



December 13, 2021

Claude Doucet

Secretary General

Canadian Radio-television and Telecommunications Commission Ottawa, Ontario

K1A 0N2

Dear Mr. Doucet:

Re: Channel Zero Final Written Submission – Broadcasting Notice of Consultation 2021-281 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire distribution and programming undertakings

1. Channel Zero is a member of the Independent Broadcaster Group (IBG) and supports IBG's final written submission in the above-referenced proceeding. In this final written submission, Channel Zero will supplement IBG's comments with more specific detail born of its experience as owner and operator of local independent television station (LITS) CHCH-TV Hamilton and discretionary services Silver Screen Classics (SSC) and Rewind (formerly Moviola).
2. Like IBG, Channel Zero does not believe that Rogers has met the onus on it to demonstrate that its application to acquire Shaw's broadcast assets will result in significant and unequivocal benefits to the broadcasting system.
3. Channel Zero remains, however, cautiously optimistic that Rogers can meet that standard with relatively few choice additional commitments. We offer these comments in that spirit. As in our oral appearance, we will focus these written submissions on (1) support for local news, (2) "help" in the digital transition through App development, carriage and discoverability, (3) provision of set top box (STB) data, and (4) access to the Cynch adtech platform.

Support for Local News

4. As noted in our appearance, Channel Zero's decision to acquire CHCH Hamilton (and CJNT-TV Montreal) from a financially struggling CanWest Global, in effect, saved those stations from closure.¹
5. Our subsequent sale of CJNT-TV Montreal to Rogers put that station in the hands of an operator better able to maximize its potential. However, our reorientation of CHCH-TV, Hamilton to a true locally focussed TV station, today with 25 hours a week of local news and information programming, was, at the time, an innovation that no other Canadian broadcaster recognized as a viable path. Stuck on the old WIC and Canwest model of trying to outbid for top simulcast shows,

¹ <https://www.cbc.ca/news/canada/canwest-may-sell-tv-stations-1.827822>





despite the lack of a competitive national “network” foot print, other potential operators failed to see, or failed to see sufficient profitability in, such a model.

6. Fast forward ten years. Despite COVID-19, CHCH-TV thrives, and we can report, is, at least, marginally profitable. We are just about to move into a new state-of-the art facility – testament to our view that CHCH-TV, and Channel Zero, has a future in Canadian broadcasting.
7. Consistent with our testimony at the hearing, we currently maintain the lead position as the #1 television news provider in the Hamilton, Halton, Niagara region, ahead of CBC, CTV, Global, Citytv and CP24.² We are one of only two significant mainstream local news sources serving the region – the other being the Hamilton Spectator. While we take appropriate credit for our news success and popularity, none of it would be possible without government and regulatory-based support – namely, both:
 - a. the temporary government support provided through COVID-19 via, in particular, the Canada Emergency Wage Subsidy (CEWS) and the CAB administered Emergency Relief Fund, which allowed us to continue to retain our news staff and other operations, and provide crucial coverage through the pandemic; and
 - b. contributions to “locally reflective news” from licenced BDUs through the Independent Local News Fund (ILNF), which [quote from CRTC decision].³
8. There is simply no way that CHCH-TV’s current level and quality of advertising supported local news could have been provided over the last few years, in fact it is unlikely the station would have survived at all, without it.⁴
9. It is also important to highlight that a stand-alone independent television station such as CHCH-TV does not benefit from the inherent economic benefits of being part of a large network, specifically the ability to spread programming expenses and news generation costs over multiple markets. Independent stations like CHCH-TV or CHEK-TV in Victoria are truly unique, endangered species, in the Canadian broadcasting ecosystem.⁵
10. Our perspective on Rogers’ proposals in respect of news are borne of this direct corporate experience, and informed by our awareness of the challenges faced, and currently being met, by

² Channel Zero testimony at Transcript, Volume 4, paras 4329-4330. Numeris Canada, Fall 2021 (August 30 – Nov 28), Mo-Su, Adults 25-54.

