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

Dear Mr. Doucet:

Re: Application 2023-0275-1 – Follow-up to Broadcasting Decision CRTC 2022-76 – Conditions of Approval and Directions – Reply Comments of Rogers Communications Inc.

I. INTRODUCTION

1. Rogers Communications Inc. (Rogers) is pleased to file this reply to the interventions we received regarding the above-referenced application, which was filed in accordance with conditions of approval and directions outlined by the Commission in Appendix 2 of Broadcasting Decision CRTC 2022-76¹ approving Rogers' acquisition of Shaw Communications Inc. (Shaw) (the Application).
2. The Application consists of two separate submissions. The first submission was filed 30 days after the Commission issued Decision 2022-76 (the 2022 Letter) and the second was filed 30 days after the close of the transaction (the 2023 Letter).²
3. Rogers received two interventions regarding the Application. The Independent Broadcast Group/Le groupe de diffuseurs indépendants (IBG) argued that the wording proposed by Rogers in the 2023 Letter for two COLs – relating to: a) the carriage of 45 Canadian independent programming services (Application 6); and b) access to set-top box (STB) data for use by Canadian independent programmers

¹ See: <https://crtc.gc.ca/eng/archive/2022/2022-76.htm> (Decision 2022-76).

² As required in Decision 2022-76, Shaw informed the Commission on April 3, 2023 that the transaction closed.

who are members of the CYNCH program³ (Application 8) – is unduly restrictive and/or deficient. Subject to one minor modification to Application 6, Rogers disagrees with IBG's demand that our commitment to carry 45 Canadian independent programming services for three years should instead apply indefinitely. This commitment was intended as an interim measure until the Commission can launch a public proceeding to review the impact of Corus' status as an independent programmer and the appropriateness of existing regulatory mechanisms that provide support for independent programming services. With respect to Application 8, we have proposed revised wording for the COL to provide some additional clarity and further address IBG's concerns.

4. The second intervention was filed by the Black Screen Office (the BSO). The 2022 Letter included a signed agreement between Rogers and the Canada Media Fund (CMF) attesting that the tangible benefits to be directed to the CMF pursuant to the transaction (\$13,072,265) will be allocated to CMF initiatives that benefit equity seeking groups (the CMF Agreement). The CMF Agreement specifies that this funding is to be directed to eligible applicants to: a) a CMF gender-balance initiative; and/or b) the CMF's Diverse Community initiative, which includes the Pilot Program for Racialized Communities⁴ (the PPRC) and the Northern Incentive Program⁵ (the NIP). While it recognizes the need for flexibility, the BSO argues that should the PPRC and the NIP cease to exist, the funding should be "specifically directed to other programs which benefit racialized communities and/or Indigenous peoples".⁶ While Decision 2022-76 allows for the filing of an alternate proposal that supports the funding of CMF initiatives that benefit equity seeking groups, given the BSO's concerns, Rogers commits to working with the CMF to amend the CMF Agreement in order to ensure that the tangible benefits funding is dedicated to eligible applicants from racialized communities and/or Indigenous peoples.
5. For the reasons outlined in this reply, as well as in our Application, Rogers is confident that approval of the Application is consistent with the Commission's requirements set out in Decision 2022-76.

II. IBG INTERVENTION

a) *Distribution of Canadian Independent Programming Services (Application 6)*

6. In the 2023 Letter, Rogers included Application 6 to amend the COLs of the broadcasting distribution undertakings (BDUs) that Rogers Communications Canada

³ CYNCH is self-serve ad-buying platform operated by Corus Entertainment Inc. (Corus) that enables advertisers to plan and purchase their advertising campaigns online. See: <https://www.cynchcanada.com/>.

⁴ See: <https://cmf-fmc.ca/program/pilot-program-for-racialized-communities/>.

⁵ See: <https://cmf-fmc.ca/program/indigenous-program/>.

