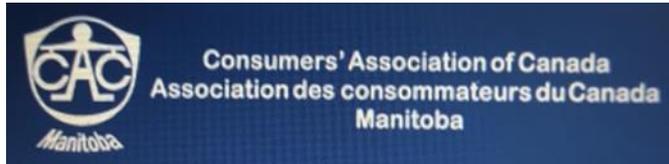




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POUR LA
DÉFENSE DE
L'INTÉRÊT PUBLIC



17 April 2023

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

Dear Mr. Doucet,

**Re: Part 1 application asking for an amendment to Broadcasting Decision CRTC 2022-
so that the Broadcasting Participation Fund/Le Fonds de participation à la
radiodiffusion does not cease operations in 2023**

Please find attached an application made under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* asking the CRTC to amend the requirement in [Broadcasting Decision CRTC 2022-76](#) that Rogers Communications Inc. allocate tangible benefits designated for the Broadcasting Participation Fund/ Le Fonds de Participation à la Radiodiffusion (BPF-FPR) over three consecutive years, to a requirement that Rogers remit the full benefit to the BPF-FPR on or before 1 September 2023. This change would enable the BPF-FPR to continue to operate until Parliament decides whether to enact Bill C-11, the *Online Streaming Act*, that in turn would enable the CRTC to enact regulations regarding costs in its broadcast proceedings.

Sincerely yours,

Monica Auer
Executive Director
Forum for Research and Policy in Communications (FRPC)
Ottawa, Ontario
613-618-0224
execdir@frpc.net

John Lawford
Executive Director
Public Interest Advocacy Centre (PIAC)
Ottawa, Ontario
(613) 562-4002, ext. 125
jlawford@piac.ca

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Christian Corbeil
Directeur général
Option consommateurs
Montréal (Québec)
514-598-7288 poste 4335
ccorbeil@option-consommateurs.org

Chris Klassen
Attorney
Consumers Association of Canada (Manitoba Branch)
Winnipeg, Manitoba
204-985-8540
chkla@legalaids.mb.ca

Geneviève Morand
Directrice par intérim
Union des consommateurs
Montréal (Québec)
514-521-6820 post 258
direction@uniondesconsommateurs.ca

Ken Whitehurst,
Executive Director
Consumers Council of Canada
416-483-2696
whitehurst@consumerscouncil.com

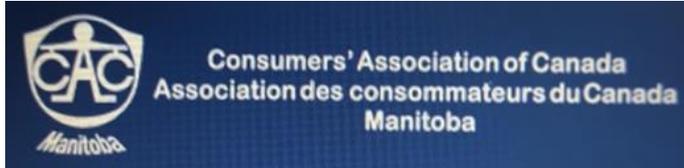
cc. Ted Woodhead cable.regulatory@rci.rogers.com
Senior Vice President, Regulatory
Rogers Communications Inc.

Audré Auger, Chief Executive Officer
Broadcasting Participation Fund, AAUGER@welchllp.com



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DÉFENSE DE
L'INTÉRÊT PUBLIC



BEFORE THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

IN THE MATTER OF AN APPLICATION BY

CONSUMERS' ASSOCIATION OF CANADA (MANITOBA),

CONSUMERS COUNCIL OF CANADA,

FORUM FOR RESEARCH AND POLICY IN COMMUNICATIONS,

OPTION CONSOMMATEURS

PUBLIC INTEREST ADVOCACY CENTRE, AND

UNION DES CONSOMMATEURS

REGARDING TIMING OF THE TANGIBLE BENEFITS ALLOCATED TO

THE BROADCASTING PARTICIPATION FUND/ LE FONDS DE PARTICIPATION A LA RADIODIFFUSION

BY BROADCASTING DECISION CRTC 2022-76

17 April 2023

John Lawford
Counsel for PIAC
jlawford@piac.ca

Monica Auer
Counsel for FRPC
ml.auer@sympatico.ca

Christian Corbeil
Directeur général
Option consommateurs
ccorbeil@option-consommateurs.org

Geneviève Morand
Directrice par intérim
Union des consommateurs
JAtack@uniondesconsommateurs.ca

Chris Klassen
Attorney
Consumers Association of Canada (Manitoba)
chkla@legalaids.mb.ca

Ken Whitehurst,
Executive Director
Consumers Council of Canada
whitehurst@consumerscouncil.com

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Synopsis

The Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR), Inc. is the only mechanism approved by the CRTC to reimburse the legal, policy and quantitative analysis undertaken in the public interest before broadcasting proceedings of the Canadian Radio-television and Telecommunications Commission (CRTC). Since 2011 the BPF-FPR has enabled more than thirty public-interest organizations to participate in more than 110 CRTC broadcast proceedings that, going forward, are likely to involve matters such as the new regulatory frameworks required to implement new laws including the *Online Streaming Act* (Bill C-11).

On 11 April 2023 the Board of Directors of the BPF-FPR announced its suspension effective August 2023 due to lack of funding and, if ongoing lack of funding is not addressed, its possible winding-up in 2024 (Appendix 1).

As the CRTC is required by law to balance a range of competing interests of which the public interest is just one, civil-society organizations play an important rôle in its proceedings by providing the CRTC with information and positions that would otherwise be absent from the public record. In 2021, for example, FRPC and PIAC argued that if the CRTC approved Rogers' acquisition of Shaw's broadcasting services, the \$5.7 million in tangible benefits proposed by Rogers was at least \$20 million too low due to its exclusion of Shaw's on-demand programming services from the required calculations – an argument not made by other parties and that the CRTC accepted.

When it approved Rogers' purchase of Shaw's broadcasting undertakings in [Broadcasting Decision CRTC 2022-76](#) (Appendix 2) the CRTC required Rogers to submit a proposal to pay \$27,233,885 in tangible benefits (Appendix 5) to support the Canada Media Fund, the Independent Local News Fund and a range of discretionary initiatives, including a payment of \$725,439 to the BPF-FPR over three consecutive but unidentified broadcast years.

The absence of a start year makes it unclear when the BPF-FPR would begin to receive these payments. Even if the first of three annual payments of \$241,813 indicated in [2022-76](#) were made in the 2022/23 broadcast year (ending 31 August 2023), moreover, the payment would be insufficient for the BPF-FPR's purposes: the average annual total costs it approved from 2013 to 2022 amounted to \$479,196 per year and, if Parliament enacts new statutes related to broadcasting, participation in CRTC broadcasting matters may increase significantly in the next two years.

This Part 1 application asks the CRTC to clarify the uncertainty regarding the BPF-FPR's continued operation as designed until Parliament enacts (or does not enact) Bill C-11, the *Online Streaming Act*. (The Bill's enactment would permit the CRTC to implement regulations to support public-interest participation in broadcasting.) Specifically, the applicants ask the Commission to facilitate Rogers' payment of the full tangible benefit amount directed to the BPF-FPR in [Broadcasting Decision CRTC 2022-76](#) on or before 1 September 2023 – if necessary, by amending the conditions of licence Rogers is required to propose for its television and/or broadcasting distribution undertakings by 3 May 2023 (Appendix 3). Full payment of the amount already directed by the CRTC to be made to the BPF-FPR will enable a range of public- and consumer-interest organizations to continue to undertake research, analysis and advocacy in both official languages in CRTC broadcasting proceedings under the *Broadcasting Act* (see *e.g.* Appendix 5).

I. Suspension of public-interest funding in CRTC broadcast matters can be prevented

- 1 This application is being submitted by the Forum for Research and Policy in Communications (FRPC), the Public Interest Advocacy Centre (PIAC), Option consommateurs (OC), Consumers Council of Canada (CCC), Union des consommateurs (UdC) and the Consumers' Association of Canada (Manitoba) (CAC-Manitoba) to propose a means by which the CRTC could provide certainty regarding the funding of public-interest participants in the CRTC's broadcasting proceedings.
- 2 [PIAC](#) is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests and, in particular, vulnerable consumer interests, concerning the provision of important public services. [FRPC](#) is a non-profit and non-soliciting organization that provides legal and research services on behalf of the public with a special focus on Parliament's broadcasting and telecommunications policies. [CAC-Manitoba](#) is a consumer organization that advocates on behalf of consumers and works with government and industry to solve marketplace problems. [OC](#) is a non-profit association established to help consumers and defend their rights. [CCC](#) is a not-for-profit corporation working towards an improved marketplace for Consumers in Canada. [UdC](#) is a non-profit organization whose mission is to defend consumers' rights.
- 3 The [Broadcasting Participation Fund, Inc./Le fonds de participation à la radiodiffusion \(BPF-FPR\)](#) was established in 2012 to reimburse qualified civil-society organizations for a portion or all of their costs in participating in broadcasting proceedings of the Canadian Radio-television and Telecommunications Commission (Commission or CRTC). (PIAC, CCC and FRPC are public-interest stakeholders in the BPF-FPR.)
- 4 The BPF-FPR is the only funding mechanism that supports public-interest participation in CRTC broadcast proceedings. It was established through the CRTC's 'tangible benefits' policy, first addressed formally in 1989.¹ While the *Online Streaming Act*, would empower the CRTC to support such participation,² Bill C-11 has not yet been enacted; if or when the new Act enters into force, the CRTC would have to enact new regulations regarding public-interest funding.
- 5 On 11 April 2023 the Board of Directors of the BPF-FPR announced that it will suspend operations as of August 2023 because the amount available to it for disbursements is insufficient to meet its purpose (Appendix 1). To conserve its remaining funds the BPF-

¹ *ELEMENTS ASSESSED BY THE COMMISSION IN CONSIDERING APPLICATIONS FOR THE TRANSFER OF OWNERSHIP OR CONTROL OF BROADCASTING UNDERTAKINGS*, [Public Notice CRTC 1989-109](#) (Ottawa, 28 September 1989)

² As currently proposed in Bill C-11-3, new subsection 11.1(1) states that
11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of
...
(c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.

FPR also reinstated a 25% reduction in the costs reimbursed to applicants on 5 April 2023; the BPF-FPR made the same reduction in October 2021 after a broadcaster unexpectedly delayed its CRTC-required payment to the BPF-FPR. The BPF-FPR subsequently reimbursed the 25% reductions to applicants in 2022.

6 This application asks the Commission to enable public-interest organizations' participation in CRTC broadcasting matters to continue by amending a condition of approval in a decision the Commission made in March 2022. The condition was set out in [Broadcasting Decision CRTC 2022-76](#)³ that granted the application by Rogers Communications Inc. (Rogers) to acquire and operate the broadcasting undertakings held by Shaw Communications Inc. (Shaw). The CRTC required Rogers to direct \$725,439 in tangible benefits to the BPF-FPR in three unidentified consecutive years.⁴

7 Due to delays related to the telecom side of the Rogers-Shaw transaction, Rogers only closed its purchase of Shaw on [Monday, April 3, 2023](#).⁵ The delay in closing means that the Commission's condition of approval has not yet been fulfilled.

8 The applicants request that the CRTC clarify [Broadcasting Decision CRTC 2022-76](#) by directing that Rogers make all three required payments to the BPF-FPR on or before 1 September 2023.

9 As provided by subsection 22(2) of the CRTC's *Rules*, Part II of this application provides the legislative and regulatory provisions that apply to this application. Parts III and IV, respectively, set out the facts and grounds that are relevant to the application. Part V describes the outcome sought from the Commission. Appendix 1 sets out the news release of the BPF-FPR of 10 April 2023. Appendix 2 sets out Broadcasting Decision CRTC 2022-76, while Appendix 3 summarizes the reporting requirements imposed on Rogers by the decision. Appendix 4 summarizes past events related to the BPF-FPR, while Appendix 6 lists the CRTC broadcasting proceeding that the BPF-FPR's existence has facilitated.

II. Legislative and regulatory provisions empowering the CRTC to act

10 This part sets out the legal foundation of the CRTC's authority regarding conditions of approval.

A. When approving transfers of ownership CRTC sets conditions of approval

11 The 1991 *Broadcasting Act* empowers the CRTC to grant or deny applications involving the transfer of ownership and/or effective control over broadcasting undertakings.⁶ Section

³ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022).

⁴ *Ibid.*, at "Summary", paragraphs 68 and 70 and Appendix 2.

⁵ Canadian Press, "Rogers takeover of Shaw finalized, deal now official", [cbcnews.ca](https://www.cbc.ca/news/business/rogers-shaw-merger-official-1.6799566) (3 April 2023 11:14 AM EDT), <https://www.cbc.ca/news/business/rogers-shaw-merger-official-1.6799566>.

⁶ S.C. 1991, c. 11.

Other statutes also grant the CRTC powers in broadcasting, such as the [Canada Elections Act](#), S.C. 2000, c. 9 and the [Accessible Canada Act](#), S.C. 2019 c. 10 with respect to federal elections and accessibility.

32(1) of the *Act* prohibits the operation of broadcasting undertakings without a licence, while section 9(1)(b) enables the CRTC to issue licences to operate broadcasting undertakings, “subject to such conditions related to the circumstances of the licensee ... as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1)” of the *Act*.

- 12 Where the 1993 *Telecommunications Act* empowers the CRTC to award costs to those participating in telecom proceedings,⁷ the *Broadcasting Act* empowers the Commission to “issue licence ... subject to such conditions related to the circumstances of the licensee ... as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1)”⁸
- 13 The CRTC has imposed two types of conditions in relation to broadcasting undertakings. In issuing, renewing or amending broadcasting licences it has imposed conditions on the licences: in 2019, for instance, it renewed two Shaw Pay-Per-View licences requiring adherence to specific conditions of licence and in 2022 renewed Shaw’s video-on-demand service again requiring adherence to specific conditions of licence.⁹
- 14 The CRTC has also issued conditions of approval. In 1994 the Commission imposed a condition of approval on applications by Rogers to acquire effective control of Maclean Hunter Limited, in [Decision CRTC 94-923](#) (Ottawa, 19 October 1994) (no page numbers). In that case, the CRTC “required the applicant, as a condition of its approval of the transaction, to divest itself of MHL’s television interests.” Rogers did not challenge the legality of the CRTC’s imposition of a condition of approval of its application and carried through with the condition’s requirements.¹⁰
- 15 In spring 2021 Rogers applied for the CRTC’s approval of the former’s acquisition of all issued and outstanding shares of Shaw and the authority to operate Shaw’s broadcasting services. After a [public hearing in November 2021](#)¹¹ the Commission granted Rogers’

⁷ [Telecommunications Act](#), S.C. 1993, c. 38:

Award of costs

56 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

Payment of costs

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

⁸ *Broadcasting Act*, s. 9(1)(b)(i).

