

Minister
of Canadian Heritage



Ministre
du Patrimoine canadien

Ottawa, Canada K1A 0M5

The Honourable Dr. Hedy Fry, PC, MP
Chair of the Standing Committee on Canadian Heritage
House of Commons
Ottawa, Ontario
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September 15, 2022

Dear Dr. Fry,

On behalf of the Government of Canada, I would like to thank the Standing Committee on Canadian Heritage (CHPC) for undertaking its review of the impact of the Rogers/Shaw transaction on local news in Canada, and to express our appreciation to all those who appeared to share their perspectives.

It is clear that the Canadian broadcasting system is in the midst of a significant transformation. Canadians' viewing habits are shifting online, and service providers are adapting to compete within Canada and with service providers from around the world. The proposed transaction is taking place against the backdrop of these sector-wide shifts.

In response to these shifts, the Government of Canada has started the process of updating its own toolkit, by putting forward Bill C-11, the *Online Streaming Act*, to reflect the new marketplace and ensure that Canadian content is produced and made accessible to the world. The Government also introduced Bill C-18, the *Online News Act*, which will ensure that the advertising revenue of online platforms is shared more fairly with news businesses. I recognize the Standing Committee's important work on both of these Bills.

I am pleased to provide the Government's response to the CHPC Committee's Report – *The Rogers-Shaw Merger: Bad News for Local News*. The Government supports your interest in the provision of, and access to, local news which provides vital information to communities. This is especially true in smaller, remote, or historically underserved communities in Canada.

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I would like to address the recommendations of the report by examining a number of themes that are common through the recommendations of the report. These themes focus on: 1) the Government's review process for the transaction; 2) preserving and supporting local news; and 3) supporting community media.

Government Review of Transactions in the Broadcasting and Telecommunications Sector

The first theme I would like to comment on is the Government's process to review the transaction. Parliament has given the Minister of Innovation, Science and Industry (ISI), the Competition Bureau, and the Canadian Radio-Television and Telecommunications Commission (CRTC) the legislative responsibility, through the *Radiocommunications Act*, the *Telecommunications Act*, the *Competition Act*, and the *Broadcasting Act* to evaluate the strengths and weaknesses of the different aspects of the transaction following the criteria set out in the respective legislations. The three reviews are performed concurrently and independently.

The CRTC was required to examine and approve the change of ownership and effective control of all of Shaw's licensed broadcasting undertakings to Rogers. When examining such transactions, the CRTC does not solicit competing applications. Instead, the CRTC considers that the burden is on the parties to the transaction to show that the application is the best possible proposal, and that approval is in the public interest consistent with the overall objectives of the *Broadcasting Act*. As one way of ensuring that the transaction serves the public interest, the CRTC expects applicants to propose financial contributions (known as "tangible benefits") that are proportionate to the size and nature of the transaction and will yield measurable improvements to both the communities served by the broadcasting undertaking to be acquired and the Canadian broadcasting system as a whole. The CRTC may also impose incremental conditions and regulatory commitments that would counteract any potential negative impacts of the transaction. The CRTC gave its approval to Rogers' takeover of Shaw's broadcasting services on March 24, 2022, subject to incremental modifications and conditions to the undertakings that Rogers had proposed.

As the spectrum regulator, the Minister of ISI is responsible for examining the impact of the transfer of spectrum licences, in accordance with the *Radiocommunication Act*. The review is guided by the *Licensing Procedure for Spectrum Licences for Terrestrial Services*, whose objective is "to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource, including the efficiency and competitiveness of the Canadian telecommunications industry, the availability and quality of services to consumers." While the Minister of ISI has not yet made a decision, it is worth noting that he stated in March 2022 that the wholesale transfer of Shaw's licences would not be permitted.

