Writers Guild of Canada

December 13, 2021 **Filed Electronically**

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2021-281: Notice of hearing re: application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw and the authority for Rogers to operate various licensed broadcasting distribution undertakings (BDUs) currently owned by Shaw in British Columbia, Alberta, Saskatchewan and Manitoba, the national direct-to-home (DTH) satellite distribution undertaking Shaw Direct, the national satellite relay distribution undertaking (SRDU) Shaw Broadcast Services, and the DTH programming service known as Shaw Pay-Per-View

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,400 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.

Certified independent production funds (CIPFs)

2. As the Commission is aware, Shaw currently contributes to the Shaw Rocket Fund, a Certified Independent Production Fund (CIPF) that supports children's and youth programming, and Rogers has made a proposal that the contributions it would continue to make to the Shaw Rocket Fund, on the one hand, and to the Rogers funds, on the other, would be combined, with the amount of the contributions being split evenly between the two sets of funds. At the hearing, Rogers said that this

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

would result in approximately $1.2 million[1] moving from the Rocket Fund to the Rogers Documentary and Cable Network Funds.[2] Later, in its responses to undertakings, Rogers said:

> As a condition of approval, Rogers is prepared to commit to dedicate 50% of the contributions made by our broadcasting distribution, VOD and PPV undertakings to Canadian independent production funds (CIPFs) to the Shaw Rocket Fund for the balance of Rogers' existing terrestrial BDU licence terms, which are set to expire on August 31, 2025. The remaining 50% will be dedicated to the RDCNF. We wish to retain the flexibility to review our funding of CIPFs at that time to ensure we are effectively addressing the needs of the Canadian film and program production industry, taking into account reviews of the Broadcasting Act and by the Canada Media Fund of its program, which is expected to commence in 2022 with a full implementation of any changes by 2024.[3]

3. As we stated in our initial written submission, Canadian programming for children and youth is amongst the most important programming categories in the Canadian broadcasting system. This programming presents and imparts Canadian social and democratic values to our youngest citizens, provides educational opportunities, and has historically been amongst Canada's strongest audio-visual exports. The Commission itself has recognized the importance of this programming. In the "Let's Talk TV: Create" decision, the Commission stated:

> The Commission considers children's and youth programming to be an integral part of the broadcasting system. During all phases of the Let's Talk TV consultation, individual Canadians and other interveners wrote and spoke about the value of children's programming and the importance of Canadian children watching Canadian programming.[4]

4. In its 2018 report, Harnessing Change: The Future of Programming Distribution in Canada, the Commission considered that the loss of Canadian children's programming, among others, "would limit the capacity of the broadcasting system to enrich, strengthen and reflect Canadian culture, identity and society."[5]

5. The WGC agrees. Yet despite its importance, Canadian children's and youth production has dropped precipitously. According to *Profile 2020*, production volume for English-language Canadian children's and youth television fell by over 32%, from $437 million in 2018/19, to $296 million in 2019/20.[6]

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[1] We presume that this means $1.2 million *annually*.

[2] Transcript, para. 906.

[3] DM#4124760 - Rogers - ABRIDGED - Response to CRTC Undertakings - Rogers (29Nov2021).doc, Answer 9, pg. 14-15.

[4] Broadcasting Regulatory Policy CRTC 2015-86, Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming, para. 298.

[5] https://crtc.gc.ca/eng/publications/s15/eval.htm#r1

[6] *Profile 2020: Economic Report on the Screen-Based Media Production Industry in Canada,* Published by the Canadian Media Producers Association in collaboration with the Department of Canadian Heritage, Telefilm Canada and Association québécoise de la production médiatique, https://cmpa.ca/wp-content/uploads/2021/05/PROFILE-2020_EN.pdf, Exhibit 3-8.

6. Given this decline, we submit that financial support for children's and youth programming is more important now than ever. As such, we continue to believe that the Commission should ensure that this transaction does not result in any further drop in funding to such programming. In particular, we submit that the Commission should reject the $1.2 million funding decline funding to the Rocket Fund that would result from Rogers' proposal. $1.2 million in annual funding is a meaningful and impactful reduction in support, representing nearly six entire shows that the Rocket Fund will no longer be able to support.[7] And while Rogers has said that children's programming *qualifies* for the Rogers Cable Network Fund,[8] actual funding to the genre is entirely at the discretion of that fund's administrator. In fact, according to its 2020 Annual Report, the Rogers Cable Network Fund appears to have funded *no* children's or youth programming—none—in that year.[9] As such, we do not accept that transferring $1.2 million from the Rocket Fund to the Rogers Group of Fund somehow doesn't affect the genre, and the Commission should ensure that funding for children's and youth programming remains, at the very least, undiminished by this transaction.