⁹ *Shaw Pay-Per-View (terrestrial) – Licence Renewal*, [Broadcasting Decision CRTC 2019-278](#) (Ottawa, 5 August 2019), at paragraph 2; *Shaw Pay-Per-View (direct-to-home) – Licence renewal*, [Broadcasting Decision CRTC 2019-279](#) (Ottawa, 5 August 2019) at paragraphs 2 and 7; *Various large English-language and French-language television ownership groups – Administrative renewals*, [Broadcasting Decision CRTC 2022-180](#) (Ottawa, 4 July 2022) at paragraph 1 and Appendix (list that includes Shaw Cablesystems Limited’s Shaw on Demand).

¹⁰ See e.g. *Transfer of control of CFCN Communications Inc.; licence renewals for television undertakings in Alberta; and inter-corporate transactions including transfer of assets of various television undertakings in Ontario – Approved*, [Decision CRTC 96-251](#) (Ottawa, 21 June 1996).

¹¹ *Notice of hearing*, [Broadcasting Notice of Consultation CRTC 2021-281](#) (Ottawa, 12 August 2021). The CRTC’s 5-person hearing panel consisted of then-CRTC Chairperson Ian Scott, Ontario Commissioner Monique Lafontaine, Alberta and Northwest Territories Commissioner Nirmala Naidoo, Atlantic Region and Nunavut Commissioner Ellen Desmond and British Columbia and Yukon Commissioner Claire Anderson.

application, subject to conditions of approval related to the ‘tangible benefits’ that the Commission expects the transaction to yield for the broadcasting system.¹²

B. CRTC’s current *Tangible Benefits Policy* includes the BPF-FPR

16 The CRTC began to develop its approach to transfers of ownership or control of broadcasting services in the early 1970s. After establishing “as a fundamental principle that its prior approval must be obtained for any transfer of effective control”¹³ the CRTC said that its policy was “to scrutinize applications for transfer of assets of licences or for transfer of control of licensees in a manner comparable to its examination of applications for licences for new undertakings.”¹⁴

17 The CRTC first broached the idea that changes in broadcast ownership should yield benefits for Canada’s broadcasting system in 1977. The Commission explained that in applications for its approval of such transactions

... the onus is on the applicants to demonstrate that approval of the transfers would be in the interest of the public, the communities served by the licensees ... and the Canadian broadcasting system. In transactions of this magnitude, there must be significant and unequivocal benefits demonstrated to advance the public interest.
...¹⁵

18 Over time the Commission developed a ‘tangible benefits policy’ (see Appendix 4). It “codified” its approach to ownership benefits in 1989¹⁶ and in 1992 distinguished between tangible and intangible benefits.¹⁷

¹² For example, the CRTC wrote as follows in paragraph 63 of Broadcasting Decision CRTC 2022-76: As a condition of approval, 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
[footnote omitted]

¹³ *Assessment of the Impact of the Benefits Test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1992-42](#) (Ottawa, 15 June 1992).

¹⁴ *Ibid.*

¹⁵ Decision CRTC 77-456 (Ottawa, 28 July 1977); no hyperlink available.

¹⁶ *Elements Assessed by the Commission in Considering Applications for the Transfer of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1989-109](#) (Ottawa, 28 September 1989).

¹⁷ *Assessment of the Impact of the Benefits Test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1992-42](#) (Ottawa, 15 June 1992).

In general, accepted benefits have tended to fall into three broad categories: operating expenditures, frequently in the areas of additional staff or programming improvements; capital expenditures for technical improvements; and grants or contributions to Canadian talent or program development funds. Certain sector-specific characteristics of accepted benefits ... have emerged from radio transactions since 1985, and from cable and television transactions since 1986....

In addition to these “tangible” benefits, the Commission also considers such intangible benefits as the experience and resources of the purchaser, local ownership, entry of new players and, occasionally, the promise to maintain or improve a struggling service, have been found to be equally significant and, in some cases, of primary importance in the approval of transactions. ...

- 19 The CRTC set out its current, Simplified approach to tangible benefits and determining the value of the transaction¹⁸ (Tangible Benefits Policy) in 2014, under its policy-making authority under the Broadcasting Act. Section 6 of the Act provides that the CRTC
- ... may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.
- 20 Under the CRTC's *Tangible Benefits Policy* applicants acquiring effective control over radio and/or television programming services are to allocate a percentage of the value of such services to CRTC-identified tangible-benefits initiatives:¹⁹ "[t]he 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."²⁰ (The current benefits policy does not apply to changes in the ownership of broadcasting distribution undertakings.²¹)
- 21 The CRTC made the BPF-FPR eligible for tangible-benefits funding in 2014.²² While applicants have some discretion as to the initiatives that their transactions benefit – such as the BPF-FPR – the CRTC said that this “discretion should be exercised within a clear policy framework that removes the need for guesswork by purchasers and interveners and the potential for gamesmanship, while also ensuring efficient administration by the Commission.”²³ The Commission emphasized that it “may choose to exercise its discretion and depart from this policy where called for to meet the public interest and based on the record before it at the time”.²⁴

C. Broadcasting Decision CRTC 2022-76 directed tangible benefits to the BPF-FPR

- 22 One of the issues in the CRTC's Rogers-Shaw proceeding involved tangible benefits – the amount and the beneficiaries proposed by Rogers.

¹⁸ [Broadcasting Regulatory Policy CRTC 2014-459](#) (Ottawa, 5 September 2014).

¹⁹ *Ibid.*, at paragraphs 60 and 74:

The Commission's purpose in determining the value of the transaction is not to value the undertakings to be acquired or ensure that the purchase price is reasonable, but rather to arrive at an appropriate amount on which to calculate tangible benefits, taking into account the public interest and the absence of a competitive licensing process. The Commission seeks to ensure predictability and consistency regardless of the structure of the transaction or the financing of the business.

²⁰ [Broadcasting Decision CRTC 2022-76](#), paragraph 43.

²¹ *Ibid.*, paragraph 44.

²² [Broadcasting Regulatory Policy CRTC 2014-459](#) at paragraph 31:

Based on the above, the Commission adopts the following revised list of eligible discretionary initiatives as a guideline to applicants:

...

funds that benefit consumers, including the Broadcasting Accessibility Fund and the Broadcasting Participation Fund;

....

[bold font in original].

²³ *Ibid.*, at paragraph 26.

²⁴ *Ibid.*, at paragraph 10.

- 23 In seeking the CRTC's permission to acquire Shaw's broadcasting services in April 2021 Rogers initially proposed a total of \$5.7 million in tangible benefits²⁵ based on its valuation of Shaw's broadcast programming services. This valuation excluded Shaw's terrestrial video-on-demand and pay-per-view television programming services²⁶ on the theory that, at Rogers' behest, Shaw intended to return the services' licences to the CRTC.²⁷
- 24 The interventions filed by FRPC and PIAC in September 2021²⁸ each described this proposal as a form of non-compete agreement²⁹ and argued that the CRTC's *Tangible Benefits Policy* required a payment in the order of \$25 million. Rogers subsequently acknowledged in late November 2021 that if all of Shaw's discretionary television programming services were included in the value of the transaction, the tangible benefits from the transaction would increase to \$26,617,315.³⁰
- 25 When it granted Rogers' application to acquire control off Shaw's broadcasting services in March 2022 (Appendix 2) the CRTC agreed that the transaction's value should include Shaw's on-demand programming services. Due to the "significant consolidation of BDU assets that would have as significant impact on the Canadian broadcasting industry", moreover, the CRTC required Rogers to pay tangible benefits of \$27. 2 million or 11% of the transaction's value.³¹ The CRTC described this amount as "more proportionate" to the transaction's size and character.³²
- 26 The CRTC also required Rogers' tangible benefits to include funding for the Broadcasting Participation Fund. This, said the Commission,
- ... 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.³³
- 27 In addition, while the CRTC's current policy generally requires that tangible benefits "be expended in equal amounts over seven consecutive broadcast years",³⁴ the CRTC directed Rogers to pay the BPF-FPR \$725,439 "over three years instead of the usual seven given the funds' current circumstances and the significant role they will be called on to play in

²⁵ Rogers Communications Inc. and Shaw Communications Inc., *Re: Application by Rogers Communications Inc. for Authority to Acquire Effective Control of Shaw Communications Inc.*, DM#4019506 (Ottawa, 13 April 2021), and Appendix 1, *Supplementary Brief*, DM#4019508, at paragraph 38: Rogers will "contribute \$5,746,000 to tangible benefits under the Commission's policy."

²⁶ Rogers, #DM4124760, page 16 of 45.

²⁷ [Broadcasting Decision CRTC 2022-76](#), at paragraphs 46 and 50.

²⁸ *Notice of hearing*, [Broadcasting Notice of Consultation CRTC 2021-281](#) (Ottawa, 12 August 2021).

²⁹ FRPC, Intervention 372 (Ottawa, 13 September 2021), page 35 at paragraphs 134 to 137; PIAC intervention 379 (Ottawa, 13 September 2021), pages 23-24 at paragraphs 67 to 69.

³⁰ Rogers, DM#4124760, page 20 of 45.

³¹ [Broadcasting Decision CRTC 2022-76](#), at paragraph 54.

³² *Ibid.*, at paragraph 61.

³³ *Ibid.*, at paragraph 68.

³⁴ [Broadcasting Regulatory Policy CRTC 2014-579](#), at paragraph 67.

the near future”.³⁵ Specifically, the CRTC directed Rogers in Appendix 3 of [Broadcasting Decision CRTC 2022-76](#)

... to file, by no later than 25 April 2022, as a condition of approval, a new tangible benefits proposal ... that meets the following allocations:

...

The Broadcasting Participation Fund (\$725,439), in equal annual payments over three consecutive broadcast years.

- 28 The absence of a beginning year could hypothetically permit Rogers to begin its three years of consecutive payments at any time, while the division of the \$725,439 into three equal parts leaves the risk that the BPF-FPR may lack funding in any one or more years of the three-year period, requiring successful applicants to wait to be remunerated later on (and without compensation for the diminishing value of their remunerated costs over time).

D. The implications of Bills C-10 and C-11

- 29 The CRTC’s reference in its decision about Rogers’ acquisition of Shaw’s broadcasting holdings to the BPF-FPR’s role “in the near future” may refer to the federal government’s proposed amendments to the 1991 *Broadcasting Act*. The prospect of such amendments has loomed over the CRTC’s consideration of Rogers’ acquisition of Shaw from the beginning.
- 30 When Rogers submitted its application to acquire Shaw to the CRTC on 13 April 2021,³⁶ a bill to amend the 1991 *Broadcasting Act* had just completed second reading in the House of Commons.³⁷ Bill C-10 would have enabled the CRTC to enact regulations requiring broadcasters to support “participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission”.³⁸ Although C-10 received second reading by the Senate on 29 June 2021, the Governor General dissolved Parliament on 15 August 2021 and proclaimed that a federal election would take place on 20 September 2021.³⁹ Bill C-10 consequently ‘died’. The new government reintroduced amendments to the *Broadcasting Act* on 2 February 2022 in Bill C-11, the *Online Streaming Act*.

³⁵ [Broadcasting Decision CRTC 2022-76](#), at paragraph 68.

³⁶ Rogers and Shaw, *Re: Application by Rogers Communications Inc. for Authority [wording in the original] Acquire Effective Control of Shaw Communications Inc.*, Cover Letter (13 April 2021), CRTC DM#4019506, at paragraph 1.

³⁷ Parliament of Canada, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other acts*, [LEGISinfo, 43rd Parl., 2nd Sess.](#)

³⁸ Bill C-10, clause 10, proposed section 11.1(c).

³⁹ Office of the Chief Electoral Officer of Canada, [Report on the 44th General Election of September 20, 2021](#), (Gatineau, 27 January 2022) at page 15, “Issue of the Writs”

- 31 By the time the CRTC approved Rogers' acquisition of Shaw's broadcasting services in March 2022 the House of Commons had just completed its first reading of Bill C-11.⁴⁰ Like Bill C-10, C-11 would enable the CRTC to make regulations "supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under" the *Broadcasting Act*.⁴¹
- 32 If the House of Commons and the Senate had each passed Bill C-11 as written, it is likely that the CRTC today would be considering proceedings to initiate regulatory changes to adapt to a new *Broadcasting Act* – possibly including regulations to reimburse civil-society organizations for participating in CRTC broadcasting proceedings.
- 33 Bill C-11 did not pass third reading by the House until 21 June 2022, however, and only passed third reading by the Senate on 3 February 2023. Further, because the House did not accept all of the amendments the Senate had proposed, C-11 effectively returned to the Senate on 30 March 2023. (According to the [Senate's calendar](#) approximately 30 fixed sitting days remain before it breaks for the summer.)
- 34 Even if Bill C-11 enters into force in 2023, however, it may not be possible for the CRTC to draft, publish for comment and enact regulations that would make it unnecessary to clarify the timing of Rogers' payment or payments to the BPF-FPR.
- 35 As the BPF-FPR's announcement of 11 April 2023 establishes that it will not be issuing decisions about applications for costs reimbursement beginning 1 August 2023, significant uncertainty now exists regarding civil-society organizations' ability to participate effectively in CRTC proceedings from August going forward.
- 36 The applicants are therefore making this application under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (Rules)* to obtain clarification and, if necessary, to amend the timing of the tangible benefit payment by Rogers to the BPF-FPR so that the BPF-FPR need not suspend its operations and so that civil-society organizations can continue to participate in the CRTC's broadcast proceedings until the CRTC has made regulations regarding participation costs in broadcasting proceedings. Specifically, the application is being made under sections 2, 3 and 11 of the *Rules*. Sections 3 and 11 provide that applicants may bring a matter before the

⁴⁰ Parliament of Canada, C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, [LEGISinfo, 44th Parl, 1st Sess.](#)

⁴¹ Bill C-11, Clause 14:
The Act is amended by adding the following after section 11:
Regulations — expenditures
11.1 (1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of
...
(c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.
....

Commission for its approval and section 2(1) establishes that the *Rules* apply to the proceeding arising from an application.⁴²

III. Facts: Suspension of the BPF-FPR does not serve the public interest and does not enable the CRTC to meet its mandate

37 The establishment and operation of the BPF-FPR is described below.

A. CRTC established BPF-FPR using its tangible benefits policy

38 In September 2010 Bell applied to acquire control of CTV⁴³ and PIAC intervened to ask that a portion of the transaction's tangible benefits for the broadcasting system be allocated to the establishment of a 'Canadian Broadcasting Participation Fund'.⁴⁴

39 In approving Bell's application in March 2011 the CRTC also approved PIAC's proposal and allocated \$3 million of the \$245 million of tangible benefits in the CTV transaction to a "new Canadian Broadcasting Participation Fund".⁴⁵ The Commission required Bell to file a proposal for the fund within 60 days of the CRTC's decision.⁴⁶ None of the parties affected by this decision challenged it before the courts.

