



13 September 2021

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: [Broadcasting Notice of Consultation CRTC 2021-281](#) (Ottawa, 12 August 2021), Application 2021-0228-4 by Rogers Communications Inc. on behalf of Shaw Communications Inc.

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest, implements Parliament's broadcasting and telecommunications policies for Canada, and includes a strong national public broadcaster. The Forum's intervention regarding the acquisition of the broadcasting assets of Shaw Communications Inc. by Rogers Communications Inc. is attached. The Forum requests the opportunity to appear before the hearing panel at the CRTC's public hearing, currently scheduled to begin 22 November 2021.

A copy of this intervention has been submitted to the applicant.

Sincerely yours,

Monica. L. Auer, M.A., LL.M.
Executive Director
Forum for Research and Policy in Communications (FRPC)
Ottawa, Ontario

cc. Ted Woodhead cable.regulatory@rci.rogers.com
Senior Vice President, Regulatory
Rogers Communications Inc.



Rogers' acquisition of Shaw's broadcasting services: In this case, bigger is not better

Forum for Research and Policy in Communications (FRPC)

Intervention

Broadcasting Notice of Consultation CRTC 2021-281

13 September 2021



Contents

Executive summary	5
Summary of recommendations	6
I. This application	1
A. The circumstances of this transaction	2
1. The broadcasters in this transaction	5
2. The broadcasting services in this transaction	7
3. The confidentiality issue	10
B. The scale of this transaction relative to the broadcasting system	11
II. Does approval of this application serve the public interest?	13
A. Impact on the competitive landscape	14
B. Impact on diversity	15
C. Impact on news	16
D. Rogers' proposed safeguards and remedies	17
E. Value of the transaction	20
F. CPAC	23
III. Will this application strengthen Canada's broadcasting system?	26
A. Rogers' discussion of the transaction's benefits	29
B. Tangible broadcast benefits	33
IV. Summary of recommendations	40
Appendices	1



Tables

Table 1 Shaw's programming and distribution holdings	7
Table 2 Operating margins (PBIT) of Shaw's programming services, 2015-2020	8
Table 3 Confusion over which services Rogers wants to acquire	8
Table 4 Difference in revenues of Shaw and Rogers on-demand and pay-per-view programming services	10
Table 5 Before approval: 2019/20 revenues of the four largest broadcasters in Canada, by broadcast sector	11
Table 6 If approved: 2019/20 revenues of the four largest broadcasters in Canada, by broadcast sector	12
Table 7 Television stations operated by Corus and Rogers	16
Table 8 BDU affiliation payments to Canadian and non-Canadian discretionary services	18
Table 9 Rogers and Shaw - Average staff per week	22
Table 10 CPAC revenues, 2014-2020	23
Table 11 How Rogers arrived at tangible benefits amounting to \$5.6 million	33
Table 12 Revenues of Shaw's programming services and its interest in CPAC	34
Table 13 Tangible benefits from Rogers' arrangement with Shaw	35
Table 14 Rogers' proposed allocation of tangible benefits	36

Figures

Figure 1 Directors' information	11
Figure 2 CPAC's total revenues and expenses, 2014-20	24
Figure 3 Broadcasting sectors' share of 2019/20 revenues	28

Appendices

Appendix 1 Rogers-Shaw transaction timeline	1
Appendix 2 CRTC ownership chart 32A (Shaw Distribution & On Demand)	2
Appendix 3 "At closing" - meaning	3
Appendix 4 CPAC Inc.'s articles of incorporation	4
Appendix 5 CPAC's publicly available corporate information and CRTC ownership information	5
Appendix 6 27 August 2021 notice from BPF	10
Appendix 7 BPF letter to the CRTC	11
Appendix 8 Textual description of programming licences held by Shaw, in CRTC ownership chart 32A as of 6 September 2021	12
Appendix 9 CRTC website list of Shaw's on-demand programming services as of 7 September 2021	14

Executive summary

- ES 1** In March 2021 Shaw and Rogers announced Rogers' acquisition of Shaw's telecommunications and broadcasting services for \$25.4 billion. Roughly a fifth of the transaction price - \$5.4 billion - relates to Shaw's programming and distribution services.
- ES 2** Rogers is asking the CRTC to authorize the operation of most of these broadcasting services by Rogers as well as the acquisition by Rogers of a majority of the shares in Cable Public Affairs Channel Inc., the licensee of the English- and French-language versions of the service that distributes Parliamentary and other public-interest programming.
- ES 3** Rogers argues that the CRTC's approval of its application will serve the public interest by enabling Rogers to compete with foreign streaming services, and will strengthen Canada's broadcasting system through its contribution of \$5.7 million to the CMF, several certified independent production funds and film festivals across Canada.
- ES 4** Overall, Rogers' application offers neither argument nor evidence to support its claims.
- ES 5** The transaction envisages that Shaw will at some point return two of its three on-demand programming services. Yet shuttering programming services does not increase but reduces programming choice and diversity.
- ES 6** Rogers argues that its acquisition of Shaw's shares in CPAC, which will result in Rogers holding 67% of CPAC's voting shares, will not give it effective control because it cannot elect a majority of CPAC's directors. As CPAC Inc.'s current articles of incorporation would permit Rogers to vote its shares on all other aspects of CPAC's business and operations this argument is at best disingenuous. It has made no commitments to strengthen CPAC's programming.
- ES 7** Rogers' plan to transfer \$13 million in BDU funding from the Corus TV stations to Rogers' own City TV stations will weaken one of their competitors – meanwhile Rogers has not made any commitments to increase or even maintain the hours of original local news its own TV stations broadcast.
- ES 8** The application's silence regarding the protection of the interests of Shaw's BDU subscribers is deafening, and while Rogers says the transaction's approval will protect 10,000 jobs, the BDU services that Rogers and Shaw now operate already employ more than 11,300 people. As for the 3,000 new net jobs that the Rogers says the transaction will deliver, the application makes no specific commitment that any of these jobs will be in Canada's broadcasting sector.
- ES 9** Finally, while the transaction will reduce competitors and competition for Rogers, its application minimizes the benefits that correct application of the CRTC's 2014 tangible

benefits policy would otherwise deliver. It does this by excluding consideration of \$45.6 million in 2019/20 revenue of a programming service still licensed to Shaw; including these revenues in the CRTC's 2014 *Tangible Benefits* policy 'formula' increases this transaction's tangible benefits by more than \$17 million to \$23.4 million.

ES 10 In brief, analysis of this application's proposals, arguments and evidence leads to the conclusion that it is not the best possible application under the circumstances.

ES 11 The Forum respectfully submits that the best possible application under the circumstances – the size of the transaction relative to Canada's broadcasting system and the significant advantages that acquiring Shaw gives Rogers – would deliver clear, significant and enduring benefits to the broadcasting system through a quantified and therefore enforceable commitment to produce or acquire new, incremental hours of Canadian programming, a commitment to ensure the independence and improvement of CPAC's programming and an enforceable commitment to limit rate increases for Shaw's BDU subscribers.

Summary of recommendations

FRPC recommendation 1

Rogers's application should be denied due to the absence of clear evidence that its approval will serve the public interest and strengthen Canada's broadcasting system.

In the alternative, if the CRTC decides to approve the application the Commission should ensure that it yields significant and enduring benefits that serve the public interest and strengthen Canada's broadcasting system, to which end the Forum respectfully submits the following recommendations:

FRPC recommendation 2

The CRTC should require Rogers, in collaboration with public-interest organizations and academic experts, to establish an independent public trust to the benefit of CPAC, so that Canadians have access to the proceedings of Parliament. The Commission should initiate a public proceeding to review the Parliamentary service, and to elicit Canadians' views on the best ways to provide innovative and useful programming to Canadians.

FRPC recommendation 3

The CRTC should also take into account the level of benefits this transaction is delivering to Rogers when it considers the matter of tangible benefits, and should require Rogers to clarify its plans and commitments as to broadcast employment levels.

FRPC recommendation 4

The Commission's review of the tangible benefits that Rogers is proposing should address the fact that the figures provided by Rogers in calculating tangible benefits do not match the figures in the CRTC's statistical and financial summaries. The CRTC's review should also address the possibility that the transaction underestimates the tangible benefits that the CRTC's 2014 policy otherwise requires by more than \$17 million by excluding a programming service for which Shaw still holds a broadcasting licence and which earned \$32.9 million in 2019/20. A tangible benefits calculation that includes this programming service's revenues increases the benefits from the \$5.7 million estimated by Rogers to \$23 million.

FRPC recommendation 5(a)

If the CRTC agrees that the tangible benefits should be recalculated to capture the \$17 million envisaged by its 2014 tangible benefits policy, all but \$3 million of the additional \$17 million should be redirected, at the Commission's discretion, to the production of new Canadian programming. The remaining \$3 million should be divided equally between the Broadcast Accessibility Fund and the BPF and granted in lump sums to enable the BPF in particular to continue to provide financial support for qualified public- and consumer-interest organizations' participation in CRTC proceedings (as intended by the CRTC in 2011) and providing time for Parliament to amend the *Broadcasting Act* to give the CRTC the authority to establish its own public-interest broadcast costs application regime.

FRPC recommendation 5(b)

If the CRTC accepts Rogers' calculation of the tangible benefits of this transaction, the Commission should use its discretion to increase the tangible benefits by \$3 million, to be divided equally between the Broadcast Accessibility Fund and the BPF and granted in a lump sum. The \$1.5 million allocated to the BPF should ensure its continued operation with respect to the financial support of qualified public- and consumer interest organizations' participation in CRTC proceedings (as intended by the CRTC in 2011) for three years, providing time for Parliament to amend the *Broadcasting Act* to be amended to give the CRTC the authority to establish its own public-interest broadcast costs application regime.

I. This application

1. On 13 March 2021 Rogers Communications Inc. (Rogers) and Shaw Communications Inc. (Shaw) announced they had reached an agreement: Rogers would acquire control of Shaw's telecommunications and broadcasting business in exchange for \$25.4 billion.¹ Of this amount, \$5.4 billion relates to the acquisition of terrestrial and satellite distribution services and several programming undertakings.
2. Following interim approval on 23 April 2021 of a plan of arrangement for the transaction the Court of Queen's Bench of Alberta,² a majority of Shaw's shareholders approved the plan of arrangement on 20 May 2021,³ and the Alberta Court of Appeal gave final approval of the plan of arrangement five days later.⁴ (Appendix 1 provides a chronology of the timing of this transaction.)
3. As broadcasting licences remain the property of the Crown and cannot neither be sold nor bought the broadcasting portion of the transaction still requires the CRTC's approval.
4. Rogers therefore applied to the CRTC on 13 April 2021 for the authority to continue operation of Shaw's licensed undertakings.⁵ BNoC 2021-281 invites the public's views on this application.
5. BNoC 2021-281 sets out three key considerations with respect to the application: whether its approval is in the public interest, whether the benefits of the transaction reflect its size and nature, and whether the application in general is the best one possible under the circumstances.⁶
6. The Forum is intervening to oppose Rogers' application as not being the best possible application under the circumstances, based both on the evidence Rogers has provided and on the evidence that Rogers has not provided to support its arguments.
7. In the event that the CRTC nevertheless decides to approve the application the Forum has made five specific recommendations to ensure that this transaction

¹ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶135.

² Shaw, "Shaw Announces the Mailing of Its Circular in Connection With the Special Meeting of Shareholders to Approve the Proposed Business Combination With Rogers", *Filing of Circular & Receipt of Interim Order (April 23, 2021)*, [23 April 2021](#).

³ Shaw, "Shaw Shareholders Overwhelmingly Approve Plan of Arrangement for the Proposed Business Combination With Rogers", [20 May 2021](#).

⁴ Shaw, "Shaw Announces Court Of Queen's Bench Approval Of The Plan Of Arrangement For The Proposed Business Combination With Rogers", [25 May 2021](#).

⁵ See DM#4019507, *Application for authority to effect a change in ownership or control of a licensed broadcasting undertaking (Shares) – Form 139*,

⁶ *Notice of hearing*, BNoC 2021-281, Item 1.

- a. is demonstrably in the public interest,
 - b. yields benefits commensurate with its size, and
 - c. is the best possible application under the current circumstances.
8. Although Rogers' application mentions them in some detail⁷ the Forum's intervention makes no argument concerning the \$20 billion worth of telecommunications assets that Shaw is selling and Rogers is buying. Legal jurisdiction to consider this matter does not rest with the CRTC but with the Department of Innovation, Science and Education (ISED) and the Competition Bureau. This division in jurisdiction makes it somewhat unclear whether the CRTC should consider benefits related to the sale of Shaw's telecommunications assets as benefits of this broadcasting application.
9. The Forum respectfully submits that while a strong telecommunications system generally benefits Canada's broadcasting system because Internet services enable the distribution of programming, Rogers' proposed investments in telecommunications will not in and of themselves generate more programming made by and for Canadians. The CRTC should therefore focus on the specific broadcasting benefits being proposed by Rogers rather than its investments in telecommunications.
10. In the remainder of this Part the Forum briefly describes the circumstances of Rogers' application. Part II then begins by addressing the issues identified by the CRTC as relevant in BNoC 2021-281 and follows with a discussion of other issues made relevant by the *Broadcasting Act* and the CRTC's policies with respect to compliance and diversity of voices. Part III addresses the benefits proposed by this application. Part IV lists the Forum's recommendations regarding requirements the CRTC should impose – if it decides to grant Rogers' application – to ensure that this \$25 billion transaction can be shown over time to have strengthened Canada's broadcasting system.

A. The circumstances of this transaction
11. In mid-March 2021 Rogers and Shaw concluded a *Voting Support Agreement* in which Shaw and Rogers agreed to proceeding with a *Plan of Arrangement* through which Rogers would acquire Shaw's business.
12. Rogers filed its application to acquire control of Shaw's broadcasting services with the CRTC on 13 April 2021.
13. On 14 April 2021 Shaw's Board of Directors invited Shaw's shareholders to a special meeting to decide whether to proceed with the *Plan of Arrangement*,⁸ and they agreed to proceed.

⁷ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶¶16-19 and p.

20.

⁸ Shaw, [Notice of Special Meeting of Shareholders](#) (14 April 2021).

14. Shaw's *Plan of Arrangement* only becomes effective, however, when certain steps are taken under *Alberta's Business Corporations Act*.⁹
15. Yet the *Plan of Arrangement* is proceeding as if it were effective because of the 13 March 2021 *Voting Support Agreement* that is already in force requires Shaw to act as if it is in force.¹⁰ As Shaw explained to its shareholders, its majority shareholder – the Shaw Family

⁹ *Plan of Arrangement*, pages 36-37.

2.9 Articles of Arrangement and Effective Date

(a) The Company shall file the Articles of Arrangement with the Registrar [“the registrar duly appointed pursuant to section 263 of the ABCA”], and the Effective Date shall occur as soon as reasonably practicable after (and in any event not later than three Business Days after) the date on which all conditions set forth in Section 6.1, Section 6.2 and Section 6.3 have been satisfied or waived (excluding conditions that, by their terms, cannot be satisfied until the Effective Time, but subject to the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is stipulated, of those conditions as of the Effective Time), unless another time or date is agreed to in writing by the Parties; provided that (i) if the Purchaser has given written notice to the Company that it requires a Marketing Period and the Marketing Period has not ended on the date of the satisfaction or waiver of the conditions set out in Article 6 (excluding conditions that, by their terms, cannot be satisfied until the Effective Time, but subject to the satisfaction or, where not prohibited, waiver by the applicable Party or Parties for whose benefit such conditions exist, of those conditions as of the Effective Time), then the Effective Date will take place instead on the earliest of (A) any Business Day during the Marketing Period as may be specified by the Purchaser on not less than three Business Days’ prior written notice to the Company (provided that the Effective Time shall not be later than the Outside Date); (B) the second Business Day after the final day of the Marketing Period (provided that the Effective Time shall not be later than the Outside Date); and (C) such other date as the Purchaser and the Company may agree in writing, but subject in each case to the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties for whose benefit a condition is stipulated, of all of the conditions set out in Article 6, and (ii) if on the date the Company would otherwise be required to file the Articles of Arrangement pursuant to this Section 2.9(a), a Party has delivered a Termination Notice pursuant to Section 4.11(c), the Company shall not file the Articles of Arrangement until the Breaching Party has cured the breaches of representations, warranties, covenants or other matters specified in the Termination Notice. From and after the Effective Time, the Arrangement will have all of the effects provided by applicable Law, including the ABCA. (b) The closing of the Arrangement (the “Closing”) will take place via electronic document exchange at 8:00 a.m. (Toronto time) on the Effective Date, or at such other date and time as may be agreed upon by the Parties.

¹⁰ Under subsection 2.2(a)(i) of the *Voting Support Agreement* Shaw covenants that it will vote its shares “for (i) the approval of the Arrangement and each of the other transactions contemplated by the Arrangement Agreement, and (ii) any other matter necessary for the consummation of the Arrangement or any other transaction contemplated by the Arrangement Agreement”

Living Trust¹¹ – “irrevocably agreed to support the Arrangement Agreement and the transactions contemplated thereby”¹²

16. These Agreements both prevent Shaw from competing with Rogers.¹³ Shaw cannot act to contravene the terms of either *Agreement*.¹⁴ Shaw acknowledged in the *Voting Support*

¹¹ Shaw, [Management Circular](#), at 4 of 208: The Trust holds 79% of Shaw’s Class A Shares and 8% of its Class B Shares.

¹² Shaw, [Management Circular](#), at 4 of 208.

See also DM#4019525 – APP – APP – Doc7 – Appendix 2D – Voting Support Agreement – Rogers-Shaw.pdf, at 3, s. 2.2. Under this agreement Shaw agreed to vote to approve the arrangement plan, each of its transactions as well as “any other matter necessary for the consummation of the Arrangement” and “any other transaction contemplated by the Arrangement Agreement”.

