



Broadcasting Decision CRTC 2022-76

PDF version

References: 2021-281 and 2021-281-1

Ottawa, 24 March 2022

Rogers Communications Inc.
Across Canada

Public record: 2021-0228-4

*Virtual public hearing in the National Capital Region
22 November 2021*

Shaw Communications Inc. – Change of ownership and effective control

Summary

The Commission **approves**, subject to a number of modifications and the fulfilment of specific conditions of approval, an application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for authority to transfer the effective control of the broadcasting undertakings licensed to Shaw or its subsidiaries to Rogers or its subsidiaries. The Commission concludes that the transaction as modified by the Commission is in the public interest and advances the objectives set out for the Canadian broadcasting system in the *Broadcasting Act* (the Act). Canadians as consumers will benefit from this transaction.

Specifically, the Commission, in approving this application, imposes a number of specific measures to ensure that the transaction benefits Canadians and the Canadian broadcasting system, including the following:

- Rogers must submit to the Commission a revised proposal to pay tangible benefits amounting to \$27,233,885, with modifications to the allocation proposed. Specifically
 - 80% must be directed to the Canada Media Fund (CMF), the Independent Local News Fund (ILNF) and the identified certified independent production funds (CIPFs). Of this portion
 - 60% must be directed to the CMF for programs impacting equity seeking groups; and
 - 40% must be distributed equally between the ILNF (20%) and the identified CIPFs (10% to the Rogers Documentary Fund and the Rogers Cable Network Fund, and 10% to the Shaw Rocket Fund); and

- 20% must be directed to the discretionary initiatives as proposed by Rogers including the Broadcasting Accessibility Fund (BAF), as well as to the Broadcasting Participation Fund (BPF);
- Rogers must ensure that the Rogers Documentary Fund and the Rogers Cable Network Fund (the Rogers funds) and the Shaw Rocket Fund (SRF) continue to be supported through its ongoing financial contribution to CIPFs. Specifically, Rogers must ensure that equivalent contribution amounts be issued to the Rogers funds and the SRF;
- Rogers must distribute a minimum of 45 independent English- and French-language services on each of its terrestrial and satellite direct-to-home broadcasting distribution undertakings;
- Rogers must air 48 prime time locally reflective news specials each year that are original programming and go over and above its current hours of locally reflective news programming;
- Rogers must demonstrate its progress in ensuring that it meets the access and local programming requirements for each of the licensed and exempt undertakings currently operated by Shaw Cablesystems Limited.
- Rogers must report to the Commission on its progress regarding, among others, its commitments to
 - increase the aggregate number of journalists employed in Citytv markets across the country, doubling its journalistic strength in Western Canada; and
 - create an Indigenous news team composed of journalists based in all the provinces where Rogers provides news content, delivering Indigenous-led stories to First Nations, Métis and Inuit communities;
- Rogers must provide set-top-box data to programming undertakings free of charge in accordance with the requirements set out in the decision;
- Rogers must provide assistance to independent programming services in the development of online applications and is expected to launch such applications as they become available in a manner that fosters their discoverability;
- Rogers must amend its conditions of licence to require that Corus Entertainment Inc. (Corus) is not advantaged in its dealings with Rogers and vice versa; and
- Rogers is expected to refrain from entering into any agreement for exclusive or preferential distribution of online broadcasting services or content through its distribution platforms.

With respect to Rogers' various commitments to consumers, the Commission expects Rogers to

- inform current Shaw customers that their contracts will be honoured and of what will happen once the contracts end, as well as to provide them with a range of options, including equivalent levels of service, 90 days before the end of their current contracts;

- maintain or improve the quality of service for current Shaw customers, as well as to maintain or improve the accessibility of all services for customers with disabilities; and
- consult with the relevant communities and take their feedback into consideration with regard to the accessibility of its services.

The Commission acknowledges the concerns raised by a number of interveners related to equity seeking groups. Accordingly, the Commission accepts Rogers’ various commitments to increase diversity in the Canadian broadcasting system and imposes directions, expectations and encouragements to ensure that these commitments are maintained and that approval of the transaction will yield real benefits to Indigenous, racialized and all equity seeking communities. The Commission notes that Rogers is required to file reports on diversity. These reports allow the Commission and the public to monitor how Rogers fulfills its commitments to equity seeking populations and remains accountable to these groups.

Application

1. Rogers Communications Inc. (Rogers) filed an application, on behalf of Shaw Communications Inc. (Shaw) pursuant to paragraph 4(4)(a) of the *Broadcasting Distribution Regulations* for authority to change the ownership and effective control of Shaw through the transfer of all the issued and outstanding shares of Shaw or its subsidiaries to Rogers or its subsidiaries, and to acquire the following licensed undertakings:

- the national direct-to-home (DTH) broadcasting distribution undertaking (BDU) Shaw Direct;
- the national satellite relay distribution undertaking (SRDU) Shaw Broadcast Services; and
- the 16 terrestrial BDUs operated by Shaw Cablesystems Limited in the following locations:

Province	Location
British Columbia	Coquitlam, Kelowna, Langford, Nanaimo, New Westminister, Vancouver (North and West), Vancouver (Richmond), Victoria and White Rock
Alberta	Calgary, Edmonton (2 undertakings) and Red Deer
Saskatchewan	Saskatoon
Manitoba	Winnipeg (2 undertakings)

2. In addition, Rogers requested, pursuant to paragraph 10(4)(a) of the *Discretionary Services Regulations*, authority to acquire from Shaw Cablesystems Limited:
 - Shaw Cablesystems Limited's 25.17% interest in Cable Public Affairs Channel Inc. (CPAC), which operates two national discretionary services—one French-language service and one English-language service—also known as CPAC, as well as the terrestrial video-on-demand (VOD) service Shaw On-demand; and
 - all the issued and outstanding shares of Shaw Pay-Per-View Ltd., which operates the terrestrial pay-per-view (PPV) service Shaw Pay-Per-View and the DTH PPV service Shaw Pay-Per-View.

The parties

3. Rogers is ultimately controlled by the Rogers Control Trust. It is one of the largest broadcasting and telecommunications companies in Canada, with broadcasting assets in distribution, television and radio services. Rogers operates
 - licensed and exempt BDUs in Ontario, Quebec, New Brunswick, and Newfoundland and Labrador;
 - 12 over-the-air (OTA) television stations including its Citytv and OMNI networks;
 - OMNI Regional, which has mandatory distribution under paragraph 9(1)(h) of the *Broadcasting Act* (the Act), and a number of other licensed discretionary television services, including several sports-related services; and
 - 57 radio stations across Canada.
4. Shaw and its wholly owned subsidiaries—7538375 Canada Inc., Shaw Cablesystems Limited and Shaw Pay-Per-View Ltd.—are controlled indirectly by the board of directors of SFLTCO LTD (SFLTCO), acting as trustee of the Shaw Family Living Trust. Shaw Satellite Services Inc., the licensee of Shaw Broadcast Services, is a wholly owned subsidiary of 7538375 Canada Inc. Star Choice Television Network Incorporated, the licensee of Shaw Direct, is a wholly owned subsidiary of Shaw Satellite Services Inc. Shaw is also one of the largest broadcasting and telecommunications companies in Canada, with broadcasting assets in distribution and television services. In addition to the services mentioned above, Shaw operates exempt BDUs in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. These services do not operate in the same markets as Rogers' exempt BDUs.
5. In a letter dated 7 October 2021, the Commission authorized CPAC to participate in the proceeding as an interested party. CPAC is a federally incorporated not-for-profit corporation owned by companies that own and control BDUs. Through its licensed and exempt programming services, it is unique in its focus on providing non-partisan coverage of the proceedings of the House of Commons and of the committees of the House and the Senate, as well as in-depth public affairs content in both official languages. CPAC's services have mandatory distribution under paragraph 9(1)(h) of the Act pursuant to Broadcasting Order 2018-330.

The transaction

6. According to the plan of arrangement announced on 15 March 2021 and approved by shareholders on 20 March 2021, Rogers would purchase all of the issued and outstanding shares and assume the debt and real property leases of Shaw or its subsidiaries for \$25,246,027,514.
7. The transaction also involves Shaw's wireline and wireless telecommunications services and business automation and security. The current decision does not consider these services since the change in ownership of these elements does not require prior approval from the Commission. Components of the transaction not within the Commission's jurisdiction are subject to review by either the Competition Bureau or Innovation, Science and Economic Development Canada pursuant to their respective statutory mandates. In addition, Rogers would acquire Shaw's exempt BDUs. This decision does not consider these exempt services since the change in ownership of services operating under an exemption order does not require prior approval from the Commission. The complete list of undertakings involved in the transaction for the purposes of this decision is set out in Appendix 1.
8. Rogers proposed that, immediately before the close of the transaction, Shaw would surrender its licences for the terrestrial VOD service Shaw On-demand and the terrestrial PPV service Shaw Pay-per-view. Following the close of the transaction, Shaw customers would be migrated to the on-demand services currently provided by Rogers.
9. Pursuant to Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), the Commission requires the payment of tangible benefits as part of all changes in ownership of licensed broadcasting undertakings except BDUs. Accordingly, Rogers proposed that the acquisition of only the DTH PPV service Shaw Pay-per-view and Shaw's share of CPAC would be subject to tangible benefits. Rogers indicated that the value of the elements in question was \$57,459,991 and proposed a tangible benefits package of \$5,746,000 representing 10% of the proposed value of the elements to be included in the value of the transaction.

Interventions

10. The Commission received 365 interventions in regard to this application, of which 334 were in support of the application, 25 were comments on the application and 6 were opposed to the application. The following 30 interveners appeared at the hearing:
 - Beanfield Technologies Inc.;
 - BCE Inc. (Bell);
 - Canadian Association of Community Television Users and Stations;
 - Canadian Broadcast Museum Foundation;
 - Canadian Communication Systems Alliance (CCSA);
 - Canadian Media Producers Association;

- Channel Zero Inc.;
- Coastal First Nations/Great Bear Initiative;
- Cogeco Communications Inc. (Cogeco);
- Community Media Advocacy Centre;
- Daniel Taylor;
- Documentary Organization of Canada;
- Forum for Research and Policy in Communications (FRPC);
- Independent Broadcasters Group (IBG);
- interCultural Online Health Network;
- John Roman;
- Karen Tanaka;
- Miracle Channel Association;
- Owen Sound Chamber of Commerce;
- Public Interest Advocacy Centre (PIAC);
- Quebec English-language Production Council;
- Saskatchewan Premier Ball Hockey League;
- Southern Alberta Council on Public Affairs;
- St. Andrews Community Channel Inc.;
- S.U.C.C.E.S.S.;
- TELUS Communications Inc. (TELUS);
- TLN/Ethnic Channels Group (TLN/ECG);
- UBC Digital Emergency Medicine;
- Unifor; and
- Wildbrain Ltd.

Regulatory Framework

11. Pursuant to subsection 5(1) of the Act, the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1) of the Act.
12. The Commission must consider each application on its merits, according to the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as

expressed in the objectives set out in subsection 3(1) of the Act. The current transaction has an impact on the following objectives set out in section 3(1) of the Act:

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society. [...]

(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;

(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources; [...]

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

(ii) be drawn from local, regional, national and international sources,

(iii) include educational and community programs,

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and

(v) include a significant contribution from the Canadian independent production sector; [...]

(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

13. The review of the applications that relate to changes in ownership or effective control is an essential element of the Commission's regulatory and supervisory mandate. In this regard, the *Broadcasting Distribution Regulations* and the *Discretionary Services Regulations* require that all broadcasting licensees obtain prior Commission approval before concluding a transaction that would result in a change in the effective control of a broadcasting undertaking.

14. As indicated in the Tangible Benefits Policy, the applicant must demonstrate that its proposal would yield a clear benefit to the Canadian broadcasting system as a whole and to the community served by the undertaking to be acquired. In that policy, the Commission specified that it does not solicit competitive applications for changes in effective control of broadcasting undertakings. Therefore, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction, both tangible and intangible, are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.

15. The Commission has the authority, pursuant to subsection 9(1) of the Act, to issue licences for such terms and conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act, as well as to amend those conditions.

Issues

16. To determine whether the transaction would serve the public interest, the Commission must be persuaded that the proposed transaction benefits Canadians and the Canadian broadcasting system. In its determination, the Commission must consider how the proposed transaction furthers the objectives of the Act. This includes considering how the transaction would affect Canadians and the extent to which the transaction could change the respective negotiating power of BDUs and programming services.

17. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues to determine the impact of the transaction on the Canadian broadcasting system and whether the proposed transaction is in the public interest:

- the impact on consumers;
- the transfer of Shaw Cablesystems Limited's interest in CPAC;
- which non-exempt broadcasting elements of the transaction as a whole are subject to tangible benefits, and the value of the transaction for the purposes of this decision;
- the amount and allocation of tangible benefits;
- the impact on the competitive landscape;
- the delivery of signals to BDUs via Shaw's relay distribution undertakings;
- the effect of the transaction on Corus Entertainment Inc. (Corus) as a vertically integrated entity;
- the compliance of the community channels currently branded as Shaw Spotlight;
- news programming;
- whether the Commission should direct Rogers' BDUs to contribute to specific certified independent production funds (CIPFs);
- the carriage of independent programming services;
- the provision of set-top-box data;
- Rogers' proposal to assist in the development of digital platform applications; and
- exclusive access to content.

Impact on consumers

18. The Commission examined how the transaction would affect consumer interests. It considered the possible impacts on various consumer segments including low-income households, seniors and people with disabilities. It considered Rogers' strategy for migrating Shaw customers to Rogers' services, including customers with disabilities who may have specific arrangements in place to enhance their access and experience, to ensure that sufficient protections exist for consumers. It also considered how consumer choice would be maintained, for example for consumers who may prefer entry-level service offerings.

19. At the hearing, Rogers confirmed that existing contracts for Shaw customers would continue to be honoured. In addition, Rogers stated that it would continue to offer television-only packages and provided evidence that its customer service representatives are trained in regard to entry-level service offerings. Rogers also noted that, while it is still working to understand the exact nature of Shaw's accommodations for customers

with disabilities, it intends to ensure that the accommodations continue to be offered, in keeping with its intention to continue improving accessibility in the Canadian broadcasting system. Finally, Rogers stated it will continue to comply with the Television Service Provider (TVSP) Code and to participate in the Commission for Complaints for Telecom-television Services (CCTS).

20. The Commission finds that Rogers' commitments will ensure that the interests of Shaw consumers will be adequately safeguarded. In particular, the Commission finds that Rogers' commitment to continue offering television-only packages adequately addresses the Commission's concerns regarding pricing increases for low-income households and seniors. Accordingly, the Commission expects Rogers to inform Shaw customers that their contracts will be honoured and, 90 days before the end of their current contracts with Shaw, to inform them of what options will be available once their contracts end, including how they will be able to continue to receive the same or a similar level of service. In addition, the Commission expects Rogers to maintain or improve the quality of service for current Shaw customers, as well as to maintain or improve the accessibility of all services for customers with disabilities. Further, the Commission expects Rogers to consult with the relevant communities and take their feedback into consideration with regard to the accessibility of its services.
21. Finally, the Commission reminds Rogers of the best practices set out in Broadcasting Decision 2016-458 to promote choice for Canadians and enable them to form their own value propositions for television services. The Commission reminds Rogers that it is required by condition of licence to comply with the TVSP Code and to participate in the CCTS. The Commission also reminds Rogers of the Commission's determinations related to the provision of paper bills set out in Telecom and Broadcasting Decision 2022-28.

CPAC

22. As one way of ensuring that the public interest is served, the Commission expects applicants to propose tangible benefits that are proportionate to the size and nature of the transaction and that will yield measurable improvements to the communities served by the licensed broadcasting undertaking to be acquired, as well as to the Canadian broadcasting system as a whole. Therefore, the Commission must first determine which elements of the proposed transaction are subject to review and tangible benefits as part of the current proceeding. As part of its application, Rogers requested authority to acquire Shaw Cablesystems Limited's 25.17% voting interest in CPAC. As a result, Rogers would become CPAC's majority shareholder with 66.75% of the voting shares. First, the Commission must determine whether CPAC should be included in the value of the current transaction.
23. In addition, the Commission must determine whether the transfer of these shares to Rogers and any safeguards as to CPAC's programming and editorial independence proposed by Rogers would serve the public interest. The Commission must be assured that the governance of CPAC, at the level of its board of directors, as well as the programming offered by the service are not unduly affected by the proposed transaction.

24. CPAC's services are the only Canadian television services dedicated primarily to providing Parliamentary coverage and related in-depth public affairs content in both official languages. The programming they provide would not otherwise be available in the Canadian broadcasting system. The Commission is of the view that these unique services should continue to be available to all Canadians, consistent with the objectives of the Canadian broadcasting policy.
25. More specifically, CPAC provides programming, in furtherance of paragraphs 3(1)(b) and 3(1)(d)(i) of the Act, that is essential to the maintenance and enhancement of national identity and cultural sovereignty and serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. CPAC presents programming originating in all regions of Canada and includes a significant amount of programming that is culturally diverse and reflects official language minority communities.

Whether the transaction would result in Rogers exercising effective of control of CPAC

26. Subsection 10(3) of the *Discretionary Services Regulations* states that

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(a) a person controls a majority of the voting interests of the licensee directly or indirectly, other than by way of security only;

(b) a person has the ability to cause the licensee or its board of directors to take a course of action; or

(c) the Commission, after a public hearing of an application for a licence or in respect of an existing licence, determines that a person has effective control of the licensee or its undertaking and sets that determination out in a decision or public notice.

27. The Commission notes that according to Schedule A, paragraph 2(ii) of CPAC's Restated Certificate of Incorporation dated 23 January 2009 (the Articles)

The holders of the common shares shall be entitled to vote at any meeting of the shareholders of the Corporation on the basis of one vote per share except with respect to the resolutions regarding the election or removal of directors of the Corporation in which case each registered holder of common shares shall be entitled to one vote only, irrespective of the number of common shares registered in the name of the holder.

28. As a result of the proposed transaction, Rogers would become the majority shareholder of CPAC, increasing its shareholdings from 41.58% to 66.75%. Under a typical corporate structure, this would generally mean that, as the majority shareholder, Rogers could exercise effective control of the corporation. However, CPAC's corporate structure is unique: the Articles provide that despite holding 66.75% of the voting rights, Rogers would continue to be entitled to only one vote in the election or removal of directors of CPAC.

29. Therefore, the Commission considers that Rogers would not gain effective control of CPAC by virtue of the transfer of shares.

Whether the transaction would result in Rogers exercising de facto control of CPAC

30. To assess control in fact, the Commission has generally relied on the following test set out in Decision No. 297-A-1993 of the Canadian Transportation Agency:

There is no one standard definition of control in fact but generally, it can be viewed as the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise. It can also be viewed as the ability to manage and run the day-to-day operations of an enterprise. Minority shareholders and their designated directors normally have the ability to influence a company as do others such as bankers and employees. The influence, which can be exercised either positively or negatively by way of veto rights, needs to be dominant or determining, however, for it to translate into control in fact.

31. As mentioned above, the Articles stipulate that holders of common shares are entitled to vote at any meeting of the shareholders of CPAC on the basis of one vote per share except with respect to resolutions regarding the election or removal of directors of CPAC, in which case each registered holder of common shares shall be entitled to one vote only, regardless of the number of common shares registered in the name of the holder.

32. Rogers stated that it was prepared to commit to electing only one member to CPAC's board of directors following the transaction. This would significantly limit Rogers' ability to influence the board of directors' decisions. In addition, Rogers proposed to consolidate its interests in CPAC into one corporate entity at the close of the transaction to further reassure the Commission that it would have only one vote with respect to the resolutions regarding the election or removal of directors.

33. In addition, CPAC proposed to amend its Articles to provide that all matters requiring a shareholder vote would require the approval of a majority of CPAC's individual shareholders (regardless of the number of shares held) in addition to a majority of the number of shares voted. The proposed text of this amendment is set out in CPAC's undertaking.

34. Following the transfer of the shares, Rogers would not have control over the election of board members, and Rogers would be able to elect only one board member. Therefore, Rogers would not be able to cause CPAC to adopt a specific course of action. Moreover, given the proposed amendment to the Articles, Rogers, even as majority shareholder, would be unable to have a shareholder resolution passed.

35. Therefore, the Commission considers that Rogers would not gain de facto control of CPAC by virtue of the transfer of shares.

36. The Commission expects that the motion to amend the Articles of CPAC be submitted to and approved by shareholders **before** the board can vote on a resolution to approve the transfer of Shaw Cablesystems Limited's interest in CPAC to Rogers.

The independence of CPAC's programming

37. In its intervention, FRPC was not convinced that Rogers would not exercise effective control of CPAC and thus influence its programming. FRPC recommended expanding CPAC's board of directors to include individuals from academic, public interest and other groups, and that broadcasters have 20% or fewer of the votes of the board to ensure its independence in editorial decisions.
38. At the hearing, CPAC stated that its board of directors has never played a role in programming, editorial or content decisions and that this independence is codified in its programming and editorial policy. CPAC maintains a strict barrier between the board of directors and the services' programming and journalistic operations. Programming decisions are made by CPAC's management and programming staff.
39. Therefore, the Commission is satisfied that following the transfer of the shares, CPAC would continue to be able to fulfill its mandate of providing coverage of the proceedings of the House of Commons and of the committees of the House and the Senate, with in-depth public affairs content in both official languages, without interference from Rogers.

CPAC's application for authority to effect a change in ownership

40. Under subparagraph 10(4)(b)(iii) of the *Discretionary Services Regulations*, except as otherwise provided under a condition of its licence, a licensee shall obtain the Commission's prior approval of any act, transaction or agreement that, directly or indirectly, would result in a person alone owning less than 50% of the issued common shares of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee.
41. Schedule B of the Articles stipulates that the right to transfer shares of CPAC is restricted and that no shares shall be transferred without the consent of the directors of the corporation expressed by a resolution passed by the directors. The transfer of Shaw Cablesystems Limited's shares in CPAC to Rogers was not approved by the board of directors of CPAC at the time of Rogers' application. Therefore, CPAC as the licensee of the discretionary services in question, would be required to file an application for authority to change the ownership of CPAC through the transfer of Shaw Cablesystems Limited's shares to Rogers with approval from the board of directors. In its current position as a minority shareholder of CPAC, Rogers cannot file such an application on CPAC's behalf.
42. In light of the above, the Commission **directs** CPAC to file by no later than **30 days after close of transaction** an application pursuant to subparagraph 10(4)(b)(iii) of the *Discretionary Services Regulations* for Rogers to acquire Shaw Cablesystems Limited's 25.17% interest in CPAC. The application must meet the following requirements:
 - CPAC must provide its amended Articles, demonstrating the date of the amendment, to the Commission prior to or with its application;

- Rogers must consolidate its shares in CPAC under a single corporate entity, and CPAC must reflect this change in its application; and
- Rogers must be limited to electing only one member to CPAC's board of directors.

An application from CPAC that meets those criteria will be processed administratively by the Commission. Once the Commission has processed that application and rendered a decision, CPAC must provide to the Commission the resolution passed by its board of directors, demonstrating the date of the resolution, to approve the transfer of Shaw Cablesystems Limited's interest in CPAC to Rogers.

Value of the transaction

43. As set out in the Tangible Benefits Policy, the Commission requires the payment of tangible benefits as part of a change in the effective control of licensed radio and television programming undertakings. The value of the transaction determines the amount of tangible benefits to be paid, taking into account the public interest and the absence of a competitive licensing process.
44. The Tangible Benefits Policy also sets out that the Commission does not require the payment of tangible benefits pursuant to a change in the effective control of a licensed BDU. Therefore, the value associated with the purchase of only licensed radio and television programming services is taken into account to determine the value of the transaction for the purpose of imposing tangible benefits. To determine the value of the transaction when the overall transaction involves assets that are not subject to tangible benefits, the Tangible Benefits Policy provides a simplified method based on the revenue of the elements of the transaction that are subject to tangible benefits.

