



13 December 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., – Final reply of FRPC for Research and Policy in Communications (FRPC)

I. Introduction

1. FRPC for Research and Policy in Communications (FRPC) intervened in the above-noted proceeding and appeared before the CRTC hearing panel on 25 November 2021. Our final reply in the proceeding is set out below; a copy is also being submitted to the applicants.
2. Following four preliminary comments, FRPC focusses on the following issues: the transaction's impact on the rates paid by BDU subscribers, on independent programming services, on local news, on the Parliamentary service, on official language communities, on Canada's broadcast heritage and on tangible benefits. FRPC's reply concludes with a summary of its recommendations concerning the amended application now before the Commission.

II. Preliminary comments

3. In this proceeding Rogers has told the CRTC that its desire for predictability and certainty demands that the CRTC strictly apply its existing policies and regulations. Rogers has not offered legal support for this desire. In reality, the *Broadcasting Act* requires the CRTC to regulate and supervise broadcasting "in a flexible manner", [s. 5\(2\)](#) specifically states that the CRTC's "guidelines and statements with respect to any matter within its jurisdiction" are not "binding on the Commission"⁶ and permits the CRTC to use conditions based on licensees' individual circumstances to modify their adherence to its regulations. To the extent that the plea for regulatory certainty and predictability carries weight, however, it must be considered in context: would it be reasonable to accept Rogers' plea while denying similar pleas of other parties – independent broadcasters, producers, employees as well as consumer- and public-interest organizations – for similar certainty and predictability?
4. Second, Rogers has from time to time argued that the CRTC may not impose requirements on this application unless it somehow also imposes the same or similar requirements on its competitors. This argument ignores the fact that Rogers is now facing the foreseeable consequences of its own approach to this application. In reality, accepting Rogers' demands

for complete regulatory symmetry would eliminate the CRTC's capacity to correct deficient applications through conditions of approval or licence – and would fetter the CRTC's capacity to implement the Act's regulatory policy in section 5(2) as it would have to ensure that all broadcasters adhere to identical requirements.

5. Third, FRPC notes that Rogers' answers to undertakings mean that its application now differs significantly from the August 2021 version published by the CRTC, analyzed by interveners until September 2021 and presented to the CRTC hearing panel in late November 2021. Its tangible benefits have increased from \$5.75 million to \$26.62 million (DM#4124766) – and it has made a number of commitments (unenforceable though such commitments may be) to address CRTC concerns. It goes without saying that a great deal of the time of the CRTC, interveners and Rogers itself would have been saved had it presented the application as redesigned in Rogers' 29 November undertakings in its initial March 2021 application to the CRTC.
6. Last, FRPC notes that Rogers has repeatedly referred to the telecommunications benefits of granting its application. FRPC respectfully notes that if the CRTC were to find that the telecommunications initiatives enumerated by Rogers constitute tangible benefits for the broadcasting system, the CRTC would then presumably also include the financial quantum represented by these initiatives in the broadcasting value of the transaction – consequently also raising the value of the transaction's estimated tangible benefits.

III. Issues of concern

7. FRPC's position on Rogers' application to acquire Shaw's business flows primarily from the CRTC's long-standing approach to changes in broadcast ownership and control: that such changes clearly, significantly and unequivocally benefit the broadcasting system, and that the onus for proving such benefits lies on the party seeking the change (see *e.g.* Decisions CRTC 77-456, [86-367](#), [89-768](#), [89-770](#), [90-1073](#), [95-516](#) and [2012-574](#), and Public Notices/Regulatory Policies CRTC [1989-109](#), [1998-41](#), [2007-53](#), [2011-601](#) and [2014-459](#)).
8. In the remainder of this section FRPC addresses the following issues:
 - a. BDU rates
 - b. Independent programming services
 - c. Local news
 - d. CPAC
 - e. Official language minority programming
 - f. Preservation of Canada's broadcast programming heritage, and
 - g. Tangible benefits
- A. **BDU rates**
9. The *Broadcasting Act* requires that programming be delivered "at affordable rates" [3\(1\)\(t\)\(ii\)](#)
10. Concerns were raised in this process that unconditional approval of this transaction could subject Shaw (and possibly other) BDU subscribers to rate increases. [Quantitative opinion research evidence led by PIAC](#) established that Canadians share this concern.