¹³ The *Voting Support Agreement* requires Shaw to support the *Plan of Arrangement*. Under section 4.1(b)(ii) of the *Plan of Arrangement* at 39-40 Shaw “covenants and agrees” that “except ... with the express prior written consent of the Purchaser (such consent not to be unreasonably withheld ...) ... the Company [Shaw] shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly: ... (ii) enter into any material new line of business or discontinue any material existing line of business;”

¹⁴ *Voting Support Agreement*, s. 2.2(a)(ii)

Covenants of the Controlling Shareholder

(a) The Controlling Shareholder hereby covenants and agrees in favour of the Purchaser that, from the date hereof until the earlier of the Effective Date and the termination of this Agreement in accordance with Article 5:

(i) at any meeting of shareholders or any class of shareholders of the Company (including the Company Meeting) or any adjournment thereof at which holders of Subject Securities are entitled to vote, or in any other circumstances upon which a vote (including in connection with any separate vote of any class of shareholders or any other sub-group of shareholders of the Company that may be required to be held and at which the Subject Securities may be voted), consent (including a written consent in lieu of a meeting) or other approval with respect to the Arrangement or any transaction contemplated by the Arrangement Agreement is sought, the Controlling Shareholder shall cause its Subject Securities to be counted as present for purposes of establishing quorum and shall vote (or cause to be voted) such Subject Securities for (i) the approval of the Arrangement and each of the other transactions contemplated by the Arrangement Agreement, and (ii) any other matter necessary for the consummation of the Arrangement or any other transaction contemplated by the Arrangement Agreement; (ii) at any meeting of shareholders or any class of shareholders of the Company (including the Company Meeting) or at any adjournment thereof at which holders of Subject Securities are entitled to vote, or in any other circumstances upon which a vote (including in connection with any separate vote of any class of shareholders or any other sub-group of shareholders of the Company that may be required to be held and at which the Subject Securities may be voted), consent (including a written consent in lieu of a meeting) or other approval is sought, the Controlling Shareholder shall cause its Subject Securities to be counted as present for purposes of establishing quorum and shall vote (or cause to be voted) such Subject Securities against (i) any Acquisition Proposal and any action, proposal, transaction, agreement or matter that could reasonably be expected to enable, encourage, support, promote, lead to or otherwise facilitate an Acquisition Proposal, and (ii) any action, proposal, transaction, agreement or matter that could reasonably be expected to (A) result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Company under the Arrangement Agreement or of the

Agreement that Rogers “would not enter into the Arrangement Agreement but for the execution, delivery and performance of this Agreement by the Controlling Shareholder [Shaw]”.¹⁵

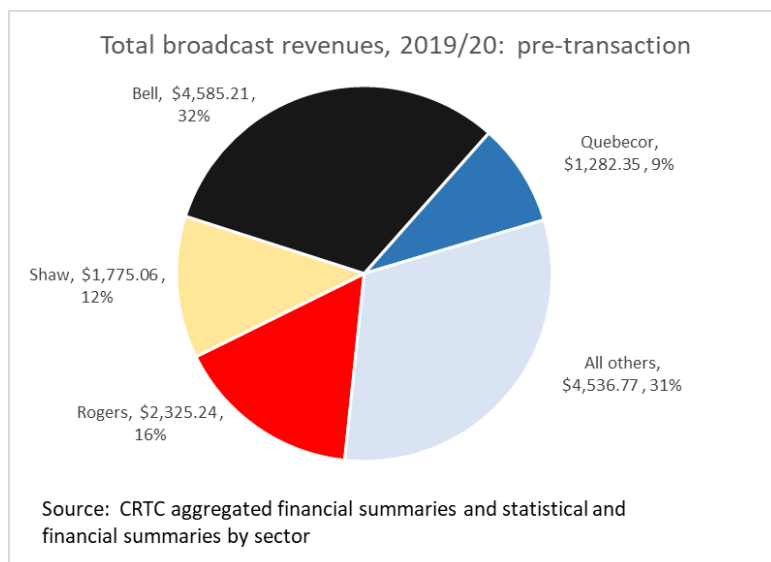
17. The Forum respectfully recommends that the CRTC assure itself that effective control over Shaw’s broadcasting licences has not already been ceded to Rogers through the signed 13 March 2021 *Voting Support Agreement*.

1. The broadcasters in this transaction

18. Rogers and Shaw are two of Canada’s four largest broadcasters. Last year they accounted for 16% and 12%, respectively of all broadcasting revenues in Canada.

19. Each company operates broadcast programming and distribution undertakings either directly or through their subsidiaries.

20. Shaw or its subsidiaries hold licences for three programming services, two satellite distribution services and sixteen terrestrial distribution services (see Appendix 2):



- 3 programming services:
 - Shaw Pay-Per-View (terrestrial) was [renewed](#) in 2019 to 2024
 - Shaw Pay-Per-View (direct-to-home) was [renewed](#) in 2019 to 2024.
 - Shaw On Demand (terrestrial) was [renewed](#) in 2017 to 2022.
- 2 satellite distribution services:
 - Shaw Broadcast Services was [renewed](#) in 2019 to 2026.
 - Shaw Direct was [renewed](#) in 2019 to 2026.
- 16 terrestrial BDUs¹⁶

Controlling - 4 - Shareholder under this Agreement, (B) impede, interfere with, delay, discourage, prevent, adversely affect, inhibit or frustrate the timely consummation of the Arrangement, any transactions contemplated by the Arrangement Agreement or the fulfillment of the conditions to the consummation of the Arrangement, or (C) change in any manner the voting rights of any class of shares of the Company (including any amendments to the Company’s or any of its Subsidiaries’ Constatng Documents);

¹⁵ DM#4019525 – APP – APP – Doc7 – Appendix 2D – Voting Support Agreement – Rogers-Shaw.pdf, at

1.

¹⁶ CRTC Ownership Chart 32a lists Calgary, Edmonton (2), Red Deer, Coquitlam, Kelowna, Langford, Nanaimo, New Westminster, Vancouver (2), Victoria, White Rock, Winnipeg (2) and Saskatoon.

-
21. Shaw also owns 25.17% of the shares in Cable Public Affairs Channel Inc., the licensee of the Cable Public Affairs Channel (CPAC).
22. Rogers or its subsidiaries hold broadcasting licences for 54 radio, 11 conventional television, 1 satellite-to-cable service (SCN) 7 discretionary programming services and 16 distribution undertakings. Rogers also holds 41.58% of the licensee of CPAC and operates a terrestrial video-on-demand discretionary service.¹⁷ It is not licensed to provide an SRDU service and while it held a licence for a DTH PPV programming service,¹⁸ the service's renewal application was denied in 2019 on the grounds of non-implementation.¹⁹
23. Rogers and Shaw therefore compete directly against each other in just one sector: on-demand programming. Rogers operates two terrestrial on-demand programming services -- Rogers on Demand and Sportsnet.²⁰ Shaw also operates two terrestrial on-demand programming services – but also operates a DTH on-demand programming service, Shaw Pay-Per-View.
24. On 13 April 2021²¹ Rogers asked the CRTC to approve its acquisition of all issued and outstanding shares of Shaw and for the authority for Rogers to operate a number of Shaw's distribution and programming services, specifically
- its licensed²² broadcasting distribution undertakings (BDUs) in British Columbia, Alberta, Saskatchewan and Manitoba,
 - Shaw Direct – the national direct-to-home (DTH) satellite distribution undertaking,
 - Shaw Pay-Per-View – the DTH programming service, and

¹⁷ See CRTC Ownership charts [27](#), [27a](#), [27b](#) and [27c](#).

¹⁸ *New, national, direct-to-home, English-language pay-per-view television programming undertaking – Approved*, [Broadcasting Decision CRTC 95-907](#) (Ottawa, 2 December 1995),

¹⁹ *Rogers Sportsnet DTH PPV – Non-renewal of licence*, [Broadcasting Decision CRTC 2019-227](#) (Ottawa, 27 June 2019):

...

2. The Commission notes that the undertaking was authorized in *New, national, direct-to-home, English-language pay-per-view television programming undertaking – Approved*, Decision CRTC 95-907, 20 December 1995, and has yet to launch.

3. In response to an inquiry from Commission staff, Rogers confirmed that the service was not offered to DTH operators and stated that there may be an opportunity to do so within the next licence term. However, Rogers gave no indication of any specific plans to launch the service.

4. The Commission considers that Rogers has had ample time to implement the service and is not convinced that the service will be operational within the next licence term.

5. In light of the above, the Commission will not renew the broadcasting licence for the national, English-language direct-to-home pay-per-view service Rogers Sportsnet DTH PPV. Consequently, the licence will expire on 31 August 2019.

²⁰ CRTC, Ownership Chart 27A, at 2.

²¹ *Rogers-Shaw, Application by Rogers Communications Inc. for Authority to Acquire Effective Control of Shaw Communications Inc.*, Letter to the CRTC, Ottawa, 13 April 2021), DM#4019506, ¶1.

²² BNoC 2021-281.

- Shaw Broadcast Services – the national satellite relay distribution undertaking (SRDU)

25. Rogers also asked the CRTC for permission to acquire Shaw's interest in CPAC's licensee.

2. The broadcasting services in this transaction

26. This transaction involves the transfer of control from Shaw to Rogers of 21 broadcasting services that in 2019/20 reported \$1,353 million in broadcast revenues, and the acquisition of control over CPAC Inc.'s voting shares: Table 1.

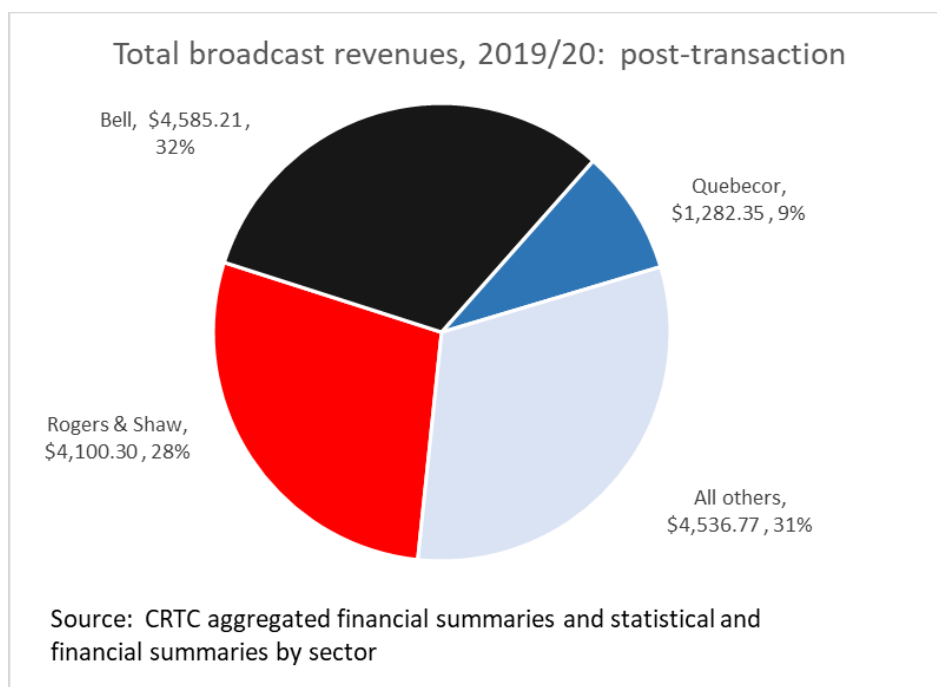
Table 1 Shaw's programming and distribution holdings

Licensee	Undertaking	Nature of service	Revenues in 2019/20 broadcast year
Shaw Cablesystems Limited	16 licensed terrestrial BDUs	BDU	\$1,306.4 million (Basic & extended basic revenues only)
[exempted from licensing]	16 exempted terrestrial BDUs	BDU	
Star Choice Television Network Incorporated	Shaw Direct to Home	BDU	
Shaw Satellite Services Inc.	Shaw Broadcast Services SRDU	Transports programming services to BDUs	No information
Shaw Cablesystems Limited	Shaw on Demand Undertaking #405424144	Programming service	\$32.9 million
Shaw Pay-Per-View Ltd.	Shaw Pay-Per-View (On demand) Undertaking #405416430	Programming service	\$12.7 million
	Shaw Pay-Per-View (DTH/PPV) Undertaking #435408117	Programming service	No information
Shaw Cablesystems Limited holds 25.17% of the shares in CPAC Inc.; Rogers holds 41.58% ²³	Cable Public Affairs Channel Inc. (English-language and French-language services)	Programming service	\$1.0 million
Total			\$1,353.0 million
Source of information: CRTC Statistical and Financial Summaries for Individual Discretionary programming services, 2016-2020; CRTC, Aggregated financial summaries for Shaw			

27. Rogers' share of the broadcasting system's total revenues would hypothetically increase:

²³

See Appendix 5.



28. The Forum notes that while the CRTC's statistical and financial summaries did not report any information for Shaw Pay-Per-View (DTH/PPV) (undertaking #435408117), it was not a failing business: it reported DTH subscriber revenues of \$9.4 million, profits of \$5.7 million and a profit-before-interest-and-taxes (PBIT) margin of 61% in 2018/19. In fact, all three of Shaw's programming services have yielded significant profit margins since 2017/18: Table 2

Table 2 Operating margins (PBIT) of Shaw's programming services, 2015-2020

Operating margin	2015	2016	2017	2018	2019	2020
Shaw on Demand	24.4%	26.1%	19.8%	33.5%	30.7%	26.6%
Shaw Pay-Per-View (formerly Allarcom)	-20.3%	-10.0%	0.9%	3.3%	61.5%	53.0%
Shaw Pay-Per-View (formerly Home Theatre)	6.1%	1.9%	4.8%	38.4%	61.1%	0.0%
CRTC, statistical and financial summaries for individual discretionary programming services (2016-2020)						

29. Rogers' application is unclear as to which programming service it wants to acquire. As noted above, Shaw's DTH pay-per-view service reported \$9.4 million in DTH revenue in 2018/19 but apparently had no revenues in 2019/20. Shaw's PPV on-demand service, meanwhile, reported \$3.8 million in terrestrial revenue in 2018/19 and almost \$13 million in revenues – an increase of \$8.9 million..

Table 3 Confusion over which services Rogers wants to acquire

Name in ownership chart	Shaw on Demand	Shaw pay-per-view (On demand)	Shaw pay-per-view (DTHPPV)
Licensee	Shaw Cablesystems	Shaw Pay-Per-View Ltd.	

Name in financial summaries	Shaw on Demand		Shaw Pay-Per-View (formerly Allarcom)		Shaw Pay-Per-View (formerly Home Theatre (pay-per-view))	
Undertaking #	405424144		405416430		435408117	
Revenue (\$ millions)	2018/19	2019/20	2018/19	2019/2020	2018/19	2019/20
Terrestrial subscribers	\$47.5	\$32.9	\$3.8	\$12.7	\$0.0	
DTH subscribers	\$0.0	\$0.0	\$0.0	\$0.0	\$9.4	
CRTC, statistical and financial summaries for individual discretionary programming services (2016-2020)						

30. Given the jump in revenues of undertaking #405416430 (“Shaw Pay-Per-View”) from \$3.8 million to \$12.7 million, one might conclude that the DTH subscriber revenue from undertaking #435408117 (“Shaw Pay-Per-View”) is now being reported as terrestrial subscriber revenue.
31. The CRTC should ask Rogers which programming service it is seeking to operate, using the CRTC’s undertaking numbers for precise identification. The CRTC should ask Shaw to confirm that Shaw Pay-Per-View Ltd.’s Shaw PPV (On Demand) has no DTH revenue at all – and if it has DTH revenue, to place this correction on the public record of this proceeding (while also correcting, if necessary, the CRTC’s statistical and financial summaries for these services).
32. Clarity is required because in March 2021 Rogers told the CRTC that “[a]t closing” Shaw “will surrender to the Commission” the licences it holds for its terrestrial video-on-demand and its terrestrial pay-per-view undertakings.²⁴ Rogers’ Supplementary Brief does not define what it means by ‘at closing’ in terms of a specific time or event, for instance, making it unclear when these services will be shuttered and the licences returned. The companies’ *Plan of Arrangement* does not clarify this issue either due to the absence of key information about the filing of relevant documents (see Appendix 3). As noted earlier, however, the *Voting Support Agreement* requires Shaw to act in accordance with the *Plan of Arrangement* and to not terminate its current businesses without Rogers’ express consent.
33. The Forum’s position is that the timing of the return of any of Shaw’s licences is irrelevant, since Rogers’ own statement about Shaw’s future actions establishes that the two terrestrial

Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508:

13. We would note that Rogers is not proposing to operate, nor are we seeking approval to acquire, Shaw’s terrestrial VOD undertaking or its terrestrial PPV undertaking as part of this application. At closing, Shaw will surrender to the Commission its licences for these two on-demand undertakings. Rogers currently holds licences to operate a national VOD undertaking and a national terrestrial PPV undertaking and we will provide on-demand programming to Shaw’s subscribers under those two licences after this transaction closes.

²⁴

Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶13.

programming services remain licensed to Shaw because they have not yet been returned. In other words, regardless of the legal issue related to the unauthorized transfer of effective control over Shaw's broadcasting licences, all three of Shaw's licensed programming services are part of this transaction – even if Shaw returns broadcasting licences on the day – or even seconds – before the CRTC renders its decision on Rogers' application.

34. The Forum submits that Rogers is having Shaw return two on-demand programming service licences because their elimination reduces competition for Rogers' own on-demand programming services: the *Voting Support Agreement* in fact specifically prevents Shaw from selling these two services to anyone but Rogers.²⁵
35. Rogers is therefore essentially paying Shaw to return its two on-demand programming licences so as to eliminate the competition they offer to its own services. This competition is not insignificant. The CRTC's financial summaries show that Shaw's on-demand and pay-per-view programming services out-earned those of Rogers by \$24 million:

Table 4 Difference in revenues of Shaw and Rogers on-demand and pay-per-view programming services

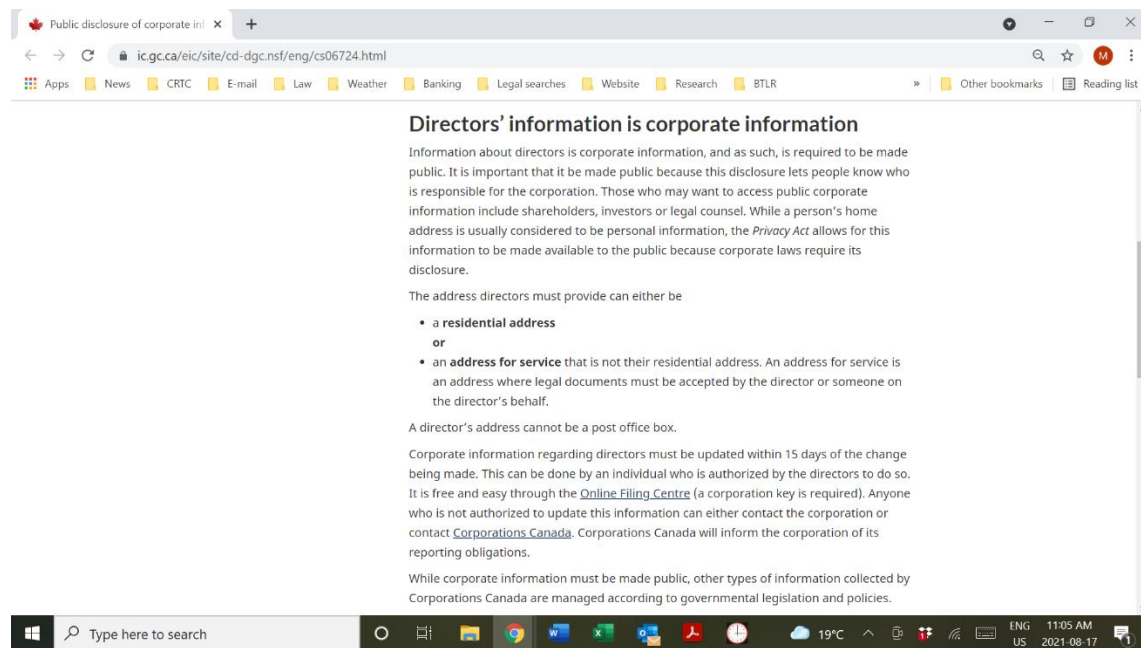
2019/20 broadcast year	CRTC Undertaking #	Revenues
Shaw on Demand	405424144	\$32.891 million
Shaw Pay-Per-View	405416430	\$12.706 million
Shaw, subtotal		\$ 45.597 million
Rogers on demand	305424137	\$21.178 million
Shaw services' revenues less Rogers' service revenues		\$24.419 million

36. While Rogers benefits from the acquisition of very profitable programming undertakings and the reduction in competition for its on-demand programming service, the fact is that on-demand subscribers in Canada will have a markedly more limited choice of service if this application is approved as presented for public review.

