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Electronically via GCKey

November 29, 2021

Reference: 1011-NOC2021-0281

Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Doucet:

Re: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw – Broadcasting Notice of Consultation CRTC 2021-281 – Rogers’ Response to Commission Undertakings – ABRIDGED

1. Rogers Communications Inc. (Rogers) is pleased to provide our response to the undertakings entered into by Rogers during our appearance before the Commission on November 22, 2021 (Part A below), as well as the undertakings and requests for information (RFI) issued on November 26, 2021 (Parts B and C). We have repeated each undertaking and RFI before our answer.
2. Rogers is designating certain information filed in this letter as confidential in accordance with section 31 of the *CRTC Rules of Practice and Procedure*. Specifically, we are requesting confidentiality for a portion of our responses to Undertakings 6-7, 12-13 and 17 and RFIs 2-4 below, highlighted in yellow. Certain information provided in response to Undertakings 6, 7 and 17 and in response to RFIs 2-4 consists of commercial information that is confidential and has been treated consistently in a confidential manner by Rogers and Shaw. In addition, certain information provided in response to Undertakings 12 and 13 is personal information about an identifiable individual that requires confidentiality to protect the individual’s privacy. Abridged versions of this letter and of Appendix C are also being filed with the Commission. Appendices H and J are only filed in a confidential version.

PART A – UNDERTAKINGS (Issued November 22, 2021)

Undertaking 1:

Submit to the Commission a proposal specifying a specific and reasonable period of time during which Rogers commits to continue delivering the signals

currently distributed by the Shaw SRDU under the same terms and conditions as those currently in force.

Answer 1:

Agreements between Shaw Broadcast Services and BDU customers include terms and conditions governing the relay of both licensed SRDU services (comprising, primarily, over-the-air services) and discretionary television services. For clarity, the relay of discretionary television services is known as a “transport” service. Rogers – as the owner of Shaw Broadcast Services, which provisions both the SRDU service and transport service to BDUs – will continue to honour all existing contracts for SRDU and transport services entered into by Shaw Broadcast Services for the full term of each such agreement.

Rogers would also accept, as a condition of approval of the current transaction, the extension to the transport services (i.e., the wholesale distribution of discretionary services to BDUs) of the same recourse to dispute resolution as is available to BDUs in connection with agreements for the provision of licensed SRDU services (see Broadcasting Decision CRTC 2019-386,¹ Condition of Licence 11), specifically:

If there is a dispute between the licensee and a distribution undertaking, whether operating by licence or by exemption order, concerning the terms under which programming services are or may be provided, then the licensee shall submit to a dispute resolution process if the Commission so requires.

Undertaking 2:

In relation to Rogers’ commitment to provide set-top box reporting on request at no cost, on an annual basis as of April 2022, until the Numeris’ enhanced television audience measurement system is fully implemented, please submit to the Commission an explanation on the following questions:

- a) Why the provision of data at no cost will (sic) is limited to once annually?**
- b) Whether provision of data can be granted on a more frequent basis? If so, could this be provided at no cost to programmers? If the answer is no, please detail anticipated associated costs for programmers.**
- c) Would a programmer be able to request data at any point in the next year or solely as of April 1st 2022.**

¹ See: <https://crtc.gc.ca/eng/archive/2019/2019-386.htm>.

Answer 2:

During our appearance, Rogers committed, beginning April 1, 2022, to provide to independent programmers set-top box (STB) reporting related to their linear TV services, upon written request and at no cost, on an annual basis, until the Numeris enhanced television audience measurement (ETAM) system is fully implemented. Consistent with the Commission's expectations in Broadcasting Decision CRTC 2018-263,² this data will be provided in a report card format prepared by Rogers and will present overall channel performance. The information to be provided will be intelligible and provide an accurate portrayal of a programming service's audience. The data will be based on universally used metrics for audience 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).

Rogers requires three months following the end of each calendar year to process the STB data that would be used to populate these report cards. This is why we would be prepared to accept requests from independent programmers starting no earlier than April 1, 2022 to generate report cards on channel performance in calendar 2021. We believe an annual report card would provide independent programmers with sufficient information about the performance of their linear TV channel(s). We propose a single report card for calendar 2021 in the 2021-2022 broadcast year because we fully expect that Numeris will launch the ETAM audience measurement system by August 31, 2022.

That said, in the unlikely event that the ETAM system remains unlaunched after August 31, 2022, we would be prepared to provide report cards in subsequent broadcast years as well, at no cost. We would also be prepared to offer a second report card in 2022, upon written request and at no cost, provided such requests are received no earlier than six months after the initial request for a report card in that year (e.g., requests for the period January-June 2022 could be received on or after October 1, 2022). The same timeframes would apply to report card requests in subsequent years: on or after April 1 for previous calendar year performance, and on or after October 1 for January-June performance in the current calendar year.

In accordance with the suspensive condition of licence established in Rogers' 2018 licence renewal decision for our terrestrial broadcasting distribution undertakings (BDUs),³ we do not believe a frequency of greater than two times per broadcast year should be imposed for the provision of report cards unless otherwise agreed to by the parties. To do otherwise would impose a greater regulatory burden on Rogers versus our competitors.

² See <https://crtc.gc.ca/eng/archive/2018/2018-263.htm>, paragraph 120.

³ See: Broadcasting Decision CRTC 2018-265 (<https://crtc.gc.ca/eng/archive/2018/2018-265.htm>), Appendix 1, condition of licence 6.

Programmers will be able to request data in writing at any point in each broadcast year, starting April 1, 2022. Rogers would not be able to provide this data for the independent programmers distributed by Shaw's terrestrial BDUs until after the close of the transaction, if this is after April 1, 2022.

Undertaking 3:

Please confirm whether this commitment applies to all independent programmers, or only to programmers that already have an agreement with Rogers or Shaw.

Answer 3:

Rogers and Shaw enter into affiliation agreements with various independent programmers for the distribution of their linear TV services. This distribution generates the STB data for the applicable independent programmer. As a result, our commitment to provide STB reporting will apply to all independent programmers that have an agreement with Rogers or Shaw. As noted above, we will only be able to provide STB reporting related to the distribution of TV services by Shaw after the close of the transaction, if this is after April 1, 2022.

Undertaking 4:

The Commission further notes Rogers' commitment to help independent programmers by providing set-top box data, free of charge, for use on the CYNCH platform.

Submit to the Commission with the following information:

- a) The frequency this Cynch Data be provided and confirm if it requires a request from programmers or be transmitted automatically?**
- b) If NOT yearly –explain why the frequency is different between set-up box data and Cynch set-up box data.**
- c) Please confirm whether this commitment applies to all independent programmers, or only to programmers that already have an agreement with Roger or Shaw and explain why.**

Answer 4:

Rogers acknowledges the importance of programmatic ad platforms in the digital broadcast environment. As such, we will help facilitate Canadian independent

English-, French- and third-language programmers' use of the third-party ad tech platform known as Cynch, specifically by supplying de-identified aggregated STB data that is needed to optimize platform. STB data will be provided, upon written request and at no cost, for the programmer's service(s), segmented by postal code. Before this takes place, the programmer will be required to enter into a commercially reasonable STB data licensing agreement with Rogers and Kantar (or another third party to manage the delivery of real-time and ongoing access to specified STB data) setting out the terms and conditions of our provision of this STB data. The agreement will include provisions that address, among other things: grant of limited licence, ownership of data, scope of permissible use/purpose, data security and privacy clauses, and confidentiality obligations.

Once the agreements are finalized, the STB data will be provided automatically to each programmer twice a year. Programmers will be responsible for entering into a commercial agreement with Cynch, as well as paying licensing fees to use the platform and any other costs to interconnect with it.

Cynch is a self-serve ad buying platform for Canadian agencies and advertisers that allows marketers and agencies to buy TV campaigns online without having to go through direct sales agents. The platform allows users to target audience segments,⁴ build and book tailored campaigns, and track campaign performance. As such, the STB data is typically provided to the Cynch platform twice each year to be used for ad buys at a program level. Ad buyers require this STB data feed to create audience segments for particular marketing campaigns, but the performance of each campaign is still determined by Numeris ratings.

Additionally, Rogers proposes to provide STB data report cards on an annual basis (or on a bi-annual basis after August 31, 2022), upon written request, to independent programmers. As explained in the answer to Undertaking 2, the purpose of the report card is to provide an accurate portrayal of a programming service's audience over a specified period of time (e.g., full prior calendar year or a subset period). The data will be based on universally used metrics for audience measurement, such as total aggregate viewing minutes and the number of unique viewers over a minimum four-week period.

As noted in our answer to Undertaking 3, Rogers and Shaw enter into affiliation agreements with various independent programmers for the distribution of their linear TV services. That distribution generates the STB data for the applicable independent programmer. As a result, our commitment to provide STB data, free of charge, for use on the Cynch platform will apply to all independent programmers that have an agreement with Rogers or Shaw.

⁴ See: <https://thinktv.ca/research/common-advanced-advertising-segments/>.

Undertaking 5:

Although SRDUs and TRDUs are both required to submit to dispute resolution, neither is currently explicitly subject to the Wholesale Code or the standstill rule. Nevertheless, CCSA proposed that Rogers' SRDU and TRDU should be subject to the Wholesale Code and to the dispute resolution and standstill provisions of the BDU Regulations in all of its contracts for the provision of signal transport services. Please comment on CCSA's proposal, explaining how the Wholesale Code could apply to RDUs, including whether any new provisions might be necessary and how the dispute resolution and standstill provisions set out in the BDU Regulations could apply to RDUs, including whether any new provisions might be necessary.

Answer 5:

Rogers strongly disagrees with the proposal to apply the Wholesale Code, as well as the dispute resolution and standstill provisions of the *Broadcasting Distribution Regulations*, to Rogers' TRDU services, SRDU services, and satellite transport services to BDUs.

As noted in the answer to Undertaking 1, above, Rogers would accept, as a condition of approval of the transaction, the application of the dispute resolution provisions set out in Condition of Licence 11 of Broadcasting Decision CRTC 2019-386 to agreements concerning the satellite transport of discretionary services, despite the fact that satellite transport is neither a licensed nor exempt service.⁵ We note that the same dispute resolution provision is already included in Broadcasting Order CRTC 2009-638,⁶ governing the provision of TRDU service, which should continue to apply to Rogers' TRDU services in its current form. In our view, adopting the dispute resolution mechanism for satellite transport of discretionary services would fully address the potential concerns noted by interveners in this proceeding.

While we are willing to accept the above-described application of COL 11, it is neither necessary nor appropriate to impose additional conditions of approval on Rogers with respect to the SRDU, satellite signal transport business and TRDU for the following reasons.

First, interveners' claims regarding risk of anti-competitive behaviour by the combined company lack any merit. Shaw has never been the subject of an undue preference complaint or request for dispute resolution (nor any other allegation that it is breaching its conditions of licence or exemption) in connection with either its SRDU, satellite transport, or TRDU businesses. Indeed, Shaw has worked hard to provide valuable and reasonably priced services to its customers in order to maximize the value of its

⁵ Broadcasting Regulatory Policy CRTC 2012-94 – *Licensing and other issues relating to satellite relay distribution undertakings*.