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Finally, for mergers that exceed \$93 million in value, the parties must provide advance notification to the Competition Bureau ahead of completing the transaction, which triggers a formal review process under the *Competition Act*. Rogers and Shaw's March 15, 2021, announcement of their intention to merge launched the Bureau's examination under this framework. This review relates exclusively to the likely competitive effects of the transaction, including the impact on consumers, suppliers or competitors. The Bureau must examine all relevant price and non-price effects, including potential reduction in affordability, service, quality or choice. The Competition Bureau announced on May 9, 2022, that it was opposing the acquisition due to concerns over a significant lessening or prevention of competition. It then announced it would be seeking an injunction against the transaction being completed through the Competition Tribunal. The Competition Tribunal's process is still ongoing at the time of writing.

Taken together, the three processes constitute an independent, robust, and multi-faceted mechanism by which the public interest in the transaction is evaluated. If the transaction is ultimately approved through these processes, each may identify unique commitments and impose conditions to mitigate any negative impacts of the transaction. The Government is confident in these processes but will be mindful of any effects of the proposed merger on local news. Further course corrections can be made downstream, if required, as broadcasting licences are renewed, and regulations are adopted.

Preserving and Supporting Local News in Small- and Medium-Size Communities

The second theme I would like to comment on is how the Government is taking an active role in preserving local news in small- and medium-sized markets. I will begin with a look at broadcasters' conditions of licence and regulatory commitments and then move on to funding supports for local news.

As the custodian of the Canadian broadcasting system, the CRTC is responsible for ensuring a significant presence for local news in the system. For example, the CRTC applies standard conditions of licence requiring that every English-language television station operating in a non-metropolitan area broadcast seven hours per week of local programming. It requires that at least three of those hours be dedicated every week to locally reflective news. To qualify, locally reflective news programming must either be produced by the station's staff or by independent producers specifically for the station. Its subject matter must relate specifically to its market and must portray an onscreen image of the market. English-language stations operating in metropolitan markets must meet even higher thresholds, as they are required to broadcast 14 hours of local programming every week, of which six hours per week must be locally reflective news.

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French-language stations' requirements are assessed on a case-by-case basis using a benchmark minimum of five hours of local programming and implemented through individual conditions of licence. To give an example, the TVA station in Québec City must broadcast at least 18 hours of local programming each week, of which at least 5.5 hours must be dedicated to locally reflective news. These are significant requirements ensuring that broadcasters remain present and active in the communities they are licensed to serve.

The local television stations owned and operated by Corus in Kelowna, Lethbridge, Saskatoon, Regina, Peterborough, Kingston, Saint John, and Halifax, among others, would continue to be subject to those existing requirements. The population of those communities will therefore continue to receive adequate levels of local programming and locally reflective news, regardless of the outcome of the transaction.

Through its commercial radio policy, the CRTC also acknowledges and emphasizes the importance of local news on radio by requiring that commercial radio stations incorporate spoken word material of direct relevance to the community served. This content must include local news, weather, sports coverage, and the promotion of local events and activities. The CRTC also requires that commercial radio stations in competitive markets, which are markets served by more than one private commercial radio station, devote at least one-third of the broadcast week (42 hours) to local programming in order to be allowed to solicit local advertising.

Over and above these pre-existing requirements, the CRTC announced a series of commitments towards local news to which Rogers must agree as a condition of approval of the transaction. For example, Rogers would be required to air 48 additional prime-time, locally reflective news specials each year that are original programming and go over and above its current required hours of locally reflective news programming. Rogers would also be required to increase the aggregate number of journalists employed in its Citytv television stations operating in markets across the country, effectively doubling its journalistic strength in Western Canada. It would also have to 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. This content would also be received by all Canadians and will foster deeper understanding of issues affecting these communities and reinforce the vital objective of reconciliation.

