



23 January 2023

Filed online

Claude Doucet  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: Broadcasting Notices of Consultation CRTC 2022-331 (Ottawa, 5 December 2022) and 2022-331-1 (Ottawa, 15 December 2022), Item 4 – Pattison Media Ltd.**

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 as defined by Parliament in the 1991 *Broadcasting Act*.

The Forum's intervention regarding the application by Pattison Media Ltd. (Pattison) to acquire two radio stations from Westman Media Cooperative Ltd is attached. FRPC supports the application, provided two aspects of the transaction are addressed.

First, FRPC is asking that the Commission ascertain the actual quantitative improvements – if any – that Pattison intends to make, in particular with respect to the numbers of reporters and hours of original (first-run) news and local news that Pattison's ownership of the two Brandon stations would yield. We respectfully submit that a broadcaster of Pattison's size and scale is well-equipped to do more than maintain the status quo for these stations (as its application appears to suggest).

Second, FRPC is asking the CRTC to allocate a small portion of the tangible benefits proposed by Pattison in this \$5 million transaction – specifically, \$83,236.19 – to the Broadcasting Participation Fund (BPF). The Fund has recently announced the 'hiatus' of its activities on 1 March 2023, and even this small amount may enable it to remain active in the time needed to seek additional financial support.

We look forward to reviewing other parties' interventions and may reply to these at the appropriate time. Should the CRTC decide to hold a public hearing in this matter the Forum respectfully asks to participate in this process in person.

Regards,

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**Broadcasting Notices of Consultation CRTC 2022-331  
(Ottawa, 5 December 2022)  
and 2022-331-1  
(Ottawa, 15 December 2022)  
Item 4**

**Pattison Media Ltd.'s acquisition of  
CKLF-FM and CKLQ-FM/AM Brandon**

Intervention of the Forum for Research and Policy in Communications (FRPC)  
23 January 2023



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## Executive Summary

- ES 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013. It undertakes research, legal analysis and quantitative research about communications, including broadcasting. FRPC believes that the public interest is served when it meets Parliament's objectives for the broadcasting system, as set out in section 3 of the 1991 Broadcasting Act.
- ES 2 FRPC supports the application by Pattison Media Ltd. (Pattison) to acquire the assets of and licences to operate CKLF-FM and CKLQ-FM/AM in Brandon, Manitoba, provided two matters are addressed.
- ES 3 First, Pattison has provided very little detail about the programming that it would provide to people in Brandon if its application is approved by the Commission. As the company currently operates 48 radio and 3 television stations in four provinces FRPC is somewhat concerned that new programming provided by Pattison's ownership of CKLF-FM and CKLQ-FM/AM will result from the synergies of its larger broadcasting enterprise. In FRPC's view, the CRTC could and should seek additional details from Pattison about its specific commitments with respect to the company's employment of additional reporters in Brandon and additional first-run (original) news in the Brandon stations' schedules. The absence of such information will otherwise make it impossible for the CRTC in the longer run to evaluate the positive effects of this transaction on the broadcasting system.
- ES 4 The second matter that FRPC believes that the CRTC should consider has to do with tangible benefits. Pattison's application entirely complies with the CRTC's current policy for radio-ownership transactions, in that the company proposes to allocate 6% of the value of the transaction to four initiatives described by the CRTC in 2014: 3% to the Canadian Association of Broadcasters' Radio Starmaker Fund (RSF), 1.5% to the Foundation Assisting Canadian Talent On Recordings (FACTOR), 0.5% to the Community Radio Fund of Canada and 1% to local Canadian Content Development (CCD) initiatives.
- ES 5 FRPC is proposing that the CRTC direct Pattison to allocate half of the amount it proposed for the RSF - \$83,236.19 of \$166,472.38 – to the Broadcasting Participation Fund (BPF) in 2023. Analysis of the RSF's annual financial statements since 2003 appears to show that the Fund, worth \$21 million at the beginning of 2021, would be able to cover any shortfall caused by a reduction in the RSF tangible benefit.
- ES 6 FRPC is asking that the CRTC take this unusual but modest step to temporarily stabilize the BPF whose creation the CRTC endorsed in 2011 and which it has helped continue. Since 2013 the BPF has paid the costs of a range of public-interest organizations to make 284 submissions to the CRTC about broadcasting matters. This includes interventions about licensing and other applications (such as the CBC's 2019-22 renewal process or the more recent proposal by distribution undertakings to raise the regulated price of basic distribution service), to policy

(such as submissions about the details of the CRTC's digital survey or requirements for paper billing by television distributors). The BPF costs process is based on the CRTC's process for telecommunications cost orders and, similarly, the BPF uses the CRTC's tariff for costs (set by the CRTC in 2007).

- ES 7 The BPF's Board of Directors recently advised stakeholders in the BPF that it intends to enter into a 'hiatus' with respect to its operations as of 1 March 2023, as it lacks funds to continue. Specifically, while the BPF has issued an average of \$484,517 per year in costs awards from 2013 to 2022, the Fund had \$211,441 in cash as of 31 December 2022.
- ES 8 The BPF has to date been supported by the CRTC's decisions in three ownership transactions to allocate a portion of the "tangible benefits" that approval of the transactions would yield for Canadians and Canada's broadcasting system. The CRTC's decisions – one each in 2011, 2013 and 2017 – allocated \$6.59 million to the BPF. A fourth decision, from the CRTC's approval in 2022 of the Rogers-Shaw transaction, would yield an additional \$241,813 for the BPF in 2023 – but this transaction remains on hold until its fate is decided by the Federal Court of Appeal, possibly the House of Commons Standing Committee on Industry and the Minister of Innovation, Science and Economic Development.
- ES 9 If enacted, Bill C-11 would also empower the CRTC to enact regulations regarding public-interest participation – but its path is also still unknown at the present time. If the Senate passes changes to the bill it would return to the House of Commons. Supposing the House decided to amend the Senate's amendments Bill C-11 may return back to the Senate. Moreover, even if the *Online Streaming Act* is quickly enacted, the Commission will require time to decide the nature of the regulations it passes concerning public-interest participation costs.
- ES 10 The BPF has supported the participation of dozens of public-interest organizations in CRTC proceedings over the past decade. In our view this participation has served the public interest in two ways: by identifying issues and presenting evidence (including surveys) to set out public-interest considerations, and by enabling the CRTC to make impartial quasi-judicial decisions involving the polycentric criteria of Parliament's broadcasting policy for Canada.
- ES 11 The CRTC's current policy on tangible benefits is just that: a regulatory policy. The 1978 Supreme Court of Canada case of *Capital Cities Communications Inc.* established that the CRTC's policies cannot bind the Commission. This decision was reinforced by Parliament in section 6 of the current 1991 *Broadcasting Act*: "[t]he Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission." Even if its policies did bind the CRTC to undertake specific actions – and they do not – the CRTC's 2014 tangible benefits policy also explicitly provides 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."