⁶ See: <https://crtc.gc.ca/eng/archive/2009/2009-638.htm>.

wireline and satellite networks and, in the case of satellite, to support its uplink business. There is absolutely no evidence that the combined company would take a different approach. It would simply not be in the economic interest of Rogers to do so.

Accordingly, there is no need to augment the regulatory rules regarding the negotiation of agreements with BDUs contracting for SRDU, satellite transport, or TRDU services. The confidentiality, dispute resolution, and reverse-onus undue preference provisions in the SRDU licence provide robust protections against the use of the SRDU for the benefit of related programming undertakings and BDUs. With respect to the terrestrial signal transport business, the dispute resolution provision set out in the TRDU Exemption Order is more than sufficient. Moreover, there has never been a single dispute that has arisen with respect to either Shaw's or Rogers' respective provision of TRDU services. Although the TRDU Exemption Order does not contain a provision proscribing undue preference, any concerned party could avail itself of such a measure by initiating an undue preference complaint against the related Rogers undertaking (be it a programming undertaking or a BDU), which it alleges is receiving a preference, pursuant to the *Discretionary Services Regulations* or the *Broadcasting Distribution Regulations*, as the case may be.

Second, the Wholesale Code should not be applied to the combined company's SRDU services, satellite transport services to third-party BDUs or TRDU services as a condition of approval of this transaction. The Wholesale Code was developed to address potential issues arising around the negotiation of fair terms and conditions between BDUs and programmers. It sets out a very specific framework for arriving at a determination of fair market value in such negotiations, none of which are applicable to ensure fair market value in the context of SRDU or signal transport services to BDUs, whether delivered by satellite or terrestrially.

Third, applying or adapting the Wholesale Code and sections 9 and 12-15 of the *Broadcasting Distribution Regulations* (including the standstill rule) to the SRDU, satellite transport and TRDU services of the combined company is unnecessary given the competition in the provision of those services that currently exists and will, upon the closing of this transaction, continue to exist. Rogers' share of the TRDU market is extremely small, and there is a healthy competitive market in Canada for TRDU services. The combined company will compete, in the provision of these services, with: other large BDUs, such as Telus and Bell; non-BDU, facilities-based TRDUs, such as Nextologies; and non-facilities-based, over-the-top terrestrial transport providers in Canada – a form of transport that is growing and will continue to do so.

Fourth, to apply the Wholesale Code or sections of the *Broadcasting Distribution Regulations*, including the standstill rule, to the combined company would be prejudicial and place it at a disadvantage that would not only be unfair to the combined company, but would distort the market for the provision of these services and effectively confer an advantage to other competitors who would not be subject to equivalent regulatory requirements. This is clear from the testimony of Beanfield Metroconnect, which noted that although it was seeking the application of new

regulatory measures against the combined company, its signal provider is neither Shaw nor Rogers, but rather is Bell.⁷

Beanfield's testimony demonstrates that if the Commission wishes to consider imposing new regulatory measures on the provision of relay distribution and signal transport services, it should only do so as part of a broader proceeding to review the TRDU Exemption Order, the SRDU licences of both Shaw and Bell (both of which are subject to the same licence term) or a hearing to consider an exemption order of general application for satellite transport services, which are covered by neither the SRDU licences nor any exemption order. That would ensure all competitors in the relay distribution market would be subject to the same obligations. It is critical that any resulting policy be applied to all competitors to avoid market distortions that would ultimately undermine choice, value, innovation, and investment in connection with RDU and transport services.

Shaw has been a strong and reliable partner for small BDUs and there is no evidence that Rogers would have any reason to behave differently. As stated many times, Rogers will simply step into Shaw's shoes. There will be no material change to the competitive landscape for these businesses.

Undertaking 6:

Comment on the possibility that the Commission impose on Rogers a condition of licence requiring Rogers to increase its local news and local programming commitments on its Citytv stations, which would require the filing of an application by Rogers to amend the conditions of licence of your Citytv stations. In your response, please expand on the impact on your ability to increase your contributions to your Citytv stations and on your ability to absorb additional commitments.

Answer 6:

In accordance with past Commission practice and the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, Rogers requests confidential treatment for some of Rogers' historical and actual financial information being provided for this Undertaking, as well as contractual information. The Commission has consistently treated this financial and contractual information as confidential. Furthermore, some of the information being provided has either not yet been filed with the Commission, or is information that is only disclosed at the

⁷ BNC 2021-281 Hearing Transcript Vol. 4 (November 25, 2021), at 5262 (Dan Armstrong): "We actually use Bell as our TRDU, and they outright refused us for a long time, and there are still issues with getting channels from some of them, because they just won't give them to you...", online: <https://crtc.gc.ca/eng/transcripts/2021/tb1125.htm>

individual station level and not at the aggregate level, and is therefore not publicly disclosed. This information is also not routinely disclosed in the regular course of business and its disclosure could reasonably be expected to prejudice Rogers' competitive position.

In Broadcasting Regulatory Policy CRTC 2016-224 (BRP 2016-224 or the Policy), the Commission stated its intention to rebalance the resources already present in the broadcasting system to help ensure that local television stations have the financial resources to continue providing high-quality local news and information and that there is no erosion of local news in the various markets across Canada.

To achieve this, the Commission implemented the following:

- licensed terrestrial broadcasting distribution undertakings (BDUs) may deduct from their required 5% contribution to Canadian programming up to 1.5% of the previous year's gross revenues derived from broadcasting activities for contributions to local expression.
- licensed terrestrial BDUs operating in markets⁸ with a population of over one million people **may allocate all or a portion of this contribution** to local expression to community programming made in other markets or **to the creation of locally reflective news programming by television stations**.
- all other licensed terrestrial BDUs **may allocate up to 50%** of their contribution to local expression to community programming made in other markets and/or **to the creation of locally reflective news programming by television stations**. The remainder may only be counted for community programming made in the BDU's market; and
- exempt terrestrial BDUs may allocate all of their required 5% contribution to Canadian programming for contributions to local expression.

Further, in the Policy, the Commission indicated that:

"this flexible approach, where VI [vertically integrated] groups maintain a significant level of control over the amounts allocated to local news, is in line with section 2(3) of the Act, which requires that it be construed and applied in a manner that is consistent with the freedom of expression and journalistic independence."⁹

Rogers notes that, consistent with its objective to ensure that local television stations have the resources to provide local news and information, the Commission does not impose any requirements on the stations relating to the funds received for local expression. This is regardless of the fact that in broadcast year 2019-20, Bell contributed \$27.2M to its CTV stations and Shaw contributed \$13M to its Global stations, while Rogers contributed \$7.2M to its Citytv stations.

⁸ Vancouver, Calgary, Edmonton, Toronto and Montréal.

⁹ BRP 2016-224, paragraph 92.

None of the stations that have received BDU contributions for local expression have been subjected to requirements relating to local news and local programming. Consequently, it would be inappropriate and unfair to impose more onerous conditions of licence (COLs) on Rogers' Citytv stations in Edmonton, Calgary, Winnipeg, and Vancouver, particularly given that these four stations are among the weakest in their respective markets. #

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Notwithstanding the above, at the public hearing last week, Rogers made it clear that, as a condition of approval of this transaction, it is fully committed to making incremental investments in its news programming by creating the following strategic editorial initiatives designed to better serve and inform our Citytv audiences across all platforms:

1) *Monthly Prime Time Local News Specials*

- We will produce and air monthly prime time multi-platform news specials in each of Vancouver, Edmonton, Calgary, and Winnipeg markets for a total of 48 specials annually. These specials will tackle important local issues with a combination of investigative/enterprise journalism, in-depth interviews, explainers, and interactive audience engagement techniques through social media, polling, and live studio audience.
- This initiative will strengthen CityNews' ability to provide greater quality coverage of elections and other major public events in these four markets.

2) *Indigenous News Content Team*

- In order to improve coverage of Indigenous issues more broadly across our entire news organization, we will create an Indigenous news team comprised of journalists in each province where we provide news content.
- This minimum 6-person team will be Indigenous-led and cover stories and issues important to First Nations, Métis and Inuit communities in addition to contributing to other CityNews stories.
- An Indigenous news team will bring an Indigenous perspective to these issues and tell these stories in ways non-Indigenous reporters cannot.
- Combined with our existing funding for Indigenous journalism scholarships, it will also provide an important talent funnel for future generations of journalists.
- Lastly, it will also allow CityNews to provide stories, insight, and perspective on these issues to non-Indigenous Canadian television audiences and online viewers worldwide, while supporting non-indigenous reporters in their coverage of Indigenous issues by helping to identify bias and misperceptions.

3) *Western Canada 24/7 Digital News Service*

- In order to help keep Canadians informed on platforms outside of traditional sources (e.g., cable or broadcast channels), we will create a Western-focused news service available on IPTV, digital and connected (“smart”) TV platforms.
- This service will feature a constantly updated curation of top news stories from various Western markets and teams, in addition to live breaking news coverage, thereby providing Canadians with greater access to the latest news and information from a trusted and reliable Canadian digital news source.
- This initiative will also help us grow the presence of our editorial news voice in the West which will enhance editorial diversity in Vancouver, Edmonton, Calgary and Winnipeg.

4) *Western Specialist in Ottawa Bureau*

- We will add 2 Western-based journalists to CityNews’ Parliament Hill team to provide a Western perspective on national issues of importance.
- These journalists will play a crucial role in identifying and reporting on stories, and in developing original story ideas that are relevant to Canadians in the western provinces and BC.

Rogers submits these are substantial commitments to our news programming which will be over and above our regulated spend of 11% of Citytv’s previous year’s gross revenues. Rogers further commits to upholding these commitments until the Citytv licences are renewed in 2023. This will allow the Commission sufficient time to assess Citytv’s local news and programming commitments made prior to and as part of this proceeding along with those of other large conventional broadcasters (Corus and Bell). We do not believe imposing a COL on Rogers is necessary given the commitments we have made and the Commission ability to assess our ability to implement them as part of our imminent licence renewal.

Further, we believe it would be far more beneficial and in line with the flexibility objectives in the Policy to direct Shaw’s local expression funding towards the above initiatives which are designed to strengthen our coverage in the markets we serve through increased editorial investments in our news programming.

Undertaking 7:

Provide the Commission with a breakdown of specific commitments, in addition to those to which your Citytv stations are currently held, subject to a further application, with respect to:

- i. The broadcast of local programming hours in metropolitan and non-metropolitan markets served by Citytv;
- ii. The broadcast of locally reflective news programming;
- iii. Locally reflective news spending;
- iv. The aggregate number of journalists employed in Citytv markets across the country.

In your undertaking, please comment on the possibility that the Commission impose on Rogers these additional commitments as conditions of licence, which would require the filing of an application to amend the conditions of licence of your Citytv stations. In your response, please expand on the impact on your ability to increase your contributions to your Citytv stations and on your ability to absorb additional commitments.