3. The confidentiality issue

37. The CRTC granted Rogers' request to keep confidential certain elements of Rogers' application, including but not limited to the names of the members of CPAC's Board of Directors.
38. The Forum respectfully disagrees with this decision, as these names are identified on the website of Innovation, Science and Economic Development Department (ISED): see Appendix 5. As ISED notes, disclosure of information about a corporation's directors "lets people know who is responsible for the corporation" and "is required to be made public":

²⁵ *Voting Support Agreement*, s. 2.2(a)(viii).

Figure 1 Directors' information

39. According to the ISED website, the four Directors of CPAC Inc. are currently Jim Deane, Peter Johnson, Rene Guimond, and Philip Lind. As the CPAC website states that “CPAC’s Board of Directors is made up of cable industry representatives who guide the overall direction of the network”²⁶ Messrs. Deane, Johnson and Lind are senior executives of Access Communications Co-operative Limited, Shaw and Rogers, respectively; according to his LinkedIn profile Mr. Guimond was a senior executive of Cogeco from 2008 to 2018 and is now a consultant.

B. The scale of this transaction relative to the broadcasting system

40. As mentioned previously, Rogers and Shaw are currently the second and third of the four largest broadcasters in Canada, with 16% and 12%, respectively of the broadcasting system’s total revenues: Table 5.

Table 5 Before approval: 2019/20 revenues of the four largest broadcasters in Canada, by broadcast sector

Before transaction is approved	2019/20 revenues						
\$ millions (current)	Bell	Rogers	Shaw	Corus	Top 4	All others	Canada
Radio	\$256.61	\$159.14		\$78.57	\$494.32	\$655.09	\$1,149.40
Conventional television	\$554.84	\$171.40		\$305.05	\$1,031.29	\$300.94	\$1,332.23
Discretionary programming services	\$1,448.27	\$688.33	\$45.60	\$746.48	\$2,928.68	\$1,000.47	\$3,929.14
BDUs (basic & non-basic services)	\$2,325.49	\$1,306.37	\$1,721.44		\$5,353.30	\$2,740.55	\$8,093.85
Total	\$4,585.21	\$2,325.24	\$1,767.04	\$1,130.10	\$9,807.58	\$4,697.05	\$14,504.62
% of Canada							

26

CPAC Inc., “Founding partners”, <https://www.cpac.ca/about-cpac> <accessed 10 September 2021>.

Radio	22.3%	13.8%	0.0%	6.8%	43.0%	57.0%	100.0%
Conventional television	41.6%	12.9%	0.0%	22.9%	77.4%	22.6%	100.0%
Discretionary programming services	36.9%	17.5%	1.2%	19.0%	74.5%	25.5%	100.0%
BDUs (basic & non-basic services)	28.7%	16.1%	21.3%	0.0%	66.1%	33.9%	100.0%
Total	31.6%	16.0%	12.2%	7.8%	67.6%	32.4%	100.0%

Source: CRTC, Aggregated Financial Summaries; CRTC, Statistical and financial summaries (commercial radio, conventional TV, discretionary services and BDUs)

41. Acquiring Shaw will make Rogers the second largest broadcaster in Canada, with Quebecor a distant third at less than 9% of the broadcasting system's revenues: Table 6. Based on the CRTC's revenue data for 2019/20, Overall, the four largest broadcasters' share of broadcasting revenues would increase from two-thirds (67.6%) to three-quarters (76.5%): Table 5 and Table 6.

Table 6 If approved: 2019/20 revenues of the four largest broadcasters in Canada, by broadcast sector

If transaction is approved	2019/20 revenues						
\$ millions current	Bell	Rogers-Shaw	Corus	Quebecor	Top 4	All others	Canada
Radio	\$256.61	\$159.14	\$78.57	\$-	\$494.32	\$ 655.09	\$1,149.40
Conventional television	\$554.84	\$171.40	\$305.05	\$165.92	\$1,197.21	\$ 135.02	\$1,332.23
Discretionary programming services	\$1,448.27	\$733.93	\$746.48	\$197.74	\$3,126.41	\$ 802.73	\$3,929.14
BDUs (basic & non-basic services)	\$2,325.49	\$3,027.81		\$918.69	\$6,271.99	\$1,821.87	\$8,093.85
Total	\$4,585.21	\$4,092.27	\$1,130.10	\$1,282.35	\$11,089.92	\$3,414.70	\$14,504.62
% of Canada							
Radio	22.3%	13.8%	6.8%	0.0%	43.0%	57.0%	100.0%
Conventional television	41.6%	12.9%	22.9%	12.5%	89.9%	10.1%	100.0%
Discretionary programming services	36.9%	18.7%	19.0%	5.0%	79.6%	20.4%	100.0%
BDUs (basic & non-basic services)	28.7%	37.4%	0.0%	11.4%	77.5%	22.5%	100.0%
Total	31.6%	28.2%	7.8%	8.8%	76.5%	23.5%	100.0%

Source: CRTC, Aggregated Financial Summaries; CRTC, Statistical and financial summaries (commercial radio, conventional TV, discretionary services and BDUs)

42. While the CRTC bears a duty to give careful scrutiny to each ownership application that it receives, the scale of this transaction and its potential impact on Canadians – specifically, their access to affordable BDU services, discretionary programming services (whether or not controlled by vertically integrated companies like Rogers) and high-quality original local news – arguably means that it deserves even closer attention.
43. BNoC 2021-281 has identified eleven issues in connection with Rogers' application. The Forum is commenting on four of these issues at this time, and may respond to other parties' comments about these and the remaining issues later in this process:

Issues raised in BNoC 2021-281

- 1 impact on the competitive landscape
- 2 consumers

Issues addressed at this time by the Forum

1. Competitive landscape

- | | | |
|----|--|---|
| 3 | diversity | 3. Diversity |
| 4 | local and community programming | 4. Local and community programming |
| 5 | certified independent production funds | |
| 6 | the transportation of television services (SRDU) | |
| 7 | non-affiliated programming services | 8. Rogers' proposed safeguards and remedies |
| 8 | the safeguards and remedies proposed by Rogers | |
| 9 | value of the transaction | 10. Tangible benefits, and |
| 10 | tangible benefits, and | 11. CPAC. |
| 11 | CPAC | |

44. In addressing these issues the Forum has been guided by the *CRTC Rules of Practice and Procedure*, specifically section 22(2)(e):

(2) An application must be made using the appropriate form listed in Broadcasting and Telecom Information Bulletin CRTC 2010-453, as amended from time to time. If none of the forms listed in the Bulletin is appropriate, the application must

...

(e) contain a clear and concise statement of the relevant facts, of the grounds of the application and of the nature of the decision sought;

45. The Forum respectfully submits that while Rogers has submitted Form 139 (Application for authority to effect a change in ownership or control of a licensed broadcasting undertaking (Shares)) the remainder of its application must nevertheless comply with the Commission's *Rules of Practice and Procedure*. In particular, Rogers' arguments must be supported by facts.

II. Does approval of this application serve the public interest?

46. Two months ago the CRTC explained that in considering whether approval of an application serves the public interest, it decides whether an ownership transaction will enhance Canada's broadcasting system and contribute to the implementation of Parliament's broadcasting policy for Canada:

... When the Commission assesses whether a transaction is in the public interest, it considers **the extent to which the transaction enhances the Canadian broadcasting system and contributes to the achievement of the objectives of the broadcasting policy for Canada**, as set out in section 3(1) of the Act.²⁷

²⁷ CIRH-FM Vancouver – Change in ownership and effective control, licence renewal, and licence amendments, [Broadcasting Decision CRTC 2021-216](#), (Ottawa, 8 July 2021) at ¶21 [bold font added].

A. Impact on the competitive landscape

47. Rogers' Supplementary Brief begins by arguing that its approval will benefit competition – in the telecommunications sector:
- “a competitive alternative to Bell and Telus for business, large enterprise and government customers with telecommunications requirements across Canada Less competition for Rogers” (Supplementary Brief, ¶16)
 - “competition for businesses and consumers [in the context of ensuring] that the full benefits of next-generation networks will be realized for Canadians and for Canada's productivity” (Supplementary Brief, ¶16)
 - “dynamic competition” because it “will partially eliminate the wireless advantage that Bell and Telus currently maintain with their reciprocal joint wireless network sharing arrangement” (Supplementary Brief, ¶17).
48. Rogers then argues that approval of this application will not reduce competition for three reasons. First, it “would not give Rogers control over all BDUs in any given market” (Supplementary Brief, ¶24). Second, Rogers will continue the operations of Shaw Direct “as an alternative to Bell Satellite TV” (Supplementary Brief, ¶25). Third, Rogers will “merely step into Shaw's shoes and continue to operate the [Shaw Direct] DTH distribution undertaking as Shaw has done” (Supplementary Brief, ¶26).
49. Yet approving Rogers' application as presented will:
- a. reduce the total number of competitors in the BDU sector
 - b. eliminate two of Shaw's three on-demand programming services
 - c. enable Rogers to price the Shaw Direct service so as to maximize profits between its terrestrial and DTH services
 - d. increase financial support of its City TV stations by \$12 million
 - e. reduce financial support of Corus' TV stations by \$12 million, and
 - f. enable Rogers, through its control of the SBS SRDU, to treat its discretionary services advantageously and to treat its competitors' services disadvantageously.
50. Rogers' answer to these problems is to ignore them. It says simply that the combined Rogers-Shaw entity will
- a. compete with foreign over-the-top (OTT) or streaming services (Supplementary Brief, ¶52), and
 - b. continue investing in program rights, networks and Ignite TV (Supplementary Brief, ¶53).
51. In brief, approving Rogers' application as presented will not increase or even maintain competition in the broadcasting system but will weaken it by:
- reducing the number of competitors in the broadcasting system and the BDU sector,

- enabling Rogers to maximize its profits by increasing BDU pricing across Canada, and by
- giving Rogers the power if it wishes to disadvantage its competitors such as Corus and independent discretionary services.

B. Impact on diversity

52. Rogers appears to argue that the only question about diversity in this proceeding is whether it would “be in a position to effectively control the delivery of programming services in the markets” it serves (Supplementary Brief, ¶23). It bases this argument on the CRTC’s 2016 decision approving BCE’s acquisition of MTS.²⁸
53. Even if the CRTC’s decisions carried precedential weight – and they do not – Rogers’ argument is flawed because the MTS transaction differed in key ways from the current transaction. Unlike this transaction, BCE’s transaction with respect to MTS’ BDU did not involve the acquisition of national on-demand programming services, a national DTH BDU, an SRDU, a majority interest in CPAC and the redirection of \$13 million from one television company (Corus) to another (Rogers).²⁹ The MTS decision therefore has little relevance to the questions related to the Rogers’ application because these actually involve diversity in programming.
54. Programming diversity was directly considered by the CRTC in its 2008 *Diversity of Voices* policy. It sought to ensure that Canadians “are exposed to an appropriate plurality” of and programming choices as well as commercial editorial voices in both local communities and across the nation.³⁰ The Commission said that
- ... the concept of ‘diversity’ in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements, plurality of editorial voices within the private element, and diversity of programming.³¹
55. The CRTC added that plurality of ownership – another aspect of diversity – matters when it comes to changes in the availability of locally reflective programming, especially news:

The Commission recognizes that a plurality of ownership does not necessarily guarantee a diversity of programming in the system and that large corporate entities may have a greater ability to provide high quality news and entertainment programming. However, as the Commission heard at the Public Hearing, ownership consolidation within the private element can raise concerns about reduced local

²⁸ Supplementary Brief, ¶23, citing *Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control*, [Broadcasting Decision CRTC 2016-487](#) (Ottawa, 16 December 2016)

²⁹ DM#4062331 – Response – 14 July 2021 – Abridged – Response to CRTC Deficiency Questions – Rogers 29Jul2021.doc, answer to question 4.

³⁰ *Diversity of Voices*, [Broadcasting Regulatory Policy CRTC 2008-4](#) (Ottawa, 15 January 2008), at ¶14.

³¹ *Ibid.*, at ¶11.

reflection, particularly in news coverage. As part of its mandate, the Commission encourages and supports content that will provide audiences with programming from a Canadian perspective and that offers local, regional and national reflection.³²

56. Rogers' stated intention to redirect the \$13 million that Shaw's BDU services have been allocating to support news broadcast by the Corus TV stations³³ will affect diversity as the reduced funding will weaken Corus' ability to provide this programming. The fact that Rogers says it will direct this money to its own City-TV stations³⁴ simply heightens concerns about editorial diversity: strengthening Rogers' stations at the expense of the Corus' stations neither strengthens nor maintains diversity.
57. The CRTC should impose a condition of licence requiring Rogers' BDUs to maintain their current financial support for the Corus TV stations. This is not the very best way to solve the diversity and funding problems of local broadcast news, but it may be the only practical tool in the CRTC's regulatory toolkit at the present time and given the terms of the existing application.
58. Rogers' acquisition of CPAC also raises concerns about diversity; the Forum discusses this in more detail below (II G ["CPAC"]).

C. Impact on news

59. As noted above, the Forum is concerned that approval of this transaction will reduce the availability of and financial support for local news offered by the Corus stations. They operate in eight provinces; Rogers' City TV stations operate in five provinces: Table 7. Five of Rogers' TV stations operate in the same communities as Corus' TV stations;

Table 7 Television stations operated by Corus and Rogers

Corus	Rogers
CHAN-DT Vancouver (M) - CHBC-DT Kelowna (M)	CKVU-DT Vancouver (M)
CICT-DT Calgary (O) - CISA-DT Lethbridge (O) - CITV-DT Edmonton (M)	CKAL-DT Calgary (M) CKEM-DT Edmonton (M)
- CFRE-DT Regina (O) - CFSK-DT Saskatoon (O)	
- CKND-DT Winnipeg (M)	CHMI-DT Portage La Prairie (O)
CIII-DT-41Toronto (M) CHEX-DT Peterborough (O)	CITY-DT Toronto (M)

³² *Ibid.*, at ¶20.

³³ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at 5 of 15: ... We do not intend to continue to allocate funds to unaffiliated Corus-owned Global television stations.

³⁴ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at 5 of 15: We confirm that we will continue to use the funding flexibility to support Citytv's local news programming. ...

Corus	Rogers
- CHEX-TV-2 Oshawa (O)	
- CKWS-TV Kingston (M)	
- CKWS-DT-1 Brighton (O)	
CKMI-DT-1 Montréal (M)	CJNT-DT Montréal (O)
CHNB-DT Saint John (M)	
CIHF-DT Halifax (M)	
Source: CRTC ownership charts	

60. Rogers provides no evidence to show that approving its application will increase the amount of original local news available to communities. To the contrary: the fact that Rogers states simply that it will re-direct the funding that the Corus stations previously received to its own City TV stations suggests that overall Rogers' acquisition of Shaw's BDU services will not change, let alone increase, the amount of funding available for locally reflective programming, nearly always consisting of local news.
61. First, the net gain in funding is zero because Rogers is redirecting rather than supplementing its financial support for local news. Even if Rogers directs more funding to and maintains this funding for its City TV stations, any increase in the news that they offer does not mitigate the negative impact on the Corus stations – especially on the communities in Saskatchewan, New Brunswick and Nova Scotia, where no City TV stations operate.
62. Second, as this transaction does not involve the licensing of conventional television services it will be difficult for the CRTC to ensure that the availability of their local news either increases or even remains the same, by setting requirements for original hours of local news by condition of licence.
63. Third, even if it were argued that Rogers' (and also Shaw's) BDU community channels could act as a substitute for conventional television news, the risk exists that BDU community channels' reliance on volunteers will limit the channels' capacity to provide the same amount and quality of news gathering and reporting as conventional television stations are able to deliver.
64. As previously suggested, the CRTC should impose a condition of licence requiring Rogers' BDUs to maintain their current financial support for the Corus TV stations.

D. Rogers' proposed safeguards and remedies

65. Rogers says that "any concerns that could be raised in relation to the expansion of Rogers' BDU subscriber base as a result of the proposed acquisition of Shaw" are alleviated by the existence of dispute resolution and standstill regulations and the *Wholesale Code* (Supplementary Brief, ¶131).
66. Rogers has merely identified the fact that the CRTC's regulations and the *Wholesale Code* exist without providing any evidence that demonstrates their effectiveness in ensuring "that

BDUs and programming services treat each other in a fair and equitable manner” and “that the terms and conditions of carriage for programming services are commercially reasonable and are based on fair market value” (Supplementary Brief, ¶31).

67. In March 2021, three days before Rogers filed its current ownership application, the House of Commons Heritage Committee heard evidence about the revenue disparities between independent discretionary services and the discretionary services of vertically integrated companies like Rogers. From 2015 to 2019 the independent discretionary revenues decreased by 20% - while discretionary service revenues of vertically integrated companies grew by 20% over the same period:

IBG recently completed a study that demonstrates some of the problems with Canada's existing broadcasting system. Between 2015 and 2019, some Canadians cut the cord and the base of Canadian subscribers fell by about 6.5%. IBG's study finds that over this same time period, the revenue of non-mandatory, Canadian independent television discretionary services fell faster, by 20%. Meanwhile, the revenue of the large, vertically integrated discretionary services actually rose. The collective per-subscriber wholesale rate for these services increased by more than 20% over this same time period. This is more than twice the rate of inflation.

These differences suggest strongly that the market power of Canada's large, vertically integrated BDUs is distorting the Canadian market. This kind of discrepancy in revenue is not sustainable. It is undermining diversity in the Canadian system. ...³⁵

68. The results from IBG's study suggest that the CRTC's current regulatory framework for ensuring fair treatment of independent services is not achieving its objectives and that independent discretionary programming licensees have been operating for years at a serious disadvantage in their negotiations with Canada's BDUs. Similar results are found when BDU affiliation payments to Canadian and non-discretionary programming services are reviewed: Table 8. From 2015 to 2019 total BDU payments to their Canadian affiliates grew by 0.9% - their payments to their non-Canadian affiliates grew by twice as much – 1.9%.

