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Montreal, May 11th, 2017

Without prejudice

Governor in Council
c/o: Mr. Michael Wernick
Clerk of the Privy Council
1000-85 Sparks Street
Ottawa, Ontario
K1A 0A3
Email: info@pco-bcp.gc.ca

RE: Petition to the Governor in Council
Telecom Regulatory Policy CRTC 2017-91
April 6th, 2017 determinations
File no.: 1011-NOC2016-0115
Implementation of National Public Alerting System by Wireless Service
Provided to Protect Canadians
Our file: 31554-003

Sir:

We represent Avis de Recherche Inc. (« **ADR** »).

I. HISTORY OF ADR

1. ADR owns and operated a French-language speciality television channel which was broadcast solely in Quebec. ADR is a public interest television channel exclusively dedicated to public safety. It works closely with police services and other organizations in order to broadcast information relating to missing persons and criminal suspects. ADR produced and broadcast, in collaboration with civil protection agencies, programming aimed at informing and educating viewers on matters relating to public safety and prevention.
2. ADR was first licensed by the Canadian Radio-Television and Telecommunications Commission (“**CRTC**”) on September 4, 2002 as a

Category 2 specialty service by Decision 2002-267. ADR's original licence was for seven years and was to expire on August 31, 2009.

3. The essential condition of ADR's license was to serve as a "media tool" whose scope is to assist law enforcement agencies across the country to obtain clues, tips and leads to help resolve matters of interest to the communities they serve, both local and nationwide. See Paragraph 8.1:

<http://www.crtc.gc.ca/eng/archive/2002/db2002-267.htm>

4. On July 24th, 2007, the CRTC amended ADR's original licence and provided that ADR was to have mandatory carriage pursuant to s. 9(1)(h) of the *Broadcasting Act* on all broadcasting distribution undertakings (BDUs) in Quebec, Decision 2007-246:

<http://www.crtc.gc.ca/eng/archive/2007/db2007-246.htm>

5. The decision to grant mandatory carriage status was based on the unique programming provided by ADR, the public nature of the service and the fact that ADR's business plan was dependent on the receipt of mandatory distribution

CRTC Decision 2007-246 - Paragraph 57

6. Following an appeal by one major Quebec BDU, the CRTC confirmed its decision on January 21, 2008, Decision CRTC 2008-12.

(Paragraphs 1 to 33, Appendix to Broadcasting Decision CRTC 2008-12)

<http://www.crtc.gc.ca/eng/archive/2008/db2008-12.htm>

7. ADR applied for renewal of its broadcasting licence, as well as the renewal of its mandatory distribution order. None of the major BDUs which distributed ADR intervened to oppose. Only Telus, which represents less than 2% of digital television subscribers in Quebec, opposed ADR's renewal application.
8. On August 8th, 2013, the CRTC granted ADR a seven (7) year renewal of its broadcasting licence, but without mandatory carriage (Decision 2013-389, Annex 1). In a separate decision, Order 2013-380, the CRTC required all Québec BDUs to provide mandatory carriage to ADR until August 31, 2015, after which, Quebec BDI's would no longer be obligated to carry ADR.

All other applicants requesting renewal of their Mandatory distribution order at the same April 2013 public hearing had their Mandatory distribution order renewed for the full term of their respective broadcast license.

Broadcasting Regulatory Policy CRTC 2013-372

Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act

(Analysis of the applicants - Avis de recherche - Paragraphs 93 to 101)

<http://www.crtc.gc.ca/eng/archive/2013/2013-372.htm>

CRTC Decision 2013-389 (August 8, 2013)

Avis de recherche - Licence renewal

<http://www.crtc.gc.ca/eng/archive/2013/2013-389.htm>

Broadcasting Order CRTC 2013-380

Mandatory Distribution Order - expires August 31, 2015

<http://www.crtc.gc.ca/eng/archive/2013/2013-380.htm>

9. ADR received letters of endorsement with regards to its license renewal application in 2013 from almost every police force in Canada, as well as from the Canadian Association of Chiefs of Police, and the provincial equivalents in British Columbia, Alberta, Saskatchewan, Manitoba and New-Brunswick.