Answer 7:

Currently, Citytv stations in Edmonton, Calgary, Vancouver, Toronto and Montreal are required to broadcast at least **14 hours** per week of **local programming** of which **6 hours** must be **locally reflective news**. Citytv Winnipeg is required to air **7 hours** of local programming each broadcast week of which **3 hours** must be locally reflective news.

Rogers supports the approach to local programming outlined in the Commission's Let's Talk TV policy and does not believe it requires adjustments in light of this transaction. As we explained during the oral hearing, we believe audiences are better served by providing more local news coverage not more hours of news programming that is filled with the same content. We intend to use the additional funding from Shaw to invest in more journalists which will increase the number of stories we can cover and improve the depth and quality of our coverage. Accordingly, for these reasons and those outlined in our response to Undertaking 6, we are not proposing to increase the numbers of hours of local programming and locally reflective news programming we are required to provide under our current licence. We do note, however, that our commitment to broadcast a total of 48 annual prime time local specials in City's western markets will result in incremental hours of locally reflective news programming in these markets.

With respect to local reflective news expenditures, Rogers commits to ensuring that the funding received from Shaw's local expression redirection is incremental to its regulated expenditure requirements for local news. In other words, Rogers commits to ensuring its use of Shaw's local expression funding is over and above its baseline spending requirement of 11% of Citytv's previous year's gross revenues.

We believe our regulated spending level of 11% is an appropriate baseline to use rather than a three-year average expenditure amount which does not take into account revenue variances and the impact of programming decisions. We further

note that using City's 11% expenditure requirement as a baseline will ensure that the Shaw funding is truly incremental to our current news investments, while also taking into account the financial realities of the conventional television sector and news programming in general.

With respect to the aggregate number of journalists employed in Citytv markets across the country, we note that we currently have # [REDACTED] #. Rogers commits to doubling our journalistic strength in our Western markets by hiring a total of # [REDACTED] #. In addition to the # [REDACTED] # we will hire, twelve additional non-journalist staff members will also be required to fulfill the four initiatives outlined in Undertaking 6. We will also hire six (6) Indigenous journalists (i.e., one in each province where we provide news content) who will also be members of CityNews' newly created Indigenous news team and two (2) journalists from the West who will be added to CityNews' Parliament Hill team. This represents a total of # [REDACTED] # to be created.

As with all of Rogers' recruitment and hiring processes, the hiring process will be done in accordance with our Inclusion and Diversity Strategy (further information is provided in our response to Undertaking 10).

By implementing all our proposed initiatives and having larger news teams in our Citytv stations in the Western provinces, we will be able to:

- bring higher quality journalism to our newsrooms by giving journalists more time to research their stories;
- allow our journalists to develop a stronger connection with their audiences;
- offer more diverse news coverage to our viewers; and
- increase the number of locally reflective news stories. We estimate that our incremental investments in news programming will allow us to add 50% (2,500) more reflective news stories in Western Canada every year.

With the increasing amount of false news and misinformation threatening to undermine Canadian democratic, social and cultural institutions, Citytv and its journalists have an important role to play in ensuring that our viewers continue to have access to a trusted news source. As we explained at the hearing, the additional funds will mean that Citytv will be in a better position to increase its investments in news content in the markets it serves which will in turn strengthen the diversity of editorial voices in the system.

As noted in response to Undertaking 6, we do not believe it is necessary for Rogers to file an application to amend the Citytv licences to reflect the above commitments. Rogers commits to ensuring the Shaw funding is incremental to its regulated baseline spend of 11% of Citytv's previous year's gross revenues as a condition of approval until Citytv's licences are renewed.

Undertaking 8:

Provide the list of all independent programming services currently carried by Shaw and Rogers.

Answer 8:

With respect to Rogers' commitment to distribute at least 45 independent programming services (excluding those services operated by Corus) for three years following the close of the transaction, this applies to Canadian independent English- and French-language services.¹⁰ Please see Appendix A for the list of all such independent programming services currently carried by Shaw's terrestrial BDUs and by Shaw Direct. Please see Appendix B for the list of all such independent programming services currently carried by Rogers' terrestrial BDUs.

Undertaking 9:

Provide the Commission with confirmation as to Rogers' commitment to contribute to the Shaw Rocket Fund, for what duration of time and at what level.

Answer 9:

As Rogers mentioned during our appearance on November 22, we will maintain our support for the creation of children's programming by continuing to fund the Shaw Rocket Fund. This will allow both the Shaw Rocket Fund and the Rogers Documentary and Cable Network Funds to achieve their mandates. We believe our proposal to combine the contributions we make and split the money evenly between the two sets of funds is the best way to ensure each remains accessible to a diversity of content producers in the children's, drama, and documentary genres.

Rogers recognizes the importance of Canadian-produced children's and youth programming. We intend to continue to fund the Shaw Rocket Fund because it is a vital source of financing for Canadian producers. We are also proud of the programming that has been produced from the contributions we have made to the Rogers Documentary Fund and the Rogers Cable Network Fund (RDCNF) and want to ensure they will have sufficient money to carry out their mandates.

As a condition of approval, Rogers is prepared to commit to dedicate 50% of the contributions made by our broadcasting distribution, VOD and PPV undertakings to Canadian independent production funds (CIPFs) to the Shaw Rocket Fund for the

¹⁰ As a result, this commitment will apply to the English-language ethnic services operated by Ethnic Channels Group (ECG), TLN and ATN.

balance of Rogers' existing terrestrial BDU licence terms, which are set to expire on August 31, 2025.¹¹ The remaining 50% will be dedicated to the RDCNF. We wish to retain the flexibility to review our funding of CIPFs at that time to ensure we are effectively addressing the needs of the Canadian film and program production industry, taking into account reviews of the *Broadcasting Act* and by the Canada Media Fund of its program, which is expected to commence in 2022 with a full implementation of any changes by 2024.

We note the concerns raised by some interveners related to the level of production funding for children's programming. While our proposal will result in the redirection of approximately \$1.2 million¹² in funding from Shaw Rocket Fund to the RDCNF, we wish to reiterate that children's programming does qualify for the Rogers Cable Network Fund. Rogers will continue to reach out to producers of children's programming to promote the availability of equity funding for their projects. As a result, not only will Rogers maintain the current level of funding contributions to independent program production overall, but a majority of this funding will also continue to be directed to support children's program production through our contributions to both the Shaw Rock Fund and Rogers Cable Network Fund.

Undertaking 10:

Provide the Commission with Rogers' diversity plan, including a list of initiatives and how Rogers is seeking to develop and promote diverse voices. Please provide specifics, about initiatives and programs, in particular focused on underrepresented and equity seeking groups. In addition, please provide details as to how your feature film production initiatives will benefit equity-seeking groups.

Answer 10:

In accordance with past Commission practice and the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, Rogers requests confidential treatment for some of Rogers' historical and actual financial information being provided for this undertaking, as well as contractual information. The Commission has consistently treated this financial and contractual information as confidential. Furthermore, some of the information being provided has either not yet been filed with the Commission, or is information that is only disclosed at the individual station level and not at the aggregate level, and is therefore not publicly disclosed. This information is also not routinely disclosed in the regular course of

¹¹ See: <https://crtc.gc.ca/eng/archive/2018/2018-265.htm>.

¹² Based on contributions made to these CIPFs in the 2020 broadcast year, which is based on the gross broadcasting revenues earned by the relevant broadcasting distribution, VOD and PPV undertakings.

business and its disclosure could reasonably be expected to prejudice Rogers' competitive position.

Please see Appendix C – Undertaking 10 (Rogers Diversity Report) and Appendix D – Undertaking 10 (National Truth and Reconciliation Day Report). Please note that Appendix C contains confidential information, and an abridged version has been included with this submission.

Undertaking 11:

Provide a revised calculation of the value of the transaction, taking into account all revenues from the on-demand services currently operated by Shaw.

Answer 11:

Rogers currently holds national licences to operate terrestrial VOD and PPV services. We will rely on these undertakings to continue to provide VOD and PPV services in the service areas covered by Shaw's terrestrial BDUs. Following the close of the transaction, there will be no need to hold two separate licences to operate the same broadcasting undertakings. As such, and consistent with the CRTC's past determinations and its Tangible Benefits Policy,¹³ we excluded Shaw's terrestrial VOD and PPV services from the value of the transaction because their licences will be surrendered upon closing, immediately prior to the time the share transfer is implemented (and thus, such licences will not be transferred). A decision requiring Rogers to pay tangible benefits on the value of Shaw's terrestrial VOD and PPV broadcasting undertakings would be inconsistent with BRP 2014-459 and past CRTC decisions.

In respect of BCE Inc.'s (Bell) 2016 application¹⁴ to acquire MTS Inc. (MTS), the Commission did not require Bell to pay any tangible benefits on the transaction. Bell advised in its application that, immediately before closing, MTS would surrender its VOD licence. It stated in its Supplementary Brief: *"Finally, with respect to MTS' VOD operations, immediately before closing MTS will surrender to the Commission its licence for a regional VOD undertaking. Bell has a licence for a national VOD undertaking and will offer on-demand programming to MTS' subscribers under that licence post-closing."* In Broadcasting Decision 2016-487,¹⁵ the Commission concluded the transaction did not trigger the payment of tangible benefits and that any exception was unwarranted:

¹³ [Broadcasting Regulatory Policy CRTC 2014-459](#) (BRP 2014-459 or the Tangible Benefits Policy).

¹⁴ [Application 2016-0602-1](#).

¹⁵ See: <https://crtc.gc.ca/eng/archive/2016/2016-487.htm>.

The application before the Commission is solely for the change in control of the licensed BDU and does not raise concerns with applicable Commission policies and regulations. Accordingly, consistent with the Tangible Benefits Policy, this transaction does not trigger the payment of tangible benefits and the Commission is of the view that an exception requiring the payment of tangible benefits would be unwarranted for this transaction. Furthermore, the Commission considers that the flexibility and pricing concerns raised by CAC Manitoba and PIAC to justify imposing tangible benefits are mitigated by the regulatory measures intended to maximize choice for television viewers and foster a healthy and dynamic television market announced in Broadcasting Regulatory Policy 2015-96.¹⁶ (emphasis added)

...

The Commission **expects** MTS to surrender its licence for a regional VOD service to the Commission.¹⁷

Other precedents include Rogers' acquisition of Aurora Cable TV Limited (Aurora Cable) in 2008 and Shaw's acquisition of Mountain Cablevision Limited (MCL) in 2009. In both cases, the VOD licences held by the previous owners of these undertakings were revoked since the acquiror (Rogers and Shaw, respectively) held their own national terrestrial VOD licences. As a result, no tangible benefits were triggered in either case.