³ In 2015, with the cancellation of the former LPIF, and prior to the formation of the ILNF. Channel Zero was forced to restructure its operations at CHCH and cut back on local news staff and hours. With the ILNF, we have been able to return the majority of cut local hours, with a more efficient operation, including one of Canada’s strongest local multi-tasking dual-platform broadcast journalist teams.

⁴ See also Channel Zero testimony at Transcript, Volume 4, paras 4225-4228.

⁵ We were provided with an opportunity to review CHEK-TV’s final written comments, and fully concur with them.





our fellow LITS, particularly those who provide locally reflective news and are recipients of the ILNF.⁶

Potential negative consequences of Rogers local news proposals

11. As has been pointed out by both IBG and Channel Zero, if Corus were deemed an independent for the purposes of the independent local news fund (ILNF), the potential downstream negative impact of Rogers' being allowed to redirect BDU contributions (currently going to Corus) from Shaw systems to its Citytv stations is enormous. We estimate that 60-80% of current "true" independent local television service LITS ILNF contributions could be lost, with devastating consequences for local news in the most underserved, and typically smallest, markets across Canada.⁷
12. Furthermore, Corus, with its pre-existing news network infrastructure, and built-in economics of scale and cost sharing, was never contemplated as an "in need" or "at risk" INLF recipient. In fact, the LPIF (predecessor to INLF) was phased out for a number of reasons, but one of the primary ones was the view that broadcasters such as the CBC, Global, CTV and Citytv in the fund that should have never been there in the first place.⁸ The Commission should not let this happen again.
13. Rogers' newly proposed tangible benefits contribution to the ILNF, while greatly appreciated by LITS, cannot be viewed as a solution to this. The numbers simply don't add up.
14. According to figures provided in this proceeding, Corus currently receives approximately \$13 million annually from Shaw, while total ILNF contributions are currently slightly over \$20 million. Given the revenue/expenditure-based formula for ILNF distributions, if eligible, Corus would receive well over a pro rata distribution of the ILNF \$20 million – hence the estimate of 60% to 80%.
15. Rogers' **one time** influx of \$8.5 million would not even make up for a single year of Corus- driven reductions in current LITS ILNF payments. In fact, it would make up for less than eight months – nowhere near enough time to review, revise and implement a new ILNF framework, even if that was the right approach to take. Which it isn't.
16. The right approach – and the only approach that would ensure approval results in significant and unequivocal benefits to local news – would be to ensure all of the following:
 1. Corus is not deemed eligible for the ILNF as a result of approval of this transaction. One way to accomplish that would be to require Rogers to continue to fund Corus stations out of its Shaw system contributions as a condition of licence;⁹

⁶ Ibid paras 4327-4332.

⁷ Testimony of Channel Zero, Transcript, Volume 4, paras ...

⁸ <https://crtc.gc.ca/eng/archive/2012/2012-385.htm>

⁹ At the oral hearing, IBG Counsel spoke to the rough "match" between BDU contributions to affiliated local services and VI group revenues/expenditures on local news. (Transcript, Volume 2, paras 2106 -2113, 2123-2127.) Appendix 1 to this submission





2. Allow the ILNF to use the one-time \$8.5 million tangible benefit to make up for ongoing BDU contribution reductions, and as interim stop-gap support before any hoped-for broader OTT/online TV or government support mechanism for support of local news is introduced; and
 3. Conduct a review of the ILNF consistent with the currently anticipated 2-year timeframe,¹⁰ but only after determinations have been made on such a broader OTT/online TV or government support mechanism for support of local news.
17. This transaction should not trigger a premature review of the ILNF for the sole reason that a corporate decision by Rogers necessitates it.
18. Rogers' corporate desire to redirect BDU contributions to its Citytv stations, while understandable, demonstrably fails to meet the onus on Rogers to demonstrate that approval of this transaction will result in a significant and unequivocal benefit to the broadcasting system in respect of the provision of local news.
19. The better course of action for the Commission is therefore to restrain that proposed redirection, by condition of license, pending an appropriately scheduled review of the ILNF.