There were letters of support from provincial public safety ministers, from city mayors from Halifax to Vancouver and from victims and missing persons organizations. (Annex 2).

<http://adr.tv/a-propos-adr-lettre-appui.php>

There were also favorable testimonials from Canadian Consumer Groups, who testified at the hearing in April 2013 in support of ADR. See testimony of Janet Lo spokesperson for PIAC (*Public Interest Advocacy Centre*) paragraphs 6988-6990 and 7062-7079 of the transcript:

<http://www.crtc.gc.ca/eng/transcripts/2013/tb0426.html>

10. Many interventions provided evidence of ADR's value in bringing criminals to justice and in reuniting families. The RCMP (Montreal division), which once described ADR as being more important to them than the firearms registry, indicated that the resolution of at least 34 percent of its "*unlawfully at large*" cases was directly attributable to ADR. Organizations outside Quebec demanded that a similar English-language channel be made available.
11. Despite the above, ADR was the only licensee seeking renewal of its mandatory

carriage status not to have such status renewed.

12. Despite the overwhelming evidence of the importance and success of the service, the CRTC rendered a decision entirely inconsistent with the evidence presented.

As a result, Quebec's major cable and satellite distributors, no longer obligated to carry the ADR channel, refused to do so, resulting in ADR laying off all its employees.

13. ADR is currently in the process of winding down its operation as the service could not exist without distribution, a fact that was acknowledged by the CRTC in paragraph 57 of the above mentioned CRTC Decision 2007-246.
14. In furtherance of maintaining ADR's mandatory service, Quebec's Deputy Minister (Lise Thériault), Mayor Coderre, and a resolution passed by the Quebec Federation of Municipalities sent letters highlighting the importance of the ADR service. There were also letters from Michel Arpin (former CRTC Vice-Chair) and Michel Morin (former CRTC Commissioner) denouncing the CRTC's numerous decisions against ADR (Annexes 3 and 4).

In an open letter to the Heritage Minister (Melanie Joly) published in the Huffington Post in April 2016, Michel Morin, a former CRTC Commissioner wrote:

http://adr.tv/docs/appui/Michel-Morin_26avr2016.pdf

Paragraph 5

« *Jamais dans l'histoire de cet organisme fédéral, un service autorisé, ayant rempli à 100% ses conditions de licence n'a été traité de la sorte.* »

Paragraph 9

« *Permettez-moi de vous rappeler, qu'en vertu du modèle Morin ..., ADR obtenait une des meilleures notes que l'on puisse obtenir, tant pour son contenu que pour son accessibilité. Comment le Conseil présidé par le président Jean-Pierre Blais et son vice-président Tom Pentefountas ont pu en arriver à une conclusion différente, reste pour moi un véritable mystère.* »

15. Despite numerous arguments filed by ADR through regulatory procedures in attempts to seek a solution that would assure continuity of the service, they were all promptly dismissed by the same CRTC.
16. A petition to the Clerk of the Privy Council filed in October 2013 and

applications to the Federal Court and to the Federal Court of Appeal were unsuccessful or dismissed (Annex 5).

17. ADR's intent in providing the above is not to seek a review of the CRTC 2013-389, but rather to demonstrate that the CRTC decision can only be explained by bias, improper and/or collateral considerations, which continues to this day.

II. PETITION FOR ORDERS WITH RESPECT TO TELECOM REGULATORY POLICY DECISION CRTC 2017-91

18. The present Petition is made with respect to Telecom Regulatory Policy Decision CRTC 2017-91.

<http://crtc.gc.ca/eng/archive/2017/2017-91.htm>

The CRTC sets out the following Directive therein (Annex 6):

*"The Commission **directs** wireless service providers to implement wireless public alerting capability on their long-term evolution networks by 6 April 2018. Concurrent with this implementation, the Commission **directs** the CRTC Interconnection Steering Committee (CISC) to resolve a number of outstanding issues before the mandatory distribution of emergency alert messages begins. Among these issues is the creation of a public awareness campaign to ensure that Canadians are fully informed about this new initiative.*

Alerts on mobile devices will warn Canadians about dangers to life and property in a timely manner so that they can take appropriate action. The Commission expects that this new capability will be available in approximately 12 months."