40 Bell and PIAC filed a joint proposal for a Broadcasting Participation Fund (BPF) in May 2011.⁴⁷ After inviting comment on the proposal in August 2011,⁴⁸ the Commission approved the proposal on 26 March 2012.⁴⁹ The BPF-FPR was incorporated under the *Canada Not-for-profit Corporations Act* on 6 September 2012⁵⁰ and as set out by the CRTC its Board of Directors has three members – a Broadcasting Industry Director, a Consumer/Public Interest Director and a Jointly Approved Director who chairs the Board. The BPF-FPR's Articles of Incorporation require the BPF-FPR to "[s]upport research,

⁴² *Rules:*
2 (1) Except if they provide otherwise, these Rules apply to all proceedings before the Commission other than a proceeding arising from an application listed in Schedule 1 or from a contravention of a prohibition or requirement of the Commission for which a person is liable to an administrative monetary penalty under any of sections 72.001 to 72.19 of the Telecommunications Act, unless the penalty is imposed in the course of a proceeding referred to in section 72.003 of that Act.

...
3 A matter may be brought before the Commission by an application or complaint or on the Commission's own initiative.

...
11 In broadcasting matters, the Commission may approve the whole or any part of an application or grant any relief in addition to or in substitution for the relief applied for.

....
⁴³ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163 (Ottawa, 7 March 2011),

⁴⁴ *Ibid.*, paragraph 47.

⁴⁵ *Ibid.*, paragraph 46.

⁴⁶ *Ibid.*, at paragraphs 46 and 48.

⁴⁷ BPF, *Annual Report 2013*, "Chronology of Key Events", at 1.

⁴⁸ *Call for comments on the Canadian Broadcasting Participation Fund*, [Broadcasting Notice of Consultation CRTC 2011-524](#) (Ottawa, 24 August 2011).

⁴⁹ *Broadcasting Participation Fund*, [Broadcasting Regulatory Policy CRTC 2012-181](#) (Ottawa, 26 March 2012).

⁵⁰ BPF, *Organizational Structure of the BPF*, <http://www.bpf-fpr.ca/en/bpfstructure.html>.

analysis and advocacy in the official language of the applicant’s choice in CRTC broadcasting proceedings under the Broadcasting Act (Canada)”⁵¹

- 41 Applications to the BPF-FPR are made using the tariffs and slightly amended versions of the forms established by the CRTC in 2010 for its telecom costs process.
- 42 Over the next five years the CRTC directed \$2.9 million of the tangible benefits in two other ownership transactions to the BPF-FPR: the 2013 purchase by Bell of Astral and the 2018 change in the ownership structure resulting in Sirius XM Canada:⁵² Table 1.

Table 1

Decision	Broadcaster	Purchase of	Total tangible benefits	BPF (% of tangible benefits)
2011-163 ⁵³	BCE	CTV	\$245 million	\$3,000,000.00 (1.2%)
2013-310 ⁵⁴	BCE	Astral	\$247 million	\$2,000,000.00 (0.8%)
2018-91 ⁵⁵	Sirius XM	Sirius FM	\$28.7 million	\$1,596,666.00 (5.6%)
Total	2 broadcasters	3 transactions	\$520.7 million	\$6,596,666.00 (1.3%)

- 43 In each of the three decisions noted above the CRTC directed that the tangible benefits payments be made over seven years: Table 2.

Table 2

Decision	BCE: 2011-163	BCE: 2013-310	Sirius XM: 2018-91
Purchase of	CTV	Astral	Sirius FM
Tangible benefits	\$245 million	\$247 million	\$28.7 million
BPF (% of tangible benefits)	\$3.0 million	\$2.0 million	\$1.6 million
Scheduled payments and their amounts			
2013	Year 1: \$428,571.43		
2014	Year 2: \$428,571.43	Year 1: \$285,714.29	
2015	Year 3: \$428,571.43	Year 2: \$285,714.29	
2016	Year 4: \$428,571.43	Year 3: \$285,714.29	
2017	Year 5: \$428,571.43	Year 4: \$285,714.29	
2018	Year 6: \$428,571.43	Year 5: \$285,714.29	Year 1: \$500,000.00
2019	Year 7: \$428,571.43	Year 6: \$285,714.29	Year 2: \$500,000.00
2020	[payments have ended]	Year 7: \$285,714.29	Year 3: \$119,333.20
2021		[payments have ended]	Year 4: \$119,333.20
2022			Year 5: \$119,333.20
2023			Year 6: \$119,333.20
2024			Year 7: \$119,333.20
2025			[payments end]
Total	\$3,000,000.00	\$2,000,000.00	\$1,596,666.00

⁵¹ BPF, *Annual Report 2016*, at page 1 of 5.

⁵² *Tangible benefits proposal by Sirius XM Canada Inc.*, [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), at paragraph 18, footnote omitted.

⁵³ *Change in effective control of CTVglobemedia Inc.’s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraphs 46 and 48.

⁵⁴ *Tangible benefits proposal by Sirius XM Canada Inc.*, [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), at paragraph 38.

⁵⁵ *Astral broadcasting undertakings – Change of effective control*, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013), at Appendix 3.

44 According to the BPF-FPR's *2022 Annual Report*, only one payment of remains to be made by Sirius XM Canada— \$119,332 no later than 24 May 2024.⁵⁶

B. BPF-FPR has worked as planned

45 The CRTC's goal for the BPF-FPR was that it "should facilitate the participation of public interest and consumer groups across Canada in both official languages." The Commission added that the "fund should be used to assist in the representation, research and advocacy of these interests."⁵⁷

46 As the CRTC intended, the BPF has assisted in the representation, research and advocacy of the public interest in both official languages. In 2016 the CRTC noted that "[t]he participation of interest groups in Commission proceedings has been made easier since the establishment of the Broadcasting Participation Fund (BPF) in 2012." It added that the BPF-FPR "enables certain groups representing OLMCs to receive financial support to participate in Commission proceedings."⁵⁸ In 2018 the CRTC approved tangible benefits payable by Sirius to the BPF-FPR "given the relevance and importance of the BPF as a tool to promote the participation of Canadians in Commission radio proceedings".⁵⁹

47 The BPF has also operated efficiently with a lean administrative structure that generally makes decisions about and issues payments for costs applications within 90 days of their submission to the BPF. As the Covid-19 pandemic took hold, its Board of Directors continued to review costs application and responded promptly to requests that it amend its administrative procedures by forgoing the requirement for the notarization of documents and by remitting payments to applicants via electronic fund transfers.

48 In terms of process, the BPF-FPR uses the forms designed by the CRTC for telecom costs applications, replacing references to telecommunications with references to broadcasting. If they qualify, consumer and public-interest groups that have intervened in or have made submissions to the CRTC may apply to the BPF for the representation, research and advocacy costs of their participation. The BPF's Board of Directors may grant or deny such applications in whole or in part.

⁵⁶ BPF-FPR, *2022 Financial Statement*, at page 10, Note 5.

⁵⁷ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraph 48.

⁵⁸ CRTC, *Review of the Implementation of Section 41 of the Official Languages Act 2015-2016*, (2016) "Training offered to group members".

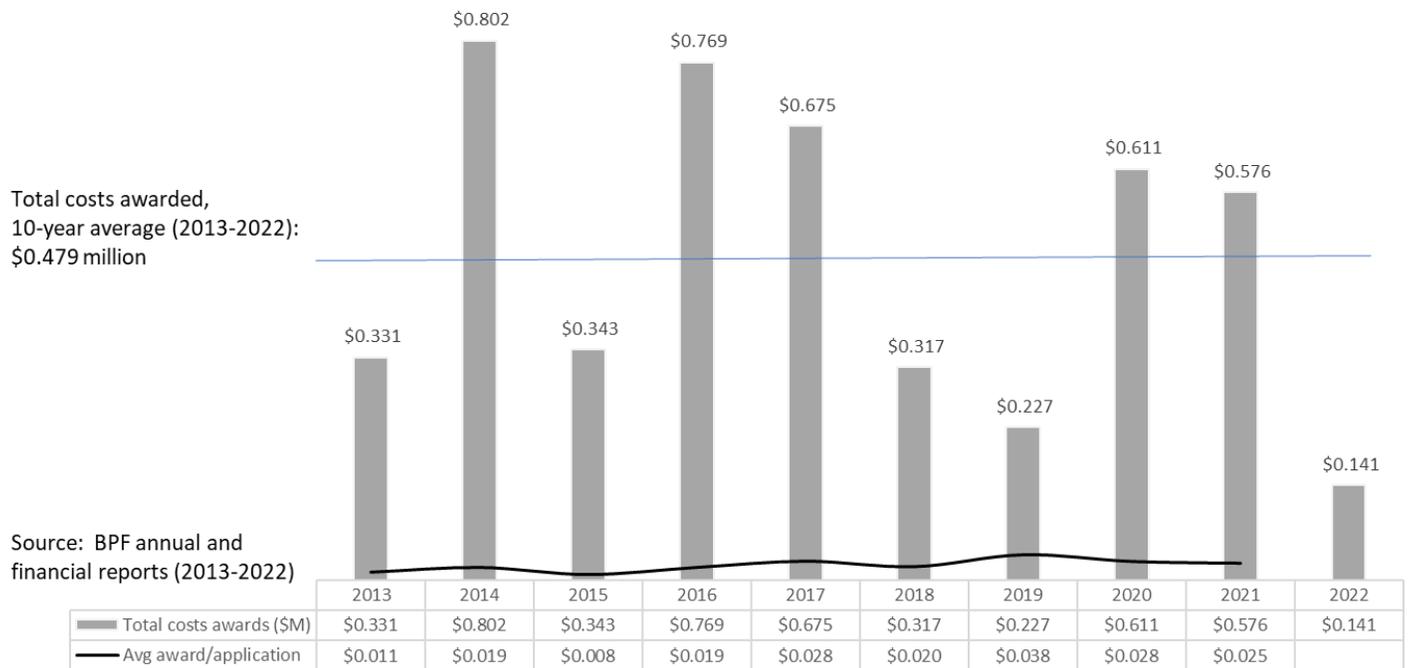
⁵⁹ *Tangible benefits proposal by Sirius XM Canada Inc.*, [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), paragraph 38:

In light of all of the above, the Commission:
approves Sirius XM's proposal to contribute \$1 million to the BPF paid in two equal installments of \$500,000 in year 1 and 2;
denies Sirius XM's proposal to allocate \$3.79 million to the Proposed Fund;
directs Sirius XM to contribute \$1,596,667 to FACTOR and \$1,596,667 to MUSICTION, expended in equal amounts over seven consecutive broadcast years and to contribute an additional \$596,666 to the BPF expended in equal amounts over five consecutive broadcast years starting in year 3.

49 The BPF considers applications for costs based on the guidance provided by the CRTC in 2010.⁶⁰ It first accepted costs awards applications in April 2013 for costs incurred on or after 26 March 2012.⁶¹ Based on the BPF-FPR’s *Annual Reports* and *Financial Statements* it has reimbursed a total of \$4.65 million in consumer- and public-interest participation costs in the CRTC’s broadcast proceedings from April 2013 to December 2021, or \$479,196 per year over the last decade: Figure 1. Appendix 5 lists the CRTC proceedings from 2013 to 2021 in which civil-society organizations were able to participate due in part to the BPF-FPR.

Figure 1

Broadcasting Participation Fund (BPF):
 total and average costs awarded, 2013-2021



50 Decisions about costs applications are made by the BPF’s Board of Directors, consisting of a Broadcasting Industry Director, a Consumer/Public Interest Director and a Jointly Approved Director. The Board of Directors makes its decisions in accordance with the guidelines established by the CRTC for its telecommunications costs process and from . The BPF retains a Costs Officer and accountant.⁶² From 2013 to 2021 the BPF-FPR considered 223 costs applications, raised the amounts sought by two applications (due to

⁶⁰ Revision of CRTC costs award practices and procedures, [Telecom Regulatory Policy CRTC 2010-963](#) (Ottawa, 23 December 2010). The *Guidelines for the Taxation of Costs* appended to Telecom Regulatory Policy CRTC 2010-963 remain unchanged from the CRTC’s 2007 [Guidelines for the Taxation of Costs](#).

⁶¹ BPF-FPR, *Annual Report 2016*, (Ottawa, 1 March 2017), <http://www.bpf-fpr.ca/en/press/BPFAnnualReport2016.pdf>, Appendix 1, at note 1.

⁶² BPF, *Organizational Structure of the BPF*, <http://www.bpf-fpr.ca/en/bpfstructure.html>; BPF-FPR, *Annual Report 2021* (Ottawa, 31 March 2022) at page 2.

calculation errors amounting to \$6 and \$526), denied 15 applications and reduced the amount applied for in 59 (26%) of the applications by an average of \$5,830.

C. Continued uncertainty about BPF-FPR's existence

51 The BPF has lacked financial stability for most of the past six years. In 2016 the BPF's Board of Directors "advised the CRTC and BPF Stakeholders that, based on current estimates the BPF will run out of cash around December 31, 2017, subject to receiving three annual payments of \$285,714.29 commencing in the spring or summer of 2018."⁶³

52 In 2017 a "[c]aution note [was] posted to the BPF website alerting stakeholders that based on current estimates, a significant risk exists that the Fund will not be in a financial position to award costs in early 2018." The BPF's Annual Report 2017 noted that

As of the release date of these financial statements, the working capital of the Fund is diminished to the point that it is likely that costs awards may need to be suspended within the coming year unless new sources of funding are approved by the CRTC or are obtained through other sources. There are no committed new sources of funding known to the Fund at this time. ...

53 In 2018 the BPF's *Annual Report* projected based on its historical disbursement rate that if no additional financial support was provided, "the Fund could be materially depleted by early 2018" with the result that "cost awards from the Fund could cease in whole or in part...."⁶⁴

54 The BPF-FPR's [Financial Update to December 31, 2020](#) showed that while it anticipated receiving four deferred payments from Sirius in the amount of \$387,832, three of these payments were expected to be received in 2022 and beyond: it at that time intended to remit just \$29,833 to the BPF in May 2021,⁶⁵ but subsequently remitted \$89,499 to the BPF-FPR – still 25% less than had been expected – "due to the COVID pandemic".⁶⁶ The BPF's *Annual Report* for 2020 consequently again warned that it was at risk of running out of funds within the next year and a half.