ES 12 FRPC is therefore respectfully asking first, that Pattison provide clarity about the manner in which its acquisition of Westman's Brandon radio stations would strengthen local news in terms of additional reporters and additional first-run news. FRPC is asking second, that if the CRTC grants Pattison's application, it also direct the company to allocate one-half of the amount proposed for the RSF to the BPF in 2023.

## I. Introduction

- 1 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 telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.
- 2 The Forum is intervening with respect to Application 2022-0668-0 submitted by Pattison Media Ltd. (Pattison) seeking approval of its acquisition of the assets of and of its applications for licences for two commercial radio stations now serving Brandon, Manitoba: CKLF-FM and CKLQ-FM (formerly CKLQ<sup>1</sup>). These licences are now held by Westman Radio, a licensee that is wholly owned and controlled by Westman Media Cooperative Ltd.
- 3 Briefly, FRPC supports Pattison’s application to acquire the Westman radio stations in Brandon on condition that the application’s specific plans for a portion of the transaction’s tangible benefits are allocated to the Broadcasting Participation Fund.

## II. Background

- 4 The company now known as Westman Communications Group (Westman) was established in 1977 as the Westman Media Co-operative.<sup>2</sup> Its broadcasting activities consisted of television distribution until 1998. At that time it acquired a non-controlling interest (40% of the shares) in Riding Mountain Broadcasting Ltd. (Riding Mountain)<sup>3</sup> which held the licence for CKLQ-AM Brandon.<sup>4</sup> Riding Mountain applied for and was granted the licence for CKLF-FM in 1999, enabling it “to establish a joint AM/FM operation”.<sup>5</sup>
- 5 Westman acquired full ownership and control of Riding Mountain in July 2003 through an administrative decision of the CRTC.<sup>6</sup> As the applications of this period are inaccessible through the CRTC’s website, it is unknown whether this ownership application addressed the matter of tangible benefits, the policy adopted by the CRTC in the 1980s to ensure that ownership transactions yielded benefits for Canada’s broadcasting system.

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<sup>1</sup> CKLQ Brandon – Conversion to the FM band, [Broadcasting Decision CRTC 2017-2](#) (Ottawa, 6 January 2017).

<sup>2</sup> Westman Communications Group, “[History of Westman](#)”, 22 January 2023.

<sup>3</sup> Westman Communications Group, “[Westman Communications Group Purchases Remaining Shares of Riding Mountain Broadcasting Ltd.](#)” (Brandon, 28 March 2003).

<sup>4</sup> Canadian Communications Foundation, [CKLQ-FM](#).

<sup>5</sup> *New FM station at Brandon*, [Decision CRTC 99-439](#) (Ottawa, 17 September 1999).

<sup>6</sup> *Ownership applications granted approval*, [Broadcasting Public Notice CRTC 2003-50](#) (Ottawa, 19 September 2003), application 2003-0466-8:

Transfer of control of Riding Mountain through the purchase by Westman Media Co-operative Ltd. (Westman) of all shares not currently held by Westman. Riding Mountain is the licensee of CKLF-FM and CKLQ Brandon, Manitoba.

6 In 2017 the CRTC approved Riding Mountain’s application to replace CKLQ-AM with an FM licence while continuing to rebroadcast the proposed FM station’s signal on the AM band. Simulcasting on the two bands would maintain service to people in the area of southwest Manitoba that would fall outside of the FM signal’s coverage area.<sup>7</sup> At that time the CRTC noted that

The profit before interest and taxes (PBIT) margin for the Brandon radio market has increased consistently every year since 2011 and has surpassed the average PBIT margin for the Manitoba non-designated radio market for the past two years.<sup>8</sup>

7 Westman currently describes itself as a “a local cooperative”; Pattison describes itself as “the second-largest private company in Canada”.<sup>9</sup> CKLQ-FM/-AM and CKLF-FM Brandon are Westman’s only radio programming services; Pattison holds licences for 48 radio stations and three television stations.<sup>10</sup>

8 Along with CKLQ-FM (-AM) and CKLF-FM Brandon is also served by BCE, through CKX-FM and CKXA-FM Brandon.<sup>11</sup>

### III. The application to acquire CKLF-FM Brandon and CKLQ-FM Brandon

9 According to the CRTC’s PDF ownership charts Pattison’s broadcasting interests include 48 radio and 3 television stations, serving British Columbia (22 radio and 2 TV), Alberta (15 radio and 1 TV), Saskatchewan (9 radio) and Manitoba (2 radio stations: CHIQ-FM Winnipeg and CFQX-FM Selkirk).

10 Pattison describes its purchase of Westman’s two radio stations as “an extremely important acquisition for Pattison” that will strengthen its company.<sup>12</sup>

#### A. Application’s impact on Brandon

11 Pattison states that it has “no plans to change management, personnel, format or spoken word programming at the operations and in fact, if anything, working with the entire Pattison team will provide growth opportunities and new resources for the stations and employees. ...”<sup>13</sup> It says it “will make plans for [technical] improvements at CKLF-FM & [sic] CKLQ-FM and invest in the stations” if the CRTC approves its application.<sup>14</sup>

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<sup>7</sup> CKLQ Brandon – Conversion to the FM band, [Broadcasting Decision CRTC 2017-2](#) (Ottawa, 6 January 2017), at para. 6.