Table 8 BDU affiliation payments to Canadian and non-Canadian discretionary services

Supplementary table 13										
Affiliation payments made to Canadian and non-Canadian discretionary services reported by BDUs (\$ millions), 2013-2019										
Category	Type of service	2013	2014	2015	2016	2017	2018	2019	Growth (%) 2018-2019	CAGR (%) 2015-2019
Canadian affiliates	Cable and IPTV	\$2,024.6	\$2,202.3	\$2,328.7	\$,385.7	\$2,470.4	\$2,532.2	\$ 2,552.1	0.8%	2.3%
Canadian affiliates	DTH and MDS	\$ 700.2	\$716.6	\$685.4	\$665.5	\$631.2	\$603.4	\$572.7	-5.1%	-4.4%
Canadian affiliates	Total	\$2,724.9	\$2,918.9	\$3,014.1	\$3,051.2	\$3,101.5	\$3,135.6	\$3,124.8	-0.3%	0.9%
Non-Canadian affiliates	Cable and IPTV	\$ 285.0	\$299.0	\$317.3	\$345.7	\$323.9	\$321.8	\$340.1	5.7%	1.7%
Non-Canadian affiliates	DTH and MDS	\$ 93.8	\$92.9	\$100.8	\$101.9	\$98.5	\$110.5	\$110.5	0.0%	2.3%
Non-Canadian affiliates	Total	\$ 378.9	\$391.9	\$418.1	\$447.6	\$422.4	\$432.3	\$450.6	4.2%	1.9%

Supplementary table 13										
Affiliation payments made to Canadian and non-Canadian discretionary services reported by BDUs (\$ millions), 2013-2019										
Category	Type of service	2013	2014	2015	2016	2017	2018	2019	Growth (%) 2018-2019	CAGR (%) 2015- 2019
All affiliates	All services	\$3,103.7	\$3,310.7	\$3,432.2	\$3,498.8	\$3,523.9	\$3,567.8	\$3,575.4	0.2%	1.0%
Source: CRTC data collection										

69. At the core of the tension between BDUs and independent discretionary programming services is the sheer disparity in bargaining power between a small number of very large BDUs and hundreds of smaller Canadian discretionary programming services, most of which earn just a fraction of what their BDU counterparts earn. Should the CRTC intervene to correct this bargaining disparity?
70. Until this year it might have been argued that the CRTC's power to intervene in disputes between BDUs and independent programming services was limited due to the 2012 Supreme Court of Canada decision in [Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168](#), 2012 SCC 68. It appeared to constrain the CRTC's authority to intervene in such disputes. However, the Federal Court of Appeal recently upheld the CRTC's jurisdiction to adopt its BDU regulations and the standstill rule in [TVA v. Bell](#), 2021 FCA 153. It noted that the 2012 *Reference* decision does not mean that the "CRTC may not control or interfere with the economic relationship between a programming undertaking and a distribution undertaking" (¶49). The Court of Appeal found (¶55) that Parliament apparently intended to give
- ... the CRTC the power to intervene through regulations in a specific aspect of the economic relationships between programming undertakings and distribution undertakings, more specifically that of adjudicating their disputes regarding the carriage of programming. ...
71. While the *TVA v. Bell* case arguably addresses worries that the CRTC exceeds its jurisdiction by setting rules for disputes between programming services and BDUs over terms of carriage, it offers no guidance regarding remedial action by the Commission. In other words – supposing that a discretionary programming licensee is being harmed financially by oppressive BDU terms or by negotiation dilatoriness – can the CRTC make the programming licensee whole? Even if it makes the licensee whole – somehow – how quickly would the CRTC be able to act? Delay is an extremely effective and powerful tool in administrative processes: large parties with access to many revenue sources can easily afford to work through a lengthy dispute process; others cannot.
72. Therefore, while the Forum strongly supports the idea that the CRTC should take remedial actions to ensure fair treatment of independent programming services, we have no specific recommendations to make at this time.

E. Value of the transaction

73. BNoC 2021-281 states that the CRTC “may wish to consider the value of the transaction, the valuation methodology applied to the value of the transaction, and how the value has been allocated between the various broadcasting undertakings”.
74. Analysing the value of this transaction would be complex at any time, but it is complicated in this proceeding by the absence of clear facts explaining how Rogers and Shaw determined that their arrangement is worth \$25.4 billion overall and \$5.4 billion in the specific case of its broadcasting business.
75. The CRTC, of course, is not bound by the Shaw-Rogers valuation of their negotiated offer. As Shaw’s *Management Information Circular* explained, Shaw’s Board of Directors decided that this offer is “in the best interests of the Company” – not that it is in the best interest of Canada’s broadcasting system.³⁶
76. It is up to the CRTC to decide whether the transaction’s value reflects the value to the broadcasting system. If it does not, the CRTC has the power to deny Rogers’ application – or to impose conditions that will ensure the broadcasting system’s interests are served.
77. The Forum’s view is that approving the transaction offers Rogers valuable benefits beyond Shaw’s shares (as Rogers is paying the company’s shareholders for their shares). Rogers’ absorption of Shaw
- 1 reduces the number of competitors and weakens competition faced by
 - (a) Rogers’ on-demand programming services because Rogers plans to operate only one of Shaw’s three services, and
 - (b) Rogers’ conventional TV stations in Vancouver, Calgary, Edmonton, Toronto and Montreal because Rogers plans to re-direct the \$13 million that the Corus stations in those communities receive from Shaw’s BDUs, to strengthen Rogers’ own City TV stations³⁷

³⁶ Shaw, *Notice of Special Meeting of Shareholders* (14 April 2021), at 3 of 208 (yellow highlighting added):

Recommendation of the Board

The Board, having undertaken a thorough review of, and having carefully considered the terms of the Arrangement, and after consulting with its financial and legal advisors, including having received a fairness opinion from TD Securities Inc. and the unanimous recommendation of the special committee of independent directors of the Board (the “Special Committee”) (who received a fixed-fee fairness opinion from CIBC World Markets Inc.), has unanimously (with Bradley Shaw abstaining) determined that the Arrangement and the entering into of the Arrangement Agreement are in the best interests of the Company and determined that the terms and conditions of the Arrangement are fair and reasonable to the Shareholders (other than the Shaw Family Shareholders).

³⁷ DM#4062331, Response to CRTC deficiency questions (14 July 2021), Abridged, response to CRTC question 4, p. 5 of 15:

We confirm that we will continue to use the funding flexibility to support Citytv’s local news programming. This additional funding will be instrumental in helping to build CityNews’ presence and coverage in Western Canada and provide locally reflective news programming that meets the needs of its viewers. ...

-
- 2 gives Rogers control over the distribution of Canada's discretionary programming services from the time those services' signals leave their premises to the time they arrive at BDUs' doorsteps (so to speak)
- 3 strengthens Rogers' position in relation to foreign streaming services³⁸
- 4 is expected to yield \$1 billion in "synergies" to Rogers within two years of the transaction's closing³⁹
- 5 expands the potential subscription base of Rogers' IPTV platform⁴⁰
- 6 enables Rogers to "maintain its investment grade rating", ⁴¹ and
- 7 will be "significantly accretive to [Rogers'] earnings and cash flow per share as of the first year after closing" ⁴²
78. Rogers' Supplementary Brief says that Rogers will "maintain a strong local employee base in Western Canada that will consist of a 10,000 strong workforce across Alberta, British Columbia, Manitoba and Saskatchewan" (¶159). With respect, Rogers' language is evasive. It does not commit Rogers to maintaining the current staff levels at Shaw's BDU and programming services.
79. As for growth in employment opportunities, the Forum reviewed the information available about current employment levels of the Rogers' and Shaw broadcasting businesses with respect to their BDU and on-demand undertakings. As the CRTC's individual statistical and financial summaries for Shaw's on-demand programming services do not include information about their employment and show just four employees for Rogers' national on-demand service, we have focussed on employment in the BDU sector. In 2019/20 Shaw and Rogers' combined BDU workforce already amounted to just over 11,000 people (having decreased by

³⁸ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶128:
If fact, the combination of Rogers and Shaw will allow us to achieve the scale necessary to compete more effectively against these foreign streaming giants, which have been a significant contributor to Canadians' cord-cutting and cord-shaving since at least 2012. ...

³⁹ Rogers, "Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout", News release (Calgary and Toronto, 15 March 2021), <https://about.rogers.com/news-ideas/rogers-and-shaw-to-come-together-in-26-billion-transaction-creating-new-jobs-and-investment-in-western-canada-and-accelerating-canadas-5g-rollout/>.

⁴⁰ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶128:
... In addition, by accelerating the migration of Shaw's terrestrial BDU subscribers to Rogers' IPTV platform, the combined company will ensure that Canadian programming services have a robust platform through which to provide Canadian audiences with access to both their linear programming services and digital media offerings. ...

⁴¹ Rogers, "Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout", News release (Calgary and Toronto, 15 March 2021), <https://about.rogers.com/news-ideas/rogers-and-shaw-to-come-together-in-26-billion-transaction-creating-new-jobs-and-investment-in-western-canada-and-accelerating-canadas-5g-rollout/>.

⁴² Rogers, "Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout", News release (Calgary and Toronto, 15 March 2021), <https://about.rogers.com/news-ideas/rogers-and-shaw-to-come-together-in-26-billion-transaction-creating-new-jobs-and-investment-in-western-canada-and-accelerating-canadas-5g-rollout/>.

just over 12% in the last three years): Table 9. Should Rogers' commitment in its application to maintain 10,000 jobs be understood as a tacit admission that it will be reducing employment if its application is granted?

Table 9 Rogers and Shaw - Average staff per week

Rogers and Shaw: cable & DTH		2018	2019	2020	Change - 2018-2020	
					Number	%
Rogers	Cable	4,502	4,975	4,949	447	9.9%
Shaw	Cable	7,144	6,131	5,260	(1,884)	-26.4%
	DTH	626	554	450	(176)	-28.1%
	Total	7,770	6,685	5,710	(2,060)	-26.5%
Rogers + Shaw		12,935	12,302	11,307	(1,629)	-12.6%
Source: Rogers' and Shaw's Aggregated annual returns for 2018, 2019 and 2020						

80. In any event neither Rogers' March 2021 news release nor its supplementary brief commits Rogers to increasing employment in broadcasting. Rogers' mid-March statement that it will create 3,000 'new net jobs' in Western Canada in fact describes these jobs in relation to its "broadband and wireless investments".⁴³ If the Rogers' transaction leads to a gain of jobs this gain may take place in Canada's telecommunications sector – but not in its broadcasting system.
81. Moreover, while Rogers states encouragingly in its Supplementary Brief that it will "maintain" an employee base of 10,000 in Western Canada, Shaw has already reduced its BDU workforce (and employment opportunities) by a quarter over the past three years. What is needed is not 'maintenance' of employment opportunities, but actual growth in the number of permanent jobs and the opportunities they bring. In the absence of clear statements of fact and commitments, a significant risk exists that approving this transaction will simply enable Rogers to eliminate more employment opportunities in the broadcasting sector overall – through administrative efficiencies and synergies.
82. The Forum respectfully submits that the CRTC should ask Rogers what specific commitments it is making in the case of broadcasting employment, by province. Rogers, in turn, should explain how approval of its transaction will increase employment opportunities in Canada's broadcasting system, thereby implementing Parliament's broadcasting policy for Canada.

⁴³ Rogers, "Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout", News release (Calgary and Toronto, 15 March 2021), <https://about.rogers.com/news-ideas/rogers-and-shaw-to-come-together-in-26-billion-transaction-creating-new-jobs-and-investment-in-western-canada-and-accelerating-canadas-5g-rollout/>.

F. CPAC

83. The television programming service now known as the Cable Public Affairs Channel (CPAC) was launched in the late 1970s by the Canadian Broadcasting Corporation as an experiment. After several years CBC/Radio-Canada applied for and was granted a network licence to broadcast the House of Commons proceedings. Reductions in CBC/Radio-Canada's budget over led the Corporation to announce its withdrawal of the service in early 1990s.
84. A consortium of cable companies subsequently formed and applied for a licence to operate the Parliamentary service. The consortium - incorporated in 1992 as CABLE PARLIAMENTARY CHANNEL INC./LA CHAÎNE PARLEMENTAIRE PAR CABLE INC. – began broadcasting in 1992. The name of the service changed to the Cable Public Affairs Channel Inc. (CPAC) in 1997.⁴⁴ Only BDU licensees may hold shares in CPAC.⁴⁵ The current ownership of CPAC appears in
85. CPAC is currently licensed under section 9(1)(h) of the *Broadcasting Act* as meriting 'mandatory' carriage by BDUs because its programming "is essential to the maintenance and enhancement of national identity and cultural sovereignty".⁴⁶
86. While the cable industry is to be commended for its years of investment in the CPAC service, for some time now it is BDU customers who have provided the bulk of CPAC's revenue, as BDUs are required to carry the service, and BDU subscribers in turn pay for the service (currently 13¢ per subscriber per month). Over the past seven years BDU subscribers have paid just over \$111 million for CPAC's service – this figure represents 99.5% of CPAC's total revenues:

Table 10 CPAC revenues, 2014-2020

Cable Public Affairs Channel (BDU) [Undertaking # 535437455]								
Current \$	2014	2015	2016	2017	2018	2019	2020	2015-20
Revenue								
Terrestrial subscriber	\$11.69	\$11.55	\$11.12	\$12.53	\$12.43	\$13.47	\$13.23	\$86.01
BDU subscriber	\$4.17	\$4.57	\$4.76	\$3.10	\$2.91	\$2.94	\$2.69	\$25.13
Local advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
National advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other	\$0.09	\$0.13	\$0.15	\$0.07	\$0.04	\$0.03	\$0.02	\$0.54
Total Revenue	\$15.94	\$16.25	\$16.03	\$15.69	\$15.38	\$16.43	\$15.94	\$111.68
BDU sub'ns as % of rev	99.4%	99.2%	99.0%	99.5%	99.7%	99.8%	99.9%	99.5%

Source: CRTC, *Individual Discretionary and On-demand Services: statistical and financial summaries* (2014-2018 and 2016-2020)

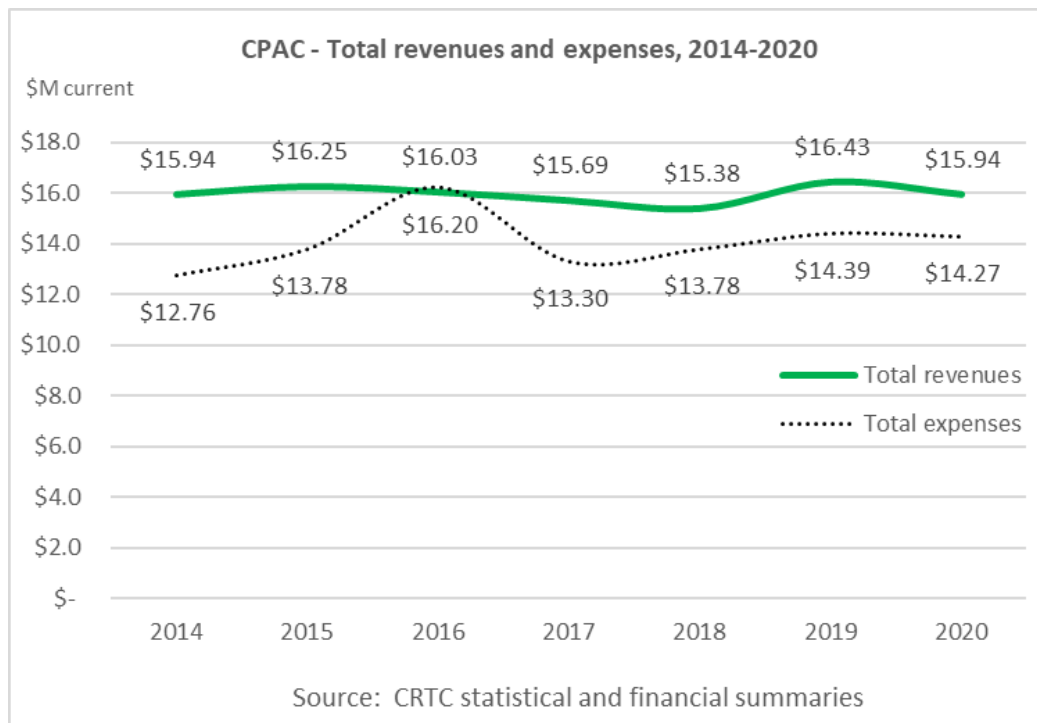
⁴⁴ ISED, Federal Corporation Information, Cable Public Affairs Channel Inc., "Corporate History" (accessed 4 September 2021), https://www.ic.gc.ca/app/scr/cc/CorporationsCanada/fdr/CrpDtIs.html?corpId=2828669&V_TOKEN=null&crpNm=public%20affairs%20channel&crpNmbr=&bsNmbr=.

⁴⁵ Appendix 4, Schedule C, subsection 5(a).

⁴⁶ *Cable Public Affairs Channel – Licence renewal and renewal of mandatory distribution order*, [Broadcasting Decision CRTC 2018-329](#) (Ottawa, 29 August 2018), at ¶13.

87. The revenue from CPAC's subscribers generally covers its programming expenses; Rogers' application has not offered any proposals to change or strengthen CPAC's programming:

Figure 2 CPAC's total revenues and expenses, 2014-20



88. BNoC 2021-281 states that the CRTC “may wish to consider the safeguards proposed by Rogers to ensure that the governance of CPAC Inc. at the level of its board of directors, and the programming offered by the service and editorial voice, are not unduly affected in the event that the proposed transaction is approved”.
89. Rogers denies it will be gaining effective control of CPAC despite its share of CPAC Inc.'s voting shares, because it will be unable to elect a majority of the company's Board of Directors:

39. While the proposed transaction would result in Rogers acquiring more than 66% of the voting shares of CPAC as part of this transaction, Rogers will not acquire effective control of CPAC. Pursuant to CPAC's articles, the shares of the company carry the right of one vote per share except in the case of an election of directors, in which case each registered shareholder is entitled to only one vote. As a result of the current transaction, in voting for the members of the board of CPAC, Rogers would not have the ability to elect a majority of CPAC's board. Rogers would not, therefore, be able to cause CPAC or its board to adopt a specific course of action and, as a result, would not exercise effective control over the undertaking.

90. Rogers is correct that it cannot use its voting shares to elect a majority of CPAC's Board of Directors. Article 2 of CPAC Inc.'s current articles of incorporation (Appendix 4) specifically prevents this. Note, however, that this seems to be the only restriction with respect to CPAC Inc. – shareholders appear able to vote their shares on all other matters:

The common shares shall have attached thereto the following rights, privileges, restrictions and conditions:

...

(ii) the holders of the common shares shall be entitled to vote at any meeting of the shareholders of the Corporation on the basis of one vote per share except with respect to resolutions regarding the election or removal of directors of the Corporation in which case each registered holder of common shares shall be entitled to one vote only, irrespective of the number of common shares registered in the name of the holder.

91. In other words, even if Rogers cannot elect or remove directors of CPAC Inc.'s Board, it may be able to use its shares to vote on other decisions regarding the direction of the company. Approving this transaction as presented will therefore give Rogers de facto majority control of CPAC Inc.
92. The Forum submits that analysis of the distribution of voting shares in and the articles of incorporation of CPAC Inc. are insufficient to understand the impact of approving Rogers' application. CPAC Inc.'s 1992 and its 2009 restated articles of incorporation permit its Board to have anywhere from 1 to 21 Directors (Appendix 4). The number of Directors has never exceeded 11, however, and has been falling since 1994 to the present four Directors: Jim Deane, Peter Johnson, Rene Guimond and Phil Lind:

1994	2021
R. Scott Colbran Noel R. Bambrough Linda Ahern Charles G. Allen Guy G. Beaudry Janice R. Gillies Mark T. Pezarro Pierre Simon Daniel Williams Philip B. Lind Ken Stein	Jim Deane Rene Guimond Peter Johnson Philip B. Lind
Total: 11	Total: 4
Source: ISED, Strategis, Corporate information, CPAC Inc.	

93. Mr. Lind, the Vice-Chair of Rogers' Board for several years, has , in fact, been a member of CPAC Inc.'s Board for at least 27 years (the next-longest-serving Director, Ken Stein of the Canadian Cable Television Association, served for just 18 years).

94. Continuity can often be positive – but in this case, the sheer length of Rogers’ involvement in the service that broadcasts parliamentary and other public-interest programming raises concerns about the extent of its influence over the service’ programming decisions.
95. What prevents Rogers from influencing CPAC’s programming, except its own good will? How, in any event, would Canadians or the CRTC know if or when such influence occurs? Should Canadians be concerned about BDUs’ and Rogers’ proposed majority control of CPAC Inc. given that it has had the monopoly over broadcasting gavel-to-gavel Parliamentary proceedings since 1992?
96. The Forum submits that the public interest would be better served by a Parliamentary programming service whose ownership and direction is entirely independent of broadcast licensees (as well as telecommunications companies).
97. We therefore recommend that the Commission consider using its discretion and exercise its supervisory function to increase the tangible benefits of this transaction beyond the formula-derived figure proposed by Rogers, so as to create an independent public trust that would be endowed with sufficient funding to enable it to manage and operate a new and innovative Parliamentary programming service.
98. The Board of Directors of the new service’s licensee should not be limited to BDU licensees – it should be expanded to include academic, public-interest and other parties. If broadcast licensees are permitted to participate on this Board, their number should be limited to 20% or less of the Directors.
99. As a first step, the Forum recommends that the CRTC use the opportunity of its decision in this transaction to announce a review of CPAC and its role in the broadcasting system, and to seek new proposals for the operation of this service.

