



24 February 2024

Filed online

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Notice of application received, [Broadcasting Notice of Consultation CRTC 2025-48](#) (Gatineau, 18 February 2025) ([Application 2024-0615-7](#))*

- 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 FRPC's comments regarding the change in NBA TV's ownership are set out below. We begin with a very brief review of the application and NBA TV's current broadcasting licence and then address three aspects of the application: concentration of media ownership, closed captioning and Canadian programming expenditures. The Forum does not oppose this transaction, but proposes that – in keeping with the 2019 *Accessible Canada Act* – that the Commission impose requirements to ensure that the level of captioning errors in NBA TV's programming decreases to the maximum level possible given higher investment in captioning accuracy.

I. **NBA TV**

- 3 On 27 November 2024 Rogers Communications Inc. (Rogers) submitted an application to the CRTC for permission to acquire “an additional 37.5% indirect interest in Toronto Raptors Network Ltd. (TRNL)” as part of a larger, transaction valued at \$4.7 billion.¹

¹ DM# 4795863, *Re: Rogers Communications Inc., on behalf of BCE Inc., 8018235 Canada Limited, 7680147 Canada Inc., 8047286 Canada Inc. and Toronto Raptors Network Ltd.: Change in ownership and effective control*, Application 2024-0615-7, (Ottawa, 31 January 2024 [sic]; as Rogers filed the letter in response to a CRTC “request for information, dated January 22, 2025” FRPC assumes the correct date or Rogers’ response is 31 January 2025); at ¶12 [31 Jan/25 response letter].

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- 4 TRNL is the licensee of NBA TV (Canada). If the CRTC approves this application Rogers will acquire the 50% interest in NBA TV now held by BCE Inc. through 8018235 Canada Limited. Kilmer Sports Inc. now holds the remaining 25% interest in TRNL.²
 - 5 NBA TV's broadcasting licence will expire in five months. The CRTC most recently renewed the licence on 24 August 2020, from 1 September 2020 to 31 August 2025.³

II. Concerns raised by the NBA TV ownership transaction

- 6 Rogers was not in favour of the CRTC's decision to consider its application through a notice of consultation. The company argued that its "commitment to fully comply with the tangible benefits policy outlined in BRP 2014-459 mitigates any need for a public proceeding"⁴ that its "application does not raise any concerns with respect to any Commission policies or regulations, including conditions of service"⁵ and that "there is no public interest objective that would be served by a decision to consider this application as part of a proceeding initiated by a notice of consultation".⁶
- 7 For its part, the Forum considers that the CRTC bears a legal responsibility to review all transactions that will result in a change in the ownership and/or control of broadcasting undertakings. This responsibility requires the CRTC to assess the evidence regarding such transactions, including NBA TV's compliance with the CRTC's regulatory requirements.
- 8 FRPC's position is that Rogers' application to acquire control of the NBA TV licence raises three concerns. These involve the impact of concentrated ownership, captioning and Canadian programming expenditures

A. Concentrated ownership

- 9 Rogers is one of Canada's largest broadcasters, controlling radio, conventional television, discretionary television and broadcast distribution undertakings. The precise scale of the company in relation to the broadcasting industry is difficult to estimate at this time, however, due to timing differences with respect to Rogers'

² [CRTC Ownership Chart 177](#) (as of 18 March 2025).

³ Broadcasting Decision CRTC 2020-289 (Ottawa, 24 August 2020).

⁴ DM# 4760952, Appendix 1: Supplementary Brief: Application to implement a change in effective control of Toronto Raptors Network Ltd. (Ottawa, November 27, 2024), at ¶12.

⁵ 31 Jan/25 response letter (supra note 1), at ¶12.

⁶ 31 Jan/25 response letter (supra note 1), at ¶12.

previous broadcasting acquisitions and the CRTC publication of up-to-date financial data.

