Writers Guild of Canada

April 2, 2012

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2012-126 – Application No. 2012-0045-1 (the Application) by Rogers Broadcasting Limited ("Rogers") for authority to acquire from Bluepoint Investments Inc. ("Bluepoint"), the assets of Saskatchewan Communications Network ("SCN").

1. The Writers Guild of Canada ("WGC") is the national association representing more than 2000 professional screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is actively involved in maintaining a strong and vibrant Canadian broadcasting system containing high quality Canadian programming delivered by profitable programming and distribution entities.

2. The WGC is pleased that Rogers has pledged to build SCN into a viable broadcasting entity and continue SCN's tradition of delivering high quality educational programming to the residents of Saskatchewan. The WGC **supports** the application on the following conditions related to Rogers' obligation to pay benefits associated with the acquisition.

3. Regarding the valuation of the transaction, the WGC supports the Commission's determination that SCN is actually worth $3,749,048.93 with a tangible benefits package of $375,905.[1] This is more than the $3 million and $300,000 in benefits claimed in the application. Rogers disputes the adjustment which centers on assumed leases. The WGC, however, trusts that the Commission has exercised due diligence in arriving at the revised figure. The Commission has often uncovered details in an applicant's financial information that have subsequently led to higher valuations and increased benefits.

4. In addition to revising Rogers' original amounts, the WGC respectfully asks the Commission to correct Rogers' attempts to manipulate the tangible benefits

[1] Rogers Reply to Round 5 Deficiency Questions. 22 February 2012, point 1.

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policy and other rules governing ownership transfers. Rogers argues that due to SCN's financial distress, it does not have to assume Bluepoint's outstanding financial commitments to independent production nor apply the tangible benefits policy to this transaction. Rogers insists that it must first grow as a business, by expanding into new markets and adding more specialty services in order to catch up with its competitors, Bell Media and Shaw Media. We find this line of reasoning unacceptable and unjustified. Rogers is one of the most powerful media companies in Canada and can easily afford to pay the unfulfilled benefits. If it did not have the means to do this, it should not have made the bid in the first place, as Rogers was well-aware of SCN's financial position. For Rogers, this deal is about fulfilling its corporate plan to build an integrated network of Citytv stations across the country. It sought this deal because it lacks the national presence that its counterparts Bell Media and Shaw Media have in programing. With SCN, Rogers will gain the foothold in the Prairies that it needs to compete at the national level and position itself to become an even more profitable entity.

5. The outstanding commitments stem from Bluepoint's acquisition of SCN from the Saskatchewan government in 2010. In place of tangible benefits, the Commission had accepted Bluepoint's pledge to spend $19.25 million over seven years on independent television and digital production. This amounts to $2.75 million per year, with $1.75 million allocated to independent television production and $1 million to digital production. Instead, Rogers says it will apply to SCN, the same CPE and PNI spending obligations that are required of all its stations. As well, Rogers adds that it will direct the entire CPE obligation in Saskatchewan to independent productions.

6. Rogers knows very well that it cannot shirk its responsibility to assume outstanding benefits when it is purchasing a broadcasting undertaking. The 1999 TV policy reaffirms this practice[2] and the Commission's decisions have been clear. When Rogers acquired Craig Media in 2007, it had to assume $20 million in unfulfilled benefits. Even when BCE purchased CTV for the second time in 2011 in one of the largest ownership transfers, the Commission instructed BCE to pay the $9.9 million still owing from the first benefits package in 2000, despite BCE's objections.

7. In addition, Rogers cannot consider CPE and spending on PNI as alternatives to paying these outstanding amounts. They are not bargaining chips, but requirements imposed by the Commission's group licence decision. Regardless of SCN's financial situation, Rogers would have had to apply its CPE and PNI spending to SCN once it folded the station into its group, in addition to outstanding and current benefits. Based on Rogers' CPE projections, annual spending on Canadian programming for SCN in the current year will be far less than the Bluepoint commitment even with a projected increase in the final year of the licence. The spending projections include the CPE amounts and $750,000 per year from SCN's Canada Media Fund (CMF) envelope. While the CPE amounts to $763,500 in 2012-2013 and $1.03 million in 2013-2014, the total for Canadian programming will still remain well below the outstanding benefits.