Going forward, the CRTC may have greater responsibilities towards local news. On February 2, 2022, the Government introduced Bill C-11, the *Online Streaming Act*, which would provide much needed updates to the *Broadcasting Act*. I would like to thank the Standing Committee on Canadian Heritage for recently completing its study of

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Bill C-11, which is currently in second reading at the Senate. Among other changes, this Bill would add a new broadcasting policy objective to the *Broadcasting Act*, stating that the programming provided by the Canadian broadcasting system should include programs produced by Canadians that cover news and current events, from the local and regional to the national and international. News that reflects the viewpoints of Indigenous persons and Canadians from racialized communities and diverse ethnocultural backgrounds should also be provided. The CRTC has the authority to direct financial support towards all varieties of Canadian programming in furthering these new policy objectives, and this includes support for local news.

On April 5, 2022, the Government introduced Bill C-18, the *Online News Act*, which would ensure that the advertising revenue of dominant online platforms is shared more fairly with news businesses. The purpose of the legislation is to support the sustainability of Canada's digital news marketplace, including sustainability of independent local news businesses. The Government has been clear that online platforms occupy a privileged place in the digital economy and in Canadian society and should contribute to support news and journalism. C-18 takes a market-based approach designed to create balance between large, dominant digital platforms and news businesses. It would ensure that eligible news businesses are fairly compensated for their content by digital platforms through negotiated deals.

Further, the *Online News Act* would encourage digital platforms to reach fair commercial agreements with a diversity of smaller and local news businesses by providing an exemption to online platforms from the mandatory bargaining and final offer arbitration process if such agreements are reached. The exemption process would require digital platforms to demonstrate that they are making fair commercial deals with a diverse set of smaller—including local—news businesses, among other things. This requirement would allow the CRTC to ensure that digital platforms are negotiating agreements with smaller and independent regional or community news businesses as well as larger ones.

I strongly support and appreciate the Committee's endorsement of the Local Journalism Initiative, which is another Government means of supporting local news provision. Since 2019, the program has demonstrated clear success in meeting its objective of supporting the provision of local news in underserved communities across Canada. This was perhaps clearest at the beginning of the COVID-19 pandemic when supported journalists ensured that residents of underserved communities had access to timely and reliable public health information. Indeed, this is why the Government announced an additional \$10 million over two years starting in 2021-22 for the program through the Department's Recovery Fund for Arts, Culture, Heritage and Sports Sectors. Crucially, over 50% of this funding was earmarked for journalists serving communities

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that are traditionally underrepresented in the media, including Indigenous, ethnocultural, Official Language Minority and LGBTQ2+ communities. The program remains a vital component of the Government's comprehensive approach to supporting the vitality of the Canadian news ecosystem. For this reason, Budget 2022 announced a further \$10 million for 2023-24, which will further ensure that coverage and employment levels remain stable over the course of the program.

The Canada Periodical Fund is another important source of support for local news. Launched in 2010, the program provides \$74.8 million annually to Canadian magazines and community newspapers, enabling them to overcome market disadvantages and serve as important platforms for the dissemination of Canadian perspectives. In response to the COVID 19 pandemic and its destabilizing effect on the advertising market, the Government invested an additional \$94.3 million over two years starting in 2020-21 in the program through the COVID-19 Emergency Support and the Department's Recovery fund. Budget 2022 has committed to providing an additional \$40 million over three years starting in 2022-23 to ensure that Canadian periodicals are well-positioned to adapt to the evolving media landscape and can participate fully in Canada's economic recovery.

As the media sector continues to evolve, we remain committed to ensuring that the suite of federal support measures for journalism is both effective and tailored to the needs of news organizations.

For its part, the CRTC created the Independent Local News Fund (ILNF) in 2016 to support the capacity of independent stations to continue offering locally reflective news and information stations. Unlike stations owned by large vertically integrated groups, independent stations do not benefit from the resources and synergies associated with vertical integration. Part of Rogers' tangible benefits package (\$4,357,421) will help fund the ILNF in the short term. However, as the television stations owned by Corus Entertainment – a company controlled by the Shaw family – would no longer be considered vertically integrated with Shaw distribution undertakings, if the transaction were to be approved, they could be eligible to receive funding from the ILNF. The CRTC committed to examining this issue in its upcoming review of the ILNF. Going forward, the ILNF is an important tool that the CRTC could adapt to support its implementation of the news policy objective if Bill C-11 receives Royal Assent.