Position of the parties

45. In its initial application, Rogers submitted that the application of the Tangible Benefits Policy should be limited to the acquisition of Shaw's DTH PPV service and Shaw's share of CPAC. Rogers indicated that the value of these elements was \$57,459,991 and proposed a tangible benefits package of \$5,746,000, which represents 10% of the value of the elements to be included in the value of the transaction.
46. At the hearing and in subsequent submissions to the Commission, Rogers maintained that Shaw's VOD and terrestrial PPV services should not be included in the calculation of the value of the transaction because Shaw would surrender the licences for these services immediately prior to the close of the transaction. Therefore, effective control of the services would not transfer to Rogers. Rogers also noted that the Commission has not imposed tangible benefits in similar cases previously. Specifically, Rogers cited BCE Inc.'s acquisition of MTS Inc.'s terrestrial BDU approved in Broadcasting Decision 2016-487; Rogers' acquisition of Mountain Cablevision Limited and Fido Solutions Inc. approved in Broadcasting Decision 2013-642; and Rogers' acquisition of Aurora Cable TV Limited approved in Broadcasting Public Notice 2008-77.

47. Interveners that addressed the value of the transaction commented that the proposed value of the transaction was not commensurate with the size and nature of the transaction. PIAC further argued that Shaw surrendering the licences of the on-demand services prior to the close of the transaction would represent a form of non-competition agreement and that these services should be included in the calculation of the value of the transaction regardless of whether Rogers requires the licences for their continued operation.

Commission's analysis

48. Provided that the transfer of CPAC's shares from Shaw to Rogers is completed in the manner specified above, CPAC will not be undergoing a change in effective control as a result of this transaction. In accordance with the Tangible Benefits Policy, tangible benefits are proposed as a result of changes in effective control of all licensed radio and television programming services. Consequently, to the extent that CPAC remains controlled by its board of directors, the payment of tangible benefits related to the transfer of CPAC shares is not required. In accordance with subsection 10(4) of the *Discretionary Services Regulations*, should CPAC undertake any act, transaction or agreement that directly or indirectly results in a change of effective control of the undertaking, this would be considered and addressed by the Commission once CPAC files its required application. However, for the purpose of the current transaction, the Commission removes the value of CPAC from the calculation of the value of the transaction.

49. Subsection 32(1) of the Act stipulates that authority to operate a broadcasting undertaking in Canada is granted through a licence issued by the Commission or if the undertaking operates in accordance with a relevant exemption order issued by the Commission. Shaw has the authority to operate its video-on-demand and pay-per-view undertakings as a result of the licences issued by the Commission in Broadcasting decisions 2017-155, 2019-278 and 2019-279 (Shaw's on-demand services). If an undertaking continues to operate on an uninterrupted basis, that authority cannot lapse or cease to be in effect without contravening subsection 32(1) of the Act.

50. In the context of this transaction, Rogers proposed to continue to operate Shaw's on-demand services, albeit under Rogers' licences granted in Broadcasting decisions 2017-151 and 2019-207. Given that these licences are national in nature, the Commission does not in principle take issue with Rogers' proposal. However, the Commission considers that Shaw, at the behest of Rogers, cannot surrender its on-demand licences prior to the close of the transaction, since Rogers intends to continue to operate these services on an uninterrupted basis. The services would be operating without a licence, even if just for a short time. In addition, the Commission considers that applicants should not attempt to structure transactions to avoid the payment of tangible benefits. Therefore, while Rogers may relinquish Shaw's on-demand licences, it can do so only after the close of transaction and not before.

51. The Commission notes that Rogers objected to the inclusion of these on-demand services in the overall valuation of the transaction, citing Broadcasting Decision 2016-487 (Bell's acquisition of MTS Inc.), Broadcasting Decision 2013-642 (Rogers' acquisition of

Mountain Cablevision Limited) and Broadcasting Public Notice 2008-77 (Rogers' acquisition of Aurora Cable TV Limited) in support of this position. Broadcasting Decision 2016-487 involved a regional on-demand undertaking that was ultimately wound down by the purchaser. In that case, the value associated with that on-demand service was minimal. In contrast, Rogers intends to migrate the customers of Shaw's on-demand services into its own national services, substantially increasing Rogers' market share and revenues. The fact that Rogers intends to continue to operate Shaw's services, the scale of those services and the resulting impact on the Canadian broadcasting system are not comparable to the facts of the cases cited by Rogers.

52. Further, the Commission notes that the purchase price accounts for Shaw's on-demand services. The assets necessary to operate these services would transfer to Rogers. Rogers would continue to provide these services to Shaw's customers as part of Rogers' own on-demand services. Rogers would benefit from an expanded subscriber base, and the revenue associated with these services would be transferred to Rogers. These elements represent an intrinsic value attached to those services that must be accounted for in the value of the transaction. Therefore, the Commission is of the view that it would be in the public interest for the value of these services to be reflected through the payment of tangible benefits to the overall benefit of the Canadian broadcasting system. Accordingly, the Commission amends the value of the transaction to include all three of Shaw's on-demand services.
53. At the hearing, the Commission asked Rogers to submit an undertaking to confirm whether any ancillary agreements, such as a consultation contract, needed to be included in the value of the transaction. In its undertaking, Rogers confirmed that no such agreement existed.
54. In light of the above, the Commission determines the value of the transaction according to the simplified revenue method set out in the Tangible Benefits Policy. Shaw's total revenue in 2020 was \$5.4 billion. The Commission determined that the revenue of the elements subject to tangible benefits constituted 0.9807% of Shaw's total 2020 revenue, as set out in the table below. The Commission applied this percentage to the purchase price to determine the elements' respective portion of the purchase price, which is the value of the transaction for the purposes of this decision. Accordingly, the Commission determines that the value of the transaction is \$247,580,772.

Service for which there is a change in effective control and that is subject to tangible benefits	2020 revenue	Proportion of total revenue of \$5.4 billion
Shaw On-Demand (terrestrial VOD service)	\$30,910,331	0.5726%
Shaw Pay-per-view (terrestrial PPV service)	\$13,812,765	0.2559%
Shaw Pay-per-view (DTH PPV service)	\$8,213,347	0.1522%
Total	\$52,936,443	0.9807%

55. In addition, should Rogers choose to surrender Shaw's licences for its terrestrial VOD and PPV services, the Commission **directs** Rogers to do so following the close of the transaction and not before.
56. Finally, the Commission notes that it will not revise the value of the transaction in light of the results of the regulatory review by either the Competition Bureau or Innovation, Science and Economic Development Canada. Any request to modify the value of the transaction will require a new application.

Tangible benefits package

57. For transactions resulting in a change in the effective control of television services, the amount of the tangible benefits is expected to represent at least 10% of the value of the transaction as determined by the Commission. The Tangible Benefits Policy states that the Commission may choose to exercise its discretion and depart from this policy where called for to meet the public interest and according to the record before it at the time.
58. The Tangible Benefits Policy stipulates that at least 80% of all tangible benefits stemming from a change in effective control of a television service is to be allocated to production funds. Of this amount
- at least 60% is to be allocated to the Canada Media Fund (CMF); and
 - up to 40% may be allocated to various CIPFs.

Up to 20% of the total amount of tangible benefits may be allocated to eligible initiatives as defined in the Tangible Benefits Policy provided that these do not serve the interests of the applicant, that they are incremental and that they serve the public interest.

Rogers' proposal

59. In an undertaking following the public hearing, Rogers submitted a revised value of the transaction that included Shaw's three on-demand services and Shaw's shares of CPAC and a tangible benefits package of \$26,620,000, which represents 10% of the revised proposed value of the transaction. Rogers proposed a tangible benefits package whereby
- 80% of tangible benefits required to be allocated to production funds would be distributed as follows:
 - 60% to the CMF; and
 - 40%, as an exception, to the Independent Local News Fund (ILNF) instead of eligible CIPFs; and
 - the remaining 20% would be distributed among the following eligible discretionary initiative:
 - 15 film festivals in Western Canada;
 - the Chinatown Storytelling Centre;

- the National Screen Institute (NSI);
- the Banff World Media Festival;
- the University of British Columbia School of Journalism, Writing and Media Scholarship Fund for BIPOC Students;
- the Sarah McLachlan School of Music; and
- the Broadcasting Accessibility Fund (BAF).

Commission's analysis

60. As previously mentioned, the Commission expects applicants to propose tangible benefits that are proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as to the Canadian broadcasting system as a whole. Pursuant to this policy, the Commission also generally expects the contributions proposed to represent 10% of the value of the transaction as determined by the Commission. However, the Commission may depart from its policy if such a departure is required to meet the public interest. For the reasons set out below, the Commission finds that the minimum tangible benefits package of 10% of the value of the transaction is insufficient and not commensurate with the size and nature of the transaction.
61. While the Commission does not generally require the payment of tangible benefits pursuant to the change in effective control of BDUs, approval of this transaction would result in a significant consolidation of BDU assets that would have a significant impact on the Canadian broadcasting industry. In addition, the Commission notes that in acquiring these BDU assets, Rogers will be in a stronger position to negotiate agreements for programming services as well as agreements to distribute them. Accordingly, the Commission determines that Rogers shall pay tangible benefits in the amount of \$27,233,885, which represents 11% of the value of the transaction. The Commission considers that a tangible benefits package that amounts to \$27,233,885 is more proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertakings to be acquired.
62. The Commission notes that Rogers' proposed allocation to the CMF is consistent with the Tangible Benefits Policy. Nevertheless, the Commission considers it in the public interest to ensure that equity seeking groups benefit directly from the funding to be directed into the system through tangible benefits. Therefore, the Commission requires that Rogers file a revised tangible benefits proposal so that the funds allocated to the CMF are specifically directed to programs and initiatives benefitting equity seeking groups. The Commission notes that the following programs would satisfy the Commission's intent:
- the CMF's pilot program for racialized communities; and
 - the CMF's Northern Incentive Program.

63. As a **condition of approval**,¹ the Commission requires Rogers to file by no later than **25 April 2022** its signed agreement with the CMF attesting that the tangible benefits to be directed to the CMF pursuant to this transaction will be allocated to the CMF's pilot program for racialized communities and its Northern Incentive Program. If those programs cease to exist or such an agreement cannot be reached for any reason, Rogers is to provide an alternate proposal to the Commission, in keeping with the Commission's requirement that those tangible benefits directly benefit equity seeking groups.
64. Under the Tangible Benefits Policy, the Commission 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 CMF or various CIPFs, unless a compelling case is made that other measures could better meet the public interest. The Commission notes that Rogers did not include CIPFs such as the Rogers Documentary Fund and the Rogers Cable Network Fund (the Rogers funds) and the Shaw Rocket Fund (SRF) among its revised proposed tangible benefits recipients. Instead, Rogers proposed to allocate the portion usually allocated to CIPFs to the ILNF.
65. Given the various challenges that the Canadian broadcasting industry, and particularly private conventional television stations, has faced prior to and during the COVID-19 pandemic, the Commission considers that Rogers' proposal to allocate a portion of the tangible benefits to the ILNF would be in the public interest. However, CIPFs are an important part of the development of a robust Canadian production sector, and the Commission is of the view that the Rogers funds and the SRF should not be excluded from this portion of the tangible benefits package. Accordingly, the Commission requires Rogers, as part of its revised tangible benefits proposal, to allocate the 40% typically allocated to CIPFs to the following initiatives, in the following proportions:
- 10% to the Rogers funds and 10 % the SRF in equal payments over seven consecutive broadcast years; and
 - 20% to the ILNF in one lump sum at the close of the transaction.
66. The discretionary initiatives proposed by Rogers are eligible and in line with the Tangible Benefits Policy. However, the Commission notes that Rogers currently sponsors some of the festivals that it has proposed to support as part of its tangible benefits package. The Tangible Benefits Policy stipulates that discretionary initiatives must be incremental and non-self-serving. Therefore, the Commission must ensure that tangible benefits stemming from this transaction either are not directed toward initiatives that Rogers would have otherwise supported in the absence of this transaction or are incremental to Rogers' existing commitments. Otherwise, the Canadian broadcasting system would not necessarily benefit from the allocation of these tangible benefits.
67. Therefore, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the conditions of licence of all the television programming undertakings currently operated

¹ For ease of reference, a list of the conditions of approval imposed throughout this decision is set out in Appendix 2.

by a Rogers-related entity² to include a requirement that Rogers must file a report by 30 November of each year detailing all of the contributions that it has made to each of the discretionary initiatives that it currently sponsors, specifically indicating how the allocations are incremental in nature. These reports will enable the Commission to verify that the allocation of tangible benefits stemming from this transaction is truly incremental and truly benefits the Canadian broadcasting system.