<sup>8</sup> Ibid., at para. 11.

<sup>9</sup> Application

<sup>10</sup> CRTC, [Ownership Chart 97](#).

<sup>11</sup> CRTC, [Diversity of Voices – Brandon](#).

<sup>12</sup> Pattison Media Inc., *Appendix 1 – Supplementary Brief*, at 1, para. 4.

<sup>13</sup> *Supplementary Brief*, at 11, para. 44. FRPC notes that section 4.2(1) of the Abridged Purchase and Sales Agreement [sic], being Appendix 2D of the application, appears to require Pattiison to provide employment to the stations’ existing employees on terms and conditions equivalent or superior to their employment by Westman.

<sup>14</sup> *Supplementary Brief*, at 11, para. 46.



- 12 What is unclear is whether changing the ownership of these two stations will strengthen their programming. The application’s *Supplementary Brief* emphasises maintenance of the status quo and continuing, rather than programming improvements:

...Pattison is committed to continuing to build on the strong local focus and flavour of CKLF-FM & CKLQ-FM’s daily programming by bringing its financial resources, programming experience and personnel to the operation. If approval is granted, we will evaluate the current local programming to ensure the integrity of our commitment to the community of Brandon and surrounding areas is maintained in news, sports, weather and local events coverage.<sup>15</sup>

- 13 Accepting Pattison’s stated commitment to ‘building on the strong local focus’, the specific details of that commitment for the two stations whose ownership may change are unclear. Pattison’s subsequent response of 25 October 2022 to a CRTC question about the manner in which the transaction would further the objectives set out in Parliament’s broadcasting policy for Canada are also unclear. FRPC welcomes Pattison’s statement that nothing “safeguards, enriches, and strengthens the cultural, political, social, and economic fabric of Canada than local news reporters and announcers reporting and reflecting on the important issues of their communities”,<sup>16</sup> but note that quantitative details of this commitment remain unclear.

- 14 It is in particular unknown whether the programming that the stations will be broadcasting to people in Brandon will be strengthened by – say – the employment of additional reporters, and/or of the addition of first-run (ie, original) local programming and of first-run local news.

### ***B. Tangible benefits proposed by the applicant***

- 15 The *Broadcasting Act* empowers the CRTC to issue and renew broadcasting licences and as a result, applicants from time to time seek the CRTC’s approval for changes in the ownership of licensed broadcasting services. (Broadcasting services exempted from licensing – such as online programming services – do not at this time require the CRTC’s approval to operate.)

- 16 The CRTC has explained that as it does not allow competitive applications for licences involved in ownership transactions, it usually requires those buying broadcasting services “to make significant and unequivocal financial contributions to the broadcasting system as a whole and to the communities served by the [broadcasting] services in question.”<sup>17</sup>

- 17 The CRTC’s ‘tangible benefits’ approach developed over several decades. In 1977 the CRTC denied an application for a change in the ownership and control of a company that provided distribution services because the benefits for the broadcasting system were inadequate:

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<sup>15</sup> Ibid., at 13, para. 57.

<sup>16</sup> Pattison, *RE: Ownership application 2022-0668-0 - Pattison Media Ltd. - Application for authorization to change ownership and control through acquisition of assets*, (25 October 2022), response to CRTC questions, at 2 of 35.

<sup>17</sup> *Merritt Broadcasting Ltd. – Change in ownership and effective control*, [Broadcasting Decision CRTC 2020-410](#) (Ottawa, 22 December 2020), at para. 27.

**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* ... 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.

**Given the extent to which ownership transactions differ in terms of their magnitude and complexity, the Commission, in considering the application as filed, must be satisfied that the benefits, both those that can be quantified in monetary terms and the others, even though they may not easily be measurable in terms of their dollar value, are commensurate with the magnitude of the transaction** and that they reflect the responsibilities to be assumed, the characteristics and viability of the broadcasting undertakings in question and the scale of resources available to the purchaser, i.e. programming, management, financial and technical.

....<sup>18</sup>

[bold font added]

- 18 In 1986 the CRTC again denied an application for a change in the ownership and control of a large broadcaster, referring to the issue of “significant and unequivocal benefits”. It explained that it had not codified its approach to such benefits in its regulations, so as to retain “flexibility to assess each case on its own merits” based on a wide range of considerations.<sup>19</sup>
- 19 The CRTC first described its ‘benefits policy’ in a 1989 public notice. It explained that applicants must demonstrate that a proposed change in ownership “is in the public interest” – and that it expected applicants to

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<sup>18</sup> Decision CRTC 77-456 (Ottawa, 28 July 1977) regarding a transfer of effective control of Premier Cablevision and Western Broadcasting Company [CRTC decision unavailable online].

1 <sup>19</sup> In *Applications for Authority to Transfer Effective Control of Télé-Métropole Inc. to Power Corporation of Canada*, [Decision CRTC 86-367](#) (Ottawa, 18 April 1986), the CRTC wrote that

...

The first test any applicant must meet is that the proposed transfer of ownership or control yield significant and unequivocal benefits to the communities served by the broadcasting undertakings, to the Canadian broadcasting system as a whole, and that it is in the public interest.

These guidelines have not been set out in detail in the regulations specifically so that the Commission can maintain sufficient flexibility to assess each case on its own merits, on the basis of the applicant's overall proposals and commitments, particularly in terms of programming and service to the communities involved, and taking into account regional, social, cultural, economic and financial considerations.