“Help” in the Digital Transition through App Development, Carriage and Discoverability

20. Twenty years ago, the BDU business was booming, and the ISP business nascent. BDUs valued Canadian independent programming services, and saw them as a building blocks to growth. Driven by consumer appetite for more and better TV, BDUs saw their revenues grow from \$6.2b in 2004 to a peak of \$8.9b in 2015, and profits grow to \$1.4b.¹¹
21. Today, BDU revenues are in slow decline, and ISP and Wireless the superior profitable growing businesses. BDUs are seen by their owner-operators as legacy platforms to be mined for profits, and used as a platform for “connectivity” and “cross-promotion” to other products and services. Growth, even if achievable in parts of the BDU business, is of limited interest; It is about cost management on the regulated licensed BDU side and accelerating growth on the unregulated App, OTT & v-BDU and possibly lesser regulated exempt BDU side. BDUs are more interested in bringing in US tech and US Apps, than maintaining their critical role in safeguarding the regulated

provides support for that notion (based on annual aggregate returns), and how accepting Rogers' proposal would completely distort that apparent policy calculus, including:

1. % contributions to revenues 2017/18 & 2019/20 - all 3 major VI/BDUs never exceeded 5%; under Rogers' proposal, Rogers/City/Omni rises to 12.5%, more than a 2x multiple of Bell
2. % contributions to news expenditures 2017/18 & 2019/20 ranged between 10-20%; under the proposed arrangement Rogers hits 40% (again a 2x multiple vs. Bell)

¹⁰ A review of the ILNF was originally anticipated for 2022. Given Bill C-10 and shifting timelines for many CRTC proceedings, including group renewals (independent services are anticipating administrative renewals to 2024), a review of the ILNF in 2023, at the earliest, would now be more logical. This would also be reflective of the Commission's determinations in <https://crtc.gc.ca/eng/archive/2021/2021-203.htm>, at para. 17.

¹¹ CRTC Financial Summaries.





broadcasting system and to provide necessary transitional support to help Canadian independent services survive and thrive.

22. Rogers is at the leading edge of this trend. In the last five to ten years it has been one of the most aggressive cutters of independent linear TV content costs. It has embraced a US IPTV platform and App ecosystem that disincentivises carriage of independent linear channels because of per channel annual fees to Comcast, incentivises import of Apps already available on Comcast in the US and does to give meaningful priority to development, carriage or discoverability Canadian Apps.
23. It is in this context that the Commission must examine Rogers' "commitment", offered on the first day of the oral hearing, to "will provide product and development assistance that will enable independent programmers to offer their services on both linear and digital platforms. This includes helping them create new apps or other outlets so that they can offer their content on Rogers' and on third-party digital platforms."
24. While Channel Zero appreciates this offer of "help", not only is the offer vague and unenforceable, since it was made, Rogers has made us none the wiser as to what it actually means. In our appearance we offered a suggestion on what a concrete commitment to support Canadian Apps, including Canadian independent Apps might look like. We suggested they put a fund together for the development of apps on the Ignite system, on the Comcast Xfinity system.¹²
25. Not only has Rogers not picked up on our suggestion, in a response to a Commission request for information the company has actually confirmed our fears. Despite claiming "The Ignite TV and SmartStream platforms enhance the discoverability of Canadian content and Canadian programming services in several ways", none of the subsequent information provided by Rogers actually supported this claim.¹³ Contrary to Rogers' positioning, making some Canadian content available, making some of it searchable, and offering paid promotion, including paid voice search, cannot be in any way construed as "enhancing discoverability" of *Canadian* content – at best, such measures merely enhance the discoverability of *all* content and/or *any* content that pays for the privilege. With deeper pockets and mandates to dominate on a global basis, international content streamers with presence on the Rogers App platform will always be able to spend more on search, discoverability and app placement than any independent Canadian operator. When examined from our perspective it is clear where our fears of "becoming road kill in this transaction" are rooted in reality.
26. Moreover, in oral reply, Rogers outright dismissed the suggestion of any linkage between foreign and Canadian apps, stating "any prospect of imposing a rule that limits our ability to provide apps on our digital platforms in a timely manner to Canadian consumers would undermine competition

¹² Channel Zero testimony at Transcript, Volume 4, para 4383.