68. During the hearing, several interveners stressed the importance of maintaining funding for the Broadcasting Participation Fund (BPF) and the BAF. The Commission is of the view that ensuring some funding for the BPF and the BAF would enable the public and consumer groups to continue to participate in Commission proceedings and in the broadcasting system in a meaningful and fulsome way. Such participation is critical, particularly in the context of the Canadian broadcasting system today and its rapid evolution. Therefore, the Commission requires Rogers to propose a revised tangible benefits package that allocates \$725,439 each to the BPF and the BAF. In addition, the Commission requires Rogers to make these payments over three consecutive broadcast years instead of the usual seven given the funds' current circumstances and the significant role that they will be called on to play in the near future.
69. Given the complexity of this tangible benefits package and of the changes required, the Commission is of the view that Rogers should be required by condition of licence to file a report by 30 November of each year specifying
- the amount of tangible benefits expended during the broadcast year, with a breakdown of the expenditures for each recipient;
 - the total tangible benefits expended to date; and
 - the amount of tangible benefits remaining to be expended.

Accordingly, the Commission requires Rogers, as a **condition of approval**, to file by no later than **25 April 2022**, an application to amend the conditions of licence for all of the television programming undertakings currently operated by a Rogers-related entity to require it to report annually on its tangible benefits expenditures stemming from this transaction.

70. In light of the above, the Commission requires Rogers, as a **condition of approval**, to file by no later than **25 April 2022**, a revised tangible benefits package in the amount of \$27,233,885 and reflecting the Commission's determinations as set out in the table below. The Commission considers that a revised proposal for tangible benefits, both tangible and intangible, that aligns with the determinations set out above would yield benefits that are commensurate with the size and nature of the transaction.

² The licences for its Citytv stations, Outdoor Life Network, FX, FXX, Sportsnet 360, Sportsnet, Sportsnet One, Rogers on Demand, Hockey Night in Canada (Television network), OMNI stations and Rogers Sportsnet PPV.

80% - Production funds and the ILNF (\$21,787,108)

Recipient	Total amount of tangible benefits	Timing
CMF (60%)	\$13,072,265	Expended equally over 7 consecutive broadcast years
CIPFs: SRF (10%) Rogers funds (10%)	\$4,357,421	Expended equally over 7 consecutive broadcast years
ILNF (20%)	\$4,357,421	Lump sum upon the close of the transaction

20% - Discretionary initiatives (\$5,446,777)

Recipient	Total amount of tangible benefits	Timing
University of British Columbia School of Journalism, Writing, and Media Scholarship fund for BIPOC students	\$1,100,000	Lump sum upon the close of the transaction
Film festival grants: 15 film festivals in the Prairie provinces and British Columbia	\$900,000	Lump sum upon the close of the transaction
Banff World Media Festival	\$800,000	Expended equally over 7 consecutive broadcast years
NSI Winnipeg	\$800,000	Expended equally over 7 consecutive broadcast years
BAF	\$725,439	Expended equally over 3 consecutive broadcast years
BPF	\$725,439	Expended equally over 3 consecutive broadcast years
Chinatown Storytelling Centre	\$230,000	Expended equally over 7 consecutive broadcast years
Sarah McLachlan School of Music Vancouver, Surrey and Edmonton	\$165,900	Expended equally over 7 consecutive broadcast years

Competitive landscape

71. In Broadcasting Public Notice 2008-4 (the Diversity of Voices Policy), the Commission set out that BDUs are a crucial part of the Canadian broadcasting system playing an important role in meeting the needs of consumers and achieving the objectives set out in the Act. In this regard, the Commission recognizes the importance of fostering a competitive environment for distribution undertakings and of encouraging a plurality of ownership. Specifically, the Commission indicated that, as a general rule, it would not approve an application for a change in the effective control of BDUs that would result in one person being in a position to effectively control the delivery of programming services in any given market.

72. Several interveners noted that if Shaw subscribers remained with the same provider, Rogers would have approximately 47% of BDU subscribers in Canada (excluding Quebec). Bell and TELUS suggested that this market share would enable Rogers to determine what programming services are carried and able to be successful. Many interveners expressed similar concerns and requested that the Commission impose additional competitive safeguards.
73. In its final reply, Rogers noted that the transaction would not change the number of BDUs serving each market since Rogers and Shaw do not currently operate terrestrial BDUs in the same markets. Rogers also submitted that the Commission's existing safeguards effectively preclude Rogers from effectively controlling the delivery of programming services, and it reiterated its intention to continue operating in compliance with the Commission's regulatory framework. In addition, Rogers would not be the sole BDU in any market. Finally, Rogers indicated that it would continue to follow the best practices set out in Broadcasting Decision 2016-458, which include providing customers with a variety of methods to manage their television services and not penalizing customers who switch to lower-priced packages.
74. The Commission recognizes that following the transaction, Rogers would become the largest BDU in Canada. However, the increase in its subscriber base would not represent a concentration of ownership that would result in a reduction of the effective competition in local markets because Rogers and Shaw do not currently operate in the same local markets.
75. The Commission recognizes that the Canadian broadcasting system is currently undergoing significant change with the growing presence and influence of digital media. The Commission is of the view that supporting the production, distribution and promotion of Canadian programming is one of the most important aspects of navigating these changes in the Canadian broadcasting system. The Commission also recognizes that this transaction would be transformative for the Canadian broadcasting system and is cognizant of the particular impacts, both direct and indirect, that this transaction may have on independent programming services, other BDUs and the Canadian broadcasting system as a whole.
76. As part of this proceeding, the Commission has directed Rogers to file a revised tangible benefits package of over \$27 million, allocated to various Canadian programming initiatives. In addition, Rogers stated that it was prepared to accept a number of conditions of approval that would result in the enhancement of local, community and Canadian programming, as well as the distribution of Canadian programming through digital platforms.
77. Nevertheless, the Commission agrees that additional safeguards are required to ensure that Rogers continues to contribute to the Canadian broadcasting system and that its increased scale will not have a deleterious effect on competition in the distribution market, the distribution of Canadian and non-Canadian online broadcasting services, or the availability of Canadian programming services, particularly independent services.

78. The Commission examined the imposition of additional safeguards in relation to relay distribution undertakings, independent programming undertakings, local news, community television, CIPFs, online digital distribution applications and exclusivity.

Relay distribution undertakings

79. Relay distribution undertakings, such as Shaw's SRDU Shaw Broadcast Services and Shaw's exempt terrestrial relay distribution undertakings (TRDUs), deliver conventional OTA television stations and transport discretionary services to BDUs. However, SRDU licences encompass only the delivery of conventional OTA television stations. As per Broadcasting Regulatory Policy 2012-94, the transport of discretionary services is not incorporated into SRDU licences.
80. The CCSA, Cogeco and TELUS expressed concerns that Rogers' acquisition of Shaw's SRDU and exempt TRDUs would result in anti-competitive behaviour relating, for example, to the rates for and transport of discretionary programming services. The interveners recommended that the Commission impose the Wholesale Code and sections 9 and 12 to 15.01 of the *Broadcasting Distribution Regulations* via condition of licence on the SRDU Shaw Broadcast Services.
81. Rogers stated its intention to continue to honour all existing contracts related to Shaw's SRDU and TRDUs for the full term of each agreement. In addition, Rogers indicated that it would accept that the dispute resolution provisions currently applied through a condition of licence on the SRDU's delivery of conventional OTA television stations be also applied to the SRDU's transport of discretionary services by condition of licence. However, Rogers indicated that it was opposed to the imposition of the Wholesale Code and sections 9 and 12 to 15.01 of the *Broadcasting Distribution Regulations* on the SRDU because these provisions were not designed to regulate relationships between SRDUs and BDUs and could prove to be irrelevant or redundant.
82. The Commission is of the view that the imposition of additional safeguards by condition of licence on the SRDU Shaw Broadcast Services is warranted to address the concerns raised on the record. The safeguards set out below will provide assurances to BDUs and programming services that currently have agreements with the SRDU.
83. In light of the above, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the licence of the SRDU Shaw Broadcast Services to include the following condition of licence:

- dispute resolution with respect to the transport of discretionary services:

If there is a dispute between the licensee and a distribution undertaking, whether operating by licence or by exemption order, concerning the terms under which discretionary programming services are or may be provided, one or both parties to the dispute may refer the matter to the Commission and the licensee shall submit to a dispute resolution process if the Commission so requires.

- the standstill rule:

During any dispute between the licensee and a person licensed to carry a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the licensee shall continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute.

For the purposes of this condition, a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

- the Wholesale Code:

The licensee shall adhere to the Wholesale Code, as applicable, set out in the appendix to Broadcasting Regulatory Policy 2015-438, in its dealings with any licensed or exempt broadcasting undertaking.

84. With regard to the exempt TRDUs, the Commission notes that BDUs can avail themselves of dispute resolution given that all TRDUs must comply with all prescribed conditions of exemptions, which include the obligation to submit to dispute resolution. In addition, the Wholesale Code applies as a guideline to TRDUs. As specified in the TRDU exemption order set out in Broadcasting Order 2009-638, if a dispute concerning the terms and conditions under which programming services are or may be provided or distributed arises between an undertaking and a distribution undertaking or a programming undertaking, whether operating by licence or by exemption order, either party may request dispute resolution, and the undertaking must submit to such dispute resolution process or processes as may be required by the Commission and to any decision resulting therefrom.
85. Finally, the Commission expects Rogers to continue to honour all existing contracts related to Shaw's SRDU and TRDUs for the full term of each such agreement. Further, at the hearing, Rogers confirmed that it would continue to make an allocation to the Aboriginal Peoples Television Network and to the uplink of Indigenous community radio stations. To provide some financial certainty to these Indigenous services after the close of the transaction, the Commission expects Rogers to continue contributing a portion of its gross revenues from broadcasting activities to the Aboriginal Peoples Television Network and to the uplink of Indigenous community radio stations.

Effect of the transaction on Corus's status

Corus's status after the close of the transaction

86. Subsection 19(1) of the *Broadcasting Distribution Regulations* defines independent programming undertaking as follows: “no licensee of a distribution undertaking or operator of an exempt distribution undertaking, or affiliate of the licensee or operation, will hold, directly or indirectly, an interest or rights in the assets of that programming undertaking.” Subsection 19(3) of the *Broadcasting Distribution Regulations* requires BDUs to provide at least one independent programming service in the same language, where available, for each related programming undertaking that it distributes in the licensed area (also known as the 1:1 rule).
87. Corus operates 31 discretionary services, 39 radio stations, 15 conventional television stations and a range of other media and content services. Corus is controlled indirectly by the board of directors of SFLTCO. Corus is currently considered a “related programming undertaking” in accordance with the definition of that term set out in the *Broadcasting Distribution Regulations*. For the purpose of subsection 19(3), the programming services held by Corus are currently not considered “independent programming services” because Shaw holds, either directly or indirectly, an interest in Corus. Although Corus became a separate entity from Shaw following Broadcasting Decision 2016-110, the Commission has consistently held that Shaw and Corus are a single vertically integrated entity, in accordance with Broadcasting Regulatory Policy 2015-96. The Commission has also consistently considered Shaw and Corus to be a single voice under the Diversity of Voices Policy.
88. While acknowledging that Rogers is not acquiring Corus, several interveners expressed the view that Corus should not be considered an independent programming undertaking. The interveners were concerned that Rogers would have an incentive to engage in anti-competitive behaviour with Corus following the close of the transaction. Corus confirmed that it would operate independently from Rogers, including in its negotiation of affiliation agreements. Corus stated that it does not expect to receive preferential treatment from Rogers.
89. Rogers stated that, following the transaction, neither Rogers nor the Rogers Control Trust would own any shares of Corus or have any board or management representation at Corus. Thus, Rogers would neither control nor materially influence Corus after the close of the transaction. While Rogers would continue to enter into contractual agreements with Corus, it would have no incentive to confer an undue preference onto Corus. In addition, Rogers proposed to carry a minimum of 45 non-Corus independent programming services on its BDUs for three years following the close of the transaction. In response to questions at the hearing, Rogers replied that it was willing to adhere to the following:
- Corus shall not be duly advantaged in its dealings with Rogers going forward, and vice versa;
 - Rogers and Corus shall not act as a single entity when it works in their favour; and

- Rogers shall not deprive, directly or indirectly, other BDUs or industry participants of Corus's content.

90. The Commission notes that, following the close of the transaction, Rogers would not control more than 10% of Corus. Accordingly, Corus's television programming undertakings would be considered "independent programming undertakings" as defined in subsection 19(1) of the *Broadcasting Distribution Regulations*. Therefore, the Commission is satisfied that Corus would remain unrelated to Rogers from a regulatory perspective following the close of the transaction.