... propose a specific package of significant and unequivocal benefits that will yield measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system. The Commission must be satisfied that the proposed benefits package is commensurate with the size and nature of the transaction and takes into account the responsibilities to be assumed, the characteristics and viability of the broadcasting undertakings in question and the scale of programming, management, financial and technical resources available to the prospective purchaser.<sup>20</sup>

20 The CRTC returned to the matter of tangible benefits in 1993 so as to address differences in the broadcasting sectors and an economic downturn affecting the Canadian economy for the past two years. In *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1993-68](#) (Ottawa, 26 May 1993) It explained that “[o]nly ... initiatives that would not be realized without approval of the proposed transfer are viewed as benefits”, and that the benefits must be incremental.<sup>21</sup> To FRPC’s knowledge, the CRTC’s approach with respect to benefits from broadcast ownership transactions has never been challenged before the Federal Court of Appeal.

21 The CRTC subsequently eased the application of its tangible benefits policy in *Simplified approach to tangible benefits and determining the value of the transaction*, [Broadcasting Regulatory Policy CRTC 2014-459](#) (Ottawa, 5 September 2014). It said that in the case of radio ownership transactions applications ought to allocate 6% of each transaction’s value to four sets of initiatives:

3.0% - Radio Starmaker Fund

1.5% to FACTOR or MUSICACTION

1.0% to any eligible Canadian content development (CCD) initiative, and

0.5% to the Community Radio Fund of Canada (CRFC).<sup>22</sup>

22 The CRTC noted, though, that it might depart from this policy in response to the public interest:

As 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.<sup>23</sup>

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<sup>20</sup> *ELEMENTS ASSESSED BY THE COMMISSION IN CONSIDERING APPLICATIONS FOR THE TRANSFER OF OWNERSHIP OR CONTROL OF BROADCASTING UNDERTAKINGS*, [Public Notice CRTC 1989-109](#) (Ottawa, 28 September 1989) [no para. Numbers].

<sup>21</sup> *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1993-68](#) (Ottawa, 26 May 1993) [no para. Numbers], “2. THE COMMISSION’S DETERMINATION WITH RESPECT TO APPLICATION OF THE BENEFITS TEST”.

<sup>22</sup> Broadcasting Regulatory Policy CRTC 2014-459, at para. 4.

<sup>23</sup> *Ibid.*, para. 10.

23 In 2017, moreover, the CRTC set out its position that it cannot be bound by its regulatory policies:

As regards the role of the Ethnic Broadcasting Policy and submissions that Rogers has breached that policy, the Commission notes that such policies are non-binding; in other words, they create no obligation in and of themselves. More specifically, **section 6 of the Act provides that the Commission may issue policy statements or guidelines, but that these are not binding on the Commission.** This is a codification of the common law and reflects the Supreme Court of Canada’s decision in *Capital Cities Communications Inc. et al. v. CRTC et al.* [[1978] 2 S.C.R. 141.] That decision upheld the Commission’s practice of issuing policy statements in light of the broad objectives entrusted to it under the Act,<sup>Footnote4</sup> including the supervision of the broadcasting system to implement the broadcasting policy set out at section 3 of the Act. Accordingly, **if the Commission were to treat the Ethnic Broadcasting Policy as binding or as having the force of law, it would be fettering its discretion and this would amount to an error of law.**

24 FRPC respectfully submits that the Commission is not bound to direct all tangible benefits as it proposed in 2014 when modifying the direction of the benefits meets the public interest. In our view, enabling the BPF to continue its operations until the Rogers-Shaw transaction is completed and/or the *Online Streaming Act* enters into force serves the public interest.

25 In its current ownership application, Pattison has applied the tangible benefits policy as set out in 2014. It describes<sup>24</sup> the transaction’s purchase price as \$5 million,<sup>25</sup> and estimates the transaction’s value to be \$5,549,079.24.<sup>26</sup> In line with the CRTC’s 2014 policy Pattison has proposed to allocate 6% of the value of the two radio Brandon stations - \$332,944.75 – over seven broadcast years, to four sets of broadcasting initiatives:

Tangible Benefits, Applicant’s proposal	Amount	Percentage of transaction value
CAB Radio Starmaker Fund	\$166,472.38	3.0%
FACTOR	\$83,236.19	1.5%
Community Radio Fund of Canada	\$27,745.40	0.5%
Local CCD initiatives	\$55,490.79	1.0%
Total tangible benefits	\$332,944.76	6.0%
Total value of transaction	\$5,549,079.24	100.0%

Revised Supplementary Brief, p. 15

26 While FRPC supports the amount of the proposed tangible benefits (conditional upon the CRTC’s review and approval of the amount), it is asking that a portion of the benefits flowing

<sup>24</sup>

<sup>25</sup> *Revised Supplementary Brief*, at 14, para. 64.

<sup>26</sup> *Ibid.*, at 15, para. 69. The initial *Supplementary Brief* set the transaction’s value at \$5,527,861 (at 15, para. 69); the change in the *Revised Supplementary* appears to be due to an increase in the lease commitment value listed (initially \$454,080) and revised upward (to \$475,298.24)

from this transaction be allocated to the Broadcasting Participation Fund, so as to serve the public interest.

#### IV. Proposal for re-allocating funding to the Broadcasting Participation Fund (BPF)

27 FRPC is asking the CRTC to allocate half the amount that Pattison proposes to devote to the CAB's Radio Starmaker Fund (RSF) – \$83,236.19 of \$166,472.38 – to the BPF so as to prevent the BPF from suspending its operations in March 2023.

28 The BPF is described below, followed by an analysis of the potential harm of FRPC' proposal.

##### A. *The BPF*

29 The Broadcasting Participation Fund (BPF) exists because of BCE's 2010 application to acquire CTV's licensed broadcasting services. The Public Interest Advocacy Centre (PIAC) intervened in the CRTC proceeding that considered this transaction and asked the CRTC to allocate a portion of the transaction's tangible benefits to a new fund that would support the participation of public-interest and consumer groups' participation in CRTC broadcasting proceedings. The CRTC approved PIAC's proposal as a starting point:

48. The Commission considers that PIAC's submission presents an appropriate starting point for the development of the CBPF's [Canadian Broadcasting Participation Fund's] mandate, as well as insights relating to its governance and operation. ... The Commission ... considers that the CBPF should facilitate the participation of public interest and consumer groups across Canada in both official languages. The fund should be used to assist in the representation, research and advocacy of these interests. ...<sup>27</sup>

30 The CRTC sought public comment on the concept of funding public-interest participation in broadcasting<sup>28</sup> and approved the BPF's establishment in 2012.<sup>29</sup>

31 The core purpose of the BPF is to reimburse civil society organizations that make submissions to the CRTC about broadcasting matters for the costs of that participation. The BPF does not fund participation before other bodies such as Parliament.