¹³ Rogers Response to Undertakings, RFI 7, at page 39-42.





and consumer choice. It would also give consumers a reason to leave or avoid the Canadian broadcasting system.”

27. Once again, Rogers’ has responded in a way that bears little scrutiny.
28. First of all, Rogers has demonstrated in words and conduct it has little interest in supporting the Canadian broadcasting system, and even less in supporting Canadian independent programmers. Especially with what will amount to direct control to half of the English speaking households post transaction, Rogers is simply not a reliable arbiter when it comes to deciding what is good or bad for the Canadian broadcasting system.
29. Second, providing Canadians that have chosen to continue to subscribe to the closed Canadian broadcasting system with more seamless options to spend less time in it, while pressuring independents out of the system, is not exactly an indication of a “significant and unequivocal” benefit to that system.
30. And finally, independent service suggestions for linkage rules are a perfectly reasonable means of balancing consumer interest in Canadian and foreign apps, independent and VI apps. What they would prevent is the future that seems otherwise apparent – a flood of US apps, some VI apps and very few independent apps, and more reliance on OTT platforms where broadcasters receive pennies on the dollar.¹⁴
31. In the absence of material commitments to “help”, linkage rules would offer an incentive to carry Canadian independent apps, while not precluding carriage of any foreign or VI apps, as long as a reasonable balance is maintained.
32. The onus should be on Rogers to prove otherwise.

Provision of Set Top Box (STB) Data

33. In its oral appearance, Channel Zero questioned Rogers limited commitments to providing an STB “report card”.¹⁵
34. Channel Zero is familiar with Rogers “report cards”. They are one means by which Rogers has, in the last six years, used this proprietary data to its advantage, rather than use it to “help”.
35. Rogers undertaking response confirms our fears. In describing the proposed “report card”, Rogers states “this data will be provided in a report card format prepared by Rogers and will present overall channel performance ... The data will be based on universally used metrics for audience

¹⁴ Channel Zero testimony at Transcript, Volume 4, para 4313-4320.

¹⁵ See Channel Zero testimony on point at Transcript, Volume 4, paras 4208-4219 and 4323-4325.





measurement such as total aggregate viewing minutes and the number of unique viewers over a minimum four-week period (or a longer period of time if deemed necessary and agreed to by the parties)."

36. In other words, Rogers wants to be both the controller of packaging, and through its report card, the arbiter of channel performance. It wants to be able to reduce an independent channel's penetration through repackaging, and then, when aggregate audience inevitability declines with that reduced penetration, argue the channel is under performing. This is not an attempt at an "accurate portrayal" it is a another means of weaponizing STB data.
37. Another factor here is Rogers' pledge to provide data to independent broadcasters is specific to the channel (singular). Measuring one's performance against oneself only provides an indication of improvement or regression from where that same channel was previously. This is the equivalent of an athlete only being provided statistics and measurement against their own performance and not against the field. They would have no idea how they are pacing against the competition.
38. What would be "helpful" is a range of per available subscriber data, including the results of any free previews, in not just a summary format, but also in a disaggregated, but anonymized manner, that can probed and analyzed. This should include:
 - a. total aggregate viewing minutes and the number of unique viewers as well as percentages of active subscribers including per program, daily, weekly and over a rolling six month period, with relevant comparisons to a minimum of 5 other channels chosen by the requesting independent service;
 - b. standard anonymized demographic information such as postal code, age and gender, plus any other "preference" data collected; and
 - c. data ported over from both Shaw and Rogers systems post transaction.¹⁶
39. Post transaction, Rogers will control access and the flow of audience data for half the English-language households in Canada. The burden of responsibility that falls from this outcome is massive. In the current audience measurement environment, the responsibility of the BDU is to pass through the Numeris tone contained in the broadcast signal such that it can be measured. In that current model, all three parties - broadcaster (with its investment in hardware and data fees), BDU (by passing through the signals), and the data collector (Numeris with data aggregation and publishing) - each play their role to create an audience measurement system that all parties in the system benefit from. As the system changes with STB Data becoming a more important currency in audience measurement, Rogers/Shaw, and similarly Bell, Videotron and other BDUs cannot impede, restrict or use to their own advantage this data set simply because of scale. Instead of using this advantage for personal gain, BDUs who control the STB data should bear the responsibility of supporting all parties in the system with parity data.