91. In light of the above, the Commission recognizes that Corus would be considered an independent programming undertaking as defined in the *Broadcasting Distribution Regulations* following the close of the transaction. The Commission acknowledges that this change in Corus's status could have a significant impact on the Canadian broadcasting industry since Corus would become by far the largest provider of independent programming services in Canada.

Regulatory framework protecting independent programming services

92. The Commission has put in place a number of mechanisms to support independent programming services including

- the 1:1 rule set out in subsection 19(3) of the *Broadcasting Distribution Regulations*;
- the standstill rule set out in section 15.01 of the *Broadcasting Distribution Regulations*;
- provisions of the Wholesale Code set out in the appendix to Broadcasting Regulatory Policy 2015-438 including 4(g) and 7 to 12; and
- various dispute resolution mechanisms set out in Broadcasting and Telecom Information Bulletin 2019-184.

93. IBG and TLN/ECG expressed the concern that Corus's services would crowd out smaller independent programming services from the English-language distribution market and enable Rogers to circumvent the safeguards in place for independent programming services. Despite Rogers' stated intention to carry 45 non-Corus independent programming services on its BDUs for three years following the close of the transaction, interveners noted that Rogers would still have considerable market power over independent programming services.

94. Rogers acknowledged that Corus's status as an independent programming undertaking would mean that the 1:1 rule would no longer be triggered with regard to Corus's services. However, Rogers argued that the current safeguards are sufficient to address concerns and that no additional mechanisms are necessary.

95. The Commission recognizes that Corus's status as an independent programming undertaking would change the relationship between Corus and all BDUs from both a wholesale and a packaging perspective. This change in status would also affect the relationship between Corus's programming services and other independent programming services as it relates to their distribution and ultimately their viewership. The Commission is of the view that Rogers' intention to carry 45 non-Corus independent programming services addresses some of these concerns in the short term.
96. However, the Commission acknowledges that its regulatory framework relating to independent programming services was designed to support smaller independent programming undertakings and was not intended to apply to an independent programming undertaking of Corus's scale. While a review of the Commission's regulatory framework relating to independent programming services and their commercial relationships with BDUs is beyond the scope of this proceeding, the Commission acknowledges that the application of existing policies could lead to unintended outcomes following the close of the transaction.
97. In light of the above, the Commission, while recognizing that BDUs routinely make packaging changes to adapt and improve their offerings to customers, encourages BDUs to minimize packaging changes until the Commission can complete a review of its policy framework supporting independent programming services and stations. The Commission intends to launch a public proceeding as soon as feasible to review the impact of Corus's new status and the appropriateness of existing mechanisms with respect to independent programming services.
98. In addition, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the licence of its broadcasting distribution undertakings to require that
- Corus will not be duly advantaged in its dealings with Rogers going forward, and vice versa;
 - Rogers and Corus will not act as a single entity when it works in their favour; and
 - Rogers not deprive, directly or indirectly, other BDUs or industry participants of Corus's content.

Independent Local News Fund funding

99. As set out in Appendix 1 to Broadcasting Regulatory Policy 2016-224 (the Local and Community Television Policy), all private conventional television stations that provide locally reflective news and information that do not belong to a vertically integrated group are eligible to receive funding from the ILNF, subject to Commission approval.
100. Several interveners were concerned that, since Corus's Global television stations could become eligible for ILNF funding as independent programming services, current recipients would see an overall decrease in their respective share of funding from the ILNF.

101. The Commission will consider this issue as part of a separate proceeding. Namely, in the Local and Community Television Policy, the Commission indicated that it intended to launch a public process to determine whether the fund remains necessary to achieve the objectives of the Act or whether changes are required to better achieve those objectives.

News programming

Local expression contributions to news programming

102. Under the *Broadcasting Distribution Regulations*, BDUs must, for each broadcast year, contribute 5% of their gross revenues derived from broadcasting activities in that year to support Canadian programming. BDUs are authorized to allocate up to 2% of those revenues to local expression. Since BDUs are in the best position to assess their subscribers' needs for locally reflective programming and how to allocate their resources accordingly, the Commission provided a certain amount of flexibility with regard to these contributions. In addition to spending on their own community channels, BDUs can either

- transfer a portion of their local expression contributions to local private television stations to fund local news programming; or
- transfer a portion of their local expression contributions from one community channel to another.

103. In the Local and Community Television Policy, the Commission also set out its expectation that local television stations maintain a local presence, by among other means, employing full-time journalists on the ground in the market.

104. Rogers indicated that it intends to use the local expression contributions that Shaw currently allocates to Corus's Global television stations to fund local news on its Citytv stations. As a result, the Global stations would stop receiving this local expression contribution and the Citytv stations could receive an increase of approximately \$13.5 million in local expression contribution per broadcast year in addition to what Rogers currently allocates.

105. At the hearing and in an undertaking, Rogers also indicated that it was prepared to commit, as a condition of approval, to invest in news programming through the following five strategic editorial initiatives:

- air a total of 48 annual prime time news specials each year across Vancouver, Edmonton, Calgary and Winnipeg, tackling important local issues;
- create a Western Canada digital news service for IPTV and smart television platforms, providing top news stories and breaking news from Western Canada;
- add two Western-Canada-based journalists to CityNews's Parliament Hill team, providing a Western Canada perspective on national stories;

- increase the aggregate number of journalists employed in Citytv markets across the country, doubling its journalistic strength in Western Canada; and
- create an Indigenous news team composed of journalists based in all the provinces where Rogers provides news content, delivering Indigenous-led stories to First Nations, Métis and Inuit communities.

106. At the hearing, the Commission also asked Rogers to comment on the possibility that the Commission could impose new requirements by condition of licence, one of which was related to the aggregate number of journalists employed by CityNews across the country. Rogers explained that the majority of its local expression contribution would be used to hire journalists and to improve the quality of its journalism.

107. The Commission considers that journalists are a vital component of democracy and that by delivering news and information to Canadians, they make significant contributions to the Canadian broadcasting system and play a major role in fulfilling the objectives set out in the Act.

108. In light of the above, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the broadcasting licence of its Citytv stations to include in its diversity report details specifying how the following four initiatives contribute incrementally to the Canadian broadcasting system and serve the public interest:

- the creation of a Western Canada news service;
- the addition of two Western-Canada-based journalists to CityNews's Parliament Hill team;
- the creation of an Indigenous news team composed of journalists based in all the provinces where Rogers provides news content, delivering Indigenous-led stories to First Nations, Métis and Inuit communities; and
- the hiring of journalists primarily from equity seeking groups including no fewer than six from Indigenous communities to increase the aggregate number of journalists employed in Citytv markets across the country.

109. In addition, the Commission **directs** Rogers, pursuant to subsection 12(3) of the *Television Broadcasting Regulations, 1987*, to report annually by 30 November on how many journalists it employs in each Citytv market, how many journalists it has hired in the past broadcast year, the level of the journalist positions filled and how many of its journalists self-identify as members of equity seeking groups. This report will be published on the Commission's website. Further, the Commission expects Rogers to reflect the cultural diversity of Canada in its employment practices, including in senior level positions specifically involved in programming decisions and in various aspects of its operations.

110. Finally, the Commission requires Rogers to ensure that all additional local expression funds originating from the acquired Shaw BDUs and redirected to its Citytv stations as a result of this transaction translate into incremental contributions to the Canadian broadcasting system that are over and above the 11% expenditure requirement currently imposed on Rogers' Citytv stations for locally reflective news and thus benefit Canadians and the public interest by providing access to a diversity of high quality programming.

Locally reflective news

111. As set out in Appendix 3 to Broadcasting Decision 2017-151, Rogers' six Citytv stations are subject to a condition of licence requiring that, for each broadcast year, Rogers shall make sufficient expenditures such that the television stations of the Rogers Media Group collectively devote 11% of the previous year's gross revenues of those television stations to the acquisition of or investment in locally reflective news. In addition, Rogers is required by condition of licence to broadcast at least 7 hours of local programming, 3 of which must be locally reflective news, per week in non-metropolitan markets and at least 14 hours of local programming, 6 of which must be locally reflective news, per week in metropolitan markets.

112. The Commission asked Rogers to comment on the possibility that the Commission could impose additional requirements by condition of licence related to expenditures and exhibition requirements in metropolitan and non-metropolitan markets for locally reflective news. Rogers responded that no stations that have received local expression contributions have been subject to additional requirements related to locally reflective news. Rogers stated that imposing such requirements on its Citytv stations in Vancouver, Edmonton, Calgary and Winnipeg would be unfair, especially since these four stations are among the weakest in their respective markets. Rogers reiterated that it intends to use the local expression contribution originally provided by Shaw to invest in a greater number of journalists to improve the depth and quality of its news coverage, as well as to invest in 48 prime time local news specials.

113. Paragraph 3(d)(1) of the Act states that the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. The Commission recognizes that the 48 annual prime time local specials proposed by Rogers in Citytv's Western markets will help meet this objective of the Act by offering high quality and informative original news specials that will keep Canadians informed on changing events, issues and the various socio-economic, cultural, and political realities that Canadians face every day. However, the 48 annual prime time local specials would have limited impact on the achievement of this objective should they simply replace local news already produced by Rogers and not be incremental. Therefore, the Commission considers it appropriate to require that the 48 specials be incremental to Citytv's current exhibition and expenditure requirements for locally reflective news.

114. In light of the above, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the licences of its Citytv stations to add a requirement that the 48 prime time local

news specials be original programming and incremental to Citytv's current exhibition and expenditure requirements for locally reflective news.

115. In addition, the Commission **directs** Rogers, pursuant to subsection 12(3) of the *Television Broadcasting Regulations, 1987*, to report annually by 30 November on the local news specials, where they aired, when they aired, and how the content was original programming and incremental to its current locally reflective news programming expenditure and exhibition requirements. Rogers must also clearly demonstrate how the local expression funds originating from the acquired Shaw BDUs and redirected to the Citytv stations are incremental to the 11% expenditure requirement currently imposed on the Citytv stations. This report will be published on the Commission's website.

Shaw Spotlight's compliance with its regulatory obligations

116. A number of interveners raised the issue of the non-compliance of Shaw's community channels, Shaw Spotlight. At the hearing and in an undertaking, Rogers claimed that Shaw Spotlight is on the path toward full compliance. Rogers also indicated that it intends to ensure that Shaw Spotlight operates in full regulatory compliance going forward. To this end, Rogers provided a list of new and existing initiatives that it intends to leverage to ensure Shaw Spotlight's compliance, including consulting with Indigenous communities, hiring 10 Indigenous community ambassadors and developing mentorship opportunities for Indigenous content creators.
117. A number of obligations are set out in the *Broadcasting Distribution Regulations* that relate to the distribution of community programming. These include the requirements that 60% of the programming aired each broadcast week be local programming and that 50% be access programming. The Local and Community Television Policy states that community programming plays a role in fostering a greater diversity of voices and alternative choices by facilitating expression at the local level.
118. In Broadcasting Decision 2018-266, the Commission determined that Shaw's community channels were in non-compliance with their regulatory obligations under the *Broadcasting Distribution Regulations* and the Local and Community Television Policy. The Commission found that Shaw had categorized programming produced for one community channel as access or local programming for several other community channels. Because Shaw misinterpreted the definitions of local and access programming, a number of its community programming undertakings failed to meet their regulatory requirements related to the broadcast of local and access programming.
119. The Commission will assess Shaw Spotlight's compliance with its regulatory obligations at its next licence renewal. However, the Commission **directs** Rogers to file as an appendix to the licence renewal application a report outlining its progress in returning Shaw's community channels to compliance and specifically detailing its progress in implementing the initiatives that it stated that it intends to leverage. Should the report not demonstrate sufficient progress, the Commission may consider imposing new conditions of licence at the next licence renewal.

120. In addition, the Commission expects Rogers to continue providing, in relation to its community channels, employment opportunities, especially in key positions that have a direct impact on programming decisions, to members of equity seeking groups, including those currently served by Shaw. The Commission also expects Rogers to continue to offer diverse programming across all community channels.