32 From 2013 to 2021 the BPF received 248 applications for costs: see Figure 1.

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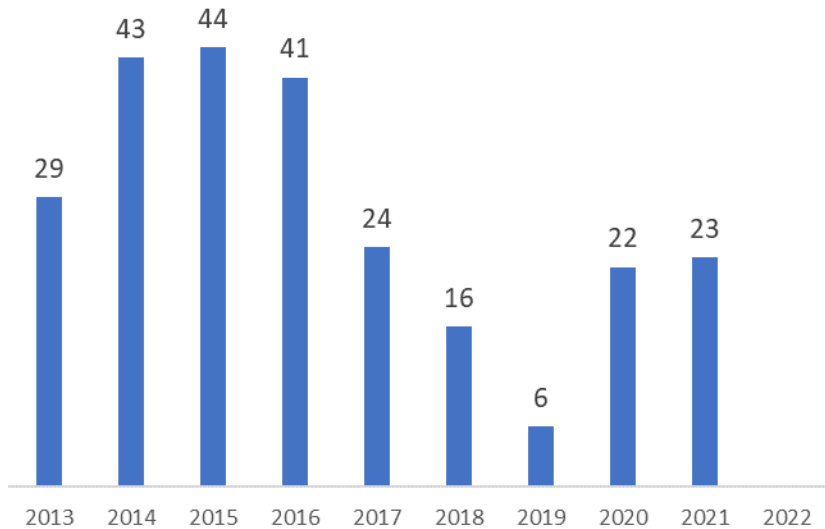
<sup>27</sup> *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at para. 58.

<sup>28</sup> *Call for comments on the Canadian Broadcasting Participation Fund*, [Broadcasting Notice of Consultation 2011-524-1](#) (Ottawa, 16 September 2011)

<sup>29</sup> *Broadcasting Participation Fund*, [Broadcasting Regulatory Policy 2012-181](#) (Ottawa, 26 March 2012); *Broadcasting Participation Fund – Amendments*, [Broadcasting Regulatory Policy CRTC 2012-181-1](#) (Ottawa, 7 August 2012).

**Figure 1**

**Costs applications submitted to the BPF, 2013-2021**



Source: BPF annual reports (2013-2021; no data available for 2022)

33 The number of applications submitted to the BPF varies by year along with the CRTC's decisions about the matters it will consider and about which it will invite public comment: Figure 1.

34 While the BPF generally makes decisions about the applications it receives within two months, it only considers applications when the public-participation component of the CRTC proceeding about which an application is made, has ended.

Though a majority of CRTC proceedings last a few months, some take longer. For example, the BPF awarded costs for public-interest participation in the CRTC's review of its policy for French-language vocal music seven years after the review began: the CRTC launched the proceeding in [mid-2015](#) and this proceeding's public-interest participation component ended in [December 2022](#).

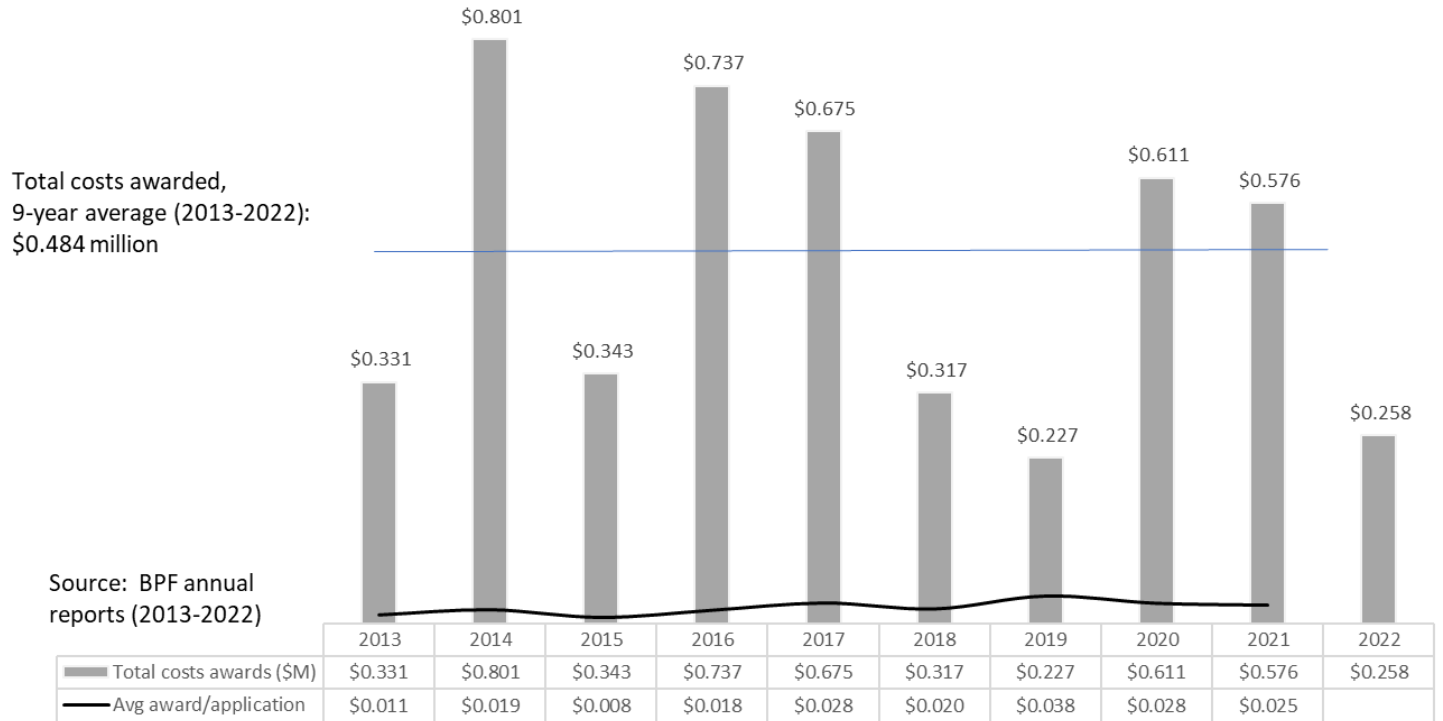
35 Costs granted by the BPF are set using the rates set by the CRTC in 2007 for participation in telecom proceedings.<sup>30</sup> The BPF does not automatically grant all applications: it has denied applications in their entirety and has also reduced costs when it believes these are excessive. In 2021, the Fund imposed a 25% reduction across the board for all applications it approved in whole or in part, in an effort to conserve its funds. As the CRTC initiated relatively few public-interest proceedings in 2022, however, the BPF returned the 25% reductions to those affected in December that year.