In our application to acquire Aurora Cable,¹⁸ Rogers stated: "*Separately, both Rogers and Aurora possess licences to operate video-on-demand (VOD) services. Aurora is authorized to operate a regional VOD programming undertaking to serve Aurora, while Rogers' VOD service is national. Since the nature of each VOD service is identical, Aurora hereby surrenders its VOD licence since it will not be required by Rogers in providing VOD service to the residents of Aurora.*"¹⁹ The CRTC approved Rogers' acquisition of Aurora Cable in a letter decision dated May 29, 2008 (attached as Appendix E). The payment of tangible benefits was not required. In the decision, the CRTC acknowledged that Aurora Cable would surrender its VOD licence at close and that Rogers' national VOD licence would be used, noting that nature of each VOD service is identical.

Consistent with this precedent, the Commission also did not require the inclusion of MCL's terrestrial VOD undertaking in the transaction value subject to tangible benefits when Shaw acquired the company. While it noted that MCL operated a regional English-language VOD programming undertaking, the Commission concluded that no tangible benefits resulted from the transaction.²⁰

¹⁶ Ibid, paragraph 32.

¹⁷ Ibid, paragraph 36.

¹⁸ See: [Application 2008-0287-8](#).

¹⁹ Cover letter, paragraph 9.

²⁰ See: <https://crtc.gc.ca/eng/archive/2009/2009-663.htm>.

The inclusion of Shaw's terrestrial VOD and PPV undertakings in the value of this transaction would require the Commission to amend the Tangible Benefits Policy in the midst of an application. Such a decision would violate the principles of regulatory certainty and predictability and would be completely unreasonable and patently unfair to Rogers and Shaw. The Commission has consistently acknowledged that it would be inappropriate to apply a different Tangible Benefits Policy at the stage where it is considering a transfer of ownership application.

In April 2021, the Public Interest Advocacy Centre (PIAC) and the Forum for Research and Policy in Communications (FRPC) filed a Part 1 application seeking, in part, to amend the Tangible Benefits Policy to: a) include the value of broadcasting distribution undertakings as part of the transaction value subject to tangible benefits; and b) require that a portion of tangible benefits be paid to the Broadcasting Participation Fund (PBF) and Broadcasting Accessibility Fund (BAF). It also requested that these amendments apply to Rogers' acquisition of Shaw. In a letter dated August 6, 2021, the Commission dismissed the application, in part, due to the fact that approval would be inconsistent with the principles of regulatory certainty and predictability:

The CRTC will be examining Rogers Communications Inc.'s application to acquire all of the issued and outstanding shares of Shaw Communications Inc. (Rogers/Shaw transaction) in the context of a future proceeding. **This application will be filed and considered based on the CRTC's existing policies and regulatory requirements** and all interested stakeholders will be able to comment on the application and the proposed tangible benefits package. However, **the CRTC does not consider that a review of the 2014 Tangible Benefits Policy, concurrent with the consideration of the Rogers/Shaw transaction, would be in keeping with the principles of regulatory certainty and predictability upon which the agreement between Shaw Communications Inc. and Rogers Communications Inc. was negotiated and concluded.**²¹

(emphasis added)

Including the value of Shaw's VOD and PPV licences as part of the value of the transaction would clearly be inconsistent with the Tangible Benefits Policy, the Commission's past practice and the principles of regulatory certainty and predictability, which were espoused most recently in the Commission's letter to PIAC dated August 6, 2021. However, if the Commission decided to require that Rogers pay tangible benefits on the value of those licences, Rogers has revised the calculation of the portion of the transaction value that would be subject to tangible benefits under BRP 2014-459.

²¹ See: <https://crtc.gc.ca/eng/archive/2021/lb210806.htm>.

a) Revised Value of the Transaction

As outlined in BRP 2014-459, in calculating the value of tangible benefits, the Commission considers the value of the transaction as a whole, including the value of the gross debt, ancillary agreements and any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities over a five-year period. The Commission's practice is to impose tangible benefits only on the portion of the interest of the television and radio programming undertakings being transferred.

Please refer to Appendix F for the figures and calculations referenced below. The value of the overall transaction (including Rogers' proposed acquisition of Shaw's terrestrial and DTH BDUs, SRDU and programming services, as well as its wireless, Internet and home phone businesses) is currently \$25,246,027,514. That value includes the purchase price (\$20,193,682,887) that Rogers agreed to pay to acquire the Shaw shares, as well as the long-term debt (\$4,549,000,000) and the leases (\$503,344,627²²) being assumed by Rogers.

In accordance with BRP 2014-459, Rogers has applied the "revenue method" adopted by the Commission to allocate the portion of the value of the overall transaction to the interests in the two television programming undertakings – the DTH PPV Service and the 25.17% interest in CPAC – that Rogers is proposing to acquire, along with Shaw's terrestrial VOD and PPV licences that be surrendered by Shaw at the close of the transaction.

Based on the twelve-month period ending November 30, 2020, the revenue achieved by Shaw's DTH PPV Service was \$8,213,347. CPAC's revenue during that same period of time was \$15,793,906. Given that Rogers is acquiring Shaw's 25.17% interest in CPAC, the amount of CPAC's revenue allocated to this transaction is \$3,975,326. Finally, the revenues for Shaw's terrestrial VOD and PPV undertakings for this period were \$30,910,331 and \$13,812,765, respectively. Together, these revenues amount to \$56,911,769, which is 1.0543% of the \$5,397,975,326 total revenue of all undertakings and other assets included in the transaction. Applying 1.0543% to the total value of the transaction, the portion allocated to the DTH PPV Service, Shaw's 25.17% interest in CPAC and to Shaw's terrestrial VOD and PPV services is \$266,173,149.

b) Tangible Benefits

Consistent with BRP 2014-459, Rogers proposed to pay tangible benefits in the required amount of 10% of the value of the interests being acquired with respect to the two television programming undertakings that are included in this application.²³ Applying this percentage to the revised valuation assigned to these undertakings, as

²² This reflects the revised overall value of the assumed broadcasting-related leases, as identified in Rogers' August 25, 2021 response to the Commission's request for information.

²³ Shaw's DTH PPV Service and its 25.17% interest in CPAC.

well as to Shaw's terrestrial VOD and PPV services, would require Rogers to contribute \$26,617,315 to tangible benefits under the Tangible Benefits Policy. A revised tangible benefits package in the amount of \$26.62 million is outlined in Appendices F and G.

In BRP 2014-459, the Commission requires that "at least 80% of such [tangible] benefits be allocated to the Canada Media Fund (CMF) or various certified independent production funds [CIPFs], **unless a compelling case is made that other measures could better meet the public interest.** Of this amount, at least 60% shall be directed to the CMF" (emphasis added). In our application, our proposed tangible benefits package addressed this requirement, with 48% (60% of 80%) of the tangible benefits package of \$5.75 million being directed to the CMF (\$2.76 million) and 32% (40% of 80%) being directed to one or more CIPFs (in our case, \$1.84 million split evenly between the Rogers Documentary and Cable Network Fund (RDCNF) and the Shaw Rocket Fund (SRF)).

As noted in our oral remarks on November 26, we are proposing an updated tangible benefits package in the amount of \$26.62 million that will address a number of the issues raised during the hearing. In particular, we note the concerns related to the impact on local news funding for independent broadcasters, which will result from the fact that Corus will become an independent programmer following the close of the transaction. Since Corus' Global TV stations will become eligible to source funding from the Independent Local News Fund (ILNF), this will have an immediate impact on the funding available to existing ILNF funding recipients.

Rogers understands that several interveners have called for an increase in funding to the ILNF. This proposal raises broader policy issues that extend far beyond our application to acquire Shaw and raises questions about the contribution requirements for BDUs in general. In its intervention, Corus proposed that BDU contributions to the CMF and CIPFs be reduced and a portion of those funds be redirected to the ILNF. We believe such a redirection should only be considered on an industry-wide basis and should not be implemented as part of this proceeding. Rogers, alone, should not be required to address the funding of local news by independent local television stations. The Commission previously indicated that it would review the ILNF funding model in 2022,²⁴ and this suggested redirection of funding could be addressed as part of that proceeding.

Until the Commission's review of the ILNF policy takes place in 2022, Rogers proposes to address the ILNF funding challenge on an interim basis. As noted above, the Commission is prepared to consider exceptions to its Tangible Benefits Policy where "a compelling case is made that other measures could better meet the public interest." Under our revised benefits package, we continue to propose allocating 48% of the \$26.62 million to the CMF (approximately \$12.8 million) to support the ongoing creation of original Canadian content. However, with respect to the 32% of the \$26.62

²⁴ See Appendix 1 to Broadcasting Regulatory Policy CRTC 2016-224 (<https://crtc.gc.ca/eng/archive/2016/2016-224.htm>).

million that would normally be directed to CIPFs (approximately \$8.5 million), we propose that this funding be allocated to the ILNF as a lump-sum payment following the close of the transaction for the reasons noted above.

The discretionary portion of Rogers' revised tangible benefits package will now increase to \$5.32 million (i.e. 20% of the \$26.62 million total package). We propose to maintain our original commitment of approximately \$1.15 million to fund 15 film festivals in the Western Canada and B.C. These festivals are devoted to or include films that support the participation of underrepresented groups in the broadcasting industry. Providing funding to support the participation of equity-seeking groups within the Canadian broadcasting system, such as film festivals, was explicitly identified by the Commission in the Tangible Benefits Policy as an eligible discretionary funding initiative. We believe that funding for these film festivals is essential given their support for the participation of groups in Canadian society that have faced systemic barriers to access and have historically been underrepresented. We continue to request the flexibility to contribute this film festival funding over a shorter period of time than the standard seven years outlined in BRP 2014-459. Providing a lump-sum payment will benefit many recipients who may be in need of an infusion of new funding to help them recover from the economic impacts of the COVID-19 pandemic.

In addition to the film festival funding noted above, Rogers proposes to allocate approximately \$4.17 million to six other initiatives in support of underrepresented groups within the Canadian broadcasting system, as well to support the development of solutions to promote the accessibility of all broadcasting content in Canada. We acknowledge the comments made by several interveners who expressed the need for support within the Canadian broadcasting system to maintain and enhance the diversity of voices, both behind and in front of the camera. These initiatives are as follows:

1. Chinatown Story Telling Centre, Vancouver - \$249,000 over seven years;
2. NSI-Winnipeg - \$1 million over seven years;
3. Banff World Media Festival - \$1 million over seven years;
4. University of British Columbia School of Journalism, Writing, and Media Scholarship fund for BIPOC students - \$1.4 million lump sum endowment;
5. Sarah McLachlan School of Music, Vancouver, Surrey, Edmonton - \$175,000 over seven years; and
6. Broadcasting Accessibility Fund (BAF) - \$350,000 over seven years.

The above-noted initiatives have been recognized by the Commission as eligible discretionary initiatives under BRP 2014-459.²⁵ Additional details concerning the proposed allocations noted above, under Rogers' revised tangible benefits package, are set out in Appendix G.