⁶ BSO intervention, June 30, 2023.

Inc. (RCCI) would own following the close of the transaction to include a requirement to distribute a minimum of 45 Canadian independent English- and/or French-language services from independent programmers other than Corus on each of our licensed terrestrial and DTH BDUs. We proposed an amendment to the COLs for each of the BDUs operated by RCCI, SCL and Shaw Direct to include the following COL:

The licensee shall distribute to the extent that such programming services are available, a minimum of 45 Canadian English- and/or French-language programming services of an independent programming undertaking, for a three-year period beginning April 3, 2023.

7. Despite the fact that Decision 2022-76 and Application 6 clearly indicate that the Corus services would not be used to meet the 45 minimum requirement, IBG asks that the above wording expressly exclude the programming services owned by Corus. We propose below a revised COL to address IBG's concern.
8. IBG also takes exception to the fact that the COL would apply for a three-year period. This is despite the three-year commitment that was clearly articulated and well-understood by all parties during the public hearing and in the final determination. Accordingly, this request must be rejected. More specifically, at the public hearing in November 2021⁷ and in our final reply,⁸ Rogers indicated that our commitment to carry 45 Canadian independent programming services would apply for a three-year period from the date of the close of the transaction. The Commission highlighted this in paragraphs 89, 93 and 126 of Decision 2022-76. It also noted that other parties argued that this commitment should apply for 5 to 7 years following the close of the transaction. These requests were rejected by the Commission. Therefore, it is entirely inappropriate for the IBG to now request an even more onerous and unacceptable commitment.
9. IBG argues that the Commission's requirement for a COL does not include a three-year sunset. As noted in our final reply, extending this commitment beyond three years would effectively create a long-term access right. The CRTC itself eliminated access rights in its *Let's Talk TV* (LTTV) decisions to foster both "a healthy and dynamic retail market that maximizes consumer choice and flexibility" and "a healthy and dynamic wholesale market that ensures that Canadians are able to choose only the discretionary channels they want, while continuing to benefit from a diverse range of programming."⁹ Those objectives would not be achieved if the CRTC were to accept IBG's proposal to apply the COL indefinitely, which would effectively provide independent programmers with an ongoing Rogers-specific access right. Our commitment to carry 45 Canadian independent programming services on our BDUs over three years was designed to provide them with additional time to bridge

⁷ See: https://crtc.gc.ca/eng/transcripts/2021/tb11_22.htm, paragraphs 781-784.

⁸ Dated December 20, 2021. See paragraph 20.

⁹ Broadcasting Regulatory Policy CRTC 2015-96, at para. 5.

the transition to digital while maintaining linear carriage. In addition, it was clearly intended to be an interim measure until the Commission launches a public proceeding to review the impact of Corus' status as an independent programmer and the appropriateness of existing regulatory mechanisms that were implemented to provide some measure support for independent programming services.¹⁰ It would be competitively inequitable for this carriage requirement to be imposed only on the BDUs operated by Rogers, for a period exceeding beyond three years from the close of the transaction.

10. Finally, IBG notes that, in the 2023 Letter, Rogers advised that RCCI and Shaw Direct were already compliant with the 45-channel requirement and that Shaw Cablesystems Limited (SCL) will be in compliance with the requirement as soon as possible and no later than September 1, 2023. It argues that Rogers should have ensured that the terrestrial BDUs operated by SCL were fully compliant within 2-3 months after the close of the transaction. Until the transaction closed on April 3, 2023, Rogers was not in a legal position to assess SCL's distribution agreements, identify options to meet the 45-channel carriage requirement, negotiate affiliation agreements and launch additional services. This assessment, followed by discussions with programmers, necessitates a slightly longer period of 4-5 months, which we believe is reasonable given the circumstances.
11. Given the above, Rogers proposes to revise the COL outlining the 45-channel commitment as follows (additions in **bold**):