7. We also submit that Rogers' 3-year commitment to maintain the 50/50 split is insufficient. It is true that directing funding to CIPFs is discretionary—BDUs are generally free to set up CIPFs and direct funding to them as they wish, so long as the CIPF(s) in question adhere to the Commission's rules on their structure and function. This discretion, however, was created in an ecosystem in which there were multiple BDUs operating across the country. With a diversity of BDUs, the Commission could assume an element of diversity of funding through CIPFs, as each BDU chose which area(s) to focus on through the CIPF(s) they contributed to. Now, however, as the Commission is well aware, this transaction will drastically reduce that diversity, by eliminating one of the largest BDUs in the country, and combining it to form *the* largest BDU. This results in a meaningful reduction in the diversity of voices in the Canadian system because Rogers will have the ability to direct CIPF funding to a much greater degree than before, and to affect the type(s) of programming that gets funding as a result. This loss of funding diversity is significant, and warrants a response by the Commission that is meaningful to offset its impact.

8. As such, we submit that, if the Commission approves the transaction, it should make the continued funding of the Rocket Fund a condition of that approval, and this should not be time-limited to 2025 or otherwise, but continue indefinitely.

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[7] According to the Shaw Rocket Fund's 2020-2021 Annual Report (https://rocketfund.ca/wp-content/uploads/2021/12/annualreport-2021.pdf), page 41, the Fund invested $13,987,174 in 66 audiovisual projects. This means it made an average contribution of nearly $212,000 per project. By this measure, a $1.2 million reduction would result in 5.7 such projects at that average contribution level that the Rocket Fund could not support.

[8] Rogers' response to undertakings, DM#4124760 - Rogers - ABRIDGED - Response to CRTC Undertakings - Rogers (29Nov2021).doc, Answer 9, pg. 15.

[9] Rogers Group of funds, Annual Report, 2020 (https://rogersgroupoffunds.com/wp-content/uploads/2021/03/RGF_AR_PowerfulQuestionsBigImpact.pdf), pages 13-15. Rogers does not specifically label the genre of each funded project, but it provides the title, description, and channel, and of the 18 projects listed, there are clearly documentaries and dramas, but no animation and no children's programming.

Tangible benefits

9. As stated in the Notice of Consultation for this proceeding, Rogers has proposed a tangible benefits package totaling $5,746,000, which is equivalent to 10% of its valuation of the transaction. Multiple intervenors have commented at the insufficiency of this proposal, given the overall size of the transaction, its impact on competition and diversity in the Canadian broadcasting system, its impact on local news, the unfortunate exclusion of BDU transactions from the Tangible Benefits Policy,[10] and the exclusion of licenses that Shaw has agreed to surrender to the Commission upon closing of the transaction. The WGC agrees with these intervenors. This is a massive transaction, yet the result, if approved, would be a comparatively miniscule contribution in tangible benefits. We agree with others that Rogers has not met its burden of demonstrating that the application is the best possible proposal and that approval is in the public interest, consistent with the overall objectives of the *Broadcasting Act*, and if the transaction is approved, a significantly larger tangible benefits package is appropriate, which should be imposed by the Commission based on the exercise of its discretion.

10. During the hearing, Rogers was asked for a revised calculation of the value of the transaction, taking into account all revenues from the on-demand services currently operated by Shaw, and a revised tangible benefits package based on that valuation. Rogers has provided this information in its response to undertakings,[11] and one of the components of its revised tangible benefits package is the complete elimination of contributions to CIPFs, directing the entire amount that would otherwise go to CIPFs, or $8,518,400, to the Independent Local News Fund (ILNF). The WGC emphatically opposes this proposal.

11. This proposal is a clear deviation from the Tangible Benefits Policy, which requires that, "at least 80% of all tangible benefits relating to changes in the effective control of licensed television undertakings shall be allocated to the [Canada Media Fund and the CIPFs]", and, "of this amount, at least 60% shall be allocated to the CMF and no more than 40% to the CIPFs."[12] The Tangible Benefits Policy does allow exceptions where, "a compelling case is made that other measures could better meet the public interest,"[13] but we submit that Rogers has not made such a compelling case. For one thing, the Tangible Benefits Policy already recognizes that news is intentionally not within its ambit. "Among those program categories that are not funded by the various funds," the Commission said, "are…news, which is also often well funded (in the case of national news) and supported through other policies and regulations".[14] Several intervenors in the consultation resulting in the Tangible Benefits Policy specifically requested that it include support to local news and local programming,[15] but the Commission declined these requests, again citing other policies and supports.[16]

12. Moreover, Rogers does not engage in any meaningful analysis on such a redistribution of tangible benefits, it merely says that several interveners have called for an increase in funding to the ILNF, and

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[10] Broadcasting Regulatory Policy CRTC 2014-459

[11] DM#4124760 - Rogers - ABRIDGED - Response to CRTC Undertakings - Rogers (29Nov2021).doc, Answer 11, pages 16-22.