19. As appears from the Telecom Regulatory Policy CRTC 2017-91, Annex 6, the CRTC recognized the public interest of ensuring that Emergency Alert Messages be disseminated by wireless service;

1. *Emergency alert messages are issued by public officials designated as emergency management officials (EMOs) for immediate distribution to the public to warn of dangers to life and property. These messages contain information relating to the nature of the threat, the area affected, and actions the public should take.*

(...)

4. *Recognizing the growing importance of wireless services in Canadians' everyday lives and the potential to notify a greater number of Canadians of imminent or unfolding dangers, in Telecom Notice of Consultation [2016-115](#) (the Notice), the Commission issued a call for comments*

regarding participation by wireless service providers (WSPs) in the NPAS.

5. *The Commission asked for comments on, among other things, whether all Canadian WSPs (including primary brands, extensions brands, and resellers) should be required to participate in wireless public alerting (WPA) and, if so, the costs and timelines associated with the cost of implementing WPA, whether alerts should be based on existing standards, and whether monitoring and compliance measures should be put in place.*

(...)

12. *In light of the above, and consistent with the Commission's earlier determination to require broadcasters and BDUs to participate in the NPAS, requiring WSPs to distribute emergency alert messages on mobile devices would be in the public interest and would help protect Canadians from imminent threats to life and property. This approach is consistent with a number of countries that have implemented public alerting on mobile devices.*

13. *Accordingly, the Commission determines that, as a condition of service under sections 24 and 24.1 of the Act, all Canadian WSPs (i.e. both carriers and non-carriers) are required to participate in the NPAS."*

20. The present Petition ("**Petition**") is made under Section 12 of the Telecommunications Act SC. 1993, c38 (the "**Act**"), which reads:

*"12. (1) Within one year after a decision by the Commission, the Governor in Council may, on petition in writing presented to the Governor in Council **within ninety days after the decision**, or on the Governor in Council's own motion, by order, vary or rescind the decision or refer it back to the Commission for reconsideration of all or a portion of it."*

21. As appears from Telecom Notice of Consultation CRTC 2016-115 (Annex 7), the CRTC held public hearings on the subject, which closed on July 25, 2016. It sought interventions from various parties.

"6. The Commission received interventions from a wide range of parties, including individuals; EMO's; municipal, regional, and provincial governments; industry groups; non-profit organizations; technology solution providers; WSPs; the Canadian Wireless Telecommunications Association (CWTA); the Office of the Privacy Commissioner of Canada (OPC); and the Senior Officials Responsible for Emergency Management Federal/Provincial/Territorial Public Alerting Working Group (SOREM). The public record of this proceeding, which closed on 25 July 2016, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above."

22. Unlike large entities, ADR does not have staff that monitors CRTC bulletins that are published. ADR thus, only learnt of the CRTC hearings regarding the mobile Wireless Public Alerting Service contemplated by the CRTC on September 19 and 21, 2016, after seeing the Globe and Mail and Toronto Star articles thereon:

Globe and Mail – September 19, 2016:

<http://adr.tv/docs/presse/GlobeMail-Sept19-2016.pdf>

The Star – September 21, 2016:

<http://adr.tv/docs/presse/TheStar-Sept21-2016.pdf>

23. ADR was thus unable to intervene in the hearings as provided by the CRTC Rules of Practice and Procedure.

III. ADR'S WIRELESS TECHNOLOGY AND THE CRTC'S KNOWLEDGE THEREOF

24. **The CRTC deemed it in the public interest that a Wireless Public Alerting System allowing police and civil protection agencies to reach cellular phone users throughout Canada be implemented to ensure maximum dissemination of missing persons' reports, wanted suspects and public warnings in case of natural disasters.**
25. **Despite the CRTC and its president, Jean-Pierre Blais' knowledge that ADR had developed a functional wireless public alerting system, and that ADR had in fact, referred to its technology in its past dealings with the CRTC on numerous occasions, ADR was not invited to participate.**
26. ADR in fact, developed the technology with the above capabilities in 2009 and its application was released in 2010.
27. The ADR Alert Application was featured as far back as in 2010 by blogger François Charron.