11. If it is argued that the risk of Rogers' raising BDU rates must be proven, FRPC notes that "proof of future conduct is not generally possible except by inference from past conduct" (*Sasol Technology (Proprietary) Limited v. de Klerk*, [2009 ABQB 599](#) at ¶20). As it happens, Rogers' BDU rates have increased in the past few years: according to its aggregated financial returns from 2017/18 (when its BDU licences in Ontario, New Brunswick and Newfoundland and Labrador were last renewed) and 2019/20, Rogers' basic and non-basic service BDU revenues grew 4.9%, from \$825.31 to \$865.78 per basic and non-basic subscriber. These data offer some 'proof' that Rogers' BDU rates will rise.

B. Independent programming services

12. The *Broadcasting Act* requires that programming be delivered "at affordable rates", [3\(1\)\(t\)\(ii\)](#) that the provision of Canadian programs to Canadians be facilitated, [5\(2\)\(e\)](#) that terms to carry, package and retail programming services be reasonable, [3\(1\)\(t\)\(iii\)](#) and that the delivery of new information technologies and services not be inhibited. [5\(2\)\(f\)](#)
13. In the course of this application's process concerns have been raised that unconditional approval of this transaction could subject independent discretionary programming services and new online applications they develop to unfair delivery and carriage terms imposed by Rogers, transforming it into a gatekeeper ([¶1483](#); IBG undertaking, ¶¶6-7, confidential appendices 1 and 2). Dispute resolution by the CRTC has been described as slow and contributing to subscription losses ([¶1495](#)). Although Rogers said it will abide by existing CRTC protections, these are the protections in which independent broadcasters identified gaps permitting BDUs to evade their application ([¶1620](#), [¶1622 and ¶1647](#)) and timelines that disadvantage independent broadcasters more than larger BDUs ([¶¶1628-1637](#)).
14. The Forum agrees with the IBG that additional, enforceable and timely safeguards are needed to ensure fair relations between BDUs such as Rogers and independent programming services. If Rogers' application is granted, the CRTC should propose draft wording for, and require Rogers to submit within 14 days of the decision conditions of approval for such safeguards, so that the CRTC – when it receives Rogers' BDU licences for amendment – may impose them as conditions of licence.
15. Insofar as the *Act*'s requirement that new information technologies and services is concerned, witnesses testified that the lack of regulatory safeguards to ensure the carriage of Canadian services' apps ([¶2199](#)) may be inhibiting all Canadians' access to new, Canadian information services. The CRTC should require Rogers to report within 7 days of a decision approving its application on the number and ownership of apps it currently makes available – so that if it then renews Rogers' BDU licences it would have evidence to evaluate the impact of a new condition of licence to address inequitable treatment, such as a 1 (Canadian) to 1 (foreign) requirement.

C. Local news: original program hours, expenditures and employment opportunities

16. The *Broadcasting Act* requires that the broadcasting system safeguard Canada's social fabric, [3\(1\)\(d\)\(i\)](#) provide programming drawn from local sources, [3\(1\)\(i\)\(ii\)](#) and serve Canadians' needs and interests by providing employment opportunities. [3\(1\)\(d\)\(iii\)](#)
17. Witnesses raised concerns that this transaction "will impoverish the diversity of voices in the broadcasting system" ([¶1468](#)) and lead to job losses ([¶1512](#)). Rogers is proposing to shift \$13 million worth of financial support currently directed by Shaw to the Corus TV stations, to Rogers'

own TV stations. Unsurprisingly – as section 2.2(a)(v) of the 13 March 2021 *Voting Support Agreement* (DM#4019525) requires the Shaw Family Living Trust to assist Rogers to “successfully complete” its acquisition of the Shaw business and the same trust holds 84.56% of the shares in Corus¹ - Corus itself has not objected to this financial loss (23 Nov/21, ¶1544 and ¶1555).