III. Will this application strengthen Canada’s broadcasting system?

100. The second broad question that Rogers’ application raises for the Commission is whether approval of the transaction will or will not strengthen Canada’s broadcasting system. BNoC 2021-281 states that

The Commission may wish to consider the proposed benefits package in terms of how it serves the public interest more broadly and compliance with the Tangible Benefits Policy, as well as alternative proposals with respect to the benefits.

101. The idea of ‘tangible benefits’ in relation to ownership transactions is often explained as the consequence of the CRTC’s decision decades ago not to consider competing applications for transfers of ownership: proceedings in which third parties seek the CRTC’s permission to acquire licences after a buyer and seller have already negotiated and come to an agreement regarding the transfer of those licences.

102. In fact, the CRTC tentatively suggested that it might consider competitive ownership transfers just after it was established in 1968.⁴⁷
103. The Commission subsequently decided that it would not entertain competing ownership applications but would instead require changes in ownership to benefit the broadcasting system. In 1977 the CRTC explained that large transactions must yield “significant and unequivocal benefits ... to advance the public interest.”⁴⁸ Its current 2014 policy on tangible benefits explains that when it thinks about the value of individual ownership transactions, it neither values the undertakings involved nor determines whether the buyer’s price is reasonable: its goal is “rather to arrive at an appropriate amount on which to calculate tangible benefits, taking into account the public interest and the absence of a competitive licensing process.”⁴⁹
104. Emphasizing that each transaction must be “the best possible proposal”, the CRTC’s 2014 policy then explains that the transactions it approves must also yield “financial contributions ... proportionate to the size and nature of the transaction”.⁵⁰ These are known as tangible benefits. As the CRTC explained in 2019,

⁴⁷ CRTC, *On the Pricing of Broadcasting Undertakings*, Public Announcement (Ottawa, 10 July 1969): It is ... the policy of the Commission to scrutinize applications for transfer of assets of licences or for transfer of control of licensees in a manner comparable to the examination of applications for licences for new undertakings. Consistent with previous practice, such applications are subject to public hearings, at which objections may be raised and at which companies or persons other than the purchaser proposed by the current licensee may apply for the licence.

....

⁴⁸ In Decision CRTC 77-456 (Ottawa, 28 July 1977), CRTC applied a benefits test to deny the transfer of effective control of Premier Cablevision Limited and Western Broadcasting Company Limited. It said,

... The Commission considers that in cases of transfers of ownership and control, particularly one of such significance, **the onus is on the applicants to demonstrate that approval of the transfers would be in the interest of the public, the communities served by the licensees, including listeners, viewers and cable television subscribers, and the Canadian broadcasting system. In transactions of this magnitude, there must be significant and unequivocal benefits demonstrated to advance the public interest.** The current Broadcasting Act, like that of 1968, requires that the Canadian broadcasting system provide opportunity for the public to be exposed to the expression of differing views and a wide range of programming that reflects Canadian attitudes and opinions, ideas, values and artistic creativity. The Commission has therefore consistently weighed proposed benefits against the potential for concentration of ownership and concerns regarding any reduction in the diversity of expression available in a market.

...
⁴⁹ Broadcasting Regulatory Policy CRTC 2014-459, at ¶74.

⁵⁰ BNoC 2021-281, at ¶1:

Since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the burden is on the applicant to show that the application is the

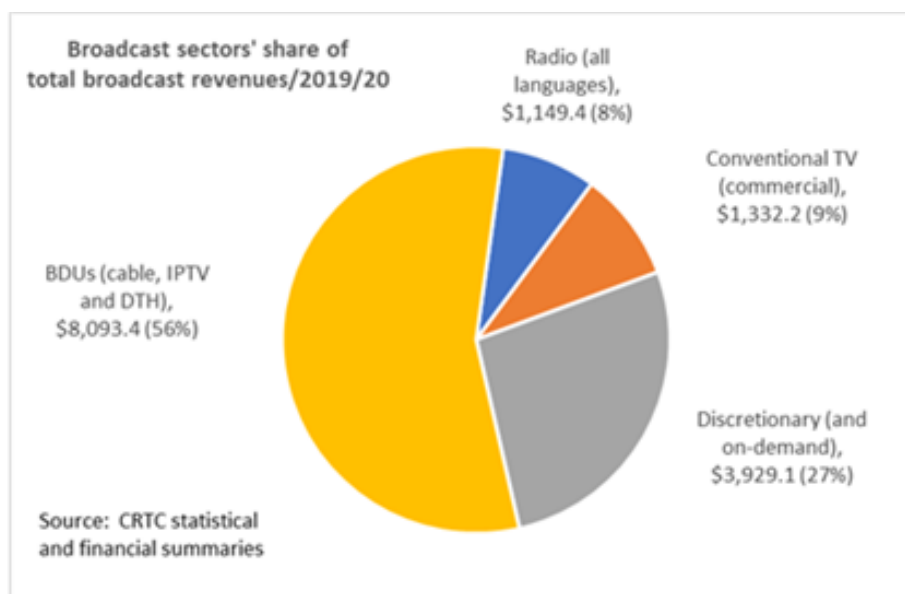
To help ensure that changes in the ownership or control of broadcasting undertakings are in the public interest, the Commission expects applicants to propose tangible benefits, in the form of financial contributions, that are proportionate to the size and nature of the transaction and that will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as to the Canadian broadcasting system as a whole. Tangible benefits are linked to a specific transaction and, generally, are to be expended in equal amounts over a fixed period of time, typically seven consecutive broadcast years.⁵¹

105. The tangible-benefits approach to ownership transactions raises at least three concerns. First, they are nearly always temporary because the CRTC does not require tangible-expenditure benefits to continue in perpetuity: tangible benefits last for a specified term and then end.

Figure 3 Broadcasting sectors' share of 2019/20 revenues

106. A second concern is that, in an era of large vertically integrated entities with massive BDU holdings, the CRTC's current tangible benefits policy does not apply to BDUs.

107. The rationale for this limitation has never been clearly explained and seems particularly odd today, given the fact that BDU revenues represent more than half - 56% - of the broadcasting system's total income.



108. A third concern is that a nearly exclusive focus on undertakings' revenues as the basis of calculating tangible benefits means that in general less or no weight is granted to non-financial impacts of changes in ownership. It is easy to understand that when a concrete

best possible proposal and that approval is in the public interest, consistent with the overall objectives of the Broadcasting Act. As one way of ensuring that the public interest is served, the Commission expects applicants to propose financial contributions (known as "tangible benefits") that are proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole. These overall requirements are referred to as the "benefits test."

⁵¹ Shaw Direct – Licence renewal, [Broadcasting Decision CRTC 2019-388](#) (Ottawa, 29 November 2019),

financial amount is weighed against the ephemeral impact of reduced editorial diversity, the concrete financial amount tends to outweigh intangible concerns.

109. The Forum submits that these concerns require the Commission, in the specific context of this transaction, to tip the balance so to speak in favour of the public interest so as to ensure that Canada's broadcasting system grows stronger – through higher-quality, better-funded original programming by and for Canadians and through more employment opportunities. (While the affordability of BDU rates would also strengthen Canada's broadcasting system, the CRTC currently mandates the provision of a low-cost basic BDU service through its BDU regulations. Nothing prevents Canadian BDUs from offering this basic BDU service at a lower price, and Rogers has not proposed this in its application.)

A. Rogers' discussion of the transaction's benefits

110. Rogers says that its transactions will "further many policy objectives outlined in subsection 3(1) of the *Broadcasting Act*, including by continuing to provide the efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost, in accordance with subparagraph 3(1)(t)(ii)".⁵²
111. Yet other than its reference to subsection 3(1)(t)(ii), Rogers does not state what "many policy objectives" its transaction will implement that but for this transaction would otherwise not be met.
112. For example, Rogers says that the transaction "will ensure Canadian programming services continue to benefit from a robust platform through which to provide Canadian audiences access to both their linear programming services and digital media offerings", and that "Canadian consumers continue to have access to a platform that delivers programming produced and distributed in Canada by Canadians". It states that the Rogers-Shaw entity "will need to continue investing hundreds of millions of dollars annually to acquire program rights, design, build and maintain robust networks and offer next-generation platforms like Ignite TV, as such innovations "are critical to providing customers with a level of choice, value, flexibility, personalization, and control comparable to those offered by foreign OTT services"⁵³ Rogers then says that the transaction will⁵⁴ "have the scale, assets and capabilities needed to deliver critical wireline and wireless broadband and network investments",⁵⁵ "deliver ... innovation and growth in new services";⁵⁶ and "result in greater choice and enhanced offerings for Communication consumers".⁵⁷

⁵² Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶56.

⁵³ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶53.

⁵⁴ Rogers, *Supplementary Brief* (being Appendix 1 of the application), DM#4019508, at ¶3.

⁵⁵ Rogers, *Supplementary Brief* (being Appendix 1 of the application), DM#4019508, at ¶3.

⁵⁶ Rogers, *Supplementary Brief* (being Appendix 1 of the application), DM#4019508, at ¶3.

⁵⁷ Rogers, *Supplementary Brief* (being Appendix 1 of the application), DM#4019508, at ¶3.

113. The Forum respectfully submits that verbs such as ‘continue’ imply more of the same, not something new: While Rogers says it will “continue investing” in program rights, it provides no evidence of any intent to increase its spending on Canadian programming due to this transaction.
114. Second, providing Canadian programming services by Canadian BDUs is a regulatory requirement and Rogers has not explained why its compliance with the CRTC’s regulations constitutes a benefit rather than the normal cost of business in broadcasting.
115. Third, given that service to its BDU subscriber base is critical to its income it is unclear why Rogers’ investments to attract and retain subscribers constitutes a benefit to the broadcasting system.
116. The application also vaguely states that the entity emerging from approval of this transaction “is in the public interest”⁵⁸ because the resulting entity will provide “enormous benefits to consumers and the Canadian broadcasting system”. As the application does not quantify these benefits or state specific commitments that can be enforced, their prospective impact on the broadcasting system is unclear.
117. Rogers goes on to argue that the tangible and intangible benefits of the transaction “will yield measurable improvements to the communities served by the broadcasting undertakings” Rogers will acquire, and “to the Canadian broadcasting system as a whole”.⁵⁹ Yet Rogers does not break out the measurable improvements to which it refers and provides no evidence to support its claim.
118. Two of the intangible benefits cited by Rogers are presented without explaining how these relate to implementation of Parliament’s broadcasting policy for Canada: creating a headquarters for Rogers’ Western operations in Calgary and naming two Shaw nominees to Rogers’ Board of Directors.⁶⁰
119. Similarly, while arguing that approving its application will fuel the economic recovery of Canada, Rogers provides no actual evidence to explain how this will happen or to estimate its transaction’s quantitative impact on Canada’s economy:

While we recognize that this application is focused on Shaw’s broadcasting businesses and that Rogers is seeking the Commission’s approval to acquire those broadcasting undertakings that are licensed to Shaw, it cannot be divorced from the larger transaction. As noted above, the acquisition of Shaw’s broadcasting services constitutes one element of a much broader strategy that involves enhancing and accelerating Canada’s digital infrastructure. This strategy will be critical to diversifying

⁵⁸ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶61.

⁵⁹ Rogers, *Supplementary Brief* (being Appendix 1 of the application), DM#4019508, at ¶4.

⁶⁰ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶59, bullets 3 and 4.

and strengthening the country's economy and innovation sector, as well as fueling economic recovery.⁶¹

120. Rogers also hints that it will continue “to provide the efficient delivery of programming at affordable rates”⁶² as Parliament's broadcasting policy envisages. This statement may not constitute a tangible benefit as Rogers has not provided any evidence that its BDU rates are affordable, however -- a nor has it actually made any enforceable commitments about ensuring the affordability of BDU rates going forward. We assume that Rogers is not arguing that meeting the *Broadcasting Act*'s legal requirement for affordable BDU rates should be viewed as an intangible benefit of ownership transactions.
121. Through its application Rogers cites numerous advantages in relation to what Rogers describes as the ‘broader’ transaction – telecommunications:
- Creation of a competitive alternative to Bell and Telus for business, large enterprise and government customers with telecommunications requirements⁶³
 - Spend \$3 billion support additional network, services and technology investments⁶⁴
 - more choice and competition for businesses and consumers⁶⁵
 - offering “Rogers’ Connected for Success” low-cost broadband service to Western Canada⁶⁶
 - eliminating duplicative network investments⁶⁷
 - spend \$2.5 billion⁶⁸ to deliver 5G and ensure that multiple 5G technology networks are broadly available.⁶⁹
 - partially eliminate the wireless advantage that Bell and Telus currently maintain with their reciprocal joint wireless network sharing arrangement⁷⁰
 - incent ongoing investment and dynamic competition from the combined Rogers/Shaw entity.⁷¹

⁶¹ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶158.

⁶² Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶156: Collectively, all of the above-noted intangible benefits will enhance the contributions that Rogers and Shaw are able to make, together, to the Canadian broadcasting system. Specifically, these initiatives will ensure the combined company is able to further many policy objectives outlined in subsection 3(1) of the *Broadcasting Act*, including by continuing to provide the efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost, in accordance with subparagraph 3(1)(t)(ii).

⁶³ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶16.

⁶⁴ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶159, bullet 10.

⁶⁵ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶16.

⁶⁶ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶159, bullet 7.

⁶⁷ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶16.

⁶⁸ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶159, bullet 10.

⁶⁹ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶17.

⁷⁰ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶17.

⁷¹ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶17.

-
- Extend Internet service to rural and remote areas in Western Canada, where close to 600,000 homes currently have either no Internet or poor Internet⁷² possibly using “a new \$1 billion Rogers Rural and Indigenous Connectivity Fund”⁷³
122. Rogers entangles its telecommunications business with its broadcasting services throughout its Supplementary Brief:
- to achieve the ultimate goal of delivering our full suite of services – Ignite TV, *Internet, phone service, broadband apps, Rogers home monitoring and SmartStream* – across all terrestrial connections and access points, including via coaxial cable, fixed wireless access and fibre to the home In every region of the country, including more rural and remote areas, Canadians’ choices will be enhanced with access to Rogers’ complete range of services and offerings⁷⁴
 - Canadian consumers who reside in areas that do not have wireline access to BDU services or *broadband Internet* today to have access to many of the same offerings that are currently available in larger markets.⁷⁵
 - By adopting fixed wireless solutions, and *utilizing improvements facilitated through the introduction of 5G*, Rogers will be able to *extend Internet access* to areas that are hard to reach via wireline networks.⁷⁶
 - Following approval of this transaction, Rogers will continue to extend our networks and the *Comcast all-IP platform* to areas that are not currently served by Shaw in Western Canada and Northern Ontario⁷⁷
[italics added]
123. As Rogers has not explained how these plans will implement Parliament’s broadcasting policy for Canada the specific benefits of this transaction for the broadcasting system are difficult to determine and assess.
124. More problematic is the fact that Rogers’ application provides no evidence demonstrating how the benefits it has proposed will – in concrete terms – strengthen Canada’s broadcasting system. To the contrary: its evidence is that it will close two programming services. As for employment, while Rogers commits to maintain a 10,000-strong workforce, Rogers and Shaw between them currently employ 11,300 people (see previous Table 9).
125. One gains the impression that Rogers is essentially proposing to step into Shaw’s shoes and no more:

⁷² Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶18

⁷³ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶59, bullet 6.

⁷⁴ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶50.

⁷⁵ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶50.

⁷⁶ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶50.

⁷⁷ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶51.

... Bell and Shaw have been operating both terrestrial and DTH BDUs for more than two decades without any policy concerns being raised. Similar to Shaw's terrestrial BDUs, Rogers will merely step into Shaw's shoes and continue to operate the DTH satellite distribution undertaking as Shaw has done for more than 20 years.⁷⁸

126. It is obvious that Rogers wants to step into Shaw's shoes – what is less obvious is that the CRTC is being asked to believe that these 'shoes' are one or two sizes smaller, so that Rogers can 'pay' less in tangible benefits for the broadcasting system. Put more simply, the benefits that Rogers says this transaction will deliver for the broadcasting system and Canadians are inadequate.

B. Tangible broadcast benefits

127. The CRTC's current approach to tangible benefits is set out in [Broadcasting Regulatory Policy CRTC 2014-281](#). The policy emphasizes the idea that the CRTC cannot fetter its own discretion, stating that "[a]s it has in the past, the Commission may choose to exercise its discretion and depart from this policy where called for to meet the public interest and based on the record before it at the time."⁷⁹
128. Broadcasting Regulatory Policy CRTC 2014-281 also notes that tangible benefits are but "one way" of ensuring that the public interest is served, implying that the CRTC may consider other ways to serving the public interest from time to time.
129. Rogers has proposed to expend \$5.671 million on initiatives related to broadcast programming. First, it added what it said were the total 2019/20 revenues from Shaw's DTH pay-per-view service, to Shaw's share of revenues from CPAC. Next, it calculated these revenues as a percentage of the total amount allocated to the value of the broadcasting undertakings and assets in the entire transaction. Finally, it multiplied this percentage by the transaction's total value – and calculated 10% of this amount: Table 11.

Table 11 How Rogers arrived at tangible benefits amounting to \$5.6 million

Undertaking	Revenue (2020)
Shaw Pay per view (DTH)	\$8,213,347
CPAC (25.17%)	\$3,975,326
Total undertakings' revenue	\$12,188,673
Total broadcasting value of undertaking and assets	\$5,397,975,326
Benefit percentage:	0.2258%
Total undertaking revenue as % of total broadcasting value	
Total transaction value	\$25,447,200,722
Tangible benefits value- Benefit percentage multiplied by total transaction value	\$57,510,674
10% of tangible benefits value	\$5,751,067

⁷⁸ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, at ¶26.

⁷⁹ *Simplified approach to tangible benefits and determining the value of the transaction*, [Broadcasting Regulatory Policy CRTC 2014-459](#) (Ottawa, 5 September 2014), at ¶10.

130. The basis of Rogers' calculation is unclear. First, the figure of \$8.2 million provided as the revenue for the Shaw DTH pay-per-view service does not match the information published by the CRTC in its statistical and financial summaries. This information is set out in Table 12:

Table 12 Revenues of Shaw's programming services and its interest in CPAC

Undertaking	Undertaking number	Revenues	
		2018/19	2019/20
Shaw on Demand (VOD)	405424144	\$47,482,490	\$32,891,145
Shaw Pay per View (DTH)	405416430	\$3,802,922	\$12,706,487
Shaw Pay per View (terrestrial))	435408117	\$9,405,746	[not shown]
25.17% of CPAC revenue	535437455	\$4,136,568	\$4,012,281
Subtotal		\$61,732,332	\$46,607,523

131. Second, Shaw holds broadcasting licences for three programming services, not one. (Shaw does not hold the licence for CPAC, which is held by a BDU consortium.⁸⁰) Rogers appears to be arguing that because Shaw may or will at some point return two of its three programming licences, their revenue should be excluded from the calculation of tangible benefits.