36 From 2013 to 2022 the BPF granted 248 applications for the reimbursement of CRTC broadcast proceeding costs, for a total of \$5,837,223, or an average of \$484,517 per year: Figure 2.

<sup>30</sup> [Guidelines for the Taxation of Costs](#), Revised as of 24 April 2007.

**Figure 2**

**Broadcasting Participation Fund (BPF):  
 total and average costs awarded, 2013-2021**



37 The source of funding for the BPF’s costs awards has been the tangible benefits process of the CRTC. The BPF has received three amounts from the CRTC’s approval of ownership transactions: \$3 million in the 2011 purchase of CTV by BCE, \$2 million after BCE acquired Astral and \$1.59 million from Sirius acquired XM Canada, for a total of \$6.59 million. PIAC’s applications seeking funding for the BPF in three other broadcast ownership matters were denied by the Commission:

Ownership transaction	Amount granted (\$M)
Change in effective control of CTVglobemedia Inc.’s licensed broadcasting subsidiaries, <a href="#">Broadcasting Decision CRTC 2011-163</a> (Ottawa, 7 March 2011), at para. 58	\$3.00
Leafs TV, Gol TV, NBA TV Canada, Mainstream Sports and Live Music Channel – Change in effective control, <a href="#">Broadcasting Decision CRTC 2012-443</a> (Ottawa, 16 August 2012).	\$0.00
Astral broadcasting undertakings – Change of effective control, <a href="#">Broadcasting Decision CRTC 2013-310</a> (Ottawa, 27 June 2013)	\$2.00
Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control, <a href="#">Broadcasting Decision CRTC 2016-487</a> (Ottawa, 20 December 2016), at para. 32	\$0.00
V Interactions inc. – Change in ownership and effective control, <a href="#">Broadcasting Decision CRTC 2020-154</a> (Ottawa, 19 May 2020):	\$0.00
Sirius Canada and XM Canada – Transfer of shares, <a href="#">Broadcasting Decision CRTC 2017-114</a> (Ottawa, 26 April 2017)	\$1.59
<b>Total:</b>	<b>\$6.59 million</b>

- 38 According to the [December 2022 financial update of the BPF](#), the net cash available to the BPF for cost awards in 2023 amounts to \$211,441 – less than half the average annual amount of awards issued since 2013 (44% of \$484,517). ownership transaction in 2022, it is unclear whether and when this transaction will conclude. Broadcasting Decision CRTC 2022-76 allocated \$725,439 to the BPF, payable in three consecutive annual increments of \$241,813.

Cash balance at 31 December 2022	\$342,504
Administrative accruals and internal contingency reserve	\$131,063
Net cash available as at 31 December 2022	\$211,441
Average annual cost awards, 2013-2022	\$484,517
Net cash available as percentage of annual average award	43.6%
Addition of Rogers-Shaw tangible benefit payment for 2023, if transaction concludes in 2023	\$241,813
Hypothetical BPF funding available if Rogers-Shaw transaction concludes in 2023	\$453,254

Source: BPF, Financial Update to December 31, 2022, <http://www.bpf-fpr.ca/en/press/BPFQ42022FinancialUpdate.pdf>

- 39 The problem for the BPF is that it does not appear that the broadcasting component of the Rogers-Shaw transaction will proceed until three other proceedings about the transaction’s telecom matters conclude in a manner satisfactory to Rogers and Shaw.
- 40 The first proceeding is the Competition Bureau’s challenge of the Competition Tribunal’s decision on [29 December 2022](#) allowing the transaction to proceed. The Federal Court of Appeal will hear the matter on [24 January 2023](#) (after the deadline for this proceeding). It is unknown when it will render its decision.
- 41 The second proceeding involves the House of Commons Standing Committee on Industry and Technology. It has announced that it will hear witnesses regarding the transaction beginning [25 January 2023](#). It is unclear whether it will then make a report to the House of Commons and if it decides to do so, when it will provide that report to the House.
- 42 The third proceeding relates to the Minister of Innovation, Science and Economic Development Canada who has also indicated that they will review the transaction. It is unclear when this will happen, however.
- 43 It is therefore uncertain whether or when the Rogers-Shaw decision regarding tangible benefits will take effect.
- 44 Further confusing matters with respect to the stability / precarity of the BPF is the status of the [Online Streaming Act in Bill C-11](#). Its proposed section 11.1(1)(c) explicitly empowers the CRTC to make regulations “supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act”.
- 45 It is unknown when Bill C-11 will be enacted and enter into force. While the House of Commons has voted in support of the Bill, the Senate has not yet done so. Its Standing Committee on Transport and Communications proposed a number of changes to the



legislation, however. If the Senate approves any of these changes in its current session (beginning 30 January 2023), the Bill would return to the House. It is somewhat unclear what would happen after that: would the House agree to changes proposed by the Senate so that further study by the Senate would not be required? If the House declines to accept all the changes proposed, would it return the bill to the Senate and if so, how would the Senate then proceed?