18. Rogers now says its City TV stations will broadcast 48 news specials, hire a team of six Indigenous reporters, maintain a two-person western news bureau on Parliament Hill and broadcast more reflective news stories in Western Canada every year – until 2023 and without conditions of licence (DM#4124760, pp. 10-11, 34). This commitment is not a tangible benefit; it remains unclear how the Indigenous reporting team will be equipped and funded.
19. [Like the CRTC](#), FRPC supports local news program production. We welcome Rogers’ proposal to add \$13 million to its CityTV local TV news expenditures, to create TV news employment opportunities and to increase hours of original TV programming – but for more than two years and through a condition of approval requiring Rogers to submit its TV licences for amendment by the CRTC to add enforceable and enforced conditions of licence as to the jobs, original program hours and the actual expenditures to which Rogers is committing for these initiatives and on which DM#4124760 is silent. FRPC asks the CRTC to focus on original hours of program production because, as Rogers wrote at p. 12 in DM#4124760, “we believe audiences are better served by providing more local news coverage not more hours of news programming that is filled with the same content”: repeating local news content enables broadcasters to claim they are meeting the CRTC’s local TV news requirements, without actually providing much new news.
20. While FRPC appreciates Rogers’ commitment “to ensuring the Shaw funding is incremental to its regulated baseline spending” (DM#4124760, p. 28), we foresee two problems. First, licensees may sacrifice commitments for financial reasons and without risk, as only breaches of the CRTC’s regulations^{s.32} or conditions of licences^{s.33} are offences under the *Broadcasting Act*. Second, as Rogers noted, its baseline is 11% of its previous year’s revenues (*Ibid.*, p. 34). Rogers reported \$27.7 million in local news spending in [2019/20](#) – or 13.8% of its [2018/19](#) revenues and \$5 million more than required. As Rogers’ 2019/20 revenues were \$171.4 million, minimum local news expenditures of \$ 18.9 million are required in 2020/21. While adding the ‘Corus’ \$13 million will raise this amount, it is therefore unclear what the total will be – the early review by the CRTC of Rogers’ conventional TV licences will enable the CRTC to obtain the evidence necessary to understand and mandate the use of any incremental funding through conditions of licence.
21. FRPC also supports Rogers’ proposal to direct \$8.5 million to the ILNF – but not as a tangible benefit of this transaction. First, this payment would be unnecessary but for Rogers’ decision to shift the \$13 million previously allocated to the Corus stations to its own stations. Second, even if Corus were granted all \$8.5 million of this amount, it would remain \$4.5 million short of the \$13 million it previously received from Shaw’s BDU subscribers: a proposal that actually reduces financial support for Canadian program production cannot plausibly be construed as an incremental benefit to the broadcasting system, and is therefore not an initiative that the CRTC could count as a tangible

¹ CRTC, Ownership Chart 32C – [Corus- Corporate Structure](#).

benefit. Third, FRPC agrees with Rogers that ILNF support should be part of an industry-wide regulatory framework rather than a matter tailored to the circumstances of one licensee.

22. Yet as the *Broadcasting Act* establishes [s.6](#) and the CRTC [has confirmed](#) that “its policies are non binding”. FRPC therefore respectfully submits that approval of this transaction be conditional on Rogers’ submission of its BDU licences for amendments [requiring them to maintain](#) their current level of payment to the Corus stations for the next three years, after which that payment level should be directed to the ILNF. This funding for local news production – in addition to the separate continuation of the Corus’ funding – would measurably enrich the socio-political fabric of Canada as the *Broadcasting Act* requires and preserve diversity in journalistic voices ([¶1543](#)). The CRTC should also review its approach to local news, given continuing declines in licensed services’ revenues.