As for the Canada Media Fund, I note that its mandate is to foster, promote, develop and finance the production of Canadian content and relevant applications for all audiovisual media platforms. It directly supports producers in the development of programs in four targeted genres: drama (including comedy), children and youth, documentary, and variety and performing arts. As such, it is not well suited to fund the

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creation of local news and information programming, which are almost always produced in-house by broadcasters. The CMF also does not fund radio programming.

The Canadian Journalism Labour Tax Credit was introduced in Budget 2019 as part of a series of tax measures to support Canadian journalism organizations producing original news. This measure provides a 25% refundable credit on salaries or wages payable in respect of an eligible newsroom employee for periods beginning on or after January 1, 2019. To qualify, an organization must be designated as a Qualified Canadian Journalism Organization (QCJO) and engaged in the production of written news content. Any organizations carrying on a broadcasting undertaking (as defined in the *Broadcasting Act*) do not qualify for this credit. While the Government recognizes the vital role of journalists and the importance of preserving local and community news, these conditions are meant to ensure that this measure is targeted to written news organizations that are experiencing financial hardship and are in need of assistance.

It should also be noted that certain not-for-profit broadcasters could be eligible for tax support through the qualified donee measure that was also introduced in Budget 2019. In order to qualify, an organization is required to apply to the Canada Revenue Agency to be registered, be established exclusively for purposes relating to journalism, and meet certain additional conditions. As a qualified donee, registered journalism organizations are able to issue official donation receipts for any gifts that they receive which, in turn, can be used by donors to reduce their taxes owing. Registered journalism organizations are also able to access philanthropic funding from registered charities.

During the COVID-19 pandemic, the Government of Canada has focused some of its response on supporting key sectors and communities to withstand the upheaval wrought by the pandemic. In 2020, this response included the \$500 million Emergency Support Fund for Cultural, Heritage and Sport Organizations (ESF) provided at the onset of the pandemic that helped alleviate the financial pressures faced by over 10,000 cultural organizations and individuals. As the pandemic continued to have effects in 2021, the Government of Canada committed to help support the recovery of the arts, culture, heritage, and sport sectors including through an investment of \$200 million over two years through the Recovery Fund for Arts, Culture, Heritage and Sport Sectors.

In recognition of their struggles and of their contribution to the dissemination of vital information regarding the pandemic, independent and community broadcasters received over \$35 million from the ESF and Recovery Fund over two years. Three organizations representing various broadcasting services (the Canadian Association of Broadcasters (CAB), the Community Radio Fund of Canada (CRFC) and the Canadian Association of Community Television Users and Stations (CACTUS)) were identified to distribute these funds.

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These contributions were a significant factor that allowed independent news broadcasters that were struggling due to the loss of advertising revenues during the pandemic to continue to offer vital local information to their communities. The broadcasters supported by the CAB have broadcast an aggregate of over 200,000 hours of local programming on television and radio in 2020. For their parts, the CRFC recipients were able to continue to broadcast almost 10,000 hours of local radio programming, while CACTUS' recipients produced close to 4,000 hours of local community television programs in the same year.

Support for Community Media in Canada

The third theme I would like to comment on is support for community media in Canada. It goes without saying that community television and radio in Canada is within the scope of the CRTC's mandate under the *Broadcasting Act*. The CRTC has the authority and the responsibility to establish a regulatory framework that it considers will best further the objectives of the Act's broadcasting policy in the public interest. It also has the responsibility to ensure that funding is available for the purposes of this pillar of the broadcasting system. And as with many aspects of its mandate, the CRTC also has the independence to choose and implement these mechanisms based on the information it collects from its public proceedings.