As noted during Rogers' appearance on November 26, 2021, the Rogers Group of Funds has an agreement with the Black Screen Office (BSO) to fund the creation of a

²⁵ Paragraph 31.

script development fund.²⁶ On June 29, 2021, the BSO announced the creation of a new \$750,000 script development fund in partnership with Rogers Group of Funds and the Canadian Independent Screen Fund for Canadian Black and People of Colour (BPOC) content creators (the CISF), delivered over three years. The fund will support creators through the writing process, from outline to script, to create pitch-ready projects for networks, studios, cable, and streaming platforms. The objective of the new Rogers/BSO Script Development Fund is to provide BPOC storytellers with the opportunity to develop scripted or unscripted (documentary) content in English or French for the international market. Rogers is contributing the entire \$750,000 to this initiative, which will be administered by the CISF. It does not form part of Rogers' benefits package related to our acquisition of Shaw. The CISF is not a Canadian independent production fund.

Finally, in addition to our support of the CISF, the Rogers Group of Funds has a strong track record in supporting creators from underrepresented groups across Canada. Most recently, on November 12, 2021, the Rogers Group of Funds and Creative BC announced plans to jointly establish a new \$1 million fund for Indigenous creators in British Columbia.²⁷ The Fund is Canada's first provincial-national partnership focused on Indigenous creators and will also be the first targeted Indigenous screen fund at Creative BC. With a priority on Indigenous sovereignty and decision-making, Creative BC will undertake a collaborative consultation process within the Indigenous community of content creators in B.C. The process will contribute to the creation of a relevant, targeted, and responsive suite of programs over four years. To launch the Fund, a collaborative partnership with the Indigenous Screen Office opened the first program on November 12, delivering a top-up to B.C.-based recipients of their recently announced Indigenous Screen Office Development Grant program. This initiative does not form part of Rogers' benefits package related to our acquisition of Shaw.

On November 2, 2019, Creative BC and the Rogers Group of Funds announced support for domestic creators in British Columbia that encourages the development of motion picture projects in the documentary series and factual series formats.²⁸ The \$800,000 *Rogers + Creative BC Documentary and Factual Development Fund* is being delivered over two years, launching in January of 2020. Importantly, the Fund supports filmmakers from equity-seeking groups in the province to increase capacity and diversify storytelling. This initiative does not form part of Rogers' benefits package related to our acquisition of Shaw.

²⁶ See: <https://about.rogers.com/news-ideas/black-screen-office-launches-fund-in-partnership-with-rogers-group-of-funds-and-canadian-independent-screen-fund-for-bpoc-creators/>.

²⁷ See: <https://about.rogers.com/news-ideas/rogers-group-of-funds-and-creative-bc-announce-1-million-fund-for-indigenous-storytellers-in-british-columbia/>.

²⁸ See: <https://www.creativebc.com/2019/11/02/rogers-group-of-funds-creative-bc-announce-800000-partnership-supporting-bcs-motion-picture-producers-.php>.

Undertaking 12:

Provide the consulting agreement between Rogers and Mr. Natale, if any, with respect to the Shaw transaction. If there is no such agreement, and will not be such an agreement, please confirm this.

Answer 12:

#.

Undertaking 13:

Provide a revised calculation of the value of the transaction, taking into account the Consultation Agreement between Rogers and Mr Natale with respect to the Shaw transaction.

Answer 13:

During our appearance before the CRTC at the hearing on November 22, Commission legal counsel questioned whether the value of the transaction should include a consulting agreement with Rogers' former CEO that was reported in the media. # #, including it in the value of the transaction would be contrary to the Tangible Benefits Policy. The Policy does not contemplate including the purchaser's consulting contracts in the value of a transaction.

The Commission has always been clear that its approach to determining the transaction value in changes of effective control is the total of all considerations passed between the buyer and seller. As such, a consultation agreement would only be included in the value of a transaction if it was entered into with the seller of the business.

The issue of including a consultation agreement in the value of a transaction was considered by the Commission in Broadcasting Decision CRTC 2014-421. The Commission reiterated in the Decision its approach to consultation agreements, stating it was the value of the vendor's employment or consulting agreements that would be included in the transaction value:

21. As stated in Broadcasting Public Notice 2008 57, the Commission determines the value of the transaction for the purposes of calculating tangible benefits based on the interest being acquired and adds elements such as assumed debt and leases to this value in the same proportion as the interest being acquired. It also includes other considerations to the vendor such as employment or consulting agreements. (emphasis added)

In the present case, given that Mr. Natale is not the seller of the business, any consultation agreement # [REDACTED] # with the buyer would not be considered part of the value of the transaction.

Undertaking 14:

In addition to the commitment to provide the final Director's Nomination Agreement within 30 days of the close of the transaction, please provide, revisions to the Director's Nomination Agreement with suggested language providing for more certainty as to situations in which recusal would be required by SLFT nominees.

Answer 14:

We confirm our undertaking to submit a copy of the final, executed Director Nomination Agreement to the Commission within 30 days after the close of the transaction. # [REDACTED]

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Undertaking 15:

Submit additional details, if any, on measures to ensure access and local programming are met for licensed and exempt undertakings going forward, whether existing measures will be enhanced or maintained and whether any new alternative measures will be implemented.

Answer 15:

Community television has been a foundational aspect of Rogers' BDU service for more than fifty years. Rogers takes great pride in delivering community channels that not only reflect the communities we serve, but also engage them in the process. In each community we serve, we engage with volunteers and local access producers to create and acquire highly relevant community programming.

Following the approval of the transaction, Rogers will bring its strong record of compliance to Shaw's community channels. We will also incorporate Shaw Spotlight's

recent and innovative programming and access initiatives into our community channel model to propel the combined company's community channels forward in a manner that is both responsive to the needs and interests of our communities and in full compliance with the requirements of the CRTC's Local and Community Television Policy.

In an April 28, 2020 letter sent to Shaw requesting additional information related to the Kelowna programming logs, Commission staff noted that Shaw Spotlight had made progress since Broadcasting Decision CRTC 2018-266,²⁹ stating: "We recognize the efforts you have made toward achieving compliance with the exhibition requirements applicable to your community channels since the renewal of your broadcasting licences in 2018."

Shaw Spotlight is on the path to full regulatory compliance. Rogers commits to ensuring access and local programming requirements for licensed and exempt undertakings are met going forward.

Below, Rogers provides a high-level outline of existing initiatives as well as new strategies and plans that we intend to explore, leverage, and/or introduce upon approval of the transaction, to ensure regulatory compliance is achieved.

Existing Initiatives to be Explored Upon Approval of the Transaction

Hiring of Access Coordinators

Shaw Spotlight is currently in the process of hiring three new Access Coordinators. Based in Victoria, Kelowna and Prince George, these new Access Coordinators will focus on sourcing and supporting access programming, with particular focus on communities in which Shaw does not have a physical studio. Access Coordinators will be expected to travel across communities within their assigned markets to meet with community members and groups to increase awareness of access opportunities at the local Spotlight channel and provide support for their productions. Rogers will review the effectiveness of this strategy and whether there are additional regions that would similarly benefit from a dedicated Access Coordinator.

Low-touch Approach by Shaw Spotlight

Since 2018, Shaw Spotlight has strived to maximize access content across all its systems. Shaw Spotlight aims to empower access partners to produce programming autonomously, pursuant to their "self-serve" model, wherever possible. To facilitate a self-serve environment for access producers with varying levels of experience or skill in video production, Shaw employs agile, easy-to-use production solutions, which support a more accessible production ecosystem. Shaw Spotlight offers smartphone recording kits, which include a Google Pixel 2 phone, camera gimbal, external

²⁹ See: <https://crtc.gc.ca/eng/archive/2018/2018-266.htm> (BD 2018-266).

microphones, and a standard or flexible tripod, and enables simplified production and post-production through Android-supported apps.

In our initial review of the Spotlight “digital by default” strategy, Rogers recognized that Shaw’s innovative approach to access programming is designed to modernize the community television experience. The Commission itself recognized in 2016 that Canadians were adapting to new technologies. We applaud Shaw Spotlight for evolving and expanding their approach to access production and acquisition. Their “low touch” model was rather prescient given the pandemic. In fact, since implementing the model in 2018 – and despite the numerous operational challenges posed by the pandemic – Shaw reports that by the end of the 2020-21 broadcast year, a full 65.5% of its access content was self-serve or turnkey.

New Plans or Strategies to be Introduced or Explored by Rogers

Additionally, to achieve compliance and enhance the community channels across the combined company’s footprint, Rogers intends to introduce several new initiatives:

Indigenous Community Ambassadors:

As communicated during Rogers’ presentation to the Commission on November 22, Rogers is committed to building on Shaw’s existing relationships with Indigenous communities and access producers across the combined company’s footprint. Rogers will help empower and enable Indigenous-led programming by:

- consulting with Indigenous communities throughout our combined company’s footprint;
- hiring 10 Indigenous Community Ambassadors whose role will include:
 - engaging with local Indigenous communities;
 - raising awareness of opportunities and resources available at the community channel; and
 - identifying and removing any barriers to access;
- increasing Indigenous perspectives on various issues covered by the community channel by connecting Indigenous subject matter experts with internal editorial leads; and
- developing robust but flexible mentorship opportunities for aspiring Indigenous content creators.

We believe these new initiatives will:

- a) increase Indigenous-led access programming across the combined footprint;
- b) increase reflection of Indigenous Peoples and their perspectives on the community channels; and,
- c) increase diversity among Rogers’ community television staff.

Ultimately, Rogers' objectives are to help build a strong cohort of Indigenous content creators: producers, videographers, and technical and editorial talent.

Increased Live Event Coverage

A portion of Shaw Spotlight's local and access programming includes the coverage of live or live-to-tape community events such as local awards ceremonies, community celebrations, parades, fundraisers, cultural performances, and amateur sports events. As part of its hybrid approach – combining the best practices of both Rogers tv and Shaw Spotlight – Rogers will seek to increase the amount of event coverage in Shaw communities, expanding it to include local and timely public affairs programming.

Broadview Scheduling and Reporting Software

For over 20 years, Rogers has been using Broadview scheduling and reporting software for its community channel operations. In recent years, as the Commission has implemented more granularity in both its annual reports and audits of community channels,³⁰ Rogers has worked closely with Broadview to ensure the software's reporting capabilities were updated to meet the new requirements. Upon approval of the acquisition, Rogers will undertake a comprehensive review of Shaw's. Rogers will consider deploying Broadview if standardizing helps to achieve more consistent, reliable and timely compliance reports. This will require a significant investment so if the measure is deemed necessary, we may take two or more years to implement it fully.

Zone-based Model

In accordance with BD 2018-266, Shaw filed a compliance report with the Commission on November 1, 2018. The report detailed Shaw Spotlight's strategies to achieve compliance with the local and access requirements over the upcoming term.

In that report, Shaw has indicated that authorization to operate pursuant to a zone-based model may be appropriate, given the financial and operational challenges facing Shaw's community channels. Given Rogers' very similar experience in Atlantic Canada, we believe there may be merit in considering this model to ensure that smaller communities can benefit from diverse and enriching community programming produced within broader "communities of interest".