D. CPAC

23. The *Broadcasting Act* requires Canada’s broadcasting system to enrich and strengthen Canada’s political fabric, [3\(1\)\(d\)\(i\)](#) and FRPC noted in this proceeding that CPAC provides a unique service of public-interest value. While originally financed by the CBC ([¶1363](#)) BDU subscribers have paid for the service in full for many years: FRPC therefore argued that CPAC should transition from being controlled by privately owned distributors to operating as a public trust on behalf of Canadians and Canada.
24. CPAC answered this argument by noting the absence of complaints about CPAC’s control and assuring the CRTC that it need not concern itself that complete control of CPAC’s ‘guiding mind’ (its Board of Directors) that sets its strategic direction ([¶1405](#)) and hires its key management ([¶1406](#)) rests solely with BDUs ([¶1390](#)) whose livelihood depends at least to some degree on Parliamentarians’ decisions about broadcast, telecommunications, taxation and other important legislation.
25. The absence of complaints about an issue does not prove its absence, and CPAC’s acknowledgment that it works in “partnership” with the House and Senate ([¶1365](#)) confirms a risk exists that a service intended to serve the public in fact serves others. As for CPAC’s statement that its Board may amend its articles at a then-unscheduled annual meeting ([¶¶1431, 1448](#)), what changes once can change again. FRPC continues to believe that it would be appropriate to expand CPAC’s Board so that more than one half of its directors are independent as the CRTC has previously defined independent directors ([2008-69, ¶51](#)).

E. Official language minority programming

26. Canada’s *Official Languages Act* has quasi-constitutional status (*Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [\[2002\] 2 SCR 773](#)) and the *Broadcasting Act* requires the CRTC in the performance of its regulatory duties to take into account the “different characteristics of English and French language broadcasting” [s.2\(a\)](#)
27. While Rogers’ application clearly contemplates the needs of French-language users (DM#4019508, [¶48](#)) it otherwise ignores the entire issue of official minority-language community program production. FRPC submits that a transaction of this scale and potential impact not only could but must strengthen all Canadians’ reflection in program production. In our view supporting OLMC/CLOSM program production would be a clear and significant tangible benefit; FRPC

respectfully submits that if the CRTC approves this transaction that it condition the approval on Rogers' submission of its renewal applications for its broadcast licences, to implement specific requirements with respect to official language minority community programming a new, certified independent OLMC/CLOSM program production fund.

F. Preservation of Canada's broadcast heritage

28. FRPC notes that while the CRTC has granted several hundred applications to change ownership since the late 1970s, it has tended to accept benefits that are time-limited. In our view, at least some of the significant and unequivocal tangible benefits of ownership transactions should be of enduring value for all Canadians. Even when benefits are significant and unequivocal it is difficult to conclude that they truly strengthen Canada's broadcasting system when they end within seven or fewer years.
29. FRPC respectfully submits that the actual or potential loss of programming whose production has been supported through tangible benefits simply due to the absence of an institution established to preserve such records constitutes not simply waste (from the perspective of trusteeship), but a tragic and irremediable harm to the broadcasting system and Canadians.
30. FRPC notes that Rogers has valued the total broadcasting assts of this transaction at \$5.4 billion (DM#4124766) – and when it announced the transaction in mid-March 2021, however, Rogers said it anticipated synergies from this transaction “to exceed \$1 billion annually within two years of closing” (*News release, [15 March 2021](#)*).
31. Assuming an early 2022 closing, Rogers therefore expects to capture the entire value of the broadcasting side of the transaction by 2029 – several years after all of the tangible benefits payments now proposed by Rogers have ended. FRPC respectfully submits that the CRTC ensure that Canada's broadcasting system benefits from this transaction to a commensurate degree and for the same duration that Rogers will benefit from it.
32. FRPC therefore supports the proposal by the Canada Broadcast Museum Foundation (CBMF) that a portion of the tangible benefits of this transaction be allocated to support the establishment of a national media depository to preserve recordings of and records related to Canadian broadcast programming. This funding would support an initiative of enduring benefit for Canada's broadcasting system by ensuring the preservation of Canadian broadcast content for all Canadians, now and going forward.