33. In accordance with past practice, the tangible benefits proposed are proportionate to the size and nature of the value of the interests of the two television programming undertakings to be acquired by Rogers (namely, the DTH PPV Service and Shaw's 25.17% interest in CPAC). Consistent with the Commission's longstanding policy whereby changes in control of licensed distribution undertakings do not trigger the payment of tangible benefits, the distribution undertakings that are part of this transaction are excluded from the proposal of tangible benefits below.⁸¹

132. The Forum disagrees. First and foremost, when Rogers filed its application in March 2021, Shaw held the licences for three programming services, not one. CRTC ownership chart 32 shows that Shaw continues to hold the licences for three programming services. As Shaw did not return two of the three licences before it began negotiations with Rogers, tangible benefits that exclude the value of two of Shaw's three television programming services misrepresent reality.
133. Second, Rogers appears to be asking the CRTC to exempt two of Shaw's discretionary programming services from consideration of tangible benefits. Under the 2014 tangible benefits policy television programming services include discretionary services (broadcaster 2014-459, paragraph 3). Moreover, while the 2014 tangible benefits policy permits certain undertakings to be excluded from application of the policy,⁸² the services being operated by

⁸⁰

⁸¹ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶133.

⁸² *Ibid.*, at ¶¶59-61.

Shaw do not meet the policy's criteria – they are not in their first licence term, nor have they suffered significant financial losses for at least five consecutive years.

134. By requiring Shaw (through the provisions of the *Voting Support Agreement*) to return two of its three programming services, Rogers effectively negotiated with Shaw to reduce competition for its own discretionary programming services.
135. Meanwhile the CRTC's current tangible benefits policy states the necessity of including non-competition agreements "to fully reflect the cost of acquisition:

Other elements – The inclusion of other commitments or arrangements related to a transaction, such as non -competition agreements and consulting contracts, is necessary to fully reflect the cost of acquisition. **Excluding these elements might lead to the structuring of transactions in such a way as to reduce the amount of tangible benefits.** The Commission notes Bell's position that including such elements is acceptable only if their value exceeds the market value for the services. However, adopting this approach would require that the Commission determine the market value for the services, which would likely be labour -intensive and thus contrary to the goal of simplifying the process. Accordingly, **the Commission considers it appropriate to maintain its current practice of including other commitments such as non-competition agreements, consulting contracts and break-up fees in the calculation of the value of the transaction.**⁸³

136. The Forum respectfully submits that Rogers' commitment that Shaw will return two of its three programming licences – a commitment to Rogers that the *Plan of Arrangement* and *Voters Shareholder Agreement* oblige Shaw to keep – is a sophisticated type of non-competition agreement. Reduced competition in the on-demand and pay-per-view sector benefits Rogers – and the broadcasting system should receive a commensurate benefit.
137. Including the programming services that Rogers has chosen to exclude yields a tangible benefit of \$23.4 million - \$17.6 million more than Rogers proposed based on the structure of the transaction designed by Rogers and Shaw: Table 13.

Table 13 Tangible benefits from Rogers' arrangement with Shaw

Undertaking	Undertaking number	2019/20 Revenue
Shaw on Demand (VOD)	405424144	\$32,891,145
Shaw Pay per View (DTH)	405416430	\$12,706,487
Shaw Pay per View (terrestrial))	435408117	[not shown]
25.17% of CPAC revenue ⁸⁴	535437455	\$4,012,281

⁸³ Broadcasting Regulatory Policy CRTC 2014-459, at para. 76, bullet 4 [bold font added].

⁸⁴ Broadcasting Regulatory Policy CRTC 2014-459, ¶185 states that non-controlling interests should be excluded:

Further, by adopting the revenue method, the Commission notes that non-controlling interests could easily be excluded from larger transactions as proposed by Corus and

Undertaking	Undertaking number	2019/20 Revenue
Subtotal		\$49,609,913
Total broadcasting value of undertaking and assets		\$5,397,975,326
Benefit percentage: Total undertaking revenue as % of total broadcasting value		0.919%
Transaction value		\$25,447,200,722
Benefit percentage multiplied by transaction value		\$233,871,654
10%		\$23,387,165
Source of programming undertakings' revenue: CRTC, <i>2020 Discretionary and On-Demand Statistical and Financial Summaries</i> , https://crtc.gc.ca/eng/industr/fin.htm		

138. The Forum respectfully submits that this tangible benefit amount more accurately reflects the true value of this application to Rogers and Shaw – evidence for which is found in the **70%** premium that Rogers willingly paid to Shaw's owners for the right to acquire their business. This amount also enables the broadcasting system to benefit in an enduring way – rather than for the temporary period after which Rogers' estimated \$5.7 million in tangible benefits 'expire' (although the purchase price previously paid to asset owners such as Shaw's shareholders does not).
139. As for the allocation of the tangible benefit amount, Rogers proposed to allocate 81% of its \$5.7 million tangible benefits estimate to the CMF, its two programming funds and the Shaw programming fund, and the remaining 19% to festivals across Canada: Table 14.

Table 14 Rogers' proposed allocation of tangible benefits

Beneficiary	Amount	% of total
Canadian Media Fund	\$2,758,080	48.6%
Rogers Documentary and Cable Network Fund	\$919,360	16.2%
Shaw Rocket Fund	\$919,360	16.2%
Subtotal	\$4,596,800	81.1%
DOXA (Vancouver)	\$50,000	
Talking Stick Festival -	\$50,000	
Vancouver International Film Festival (VIFF) -	\$75,000	
Vancouver Queer Film Festival -	\$50,000	
Victoria Film Festival -	\$100,000	
Whistler Film Festival -	\$50,000	
Calgary International Film Festival	\$100,000	

Shaw and that this would harmonize the treatment of such transactions with that of acquisitions of non-controlling interests in individual transactions. Accordingly, the Commission will modify its current practice for the allocation of non-controlling interests so as not to include them when they are acquired as part of a larger transaction.

...

The Forum has included Shaw's 25.17% of CPAC Inc. in calculating tangible benefits, however, because Rogers already owns 41.58% of the service – Shaw's percentage of voting shares makes Rogers the majority shareholder in CPAC inc.

Calgary Queer Arts Society, Fairy Tales Festival -	\$99,600	
Edmonton: Dreamspeakers International Film Festival -	\$99,600	
Edmonton International Film Festival -	\$100,000	
Saskatoon Fantastic film Festival -	\$75,000	
Yorkton Film Festival -	\$75,000	
Gimli Film Festival -	\$75,000	
Winnipeg Aboriginal Film Festival -	\$75,000	
Subtotal	\$1,074,200	18.9%
Total	\$5,671,000	100.0%

140. Rogers explained its decisions regarding discretionary initiatives as follows:

... Each contribution qualifies as an eligible discretionary initiative in part because it is incremental and also because it supports the participation of equity groups in the broadcasting industry (i.e., women, racialized communities and Canadians of diverse ethnocultural backgrounds, Canadians of diverse abilities and disabilities, sexual orientations, gender identities and expressions, and Indigenous persons). Each of the initiatives is a film festival that is devoted to or includes the participation of films of one or more of the identified equity groups.⁸⁵

141. The Forum does not disagree with Rogers' allocation of the initial \$5.7 million tangible benefit.

142. Moreover, the Forum supports Rogers' request that it be allowed to distribute the tangible benefits of this transaction in lump-sum payments:

Finally, Rogers is requesting the flexibility to contribute the discretionary portion of the tangible benefits package over a shorter period of time than the standard seven years outlined in BRP 2014-459. ... Moreover, we believe that providing a lump-sum payment would benefit many of the recipients who may be in need of an infusion of new funding to help them recover from the COVID-19 pandemic. In our view, this exception to the general approach would allow us to enhance the impact of our contributions to these organizations. ...⁸⁶

143. Should the Commission agree that the tangible benefits amount estimated by Rogers does not fully reflect the value of the transaction, as the Forum has argued above, FRPC respectfully recommends that CRTC exercise its discretion to allocate a portion of the 'found benefits' to support the continuation of the Broadcasting Accessibility Fund (BAF) and the Broadcast Participation Fund (BPF).

⁸⁵ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶43.

⁸⁶ Rogers, Supplementary Brief (being Appendix 1 of the application), DM#4019508, ¶44.

144. The BAF receives, considers and decides on applications for projects that advance accessibility in broadcasting content. It was established as a \$3 million tangible benefit from the CRTC's approval of BCE's acquisition of CTV in [2011](#).
145. Parliament's enactment of the *Accessibility Act* establishes its concern and requirement that broadcasting be fully accessible to all Canadians. Ensuring the continued availability for projects that strengthen the accessibility of Canadian programming will benefit Deaf and Hard of Hearing Canadians, is not a significant component of Rogers' normal costs of doing business and is related to the context of Rogers' transaction as it involves programming services.
146. The BPF receives, considers and makes decisions about applications submitted by public-interest and consumer organizations to reimburse them for their legal, research and other costs of participating in CRTC broadcasting proceedings. Similar to the BAF it was established as a \$3 million tangible benefit from the CRTC's approval of BCE's acquisition of CTV in [2011](#). Two subsequent transactions – Bell's acquisition of Astral in [2013](#) and Sirius XM's acquisition of Sirius FM in [2018](#) – supplemented the BPF's funding by \$2 and \$1.6 million, respectively. The CRTC has denied six requests to stabilize the BPF's funding, in [2012](#), [2013](#), [2016](#) (1 of 2), [2016](#) (2 of 2), [2020](#) and [2021](#).
147. The BPF's Board of Directors makes its decisions about broadcast costs application based on the CRTC's telecommunications-costs regime. This regime, including the hourly rates for which applicants may seek reimbursement, was last reviewed in [2010](#).
148. In August 2021 the BPF advised prospective applicants that it expects its funding to run out in Spring 2022 (Appendix 6). It therefore decided that it would reduce amounts granted to costs applicants for applications submitted after 1 October 2021 by 25%. In September 2021 it clarified to the CRTC that the BPF "will essentially be depleted by June 2022" (Appendix 7).
149. The Forum respectfully notes that as the CRTC has not reviewed the rates it authorized for public-interest participation in telecommunications proceedings since 2010, the value of the rates used in costs applications to the BPF had already decreased. According to the Bank of Canada's inflation calculator, the \$35/hour paid to legal assistants in 2010 would – with inflation – be \$42.64 in 2021. In other words, the value of the rates set in 2010 have fallen by 25% due to inflation. Along with the impact of inflation the BPF's decision to reimburse qualified applicants' costs by 75¢ on the dollar, or 25%, effectively means that public interest funding in CRTC broadcast proceedings has now been cut in half.
150. The rationale for providing financial support for qualified public-interest organizations in broadcasting proceedings is the same as that used to justify the CRTC's establishing of its telecommunications costs regime in the late 1970s. The CRTC essentially concluded in 1978

that “informed participation in public hearings should be encouraged”.⁸⁷ In 1979 a CRTC taxing officer said he had interpreted the Commission's decision in light of the knowledge that “public participation is a fragile concept, more talked about than realized” and “that public interest advocacy groups offer a different, but no less valuable, approach to participation than does the traditional solicitor-client form”.⁸⁸

151. The CRTC subsequently confirmed in 1981 that its costs-application process enabled “informed public participation” in its proceedings, as it permitted public-interest organizations to develop and maintain useful knowledge about the communications system: “The Commission considers that the active participation of established organizations such as CAC and NAPO et al in regulatory proceedings is desirable in view of their continuing interest and knowledge base in the field” and their ability to “intervene in a number of regulatory proceedings ...”⁸⁹
152. The BPF enables public-interest organizations to provide the Commission with evidence-based meaningful reaction about matters before it, and to contribute to the Commission’s understanding of some of the issues its proceedings raises. The termination of the BPF will lead to a reduction in well-researched legal and other analyses concerning proceedings such as this one, policy proceedings and licence renewals. As some groups are able to use the work they have undertaken in the CRTC’s proceedings to participate (without remuneration) in Parliamentary proceedings and other consultations (such as the Broadcasting and Telecommunications Legislative Review Panel), the loss of the BPF will have effects beyond the CRTC.
153. It is obvious that the September 2021 Federal election has complicated matters: while the House of Commons voted to amend the *Broadcasting Act* to give the CRTC explicit authority to establish a broadcast costs regime, the Senate’s decision to study Bill C-10 meant that it did not vote on this change.
154. Nothing has changed, however, insofar as the CRTC’s discretionary authority over tangible benefits is concerned. If the CRTC wishes well-informed public participation from the perspective of the public interest to continue – and at the obvious risk of appearing self-interested – the Forum respectfully recommends that the CRTC exercise its discretion in this proceeding to enable the BPF to continue to operate for the next three years by setting aside tangible-benefits funding for the BPF.
155. Funding the BPF has not been and is not part of Rogers’ normal costs of doing business as the BPF was originally funded by ownership transactions involving two other parties (Bell and

⁸⁷ *Bell Canada v. Consumers' Assoc. of Canada*, [1986 CanLII 49 \(SCC\)](#), [1986] 1 SCR 190, at ¶16, citing CRTC’s Taxation Order 1980-1.

⁸⁸ *Bell Canada v. Consumers' Assoc. of Canada*, [1986 CanLII 49 \(SCC\)](#), [1986] 1 SCR 190, at ¶16, citing Taxation Order 1980-81.

⁸⁹ *Ibid.*, at ¶19, citing Telecom Decision CRTC 81-5.

Sirius). The existence of public-interest funding is related to the context of Rogers' transaction in that public participation enables the CRTC to hear and consider different perspectives on and evidence about the transaction's impact on Canada's broadcasting system.

156. As explained in Table 13, above, Rogers' application does not account for \$17.6 million in tangible benefits; this amount results when the 2019/20 revenues of Shaw's two on-demand programming services are included in the calculation of benefits. The amount that the Forum believes is reasonable for the BAF and BPF represents 0.012% of the transaction's value - or \$3 million – which the Forum is proposing be equally divided the two funds.
157. Tangible benefit funding of \$1.5 million would enable the BPF to continue operations for the current and next two years (see Appendix 7). In making this proposal the Forum assumes that the next Parliament of Canada will continue the work it has begun on amending Canada's 1991 *Broadcasting Act*, and include in those amendments specific legislative authority for the CRTC to establish a broadcast public participation costs application regime similar to its telecommunications public participation costs application regime.
158. In the alternative – if the CRTC approves Rogers' application and does not believe the transaction should provide the benefits as estimated by Rogers and described above, the Forum respectfully submits that the CRTC should nevertheless exercise its discretion to increase the value of the tangible benefits proposed by Rogers by an additional \$3 million, to be allocated to the BAS and BPF in equal, lump-sum amounts of \$1.5 million. The \$1.5 million will enable the BPF to continue operations for approximately three more years (see Appendix 7).

IV. Summary of recommendations

159. The Forum has several recommendations about Rogers' application.
160. Having reviewed the application the Forum believes it should be denied due to the absence of clear evidence that its approval will serve the public interest and strengthen Canada's broadcasting system.
161. In the alternative, if the CRTC decides to approve the application it should ensure that it yields significant and enduring benefits that serve the public interest and strengthen Canada's broadcasting system.
162. Specifically, the CRTC should use this transaction as the opportunity to take steps to establish a Canadian independent public trust to the benefit of CPAC, so that Canadians continue to have access to the proceedings of Parliament programmed by Canadians for Canadians.
163. The CRTC should also take into account the level of benefits this transaction is delivering to Rogers when it considers the matter of tangible benefits. In particular, the CRTC should

require Rogers to clarify its plans regarding broadcast (rather than telecommunications or telecommunications combined with broadcasting) employment levels in the new Rogers-Shaw entity, including disaggregation of incremental broadcast programming and BDU employment by province.

164. The CRTC should require Rogers to maintain or increase employment levels in its licensed undertakings for the next seven years.
165. The Commission's review of the tangible benefits that Rogers is proposing should address the fact that the figures provided by Rogers in calculating tangible benefits do not match the figures in the CRTC's statistical and financial summaries. The CRTC's review should also address the possibility that the transaction underestimates the tangible benefits that the CRTC's 2014 policy otherwise requires by more than \$17 million by excluding one or more programming services for which Shaw still holds broadcasting licences.
166. The Forum is proposing that
- a. If the CRTC accepts Rogers' estimate of the tangible benefits that this transaction should yield, it should use its discretion to increase the tangible benefits by \$3 million above that amount, and divide the \$3 million equally between the Broadcast Accessibility Fund and the BPF, to be granted in a lump sum. The \$1.5 million allocated to the BPF should ensure its continued operation in providing financial support for qualified public- and/or consumer-interest organizations for three years, providing time for the *Broadcasting Act* to be amended to give the CRTC the authority to establish its own public-interest broadcast costs application regime.
 - b. If the CRTC accepts the tangible benefits amount estimated based on its 2014 tangible benefits policy, much of the additional \$17.6 million yielded by that calculation should be redirected, at the Commission's discretion, to the production of new Canadian programming, with \$3 million being divided equally between the Broadcast Accessibility Fund and the BPF and granted in a lump sum, to enable the BPF in particular to continue to operate to provide financial support for qualified public- and/or consumer-interest organizations for the next three years, providing time for the *Broadcasting Act* to be amended to give the CRTC the authority to establish its own public-interest broadcast costs application regime.

