Pre-Budget Submission to the House of Commons Standing Committee on Finance

August 5, 2016

FRIENDS of Canadian Broadcasting (friends.ca) is:

- An independent watchdog for Canadian content on air and online;
- Not affiliated with any broadcaster or political party; and
- Supported by 364,000 Canadians who contribute their action and after-tax donations to support our work.

FRIENDS seeks an opportunity to present to your Committee during one of its pre-budget hearings in Ottawa (or elsewhere if necessary).

Media infrastructure supports Canadian democracy.

Television is the most important source of local news in Canada.[1] A December 2015 survey by *Thinktv* asked Canadian adults: "Which one of the following media is your primary source of local news?" At 36%, television eclipsed newspapers (23%), radio (20%) and the internet (18%)".

Local news on TV supplies oxygen for Canadian democracy, offering citizens the information they need to make informed judgments and decisions, while connecting them to their communities and local leaders in municipal, provincial and federal political circles.

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[1] *NLogic Thinktv* OmniVu Survey, December 2015, National A 18+. NLogic was previously known as the *Television Bureau of Canada*.

FRIENDS OF CANADIAN BROADCASTING

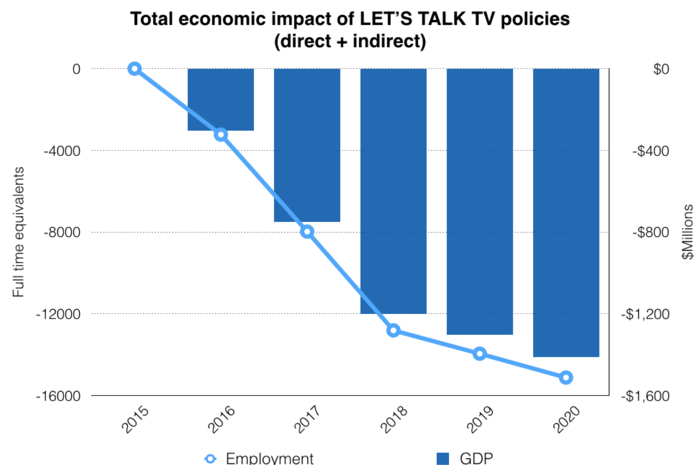
And local TV – especially news – is very popular with Canadians. A recent Nanos Research poll[2] found that:

- 92% agree that local news is valuable to them.
- 90% agree that their federal Member of Parliament should work to keep local broadcasting strong in their community.

Yet local independent broadcasters and the news programs they produce are teetering on the brink. Despite the high value Canadians place on local TV news, research commissioned by FRIENDS and others has found that the near term future for Canadian TV is bleak as a direct result of the CRTC's recent *Let's Talk TV* policies.

In their report, *Canadian Television 2020: Technological and Regulatory Impacts*[3], Nordicity and broadcast consultant Peter H. Miller concluded that by the year 2020 the CRTC's *Let's Talk TV* decisions will cost Canada:

- 15,130 media jobs,
- $400 million annually in 'Canadian Programming Expenditures' (18%), and
- a $1.4 billion annual hit to Canada's GDP.



Changes in technology or audience behaviour have nothing to do with these negative impacts. All this is a direct result of *Let's Talk TV* regulatory decisions under the influence of the Harper government – putting in doubt the viability of local TV news in Canada.

Compounding this 'hit', independent television stations in small and medium markets are highly vulnerable to adverse economic trends, according to another Nordicity/Miller study, *Near Term Prospects for Local TV in Canada*.[4] The study's conclusion is that "Canada's local television heritage is at risk of major cutbacks and station closures – which could be

[2] Nanos Research, September 29, 2015: http://www.friends.ca/poll/13122

[3] This research study was sponsored by FRIENDS in collaboration with ACTRA, the Canadian Media Guild, the Directors Guild of Canada and Unifor:
http://www.friends.ca/pub/13491
http://www.friends.ca/node/13490
http://www.les-amis.ca/node/13639

[4] This study, co-funded by FRIENDS and Unifor, was submitted to the CRTC on November 5, 2015: https://www.friends.ca/files/PDF/nordicity-miller-report-on-future-of-local-tv-final.pdf

avoided, deferred or minimized by the CRTC's contemplated reallocation of mandatory Broadcast Distribution Undertaking (BDU) 'local expression' contributions, if focused on private small and medium market TV stations".

This *Near Term Prospects* study projects that up to half of local stations in small and medium markets – where there is often no local TV alternative – will fade to black by 2020 in the absence of a regulatory response. This would also lead to an estimated 910 layoffs of journalists and others who work to put local news on the air in Canada's smaller cities.

