it still falls far below the average of other online broadcasters in Canada.[40]

Unifor recommends:

- **More robust data collection on OTT operators, including foreign services operating in Canada**

110. Drawing on the analysis provided to the Commission by Miller and Rudniski in 2012, we think it imperative the CRTC engage in a rigorous monitoring of OTT penetration in the Canadian television market, including levels of Canadian content and exhibition through OTT operators. There is good reason for the Commission to develop pre-defined "tipping points" that will trigger deeper discussions around potential intervention.

- **Update the definition of broadcasting revenues to reflect all broadcasting activities of licensees**

111. This is an important (and reasonable) first step in addressing the system's revenue leakage, and should be undertaken by the Commission for the reasons expressed above. Broadcasting is evolving and so must the regulatory system. We see this move as inevitable and will provide useful lessons for potential future regulatory expansion. BDUs and Vertically-Integrated companies are well-positioned financially to shoulder this requirement, although the Commission should take care not to adversely undermine their competitive position among comparable OTT and online services.

112. This should be done only in concert with a fuller examination of alternative contributory and licensing models for OTT services operating within Canada. The Commission must ensure not to create imbalance in the competitive playing field among licensed broadcasters and other online broadcasters and aggregators. In that respect, we support and encourage the Commission to consider the proposal articulated by Friends of Canadian Broadcasting in their intervention to BNOC 2014-190 regarding mandating

[40] Forum for Research and Policy in Communications, "Canadian Content in Online TV"

contribution requirements from OTT services operating in Canada of 10%. Those funds would be directed towards Canadian programming expenditures as well as third parties.

113. We view this as a useful (and practical) proposal, and urge the Commission to take it into serious consideration.

V-Final Comments

114. Unifor would like to appear before the Commission during the oral hearings set to take place in September 2014. Our union will be in the midst of our first Canadian Council taking place in Vancouver, B.C. We will be available to participate in the September hearings from Ottawa on September 8 and 9. We will be available to participate from Vancouver on September 10, 11, 12 and 15. We will again be available to participate from Ottawa on September 16 and onwards.

Submitted by:

Howard Law	Randy Kitt	Angelo DiCaro
Unifor Media Director	Unifor Media Council Chair	Unifor Research Department

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June 27, 2014

Mr. John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Mr. Secretary General;

<u>Re: Phase 3 of Let's Talk TV: A Conversation with Canadians (BNOC 2014-190)</u>

1. On behalf of Unifor, the new national union established on August 31, 2013, we are pleased to submit the attached intervention with respect to Broadcasting Notice of Consultation 2014-190.

2. Created through the merger of the Communications, Energy and Paperworkers Union of Canada and the Canadian Auto Workers union, Unifor has more than 300,000 members across Canada, working in 20 economic sectors.

3. Unifor is one of Canada's largest unions in the media sector, representing more than 12,500 workers, including 5,000 workers in the broadcast and film industries.

4. Unifor asks the Commission to consider the following comments in their deliberations on Phase 3 of its comprehensive review of the Canadian television system ("Let's Talk TV").

5. Unifor looks forward to the CRTC's determination in this matter, and requests to appear before the Commission during the oral hearings set to commence on September 8, 2014.

Sincerely,

Howard Law
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