55 In March 2021 the BPF-FPR warned that "... the Fund may lack sufficient funds to approve and pay costs awards in respect of costs awards applications received by the Fund."⁶⁷ It added that it "will not incur any liabilities, including the approval of costs awards, beyond the availability of its working capital."⁶⁸ In late August 2021 the BPF-FPR again notified its

⁶³ BPF, *Annual Report 2016*, Appendix III, "Chronology of Key Events".

⁶⁴ Welch LLP, *Broadcasting Participation Fund (BPF), Inc./le fonds de Participation à la Radiodiffusion (FPR), Inc.: Annual Report 2017*, (Ottawa, 1 March 2018), <http://www.bpf-fpr.ca/en/press/BPFAnnualReport2017.pdf>, at Section 6.0

⁶⁵ BPF, "[Financial Update to December 31, 2020](#)".

⁶⁶ BPF-FPR, *Annual Report 2020*, page 26.

⁶⁷ *Ibid.*, (Notes to the Financial Statements, note 1).

⁶⁸ *Ibid.*, (Notes to the Financial Statements, note 3).

stakeholders of developments that had “left the BPF in a very difficult financial position.”⁶⁹

56 The BPF’s financial instability arises because it has had to rely solely on fluctuating annual payments from broadcasters that are not always framed as clearly written conditions of licence. For example, while the CRTC ‘directed’ Sirius XM Canada to make payments to the BPF, the Commission did not impose this direction in a condition of licence.

57 As Rogers was unable to close its transaction with respect to Shaw until April 2023, moreover, the condition of approval regarding the BPF-FPR has not yet been fulfilled. This is perhaps unsurprising as when the CRTC issued [Broadcasting Decision CRTC 2022-76](#) on 24 March 2022 it imposed more than a dozen reporting requirements on Rogers – see Appendix 3 – including a requirement to submit a revised tangible benefits proposal taking into account the CRTC’s determinations in the decision.

D. Previous actions taken to stabilize BPF-FPR’s financial position

58 Several steps have been taken to attempt to stabilize the BPF-FPR’s finances.

1. Six requests to allocate tangible benefits to BPF-FPR denied by CRTC

59 Until 2022 the CRTC had granted financial support to the BPF-FPR in three broadcast ownership decisions: two involving Bell and one involving Sirius.

60 From 2012 to 2017 the CRTC also denied five other proposals to direct ownership-related tangible benefits to the BPF-FPR:

- the 2012 change of ownership of the discretionary programming services involving BCE and RCI in 2012,⁷⁰
- Shaw’s 2013 acquisition of Corus’ discretionary programming services⁷¹
- Corus’ 2016 acquisition of Shaw’s discretionary programming services,⁷²

⁶⁹ BPF-FPR, [Notice to Stakeholders and Claimants Regarding Broadcasting Participation Fund Diminishment](#), (Ottawa, 27 August 2021).

⁷⁰ [Leafs TV, Gol TV, NBA TV Canada, Mainstream Sports and Live Music Channel – Change in effective control](#), [Broadcasting Decision CRTC 2012-443](#) (Ottawa, 16 August 2012).

⁷¹ [Notice of hearing](#), [Broadcasting Notice of Consultation CRTC 2013-448](#) (Ottawa, 5 November 2013).

⁷² [Notice of application received](#), [Broadcasting Notice of Consultation CRTC 2016-22](#), as amended (Ottawa, 21 January 2016) – Application 2016-0055-2 by Shaw Communications Inc. on behalf of Shaw Media Inc. and its licensed subsidiaries. Intervention of PIAC, at paragraph 27:

PIAC believes that a transaction of this size and its impact on viewers and creators requires the proposal of a benefits package, regardless of whether the technical nature of the transaction triggers the Tangible Benefits Policy. Given the impact of this transaction on viewers, PIAC believes that public interest participation will only become more critical in the future, and that a percentage of the value of the transaction should be allocated to both the Broadcasting Participation Fund and Broadcasting Accessibility Fund.

Various television services and stations - Corporate reorganization (transfer of shares), [Broadcasting Decision CRTC 2016-110](#) (Ottawa, 23 March 2016), at paragraph 25:

- BCE's 2016 application to acquire MTS' BDU and other assets,⁷³ and
- in 2017 when Bell Media applied to acquire two of Corus' discretionary TV programming services.⁷⁴

61 While the CRTC required Sirius to allocate funding to the BPF-FPR in 2018, it denied a proposal in 2020 to direct tangible benefits funding to the BPF-FPR when it approved Bell's acquisition of V Interactions.⁷⁵

62 The denial of requests to provide the BPF-FPR with a stable base of financial support has created uncertainty for the BPF-FPR and those eligible to submit applications for the reimbursement of their CRTC- broadcasting costs since 2016 (see Appendix 4).

Consistent with the Tangible Benefits Policy, given that the proposed transaction will not change the effective control of the licensees or the undertakings, the Commission is not imposing tangible benefits. Moreover, the Commission sees no reason to make an exception to the Tangible Benefits Policy in this instance.

⁷³ *Notice of application received*, [Broadcasting Notice of Consultation CRTC 2016-349](#) (Ottawa, 30 August 2016), Application 2016-0602-1:

Application by MTS Inc. (MTS) for authority to effect a change in the ownership and effective control of the terrestrial broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas, Manitoba, currently licensed to MTS, to Bell Canada (Bell), pursuant to section 4(4)(a) of the Broadcasting Distribution Regulations.

See *Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control*, [Broadcasting Decision CRTC 2016-487](#) (Ottawa, 20 December 2016), at paragraph 32:

The application before the Commission is solely for the change in control of the licensed BDU and does not raise concerns with applicable Commission policies and regulations. Accordingly, consistent with the Tangible Benefits Policy, this transaction does not trigger the payment of tangible benefits and the Commission is of the view that an exception requiring the payment of tangible benefits would be unwarranted for this transaction. Furthermore, the Commission considers that the flexibility and pricing concerns raised by CAC-Manitoba and PIAC to justify imposing tangible benefits are mitigated by the regulatory measures intended to maximize choice for television viewers and foster a healthy and dynamic television market announced in Broadcasting Regulatory Policy 2015-96.

⁷⁴ *Notice of application received*, [Broadcasting Notice of Consultation CRTC 2018-95](#) (Ottawa, 20 March 2018), Application 2017-1060-9:

Application by Bell Media Inc. (Bell), on behalf of Corus Entertainment Inc. (Corus), for authority to effect a change in the ownership and effective control of 8504644 Canada Inc. (8504644) and 8504652 Canada Inc. (8504652), the respective licensees of the French-language discretionary services Historia and Séries+.

PIAC intervention, Application 2017-1060-9, at paragraph 59:

One element notably missing from BCE Inc.'s tangible benefits package was any contribution to the recently approved Broadcasting Participation Fund or the Broadcasting Accessibility Fund. Both of these funds are designed to help promote participation in and access to the broadcasting system, including the regulatory process. The Commission specifically stated in relation to both funds that the funds should be funded from tangible benefits packages going forward. As both funds are meant to be continuing funds, the prospect of eventual shortcomings in funding are real and therefore tangible benefits packages present a very real opportunity to ensure the future of these funds without undue hardship on the broadcasting industry.

⁷⁵ *V Interactions inc. – Change in ownership and effective control*, [Broadcasting Decision CRTC 2020-154](#) (Ottawa, 19 May 2020):

170. In addition, several interveners requested changes to the tangible benefits package. PIAC submitted that it would be reasonable to require Bell to direct 1% of all tangible benefits that are allocated to the Bell Fund (\$252,045) to the Broadcasting Participation Fund (0.5%) and the Broadcasting Accessibility Fund (0.5%). According to the intervener, the public interest would be better protected and served by this proposal.

...

177. Bell's proposal is consistent with the Tangible Benefits Policy. Specifically, the proposed tangible benefits package represents 10% of the value of the transaction, and the funds would be allocated between the CMF and the Bell Fund, paid over a seven-year period.

2. *Steps taken to deal with uncertainty about BPF-FPR's existence*

- 63 The Board of Directors of the BPF-FPR first set out its concern about the depletion of the fund in 2016 and repeated the warning in 2017.
- 64 FRPC and PIAC submitted a joint application to the CRTC on [21 April 2021](#), asking the CRTC to stabilize the BPF-FPR's funding. The CRTC did not grant process to the application, instead writing FRPC and PIAC on 6 August 2021 to say that by majority decision, the Commission had declined to launch the proceeding requested by the FRPC-PIAC application.⁷⁶ The CRTC's letter added that the Commission had "directed staff to organize a virtual meeting in the coming months in order to engage with Canadian public interest and consumer organizations", as the Commission "recognizes the issue of support for Canadian public interest and consumer organizations to participate in CRTC broadcasting proceedings is both broader and more immediate than Bill C-10, which itself is currently only draft legislation that is before Parliament." CRTC-staff organized online meetings took place the following year, in early February 2022. The Commission staff's "What We Learned Report" report on these meetings has not yet been published.
- 65 The Board of Directors of the BPF-FPR has also attempted to address its funding shortfall. From January to February 2021 it met with officials of the Department of Canadian Heritage and wrote the Minister of Canadian Heritage, the Minister of Finance and the Chairperson of the CRTC to discuss an interim funding solution.⁷⁷ In mid-July 2021 it reviewed its financial options, established a restricted reserve fund and advised the CRTC and BPF-FPR stakeholders [in writing](#) of the Fund's precarity.
- 66 On 27 August 2021 the BPF-FPR's Board announced it would reduce the reimbursements (if any) granted to applicants for their CRTC broadcast-participation costs by 25%.⁷⁸ Following a required tangible benefit payment by Sirius SM, these shortfalls were reimbursed in Fall 2022 and the temporary reduction in costs awarded was dropped.
- 67 At the end of 2022 the BPF-FPR had \$203,688 cash on hand.⁷⁹ Its Board restricted \$115,000 of this amount – leaving \$88,688

... to cover expenses related to the ongoing costs of running the fund should the fund go into an extended hiatus, and will ensure that sufficient funds remain available to cover final expenses in the even the fund is ultimately unable to secure sufficient ongoing funding and is required to be wound down.⁸⁰

⁷⁶ CRTC, *Subject: Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Fund*, [Broadcasting – Commission Letter](#) (Ottawa, 6 August 2021).

⁷⁷ BPF-FPR, *Annual Report 2021*, at page 26 (Appendix IV).

⁷⁸ To put this reduction into perspective, the CRTC set its current allowable rates for telecommunications proceedings (used by the BPF-FPR in its broadcasting matters) in 2007: [Guidelines for the Taxation of Costs](#), (Revised as of 24 April 2007). When adjusted for inflation, the rates are in real terms now worth 74% of their 2007 value. Adding the 25% reduction set by the BPF-FPR, the costs of civil-society organizations were in 2022 being reimbursed for an amount equivalent to 55% of the 2007 rates.

⁷⁹ BPF, *Annual Report 2022*, page 6 ("Statement of Cash Flows").

⁸⁰ *Ibid.*, page 11 ("Internally Restricted Reserve Fund").

68 On 5 April 2023, the BPF-FPR also resumed its reduction of all costs applications that it grants by 25%.⁸¹

69 On 10 April 2023 the BPF-FPR announced that it will suspend operations at the beginning of August 2023 and may wind itself up in 2024 due to a critical gap between the amount remaining in the Fund, and the total amount applied for by qualified public-interest organizations for their costs of participating in CRTC broadcast proceedings.

E. CRTC broadcasting matters in 2023/24

70 The CRTC continues to operate to meet its mandate under the 1991 *Broadcasting Act* and it is likely that some of the broadcasting matters it considers will touch on matters of public interest.

71 First, regardless of whether Parliament enacts any new statutes involving broadcasting, broadcasters typically submit several hundred applications to the Commission each year, asking the Commission to amend their licences, its policies or its regulations. The CRTC may also consider renewing some broadcasters' licences.

72 Second, apart from the applications filed by broadcasters the CRTC may also hold a proceeding to reconsider its June 2020 decision renewing CBC's licences (as required by Cabinet on 16 September 2022).⁸² The Commission's last CBC renewal process was unusually long due to delays caused by the Covid pandemic, but even a streamlined renewal of Canada's national public broadcaster may take several months, especially if the CRTC invites the CBC to update the evidence it provided in 2019 for the public's review.

73 Third, the CRTC's *2023-24 Departmental Plan* says that the Commission "will launch public proceedings" regarding new regulatory frameworks required by each new statute and "continue to co-develop a new regulatory framework for Indigenous broadcasting ... which will include a public consultation process."⁸³ Even if Parliament were to enact Bill C-11 in April 2023, it might be challenging for the CRTC to propose, hear comments on and enact regulations establishing a brand-new costs regime for broadcasting by 1 August 2023.

F. Rogers' new benefits proposal not yet part of public record and full payment of the BPF-FPR benefit would have no material effect on Rogers

74 In approving Rogers' acquisition of Shaw in March 2022 the CRTC directed Rogers to submit a new benefits proposal.⁸⁴ This schedule does not yet appear on the CRTC's [2021-](#)

⁸¹ BPF-FPR Costs Officer, BPF-FPR decision of 5 April 2023 regarding FRPC application to BPF-FPR. The CRTC has not, incidentally, updated the rates it permits public-interest participants to seek as reimbursement of their costs, since 2007.