In its current, publicly available, *Policy Framework for local and community television*, the CRTC describes the important role of broadcasters in this space and highlights its dual objective: citizen access and community reflection. Community programming allows for citizen access to the Canadian broadcasting system. Access programming aims to turn the passive viewer into an active participant. As such, it plays a role in fostering a greater diversity of voices and alternative choices by facilitating expression at the local level.

Community programming is also an important source of community reflection on television, be it in the realms of news, civic discussion, artistic expression, or local sports. Community programming provides a reflection of local realities that few other television services currently provide, especially in smaller and remote communities. It is key in supporting the activities of thousands of amateur sport associations across Canada. It is also a source of information about municipal politics outside major centres, which is essential to full democratic participation.

To achieve these objectives, the CRTC requires that significant percentages of the community television channels' programming each week be devoted to local community television programming, and to access programs which are produced by community members. Operators of these channels are expected to create citizen advisory committees

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and consult members of the community to determine the mix, scope and types of programs that best serve the community's needs and interests.

The CRTC also encourages local reflection on radio through its publicly available *Regulatory Policy for Campus and Community Radio*. This includes standard conditions of licence that require all campus and community radio stations to devote 15% of each broadcast week to spoken word and that for the purpose of this requirement all spoken word shall be locally produced.

With respect to the proposed Community Media Access Fund that would support not-for-profit community television stations, the CRTC has the authority to evaluate the community media associations' application and make determinations as to its creation. It would also have the authority to determine the sources of its funding through new regulatory contributions or through the redirection of existing regulatory charges for this purpose if it so chooses.

The CRTC has also been mindful of the impacts of the Rogers-Shaw merger on community television. Amongst the commitments imposed on Rogers as a condition of approval for the transaction, the CRTC required that Rogers would have to demonstrate its progress in ensuring that it meets the access and local programming requirements for each of the licensed and exempt community television undertakings currently operated by Shaw Cablesystems Limited. The communities that were served by Shaw's community television channels would therefore continue to be served by Rogers in the same regard.

Bill C-11, the *Online Streaming Act*, would guide a renewal of this framework by introducing updated definitions and responsibilities for the CRTC. It would add a definition for the 'community element' (élément communautaire) to the *Broadcasting Act*. The new definition would reference the not-for-profit and community-owned aspects of some community broadcasters, without narrowing the scope of the definition to particular business models and organizations. By including not-for-profit broadcasting undertakings that are managed by a board of directors elected by the community, the definition would provide recognition for community-owned media in legislation, which was a priority from stakeholders, including the CACTUS and CRFC.

Additionally, through the Parliamentary process, stakeholders saw changes to Bill C-11 that they advocated for, including recognition for the role of community broadcasting in the updated policy objectives. Such amendments provide additional details on the role of community broadcasting and programming, without limiting the scope of other elements of the broadcasting sector. In some cases, changes that advance community broadcasting in Bill C-11 are linked to the broadcasting objectives for specific communities, such as for Indigenous peoples broadcasting in proposed paragraph 3(1)(o), and persons with disabilities in paragraph 3(1)(p).

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The most significant change to the objectives section pertaining to community broadcasting is in paragraph 3(1)(s), which provides details on the nature of programming that the community element should provide. It reflects direct interest from community broadcast stakeholders. I shall note that there was widespread support for these changes by all political parties during the parliamentary process. As the CRTC thoughtfully determines how it would implement this new policy objective, it will need to ensure that appropriate supports are available for this important sector of the broadcasting system.

I will continue to work with my colleagues to make sure the Government of Canada avails itself of the tools needed to ensure the continued success of the local news production in Canada.

Thank you again for your contributions to the Government's work, and this welcome opportunity to discuss what we are doing for this industry.

Sincerely,

A handwritten signature in black ink, appearing to be 'Pablo Rodriguez', with a stylized, overlapping structure.

The Honourable Pablo Rodriguez, PC, MP