Contributions to certified independent production funds

121. CIPFs are production funds that have been certified by the Commission to receive funding contributions from BDUs. As set out in paragraph 34(1)(b) of the *Broadcasting Distribution Regulations*, licensees of terrestrial BDUs that are required to make an annual contribution to Canadian programming may allocate up to 20% of that contribution to CIPFs. As set out in paragraph 52(2)(a) of the *Broadcasting Distribution Regulations*, licensees of DTH BDUs may allocate up to 0.5% of their gross revenues derived from broadcasting activities to CIPFs. These contributions support the work of the creative sector in producing content for Canadians.

122. A number of interveners recommended that the Commission impose a requirement that Rogers continue to fund the SRF, a CIPF, to preserve the SRF's support for children's programming.

123. At the hearing and in an undertaking, Rogers indicated that, for the remainder of its current licence term, it intends to allocate 50% of its allowable BDU CIPF contributions to the SRF, while the other 50% would go to the Rogers funds. Further, Rogers indicated that it intends to continue working with producers of children's programming to raise equity funding for their projects.

124. Contributions by BDUs to CIPFs are not mandated. The Commission's policy is to provide BDUs with discretion in these matters. The Commission is of the view that this flexibility enables BDUs and CIPFs to adapt to the evolving realities of the industry. The Commission is also of the view that Rogers has been responsive in adapting to industry needs. However, the Commission recognizes the significance of the SRF in supporting the production of programs for children and youth, particularly those from equity seeking groups. Accordingly, the Commission finds it appropriate to direct Rogers to provide equal support to the Rogers funds and the SRF through its BDU contributions.

125. In light of the above, the Commission **directs** Rogers to continue to allocate its allowable CIPF contributions to both the Rogers funds and the SRF in equal amounts for the remainder of Rogers' licence term, as proposed by Rogers. Further, the Commission **directs** Rogers to foster diversity in its content and to support producers from equity seeking communities through BDU contributions.

Carriage of independent programming services

45 Canadian English- and French-language independent services

126. A number of interveners expressed concerns that Rogers' market power following the transaction would enable it to determine the success or failure of programming services,

particularly independent programming services. To respond to these concerns, Rogers indicated its intention to carry 45 independent Canadian English- and French-language programming services on all current and acquired BDUs for a period of three years after the close of the transaction. Some interveners argued that this was insufficient and proposed that the Commission require Rogers to carry 50 to 60 independent programming services for 5 to 7 years following the close of the transaction.

127. Rogers argued that increasing the number of independent programming services that Rogers would be required to carry would have unintended consequences. It noted that Shaw's legacy platform is capacity constrained and that the obligation to carry more than 45 independent programming services could require dropping other services, reducing signal quality or converting high definition services to lower definition. With regard to the IPTV platform, the issue relates to costs, since significant fees are associated with the encoding of linear channels. Adding more programming services could force Rogers to drop others to save on operating expenses or avoid passing on the fees associated with encoding to programmers.
128. The Commission recognizes the capacity constraints of Shaw's legacy platform and that increasing the number of independent services to more than 45 services could have a negative impact on subscribers in that they could lose access to other services or experience a reduction in signal quality. The Commission is of the view that the carriage of a minimum of 45 independent programming services strikes the right balance between ensuring that independent programming services, collectively, benefit from stable carriage by Rogers, and maintaining Rogers' ability to manage its capacity appropriately.
129. In light of the above, the Commission requires Rogers, as a **condition of approval**, to file by no later than **30 days following the close of the transaction** an application to amend the licences of the BDUs Rogers would own following the transaction to include a requirement to distribute a minimum of 45 Canadian independent English- and French-language programming services, excluding Corus services, on each of its terrestrial BDUs and DTH BDUs. In addition, the Commission encourages Rogers to ensure that any of its BDUs already carrying 45 or more independent programming services maintain or increase those levels.

Ethnic and third-language independent programming services

130. Some interveners requested specific protections for ethnic and third-language independent programming services. TLN/ECG proposed a ban on repackaging ethnic programming services for five years following the close of the transaction and suggested that Rogers be required to offer subscribers the option to add a Canadian ethnic independent programming service channel at no additional cost.
131. Rogers responded that its commitment to carry 45 independent programming services includes 8 English-language ethnic programming services owned by ECG, TLN or the Asian Television Network. In addition, Rogers indicated that competitive forces would ensure that it continues to distribute third-language programming services, particularly given the diversity of ethnic and third-language populations in Shaw's current markets.

Rogers added that the existing 1:1 rule for third-language services set out in section 27 of the *Broadcasting Distribution Regulations* provides sufficient protection, particularly since both Rogers and Shaw currently exceed that threshold.

132. The Commission considers that the 1:1 rule for third-language programming services provides important safeguards. Moreover, both Shaw and Rogers have demonstrated their ability to exceed regulatory requirements in responding to consumer demand. As a result, the Commission considers that additional safeguards for ethnic and third-language independent programming services are not needed at this time.

Terms of carriage

133. Interveners proposed a number of additional regulatory measures to protect independent programming services given Rogers' significant market power following the transaction. These measures included requiring Rogers to honour current affiliation agreements for a minimum of five years and requiring Rogers to provide no less favourable terms in aggregate.
134. The Commission considers that these additional measures amount to guaranteeing carriage terms for independent programming services and that such measures would constitute an unwarranted intrusion into business matters that could insulate programmers from consumer choices. Nevertheless, the Commission expects Rogers to treat independent undertakings fairly and to avoid dropping channels, imposing punitive or retaliatory measures, imposing unreasonable rates, significantly changing packaging or otherwise materially reducing wholesale payments. The Commission will monitor Rogers' relationships with independent programming undertakings to ensure such behaviours do not manifest.

Dispute resolution and the standstill rule

135. Subsection 15.01(1) of the *Broadcasting Distribution Regulations* sets out the standstill rule:

During any dispute between a licensee and a person licensed to carry on a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the licensee shall continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute.

136. A number of interveners expressed concerns about the dispute resolution process generally and the application of the standstill rule more specifically. Cogeco suggested that the Commission adopt uniform language to confirm that any party may refer a dispute and launch the dispute resolution process. IBG recommended that the Commission confirm that the standstill rule applies even if Rogers serves a notice of intent to stop carrying a service. A number of interveners requested automatic referral to dispute resolution in certain scenarios including when a dispute is not resolved within 90 days or when Rogers intends to stop carrying a service. Interveners also expressed a fear

of retaliatory behaviour following the filing of a notice of dispute, such as Rogers terminating carriage of a given programming service unless the programming undertaking agrees to lower rates. In its intervention, Blue Ant Media Inc. recommended requiring a “show cause” hearing when a BDU unilaterally wishes to cease carriage of an independent programming service.

137. The Commission notes that paragraph 13 of the Wholesale Code provides parties with the ability to automatically engage the dispute resolution process prior to the expiration of an affiliation agreement where both parties intend to renew the agreement. With hundreds of negotiations taking place at any given time, some parties have inferred that a BDU can dictate whether dispute resolution is engaged or that dispute resolution is not possible when a BDU wishes to terminate an affiliation agreement. However, the Commission emphasizes that dispute resolution can be initiated by any party to a dispute in accordance with subsection 14(1) of the *Discretionary Services Regulations* and subsection 12(1) of the *Broadcasting Distribution Regulations*.
138. Parties also benefit from the standstill rule, which applies to the carriage of programming services. In theory, if a BDU were to signal its intention to cease the carriage of a programming service, such an issue could be brought to the Commission’s attention through its dispute resolution process, in which case parties would be required to comply with the standstill rule. The standstill rule applies upon the filing by any party of a notice of dispute. Once the standstill rule is triggered, a BDU cannot cease the distribution of the programming service in question or change the terms and conditions under which it is distributed until the parties reach an agreement or the Commission rules on the issue. The Commission also notes that filing a notice of dispute, which can take the form of an undue preference application, a complaint under the Wholesale Code, a request for final offer arbitration, a request for staff-assisted mediation or a simple notification to the Commission of the existence of the dispute, generally does not require the filing of extensive evidence. The Commission also confirms that the standstill rule applies with respect to the distribution by Rogers of exempt programming undertakings and undertakings operating under Broadcasting Order 2012-409 (the digital media exemption order [DMEO]).
139. In light of the above, the Commission considers that the existing dispute resolution framework is robust. Nevertheless, extending the scope of the dispute resolution framework would reduce the risk of retaliatory or punitive practices. Therefore, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the licence of its BDUs to specify that
- a) in any dispute with an independent programming service, the standstill rule will be extended to all of the services belonging to that ownership group; and
 - b) if an affiliation agreement is not concluded within 90 days of the initiation of a negotiation with an independent programming service or services, the matter will be automatically referred to the Commission for dispute resolution.

For greater certainty, the Commission notes that this condition will trigger the application of the standstill rule set out in section 15.01 of the *Broadcasting Distribution Regulations*.

Provision of set-top box data

140. In Broadcasting Regulatory Policy 2015-96, the Commission required the broadcasting industry to form a working group that would develop a set-top-box (STB) audience measurement system. (A set-top box or cable box is a device that receives and processes an external signal so that it can be displayed on a television screen.) Given that the development of the STB audience measurement system (now sometimes referred to by the industry as the enhanced television audience measurement [ETAM] system) has taken a significant amount of time and that it had yet to be operational in 2018, the Commission imposed in Broadcasting Decision 2018-263, through a suspensive condition of licence, an interim requirement that BDUs provide any requesting programming undertaking with the STB data regarding that programming undertaking, in the form of raw data or reports, within 30 days of a written request, at no cost, for up to a maximum of two times per broadcast year.
141. This interim condition of licence was to be suspended and replaced with a more general requirement, also imposed by condition of licence, that BDUs provide STB data to the STB audience measurement system once such a system became operational. To date, the interim condition of licence continues to apply to Rogers since the system is still not fully implemented.
142. In its application, Rogers stated that it would provide STB data to independent programming undertakings on request at no cost once a year until the ETAM system is implemented. If the system is not in place by 31 August 2022, Rogers would provide a second report upon request for subsequent years, provided that this request is received no earlier than 6 months after the request for the first report in a given year. In addition, Rogers would provide STB data free of charge for use on the CYNCH platform, since STB data is required to use it. (Rogers described the CYNCH platform as a self-serve ad-buying platform that enables advertisers to plan and purchase their advertising campaigns online.)
143. A number of interveners claimed that STB data remains difficult to obtain. Intervenors noted that despite repeated requests, Rogers and other BDUs have not been consistent in their provision of STB data, and the formats in which that data is provided are not useful to them. Some intervenors suggested that Rogers provides STB data only when doing so works in its favour in the context of contract negotiations. The intervenors stressed that independent programming undertakings' inability to obtain the data is widening the gap between them and vertically integrated BDUs and that when STB data is not provided in a timely manner, programming undertakings are unable to make timely decisions in response to the needs of subscribers. With regard to the CYNCH platform, some intervenors argued that Rogers' proposal to provide STB data for the CYNCH platform at no cost is appreciated and should be a condition of approval.

144. When the Commission asked Rogers whether it had denied requests from programmers for STB data, Rogers noted that it had denied one such request because it had commenced its flow of data to the Numeris ETAM system. In addition, Rogers disputed the assertion that it has leveraged STB data as a “negotiation tactic.”
145. The Commission considers that Rogers’ proposed commitment with regard to the provision of STB data to programmers falls short of the existing obligations set out in the interim condition of licence, notably in terms of frequency in the current broadcast year and in terms of timelines. The Commission reiterates that the full implementation of the ETAM system to provide STB data to independent programming undertakings is a pressing issue. The Commission notes that while Rogers and other BDUs may have started providing data to Numeris’ ETAM system, the system is not yet operational in the sense contemplated by the conditions of licence, since programmers cannot yet access data through the system. Therefore, the Commission reminds Rogers that it continues to be bound by the interim condition of licence, which requires it and other vertically integrated BDUs to provide intelligible STB data using universally used metrics up to two times per broadcast year within 30 days of the submission of a request by a programming undertaking.
146. Further, the Commission considers that STB data is crucial to ensuring fairness in negotiations between programmers and BDUs. Therefore, when Rogers uses STB data in the context of a dispute, it must provide the data to the other party to the dispute.
147. With regard to Rogers’ proposal to provide STB data free of charge for the CYNCH platform, the Commission considers that this would provide an additional resource that may be useful to independent programming undertakings. Therefore, the Commission requires Rogers, as a **condition of approval**, to file an application to amend its BDU licences to reflect its intention to provide STB data free of charge for use on the CYNCH platform, with parameters that ensure that it is provided in a timely manner.