G. Diversity

33. The *Broadcasting Act* says that Canada's broadcasting system should reflect Canada and Canadians, thereby strengthening Canada's social fabric [3\(1\)\(d\)\(i\),\(ii\),\(iii\)](#) and the CRTC approved the CAB's *Equitable Portrayal Code* in [2008](#).
34. Concerns were raised during the hearing about the lack of diversity in Canadian broadcast programming, and FRPC shares this concern. We therefore support Rogers' unexpected statement in DM#4124760 that it will supplement the tangible benefits it proposed last March with new initiatives worth \$3 million to support diversity in film and education. That said, FRPC also asks that funding for the Shaw and Rogers' production funds be re-established as tangible benefits on the grounds that the Rogers' fund helps to support independent productions including those made by

Black, Indigenous and other People of Colour ([¶¶4476, 4486-87, 5110](#)). As for carriage-related issues, Rogers says “[n]o additional regulatory commitments are necessary” beyond its own interest in ensuring ensure “the addition of ethnic and third-language services for IPTV distribution” (DM#4124760, p. 35); as previously noted only conditions of licence can be enforced, not voluntary commitments: FRPC recommends that the CRTC apply conditions of licence in this area.

H. Tangible benefits

35. FRPC, PIAC and others raised concerns that the \$5.7 million in tangible benefits proposed by Rogers were inadequate given the value of the application’s assets. [FRPC, ¶131](#) FRPC addressed the CRTC decisions claimed by Rogers to support its argument before the CRTC hearing panel. [¶¶4738-41](#) Rogers’ argument that these licences may or will be returned by Shaw to the CRTC in the future is not the test for excluding programming services in the [2014 tangible benefits policy](#) (DM#4124760, p. 16). To the contrary: it contravenes the 2014 tangible benefits policy’s requirement that ownership transactions not be structured “in such a way as to reduce the amount of tangible benefits”. [FRPC, ¶¶135-136](#) Rogers did not deny at the hearing or in its undertakings that its payment for Shaw’s shares includes consideration for these programming services – as stated in DM#4124760 at p. 16, it “excluded Shaw’s terrestrial VOD and PPV services from the value of the transaction” – not from its purchase price. Rogers’ undertakings in DM#4124767 and DM#4124766 confirm that accepting Rogers’ initial tangible benefits minimizes such payments by \$20 million or 78%.
36. Rogers’ 26 Nov/21 oral reply did not refute FRPC’s argument [¶4740](#) that the only relevant decision Rogers cited to support its view that the [2014 tangible benefits policy](#) enables buyers to exclude discretionary services involved a discretionary service whose financial losses, under the 2014 policy, meant no benefits were due. Neither it nor the other CRTC decisions mentioned by Rogers support its desire to pick and choose which broadcasting services are included or excluded from the transaction’s value so as to minimize tangible benefits. FRPC notes, moreover, that Rogers has not denied that the discretionary services were included in the business that Shaw agreed to sell to Rogers. Including the profitable and long-standing discretionary services in the value of this transaction therefore does not represent an amendment of the 2014 policy as Rogers argues (DM#4124760, p. 15), but compliance with it.
37. Rogers has now confirmed that including Shaw’s profitable discretionary services as provided by the [2014 policy](#) raises the transaction’s tangible benefits to \$25.8 million. Its 29 Nov/21 benefits proposal drops incremental benefits for two of its own onscreen funding initiatives, adds funding for the ILNF, raises the number of festivals funded from 14 to 15, adds benefits for two academic institutions and a story-telling centre, and adds limited support for the BAF (DM#4124767, Undertaking 11). Rogers’ local news initiatives offer welcome support for this Canadian programming – but as it said, these are not part of its tangible benefits (DM#4124760, p. 22).
38. FRPC supported and supports the recipients identified by Rogers’ original proposal for tangible benefits and supports all but one of the recipients added by Rogers in DM#4124760.
39. While Rogers has committed to “dedicate 50%” of its BDU, VOD and PPV undertakings’ payments to the Rogers and Shaw Funds (DM#4124760, pp. 14-15), FRPC supports instead the reinstatement of incremental tangible benefits funding for these funds. Testimony at the hearing established that \$4 million paid by the Rogers’ Fund in 2020 assisted 48 independent production projects [¶5101](#) - \$1

million should therefore support at least ten new projects a year. This benefit should not end in 2025 (DM#4124760, p. 14), but when the CRTC establishes a new policy to ensure that CIPFs are meeting the *Broadcasting Act's* objectives.