Upon approval of the transaction, Rogers will undertake a thorough review of the Shaw Spotlight operations. Our goal will be to determine whether a zone-based model can best serve the interests of community television content creators and viewers in Shaw's BDU markets in Northern Ontario, the Prairies and British Columbia.

³⁰ For example, see: <https://crtc.gc.ca/eng/archive/2021/2021-155.htm>.

Undertaking 16:

Provide details as to Rogers proposed contributions to local expression via contributions to CityTV on a market-by-market basis. This should include identifying markets where Shaw subscribers currently benefit from Shaw's contributions to Global markets, and Rogers' planned contributions to local expression in those markets, among others. During the hearing, it was suggested a response to this undertaking could include a map.

Answer 16:

Rogers has committed to ensuring the Shaw funding is incremental to its regulated baseline spending of 11% of Citytv's previous year's gross revenues. We intend to invest in a total of 48 prime time specials in Vancouver, Calgary, Edmonton, and Winnipeg markets. Furthermore, four of the six members of our Indigenous news team will be based in our Western markets (one in each market) and at least 1 of our 2 Western-based Ottawa news bureau journalists will be based in Vancouver. Otherwise, as noted in Undertaking 7 and RFI 4, our initiatives will apply as a whole to these markets with the allocation of funds based on the needs of each market.

Rogers notes that following the publication of Broadcasting Regulatory Policy 2016-224, Shaw Communications Inc. and Corus Entertainment Inc. issued a press release outlining how Corus intended to spend the monies it received from Shaw's redirection of local expression funding.³¹ Specifically, we note that Corus indicated the additional funding would be used to "...ensure viewers in BC's Lower Mainland, the Calgary Region and the Edmonton Capital Region continue to receive top-notch local news coverage."

As we outlined at the oral hearing and in our response to these undertakings, Rogers also intends to invest Shaw's local expression funding in the Edmonton and Calgary markets as well as Vancouver and Winnipeg. Furthermore, in terms of access to news programming, we note that coverage of service areas by Global and Citytv in British Columbia is nearly identical, with the following exceptions:

- coverage of the Lower Mainland extends to Harrison, with Global having a slightly wider reach in that area, as well a repeater in Chilliwack, which allows them to extend their coverage to Hope; and
- coverage on Vancouver Island is also comparable; Citytv has a wider reach into Victoria, whereas Corus covers the north-east portion of the island with a repeater in Courtenay.

³¹ “Corus Entertainment and Shaw Communications Reinforce Commitment to Local News With New Funding Model.” April 26, 2017. < [Corus Entertainment and Shaw Communications Reinforce \(globo.newswire.com\)](http://globo.newswire.com).>

The coverage area of the AM news stations in British Columbia, 1130 CKWX (CityNews) and 980 CKNW (Global), is also very similar. However, Global's AM station has a slightly wider reach into Abbotsford, covering deeper into the Fraser Valley.

Finally, as we alluded to at the hearing, Global's news budget is far larger than Citytv's and exceeds its regulated news spend by approximately \$98M. Moreover, each of the Global stations is required to provide either six or three hours of locally reflective news programming each week, which will ensure there is no reduction in news programming in the markets served by Global.

PART B – UNDERTAKINGS (Issued November 26, 2021)

Undertaking 17:

With respect to diversity, please provide details of the number of employees and executives on designated group based on employee self-identification.

Answer 17:

In accordance with past Commission practice and the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, Rogers requests confidential treatment for the employment diversity information being submitted.

The diversity representation information requested by the Commission is commercial information that is confidential and is treated consistently in a confidential manner within Rogers. The information used to create the diversity representation was submitted in confidence to Rogers by its employees who elected to disclose such sensitive personal information as part of a voluntary and confidential Self Identification Questionnaire. Rogers does not share this information externally, nor internally at this level of detail. In fact, this information is only available to select HR team members. Further, we do not believe that any Rogers employee who voluntarily disclosed this sensitive personal information would consent to its disclosure in this way. Publicly disclosing this information would contravene Section 19 of the *Access to Information Act*.

The disclosure of this information could also reasonably be expected to prejudice our competitive position. Rogers does not disclose its employee diversity representation publicly, let alone at such a granular level, and to the best of our knowledge we do not believe other broadcasters do either. In today's job market diversity in a workplace can be a competitive factor in attracting talent or a factor in attracting investment and business partners. To our knowledge, no other licensee has been asked to disclose

information about the composition of their workforce vis a vis designated under-represented groups.

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Please also see Rogers Sports & Media's *Women in Production 2020 Annual Report*, attached as **Appendix I – Undertaking 17 (WIP Report)** which contains specific details on how Rogers Sports & Media is working to increase the representation of women in key decision-making roles. As the report demonstrates, through our Inclusion & Diversity hiring and recruitment practices, we have increased the percentage of women in key decision-making roles from 48% in 2019 to 54% in 2020. We believe this demonstrates our commitment to and understanding of how best to achieve diversity goals within our programming and our teams.

Undertaking 18:

The Arrangement Agreement stipulates at section 2.12 that if between March 13, 2021 and the Effective Time, Shaw declares or pays cash dividends on the Company Shares in excess of the Company Permitted Dividends (as defined in the Arrangement Agreement) then a corresponding reduction shall be made to the Arrangement Consideration to be paid to the Company participating Shareholders on a dollar-for-dollars basis. Could you please confirm whether such an excess dividend has been declared or payed.

Answer 18:

Please see the response to Undertakings filed by Shaw.

PART C – REQUESTS FOR INFORMATION (Issued November 26, 2021)

RFI 1:

What would be the impact on Rogers were a condition of licence imposed so as to require the provision of FreeWheel service to programming undertakings?

RFI Answer 1:

It would not be appropriate to impose a condition of licence on Rogers requiring the provision of FreeWheel service to programming undertakings.

FreeWheel is a third party that is not owned or controlled by Rogers. It is an affiliate of Comcast and it provides the technology that supports digital ad insertion (DAI) into on-demand content. Rogers' Ignite TV and SmartStream platforms use FreeWheel's ad server and ad technology in order to insert ads into programs offered on our VOD service. In order to access its DAI services, each programming undertaking will, like Rogers, be required to enter into a commercial arrangement directly with FreeWheel.

If independent programmers are interested in leveraging DAI, we will help facilitate their relationship with FreeWheel. However, since this is a third-party arrangement that each programmer would have to enter into with FreeWheel, it would not be appropriate to impose a condition of licence on Rogers to require the provision of the FreeWheel service. That said, if a programmer experienced any issues with FreeWheel, they could raise it with Rogers and we would then escalate the matter to Comcast.

RFI 2:

Rogers has indicated that affiliation agreements do not rise to the “threshold” requiring consideration by the Board of Directors. Please specify what the “threshold” is for consideration by the board of directors. What dealings with Corus or others would require consideration by the board of directors?

RFI Answer 2:

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RFI 3:

On Monday, you noted that there was a very detailed web page explaining the \$25 price point where all of the specific channels that are included in the small basic package. You also mentioned that your frontline staff are in a position to explain to customers that the \$25 basic service is an option that is available to them.

Please confirm that Rogers' CSRs are trained to offer this option to subscribers when requested.

In the affirmative, please submit the relevant training material used to inform the CSRs about the offering of the \$25 basic service.

RFI Answer 3:

Yes, we confirm that Rogers' customer service representatives (CSRs) are trained to offer our \$24.99 basic service (known as Starter TV) to customers when requested.

Please find attached as Appendix J a zip file containing the relevant training material used to inform CSRs about the offering of Starter TV and related TV service options. Rogers is filing the following documents confidentially as they contain information that is competitively sensitive:

1. # #
2. # #
3. # #
4. # #
5. # #
6. # #
7. # #
8. # #
9. # #
10. # #

These training documents are provided to all Rogers' CSRs and outline that standalone TV options, including our \$24.99 Starter TV package, are available to customers.

New and existing customers who are interested in receiving only TV service can choose to subscribe to TV on our Digital TV platform. These customers have the option to subscribe only to Starter TV for \$24.99. They can also add discretionary TV

services to Starter TV by ordering individual channels on a standalone basis, or in theme packs and larger pre-assembled packages. Detailed information about Starter TV and our flexible TV packaging options is available on our website at: <https://www.rogers.com/consumer/tv/starter-package#/starter-channels>. A link to this information is presented on the webpages that present general information about available Ignite TV and bundles.³²

RFI 4:

You discussed various new initiatives for better coverage and engagement, including primetime local news specials, the hiring of journalists, and a growing investment in the Western news markets, to name a few.

- **Could you please explain what you are going to be doing to improve access and outreach to community channels outside of urban areas?**
- **Could you please elaborate on how the additional local expression monies that will now be transferred to your Citytv stations, will provide specific and incremental benefits to City News programming? How will this impact the future of Citytv? What changes/improvements can viewers expect?**

RFI Answer 4:

Please refer to the answer to Undertaking 15 above, which outlines the initiatives that will be undertaken by Rogers to improve access and outreach to community channels outside of urban areas.

Rogers submits that the additional local expression monies received from Shaw will provide specific and incremental benefits to CityNews' programming as follows:

- will be incremental to our regulated baseline expenditure on local news of 11% previous year's gross revenues;
- will be used to invest in # [REDACTED] # in the western markets of Vancouver, Edmonton, Calgary and Winnipeg;
- will create 48 one hour-long prime time news specials that will be incremental to CityNews' regulated requirements;
- will result in approximately 50% (or 2,500) more reflective news stories in Western Canada every year;
- will create an Indigenous news team that will bring a more accurate and nuanced perspective to Indigenous news issues; and

³² See: <https://www.rogers.com/web/consumer/ignite-bundles/tv-internet> and <https://www.rogers.com/web/consumer/ignite-bundles/get-iptv>.

- will create a digital news service that will enhance Western Canadians' access to news programming on the platform of their choice.

Specifically, Rogers' proposed monthly prime time local news specials that will offer local audiences in Edmonton, Calgary, Winnipeg and Vancouver a comprehensive examination of complex issues of local importance in a format that will engage the local community in immediate and interactive dialogue and create better awareness and understanding of issues of importance to their community. The specials will use journalism and storytelling as the foundation of the programs and starting point for community discussion. This will help keep the local news teams focused on enterprise/issue-focused coverage, which are journalistic skills that require constant exercise, and will in turn contribute to the strength and relevance of the ongoing daily news programming. Further, we have seen again and again that investing in such journalism has a positive impact on the entire local journalism scene, prompting other outlets to also produce more original journalism.

With respect to our proposal to create an Indigenous-led news team, we believe this will benefit viewers by improving coverage of Indigenous issues more broadly across our entire news organization. We believe this focus will help inform viewers on issues of importance to Indigenous Peoples in Canada and on Indigenous rights and help educate, train and guide non-Indigenous journalists across our news organization on the coverage of Indigenous stories. Moreover, this investment will give Indigenous journalists the opportunity to apply and develop their journalism and creative skills, and the editorial freedom to tell stories from a uniquely Indigenous perspective. We hope that it will also encourage and inspire Indigenous youth to pursue careers in journalism by giving them the opportunity to see CityNews' Indigenous journalists on screen.