- 46 Even if Bill C-11 enters into force in 2023 it is unclear when the CRTC will enact regulations about the financial support of public-interest participation.
- 47 Regardless of the Rogers-Shaw transaction and the outcome of Bill C-11, it is in any event unclear if the BPF will continue to operate this year. The BPF has advised that it is considering a “hiatus” in its operations as of 1 March 2023.
- 48 Several BPF stakeholders have consequently said that they will be unable to continue to participate in CRTC proceedings if the BPF is unable to reimburse their costs – which we believe is contrary to the public interest.
- 49 To stop this from happening FRPC is asking the CRTC to exercise its discretion allocate at least a small portion of the tangible benefits from Pattison’s acquisition of the Westman radio stations, to the BPF. In other words, unless the BPF receives funding through the CRTC’s tangible benefits, it will enter into a “hiatus” of its operations in approximately one month, on 1 March 2023: granting FRPC’s request in this proceeding to allocate \$83,236.19 to the BPF in 2023 will help the fund to survive until certainty exists about the Rogers-Shaw transaction.

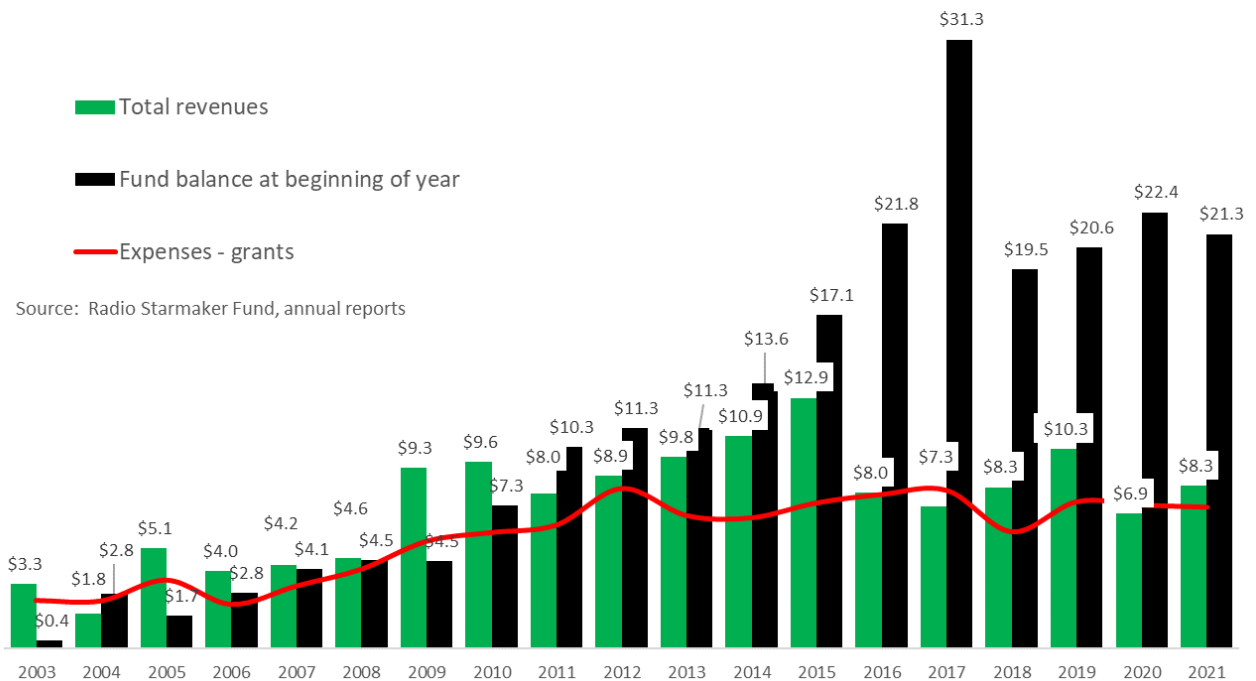
### ***B. Tangible benefits of this transaction***

- 50 As FRPC assumes that the CRTC will continue to undertake public consultations with respect to broadcasting in 2023, the Forum is asking that the CRTC exercise its discretion to allocate a portion of the tangible benefits in this transaction, to the BPF, to enable it to not enter into a hiatus with respect to its operations at least until September 2023 (by which time, one hopes, the outcome of either the Rogers-Shaw matter or Bill C-11 will be clear).
- 51 Pattison’s application currently proposes to allocate 3% of the value of its acquisition of the two transaction to the Radio Starmaker Fund (RSF). FRPC is asking that half this amount be allocated to the RSF, and that the remaining half – \$83,236.19 – be allocated to the BPF in 2023. In our view, this funding will assist the BPF to continue in operations for at least two more months (as the average monthly award of the BPF amounts to approximately \$40,000).
- 52 The Forum respectfully submits that accepting this proposal would serve the public interest. Public-interest organizations that have appeared before the Commission since 2013 and whose costs applications have been approved by the BPF have provided legal analysis, policy arguments and evidence explaining how adoption of their proposals would further the public interest. This information provides the Commission with a wider base of informed opinion and expertise on which to base its determinations in policy and licensing matters.

- 53 Pattison would not be affected by the re-allocation of a portion of the RSF tangible benefit to the BPF, and a review of the annual reports issued by the RSF establishes that any undue harm it would incur by the CRTC's granting our proposal would be either negligible or *de minimus*.
- 54 First, as ownership transactions are unpredictable, the RSF could not have planned to use the tangible benefits proposed by Pattison. Therefore, no specific RSF plans would be affected by the re-allocation of the benefit.
- 55 Second, the RSF does not rely solely on ownership transactions for its existence: as the CRTC's radio regulations require radio broadcasters to remit payments to the RSF each year, it has developed a financial base on which it relies when, from time to time, its annual expenses exceed its annual income.
- 56 The RSF base fund at the beginning of 2021 – the latest year for which an RSF annual report is available – was \$21.3 million: Figure 3.