40. While FRPC supports ongoing funding by Rogers' BDUs for the ILNF, it opposes its inclusion in Rogers' tangible benefits package (DM#4124760 & DM#4124766) for the reasons set out in Part III (C). We argue instead that the \$8.5 million allocated by Rogers to the ILNF be re-distributed: \$1.8 million in incremental funding of the Shaw and Rogers' production funds, and \$3 million to create a new program production fund for official-language minority program production that – like programming serving the objectives of the [Canadian Multiculturalism Act](#) – serves the quasi-constitutional objectives of Canada's [Official Languages Act](#).
41. FRPC is also proposing that \$1.5 million (not \$0.35 million) in tangible benefits be provided to support accessibility in the broadcasting system on which the CRTC placed "great importance" in meeting Parliament's broadcasting policy.^{3(1)(p)} The BAF's "focus on innovation that provides platform-neutral solutions to ensure accessibility of all broadcasting content"^{2011-163, ¶155} is in keeping with Parliament's 2019 enactment of the [Accessible Canada Act](#).
42. Like several other interveners FRPC has proposed the addition of financial support for the Broadcast Participation Fund (BPF). The unchallenged evidence in this proceeding is that the BPF has operated as the CRTC intended, by enabling the representation of "non-commercial user interests" and "public interest and consumer groups across Canada in both official languages" in broadcasting proceedings, by funding the "representation, research and advocacy of these interests."^{2011-163, ¶148} This representation is an invaluable part of increasingly complex CRTC proceedings because the *Broadcasting Act* does not mandate the CRTC to serve the public interest: in fact, its many "sometimes conflicting objectives must guide the CRTC in exercising its powers", leading to a "polycentric adjudication process, involving numerous participants with opposing interests" (*Société Radio-Canada v. Métromédia Cmr Montréal Inc.*, [1999 CanLII 8947 \(FCA\)](#), at ¶15). Approving funding for the BPF in tangible benefits determinations therefore enabled the CRTC to meet its duty to act as an impartial decision-maker in broadcasting.
43. A number of parties including FRPC provided uncontradicted testimony establishing the importance of the BPF's funding to their CRTC-related work due to the lack of financial support elsewhere. The evidence of the BPF's 7 Sept/21 letter to the CRTC that "the Fund will essentially be depleted by June 2022"^{FRPC, App. 7} was also not challenged. FRPC therefore recommends that if the CRTC approves Rogers' application with a tangible benefits package reflecting Shaw's assets as of March 2021, \$1.5 million be allocated to the BPF as a tangible benefit to enable it to operate for at least the next three years; if new broadcasting legislation introduces a new public-interest funding regime in that period, any remaining BPF monies may be reallocated amongst all other tangible-benefits beneficiaries.
44. Finally, FRPC is proposing \$1.03 million in support for the Canadian Broadcast Museum Foundation (\$1.03 million) for the reasons set out in Section III F, above.

Rogers 29 November 2021 Undertakings		Revision proposed by the Forum	
Beneficiary	Amount (\$M)	Beneficiary	Amount (\$M)
Canadian Media Fund	\$12.7776	Canadian Media Fund	\$12.7776
Independent Local News Fund	\$8.5184		