<https://www.francoischarron.com/avis-de-recherche-de-personnes-disparues-sur-iphone-et-le-web/-/mkQ8ENJK6U/>

There is also this short video that explains ADR's Wireless Public Alerting Application:

<http://bit.ly/2kVZqlv>

28. ADR referred to its smartphone applications technology: ADR Alert and Child Alert (Enfant Alerte) in the All Points Bulletin Application for Mandatory Distribution dated May 30, 2012, remitted to the CRTC as part of its application

and the public hearings which were to be held in 2013 (Annex 8).

https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?AppNo=201206897&_ga=2.16571454.941773182.1494348093-379285650.1492019633

“9. ADR has also gone beyond television and the internet. Over the last year, ADR developed and introduced two valuable smart-phone applications: ADR-ALERT and CHILD-ALERT (Enfant-Alerte). The first application allows cell phone users to instantly receive alerts on their very own cell phone, including photos and videos of suspects and missing persons within minutes after police services release the information. The second application allows parents to create a digital profile of their child that they keep with them at all times on their smart-phone. This digital profile, containing numerous photos of the child and vital information, can be instantly sent to investigating authorities in the event that a child goes missing, thereby saving precious time that could make a difference to the outcome. Both of these tools are promoted by police services and missing persons’ organizations in Quebec.

http://www.avisderecherche.tv/adr_alerte.php

<http://www.avisderecherche.tv/child-alert.php>

(our emphasis)

29. The CRTC was informed that the description in the All Points Bulletin application also applied to ADR.
30. ADR expressly mentioned the existence of this technology during the 2013 hearing on its licence renewal, emphasizing that in addition to broadcasting, ADR had also developed and was operating a wireless public alerting application.
31. Unaware of the upcoming hearing, ADR also wrote the CRTC’s J.P. Blais on March 14, 2016 and ADR again pointed out that it had developed the technology, which the CRTC is now seeking to be developed and implemented (Annex 9).

« ADR est également un pionnier dans les nouvelles technologies. Nous sommes la seule base de données totalement fonctionnelle qui regroupe tous les services de police du Québec. Nous avons créé des applications pour téléphones intelligent qui nous permettent de cibler la diffusion de l’information au choix de l’usager toute (sic) en contrôlant la dissémination d’information de nature sensible pour éviter qu’elle se propage abusivement sur le Web. Nous avons développé une autre application promu (sic) par plusieurs organismes qui a révolutionné la sécurité de nos enfants et qui a même été copiée par le FBI aux États-Unis. ET nous avons mis en place un système capable de transmettre de l’information d’urgence sur une multitude de plateformes, incluant tous les réseaux sociaux, aéroports, écrans de points de ventes, pour donner que quelques exemples, à l’aide d’une simple

touche. Donc, nous avons la vision et nous avons créé la technologie pour aller vers le futur. Tout ça dérive de ADR. »

32. Upon learning of the hearings that had just ended, ADR's president, Vincent Géricitano emailed Jean-Pierre Blais, president of the CRTC on September 22, 2016, (Annex 10) and reiterated that:
 - a) ADR had developed a functional wireless public alerting application already successfully used on the ground to transmit police bulletin pertaining to wanted suspects, missing persons and urgent communiques to mobile phone users across Quebec; and
 - b) The application was easily modifiable to adapt to the needs of the rest of Canada.
33. ADR sent the same September 22nd, 2016 email to the Honorable Ralph Goodale, Minister of Public Safety and Emergency Preparedness, to the Honorable Navdeep Singh Bains, Minister of Innovation, Science and Economic Development and to the Honorable Mélanie Joly, Minister of Canadian Heritage (Annex 11).
34. ADR wrote the CRTC's Chris Seidi on September 30th, 2016, again referring to the "ADR Alert System", its wireless technology (Annex 12).
35. The CRTC replied by October 12th, 2016, letter curtly stating that ADR had missed the deadline for participating in the public hearings (Annex 13).
36. As a result of the CRTC hearings, reference to costs of upwards of \$25,000,000.00 to introduce a wireless public alert application with a timeframe of approximately 2 years for implementation have been discussed. See:

Globe and Mail – September 19, 2016:

<http://adr.tv/docs/presse/GlobeMail-Sept19-2016.pdf>

The Star – September 21, 2016:

<http://adr.tv/docs/presse/TheStar-Sept21-2016.pdf>
37. Meanwhile, ADR's application is functional and can be adapted and reinstalled in Quebec within approximately 2 months, and expanded to the rest of Canada within 4 months. The cost to maintain the ADR service, including a Canada wide database such as websites, aboriginal women registry, wireless alerting application was estimated at 0,02\$ monthly per cellular phone user. It should be noted that "911" service costs 46 cents monthly per user.