The study also found that the most vulnerable stations are independently owned and in small markets such as Kamloops, Medicine Hat, Prince George, Lloydminster, Lethbridge, Red Deer, Regina, Yorkton, Prince Albert, Thunder Bay, Sudbury, Sault Ste. Marie, Timmins, North Bay, Peterborough, Kingston, Rivière-du-Loup, Val-d'Or, Rouyn-Noranda, Carleton, Rimouski, Sydney, Saint John, Moncton and St. John's. When large-market local stations are included, the study projects that job losses would rise to 3,490.

The CRTC released a new policy for local TV news[5] on June 15th. The Commission's plan is too little, too late, and is based on the erroneous assumption that there is sufficient money in the Canadian television system to ensure a future for local TV. Measures announced to help independent stations in small markets are not scheduled to kick in until September 2017 – despite independent local stations declaring an emergency eleven months ago.[6] The policy offers a shell game, giving new support to local independent stations while cutting existing funding. And while the new Independent Local News Fund is larger than the fund it is replacing its support will be spread thinner as more broadcasters will be covered.

Stations will close and the CRTC will carry the can, although affected viewers and listeners will likely blame the government.

A FAIR CONTRIBUTION FROM NON-TRADITIONAL TV PLAYERS

FRIENDS wishes to draw your attention to a second pressing concern – the privilege bestowed by public policy on Netflix and other foreign internet broadcasters to the disadvantage of Canadian broadcasters.

The CRTC's 1999 decision to exempt non-traditional IP-based forms of television distribution and exhibition was based on the following logic: "the Commission does

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[5]Broadcasting Regulatory Policy CRTC 2016-224: http://www.crtc.gc.ca/eng/archive/2016/2016-224.htm?_ga=1.8811443.701070408.1365596358
[6] http://www.friends.ca/files/PDF/smits-letter-to-crtc-re-interim-local-tv-fund-final-09-03-15-3.pdf

not consider that broadcasting in new media currently poses a threat to traditional broadcasting licensees' ability to meet their obligations".[7]

This seventeen year-old statement is no longer valid. Netflix alone has 5.2 million subscribers in Canada.

As a result, FRIENDS submits that the CRTC is *legally obliged* to revisit the New Media Exemption Order and determine what contributions pursuant to the Broadcasting Act would be appropriate for 'over-the-top' (OTT) services and other internet-based TV players.

This does not mean the CRTC must necessarily license such players. Adding conditions of exemption requiring some form of contribution would be entirely appropriate, and in FRIENDS' view, is essential.

Canada is not alone in grappling with the issue of the appropriate role and contribution of foreign OTT services. France has been negotiating with Netflix on conditions of entry, given pre-existing European 50% exhibition requirements and a 15% French-content expenditure requirement,[8] while Australia has recently moved to require Netflix-like foreign program distributors to collect sales taxes.

Rogers' *Shomi* and Bell's *CraveTV* collect sales taxes from their Canadian customers. But their direct competitor, Netflix, does not. Budget 2017 should address this anomaly.

Netflix Canada is estimated to spend less than 5% of its Canadian revenues on Canadian content. It is not known whether the rights purchased for this sum refer only to Canadian rights or include other territories.

Canadian Broadcast Distribution Undertakings (BDUs) are required to contribute 5% of their revenues to fund the creation of Canadians programs. The average contribution requirement from private Canadian broadcasters is 30%.

Netflix and similar OTT services operating in Canada (Crackle, Canal+ etc.) and elsewhere are part programmer/part distributor. Therefore, a rate somewhere between 5% and 30% would be appropriate.

A majority of Canadians would support mandated contributions from TV-like internet programmers to Canadian programming as a cost of doing business here. A September 2015 Nanos Research poll[9] commissioned by FRIENDS found that:

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[7] Broadcasting Regulatory Policy CRTC 2009-329, *Review of Broadcasting in New Media*, para 22: http://www.crtc.gc.ca/eng/archive/2009/2009-329.htm
[8] *Netflix confirms France launch despite protectionist hurdles*, France24.com, May 9, 2014.
[9] Nanos Research, September 29, 2015: http://www.friends.ca/poll/13122

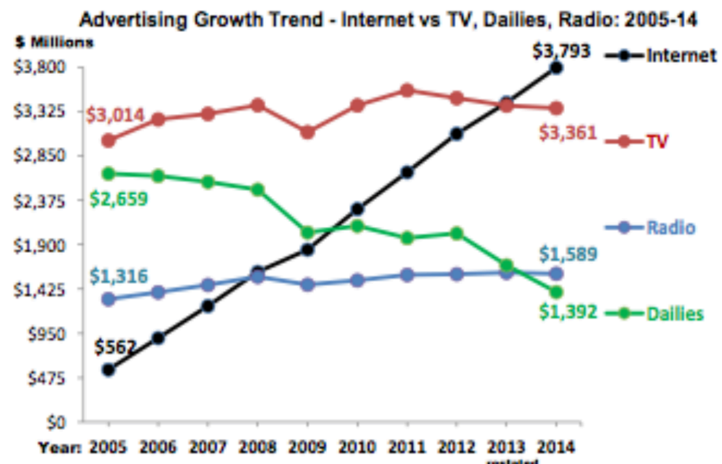
- Three in five Canadians surveyed **disagree** (44% disagree; 16% somewhat disagree) with the notion that foreign companies broadcasting in Canada should be exempt from financially contributing to support Canadian programming;