[2] Public Notice CRTC 1999-97, para 26.

8. As for tangible benefits, while Rogers does propose a benefits package, in its January 26 response to a deficiency letter, Rogers explains that the initiative "was not intended to comply with the Commission's benefits policy… [it] was made as a gesture of good faith and in recognition of the growing importance of digital production to the Saskatchewan television and film communities." We ask the Commission to remind Rogers that it is clear from the robust collection of policies and precedent-setting decisions that tangible benefits are not a choice but Commission regulation.[3] In the absence of a competitive bidding process, purchasers of programming undertakings are expected to enrich the system as a whole, not solely shareholders.

9. Rogers also claims that the Commission is "normally prepared to waive the requirement for tangible benefits where the survival of the service is at stake which is the case for SCN".[4] While there is flexibility, there is no blanket exemption policy. Exemptions are determined on a case-by-case basis and only permitted if they meet specific criteria. In Broadcasting Public Notice CRTC 2007-53, the Commission revised its policy to recognize the economic hardship facing independent small market conventional broadcasters. For transactions to qualify, the pre-tax earnings of the broadcaster-to-be-acquired must be less than $10 million per year for the previous three years, and it must qualify for the Small Market Programming Fund. In addition, the purchaser and the broadcaster-to-be-acquired must *both* demonstrate poor financial health.

10. If we apply the criteria to this transaction, the case for exemption fails with at least two of the three factors. We cannot independently verify the extent of SCN's financial situation because the financial statements in Appendix 5 of the Application are confidential. However, regarding the remaining criteria, SCN is not eligible for the Small Market Programming Fund because the population threshold to qualify is 300,000 and SCN serves the entire province of Saskatchewan. Also, since Rogers is a well-financed and profitable major player in the communications industry, it cannot claim financial hardship.

11. As for the substance of the benefits package, Rogers plans to direct the funds to the Rogers Digital Development Fund. Rogers explains that this will support training programs centered on "building capacity and accelerating uptake of digital technology". The WGC supports the goals of this initiative. However, it is the policy of the Commission to direct a significant portion of the benefits to onscreen initiatives. This ensures that funding is not inadvertently spent on ineligible activities that are the normal course of business, such as digital infrastructure-building, and that it benefits the Canadian broadcasting system as a whole. As such, we recommend that the Commission direct Rogers to set aside at least 85% of the Rogers Digital Development Fund for digital content-creation initiatives. The remainder can be allocated to the training programs that Rogers has suggested in order to address the importance of developing

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[3] Regulatory policies include: Public Notice CRTC 1989-109, Public Notice CRTC 1993-68, and Public Notice CRTC 1999-97. Decisions include: CRTC 2009-247, 2009-536 and 537, among others.

[4] Rogers' transfer of ownership application to the CRTC, Supplementary Brief, 17 January, 2012, p. 3

innovative business models for digital media.

12. Finally, regarding the licence term, we are concerned about the impact of Rogers' proposal to change the expiry date to August 31, 2014 so that it coincides with the rest of its Citytv broadcasting licences. Rogers has pledged to maintain SCN's designation as the provincial educational broadcaster and provincial authority for the rest of the term. It is unclear, however, what happens to that designation after the licence term. Given the importance of Canadian children's television programming, particularly with a regional reflection, we respectfully submit that the Commission extends this designation beyond 2014, even if the licence term expires in 2014.

13. In closing, this transaction could have a very positive impact on SCN and the Saskatchewan independent production community at a time when it really needs support. Rogers appears to be highly motivated to succeed in order to build its Citytv profile into a truly national brand. In order for this deal to benefit both Rogers and the independent community in Saskatchewan, we ask the Commission to ensure that Rogers complies with the issues we have raised above pertaining to the revised valuation of SCN and appropriately revised benefits package, the obligation to assume Bluepoint's outstanding financial commitment, the practice of directing benefits to onscreen initiatives and the mandate to provide educational programming to Saskatchewan through SCN on a long-term basis.

14. We thank the Commission for this opportunity to provide you with our comments.

Sincerely,

Maureen Parker
Executive Director

c.c. Susan Wheeler, Vice-President, Regulatory, Rogers Media

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