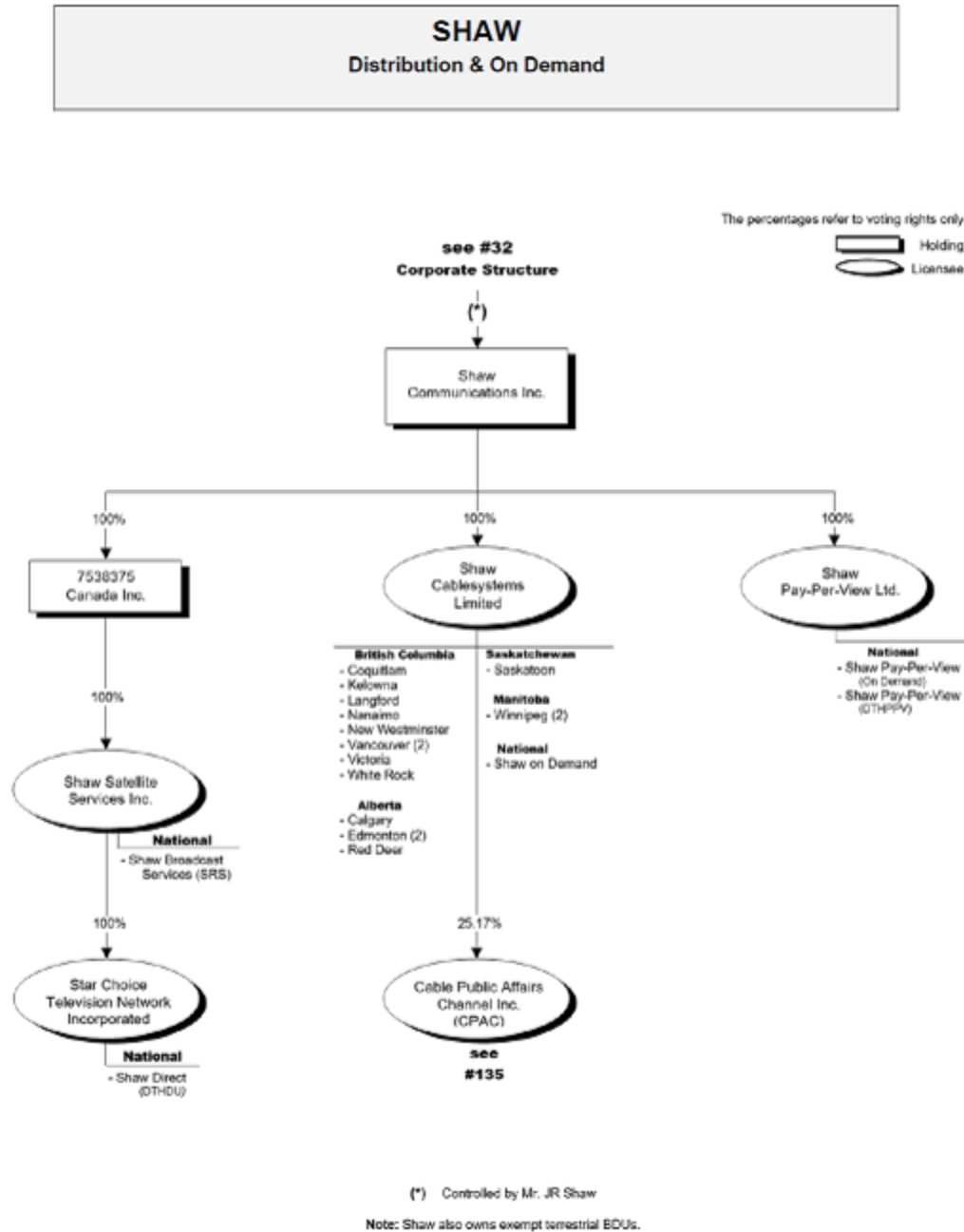
Appendices

Appendix 1 Rogers-Shaw transaction timeline	1
Appendix 2 CRTC ownership chart 32A (Shaw Distribution & On Demand)	2
Appendix 3 “At closing” - meaning	3
Appendix 4 CPAC Inc.’s articles of incorporation	4
Appendix 5 CPAC’s publicly available corporate information and CRTC ownership information	5
Appendix 6 27 August 2021 notice from BPF	10
Appendix 7 BPF letter to the CRTC	11
Appendix 8 Textual description of programming licences held by Shaw, in CRTC ownership chart 32A as of 6 September 2021	12
Appendix 9 CRTC website list of Shaw’s on-demand programming services as of 7 September 2021	14

Appendix 1 Rogers-Shaw transaction timeline

13 March 2021	Date of the Arrangement Agreement between Rogers and Shaw (DM#4019524 – APP – APP – Doc7- Appendix2D – Plan of Arrangement – Rogers-Shaw.pdf) Date of the signed <i>Voting Support Agreement</i> between Rogers and Shaw (DM#4019525 - APP – APP – Doc7 – Appendix 2D – Voting Support Agreement – Rogers-Shw.pdf)
15 March 2021	Rogers and Shaw announce a \$26 billion transaction to combine their companies (Rogers & Shaw, “Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada’s5G rollout”, news release)
13 April 2021	Rogers submits application to the CRTC for authority to acquire effective control of Shaw Communications Inc. (DM#4019506 – APP – Doc 1 – Cover Letter – Application by Rogers to Acquire Effective Control of Shaw.doc)
19 April 2021	Court of Queen’s Bench of Alberta issues interim order that a special meeting be held of Class A and B shareholders in Shaw (Shaw Announces the Mailing of Its Circular in Connection With the Special Meeting of Shareholders to Approve the Proposed Business Combination With Rogers)
25 May 2021	Shaw announces that the Court of Queen’s Bench issues a final order approving the plan of arrangement (Shaw Announces Court of Queen’s Bench Approval of the Plan of Arrangement for the Proposed Business Combination With Rogers)
29 July 2021	Rogers responds to CRTC deficiency questions
12 August 2021	CRTC announces public hearing to consider Rogers’ application in Broadcasting Notice of Consultation CRTC 2021-281
13 September 2021	Comments on Rogers’ application due at CRTC
22 November 2021	CRTC public hearing scheduled to consider Rogers’ application

Appendix 2 CRTC ownership chart 32A (Shaw Distribution & On Demand)



Appendix 3 “At closing” - meaning

The companies’ *Plan of Arrangement* says that “‘Closing’ has the meaning specified in Section 2.9(b)”. Section 2.9(b) of the Plan of Arrangement says that

The closing of the Arrangement (the “Closing”) will take place via electronic document exchange at 8:00 a.m. (Toronto time) on the Effective Date, or at such other date and time as may be agreed upon by the Parties.

The Plan of Arrangement then defines the “Effective Date” as the “date shown on the Certificate of Arrangement giving effect to the Arrangement” (p. 10), in turn defining this this document as “the certificate or proof of filing to be issued by the Registrar pursuant to section 193(11) of the ABCA in respect of the Articles of Arrangement giving effect to the Arrangement.”

This certificate can only be issued after a Court approves the arrangement (subsection 193(9)) – which according to Shaw took place on 25 May 2021 (see Appendix 1).

Section 193(11) of Alberta’s *Business Corporations Act* explains that the Registrar of the issues such certificates when any documents specified in subsection 193(10)(b) and (c) are filed. Subsections 193(10) states:

193(10) After an order referred to in subsection (9)(a) has been made, the corporation shall send to the Registrar

- (a) a copy of the order,
- (b) articles of arrangement in the prescribed form,
- (c) articles of amalgamation or a statement of intent to dissolve pursuant to section 212 in the prescribed form, if applicable,

and

- (d) the documents required by sections 20 and 113, if applicable,

and the Registrar shall file them.

The order in subsection 193(9)(a) referred to by subsection 193(10) Then refers to other steps:

193 (9) After the holding of the meetings required by an order under subsection (4) or the submission to it of written resolutions that comply with subsection (7), the Court shall hear the application and may in its discretion

- (a) approve the arrangement as proposed by the applicant or as amended by the Court, or
- (b) refuse to approve the arrangement, and make any further order it thinks fit.

In brief, it is unclear when the Plan of Arrangement’s closing date will take effect.

Appendix 4 CPAC Inc.'s articles of incorporation



Consumer and
Corporate Affairs Canada

Consommation
et Corporations Canada

Certificate of Incorporation

**Canada Business
Corporations Act**

Certificat de constitution

**Loi régissant les sociétés
par actions de régime fédéral**

**CABLE PARLIAMENTARY CHANNEL INC./
LA CHAÎNE PARLEMENTAIRE PAR CABLE INC.**

282866-9

Name of Corporation - Dénomination de la société

Number - Numéro

I hereby certify that the above-mentioned Corporation, the Articles of Incorporation of which are attached, was incorporated under the Canada Business Corporations Act.

Je certifie par les présentes que la société mentionnée ci-haut, dont les statuts constitutifs sont joints, a été constituée en société en vertu de la Loi régissant les sociétés par actions de régime fédéral.

directeur adjoint

Glenn M. Collins

Deputy Director

June 12, 1992/le 12 juin 1992

Date of Incorporation - Date de constitution

Canada



Consumer and
Corporate Affairs Canada

Consommation
et Corporations Canada

Canada Business
Corporations Act

Loi sur les sociétés
commerciales canadiennes

FORM 1
ARTICLES OF INCORPORATION
(SECTION 6)

FORMULE 1
STATUTS CONSTITUTIFS
(ARTICLE 6)

1 - Name of Corporation

Dénomination de la société

CABLE PARLIAMENTARY CHANNEL INC./LA CHAÎNE PARLEMENTAIRE PAR CABLE INC.

2 - The place in Canada where the registered office is to be situated

Lieu au Canada où doit être situé le siège social

Regional Municipality of Ottawa-Carleton, Province of Ontario

3 - The classes and any maximum number of shares that the corporation is authorized to issue

Catégories et tout nombre maximal d'actions que la société est autorisée à émettre

an unlimited number of common shares and an unlimited number of special shares issuable in series which shall have attached thereto the rights, privileges, restrictions and conditions set out in Schedule "A".

4 - Restrictions if any on share transfers

Restrictions sur le transfert des actions, s'il y a lieu

See Schedule "B"

5 - Number (or minimum and maximum number) of directors

Nombre (ou nombre minimum et maximum) d'administrateurs

minimum one, maximum 21

6 - Restrictions if any on business the corporation may carry on

Limites imposées quant aux activités commerciales que la société peut exploiter, s'il y a lieu

N/A

7 - Other provisions if any

Autres dispositions s'il y a lieu

See Schedule "C"

8 - Incorporators

Fondateurs

Names - Noms	Address (include postal code) Adresse (inclure le code postal)	Signature
Robert J. Buchan	161 Mariposa Avenue Ottawa, Ontario K1M 0T8	<i>Robert J. Buchan</i>

FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT
Corporation No - N° de la société

282866-9

Filed - Déposée

SEP - 8 1992

SCHEDULE "A"

1. The common shares shall have attached thereto the following rights, privileges, restrictions and conditions:
 - (i) the holders of the common shares shall be entitled to receive any dividend declared by the directors on the common shares;
 - (ii) the holders of the common shares shall be entitled to vote at any meeting of shareholders of the Corporation on the basis of one vote per share except with respect to resolutions regarding the election or removal of directors of the Corporation in which case each registered holder of common shares shall be entitled to one vote only, irrespective of the number of common shares registered in the name of the holder; and
 - (iii) subject to the rights of the holders of the special shares, the holders of the common shares shall be entitled to receive the remaining property of the Corporation on dissolution.
2. The directors of the Corporation may at any time or from time to time issue the special shares in one or more series. The directors of the Corporation shall have the right to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to, the shares of each series of special shares, by resolution of the directors passed at or prior to the issue thereof, subject to the limitations set out in the articles of the Corporation.
3. The first series of special shares, which shall be designated Series I Special Shares, shall have attached thereto the following rights, privileges, restrictions and conditions:
 - (i) the holders of the Series I Special Shares shall be entitled to receive any dividend declared by the directors on the Series I Special Shares;
 - (ii) the Corporation may, upon giving notice as hereinafter provided, redeem the whole or any part of the Series I Special Shares on payment for each share to be redeemed of an amount per share determined by dividing the aggregate stated capital attributable to the Series I Special Shares by the total number of Series I Special Shares issued and outstanding, together with all dividends declared thereon and unpaid (hereinafter referred to as the "redemption amount" in respect

of each Series I Special Share); not less than 30 days' notice in writing of such redemption shall be given by mailing such notice to the registered holders of the shares to be redeemed, specifying the date and place or places of redemption; if notice of any such redemption be given by the Corporation in the manner aforesaid and an amount sufficient to redeem the shares be deposited with any trust company or chartered bank in Canada, as specified in the notice, on or before the date fixed for redemption, dividends on the Series I Special Shares to be redeemed shall cease after the date so fixed for redemption, and the holders thereof shall thereafter have no rights against the Corporation in respect thereof except, upon the surrender of certificates for such shares, to receive payment thereof out of the moneys so deposited;

- (iii) on the dissolution of the Corporation, the holders of the Series I Special Shares shall be entitled to receive, before any distribution of any part of the assets of the Corporation among the holders of any other class of shares of the Corporation, an amount per share equal to the redemption amount in respect of each Series I Special Share, and no more; and
- (iv) subject to the provisions of the Canada Business Corporations Act, the holders of the Series I Special Shares shall not be entitled to vote at any meeting of shareholders of the Corporation.

SCHEDULE "B"

The right to transfer shares of the Corporation is restricted and no shares shall be transferred without the consent of the board of directors of the Corporation expressed by a resolution passed by the board of directors.

SCHEDULE "C"

1. The number of shareholders of the Corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment to have continued after termination of that employment to be, shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.
2. Any invitation to the public to subscribe for the securities of the Corporation is prohibited.
3. The board of directors may from time to time, in such amounts and on such terms as it deems expedient;
 - (a) borrow money on the credit of the Corporation;
 - (b) issue, reissue, sell or pledge debt obligations (secured or unsecured) of the Corporation;
 - (c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person or body corporate; and
 - (d) charge, mortgage, hypothecate, pledge or cede and transfer or otherwise create a security interest in all or any of the currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation, including book debts, rights, powers, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the Corporation.
4. The board of directors may from time to time delegate to such one or more of the directors or officers of the Corporation as may be designated by the board all or any of the powers conferred on the board pursuant to paragraph 3 above to such extent and in such manner as the board of directors shall determine at the time of each such delegation.
5. The board of directors of the Corporation shall not issue shares of the Corporation, and shall not consent to a transfer of shares of the Corporation, to any person who is
 - (a) not the holder of a licence issued under the Broadcasting Act (Canada) to carry on a distribution undertaking or an affiliate of such person; or
 - (b) to any person who is an affiliate of a shareholder of the Corporation.

6. For the purposes of administering the provisions of paragraph 5 above, the board of directors of the Corporation may make, amend or repeal by-laws to require any person seeking to have shares of the Corporation issued or transferred to the person to furnish a statutory declaration under the Canada Evidence Act declaring whether the person is a licensee or affiliate referred to in paragraph 5(a) above and whether the person is an affiliate of a shareholder of the Corporation.



Industry Canada

Industrie Canada

Restated Certificate
of Incorporation

Canada Business
Corporations Act

Certificat
de constitution à jour

Loi canadienne sur
les sociétés par actions

Cable Public Affairs Channel Inc./

la Chaîne d'affaires publiques par câble inc.

282866-9

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of incorporation of the above-named corporation were restated under section 180 of the *Canada Business Corporations Act* as set out in the attached restated articles of incorporation.

Je certifie que les statuts constitutifs de la société susmentionnée ont été mis à jour en vertu de l'article 180 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les statuts mis à jour ci-joints.

Richard G. Shaw
Director - Directeur

January 23, 2009 / le 23 janvier 2009

Effective Date of Restatement -
Date d'entrée en vigueur de la mise à jour



Industry Canada Industrie Canada
Canada Business Loi canadienne sur les
Corporations Act sociétés par actions

FORM 7
RESTATED ARTICLES OF
INCORPORATION
(SECTION 180)

FORMULAIRE 7
STATUTS CONSTITUTIFS
MIS À JOUR
(ARTICLE 180)

1-- Name of the Corporation - Dénomination sociale de la société CABLE PUBLIC AFFAIRS CHANNEL INC./ LA CHAÎNE D'AFFAIRES PUBLIQUES PAR CABLE INC.		Corporation No. - N° de la société 282866-9
2-- The province or territory in Canada where the registered office is situated Ontario		La province ou le territoire au Canada où est situé le siège social
3-- The classes and any maximum number of shares that the corporation is authorized to issue an unlimited number of common shares and an unlimited number of special shares issuable in series which shall have attached thereto the rights, privileges, restrictions and conditions set out in Schedule "A".		Catégories et tout nombre maximal d'actions que la société est autorisée à émettre
4-- Restrictions, if any, on share transfers See Schedule "B".		Restrictions sur le transfert des actions, s'il y a lieu
5-- Number (or minimum and maximum number) of directors minimum 1, maximum 21		Nombre (ou nombre minimal et maximal) d'administrateurs
6-- Restrictions, if any, on business the corporation may carry on Effective as of March 21, 1994, the Corporation is established to operate as a non-profit organization with its activities restricted to the provision of public interest programming on a non-profit basis.		Limites imposées à l'activité commerciale de la société, s'il y a lieu
7-- Other provisions, if any See Schedule "C".		Autres dispositions, s'il y a lieu

These restated articles of incorporation correctly set out, without substantive change, the corresponding provisions of the articles of incorporation as amended and supersede the original articles of incorporation.

Cette mise à jour des statuts constitutifs démontre exactement, sans changement substantiel, les dispositions correspondantes des statuts constitutifs modifiés qui remplacent les statuts constitutifs originaux.

Signature <i>Robert J. Buchan</i>	Printed Name - Nom en lettres moulées Robert J. Buchan	8 -- Capacity of - En qualité de	9 -- Tel. No. - N° de tél.
--------------------------------------	--	----------------------------------	----------------------------

FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT

C 23 JAN '09 13:12

SCHEDULE "A"

1. Effective as of March 21, 1994:

- (i) recognizing that the Corporation is established to operate as a non-profit organization and to further support this objective the directors of the Corporation do not intend to declare any dividends now or in the future in respect of the common shares or the special shares of the corporation or in respect of any other class of shares of the corporation and to further ensure this the directors of the Corporation shall not declare dividends in respect of the common shares or the special shares of the Corporation, or in respect of any other class of shares of the Corporation, unless the retained earnings of the Corporation exceed \$500,000,000; and
- (ii) on dissolution the Corporation shall, before distributing any property to the holders of shares of the Corporation, donate to a registered charity, as defined in section 149.1 of the *Income Tax Act* (Canada) and selected by the directors of the Corporation, an amount equal to the difference, if positive, between (A) the value of the Corporation's remaining assets after satisfaction of all liabilities and (B) the total redemption amount in respect of all special shares of the Corporation plus the stated capital of all common shares and shares of any other class of the Corporation issued and outstanding at that time.

2. The common shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- (i) the holders of the common shares shall be entitled to receive any dividend declared by the directors on the common shares;
- (ii) the holders of the common shares shall be entitled to vote at any meeting of the shareholders of the Corporation on the basis of one vote per share except with respect to resolutions regarding the election or removal of directors of the Corporation in which case each registered holder of common shares shall be entitled to one vote only, irrespective of the number of common shares registered in the name of the holder; and
- (iii) subject to the rights of the holders of the special shares, the holders of the common shares shall be entitled to receive the remaining property of the Corporation on dissolution.

3. The directors of the Corporation may at any time or from time to time issue the special shares in one or more series. The directors of the Corporation shall have the right to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to, the shares of each series of special shares, by resolution of

the directors passed at or prior to the issue thereof, subject to the limitations set out in the articles of the Corporation.

4. The first series of special shares, which shall be designated Series I Special Shares, shall have attached thereto the following rights, privileges, restrictions and conditions:
- (i) the holders of the Series I special Shares shall be entitled to receive any dividend declared by the directors on the Series I Special Shares;
 - (ii) the Corporation may, upon giving notice as hereinafter provided, redeem the whole or any part of the Series I Special Shares on payment for each share to be redeemed of an amount per share determined by dividing the aggregate stated capital attributable to the Series I Special Shares by the total number of Series I Special Shares issued and outstanding, together with all dividends declared thereon and unpaid (hereinafter referred to as the "redemption amount" in respect of each Series I Special Shares); not less than 30 days notice in writing of such redemption shall be given by mailing such notice to the registered holders of the shares to be redeemed, specifying the date and place or places of redemption; if notice of any such redemption be given by the Corporation in the manner aforesaid and an amount sufficient to redeem the shares be deposited with any trust company or chartered bank in Canada, as specified in the notice, on or before the date fixed for redemption, dividends on the Series I Special Shares to be redeemed shall cease after the date so fixed for redemption, and the holders thereof shall thereafter have no rights against the Corporation in respect thereof except, upon the surrender of certificates for such shares, to receive payment therefore out of the moneys so deposited;
 - (iii) on the dissolution of the Corporation, the holders of the Series I Special Shares shall be entitled to receive, before any distribution of any part of the assets of the Corporation among the holders of any other class of shares of the Corporation, an amount per share equal to the redemption amount in respect of each Series I Special Shares, and no more; and
 - (iv) subject to the provisions of the *Canada Business Corporations Act*, the holders of the Series I Special Shares shall not be entitled to vote at any meeting of shareholders of the Corporation.

SCHEDULE "B"

The right to transfer shares of the Corporation is restricted and no shares shall be transferred without the consent of the directors of the Corporation expressed by a resolution passed by the directors.