*The licensee shall distribute to the extent that such programming services are available, a minimum of 45 Canadian English- and/or French-language programming services of an independent programming undertaking, **excluding those owned by Corus Entertainment Inc.**, for a three-year period beginning April 3, 2023.*

b) Provision of STB Data for Use in the CYNCH Program (Application 8)

12. CYNCH is a self-serve ad buying platform for Canadian agencies and advertisers that allows them to buy TV campaigns online without having to go through direct sales agents. The platform enables users to target audience segments, build and book tailored campaigns, and track campaign performance. As such, the STB data is typically provided to the CYNCH platform to be used for ad buys at a program level. Ad buyers require this STB data feed to create audience segments for particular marketing campaigns.
13. During our appearance at the public hearing and in our undertakings filed as part of the proceeding leading to Decision 2022-76,¹¹ Rogers committed to support Canadian independent programmers' use of CYNCH platform, specifically by

¹⁰ Decision 2022-76, para. 97.

¹¹ Dated November 29, 2021.

supplying de-identified aggregated STB data that is needed to optimize the platform. STB data will be provided, upon written request and at no cost, for the programmer's service(s), segmented by postal code. Before this happens, programmers will first need to enter into a commercial agreement with CYNCH, as well as pay licensing fees to use the platform and any other costs to interconnect with it. The programmer will then be required to enter into a commercially reasonable STB data licensing agreement with RCCI and Kantar (or another third party hired by RCCI to manage the delivery of access to specified STB data), setting out the terms and conditions of our provision of this STB data. The agreement will include provisions that address, among other things: the grant of limited licence, ownership of data, scope of permissible use/purpose, data security and privacy clauses, and confidentiality obligations.

14. In the 2023 Letter, Rogers included Application 8 to amend the COLs of the terrestrial BDUs that RCCI would own following the close of the transaction to include a requirement to provide STB data free of charge for use by independent Canadian programmers who have entered into an agreement to participate in the CYNCH program. This was in response to the direction in Appendix 2 to Decision 2022-76, where Rogers was required "to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to add a condition of licence in relation to the provision of data on the CYNCH platform with similar parameters as those set out in the interim condition of licence linked to the launch of the enhanced television audience measurement system." (emphasis added)
15. As noted above, the provision of STB data for use by an independent programmer who has entered into an agreement to participate in the CYNCH program is to be subject to similar parameters as those set out in the interim COL linked to the launch of the enhanced television audience measurement (ETAM) system (the Interim COL).¹² The Commission pointed out in Decision 2022-76 that the parameters that apply to Rogers and other vertically integrated BDUs, until the ETAM system becomes operational, require the provision of intelligible STB data using universally used metrics: a) up to two times per broadcast year; and b) within 30 days of the submission of a request by a programming undertaking.¹³ The wording for the proposed COL in Application 8 reflected these parameters.
16. IBG seeks access to STB data, for use on the CYNCH platform, on a "near live" basis. IBG argues that the provision of STB data two times per broadcast year does not conform with this requirement. It further claims that the programming services operated by Rogers and Corus receive STB data at a greater frequency, arguing "[f]or ad buyers to meaningfully benefit from CYNCH, data cannot be 6 months old."¹⁴

¹² The Interim COL was outlined in [Broadcasting Decision CRTC 2018-263](#).

¹³ Para. 45.

¹⁴ IBG intervention, dated June 30, 2023, para. 27.