[12] Para. 21.

[13] *Ibid.*

[14] Para. 15.

[15] Para. 24.

[16] Para. 29.

then proposes to divert money from the CIPFs there. There is no data, no analysis, and no discussion. We submit this simple statement by Rogers does not amount to a "compelling case". Indeed, Rogers seemingly contradicts itself on this subject in the same document. At one point Rogers says that Corus's proposed redirection of BDU contributions from the CMF and CIPFs to the ILNF, "should only be considered on an industry-wide basis and should not be implemented as part of this proceeding," noting that, "Rogers, alone, should not be required to address the funding of local news by independent local television stations."[17] Yet, just two sentences later, Rogers proposes, "to address the ILNF funding challenge on an interim basis" through this transaction.[18] We submit that when Rogers cannot itself decide on whether the ILNF funding challenge should be addressed in this transaction or not, they have not made a compelling case in the matter.

13. This is not the first time that Rogers has sought to pit different categories of important Canadian programming against each other. It made similar arguments in the 2020 application for regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic. In its decision in that matter, the Commission stated:

> Rogers Media Inc. (Rogers) stated that it wishes to redirect, by the end of its licence term (i.e., 31 August 2022), shortfall amounts relating to PNI expenditures and contributions to FACTOR from the 2019-2020 broadcast year to news and information programs. In support of its proposal, Rogers explained that this would, among other things, allow it to continue producing quality news and information content, which is consistent with the Commission's third expected outcome relating to the maintenance of news and information programming.
>
> The CMPA and the WGC opposed Rogers' proposal because it unfairly positions one type of important Canadian programming against another. The WGC added that Rogers benefits from the current flexibility for supporting news programming and from the synergies of a vertically integrated entity, and has the lowest PNI expenditure threshold of any English-language group (5%).
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> The Commission notes that although Rogers' proposal would meet the third expected outcome set out in the Notice (i.e., the maintenance of news and information programming), it would come at the expense of supporting the production of PNI, the primary vehicle for conveying Canadian values and stories. Accepting Rogers' proposal would also imply that the Commission is prioritizing one type of Canadian programming (news programs) over another (PNI), whereas both types, as noted by the CMPA and the WGC, are important and essential for the support of the policy objectives of the Act.
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> Consequently, the Commission considers that it would not be appropriate to adopt Rogers' proposal.[19]

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[17] DM#4124760 - Rogers - ABRIDGED - Response to CRTC Undertakings - Rogers (29Nov2021).doc, Answer 11, page 20.
[18] *Ibid.*
[19] Broadcasting Decision CRTC 2021-274, paras. 85-88.

14. The WGC agrees. It is unfair to position one type of important Canadian programming against another, and both news and programming funded by the CIPFs—programming which is also PNI—are important. The WGC opposes the proposal of any intervenor, Rogers or otherwise, to direct money from CIPFs to news programming. News remains important, but there are other policies and methods to support it, and it cannot come at the cost of other important Canadian programming, such as that supported by the CMF and CIPFs. As Rogers itself notes, the Commission has indicated its intention to review the ILNF after five years. We submit that this is a preferable place to address it and local news programming more generally.

15. As we stated in our initial written submission, we believe the Commission should require Rogers to file tangible benefits reports annually, and the Commission should publish those reports on its website, so that both the Commission and the public can monitor and track this benefits spending. We were pleased to see at the hearing that the Commission questioned Rogers on this subject and that Rogers said it would happily provide these reports.[20] As such, we simply reiterate that this apparently uncontroversial requirement should be made an explicit condition of approval of the transaction. While it may merely be "housekeeping" at this point, we have observed over the years that if the Commission does not formally and expressly require such reporting as a condition of approval of a transfer of ownership and control of television broadcasting assets, it can be extremely difficult for it to do so after the fact, resulting in the loss of this important data to the public.

Conclusion

16. We thank the Commission for the opportunity to participate in this proceeding.

Yours very truly,

Maureen Parker
Executive Director

c.c.: Cable.regulatory@rci.rogers.com
Cable Public Affairs Channel Inc. (cwatson@cpac.ca)
Council, WGC

[20] Transcript, paras. 1246-1247.

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