- 10** The CRTC approved Rogers’ acquisition of Shaw Communications Inc. in March 2022⁷ and approved Rogers’ meeting of CRTC-imposed conditions of approval in June 2024.⁸ Rogers’ control of Shaw’s direct-to-home satellite distribution undertaking is reflected by a separate 2023/24 aggregated financial summary for DTH, while Rogers’ non-satellite BDU revenues grew from \$972 million in 2023 to \$1,590 million in 2024.
- 11** The challenge for those evaluating the impact of this transaction is that the public lacks information about the 2023/24 financial performance of Canada’s radio, TV, discretionary services and BDUs. Consequently, even with the 2023/24 aggregated financial summaries of Rogers published on the CRTC’s website, its scale relative to the entire broadcasting sector cannot be calculated, only estimated. Nor can the impact of approving this transaction on Rogers’ other programming services
- 12** What is currently known is that in 2022/23, Rogers’ radio, conventional TV, discretionary television services and broadcast distribution undertakings generated \$2.2 billion in revenues, amount to 16.5% of the \$13.3 billion earned in these four sectors. From this perspective, the addition of \$3.6 million in revenues – that is, 37.5% of the \$9.66 million earned by NBA TV in 2022/23 – would have raised Rogers’ 2022/23 discretionary revenues by just 0.4%.
- 13** Moreover, Rogers already obtains more than half of the advertising and total revenues obtained by the 14 licensed discretionary services offering televised sports programming, as it controls four of the sports services listed in the CRTC’s financial summaries: Sportsnet 360, Sportsnet and Sportsnet One.⁹ The Forum estimates that in 2022/23 Rogers’ four sports services services accounted for 57.1% and 53.6%, respectively, of all 14 sports services’ total advertising and total revenues for that year: Table 1.

Table 1 Advertising and total revenues of licensed discretionary sports services in Canada: 2022/23

2023 revenues \$ current		English-language services		French-language services	
		Advertising	Total revenue	Advertising	Total revenue
1	ESPN Classic	[no data]	-\$ 28,291		
2	Euroworld Sport	[no data]	\$ 135,000		

⁷ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022).

⁸ *Fulfilment of conditions of approval set out in Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2024-133](#) (Ottawa, 18 June 2024).

⁹ [CRTC Ownership Chart 27c](#).

2023 revenues \$ current		English-language services		French-language services	
		Advertising	Total revenue	Advertising	Total revenue
3	Fight Network	[no data]	\$ 4,049,865		
4	Game+ (FNTSY Sports Network)	[no data]	\$ 893,960		
5	GameTV	[no data]	\$ 10,929,973		
6	NBA	\$694,635	\$ 9,633,915		
7	RDS			[no data]	\$ 146,232,078
8	Sportsman Canada	[no data]	\$ 2,204,626		
9	Sportsnet	\$185,320,707	\$ 555,924,619		
10	Sportsnet 360	\$16,570,606	\$ 42,003,059		
11	Sportsnet One	\$40,625,834	\$ 138,984,337		
12	Sportsnet PPV	[no data]	[no data]		
13	The Sports Network (TSN)	\$181,230,094	\$ 610,406,624		
14	TVA Sports			\$ 18,017,254	\$ 93,452,041
Estimated total		\$424,441,876	\$ 1,375,137,687	\$ 18,017,254	\$ 239,684,119
Rogers, current total		\$242,517,147	\$ 736,912,015		
Rogers as % of total		57.1%	53.6%		
Rogers with NBA		\$243,211,782	\$ 746,545,930		
As % of total		57.3%	54.3%		

Source of advertising and total revenues: CRTC, *Individual Discretionary and On-Demand Services – Statistical and Financial Summaries, 2019-2023*.

14 Rogers' acquisition of NBA TV would slightly increase its current share of sports services' advertising and total revenue. In other words, the change in ownership would not alter what is now effectively a duopoly (between Rogers and BCE, which controls TSN and RDS).¹⁰

15 That said, apart from the tangible benefits to which Rogers has already agreed, it is unclear how Canadians in general will benefit from a very large broadcaster's acquisition of another lucrative broadcasting licence: NBA TV's margin of profits before interest and taxes in 2022/23 was 26.3%. While the Forum would usually argue that the CRTC should seek a commitment from Rogers not to raise its subscriber rates, we believe that in this case subscribers and the market are better placed to guide such decisions.

B. Captioning

16 In its August 2020 renewal Broadcasting Decision CRTC 2020-289 noted the licensee's argument that while NBA TV's program logs showed non-compliance with the requirement to provide closed captioning for advertising, sponsorship and promos in the 2016/17 broadcast year, this result was due to inaccurate reports issued by NBA TV's tracking and programming software rather than actual non-

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[CRTC Ownership Chart 143k](#).

compliance by NBA TV.¹¹ The CRTC noted that these “instances of apparently non-compliance appear[ed] to be isolated” – stating somewhat unclearly that it was “satisfied that the measures put in place by the licensees address these instances of apparent non-compliance and will ensure compliance going forward.”¹² As noted earlier, Rogers has said that its “application does not raise any concerns with respect to any Commission policies or regulations, including conditions of service”.¹³

- 17** The Forum notes that in 2024 Maple Leaf Sports and Entertainment told the Commission that while it admitted that “there is some room for improvement with [its] live captioning”, NBA TV “will continue to strive towards maintaining and surpassing a 98% NER evaluation scores to provide broadcast accessibility to all Canadians”.¹⁴
- 18** NBA TV’s individual captioning reports for 2024 at times indicate “high error” counts, or significant levels of ‘lost’ content: Table 2.