¹⁶ Ibid, paras 4323-4325.





40. Moreover, given that it has been six years since the Commission determined, in principle, that all BDUs should treat programming services equitably in the provision of STB data (and we know that Rogers Media Corus has been receiving STB data from Rogers and Shaw for some time), provision of such data to independents should, as suggested by IBG, be effective as soon as possible, a minimum of twice a year, and independent of the proposed Numeris ETAM system, or any successor project should the Numeris ETAM project fail.

Access to the Cynch adtech platform

41. Channel Zero fully agrees with IBG concerning the importance of Rogers providing access to Cynch.
42. Adtech platforms like Cynch and SAM are the effective application of set-top box data to TV ad-buying. Access to Adtech today is what access to STB box data was a decade ago. Independents cannot wait that long again.
43. Adtech platforms combine the advantages of targeted, addressable, biddable online advertising with the higher reach, higher per impression value, and more mainstream proposition of TV. Channel Zero expects these platforms to rapidly evolve from a “premium” offering to a “default” one. Within a matter of a few seasons, not years, we expect major national advertisers will incorporate buying via these platforms as an integral component of their ad-buys – not a nice addition.
44. The Commission should understand that absence from these buying platforms will ultimately mean that media buyers won’t be able to select independent stations as they buy on these platforms. By not being “on the shelf” so to speak, a station cannot be purchased.
45. Independent services have differing degrees of dependence on advertising. As the only independent discretionary service operator that also owns an independent local television station, Channel Zero is on the high end of the scale in terms of dependence on advertising revenues. We believe, that for our services, maximising distribution, both linear and VOD – and growing overall revenues through relative increases in advertising revenue – is key to future success.
46. Like IBG, we therefore appreciate Rogers’ commitments in this regard, look forward to Bell making similar commitments with respect to SAM, and would encourage the formation of something similar to the STB Working Committee to specifically monitor and report back on this - perhaps headed up by a neutral voice like ThinkTV,

Conclusion

47. In our intervention we posed two basic, but fundamental questions:



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- a. Does public policy want innovative entrepreneurial independent broadcasters to continue to exist?
- b. Does it want them to at least have a fair opportunity to compete in today's media environment, and provide vital news and information programming and valued Canadian and other entertainment programming to Canadians?

48. To which we would now add “or have we now given up on the broadcasting system?”
49. The CRTC has a strong record of supporting diversity and independent voices. For the reasons outlined in IBG's Intervention, we respectfully urge the Commission to apply the safeguards and support for local news necessary to ensure this transaction truly builds on Ted Rogers legacy in support of Canadian broadcasting, including independent broadcasting, and is of clear net benefit to the broadcasting system. This is not the time to give up on the Canadian broadcasting system. Rather, this is the opportunity to put it on a path to sustainability.
50. While “significant and unequivocal” commitments to independents have not been sufficiently in evidence at this proceeding, what has been evident is that Rogers is not politically tone deaf. Rogers knows that suggesting that it plans to, or at least wants to reserve the right to, cull the herd, and reduce the number of Canadian Independents it carries, their packaging and revenues, would not go over well.
51. Yet, exceptions define the rule.
52. Rogers raised the number of independent channels it will carry to 45, with exceptions, but again reiterated that it should have the right to drop channels. It also said its “not our practice” is threaten to drop or service. The IBG has spent much of its comments questioning this statement.
53. The simple reality being that, even at 45 channels Rogers, wants the right to continue to have the right to determine, in its sole interest, which independent services continue and what die. It wants to move off Shaw's packaging and pricing approaches, particularly to the extent these are advantageous to independents, and choose “best of” terms as between Rogers and Shaw affiliation agreements – from their perspective (or “worst of”, from “independents”). It has consummated a \$26 Billion deal, with a \$1.2 billion break fee, but is still not prepared to make commitments to independents that would at most cost low single 10s of millions of dollars. Quite the opposite, it wants to find 10s of millions of “synergies” and cost savings by continuing, if not accelerating, the tactics and conduct it has employed towards independents since LTTV in 2016.
54. Rogers continues to refuse to acknowledge that at 47% of the English language market it has considerable market power. Despite clear evidence to the contrary, Rogers continues to argue that current safeguards are “ample” and “comprehensive”, presumably hoping that by flattering the Commission no new safeguards will be added.