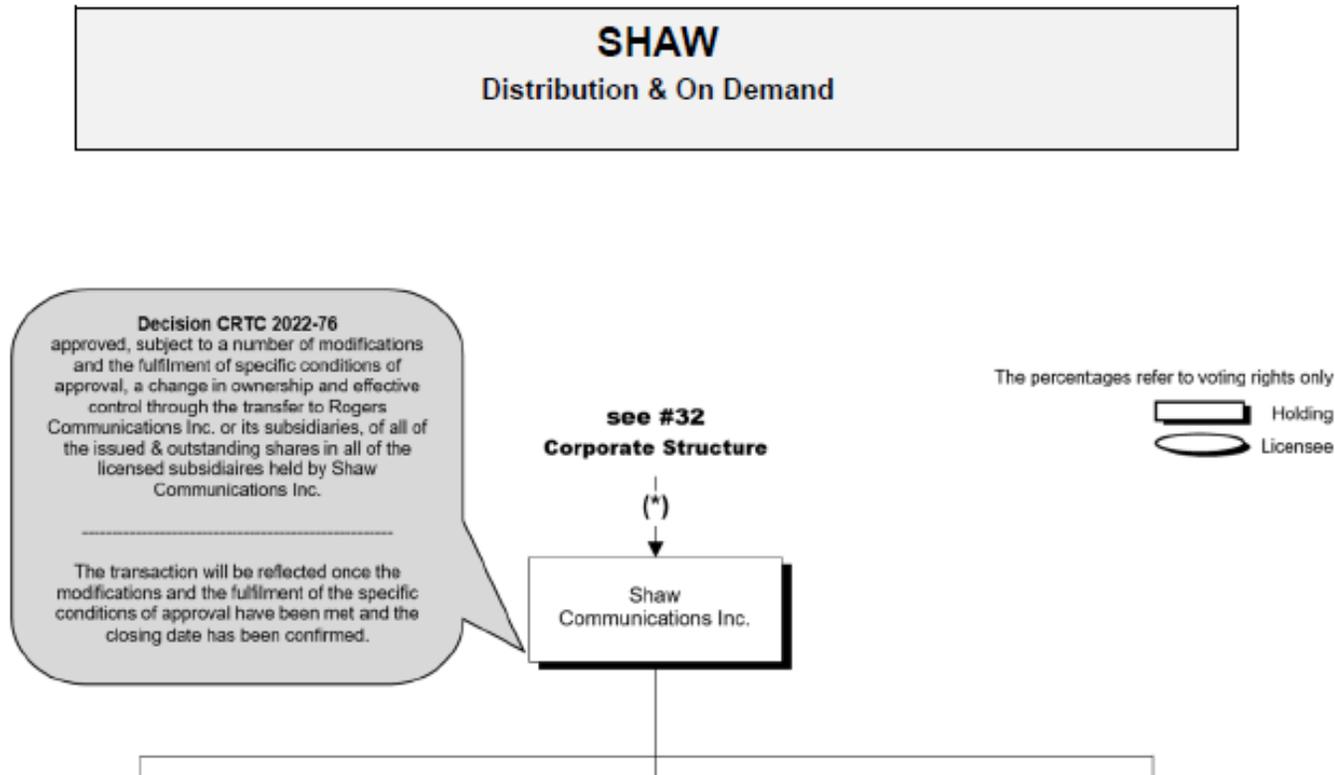
⁸² *Order Referring Back to the CRTC Broadcasting Decision CRTC 2022-165, SI/2022-44* (P.C. 2022-995, 16 September 2022).

⁸³ *Ibid.*, at page 8.

⁸⁴ [Broadcasting Decision CRTC 2022-76](#), at paragraph 68:

[0228-4 public record](#) and is not reflected in the [CRTC ownership chart #32A](#) for Shaw Communications Inc.: see Figure 2 (as posted on the CRTC's website on 14 April 2023).

Figure 2



75 The note in Figure 2 states that

...

The transaction will be reflected once the modifications and the fulfilment of the specific conditions of approval have been met and the closing date has been confirmed.

76 In considering this Part 1 application the CRTC should take into account the circumstances of the licensee. In this case, FRPC respectfully submits that the relevant licensee is Rogers because, after it completes the conditions of approval required by the Commission in Broadcasting Decision CRTC 2022-76, it will be responsible for operation of the

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.
[bold font added]

broadcasting licences currently held by Shaw. Based on the information set out in Broadcasting Decision CRTC 2022-76 it appears somewhat unlikely that the payment of \$725,439 to the BPF-FPR on or before 1 September 2023 (rather than three payments of \$241,813) will materially affect Rogers or place it at a financial disadvantage. The CRTC concluded in Decision CRTC 2022-76 that the total value of the transaction for Rogers amounted to \$5.4 billion.

Table 3

	Transaction value	Millions	2022-76 - paragraph
77	The total tangible benefits for the BPF-FPR amount to 0.01% of this amount: Table 3.		
	Value of the transaction	\$ 5,400.00	54
	Broadcast component	\$ 247.58	54
	Tangible benefits, total	\$ 27.23	61
	Tangible benefits, BPF-FPR	\$ 0.73	70
78	Respectfully, an amount that represents one one-hundredth of one percent of the CRTC valuation of the Rogers-Shaw transaction would appear to be <i>de minimus</i> .		
	As % of value of the transaction	0.01%	
	As % of broadcast component	0.29%	

IV. Grounds supporting the CRTC’s intervention

79 As noted above, Broadcasting Decision CRTC 2022-76 directed Rogers to remit a total of \$725,439 to the BPF-FPR. This application asks the CRTC to require Rogers to remit this amount to the BPF-FPR on or before 1 September 2023. Taking this step will ensure the continued operation of the BPF-FPR until Parliament enacts new legislation enabling the CRTC to support public-interest participation through its regulations. The operation of the BPF-FPR will provide the CRTC with a stronger and more complete evidentiary record in its broadcasting proceedings, and will provide all parties involved in these proceedings with greater certainty.

A. Informed public participation strengthens evidentiary record

80 Throughout its history the CRTC has facilitated the public’s participation in its proceedings by inviting members of the public to comment on many of the broadcasting applications it receives and on the consultations it publishes. The federal government supports this objective: in introducing the CRTC’s current 2023-24 *Departmental Plan*, the Minister of Canadian Heritage noted that as

... the organizations in the Canadian Heritage Portfolio plan their year to come, they remain attentive to the needs of Canadians in order to remain in tune with current realities. In this way they are carrying out their mission in fields as diverse as arts, culture, heritage, and communications.⁸⁵

81 Yet the CRTC does not ‘remain attentive to the needs of Canadians’ as a formality or due to simple courtesy. As it has itself argued before the Federal Court of Appeal (FCA), the

⁸⁵ CRTC, [Departmental Plan 2023-24](#), at 1 (“From the Minister”).

CRTC's role is in fact to "balance competing interests among a variety of stakeholders".⁸⁶ The FCA has agreed with the Commission: in 1999 the Court noted that Parliament's broadcasting policy for Canada has "about forty sometimes conflicting objectives", which lead "to a polycentric adjudication process, involving numerous participants with opposing interests...".⁸⁷ In 2011 the same Court noted that the *Broadcasting Act* is "intended to ensure these competing interests" – of "the originators of television signals" and "the public" – "are properly balanced."⁸⁸

82 Ensuring public participation in its proceedings does not, therefore, simply inform tribunals like the Commission of Canadians' needs. Public participation balances and completes the evidentiary record of its proceedings. In 2017, the CRTC's Chairperson and CEO noted that the Commission's procedures "ensure the broadest possible public participation":⁸⁹ public participation provides the CRTC with evidence and arguments it might otherwise not receive from current or prospective licensees.

83 Simply hearing from thousands of individual members of the public – as the Commission regularly does in proceedings about the Canadian Broadcasting Corporation, for example – is not enough, however.

84 The complexity of policy and licensing issues in broadcasting has for some time required expertise. The CRTC explained this several decades ago in the context of telecommunications, saying it had

... concluded that if the objective of informed participation in public hearings is to be met, some form of financial assistance must be available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interest of a substantial number or class of subscribers.⁹⁰

85 Three years later (1981) the Commission commented in the context of dismissing an appeal against an award of costs in a telecommunication proceeding that "the proper purpose" of costs "awards is the encouragement of informed public participation in Commission proceedings."⁹¹

86 Broadcasting now faces the same level of complexity as telecommunications faced several decades ago, and the result is that

⁸⁶ *Telecommunications Workers Union v. Canadian Radio-television and Telecommunications Commission*, 2003 FCA 381 (CanLII), [2004] 2 FCR 3, at paragraph 21. The Court noted that "[t]he respondent Shaw concurs with this submission." *Ibid.*

⁸⁷ *Société Radio-Canada v. Métromédia Cmr Montréal Inc.*, [1999 CanLII 8947 \(FCA\)](#), at paragraph 5.

⁸⁸ *Canadian Radio-television and Telecommunications Commission's Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168 (Re)*, [2011 FCA 64 \(CanLII\)](#), at paragraph 29.

⁸⁹ Ian Scott, [Speech](#), IIC Canada communications Law and Policy Conference, (Ottawa, 14 November 2017).

⁹⁰ *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978), Canadian Radio-television and Telecommunications Decisions and Policy Statements, 4 CRT, Part 1, Decisions, April 1, 1978 to March 31, 1979, at page 104.

⁹¹ Telecommunications Decision CRTC 81-5 (Ottawa, 9 March 1981).

[m]eaningful participation ... requires thorough knowledge and expertise in the regulated field, coupled with sizeable resources and the motivation to persuade the agency in favour of one's position. Most citizens do not fit this description, and agencies are not required to actively encourage participation or solicit comments from underrepresented stake-holders. Hence, notice and comment is typically dominated by a limited number of high-caliber professional interest groups and industry representatives, who possess the resources and the expertise necessary to file persuasive comments.⁹²

- 87 Until 2011, however, only public-interest organizations making submissions in CRTC telecommunications proceedings were able to seek reimbursement of their costs. The absence of a funding mechanism for broadcasting proceedings placed consumer groups and public-interest organizations at a disadvantage, as the CRTC explained to the Broadcasting and Telecommunications Legislative Review Panel in 2019:

The CRTC makes its decisions based on the evidence presented on the public record of its proceedings. The communications companies that participate in CRTC proceedings generally have substantial internal resources and can afford to retain external consultants and lawyers, as well as to commission research to put forward their views and evidence in a proceeding. Consumer groups and public interest organizations are typically not-for-profit, volunteer-run organizations with limited monetary resources to develop similarly sophisticated submissions.⁹³

- 88 If the BPF ceases operations, consumer and public-interest organizations will no longer have the resources to pay for representation, legal advice, research (including surveys) and advocacy on behalf of consumers and the public interest before the CRTC. In their absence the record of CRTC proceedings would consist of evidence from broadcasters, from industry or employee associations and (one assumes) from academic scholars. The record would include less evidence from or argument on behalf of the public interest – and filling such gaps in evidence would jeopardize the CRTC's status as an impartial, quasi-judicial decision-making tribunal whose decisions are based on the evidence before it.
- 89 The CRTC will return to the days when well-funded and very experienced commercial interests generally faced individual, less experienced members of the public – the days that originally led the Commission to approve and support the establishment of the BPF.

⁹² Jennifer Shkabatur, "Transparency With(out) Accountability: Open Government in the United States" Yale Law & Policy Review, Vol 31 (2012), 79-140 at 86.

⁹³ CRTC, *CRTC Written Public Submission to the Legislative Review Panel*, [Cat. No.: BC92-102/2019E-PDF](#) (Ottawa, 2019) at 18.

B. Clarifying Decision CRTC 2022-76 provides certainty without changing its outcome

- 90 CRTC decisions should be clear so that all parties can understand their impact. The Supreme Court of Canada has held that vague law is contrary to due process - *nullem crimen sine lege, nulla poena sine lege*.⁹⁴
- 91 In this case, the CRTC's decision regarding the BPF-FPR lacks certainty for two reasons. First, Broadcasting Decision CRTC 2022-76 does not identify the three-year period in terms of a beginning or ending year. Second, the decision requires that the benefit be divided into three separate payments of \$241,813: as the average annual costs granted by the BPF-FPR from 2013 to 2021 amount to \$516,000, one year's payment by Rogers could leave the BPF-FPR with a \$274,000 gap, creating the potential risk of ongoing shortfalls that in turn may again require the BPF-FPR to reduce the payments for costs it has otherwise approved. (The Sirius payment of \$119,332 that is due in 2024 would reduce the gap in the first of the three years to \$154,855.)
- 92 The CRTC has in the past noted that certainty matters to those operating in the broadcasting system: it declined to review its current *Tangible Benefits Policy*, for example, out of concern that this would not "be in keeping with the principles of regulatory certainty and predictability" upon which Rogers and Shaw based their transaction.⁹⁵ Moreover, the CRTC in 2017 acknowledged that while it "generally requires licensees to distribute tangible benefits equally over seven years" it would instead require payments over a shorter period "to provide the BPF with the necessary flexibility to effectively management its operations."⁹⁶ Dividing payments over a number of years ultimately led one broadcaster to reduce one of these payments to the BPF-FPR when the broadcaster encountered financial difficulties, creating uncertainty for the BPF-FPR and costs applicants alike.

⁹⁴ *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, 1990 CanLII 105 (SCC), [1990] 1 S.C.R. 1123 per Lamer J. (as he then was). Referring to two U.S. Supreme Court judgements he wrote,

The principles expressed in these two citations are not new to our law. In fact they are based on the ancient Latin maxim *nullum crimen sine lege, nulla poena sine lege* - that there can be no crime or punishment unless it is in accordance with law that is certain, unambiguous and not retroactive. The rationale underlying this principle is clear. It is essential in a free and democratic society that citizens are able, as far as is possible, to foresee the consequences of their conduct in order that persons be given fair notice of what to avoid, and that the discretion of those entrusted with law enforcement is limited by clear and explicit legislative standards . . .

⁹⁵ CRTC, [Subject : Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Fund](#), (Ottawa, 6 August 2021).

⁹⁶ *Sirius Canada and XM Canada – Transfer of shares*, [Broadcasting Decision CRTC 2017-114](#) (Ottawa, 26 April 2017), paragraph 83. In *Tangible benefits proposal by Sirius XM Canada Inc.*, [Decision CRTC 2018-91](#) (Ottawa, 16 March 2018) the CRTC approved

... Sirius XM Canada Inc.'s (Sirius XM) proposal to contribute \$1 million to the Broadcast Participation Fund (BPF), paid in two equal installments of \$500,000 in years 1 and 2 as part of the tangible benefits approved in Broadcasting Decision 2017-114

and directed

...Sirius XM to contribute an additional \$596,666 to the BPF, expended in equal amounts over the following five consecutive broadcast years from years 3 to 7.

[Italics in original text]

- 93 It is true that section 9(1)(c) of the *Broadcasting Act* prevents the CRTC from amending on its own motion any condition of the licences acquired by Rogers unless five years have passed since the licences were issued or renewed – but the *Act* does not limit the CRTC’s ability to amend the conditions of approval set out in [Broadcasting Decision CRTC 2022-76](#).
- 94 Moreover, the *Act* does not prevent broadcasters themselves from applying to amend the terms and conditions under which they operate; in the past, the CRTC has even invited broadcasters to apply to renew their licences earlier than planned so as to address programming concerns:⁹⁷ the licences for Shaw’s on-demand television programming services which were renewed over three years ago currently expire in August 2024.⁹⁸
- 95 As the CRTC has not yet published Rogers’ revised benefits proposal, one reasonable approach might be for Rogers, as a gesture of goodwill towards the public and consumers’ interest, to itself propose to amend the 2022-76 conditions of approval by asking the Commission to permit it to remit the \$725,439 now directed to the BPF-FPR in one year rather than three, and to make this payment on or before 1 September 2023.
- 96 As an alternative, Broadcasting Decision CRTC requires Rogers to file by 3 May 2023 several applications to amend the conditions of licence of the television programming undertakings operated by Rogers and Rogers’ broadcasting distribution undertakings (see Appendix 3). In considering these applications – and the precarity of the BPF-FPR that can be addressed by full payment of the tangible benefit that the CRTC already directed be made to the BPF-FPR in Decision CRTC 2022-76 – the CRTC in approving the applications could include a requirement that Rogers remit the full tangible benefit to the BPF-FPR on or before 1 September 2023.