Rogers 29 November 2021 Undertakings		Revision proposed by the Forum	
Beneficiary	Amount (\$M)	Beneficiary	Amount (\$M)
		Rogers Documentary and Cable Network Fund	\$0.9194
		Shaw Rocket Fund or other CIPFs	\$0.9194
		New OLMC/CLOSM fund	\$3.0000
Subtotal, production funds	\$21.2960	Revised subtotal, production funds	\$17.6163
Subtotal, 15 festivals	\$1.1492		\$1.1492
UBC School of Journalism, Writing and Media Scholarship Fund for BIPOC students	\$1.4000	UBC School of Journalism, Writing and Media Scholarship Fund for BIPOC students	\$1.4000
Sarah McLachlan Schools of Music in Vancouver, Surrey and Edmonton	\$0.1750	Sarah McLachlan Schools of Music in Vancouver, Surrey and Edmonton	\$0.1750
Banff World Media Festival	\$1.0000	Banff World Media Festival	\$1.0000
NSI – Winnipeg	\$1.4000	NSI – Winnipeg	\$0.1400
Chinatown Story Telling Centre – Vancouver	\$0.2490	Chinatown Story Telling Centre – Vancouver	\$0.2490
Subtotal, 5 discretionary initiatives	\$2.9669	Subtotal, other discretionary	\$2.9669
Broadcasting Accessibility Fund	\$0.3500	Broadcasting Accessibility Fund	\$1.5000
		Broadcast Participation Fund	\$1.5000
		CBMF	\$1.0297
Subtotal, enduring public-interest benefits	\$0.3500	Subtotal, enduring public-interest benefits	\$4.0297
Subtotal, discretionary initiatives	\$7.4329	Subtotal, discretionary initiatives	\$8.5829
TOTAL, TANGIBLE BROADCAST BENEFITS	\$26.6192	TOTAL, TANGIBLE BROADCAST BENEFITS	\$26.6192

IV. Summary of recommendations

45. FRPC's recommendations with respect to Rogers' application to acquire Shaw's broadcasting business are set out below.

FRPC recommendation 1

Rogers's current 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, and to the absence of meaningful safeguards such as conditions of licence to limit harms to third parties including audiences, BDU subscribers, independent broadcasters, accessibility and public-interest organizations and others.

FRPC recommendation 2

In the alternative, if the CRTC decides to approve the application, it should ensure that it yields both vital safeguards for other broadcasters in the system, as well as significant and enduring benefits that serve the public interest and strengthen Canada's broadcasting system. FRPC's proposals in this regard involve the following conditions of approval:

- (a) That, within 14 days of a CRTC decision granting Rogers' application, Rogers submit applications to renew
 - i. its conventional television programming licences that [were renewed in 2017 and now expire in August 2022](#) so that the CRTC may attach conditions of licence with respect to original local news hours, news specials, employment and local news expenditures
 - ii. Rogers' and Shaw's BDU licences so that the CRTC may attach conditions of licence
 1. mandating financial support of the ILNF equivalent to \$8.5 million per year in each of the next three years, and

2. regarding safeguards proposed by the IBG, including the ability of independent discretionary programming services to initiate mediation/arbitration in the absence of their written consent to carriage termination or changes in carriage terms
- (b) That Rogers provide set-top box reporting following written (including emailed) requests from non-affiliated programming services and at no cost for up to four times per year
 - (c) That Rogers re-submit its 29 November 2021 tangible benefits proposal as suggested by FRPC and that this submission become a condition of this transaction's approval,
 - (d) That CPAC, within 14 days of a CRTC decision approving Rogers' acquisition of Shaw's voting interest in CPAC, apply to the CRTC for the renewal of its licence so that the CRTC may impose a condition of licence mandating the expansion of its Board of Directors to include independent directors comprising more than half of the Directors' positions.

FRPC recommendation 3:

In introducing its determination, FRPC respectfully requests that the CRTC also announce its intention to hold the following proceedings in 2022:

- (a) Ownership policy with respect to vertical integration, the *Wholesale Code* and the *TVSP Code*
 - (b) Tangible benefits policy, in light of Canada's very highly vertically integrated communications system and the loss of half the value of the 2010 rates on which the policy is based
 - (c) Financial support for local news (ILNF)
 - (d) Dispute resolution system, in light of evidence that the current system permits delays that impose unreasonable and unfair costs on independent programming services
 - (e) SRDU licensing framework in light of its current duopolistic and vertically-integrated status, and
 - (e) Direction and control of CPAC.
46. FRPC appreciated the opportunity to appear before the CRTC panel hearing this important application. We look forward to the opportunity to consider Rogers' reply.

Sincerely yours,



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