Our Western Canada 24/7 digital news service will keep Canadians informed on platforms outside of traditional sources (e.g., cable or broadcast channels) thereby providing Canadians with greater access to the latest news and information from a highly reliable Canadian digital news source on the platform of their choice.

Finally, adding Western-based journalists to CityNews' Parliament Hill team will provide a Western perspective on national issues of importance to our viewers. These journalists will play a crucial role in identifying and reporting on stories, and in developing original story ideas that are relevant to Canadians in the western provinces.

RFI 5:

Can you elaborate on how your commitments to independent services will specifically support ethnic/third-language services?

RFI Answer 5:

Rogers has proposed as part of this application a number of measures that are designed to support independent programming services, including ethnic and third-language services.

First, it is clear from our track-record of distributing ethnic and third-language services, that competitive forces will drive Rogers, post transaction closing, to distribute all manner of third-language services just as we do today (i.e., today we distribute, on our Rogers BDUs, 8 Canadian ethnic services, 81 Canadian third-language services and 65 foreign third-language services). Given the diversity of ethnic and third-language populations in the areas that the existing Shaw footprint currently covers (including Vancouver, Calgary, Edmonton and Winnipeg), this will make good business sense. We will ensure that we have a robust selection of ethnic and third-language services to serve the needs and desires of our ethnic and third-language customers while at the same time providing a competitive option to Telus and other BDUs that operate in these markets. For these reasons alone, we do not believe it would be appropriate for the Commission to impose any further requirements on Rogers with respect to the carriage of ethnic and third-language services than those that already exist in section 27 of the Regulations and in the Wholesale Code.

In addition, the main obstacle to the addition of more ethnic and third-language services in the Shaw terrestrial BDUs has been the capacity constraints of legacy quadrature amplitude modulation (QAM) technology. Shaw Cable currently distributes: 5 Canadian English-language ethnic services, 26 Canadian third-language services, 3 foreign English-language ethnic services and 9 foreign third-language services. With IPTV now available across the majority of Shaw's cable footprint and a foreseeable increase in customer penetration as a result of this transaction, the addition of ethnic and third-language services for IPTV distribution will clearly serve the interests of the combined company, our customers, and diversity within the broadcasting system. No additional regulatory commitments are necessary to achieve this objective.

For its part, Shaw Direct serves a unique market segment. Both its business and public interest objectives are focused on providing services to rural and remote areas, including Northern communities, where there are no terrestrial BDUs. Consistent with the objective of providing these communities with programming that is available in larger markets, Shaw Direct carries a significant number of over-the-air services pursuant to its conditions of licence and a full slate of discretionary services. Given capacity limitations, Shaw Direct currently distributes: 2 Canadian English-language ethnic services, 7 Canadian third-language services and 1 foreign third-language service. Notably, however, Shaw Direct fulfills its specific public interest objectives without the need for regulatory intervention. In January 2021 (prior to the transaction), Shaw Direct added Uvagut TV (SD) to its national channel line-up.³³ Uvagut TV, which

³³ See: <http://uvagut.tv/uvagut-tv-breaks-ground-as-canada%E2%80%99s-first-inuit>.

is available to every Shaw Direct customer at no additional charge, is Canada's first national Inuktitut television channel. Programming includes movies, documentaries, cultural programs, current affairs, interviews with elders, and 5 hours of daily kids shows.³⁴

Second, Rogers' commitment to independent services is to distribute 45 services on Shaw's and Rogers' terrestrial BDUs as well as Shaw Direct for 3 years from the date of closing; to provide assistance to independent services in app development for digital platforms; to provide them with STB data reporting on an annual basis as of April 1, 2022 (or twice annually from September 1, 2022 for as long as the Numeris ETAM system does not launch); and to provide their services' STB data to CYNCH at no cost should they decide to participate in its ad tech platform.

Independent services that would be covered by our 45 independent programming services commitment are English- and French-language services that are otherwise subject to the current 1:1 linkage rule (ratio of independently owned English and French-language programming services to VI-owned programming services distributed on our channel line-up). In respect of ethnic services, this would include the following eight English-language ethnic services owned by ECG, TLN and ATN respectively: a) BeIN Sports (ECG); b) TLN and EuroWorldSports (TLN); and c) CBN, Cricket Plus, News 18, Sports, and Times Now (ATN).

This carriage commitment regarding the 45 independent programming services for three years post closing does not extend to third-language services. In our view, it was necessary to provide added protection for independent English- and French-language services in the same way that the Commission did when it adopted the 1:1 carriage rule as part of the Let's Talk TV decision. This is because Corus, post transaction closing, will become an independent service. Our three-year carriage commitment, together with the other commitments we have made, will provide these independent services with the time and resources to bridge the transition to digital while maintaining linear carriage. As indicated on the record of this proceeding, this did pose an issue (whether real or perceived) for independent programmers with respect to the 1:1 linkage rule. This is not the case with third-language services. The merger will not change the status of any third-language service such that a change to the existing protections set out in section 27 of the BD Regulations regarding distribution and packaging would be warranted.

The Commission has itself developed access rules for unrelated programming undertakings that are now focused on English- and French-language programming services. The concept of applying the rule on an "official-language basis" was introduced by an independent programmer.³⁵ The current rule and Rogers' proposed approach reflect the Commission's determination in Broadcasting Regulatory Policy

³⁴ See: <http://uvagut.tv/>.

³⁵ In Broadcasting Public Notice CRTC2008-100, the Commission stated at paragraph 89: "Astral noted that the current rule is not language specific and recommended that the rule be applied on an official-language basis."

CRTC 2015-96 (the “Choice Policy”) and later incorporated in the amended *Broadcasting Distribution Regulations* that, to the extent available, independent English- and French-language discretionary services would be distributed on a 1:1 basis (hence the protections accorded to third-language services set out in section 27).

As noted above, we carry 146 third-language services of which 81 are Canadian and 65 are foreign. This again is far beyond the requirement of the 1:1 linkage rules set out in section 27. This demonstrates that the protections are effective and achieving the Commission objectives. As such, no additional protections are required.

Turning to the other supports we referenced in our proposal for independent services, these will also be available to ethnic and third-language services. As noted, these include our commitment to provide app development assistance for those who wish to avail themselves of our offer, as well as the provision of STB data both in respect of data reporting (see Undertaking 2 and RFI 10) and for those ethnic and third language services that choose to participate in the CYNCH ad tech platform (see Undertaking 4).

RFI 6:

Given concerns expressed about Rogers’ potential “gate-keeping” role, can you provide specific assurances that new services will be treated equally when it comes to the addition of new services to your Ignite TV and Ignite SmartStream platforms?

RFI Answer 6:

Rogers has no ability to be a “gatekeeper” in the linear or the online worlds with respect to the distribution of new services.

As we outlined during the hearing, our strategy is to provide Canadians with an attractive alternative to the foreign streaming app aggregation platforms (such as smart TVs, game consoles and Roku) that provide access to popular streaming services (apps) on a direct-to-consumer (DTC) basis – such as Netflix, Amazon Prime and Disney+. Our objective is to provide our customers with a seamless way to access the programming they want to watch no matter which platform it is offered on. We are doing that in two key ways.

First, our Ignite TV platform marries the linear services offered as part of our BDU with the digital streaming services that are otherwise offered DTC over the Internet through other devices (e.g., TVs, game consoles, tablets, laptops). Our overriding goal is to provide customers with access to the best of both worlds and keep them within the regulated broadcasting system even as they watch more and more television online.

Second, our SmartStream platform enables Internet-only customers who are cord-cutters or cord-nevers to access Canadian and foreign streaming services using the same device as our BDU customers. Given that SmartStream uses the same STB technology as Ignite TV, our customers can easily upgrade to Ignite TV to subscribe to linear services that make up our regulated BDU offering.

We are using our Ignite TV and SmartStream platforms to ensure consumers who subscribe to streaming services remain connected to the regulated system through a Canadian app aggregation platform that offers them Canadian and foreign linear and streaming content options at the same time.

This strategy does not involve or require Rogers to enter into any sort of exclusive access arrangement with linear services or digital streaming services.

With respect to our linear platform, Canadian programmers have other avenues to deliver their programming to consumers. There are currently at least two BDUs in every market in Canada and this transaction will not change that. There is also a growing number of digital streaming services and platforms – such as Amazon Prime Video Channels, Apple TV, Google Chromecast, Xbox and Roku – that are available to programmers. OUTtv,³⁶ Corus³⁷ and Bell³⁸ are examples of programmers that have effectively taken advantage of these other options for distributing their channels. Given the level of competition that exists today – from competing BDUs and, increasingly, from online aggregators like Amazon Prime, Roku and Apple TV – Rogers would have no ability to be a gatekeeper for new linear services or their apps post-closing.

In addition, keeping in mind our overall strategy described above, it is important to recognize that a BDU, like Rogers, regardless of its market share, has no ability to gatekeep, in respect of new online streaming services either. The competitive reality in the marketplace makes that impossible. Foreign streaming services have a business imperative to meet consumers where they are watching “television programming”. A streaming service like Netflix could not have achieved the hundreds of millions of subscribers worldwide that it has today if it had not pursued a strategy whereby its content would be offered on every possible device and would be accessible to every possible consumer. It is clear that other digital streaming services, including Disney+, are pursuing the same strategy today.

Rogers’ service, Sportsnet NOW, is also pursuing a strategy of ensuring the service available on every platform possible. It is available on 4th generation Apple TVs, Xbox One, Xbox Series X, PlayStation 4, PlayStation 5, Amazon Fire TV, Android TV, Ignite TV, Samsung Smart TVs (currently 2018 and newer models) and Chromecast.

³⁶ The OUTtv app is available via Roku, Apple TV, iOS and Android apps, without a cable TV subscription.

³⁷ Stack TV is available via Prime Video Channels.

³⁸ The Crave app is available on the Bell Streamer platform, as well as Amazon Firestick, Android TV/phones/tablets, Apple TV, Chromecast, crave.ca, iPhone/iPad, LG and Samsung TVs, Roku, Sony Playstation 4/5, Windows phones/tablets and Xbox.

The evidence on the record of this proceeding is that the online streaming business, which was once dominated by Netflix, has evolved into a highly competitive marketplace. None of the most popular online streaming services (new or old) would ever consider limiting their distribution to a single platform because that would undermine their strategy of reaching the largest number subscribers possible.

With respect to our Ignite TV and SmartStream platforms, an online streaming service that wants access to them would not need Rogers to initiate the development of its app. Ethnic Channels Group, for example, launched its app called Toober on Comcast with the assistance of Videotron. We added it to our platform on July 8, 2021, shortly after it became available. And once an app is developed for the Comcast X1 platform, it can, with a bit more work, be made available on every other online distribution platform. We place no restrictions on programmers should they wish to pursue this.