17. To address IBG's concern and provide more clarity related to the arrangements that will be entered into between a Canadian independent programmer, RCCI/SCL and Kantar (or another third party hired by RCCI/SCL to manage the delivery of STB data to the operator of the CYNCH platform), we have made the following revisions to the wording for the proposed COL under Application 8 (additions in **bold**, deletions in ~~strikeout~~):

*Where the licensee collects set-top box data regarding programming services it distributes, it shall, upon the written request of an independent Canadian programming service that has entered into an agreement to participate in the CYNCH program, ~~provide~~ **enter into a separate agreement with** the operator of that programming service ~~with the~~ **and a third party (selected at the licensee's discretion) to arrange for the provision of** set-top box data regarding that programming service, **in the form of** raw data or reports, **by the third party to the programmer, within 30 days and at no cost. The format, frequency and timelines for the provision of the set-top box data will be consistent with the manner by which this data is provided to other participants in the CYNCH program, in respect of their programming services, for use on the CYNCH platform.***

- ~~i. at no cost; and~~*
- ~~ii. up to a maximum of two times per broadcast year, unless otherwise agreed to by the parties.~~*

For the purposes of this condition of licence, "set-top box data" means viewership data that is obtained by the licensee through a set-top box or by comparable means for use on the CYNCH platform, but does not include any portion of such data that would allow the recipient of the data to identify a particular subscriber or household.

18. Finally, IBG argues that Shaw Direct should be included in the COL. As noted in the 2023 Letter, Shaw Direct is not subject to the Interim COL due to the barriers to STB-data collection in the case of DTH video distribution. Those barriers will continue – satellite companies cannot collect STB data. As a result, the COL proposed under Application 8 should not apply to Shaw Direct.

III. BSO INTERVENTION

19. In Decision 2022-76, Rogers is required to pay \$13,072,265 to the CMF over seven consecutive broadcast years. In the Decision, the Commission noted that it considers it in the public interest to ensure that equity seeking groups benefit directly from the funding to be directed into the Canadian broadcasting system through tangible benefit payments. It further noted that the following programs at the CMF would satisfy the requirement that tangible benefits fund initiatives that benefit equity

seeking groups: the PPRC and the NIP.¹⁵ If the PPRC ceases to exist or an agreement cannot be reached for any reason, Rogers was further directed to provide an alternate proposal to ensure that the tangible benefits to be paid to the CMF directly benefit equity seeking groups.¹⁶ The CMF Agreement includes an alternate proposal specifying that the tangible benefits funding is to be directed to applicants to: a) a CMF gender-balance initiative; and/or b) the CMF's Diverse Community Initiative, which includes the PPRC and the NIP.

20. In its intervention, the BSO expressed concern that the alternate proposal in the CMF Agreement is too flexible. It argued that, should the PPRC and the NIP cease to exist, the funding options under the alternate proposal should be "specifically directed to other programs which benefit racialized communities and/or Indigenous peoples".¹⁷ It asks that Rogers amend the CMF Agreement to reflect this requirement.
21. Decision 2022-76 allows for the filing of an alternate proposal that supports the funding of CMF initiatives that benefit equity seeking groups, which would include Indigenous Peoples, racialized communities, members of the 2SLGBTQ+ community and persons with disabilities,¹⁸ as well as gender balance initiatives designed to benefit individuals who identify as women. While the CMF Agreement addresses this requirement, given the BSO's concerns, Rogers commits to working with the CMF to amend the CMF Agreement in order to ensure that the tangible benefits funding is dedicated to eligible applicants from racialized communities and/or Indigenous peoples. We will file an amended agreement with the Commission within 30 days, which will also include a revised clause 2 indicating that the first annual payment will be no later than December 31, 2023.

IV. CONCLUSION

22. Rogers appreciates this opportunity to reply to the issues raised in the interventions filed in response to our Application. We would be pleased to respond to any further questions the Commission might have concerning the Application.

¹⁵ Para. 62.

¹⁶ Para. 63.

¹⁷ BSO intervention, June 30, 2023.

¹⁸ See the definition for each of these communities found in the CMF's Appendix A reference document, which was included with the 2022 Letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dean Shaikh".

Dean Shaikh
Senior Vice President, Regulatory
Rogers Communications Inc.

cc: Joan Jenkinson, Executive Director, BSO (joan@bso-ben.ca)
Peter Miller, IBG (peter@petermiller.ca)

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