- Almost seven in ten respondents (68%), report that their impression of online streaming service Netflix (or Canal+ in Quebec) would be more positive (44%) or somewhat more positive (24%) if the service contributed financially to support Canadian programming;

- Almost four in five of those surveyed (79%) either agree (64%) or somewhat agree (15%) that foreign companies that broadcast TV programming into Canada over the internet should be subject to the same rules as Canadian companies that broadcast TV programs by cable, satellite or over the air.

RECOMMENDATIONS

First, **tax policy**. Internet advertising is driving structural change, first in print, now in television, as spending has increased eight-fold to $3.8 billion since 2005. That's more than a third of all Canadian advertising.



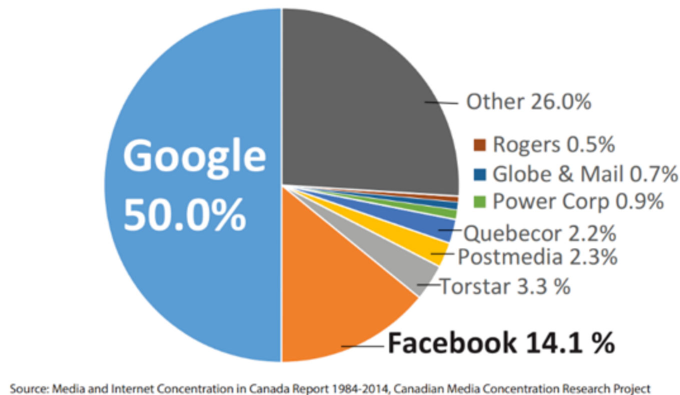
Source: IAB Canadian Internet Advertising Revenue Survey, 2015

Yet federal policies to support local media have not changed since the 1990s. The Income Tax Act should be updated to exclude tax deductibility for foreign-owned or controlled Internet advertising platforms – in addition to cross-border broadcasters and newspapers. Tax deductibility should be restricted to Canadian-owned Internet sites.

This century, foreign-owned digital media have grown exponentially to 35% of the Canadian ad market. Canadian advertisers get the same tax benefits from spending on those ads as from ads in Canadian publications and on Canadian broadcasters. Here is a Public Policy Forum graphic indicating the high level of foreign ownership in this huge, and growing, segment of the ad market:

Who gets the advertising revenue?

Internet advertising revenue, percent market share, 2014



ppforum.ca |3

One of the heaviest digital advertisers is the Government of Canada, and most of this money leaves the country.

The Canadian Film or Video Production Tax Credit (CPTC) supports most independently produced Canadian programming other than local programming.[10] This support should be extended to local news programming.

FRIENDS believes the government should require Netflix and other foreign OTT services to collect sales taxes, as their Canadian competitors must do.

Next year's 600 MHz Spectrum Auction will repurpose this spectrum from broadcast to mobile in sync with our American neighbours. This will force Canadian TV broadcasters to purchase new transmission technology. While Congress has allocated a portion of the windfall revenues from this reallocation to compensate local broadcasters for this one-time burden, Canada has failed to do so. Funding this capital cost could make all the difference for independently-owned stations in small markets.

[10] CPTC was developed when local programming was profitable.

Second, **CRTC policies**:

The government has the right under Sections 7, 15, 26 and 28 of the Broadcasting Act to ask the Commission to reconsider decisions and policies in view of the government's broadcasting policies and priorities.

FRIENDS recommends that the government instruct the Commission to:

- Increase BDU contributions to support local television;

- Amend its Digital Media Exemption Order to require foreign and domestic over-the-top (OTT) television providers to contribute to Canadian programming. FRIENDS recommends that a minimum contribution requirement of 10% of Canadian revenue be levied on OTT services operating in Canada. This could be directed to a combination of Canadian programming expenditures and third parties such as the Canadian Media Fund and CBC/SRC. FRIENDS recommends that, given its importance, a minimum of 5% of OTT revenues be directed to the CBC/SRC, exclusively for programs of national interest (PNI);

- Ensure that internet service providers and mobile operators are required to give priority to internet-distributed Canadian local media through such measures as exemptions from bandwidth caps.[11]

We look forward to discussing these ideas with the Committee.

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[11] Commonly known as 'zero rating'.