V. Outcome sought: amend BPF-FPR condition of approval in Broadcasting Decision CRTC 2022-76

- 97 The CRTC’s current tangible benefits policy emphasizes that it “may choose to exercise its discretion and depart from this policy where called for to meet the public interest and based on the record before it at the time”.

⁹⁷ *Rogers Media Inc. – Group-based licence renewals*, [Broadcasting Decision CRTC 2014-399](#) (Ottawa, 31 July 2014) at paragraph 111:

In Broadcasting Decision 2013-657, the Commission addressed a complaint against Rogers Broadcasting Limited (RBL), licensee of the OMNI stations, by the Communications, Energy and Paperworkers Union of Canada. The complainant had alleged that RBL was in non-compliance with a number of its conditions of licence and with the Ethnic Broadcasting Policy as a result of programming changes that occurred on the OMNI stations as of 30 May 2013. In that decision, the Commission expressed concern over the extent of the programming changes, the impact of the changes on the communities served by the stations, and the lack of information provided by RBL in regard to the level of consultation that may have taken place with the community advisory councils for its various stations about the upcoming programming cuts. **Although the Commission found RBL to be in compliance with its conditions of licence, it requested that it submit licence renewal applications for the OMNI stations early in order to allow a review of the stations’ programming issues.**

⁹⁸ *Shaw Pay-Per-View (terrestrial) – Licence renewal*, [Broadcasting Decision CRTC 2019-278](#) (Ottawa, 5 August 2019); *Shaw Pay-Per-View (direct-to-home) – Licence renewal*, [Broadcasting Decision CRTC 2019-279](#) (Ottawa, 5 August 2019).

98 In this application, CAC-Manitoba, CCC, FRPC, OC, PIAC and UdC respectfully ask the Commission to exercise its discretion to meet the public interest⁹⁹ by providing the BPF-FPR and the civil-society organizations whose CRTC-broadcasting costs it reimburses with unequivocal certainty regarding the fund’s continued operations in 2023 and 2024, by facilitating Rogers’ remission of the full tangible benefit now set out in Broadcasting Decision CRTC 2022-76 to the BPF-FPR on or before 1 September 2023.

⁹⁹ *Simplified approach to tangible benefits and determining the value of the transaction*, [Broadcasting Regulatory Policy CRTC 2014-459](#) (Ottawa, 5 September 2014), at paragraph 10.

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CAC (Manitoba)

CCC

FRPC

OC

PIAC

UdC

Part 1 Application regarding the BPF

17 April 2023

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Appendix 1 [BPF-FPR news release of 10 April 2023](#)

CAC (Manitoba)

CCC

FRPC

OC

PIAC

UdC

Part 1 Application regarding the BPF

17 April 2023

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**Appendix 2 *Shaw Communications Inc. – Change of ownership and effective control*,
[Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022)**

Appendix 3 Reporting requirements imposed on Rogers by Broadcasting Decision CRTC 2022-76

When the CRTC issued [Broadcasting Decision CRTC 2022-76](#) on 24 March 2022 it imposed several requirements on Rogers:

1. “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” (paragraph 62)
2. “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” (paragraph 63)
3. “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 by a Rogers-related entity 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.”
4. “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” (paragraph 69)
5. “to file by no later than 25 April 2022 [in other words, one month after closing], 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” (paragraph 70)
6. “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” (paragraph 83)
7. “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] (paragraph 98)
8. “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” with respect to its interactions with Corus (paragraph 108)
9. “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" (paragraph 114)

10. "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" (paragraph 129)
11. "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 [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 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] (paragraph 139)
12. "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" (paragraph 147)
13. "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" (paragraph 153)
14. "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" (paragraph 161)

Appendix 4 Events related to BPF-FPR

- 1977 One of the first uses of the ‘benefits’ test in ownership transactions was in Decision CRTC 77-456 (Ottawa, 28 July 1977), when the CRTC denied the transfer of effective control of Premier Cablevision Limited and Western Broadcasting Company Limited. It wrote that,
...
The Commission considers that in cases of transfers of ownership and control, particularly one of such significance, the onus is on the applicants to demonstrate that approval of the transfers would be in the interest of the public, the communities served by the licensees, including listeners, viewers and cable television subscribers, and the Canadian broadcasting system. **In transactions of this magnitude, there must be significant and unequivocal benefits demonstrated to advance the public interest.** The current Broadcasting Act, like that of 1968, requires that the Canadian broadcasting system provide opportunity for the public to be exposed to the expression of differing views and a wide range of programming that reflects Canadian attitudes and opinions, ideas, values and artistic creativity. The Commission has therefore consistently weighed proposed benefits against the potential for concentration of ownership and concerns regarding any reduction in the diversity of expression available in a market.
....
[bold font added]
- 1989 *ELEMENTS ASSESSED BY THE COMMISSION IN CONSIDERING APPLICATIONS FOR THE TRANSFER OF OWNERSHIP OR CONTROL OF BROADCASTING UNDERTAKINGS*, [Public Notice CRTC 1989-109](#) (Ottawa, 28 September 1989):
...
In addition to demonstrating that it has sufficient resources, an applicant is expected to propose a specific package of significant and unequivocal benefits that will yield measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system. The Commission must be satisfied that the proposed benefits package is commensurate with the size and nature of the transaction and takes into account the responsibilities to be assumed, the characteristics and viability of the broadcasting undertakings in question and the scale of programming, management, financial and technical resources available to the prospective purchaser.
....
- 2002 *New procedure for Telecom costs awards*, Telecom Public Notice CRTC [2002-5](#), (Ottawa, 7 November 2002)
CRTC announces it will generally proceed to fix the costs to be paid as part of the costs award process, thereby dispensing with the follow-up taxation process. While in most instances the Commission fixes costs, it retains the discretion to proceed with the taxation process in exceptional circumstances.
- 2007 [Guidelines for the Taxation of Costs](#), attachment to Telecom Regulatory Policy CRTC 2010-963 (Ottawa, 23 December 2010) CRTC (Revised as of 24 April 2007)
Introduction

1. These Guidelines, which have been adopted by the Commission's Legal Directorate, are to be employed by taxation officers appointed by the Commission to tax costs awarded to persons pursuant to sections 56 of the Telecommunications Act and 44 of the CRTC Telecommunications Rules of Procedure (the Rules). The Guidelines do not detract from or limit the taxation officers' general discretion. They shall apply to taxation of costs made in respect of costs awarded by the Commission on or after 15 May 1998. [Mod. May 1998]

....

Fees

General

8. Consistent with past practice, costs generally will not be awarded for time spent by the applicant's support staff, administrative staff, officers and directors, acting as such, in connection with its participation in the proceeding.

9. Fees as billed to the applicant for the services provided by claimants will normally be allowed, provided they are based on (a) the current allowable daily or hourly rates which are set out in Appendix A; and, (b) time which is not excessive under the circumstances.

10. If the applicant is claiming costs which are to be calculated on an hourly basis, all persons for whom work is being so claimed must, in general, keep hourly records which may be requested by the taxation officer. Hourly records must contain at least the following information: the date on which the work was done, the amount of time spent on the work and a brief description of that work. In the event that the taxation officer requests such records and they are not available, the applicant's claim in respect of that work will generally be disallowed in its entirety. [Mod. May 1998]

Revised Appendix A to Guidelines for the Taxation of Costs

[Mod. 24 April 2007]

Legal Fees (Outside Counsel) – Hourly rates

Service Provider	Completed Years of Practice	Hourly Rate
Legal Assistant	-	\$35
Articling Student	-	\$70
Legal Counsel	0-2	\$135
Legal Counsel	3-5	\$165
Legal Counsel	6-10	\$206
Legal Counsel	11-19	\$250
Legal Counsel	20 or more (with at least 10 years of relevant experience)	\$290

Expert Witnesses

Service provided	Rate
Attendance at an oral hearing in order to testify	\$1650/day
Other Services	\$225/hour

Consultant and Analyst Fees – Hourly rates

Service Provider	Completed Years of Practice	Hourly Rate
Analyst/Consultant	0-4	\$110
Intermediate Analyst/Consultant	5-8	\$165
Senior Analyst/Consultant	9 or more	\$225

In-house Fees – Daily rates

Service Provider	Completed Years of Practice	Daily Rate
Legal Counsel	0-8 years	\$600
Legal Counsel	over 8 years	\$800
Articling Student	-	\$235
Legal Assistant	-	\$175
Analyst/Consultant	-	\$470

Disbursements:

Travel by automobile: \$0.35 per km

Meals:

Per diem rate applies where meals are taken in connection with a hearing or meetings which take place at a distance of more than 50 kilometres from regular place of work: \$48.00 per day

Meal allowance where meals taken in connection with a hearing or meetings which take place at a distance of 50 kilometres or less:

Breakfast: \$10
 Lunch: \$12
 Dinner: \$26
 In-house photocopies: \$0.15 per copy

Date modified: 2007-04-24

2009 *Call for comments – Review of CRTC costs award practices and procedures, [Telecom Notice of Consultation CRTC 2009-716](#) (Ottawa, 23 November 2009)*

...

Background

6. The Commission considers that individuals and groups that represent consumer interests often provide a valuable contribution to Commission decisions through their participation in telecommunications proceedings. The Commission also recognizes that, unlike telecommunications service providers, these individuals and groups often require financial assistance in order to effectively participate in such proceedings. Consequently, the Commission awards costs to facilitate the informed participation of these individuals and groups in its telecommunications proceedings.

...

13. Any changes to the Commission's current costs award practices and procedures will be announced in a regulatory policy. Any substantive changes to the wording of the Proposed Rules necessary to implement these changes will be published for public comment pursuant to section 69 of the Act.

...

2010 *Revision of CRTC costs award practices and procedures, [Telecom Regulatory Policy CRTC 2010-963](#) (Ottawa, 23 December 2010)*

...

I. Should the Commission modify its eligibility criteria for costs awards?

7. The Commission's criteria for determining who is eligible for an award of costs are set out in paragraph 44(1)(a) of the *Telecommunications Rules* and paragraph 68(a) of the *Rules of Procedure*.^[4] Parties raised concerns in two areas: first, who should be eligible for costs awards and, second, when eligibility determinations should be made.

8. The Applicants sought to tighten the eligibility criteria, submitting that only costs applicants who could demonstrate "significant financial hardship" should be eligible for costs awards. They submitted that costs applicants should be required to (a) declare their sources of funding; and (b) attest to the fact that without a costs award, their participation in the proceeding would cause them to suffer significant financial hardship. The consumer advocacy groups generally submitted that the latter requirement would place an undue burden on their limited resources, thereby limiting the effective representation of public interest. PIAC submitted that the current eligibility criteria are appropriate and should not be altered.

...

12. The Commission considers that costs awards are intended to encourage the participation of individuals and groups who represent subscriber interests, rather than private interests. The Commission has consistently denied applications for costs awards from non-profit industry organizations on this basis and notes that these organizations have sufficient incentives to participate in proceedings.^[5] Therefore, the Commission does not consider it appropriate to expand its eligibility criteria to include non-profit industry organizations.

...

22. The Commission notes that since they were adopted, the Guidelines have provided direction regarding the factors that the Commission may consider in determining whether the time a claimant spends preparing for and participating in a proceeding is excessive under the circumstances. The Commission also notes that past costs orders also provide guidance on the Commission's claim review criteria. However, the Commission considers that providing additional guidance on the criteria it will use to assess costs claims would increase clarity and predictability for all parties. In light of this, the Commission has updated the Guidelines to include a list of additional factors it may consider when assessing costs claims.

23. Specifically, in evaluating whether or not the time expended by a claimant is excessive, the Commission may consider (a) the extent of the applicant's participation, the degree of complexity of the issues to which that participation related, and the amount of documentation involved in the proceeding; (b) the degree of responsibility assumed by the claimant; (c) the duplication of substantive submissions among claimants; (d) the experience and expertise of the claimant; and (e) the time claimed and awarded in the proceeding or in other similar proceedings. This list is not exhaustive or binding and the Commission will consider all factors relevant to a specific proceeding.

24. In evaluating whether a costs applicant has contributed to a better understanding of the issues, the Commission may consider (a) whether the applicant filed evidence; (b) whether the contribution was focused and structured; and (c) whether the contribution offered a distinct point of view. This list is not exhaustive or binding and the Commission will consider all factors relevant to a specific proceeding.

25. The Commission recognizes that compliance with procedural requirements is important for ensuring administrative fairness for all parties. However, the Commission considers that the Applicants' proposal to deny costs outright in instances of procedural non-compliance is inflexible. When assessing costs claims, the Commission considers whether costs applicants have participated in a responsible way and it has the discretion to reduce or deny costs, as appropriate. The Commission therefore considers that its current approach of addressing procedural non-compliance remains appropriate.

26. The Commission considers that automatically denying costs when a costs applicant's application under Part VII of the Telecommunications Rules or Part 1 of the Rules of Procedure has not been successful could have a chilling effect on those who wish to raise issues of public interest. The Commission finds that its current approach of assessing each costs application on its merits remains appropriate.

27. The Commission recognizes that when a costs applicant has coordinated its submissions in a proceeding with a commercial entity or industry group, a costs respondent could end up funding the participation of a competitor who has made submissions jointly with the costs applicant. Therefore, the Commission has amended the Guidelines to require costs applicants to declare whether they have coordinated their submissions in a proceeding with a commercial entity or industry group. If coordination with such groups has occurred, the Commission will generally reduce allowable costs accordingly.

...

V. Is a review of the rates set out in the Guidelines necessary at this time?

33. Parties generally agreed that a review of the rates listed in the Guidelines is not necessary at this time because the rates were reviewed in 2007. However, PIAC, CIPPIC, and l'Union des consommateurs argued that the rates for subject matter experts are too low to attract the experts who can best inform the Commission. The Applicants counter-argued that the rates are comparable to those used by other administrative tribunals.