We would also emphasize that Rogers' contractual arrangements with online streaming service providers contain provisions that effectively prohibit Rogers from obtaining exclusive access to the app consistent with the DMEO requirements under section 5. When we sign up a new app partner, we ensure the following: (i) we receive contractual assurances that the app will be available online DTC on non-Rogers platforms, consistent with the DMEO; and (ii) we require that the Rogers-integrated version of the app contains the same content as any other version of the app made available to other BDUs or DTC. These arrangements remove any ability for Rogers to gatekeep.

Even if Rogers somehow had the ability to convince the operator of a digital streaming service to anoint us as its exclusive or "gatekeeper" platform for Canada, the Commission has adopted a number of regulatory safeguards that would prevent our BDU, ISP or mobile service from acting as a gatekeeper. Please refer to our response to RFI Question 8 below.

RFI 7:

We have heard from many independent services that discoverability is a challenge and that the Xfinity software behind the Ignite TV and Ignite SmartStream platforms may not give priority to Canadian programming services and apps.

- **Please comment on this and elaborate on the ways that Rogers believes the Ignite platforms can be used to enhance the discoverability of Canadian content and Canadian programming services.**

RFI Answer 7:

With our industry-leading Ignite TV and SmartStream platforms and more traditional methods of promotion (e.g., through the use of the U.S. local avails and barker channels), Rogers provides Canadians with unique ways to discover new content, including Canadian programming, through our investments in advanced consumer-focused technologies.

The Ignite TV and SmartStream platforms enhance the discoverability of Canadian content and Canadian programming services in several ways. The Ignite TV platform provides Rogers' customers with the ability to seamlessly discover and access content available through Canadian linear channels and online apps, via an integrated user interface. Program search results and recommendations present content options from all available linear, on-demand and app services available on the platform. As a result, Canadian linear and online options are presented alongside programming provided by foreign services.

Rogers also actively promotes the availability of Canadian linear services, apps and individual programs on the Ignite TV platform through a variety of merchandising techniques, including:

- **homepage takeovers** – when the customer clicks the “Rogers” button on their remote, they are brought to the main navigation menu where a three-panel tile is presented and used to showcase specific channels/apps/programs;
- **screen saver** – after a period of user inactivity, Ignite TV presents a screen saver, which can inform customers of featured content and/or features;
- **system notifications** (in the Settings menu) – when the customer clicks the “Rogers” button, the Settings icon indicates there is a new message to read, which can be used to advise customers of a new app or channel launch;
- **3 (or 4) panel takeovers** – a three- or four-panel image which “takes over” the visual within a swimlane on a page on the user interface; clicking on the panel links the customer to a curated page or individual program;
- **featured tiles** – to highlight a program in the top row of the VOD menu;
- **dedicated page/experience** – an immersive merchandising experience that blends key features across the Ignite platform – this can include: (1) three-panel headline banner at the top of the page; (2) past seasons of a TV series or movie franchise; and (3) bonus features/enhanced extras;
- **curated swim lanes** – to present on a single row, on the Ignite TV or SmartStream user interface, feature films/programs falling under a common category; and
- **multi-panel creative for linear programming services and apps** – a dedicated graphic typically used to showcase the breadth of content available through a linear TV service or app (e.g., 3-4 images grouped together to deliver a cohesive message).

Rogers also develops multi-pronged promotional campaigns, that enable Canadian programmers to use a combination of the above-noted options to highlight their channels and/or specific programs. For example, to commemorate the National Day

for Truth and Reconciliation, we curated an immersive destination to promote Canadian content relating to Indigenous peoples – including movies, TV shows, documentaries, and music – which were selected in tandem with the Indigenous Peoples Network at Rogers (one of our internal Employee Resource Groups). We also maintain an immersive destination for the Canada Day collection, which features curated galleries of Canadian content, including menus for Movies, TV Shows, Kids and Music. In addition, Rogers maintains a permanent destination for Canadian programming within our VOD service menu; curated galleries of Canadian content include folders for: movies, TV shows, children’s programming and music.

All Canadian programmers (both independent and vertically integrated) have access to a common rate card for promotional campaigns where they can use any of the merchandising techniques noted above. In 2021, promotional campaigns featured services offered by the following independent programmers: Super Channel (February/June/November); Blue Ant Media (March/October/November); Zoomer (May/October/November); Channel Zero (July); Stingray (July); Anthem (August); and Wildbrain (October).

Rogers also actively uses the local avails and our barker channels to promote Canadian first-run original programs and Canadian linear channels, packages and apps. This comprehensive approach to promotion and content discovery increases the BDU value proposition and encourages Canadians, including cord-cutters and cord-nevers, to remain in the regulated broadcasting system.

Rogers is committed to working with independent programmers to support their transition to our Ignite TV and SmartStream platforms. This includes helping them create an app or free ad-supported streaming TV (FAST) channel for carriage on these platforms, which will further contribute to the discoverability of their content.

More specifically, if an independent programmer wishes to develop an app for Ignite, then we would connect them with a developer who has expertise in the Comcast system so they could work together to develop their app. Once the app is developed, Rogers would work with Comcast to test and launch it. The app would also be available to other syndication partners that use the Comcast platform, such as Videotron. Similarly, if an independent programmer prefers to launch a FAST channel, then we would connect them with a FAST channel provider who is affiliated with the Comcast system.

Lastly, we believe that further consultation on an industry-wide basis is needed to consider how the discoverability of Canadian content can be better achieved in the digital streaming world, especially as the Commission looks to implement the legislative and regulatory changes that will result from an amended *Broadcasting Act*. Rogers looks forward to participating in any such consultations in the future.

RFI 8:

Several BDUs have raised concerns about Rogers' ability to grant itself exclusive or preferential access to popular non-Canadian online services. At the hearing on Friday morning, Rogers stated that its understanding of the exclusivity provisions in the digital media exemption order were that as long as a service was provided on a direct-to-consumer basis, it could then be offered on an exclusive basis on your platforms. [Note that the transcripts were not available at the time of drafting these questions.] Comment on the impact if the Commission were to impose the following conditions:

- The undertaking offers its service over a broadcasting distribution undertaking provided that all of the programs for which the rights are held on an exclusive basis are also delivered and accessed over the Internet.
- Where the service is delivered and accessed over the Internet as described in paragraph a), it shall not be offered in a way that is dependent on a subscription to any specific broadcasting distribution undertaking, mobile service or retail Internet access service.

RFI Answer 8:

The proposed conditions are unnecessary, and they would likely be less effective in preventing Rogers from granting itself exclusive or preferential access to popular non-Canadian online services than the current safeguards set out in the *Digital Media Exemption Order* (DMEO) and in the *Broadcasting Distribution Regulations* (the Regulations).

As noted above, in response to RFI Question 6, Rogers does not have the ability to be a gatekeeper or to obtain exclusive or preferential access to non-Canadian online services given the nature of the competitive marketplace in which those services operate. We similarly do not have the ability to acquire exclusive or preferential rights to such services because of the Commission's current regulatory framework. That framework, which is set out in the DMEO and the Regulations, effectively prevents Rogers from acquiring such rights to popular non-Canadian online services.

First, the DMEO prohibits such exclusive or preferential arrangements. Section 5 of the DMEO provides that where television programming is offered over the Internet, a DMBU is prohibited from restricting access to that programming on the basis of a consumer's specific mobile or retail Internet access service, and section 6 further prohibits an undertaking from acquiring, exercising, renewing or otherwise extending rights to television programming on an exclusive or otherwise preferential basis unless it is not prevented, directly or indirectly, from making that television programming available to subscribers of all service providers providing access to the same platform. Together, these two provisions would expressly prohibit a non-Canadian online service, or DMBU, from limiting the distribution of its services to Rogers' ISPs and mobile services, and would prevent a DMBU from acquiring rights to television

programming where it was prevented from making that television programming available to service providers that offer a platform that is the same as Rogers.

Those two sections are backstopped by the undue preference provisions in section 3 of the DMEO and section 9 of the *Broadcasting Distribution Regulations* (the Regulations), which would be available to prevent a BDU from obtaining access to a streaming service on an exclusive or preferential basis. An aggrieved party could file an undue preference complaint under both provisions, arguing that either the streaming service granted Rogers' an undue preference by entering into such an arrangement contrary to the DMEO or that Rogers' BDU received an undue preference contrary to the Regulations.

Given the reality of the marketplace and the current comprehensive regulatory regime put in place by the Commission, Rogers will have no ability to act as a gatekeeper with respect to non-Canadian online services (or any other programming services, for that matter) following the close of the transaction. As such, the proposed conditions set out above would be superfluous and unnecessary.

We would also note that the proposed conditions largely reflect sections 12 and 13 of the *Exemption Order for Video-on-Demand Undertakings* (the VOD Exemption Order) and could not be imported into the current situation where Rogers, as the BDU, is offering online services on a platform or device. The terms "undertaking" and "service", which are used in the proposed conditions, would refer to the non-Canadian online service, rather than to the BDU. Just like the VOD Exemption Order, the two proposed conditions would, therefore, apply to the provider of the programming service (i.e., the online service), rather than to Rogers.

Rogers does not today, and will not in the future, acquire exclusive rights to non-Canadian online services, and we commit not to enter into any such arrangement following the close of the transaction.

RFI 9:

Over the course of the hearing, we've heard from multiple parties that there are concerns over what this transaction may mean for the SRDU and TRDU market, and specifically the ability of BDUs to access discretionary signals at reasonable rates. On Friday morning, Rogers stated that it would be willing to accept, as a condition of approval, the same recourse to dispute resolution as is available to BDUs with respect to over-the-air signals carried by the SRDU, upon the expiry of current contracts.

- Please comment on the possible application of the Wholesale Code and the undue preference and dispute resolution provisions (including the standstill rule) set out in sections 9 and 12-15 of the BDU regulations with respect to delivery of discretionary signals?

RFI Answer 9:

Please see the responses to Undertaking 1 and Undertaking 5, above.

RFI 10:

You noted on Monday that you would provide, as of April 1, 2022, set-top box reporting to Canadian services on request at no cost on an annual basis until the Numeris enhanced television audience measurement system is fully implemented.

The condition of licence currently in force requires that, where the licensee collects set-top box data regarding programming services it distributes, it shall, upon the written request of a Canadian programming service, provide that programming service with the set-top box data regarding that programming service, in the form of raw data or reports, within 30 days:

- i. at no cost; and**
- ii. up to a maximum of two times per broadcast year, unless otherwise agreed to by the parties.**

With this in mind, please comment on some of the intervenors' views that the timeframe and the frequency for providing set-top box data to independent programmers are inadequate. Would you be prepared to commit to providing the data twice a year, consistent with the condition, or on a more frequent basis?

RFI Answer 10:

Please see the response to Undertaking 2, above

3. Rogers trusts that we have adequately addressed the undertakings and RFIs noted above. We would, of course, be pleased to respond to any further questions you may have.

Yours truly,



Ted Woodhead
Senior Vice President
Regulatory
Rogers Communications Inc.

Encls.

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