55. In this forum, independents don't have to prove that Rogers' history of squeezing them constitutes "anti-competitive behaviour", just that it has occurred, and can be expected to continue, to greater negative effect, should this transaction be approved without appropriate new safeguards. Furthermore, with control of 47% of English households, misuse of its market power, either by intention or by accident, decisions made by Rogers won't result in minor financial outcomes for independents. These outcomes will be the knockout blow.
56. The Let's Talk TV framework, that Rogers' has so wholeheartedly embraced, was not designed for an environment in which one single BDU can determine effectively the commercial success of all independent programmers. LTTV assumed that a competitive BDU market exists. It doesn't now and certainly won't when Rogers owns half of it.
57. The fact that a few independents have been "making deals with Rogers in order to not oppose the transaction", as Bell put it, should not be determinative.¹⁷ The IBG had also prudently come close to reaching an agreement with Rogers on the eve of this proceeding, which would have yielded our unequivocal support for this transaction. But that deal was not consummated.
58. There are times to hang together, and times to hang separately. It has not been Channel Zero's past approach to stand out in the crowd. We have always preferred to conduct our business out of the limelight. But on this occasion, we join with the vast majority of independent programmers in calling on the Commission to not pay lip service to its responsibilities under the Broadcasting Act, but to truly ensure, through appropriate safeguards as outlined by IBG, that this transaction is in the public interest and provides significant and unequivocal benefits to the broadcasting system.

Sincerely,
Channel Zero Inc.

[signed electronically]
Cal Millar, President

¹⁷ Transcript, Volume 4, para. 5052.





Appendix 1 - "Match" between BDU contributions to affiliated local services and VI group revenues/expenditures on local news

2017-18 \$ millions	* BDU contributions to "locally reflective news"	affiliated local station revenues	% contrib to revenues	affiliated news -Cat 1 & 2(a) expenditures**	% contrib to news exp
Bell/CTV	28.2	622.9	4.5%	167.5	16.8%
Rogers/Citytv/Omni	5.4	201.1	2.7%	37	14.6%
Shaw/Corus/Global	14.2	338.2	4.2%	133.5	10.6%
2019-20 \$ millions	* BDU contributions to "locally reflective news"	affiliated local station revenues	% contrib to revenues	affiliated news -Cat 1 & 2(a) expenditures**	% contrib to news exp
Bell/CTV	27.2	554.9	4.9%	166.2	16.4%
Rogers/Citytv/Omni	7.3	171.4	4.3%	38.2	19.1%
Shaw/Corus/Global	13	305	4.3%	137.7	9.4%
Post transaction (est) \$ millions	* BDU contributions to "locally reflective news"	affiliated local station revenues	% contrib to revenues	affiliated news -Cat 1 & 2(a) expenditures***	% contrib to news exp
Bell/CTV	27	520	5.2%	160	16.9%
Rogers/Citytv/Omni	20	160	12.5%	50	40.0%
Shaw/Corus/Global	0	290	0.0%	122	0.0%
Source: CRTC Annual Aggregate Returns					
* i.e. to affiliated local stations					
** used as a proxy for "locally reflective news"					
*** assumes \$13 million added to Citytv news expenditures and deducted from Global news expenditures					
Notes:					
1. % contributions to revenues 2017/18 & 2019/20 - all 3 major VI/BDUs never exceeded 5%; under Rogers' proposal, Rogers/City/Omni rises to 12.5%, more than a 2x multiple of Bell					
2. % contributions to news expenditures 2017/18 & 2019/20 ranged between 10-20%; under the proposed arrangement Rogers hits 40% (again a 2x multiple vs. Bell)					