34. The Applicants also raised two issues related to the rates claimed for legal expenses. First, they submitted that the Commission should provide clear guidance on the criteria it uses to categorize lawyers as in-house or outside counsel. Second, they submitted that the Commission should cap the allowable rate for certain tasks in order to discourage the allocation of these tasks to senior counsel when they could reasonably be completed by counsel with less experience. PIAC submitted that there was no need to review the first issue and objected to the second one, submitting that it might lessen the quality of representation available to costs applicants.

Commission's analysis and determinations

35. The Commission has found no compelling evidence on the record indicating that the rates listed in the Guidelines are out of step with market rates. The Commission notes that the Guidelines allow it to exercise discretion when a rate exceeds the maximum value listed and the costs applicant can justify that rate. The Commission considers that a piecemeal review of the rates would not be efficient. Therefore, the Commission determines that a full-scale review of the rates should be done at a later date, as necessary. Further, the Commission formally establishes the rates set out in the Guidelines as a Scale of Costs, pursuant to its authority to do so under subsection 56(2) of the Act.

Guidelines for the Assessment of Costs, Revised as of 23 December 2010

I. Introduction

1. These Guidelines, originally adopted by the Commission's Legal Directorate, have now been adopted by the Commission and will continue to be employed in the assessment of costs applications pursuant to section 56 of the *Telecommunications Act (the Act)*, sections 44-45 of the *CRTC Telecommunications Rules of Procedure (the Telecommunications Rules)* and sections 60-71 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (the Rules of Procedure)*. The Guidelines do not detract from or limit the general discretion of the Commission or a taxation officer appointed thereby. These Guidelines shall apply to all costs applications submitted to the Commission on or after 23 December 2010.

2. In *New procedure for Telecom costs awards*, Telecom Public Notice CRTC [2002-5](#), 7 November 2002, the Commission *announced that it would generally proceed to fix the costs to be paid as part of the costs award process, thereby dispensing with the follow-up taxation process. While in most instances the Commission fixes costs, it retains the discretion to proceed with the taxation process in exceptional circumstances.* As such, any reference to a costs assessment process in this document applies equally in respect of a process in which the Commission fixes or taxes costs.

...

Contribution to a Better Understanding

6. In evaluating whether an applicant has contributed to a better understanding of the issues, the considerations that the Commission will generally take into account include:

- a. whether the applicant filed evidence;
- b. whether the contribution was focused and structured; and
- c. whether the contribution offered a distinct point of view.

7. The above list of considerations is not exhaustive and the factors considered are entirely within the discretion of the Commission, depending on the circumstances of each case.

...

Appendix A: Scale of Costs
Legal Fees (Outside Counsel) – Hourly Rates

Service Provider	Completed Years of Practice	Hourly Rate
Legal Assistant	-	35 \$
Articling Student	-	70 \$
Legal Counsel	0-2	135 \$
Legal Counsel	3-5	165 \$
Legal Counsel	6-10	206 \$
Legal Counsel	11-19	250 \$
Legal Counsel	20 or more (with at least 10 years of relevant experience)	290 \$

Expert Witnesses

Service Provided	Rate
Attendance at an Oral Hearing in Order to Testify	\$1,650/day
Other Services	\$225/hour

Consultant and Analyst Fees – Hourly Rates

Service Provider	Completed Years of Practice	Hourly Rate
Analyst/Consultant	0-4	\$110
Intermediate Analyst/Consultant	5-8	\$165
Senior Analyst/Consultant	9 or more	\$225

In-house Fees – Daily Rates

Service Provider	Completed Years of Practice	Daily Rate
Legal Counsel	0-8 years	\$600
Legal Counsel	over 8 years	\$800
Articling Student	-	\$235
Legal Assistant	-	\$175
Analyst/Consultant	-	\$470

VI. Disbursements

Private residence accommodation: Claims for accommodation in a private residence will be allowed at a fixed rate of \$20 per day.

Travel by automobile: \$0.35 per kilometre

Meals:

- *Per diem* rate applies where meals are taken in connection with a hearing or meetings which take place at a distance of more than 50 kilometres from regular place of work:

- \$48.00 per day
- Meal allowance where meals are taken in connection with a hearing or meetings which take place at a distance of 50 kilometres or less:
 - Breakfast: \$10
 - Lunch: \$12
 - Dinner: \$26
- In-house photocopies: \$0.15 per copy

2011 *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011) directs \$3 million to the BPF-FPR, "expended over a seven-year period" (para. 49, App. 1)*

...

41. At the hearing, BCE repeatedly stated that the future of the A-Channel stations was uncertain and that these stations needed assistance to maintain their current programming levels. Consequently, in its tangible benefits package of 7 February 2011, BCE proposed to dedicate \$35 million to the A-Channel stations, including \$30 million for local programming and \$5 million for upgrading the master controls for the stations. BCE's proposal included a promise to keep the A-Channels open for three years, regardless of their financial performance. These benefits would sustain rather than increase the current level of local programming provided by the individual A-Channel stations. BCE submitted that the A-Channels currently provide programming beyond their regulatory obligations and stated that without benefits funding the continued operation of the A-Channels was in doubt.

...

46. In Broadcasting Public Notice 2006-74, the Commission stated that the cost of the transition to HD is a cost of doing business for both distributors and programmers. Consequently, the Commission determines that the proposed investment in master control units for the A-Channels does not qualify as a tangible benefit. The Commission requires BCE to redirect \$2 million of the money so allocated to independently produced PNI under the terms specified above and the remaining \$3 million to a new Canadian Broadcasting Participation Fund (CBPF), as proposed by the Public Interest Advocacy Centre (PIAC) in its intervention and discussed in the following section.

The Canadian Broadcasting Participation Fund (CBPF)

47. PIAC submitted a proposal for an independent fund to represent non-commercial consumer interests before the Commission in its broadcasting proceedings.

Commission's analysis and determinations

48. The Commission considers that PIAC's submission presents an appropriate starting point for the development of the CBPF's mandate, as well as insights relating to its governance and operation. PIAC stated that the goal of this new fund would be to represent non-commercial user interests before the Commission in its broadcasting proceedings. The Commission further considers that the CBPF should facilitate the participation of public interest and consumer groups across Canada in both official languages. The fund should be used to assist in the representation,

research and advocacy of these interests. The Commission therefore directs BCE to file a proposal for the CBPF within 60 days of the date of this decision. BCE should include in its proposal detailed information on the mandate of the fund, its funding and its governance structures, as well as a clear reporting mechanism. Other parties to the present proceeding will be given the opportunity to comment on the proposal in a follow-up process to be established. Further details regarding the establishment of this fund are set out in Appendix 2.

Conclusion

49. Based on the revisions set out above, the Commission directs BCE to adhere to the tangible benefits package set out in Appendix 1. At the hearing, BCE confirmed that the tangible benefits would be expended over a seven-year period and provided a payment schedule as part of its final comments. Because this decision modifies BCE's proposal in several respects, the Commission further directs BCE to file a revised payment schedule within 30 days of the date of this decision.

50. In addition, the Commission requires BCE to adhere to its payment schedule, once filed, and to submit annual reports to the Commission by 30 November of each year detailing its progress in fulfilling its tangible benefits.

2012 *Broadcasting Participation Fund*, Broadcasting Regulatory Policy CRTC 2012-181 (Ottawa, 26 March 2012)

...

Mandate

6. The BPF would:

provide costs support to public interest groups and consumer groups representing non-commercial user interests and the public interest before the CRTC in broadcasting matters under the Broadcasting Act;

support research, analysis and advocacy in both official languages directly related to ongoing CRTC broadcasting proceedings under the Broadcasting Act;

retain an independent costing officer who shall be responsible for the day-to-day operations of the BPF subject to the overriding authority of the Board; and

do all things which are in furtherance of the foregoing.

....

Commission's analysis and decisions

17. In Broadcasting Decision 2011-163, the Commission stated that the BPF should represent non-commercial consumer interests before the Commission in its broadcasting proceedings, facilitate the participation of public interest and consumer groups across Canada in both official languages, and assist in the representation, research and advocacy of these interests. After reviewing the submissions, the Commission considers that the mandate for the BPF set out in Broadcasting Decision 2011-163 remains appropriate, but that references to the official languages should be reinforced.

18. **Accordingly, the Commission directs BCE and PIAC to revise the wording of BPF's mandate to ensure that the monies will be directed to support research, analysis and advocacy in the official language of the applicant's choice in broadcasting proceedings under the *Broadcasting Act* and that the monies will not be directed to other issues or concerns of the Commission or to groups that are not making submissions to the Commission as part of a Commission broadcasting proceeding. The Commission further directs BCE and PIAC to revise the wording of the mandate to include a provision stating that the BPF will also provide efficient and accessible service in English and French, and make the documents that potential costs applicants use and consult available in both official languages. The revised wording is set out in the appendix to this regulatory policy.**

....

41. ... It is the Commission's expectation that any costs incurred as of the date of publication of this regulatory policy could be included in a costs application to the BPF.

[bold font added]

Broadcasting Participation Fund – Amendments, [Broadcasting Regulatory Policy CRTC 2012-181-1](#) (Ottawa, 7 August 2012)

...

Conclusion

11. The Commission directs BCE and PIAC to file signed and dated executed copies of the requested documents as well as the agreements amended according to the Commission's directions set out in the appendix within 30 days of the date of this regulatory policy. The Commission further directs BCE and PIAC to amend the other documents, including the Articles of Incorporation, the Costs Officer Services Agreement, and the Stakeholder Agreement to reflect all amendments to the By-law and Articles of Incorporation set out in the appendix to Broadcasting Regulatory Policy 2012-181. At that time, the Commission requires Bell and PIAC to file accurate verified French versions of the above-mentioned documents. The Commission further directs BCE and PIAC to begin immediately the process of setting up the BPF, including the process of replacing the Provisional Board, so that the BPF becomes operational to provide costs support to public interest groups and consumer groups within 60 days of the date of this regulatory policy.

12. The Commission expects that any costs incurred as of 26 March 2012, the publication date of Broadcasting Regulatory Policy 2012-181, could be included in a costs application to the BPF.

The BPF-FPR "was incorporated without share capital under the Canada Not-for-profit Corporations Act on September 6, 2012 to operate the Fund." (BPF-FPR, 2017 Annual Report, at page 5 of 9.

2013 BPF-FPR receives \$3,000,000 from BCE Inc. (or its affiliates) (BPF-FPR, *2012 and 2013 Financial Statements*, at 5 of 9, note 1)

In April 2012 BPF-FPR begins accepting costs applications in broadcast proceedings incurred on or after 26 March 2012 (BPF-FPR, *2012 and 2013 Financial Statements*, at 8 of 9, note 4)

Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction, [Broadcasting Notice of Consultation CRTC 2013-558](#) (Ottawa, 21 October 2013)

Astral broadcasting undertakings – Change of effective control, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013) directs \$2 million to the BPF-FPR (App. 3) – over a “seven-year period” – [Bell Media's BCE-Astral Tangible Benefits Report 2013-2014](#)

...

134. As a result, the Commission determines the value of the transaction to be \$4.154 billion

....

158. Astral and BCE proposed a tangible benefits package for television totalling \$124,600,000.[23] The Commission requires, however, that the amount of tangible benefits must be in accordance with the revised value of the transaction. Accordingly, the Commission has calculated the tangible benefits package to be \$175,400,000, as indicated in the table set out in paragraph 153 above. The Commission directs BCE to file by no later than 29 July 2013 a revised tangible benefits package with a value of \$175,400,00 that reflects the Commission's determinations set out below. The revised amount of the tangible benefits package should be allocated to English- and French-language initiatives in a proportion that reflects the value of the assets to be acquired. In addition, the Commission directs BCE to file an annual report on tangible benefits relating to television that result from the present decision.

160. In the Commission's view, the following proposed initiatives would primarily benefit third parties, be incremental, and constitute an improvement to the community and to the Canadian broadcasting system. Accordingly, it approves the initiatives as well as the amount proposed for each. These initiatives and the amounts proposed are as follows:

- the Harold Greenberg Fund (\$23,800,000);
- Youth programming initiatives (\$4,900,000);
- Les FrancoFolies de Montréal (\$1,750,000);
- Media Training Programs (\$2,690,000);
- Academy of Canadian Cinema and Television (\$1,250,000);
- Canadian Women in Communications (\$400,000);
- the Canadian Broadcasting Participation Fund (\$2,000,000);
- the Canadian Broadcast Standards Council (\$500,000);
- Telefilm Canada (\$5,000,000).

...

2014 On 5 February 2014 BPF-FPR states its purposes (at page 1 of 6 of BPF-FPR, *Annual Report and Business Plan 2013-2014* (Ottawa, 5 February 2014):

The purposes of the corporation, as set out in the Articles of Incorporation, continue to be to:

- (a) Provide costs support to public interest groups and consumer groups representing non-commercial user interests and the public interest before the Canadian Radio-television and Telecommunications Commission (CRTC) in broadcasting matters under the Broadcasting Act (Canada), recognizing that English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;
- (b) Support research, analysis and advocacy in the official language of the applicant's choice in CRTC broadcasting proceedings under the Broadcasting Act (Canada);
- (c) Retain an independent costs officer who shall be responsible for the day-to-day operations of the corporation subject to the overriding authority of the board of directors of the corporation;
- (d) Provide efficient and accessible service in English and French and make available in both official languages the corporation's documents necessary for potential costs applicants, including policies, costs funding criteria and annual reports; and
- (e) Do all things, which are in furtherance of the foregoing.

Simplified approach to tangible benefits and determining the value of the transaction, [Broadcasting Regulatory Policy CRTC 2014-459](#) (Ottawa, 5 September 2014)

Introduction

1. Since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the burden is on the applicant 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 public interest is served, the Commission 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 the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole. These overall requirements are referred to as the "benefits test."

...

8. The Commission notes that some interveners argued that the tangible benefits policy should be considered in the broader context of the Let's Talk TV process^{[Footnote2](#)} due to the many structural elements that will be examined in that process. However, the Commission notes that the purpose of the present proceeding is simply to clarify and streamline its administration of the benefits policy and that making its determinations public will allow interveners to comment on these determinations at the Let's Talk TV hearing if they so choose. Further, based on the record of the present proceeding, the Commission considers that maintaining its practice of imposing tangible benefits to help fulfill the public interest in transactions that are not subject to a competitive

bidding process remains appropriate. Accordingly, the Commission finds it appropriate to issue its determinations in this proceeding.

9. **As it has in the past, the Commission may choose to exercise its discretion and depart from this policy where called for to meet the public interest and based on the record before it at the time.** [bold font in original text]

...

Television – Criteria for discretionary initiatives

...