Online digital distribution applications

148. The broadcasting industry is in the process of transitioning from conventional and legacy distribution to online distribution. The DMEQ specifies that undertakings must submit information regarding their activities in broadcasting in digital media as required by the Commission to monitor the development of broadcasting in digital media. This is consistent with paragraph 11(1)(b) of the *Broadcasting Distribution Regulations*, which requires licensees to respond to any request for information from the Commission regarding the licensee’s adherence to its conditions of licence, the Act and regulations, industry standards, practices or codes, and any other self-regulatory mechanism of the industry.
149. Rogers stated that it is prepared to provide assistance to independent programming undertakings in the development of applications or free ad-supported streaming television (FAST) channels for online digital distribution of independent services. Rogers indicated that the applications or FAST channels would contribute to improving the discoverability of independent content. Rogers indicated that it would connect independent programming

undertakings with a developer with expertise in the Comcast system (a proprietary IPTV platform), and it would work with Comcast to test and launch the resulting applications or FAST channels. The applications and FAST channels would be compatible for all distributors that use the Comcast platform. Rogers stated that they could easily be adapted to be compatible with other distribution platforms. Rogers specified that the costs associated with the development of these applications and channels would be incurred by the programmer.

150. Interveners submitted that additional safeguards are required relating to digital application platforms. IBG noted that Rogers' proposal is vague and unenforceable. It also expressed concerns that Canadian applications, and independent applications in particular, are not given sufficient priority (e.g., on the platform's homepage) and called for regulatory intervention to ensure their discoverability. Other interveners proposed a linkage rule requiring a 1:1 ratio of independent service applications to non-Canadian and vertically integrated applications.
151. The Commission is of the view that independent programming services, particularly those serving niche and diverse audiences, require a measure of support to successfully transition to digital media broadcasting distribution and to ensure that their services are discoverable. Certain measures are already available to programming services, such as dispute resolution mechanisms and the Wholesale Code that apply as guidelines to the distribution of programming under the DMEQ. Specifically, paragraph 5(f) of the Wholesale Code prevents Rogers from imposing unreasonable terms and conditions that restrict a programming service from providing programming on multiple distribution platforms, and paragraph 11 of the Wholesale Code requires Rogers to provide reasonable terms of access at fair market value to independent programming undertakings.
152. To provide further clarity to parties engaged in negotiations or other contractual matters, the Commission considers that the following behaviours on the part of Rogers could constitute undue preference:
 - setting any terms that prevent an independent programming service from launching online;
 - forcing a service to go online rather than carrying a linear service; and
 - unduly favouring Rogers', Corus's or non-Canadian services on digital platforms.
153. In light of the above, the Commission requires Rogers, as a **condition of approval**, to file, by no later than **30 days following the close of the transaction**, an application to amend the licence of its BDUs to codify its intention to provide assistance to independent services in the development of online digital distribution applications or FAST channels.
154. In addition, the Commission expects Rogers to launch Canadian applications or FAST channels as they become available, on reasonable and fair market terms to be established through negotiations. The Commission also expects Rogers to foster the discoverability of Canadian applications including by having them featured on the homepage of Rogers'

various distribution platforms and setting them as the default application initiated by a voice command.

155. Finally, in accordance with section 4 of the DMEO, the Commission **directs** Rogers to submit a plan within three months of the date of this decision detailing how Rogers intends to ensure the discoverability of Canadian online distribution applications, as well as to report every six months thereafter on which applications it is carrying and how their discoverability is being ensured for the duration of Rogers' BDU licence term. This report will be published on the Commission's website.

Exclusive access to content

156. Interveners suggested that, given Rogers' market share following the transaction, non-Canadian and Canadian online broadcasting services could seek to deal with Rogers rather than attempt to market their services directly to consumers. Some interveners expressed concerns that Rogers could obtain exclusive or preferential access to non-Canadian online services or provide itself with an anti-competitive head start. TELUS requested the imposition of requirements ensuring that Rogers provide timely access to all the programming it controls including features and functionalities on all platforms under reasonable terms, and that Rogers be required to provide advance notice of the launch of a new service.
157. Rogers argued that additional safeguards in this respect are not needed given the existing framework and particularly the undue preference provisions. In its final undertaking, Rogers stated that it would not before or after the transaction acquire exclusive rights to non-Canadian online services.
158. To ensure that Canadians have more than one route to access programming, the Commission generally requires programming services to be offered to all BDUs. The Commission specifically prohibited PPV and VOD services from acquiring exclusive programming since they are typically unique to the BDUs that distribute them. Hybrid VOD undertakings are permitted to hold exclusive content, but that content must be made available to all Canadians over the Internet without requiring a subscription to a specific BDU or other service. Similar requirements have been applied to new discretionary services, prohibiting "head starts," and a similar obligation is set out in the DMEO requiring undertakings to make programming available to all other undertakings. The Commission recognizes that these requirements do not explicitly cover new features and functionalities.
159. As noted by Rogers, several mechanisms are already in place to address the concerns raised by interveners. In particular, undue preference provisions are set out in the *Discretionary Services Regulations*, the *Broadcasting Distribution Regulations* and the DMEO that prohibit Rogers from granting itself or any other party an undue preference or disadvantage. In addition, the Wholesale Code applies as a condition of licence to Rogers' licensed undertakings and as a guideline to its exempt undertakings, and is applied by the Commission in the context of any dispute.

160. Nevertheless, for greater certainty, the Commission considers it important to identify various scenarios that could be found to constitute preferential behaviour. These behaviours include

- entering into an exclusive arrangement with a non-Canadian or Canadian digital media broadcasting undertaking;
- removing Rogers services or content from other BDUs or platforms or providing the services or content exclusively on Rogers' platforms;
- unreasonably denying other BDUs' access to new features or functionalities;
- securing significant volume discounts that would allow Rogers to offer its BDU subscribers pricing that other BDUs could never match; and
- imposing a wholesale rate that has the effect of requiring a BDU, including its affiliated VOD or PPV undertaking, to charge its clients, whether programmers or subscribers, rates that are substantially higher than the retail rate Rogers charges in any of its own direct-to-consumer offerings or third-party direct-to-consumer platforms.

161. In addition, the Commission **directs** Rogers to file all of its affiliation agreements with the Commission so that the Commission may monitor the situation and to ensure that negotiations and the resulting agreements respect the Wholesale Code.

162. Finally, the Commission notes Rogers' commitment and expects Rogers to refrain from entering into any agreement for exclusive or preferential distribution of any online programming service or rights necessary for its distribution.

Conclusion

163. In light of all of the above, the Commission is of the view that the application, subject to the modifications outlined above, is the best possible proposal given the circumstances and that this transaction would not diminish the diversity of voices in Canada, that the competitive landscape would not be unduly affected and that the transaction would be in the public interest.

164. Accordingly, the Commission **approves**, subject to the conditions of approval set out in Appendix 2 to this decision, the application by Rogers for authority to acquire from Shaw or its subsidiaries the following:

- the 16 terrestrial BDUs operated by Shaw Cablesystems Limited in British Columbia, Alberta, Saskatchewan and Manitoba;
- the national DTH BDU Shaw Direct;
- the national SRDU Shaw Broadcast Services; and
- all the issued and outstanding shares of Shaw Pay-Per-View Ltd.

The full list of licensed broadcasting undertakings involved, as well as their terms and conditions of licence, are set out in Appendix 1.

165. The Commission directs Shaw to notify the Commission of the close of the transaction.
166. Rogers must submit to the Commission updated ownership information, including the composition of its board of directors, following the close of the transaction.
167. The Commission wishes to thank all who participated in this proceeding. The thoughtfulness and clarity reflected in the written submissions and presentations at the hearing greatly assisted the Commission in its deliberations.

Secretary General

Related documents

- *When and how communications service providers must provide paper bills*, Telecom and Broadcasting Decision CRTC 2022-28, 10 February 2022
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2021-281, 12 August 2021
- *Shaw Pay-Per-View (direct-to-home) – Licence renewal*, Broadcasting Decision CRTC 2019-279, 5 August 2019
- *Shaw Pay-Per-View (terrestrial) – Licence renewal*, Broadcasting Decision CRTC 2019-278, 5 August 2019
- *Rogers Sportsnet PPV – Licence renewal*, Broadcasting Decision CRTC 2019-207, 12 June 2019
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *Distribution of the programming services of Cable Public Affairs Channel Inc. (CPAC Inc.) known as Cable Public Affairs Channel and of the exempt services operated by CPAC Inc. by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2018-330, 29 August 2018
- *Shaw – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-266, 2 August 2018
- *Renewal of licences for various terrestrial broadcasting distribution undertakings that will expire in August 2018 – Introductory decision*, Broadcasting Decision CRTC 2018-263, 2 August 2018
- *Shaw On Demand – Licence renewal and licence amendment*, Broadcasting Decision CRTC 2017-155, 15 May 2017
- *Rogers Media Inc. – Licence renewals for English-language television stations, services and network*, Broadcasting Decision CRTC 2017-151, 15 May 2017

- *Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control*, Broadcasting Decision CRTC 2016-487, 20 December 2016
- *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Various television services and stations – Corporate reorganization (transfer of shares)*, Broadcasting Decisions CRTC 2016-110, 23 March 2016
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015
- *Let's Talk TV*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador; national video-on-demand programming undertaking known as Rogers On Demand; and terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2013-642, 29 November 2013
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Licensing and other issues relating to satellite relay distribution undertakings*, Broadcasting Regulatory Policy CRTC 2012-94, 14 February 2012
- *Amendments to the Exemption order respecting terrestrial relay distribution network undertakings*, Broadcasting Order CRTC 2009-638, 9 October 2009
- *Applications processed pursuant to streamlined procedures*, Broadcasting Public Notice CRTC 2008-77, 3 September 2008
- *Diversity of Voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

This decision is to be appended to each licence.

Appendix 1 to Broadcasting Decision CRTC 2022-76

List of broadcasting undertakings currently licensed to Shaw Communications Inc. or its subsidiaries

Terrestrial broadcasting distribution undertakings

Licensee	Location
Shaw Cablesystems Limited	Coquitlam, Kelowna, Langford, Nanaimo, New Westminster, Vancouver (North and West), Vancouver (Richmond), Victoria and White Rock, British Columbia
	Calgary, Edmonton (2 undertakings) and Red Deer, Alberta
	Saskatoon, Saskatchewan
	Winnipeg (2 undertakings), Manitoba

The terms, conditions of licence and expectations for these undertakings are set out in Appendix 2 to *Shaw – Licence renewal for various terrestrial broadcasting distribution undertakings*, Broadcasting Decision CRTC 2018-266, 2 August 2018.

National direct-to-home broadcasting distribution undertaking Shaw Direct

Licensee	Location
Star Choice Television Network Incorporated	Across Canada

The conditions of licence, expectations and encouragement for this undertaking are set out in the appendix to *Shaw Direct – Licence renewal*, Broadcasting Decision CRTC 2019-388, 29 November 2019.

Satellite relay distribution undertaking Shaw Broadcasting Services

Licensee	Location
Shaw Satellite Services Inc.	Across Canada

The conditions of licence for this undertaking are set out in the appendix to *Satellite relay distribution undertaking – Licence renewal*, Broadcasting Decision CRTC 2019-386, 29 November 2019.

National terrestrial video-on-demand service Shaw On-demand

Licensee	Location
Shaw Cablesystems Limited	Across Canada

The terms, conditions of licence, expectations and encouragements for this service are set out in the appendix to *Shaw On Demand – Licence renewal and licence amendment*, Broadcasting Decision CRTC 2017-155, 15 May 2017.

Terrestrial pay-per-view service Shaw Pay-Per-View

Licensee	Location
Shaw Pay-Per-View Ltd.	Edmonton, Alberta

The conditions of licence for this service are set out in *Shaw Pay-Per-View (terrestrial) – Licence renewal*, Broadcasting Decision CRTC 2019-278, 5 August 2019.

Direct-to-home pay-per-view service Shaw Pay-Per-View

Licensee	Location
Shaw Pay-Per-View Ltd.	Edmonton, Alberta

The conditions of licence for this service are set out in *Shaw Pay-Per-View (direct-to-home) – Licence renewal*, Broadcasting Decision CRTC 2019-279, 5 August 2019.