Table 2 Extracts from NBA TV’s 2024 captioning reports to the CRTC

Program	Date	Duration (minutes)	Evaluator Comments
NBA XL	2023 11 15	10	“High error count across the board, but a particularly significant amount of lost content.”
Raptors Today	2024 03 06	10	“Thorough editing; while there's a high CE count there's also a significant amount of lost content. High error count across the board. “
NBA XL	2024 03 18	10	“Very high error count across the board. Significant amount of lost information, awkward edits with dropped words. A difficult segment to follow.”
Raptors Today Summer League	2024 07 15	10	“High error count across all types. Typos throughout, a significant amount of awkward/confusing phrasing.”
SWISH [sic]	2024 08 16	10	“High error count particularly interruption errors. Typos, dropped words, and awkward phrasing throughout.”
Raptors Today	2024 10 31	10	“A higher concentration of errors during the Halloween segment as there's quick back-and-forths, interjections, and all speakers are off screen; the second half is much clearer and contains less lost content.”

- 19** Given that Parliament enacted the *Accessible Canada Act* more than half a decade ago in 2019, it is unclear why the CRTC would consider ‘high error’ levels in

¹¹ Broadcasting Decision CRTC 2020-289, at ¶¶7-9.
¹² *Ibid.*, ¶9.
¹³ 31 Jan/25 response letter (supra note 1), at ¶2.
¹⁴ Manager, Content Traffic and Programming, MLSE (Toronto, 2024).

captioning to be acceptable. Since 2019, after all, NBA TV has earned more \$16.6 million in profits before interest and taxes, all of which it has been entitled to retain even though a portion of its audience was likely unable (literally) to understand its programming due to “lost information”, “dropped words” and “lost content”. The Forum submits that Rogers should increase its expenditures on captioning – especially in the case of live programming – with the goal of reducing, if not eliminating ‘high error counts’ in NBA TV’s programming. The only way to ensure that this happens is for the CRTC to impose a condition of service to this effect; if the Commission does not impose this condition in the current proceeding – the Forum’s preference – the CRTC should seek additional evidence and re-consider this issue when Rogers applies to renew the NBA TV licence.

C. Canadian programming expenditures

- 20 As noted earlier, the CRTC renewed the discretion programming licence for NBA TV in August 2020, from 1 September 2020 to 31 August 2025. Then empowered to impose conditions of licence (rather than today’s conditions of service), the CRTC required NBA TV’s licensee to “devote not less than 13% of the previous year’s gross annual revenues ... to the acquisition of or investment in Canadian programming.”¹⁵
- 21 According to the CRTC’s financial summaries for NBA TV, the service allocated slightly less than the required amount in 2021, doubtless due to the pandemic, and has since increased the percentage of its previous year’s revenues devoted to Canadian programming, to 23.0% in 2021/22 and to 27.3% in 2022/23: Table 3.

Table 3 NBA TV financial results – total revenues and Canadian programming expenditures, 2017/18 – 2022/23

Broadcast year	Total Revenue	Total Canadian Programming expenditures	Canadian Programming/ Revenue (%)	Canadian expenditures as % of previous year's revenues
2017/2018	8,763,474	1,854,059	21.16	
2018/2019	11,334,638	1,560,201	13.76	17.8%
2019/2020	10,814,009	1,857,557	17.18	16.4%
2020/2021	9,206,546	1,209,061	13.13	11.2%
2021/2022	9,484,033	2,121,514	22.37	23.0%
2022/2023	9,633,915	2,589,574	26.88	27.3%

- 22 As NBA TV’s data show, it was able in both 2021/22 and 2022/23 to substantially increase the percentage of revenues (of each preceding year) which it allocated to

¹⁵ Condition of licence 2.

Canadian programming. The Forum does not suggest that the CRTC raise this level – but that at NBA TV's next renewal, the percentage of Canadian programming expenditures be based on the average of the percentage amounts for the period from 2021/22 going forward.

III. Conclusions

- 23 Given Rogers' existing level of dominance in Canada's broadcasting system, in the discretionary-programming services sector and in the context of sports services, and the fact that BDU subscribers may decide whether to subscribe to sports services such as NBA TV, the Forum does not oppose Rogers' application to acquire effective control of NBA TV.
- 24 FRPC proposes, however, that the Commission require Rogers to allocate more resources to reducing the levels of errors in captioning disclosed by that NBA TV's individual 2024 captioning reports and that, when the CRTC considers the renewal of this licence, it make its determination of the appropriate financial support that NBA TV should make to Canadian programming based on the period from 2021/22 and forwards.,

Regards,



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