38. As appears from ADR's Emergency Public Alerting Technology documentation (Annex 14):
- a. ADR's wireless public alerting application is accessible to, and is able to reach 30 million Canadian phone users.
 - b. The ADR application can be downloaded on iPhones, iPads and Androids and allows ADR to communicate information provided by law enforcement to various channels: including websites and social media such as Facebook and Twitter.
 - c. ADR's application is not limited to 90 characters as are applications presently used in the US. Also, unlike applications developed by the province of Alberta, ADR's application allows for the transmission of photos and videos to users, with instant updates.
39. The reference to the ADR Application is set out on its website and:
- http://adr.tv/adr_alerte_utilisation.php
40. As appears from an article published in the Nouvelliste on March 19th, 2017, by Michel Morin, ex CRTC Commissioner, he stated that the existing ADR wireless technology could have avoided the disaster on Autoroute 13 of Montreal, Quebec caused by the snowstorm (Annex 15).

IV. CONCLUSIONS

41. Not only has the CRTC and its president J. P. Blais denied Mandatory carriage status to ADR, thus making it impossible for ADR to continue to operate, they also refuse to even consider ADR's functioning wireless alert application, which technology answers the very needs identified by the CRTC for the security of Canadians and the greater public good.
42. Given the CRTC's mandate to protect Canadians and its obligation to act in the public's best interest, the CRTC had a positive duty to advise ADR of the hearings and give ADR the opportunity to present so as to benefit from all relevant facts.
43. It should be noted that in 2006, CRTC's staff informed ADR's Vincent G racitano of the upcoming public hearings for granting of Mandatory Distribution to "Public Interest" services and suggested ADR apply.
44. The CRTC has, as its practice, to advise parties it knows interested on upcoming hearings that concern their interests.

45. Given all of the above, in the present specific circumstances, ADR had a legitimate expectation to be included in the CRTC hearings.
46. Knowing ADR was an interested party, the CRTC had a positive obligation to respect past practices, to advise ADR of the process and give ADR the opportunity to be heard. The CRTC violated such obligation.
47. The CRTC's failure to include ADR and its failure to consider ADR's technology is due to the bias of the CRTC and its chair, Jean-Pierre Blais, and their refusal and failure to give consideration to all relevant facts and viable options to the prejudice of the Canadian public.
48. Indeed, a wireless public alert system already exists, yet the CRTC imposes an expensive untested alternative with a 2 year wait. The CRTC had the obligation to perform its due diligence in impartial manner and consider all existing solutions prior to imposing costly untested alternatives on the Canadian public.
49. **ADR therefore requests that Telecom Regulatory Policy CRTC 2017-91 Decision be rescinded and/or referred back to the CRTC for reconsideration so that ADR be given full opportunity to present its position. ADR also requests that, in the interim, the Decision be stayed for such time as determined by the Governor in Council.**

ROBINSON SHEPPARD SHAPIRO

S.E.N.C.R.L. • L.L.P.

(Digital signature)

Jean-Pierre Sheppard

JPS/II

- c.c. :
- The Honourable Navdeep Bains, Minister of Innovation, Science and Economic Development, Innovation, Science and Economic Development Canada, 473 Albert Street, Ottawa On K1R 5B4
 - Director General, Telecommunications Policy Branch, 16th Floor, 300 Slater Street, Ottawa, ON, K1A 0C8 – telecom@ic.gc.ca
 - Secretary General, Canadian Radio-television and Telecommunications Commission (CRTC) Les Terrasses de la Chaudière, Central Building, Floor 7 S, 766-1 Promenade du Portage, Gatineau, Quebec K1A 0N2 – demandegec-gicpetition@crtc.gc.ca
 - Mr. Vincent Géracitano – ADR – Vincent@adr.tv