**Figure 3**

Radio Starmaker Fund, 2003-2021:  
 Revenues, expenses and fund balance at beginning of the year (\$M current)

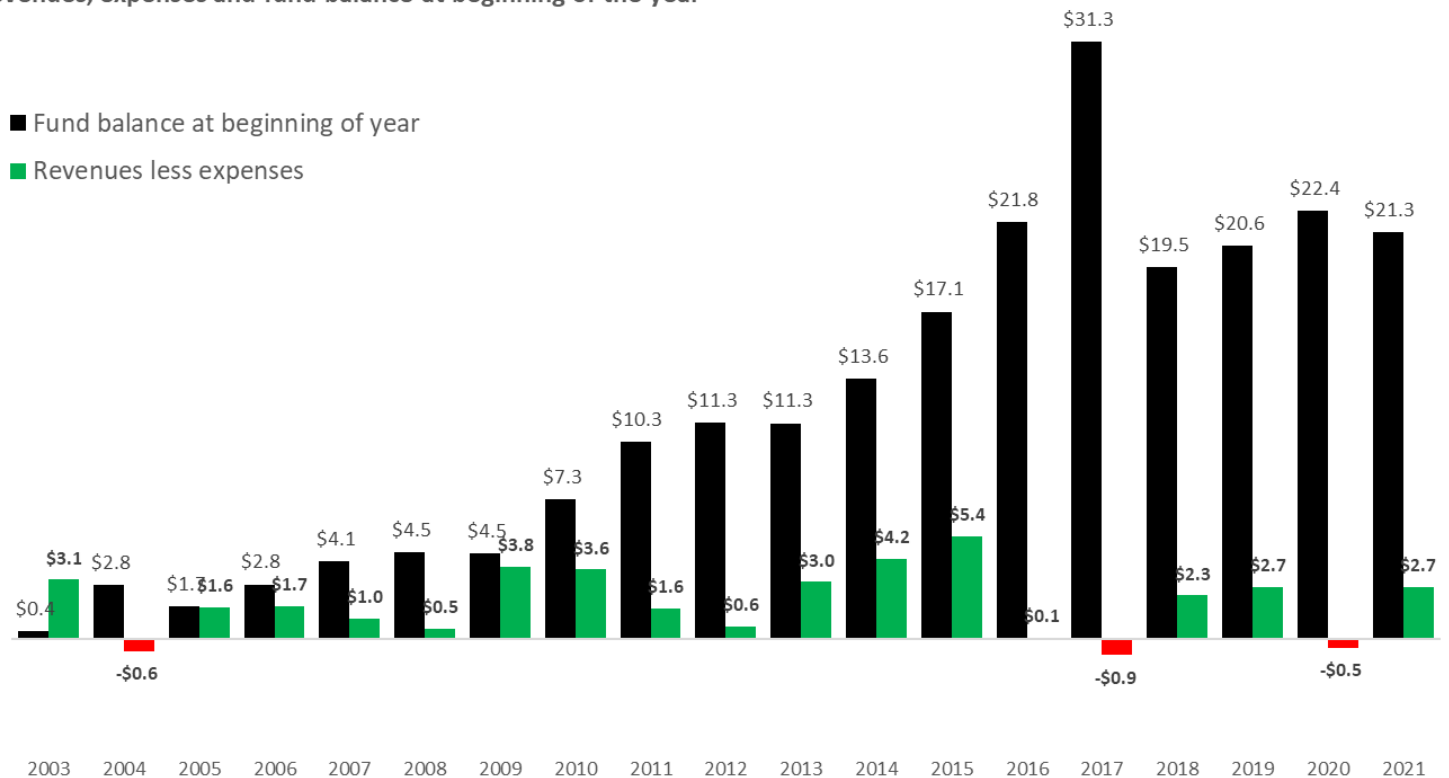


- 57 Based on the RSF reports it appears to FRPC that a shortfall of \$83,236.19 would amount to 0.39% of the RSF base of \$21.3 million. FRPC respectfully submits that this amount is insufficient to harm the RSF.
- 58 Even if the tangible benefits that the RSF might expect automatically from this radio ownership transaction were reduced by \$83,236.19, it seems unlikely that the Fund would be unable to

meet its obligations. According to its annual reports RSF’s annual revenues have exceeded its total expenses for all but three of the past 16 years: 2004, 2017 and 2020: Figure 4. In those years it appears to have relied on interfund transfers to meet the gap between its annual revenues and expenses.

**Figure 4**

**Radio Starmaker Fund, 2003-2021:  
 Revenues, expenses and fund balance at beginning of the year**



Source: Radio Starmaker Fund, annual reports

**59** In other words, FRPC respectfully submits that RSF would not be unduly disadvantaged by the allocation to the BPF in 2023 of one-half of the tangible benefits proposed by Pattison for RSF over several years. The amount involved - \$83,236.19 – would be a small reduction for the RSF that it may address using its Fund, but would be significant to the BPF by enabling it to continue to support the participation of public-interest organizations in CRTC proceedings for several more months.



## V. Conclusion and recommendation

- 60 The Forum has expressed concern about the absence of detail in Pattison’s commitment to local service if the CRTC grants its applications to acquire CKLF-FM and CKLQ-FM/AM in Brandon. We invite Pattison to provide the public record of this proceeding with more information that demonstrates – quantitatively – how Pattison’s acquisition of these stations will specifically improve the two stations’ programming, particularly insofar as numbers of reporters and hours of first-run local news are concerned.
- 61 FRPC has also set out its concerns about the imminent ‘hiatus’ of the BPF, so far set for 1 March 2023. We respectfully request that if the CRTC grants Pattison’s application, it direct the company to allocate (at least) half the amount currently proposed for the CAB’s Radio Starmaker Fund, to the Broadcasting Participation Fund, in a one-year payment to be made in 2023. Based on our review of the RSF’s financial statements this minor reduction in a payment it could not have anticipated will not cause harm the RSF’s ability to perform its operations, and will not jeopardize the current status of the Fund that, at the beginning of 2021, held just over \$21 million to serve the RSF’s purposes.

\* \* \* End of document \* \* \*