Appendix 2 to Broadcasting Decision CRTC 2022-76

Conditions of approval, directions, expectations, encouragements and reminders relating to the change in effective control of Shaw Communications Inc. or its subsidiaries' undertakings approved in this decision

Conditions of approval

The Commission **directs** the licensee to file, by no later than **25 April 2022**, as a condition of approval, a signed agreement between the Canada Media Fund (CMF) and Rogers Communications Inc. (Rogers) attesting that the tangible benefits allocated to the CMF stemming from the transaction will be allocated equally between the CMF's pilot program for racialized communities and the Northern Incentive Program. This agreement must stipulate that, if the pilot program for racialized communities ceases to exist or such an agreement cannot be reached for any reason, Rogers must provide an alternate proposal to the Commission.

The Commission **directs** the licensee to file, by no later than **25 April 2022**, as a condition of approval, a new tangible benefits proposal amounting to \$27,233,885 that meets the following allocations:

- 80% (\$21,787,108) to production funds and the Independent Local News Fund (ILNF), divided among:
 - the Canada Media Fund (CMF) (\$13,072,265), specifically, the CMF's pilot program for racialized communities and the CMF's Northern incentive program, or to initiatives benefitting equity seeking groups;
 - certified independent production funds (\$4,357,421), specifically, the Shaw Rocket Fund (\$2,178,710) and the Rogers Documentary Fund and the Rogers Cable Network Fund (\$2,178,711), in equal annual payments over seven consecutive broadcast years;
 - the ILNF (\$4,357,421), as a lump sum upon the close of the transaction;
- 20% (\$5,446,777) to discretionary initiatives, divided among:
 - 15 film festivals in British Columbia, Alberta, Saskatchewan and Manitoba (\$900,000), as a lump sum upon the close of the transaction;
 - the Chinatown Storytelling Centre (\$230,000), in equal annual payments over seven consecutive broadcast years;
 - the National Screen Institute Winnipeg (\$800,000), in equal annual payments over seven consecutive broadcast years;
 - the University of British Columbia School of Journalism, Writing, and Media Scholarship fund for BIPOC students (\$1,100,000), as a lump sum upon the close of the transaction;

- the Sarah McLachlan School of Music, Vancouver, Surrey and Edmonton (\$165,900), in equal annual payments over seven consecutive broadcast years;
- the Banff World Media Festival (\$800,000), in equal annual payments over seven consecutive broadcast years;
- the Broadcasting Accessibility Fund (\$725,439), in equal annual payments over three consecutive broadcast years; and
- the Broadcasting Participation Fund (\$725,439), in equal annual payments over three consecutive broadcast years.

The Commission **directs** the licensee to file, by no later than **25 April 2022**, as a condition of approval, an application to include, in its conditions of licence for all of its television programming undertakings, a requirement that it annually report on its tangible benefits expenditures by 30 November of each broadcast year. The report must be in an Excel or Word document and must include

- the total amount of benefits to be expended;
- the amount spent that broadcast year, with a breakdown of the expenditures for each recipient; and
- the remaining amount of benefits left to be expended.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend the conditions of licence for its Citytv stations, Outdoor Life Network, FX, FXX, Sportsnet 360, Sportsnet, Sportsnet One, Rogers on Demand, Hockey Night in Canada (television network), OMNI stations and Rogers Sportsnet PPV to include a requirement to file a report by 30 November of each year detailing all of the contributions that it has made to each of the discretionary initiatives, specifically indicating how the allocations are incremental in nature, so that the Commission can verify that the allocation of tangible benefits stemming from this transaction truly benefits the Canadian broadcasting system.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend the conditions of licence for its broadcasting distribution undertakings (BDUs) to ensure that:

- Corus Entertainment Inc. (Corus) will not be duly advantaged in its dealings with Rogers Communications Inc. or its subsidiaries (Rogers) going forward, and vice versa;
- Rogers and Corus will not act as a single entity when it works in their favour; and
- Rogers will not deprive either directly or indirectly other BDUs or industry participants of Corus's content.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend the conditions of licence of the satellite relay distribution undertaking Shaw Broadcast Services to include the following:

- dispute resolution with respect to the transport of discretionary services:

If there is a dispute between the licensee and a distribution undertaking, whether operating by licence or by exemption order, concerning the terms under which discretionary programming services are or may be provided, one or both parties to the dispute may refer the matter to the Commission and the licensee shall submit to a dispute resolution process if the Commission so requires.

- the standstill rule:

During any dispute between the licensee and a person licensed to carry a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the licensee shall continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute.

For the purposes of this condition, a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

- the Wholesale Code:

The licensee shall adhere to the Wholesale Code, set out in the appendix to *Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend its conditions of licence for its Citytv stations in relation to the new requirement to produce 48 annual prime time locally reflective news specials that represent incremental expenditures, are original programming, and go over and above its current hours of locally reflective news programming.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend its conditions of licence for its Citytv stations in relation to the reporting on the various commitments listed below within its diversity report:

- Indigenous news content team;
- Western Canada journalists to be added to Parliament Hill team in Ottawa;
- growing investment in the Western news markets; and
- mentorship opportunities for Indigenous content creators.

This reporting is to detail exactly how these initiatives are funded through incremental expenditures, positively contributing to the Canadian broadcasting industry and meet the public interest.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend the conditions of licence of the broadcasting distribution undertakings (BDUs) it would own following the transaction to include a requirement to distribute a minimum of 45 Canadian independent English- and French-language services from independent programmers other than Corus Entertainment Inc. on each of its terrestrial BDUs and direct-to-home BDUs.

The Commission **directs** the licensee to file, by no later than **30 days following the close of the transaction**, as a condition of approval, an application to amend the conditions of licence of its broadcasting distribution undertakings to specify that

- a) in any dispute with an independent programming service, the standstill rule will be extended to all of the services belonging to that ownership group; and
- b) if an affiliation agreement is not concluded within 90 days of the initiation of a negotiation with an independent programming service or services, the matter will be automatically referred to the Commission for dispute resolution.

For greater certainty, the Commission notes that this condition will trigger the application of the standstill rule set out in section 15.01 of the *Broadcasting Distribution Regulations*.

The Commission **directs** the licensee 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.

Directions

The Commission **directs** Cable Public Affairs Channel Inc. (CPAC) to file by no later than **30 days following the close of the transaction** an application pursuant to subparagraph 10(4)b(iii) of the *Discretionary Services Regulations* for Rogers Communications Inc. (Rogers) to acquire Shaw Cablesystems Limited's 25.17% interest in CPAC. The application must meet the following requirements:

- CPAC must provide a resolution passed by its board of directors, demonstrating the date of the resolution, to approve the transfer of Shaw Cablesystems Limited's interest in CPAC to Rogers;
- CPAC must provide its amended articles of incorporation, demonstrating the date of the amendments, to the Commission prior to or with its application;
- Rogers must consolidate its shares in CPAC under a single corporate entity, and CPAC must reflect this change in its application; and
- Rogers must be able to elect only one member to CPAC's board of directors.

The Commission **directs** Shaw Communications Inc. to notify the Commission of the date of the close of the transaction.

The Commission **directs** the licensee to surrender the licences for Shaw Communications Inc. or its subsidiaries' terrestrial video-on-demand and pay-per-view services following and not before the close of the transaction.

The Commission **directs** the licensee to file, by no later than **60 days following the close of the transaction**, a one-time report to demonstrate its progress in ensuring that it meets the access and local programming requirements for each of the licensed and exempt undertakings currently operated by Shaw Cablesystems Limited. This report must also include whether and how it has implemented the initiatives that it stated that it intends to leverage. The report must be submitted as an appendix to the licence renewal application should the deadlines overlap, or at the earliest date that corresponds to the deadline set out in the condition above or to the date specified in the call for renewal applications.

The Commission **directs** the licensee to report annually by 30 November on how many journalists it employs in each Citytv market, how many journalists it has hired in the past broadcast year, the level of the journalist positions filled and how many of its journalists self-identify as members of equity seeking groups. This report will be published on the Commission's website.

The Commission **directs** the licensee to report annually by 30 November what the 48 annual prime time locally reflective news specials were, where they aired, when they aired and how the content was original programming and incremental to its current locally reflective news programming expenditure and exhibition requirements. Rogers must also clearly demonstrate how the local expression funds originating from the acquired Shaw BDUs and redirected to the Citytv stations are incremental to the 11% expenditure requirement currently imposed on the Citytv stations. This report will be published on the Commission's website.

The Commission **directs** the licensee to continue to allocate its allowable certified independent production fund contributions to both the Shaw Rocket Fund and the Rogers funds (the Rogers Documentary Fund and the Rogers Cable Network Fund) in equal amounts for the remainder of the licence term.

The Commission **directs** the licensee to foster diversity in its content and to support producers from equity seeking communities through broadcasting distribution contributions.

The Commission **directs** the licensee to submit a plan within three months of the date of this decision detailing how it intends to ensure the discoverability of Canadian online distribution applications, as well as to report every six months thereafter on which applications it is carrying and how their discoverability is ensured for the duration of Rogers Communications Inc.'s broadcasting distribution undertaking licence term. This report will be published on the Commission's website.

The Commission **directs** the licensee to file all of its affiliation agreements with the Commission so that the Commission may ensure that negotiations and the resulting agreements respect the Wholesale Code.

Expectations

The Commission expects the licensee to inform the current customers of Shaw Communications Inc. or its subsidiaries that their contracts will be honoured and of what will happen once the contracts end, as well as to provide them with a range of options, including equivalent levels of service, 90 days before the end of their current contracts.

The Commission expects the licensee to maintain or improve the quality of service for current customers of Shaw Communications Inc. or its subsidiaries, as well as to maintain or improve the accessibility of all services for customers with disabilities.

The Commission expects the licensee to consult with the relevant communities and take their feedback into consideration with regard to the accessibility of its services.

The Commission expects Cable Public Affairs Channel Inc. to amend its incorporation articles as described **before** the board can vote on a resolution to approve the transfer of Shaw Cablesystems Limited's interest to Rogers Communications Inc.

The Commission expects the licensee to treat independent services fairly and to avoid dropping channels, imposing punitive or retaliatory measures, imposing unreasonable rates, significantly changing packaging or otherwise materially reducing wholesale payments.

The Commission expects the licensee to continue to honour all existing contracts related to Shaw Communications Inc. or its subsidiaries' satellite and terrestrial relay distribution undertakings for the full term of each such agreement.

The Commission expects the licensee to continue providing, in relation to its community channels, employment opportunities, especially in key positions with a direct impact on programming decisions, to members of equity seeking groups, including those currently served by Shaw Communications Inc. or its subsidiaries.

The Commission expects the licensee to continue to offer diverse programming across all community channels.

The Commission expects the licensee to continue contributing a portion of its gross revenues from broadcasting activities to the Aboriginal Peoples Television Network and to the uplink of Indigenous community radio stations.

The Commission expects the licensee to launch the Canadian online digital distribution applications or free ad-supported streaming television channels that it helps develop as they become available, on reasonable and fair market terms established through negotiations.

The Commission expects the licensee to foster the discoverability of Canadian online digital distribution applications.

The Commission expects the licensee to refrain from entering into any agreement for exclusive or preferential distribution of any online programming service or rights necessary for its distribution.

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

Encouragements

The Commission, while recognizing that broadcasting distribution undertakings (BDUs) routinely make packaging changes to adapt and improve their offerings to customers, encourages BDUs to minimize packaging changes until the Commission can complete a review of its policy framework supporting independent programming services and stations.

The Commission encourages the licensee, for its broadcasting distribution undertakings already carrying 45 or more independent programming services, to maintain or increase those levels.

The Commission encourages the licensee to increase cultural diversity and representation at all levels of its journalistic staff as well as its executive staff.

Reminders

The Commission reminds the licensee that it is required to provide set-top-box (STB) data up to two times per broadcast year within 30 days of the submission of a request until the enhanced television audience measurement system is fully launched. The Commission also reminds Rogers Communications Inc. (Rogers) that the STB data must be intelligible and use universal metrics. Further, when Rogers uses STB data in the context of a dispute, it must provide the data to the other party to the dispute.

The Commission reminds the licensee that it is required by condition of licence to comply with the Television Service Provider Code and to participate in the Commission for Complaints for Telecom-television Services.

The Commission reminds the licensee of the Commission's determinations related to the provision of paper bills set out in *When and how communications service providers must provide paper bills*, Telecom and Broadcasting Decision CRTC 2022-28, 10 February 2022.

The Commission reminds the licensee of the best practices set out in *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016.