SCHEDULE "C"

1. The number of shareholders of the Corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment to have continued after termination of that employment to be, shareholders of the Corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.
2. Any invitation to the public to subscribe for the securities of the Corporation is prohibited.
3. The board of directors may from time to time, in such amounts and on such terms as it deems expedient;
 - (a) borrow money on the credit of the Corporation;
 - (b) issue, reissue, sell or pledge debt obligations (secured or unsecured) of the Corporation;
 - (c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person or body corporate; and
 - (d) charge, mortgage, hypothecate, pledge or cede and transfer or otherwise create a security interest in all or any of the currently owned or subsequently acquired real or personal property of the Corporation, including book debts, rights, powers, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the Corporation;
4. The board of directors may from time to time delegate to such one or more of the directors or officers of the Corporation as may be designated by the board all or any of the powers conferred on the board pursuant to paragraph 3 above to such extent and in such manner as the board of directors shall determine at the time of each such delegation.
5. The board of directors of the Corporation shall not issue shares of the Corporation, and shall not consent to a transfer of shares of the Corporation, to any person who is,
 - (a) not the holder of a licence issued under the *Broadcasting Act* (Canada) to carry on a distribution undertaking or an affiliate of such person; or
 - (b) an affiliate of a shareholder of the Corporation if such issuance or transfer would increase the number of shareholders of the Corporation immediately after such issuance or transfer, and any issue or transfer of shares of the Corporation approved by the board of directors of the Corporation from and after the date of

incorporation of the Corporation in accordance with this provision is ratified, approved and confirmed.

6. For the purposes of administering the provisions of paragraph 5 above, the board of directors of the Corporation may make, amend or repeal by-laws to require any person seeking to have shares of the Corporation issued or transferred to the person to furnish a statutory declaration under the *Canada Evidence Act* declaring whether the person is a licensee or affiliate referred to in paragraph 5(b) above and whether the person is an affiliate of a shareholder of the Corporation.


Appendix 5 CPAC's publicly available corporate information and CRTC ownership information

(Municipal addresses redacted by FRPC)

8/17/2021

Federal Corporation Information - 282866-9 - Online Filing Centre - Corporations Canada - Corporations - Innovation, Science and Econo...

**Government
of Canada****Gouvernement
du Canada**[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#) → [Corporations Canada](#)→ [Search for a Federal Corporation](#)**Federal Corporation Information - 282866-9**

 Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)**Corporation Number**

282866-9

Business Number (BN)

133750653RC0001

Corporate Name

Cable Public Affairs Channel Inc.

la Chaîne d'affaires publiques par câble inc.

Status

Active

Governing Legislation*Canada Business Corporations Act - 1992-06-12*[Order a Corporate Profile](#) [\[View PDF Sample\]](#) [\[View HTML Sample\]](#).[PDF Readers](#)**Registered Office Address**

45 O'CONNOR ST
SUITE 1750
OTTAWA ON K1P 1A4
Canada

Note

Active CBCA corporations are required to [update this information](#) within 15 days of any change. A [corporate key](#) is required. If you are not authorized to update this information, you can either contact the corporation or contact [Corporations Canada](#). We will inform the corporation of its [reporting obligations](#).

Directors

Minimum 1
Maximum 21

JIM DEANE

[REDACTED]

REGINA SK [REDACTED]

Canada

Peter Johnson

[REDACTED]

Calgary AB [REDACTED]

Canada

Rene Guimond

[REDACTED]

Montréal QC [REDACTED]

Canada

PHILIP B. LIND

[REDACTED]

TORONTO ON [REDACTED]

Canada

Note

Active CBCA corporations are required to [update director information](#) (names, addresses, etc.) within 15 days of any change. A [corporate key](#) is required. If you are not authorized to update this information, you can either contact the corporation or contact [Corporations Canada](#). We will inform the corporation of its [reporting obligations](#).

Annual Filings

Anniversary Date (MM-DD)

06-12

Date of Last Annual Meeting

2021-02-02

Annual Filing Period (MM-DD)

06-12 to 08-11

Type of Corporation

Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2021 - Filed

2020 - Filed

2019 - Filed

Corporate History

8/17/2021

Federal Corporation Information - 282866-9 - Online Filing Centre - Corporations Canada - Corporations - Innovation, Science and Econo...

Corporate Name**History**

1992-06-12 to 1997-05-22	CABLE PARLIAMENTARY CHANNEL INC.	1992-06-12 to 1997-05-22	LA CHAINE PARLEMENTAIRE PAR CABLE INC.
1997-05-22 to Present	Cable Public Affairs Channel Inc.	1997-05-22 to Present	la Chaîne d'affaires publiques par câble inc.

Certificates and Filings**Proxy circular**

As of 1993-05-11

Certificate of Incorporation

1992-06-12

Financial statements**Proxy circular**

As of 1999-05-17

Proxy circular

As of 2000-04-03

Financial statements**Financial statements****Certificate of Amendment ***

2008-02-28

Amendment details: Other

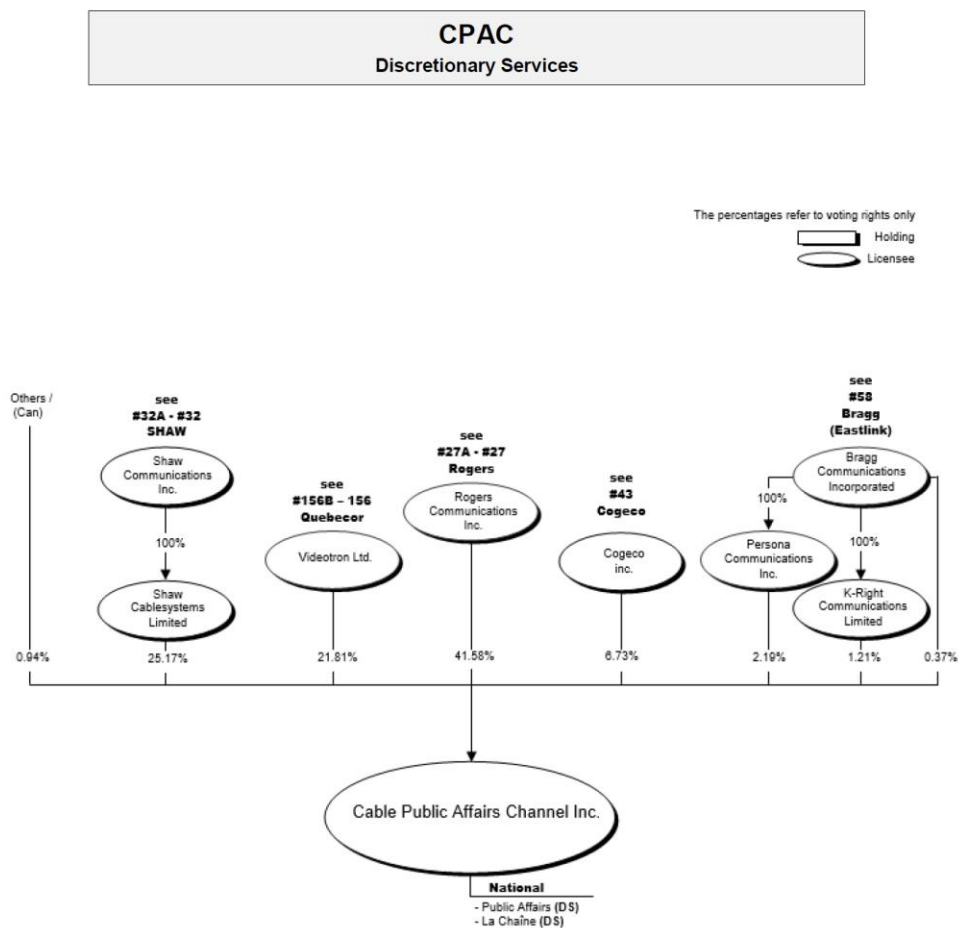
Certificate of Restated Articles of Incorporation

2009-01-23

* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. For more information, [contact Corporations Canada](#).

[Order copies of corporate documents](#)[Start New Search](#)[Return to Search Results](#)**Date Modified:**

2021-06-28

**UPDATE**

Update – 2017-03-14 – of Cable Public Affairs Channel Inc.'s shareholding.

Update – 2018-09-27 – minor change.

Update – 2019-10-10 – on 1 September 2019, Shaw Cablesystems Limited, Shaw Cablesystems (VCI) Limited, Shaw Real Estate Ltd. and eight other entities amalgamated to continue as Shaw Cablesystems Limited.

Update – 2020-06-30 – minor change.

NOTICE

The CRTC ownership charts reflect the transactions approved by the Commission and are based on information supplied by licensees. The CRTC does not assume any responsibility for discrepancies between its charts and data from outside sources or for errors or omissions which they may contain.

Appendix 6 27 August 2021 notice from BPF**NOTICE TO BPF STAKEHOLDERS AND CLAIMANTS REGARDING BROADCASTING PARTICIPATION
FUND DIMINISHMENT**

August 27th, 2021

This is to inform you of some recent developments which have left the BPF in a very difficult financial position.

The BPF Board had hoped that with Bill C-10, there would be funds forthcoming to support the Fund. However, without the passing of Bill C-10 and the recent election call, this is no longer an available source of funding in the near future.

In April, PIAC and FRPC, submitted a Part 1 Application to the CRTC requesting it to initiate public proceedings with the purpose of stabilizing the funding of the BPF. Attached, for your information, is the CRTC's response to this application in which they denied the application considering it closed and deemed the application to be returned.

As of June 30th, 2021, the balance in the Broadcasting Participation Fund was \$516,398 and is expected to be largely depleted by spring of 2022. (See June 30th, 2021 quarterly report attached) In response to the aforementioned developments, and with regard to the financial situation of the Broadcasting Development Fund, the BPF Board is taking the following steps to preserve the Fund until significant new funds are received.

1. As of October 1, 2021, \$0.75 on the dollar will be paid on claims received for work performed after October 01, 2021.

When and if significant funds are received, the Fund will review reimbursement of the remaining \$0.25.

2. When the level of cash in the fund is too low, the Board will undertake the additional measure of imposing a hiatus during which claims will not be accepted. The Fund will re-open when other funds (including Sirius) are received. The reimbursement will remain at .75 on the dollar until significant new funds are received.

The BPF Board have been very actively engaged in finding solutions to this urgent situation and share your concerns that these measures may erode public participation in broadcasting matters. We will keep stakeholders apprised of any significant developments.

BPF Board of Directors

Robin Jackson (Chair), William Atkinson, Penny McCann

Appendix 7 BPF letter to the CRTC



Broadcasting Participation Fund
Le Fonds de Participation à la Radiodiffusion

September 7, 2021

Mr. Ian Scott
Chairperson, CRTC
Ottawa, ON K2A 0N2

ian.scott@crtc.gc.ca

Dear Chairperson Scott,

The Board of Directors of the Broadcasting Participation Fund is writing to advise the Commission of the Fund's current status.

As background, the Commission approved the concept of a funding mechanism for public participation in its broadcasting proceedings in 2011. The mechanism was designed to enable responsible public-interest and consumer groups to make evidence-based submissions in CRTC proceedings, thereby contributing to a better understanding of the significant issues it weighs.

The CRTC approved funding for the Fund by way of tangible benefits from three ownership transactions from 2011 to 2018. While the funding agreed to by the Commission has been used to incorporate the Fund and to retain an accounting firm to oversee the BPF's finances and the applications it receives, it has been directed primarily to pay claims with respect to CRTC-broadcast work by non-commercial public-interest and consumer groups. The BPF has neither full-time staff nor office space.

Applicants that participate in the broadcast proceedings scheduled by the CRTC submit applications to the Fund. The Fund's accounting firm reviews these for accuracy; the BPF's three-member Board then reviews each application along with the materials submitted to the CRTC by the applicants: BPF applicants must explain the contribution they made to the CRTC's proceeding, which has and continues to include legal and expert analysis, empirical research including surveys, and reasoned arguments based on such evidence.

The Board's goal is to issue decisions on all applications within three months of their receipt by the BPF. The Fund does not approve each claim it receives: it has denied some claims in their entirety and has also declined payment for certain aspects of applicants' work.

Since 2013 the Fund has approved the payment of \$4,536,977 for 204 claims from non-commercial public-interest and consumer groups. In an average year the Fund considers claims totalling approximately \$500,000.

As of August 31, 2021, the cash available in the fund is \$508,525. Applications amounting to approximately \$35,500 have been received but have not yet been approved. Should these applications be approved in their entirety, \$473,025 will remain in the fund.

While the Board anticipates that the third set of benefits totalling \$358,000 noted above will continue to be paid - \$119,333 by the end of 2022, 2023 and 2024, respectively, cash flow forecasts project that the Fund will essentially be depleted by June 2022.

In light of the BPF's financial situation, the Board of Directors has therefore decided that as of October 1, 2021, the BPF will pay claimants \$0.75 on the dollar of each claim received. A copy of the letter that the Board sent to stakeholders in late August is attached.

The board will also continue to monitor the situation closely. It will impose a hiatus on all claims when the funds near exhaustion.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robin Jackson", with a stylized flourish at the end.

Robin Jackson
Chair, Broadcasting Participation Fund

cc. Dr. Caroline Simard, CRTC Vice-Chairperson, Broadcasting
Scott Shortliffe, CRTC Executive Director, Broadcasting
Nanao Kachi, CRTC Director, Social and Consumer Policy
BPF stakeholders

Attach. ("NOTICE TO BPF STAKEHOLDERS AND CLAIMANTS REGARDING
BROADCASTING PARTICIPATION FUND DIMINISHMENT")

**NOTICE TO BPF STAKEHOLDERS AND CLAIMANTS REGARDING BROADCASTING
PARTICIPATION FUND DIMINISHMENT**

August 27th, 2021

This is to inform you of some recent developments which have left the BPF in a very difficult financial position.

The BPF Board had hoped that with Bill C-10, there would be funds forthcoming to support the Fund. However, without the passing of Bill C-10 and the recent election call, this is no longer an available source of funding in the near future.

In April, PIAC and FRPC, submitted a Part 1 Application to the CRTC requesting it to initiate public proceedings with the purpose of stabilizing the funding of the BPF. Attached, for your information, is the CRTC's response to this application in which they denied the application considering it closed and deemed the application to be returned.

As of June 30th, 2021, the balance in the Broadcasting Participation Fund was \$516,398 and is expected to be largely depleted by spring of 2022. (See June 30th, 2021 quarterly report attached) In response to the aforementioned developments, and with regard to the financial situation of the Broadcasting Development Fund, the BPF Board is taking the following steps to preserve the Fund until significant new funds are received.

1. **As of October 1, 2021, \$0.75 on the dollar will be paid on claims received for work performed after October 01, 2021.**

When and if significant funds are received, the Fund will review reimbursement of the remaining \$0.25.

2. **When the level of cash in the fund is too low, the Board will undertake the additional measure of imposing a hiatus during which claims will not be accepted. The Fund will re-open when other funds (including Sirius) are received. The reimbursement will remain at .75 on the dollar until significant new funds are received.**

The BPF Board have been very actively engaged in finding solutions to this urgent situation and share your concerns that these measures may erode public participation in broadcasting matters. We will keep stakeholders apprised of any significant developments.

BPF Board of Directors

Robin Jackson (Chair), William Atkinson, Penny McCann

Appendix 8 Textual description of programming licences held by Shaw, in CRTC ownership chart 32A as of 6 September 2021

APPENDIX**Notes:**

The percentages in this chart refer to voting rights only.

The identification (M) after a call sign and location of a radio or television listed below, indicates an originating station with rebroadcasting transmitter(s)

The identification (O) after a call sign and location of a radio or television listed below, indicates an originating station without rebroadcasting transmitter(s)

OWNERSHIP

For the ownership of Shaw Communications Inc., see chart 32.

Shaw Communications Inc. is controlled by J.R. Shaw.

Shaw Communications Inc. holds

- 100% of 7538375 Canada Inc. which in turn holds 100% of Shaw Satellite Services Inc.
- 100% of Shaw Cablesystems Limited
- 100% of Shaw Pay-Per-View Ltd.

Shaw Satellite Services Inc. holds 100% of Star Choice Television Network Incorporated.

Shaw Cablesystems Limited holds 25.17% in Cable Public Affairs Channel Inc. (see Chart 135)

LICENSEES

Shaw Cablesystems Limited is licensee of the following broadcasting distribution undertakings in Alberta, British Columbia, Manitoba, Ontario and Saskatchewan and of the following national video-on-demand service:

Alberta

- Calgary
- Edmonton (2)
- Red Deer

British Columbia

- Coquitlam
- Kelowna
- Langford
- Nanaimo
- New Westminster
- Prince George
- Vancouver (2)
- Victoria
- White Rock

Manitoba

- Winnipeg (2)

Saskatchewan

- Saskatoon

National

- Shaw on Demand

Shaw Pay-Per-View Ltd. is licensee of

- a national on demand service, and of
- a national direct-to-home pay-per-view television service, both known as Shaw Pay-Per-View

Appendix 9 CRTC website list of Shaw's on-demand programming services as of 7 September 2021



Government
of Canada

Gouvernement
du Canada

Canadian Radio-television and Telecommunications Commission (<http://www.crtc.gc.ca/eng/home-accueil.htm>)

Canada

[Home](#) → [TV](#) → [TV and Radio Services](#)

Radio, TV and Cable Broadcasting Services that do and do not need a licence

i Information

The table below contains radio, TV and cable services. These services are categorized as:

1. **Authorized:** services that have obtained approval by the CRTC to have a broadcasting licence ¹; and
2. **Exempt:** services that do not need to have a broadcasting licence.

The exempt services included in the table are :

- Discretionary TV ² services;
- Hybrid Video-on-demand (VOD) ³ services; and
- Cable undertakings ⁴ (or in legal terms, "terrestrial broadcasting distribution undertaking") that are located in a market with at least one licensed cable company.

Selection Criteria

The list will be automatically refreshed upon input selection below.

Broadcast Category

All ▼

Type of Service

On-demand Programming ▼

☐ Include Rebroadcasters

[Export data to Excel](#)

Search: Showing 1 to 4 of 4 entries Show entries

Company Contact Info	Call Sign / Name of service	Description of Service	Location / Service area	Location / Province	Language(s)	Service Subtype	Authorized / Exempt
shaw	Search Call Sign	Search Description	Search Location	All ▼	Search Language(s)	All ▼	All ▼
Shaw Cablesystems Limited	Shaw on Demand		Across Canada	Across Canada		On-demand Service (Video-on-demand)	Authorized
Shaw Pay-Per-View Ltd.	Shaw Pay-Per-View (formerly Home Theatre (pay-per-view))		Across Canada	Across Canada		On-demand Service (Pay-per-view/terrestrial)	Authorized
Shaw Pay-Per-View Ltd.	Shaw Pay-Per-View (formerly Allarcom)		Across Canada	Across Canada		On-demand Service (Pay-per-view/direct-to-home)	Authorized

Company Contact Info	Call Sign / Name of service	Description of Service	Location / Service area	Location / Province	Language(s)	Service Subtype	Authorized / Exempt
<u>Shomi, a joint venture between Shaw Communications Inc. and Rogers Communications Inc.</u>	shomi		Across Canada	Across Canada	English, French, Japanese, Russian, Cantonese, Mandarin, German, Italian, Spanish, Hindi, Norwegian, Portuguese, Swedish, Hebrew	On-demand Service (Hybrid VOD)	Exempt