30. **Based on the above, the Commission adopts the following revised list of eligible discretionary initiatives as a guideline to applicants:**

- **independent production, which may include contributions to the CMF, any CIPF or regional production initiatives;**
- **digital media content production;**
- **funds that benefit consumers, including the Broadcasting Accessibility Fund and the Broadcasting Participation Fund;**
- **direct grants and contributions to schools that offer educational programs focussing on broadcasting-related studies, including communications and journalism, so long as these grants and contributions are unrelated to the training of persons employed by either the purchaser or the undertaking to be purchased;**
- **broadcasting industry-related training and conferences operated by third parties so long as the contributions are not used to subsidize the attendance of persons employed by the purchaser or the undertaking to be purchased;**
- **other broadcasting-related social benefits such as:**
 - **third-party research on consumer trends and needs with regard to media;**
 - **initiatives that support the participation of the four identified employment equity groups in the broadcasting industry (women, visible minorities, persons with disabilities and Aboriginals), including, for example, film festivals and contributions to organizations such as Women in Communications and Technology and the Foundation for Women in Film;**
 - **media literacy organizations such as MediaSmarts; and**
 - **archival initiatives such as contributions to the Canadian Broadcast Museum Foundation or the Canadian Communications Foundation.**

[bold font in original text]

32. The Commission recognizes that under this framework some benefits will flow to various initiatives that may or may not provide public annual reports. Public transparency may therefore be limited, and public scrutiny of these initiatives could be warranted to ensure that contributions are truly incremental, non-self-serving and spent in a manner that meets the expectations of the benefits policy.

The Commission also sees merit in standardizing and simplifying reporting requirements, as well as the concerns expressed by several interveners about the transparency of benefits reporting.

- 2015 On 24 November BPF-FPR met “with CRTC officials to update the Commission on the BPF progress”
BPF-FPR, *Annual Report 2015*, (Ottawa, 3 March 2016) at page 20.
- 2016 On 6 September 2016 BPF-FPR advises “the CRTC and BPF Stakeholders that, based on current estimates, the BPF will run out of cash around December 31, 2017, subject to receiving three annual payments of \$285,714.29 commencing in the spring or summer of 2018.” BPF-FPR, *Annual Report 2016* (Ottawa, 1 March 2017) at page 20.
- 2017 On 30 October 2017 BPF-FPR posts note on its website “alerting stakeholders that based on current estimates, a significant risk exists that the Fund will not be in a financial position to award costs in early 2018.” BPF-FPR, *Annual Report 2017* (Ottawa, 1 March 2018), at 21.

Ibid., section 6.0 (“Risk Management”):

...

The CRTC is currently considering additional funding for the Fund in the current Part 1 Proceeding (application/reference number 2017-056-0) resulting from the submission by Sirius XM Canada of its tangible benefits proposal following Broadcasting Decision CRTC 2017-114. No further funding has been received by the Fund since such initial funding and the outcome of the ongoing review by the Commission of the Sirius tangible benefits proposal is uncertain at this point.

Based on the historical rate of disbursements from the Fund (anticipated five year average of \$621,000), and if no additional funding contributions are forthcoming, the Board currently projects that the Fund could be materially depleted by early 2018, to the point that it is anticipated that funding of cost awards from the Fund could cease in whole or in part prior, on or around such time, dependent upon the number and scope of Commission broadcast proceedings as well as the participation of groups seeking cost awards in those proceedings.

....

Notes to the Financial Statements,

...

3. Financial Instruments and Risk Management

...

Liquidity risk is the risk that the Fund cannot meet a demand for cash or fund its obligations as they become due. As of the release date of these financial statements [1 March 2018], the working capital of the Fund is diminished to the point that it is likely that costs awards may need to be suspended within the coming year unless new sources of funding are approved by the CRTC or are obtained through other sources. There are no committed new sources of funding known to the Fund at this time. The Fund manages its financial obligations carefully and will not incur any

liabilities, including the approval of costs awards, beyond the availability of its working capital.

....

Sirius Canada and XM Canada – Transfer of shares, [Broadcasting Decision CRTC 2017-114](#) (Ottawa, 26 April 2017).

...

80. The applicant did not identify any initiatives to be funded by way of the discretionary portion (\$4.79 million). Consequently, in the absence of a tangible benefits package submitted by the applicant, the Commission considers it appropriate to provide the licensee with the option to allocate the discretionary portion of the tangible benefits to the Broadcasting Participation Fund (BPF). The BPF is an independent fund that helps public interest and consumer groups that represent non-commercial user interests and the public interest to offset the costs of participating in the Commission's broadcasting proceedings.

81. In the Tangible Benefits Policy, the Commission recognized the important role that the BPF plays in helping non-commercial user interests and the public interest to offset the costs of participating in Commission proceedings, and included the BPF within its list of eligible discretionary initiatives for tangible benefits on television. However, the BPF does not limit funding solely to television proceedings and participants to all broadcasting proceedings, including those related to radio, are eligible to receive funding. In this respect, while the BPF was not explicitly included as an eligible initiative within the radio framework, it does not diminish its relevance or importance as a tool to promote the participation of Canadians in Commission radio proceedings.

82. Directing the remaining \$4.79 million of the tangible benefits package to the BPF would ensure that the voices of Canadians continue to be reflected on the record of broadcasting proceedings in the short and medium term.

83. The Commission generally requires licensees to distribute tangible benefits equally over seven years to help mitigate the concentration of tangible benefits in the final years. However, in this instance, the Commission considers that if the contribution was to be paid out in two equal payments in the first two years, it would provide the BPF with the necessary flexibility to effectively manage its operations.

84. Therefore, in the absence of a proposed benefits package, the Commission is providing the applicant with the option to direct the 1% discretionary portion of the tangible benefits package to the BPF, thereby removing the need for further process. Alternatively, the applicant may submit its own proposal for the discretionary portion of the tangible benefits for approval by the Commission. Should the applicant opt to submit its own proposal, no amount of the tangible benefits can be allocated to the licensee's staff.

85. Accordingly, with respect to the discretionary initiatives, the Commission directs the applicant, by 26 May 2017, to either:

- provide written acceptance of the Commission's proposed allocation of the discretionary portion to the Broadcasting Participation Fund (paid in two equal installments in year 1 and 2); or
- submit, for the Commission's approval, a proposal for the discretionary portion of the tangible benefits.

...

Conclusion

...

- The Commission **directs**, by **26 May 2017**, that the applicant either:
 - provide written acceptance of the Commission's proposed allocation of the discretionary portion to the Broadcasting Participation Fund (paid in two equal installments, one in year 1 and one in year 2); or
 - submit, for the Commission's approval, a proposal for the discretionary portion of the tangible benefits.

2018 In *Tangible benefits proposal by Sirius XM Canada Inc.*, [Decision CRTC 2018-91](#) (Ottawa, 16 March 2018) the CRTC approved

... Sirius XM Canada Inc.'s (Sirius XM) proposal to contribute \$1 million to the Broadcast Participation Fund (BPF), paid in two equal installments of \$500,000 in years 1 and 2 as part of the tangible benefits approved in Broadcasting Decision 2017-114

and directed

...Sirius XM to contribute an additional \$596,666 to the BPF, expended in equal amounts over the following five consecutive broadcast years from years 3 to 7.
[Italics in original text]

BPF-FPR 2017 Annual Report, p. 8, warns of fund depletion:

Based on the historical rate of disbursements from the Fund (anticipated five year average of \$621,000), and if no additional funding contributions are forthcoming, the Board currently projects that the Fund could be materially depleted by early 2018, to the point that it is anticipated that funding of cost awards from the Fund could cease in whole or in part prior, on or around such time, dependent upon the number and scope of Commission broadcast proceedings as well as the participation of groups seeking cost awards in those proceedings.

[Broadcasting Decision CRTC 2018-91](#) directs Sirius to allocate \$1.597 million to BPF-FPR (paragraph 38)

2019 CRTC written public submission to the Legislative Review Panel (undated, but 2019), Cat. No.: [BC92-102/2019E-PDF](#).

...

17: The CRTC makes its decisions based on the evidence presented on the public record of its proceedings. The communications companies that participate in CRTC proceedings generally have substantial internal resources and can afford to retain external consultants and lawyers, as well as to commission research to put forward their views and evidence in a proceeding. Consumer groups and public interest

organizations are typically not-for-profit, volunteer-run organizations with limited monetary resources to develop similarly sophisticated submissions.

18: The Broadcasting Act lacks a legislated mechanism to help support consumer and public interest organizations' participation in broadcasting proceedings. Instead, in 2011, as part of an ownership transaction involving BCE Inc. and CTVglobemedia, the CRTC required, as one of the conditions of approval, the establishment of an independent broadcasting participation fund (BPF) to offset the costs of public interest groups that participate in CRTC broadcasting proceedings.¹⁹ The initial funding was \$3 million, and as a result of two other merger and ownership transactions, an additional \$3 million has been added.²⁰ The BPF is administered independently from the CRTC....

19: *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011

20: An additional \$2 million from the BCE-Astral acquisition in 2014 (*Astral broadcasting undertakings – Change of effective control*, Appendix 3, Broadcasting Decision CRTC 2013-310, 27 June 2013) and \$1 million from the Sirius XM Canada Inc. change in ownership structure in 2018 (*Tangible benefits proposal by Sirius XM Canada Inc.*, Broadcasting Decision CRTC 2018-91, 16 March 2018).

Broadcasting and Telecommunications Legislative Review Panel, [What we heard](#) (June 2019)

...

p. 29

FUNDING FOR PUBLIC PARTICIPATION IN REGULATORY PROCEEDINGS

A number of parties submitted that current funding mechanisms for participation in proceedings under communications statutes are insufficient, inconsistently applied and overly cumbersome to access. Some parties proposed the creation of permanent, stable funding to allow public interest groups to participate more effectively in regulatory proceedings under all three statutes

....

2020 Broadcasting and Telecommunications Legislative Review Panel, [Canada's Communications Future: Time to Act](#), Final Report (Ottawa, January 2020)

...

Overview, pp. 17-18

...

Greater participation by public interest groups is vital if Canadians are to have confidence that the institutions are working in their best interest. We are recommending improved funding for public interest participation and the creation of a Public Interest Committee, funded by the CRTC and composed of not more than 25 individuals with a wide range of backgrounds, skills and experience. These recommendations would ensure that the diverse range of public, civic, consumer and small business interests — often unorganized or unrepresented in regulatory proceedings — have their voices heard. We recognize that more resources would be required to support a more proactive regulator, and expect those to be generated

through fees paid by all those to whom the *Broadcasting Act* and *Telecommunications Act* apply.

....

[p. 21]

...

12. We recommend that to promote public interest group participation in regulatory proceedings:

- the *Broadcasting Act* be amended to provide the CRTC with explicit authority to award costs, similar to the authority granted under subsections 56(1) and 56(2) of the *Telecommunications Act*;
- ISED establish a funding program to support participation in proceedings under the *Radiocommunication Act*; and
- the provisions concerning cost awards in the *Broadcasting Act* and *Telecommunications Act* be amended to include appeals that flow from decisions so that public interest intervenors are not left behind on appeals.

13. We recommend that the *Broadcasting Act* and the *Telecommunications Act* be amended to include public interest participation funding in the operational funding requirements of the

[p. 22]

CRTC, and that this be included in the expenditure plans for Broadcasting Activity and Telecommunications Activity costs recovered under the Broadcasting Licence Fee Regulations and Telecommunications Fee Regulations, respectively. We further recommend that ISED's operational funding include amounts to be directed to public interest participation.

14. We recommend that the CRTC convene a public consultation on establishing a transparent process for funding public interest participation regarding telecommunications or broadcasting based on the following elements:

- to ensure transparency, the CRTC would be required to report quarterly on the status of cost claims and their disposition;
- to ensure timeliness, the funding process would be subject to a three-month service standard with a six-month upper limit for the completion of cost awards. The CRTC would be required to report annually on compliance with this standard; and
- to eliminate lengthy and adversarial processes, the new process would be administered either by CRTC staff directly or delegated to an independent organization modelled along the lines of the Broadcasting Participation Fund.

15. We recommend that the CRTC Act be amended to require the creation of a Public Interest Committee funded by the CRTC and composed of not more than 25 individuals with a wide range of backgrounds, skills, and experience representing the diversity of public, civic, consumer, and small business interests, and including Indigenous Peoples. The CRTC should be encouraged to meet with representatives of Indigenous Peoples and communities outside of the Committee structure. The

Committee should also include, as an ex officio member, a representative of the Accessibility Advisory Committee called for in Recommendation 88.

...

[p. 55]

Notwithstanding the mechanisms that are in place, public interest groups face several challenges, including resource constraints that limit the effectiveness of their participation and their contribution to the overall quality of the proceeding in question. There is a significant disparity in the resources available to these groups relative to industry participants in CRTC proceedings. This affects the public interest groups' ability to undertake research, retain experts, and develop in-house expertise. This situation is exacerbated by the uncertainty associated with cost awards, whose claimants do not know how much of their claim will be approved when their participation decisions must be made. The administration of telecommunications cost awards and the BPF awards are not aligned in terms of process, source of funds, timeliness, administrative burden, or legislative basis. Neither process provides funding of cost awards outside the context of CRTC proceedings, including GiC and court appeals of CRTC decisions. There are also challenges related to the timeliness of payments. The cost award process in telecommunications proceedings has become lengthy, resulting in increased delays in the adjudication of cost claims and negatively impacting public interest participation. More focus and attention must be brought to this issue, along with a streamlined reimbursement process. Similar concerns do not appear to exist within the process administered by the BPF regarding broadcasting proceedings. The process to obtain funding is also adversarial and cumbersome. Current CRTC practice is to conduct a process in which the industry participants in the proceeding can challenge the claimant's expenses, contributing to conflict and delay. The cost award process should be administered by dedicated staff with expertise in this area in order to ensure consistent claims determinations. 1.5.1 Stable, Predictable Funding As a matter of principle, we believe there must be recognition of and support for the role of public interest groups in communications regulatory proceedings as a critical element in ensuring the credibility of and trust in the regulatory process. Such support is particularly urgent at present: the administrative procedure involved in cost awards in telecommunications proceedings is becoming unwieldy, and funding for cost awards in broadcasting proceedings is dwindling. Further, the impact

[p. 56]

of the lack of cost awards under the Radiocommunication Act will increase as the spectrum and device regulatory framework for future 5G, machine-to-machine communication, and the Internet of Things is developed. It is essential to find a means for ensuring stable, predictable, and long-term funding for public interest groups. This funding should support participation in proceedings, development of in-house expertise by public interest groups, and involvement in broader public consultation processes. It should also create a uniform model for telecommunications and broadcasting proceedings, with a parallel approach to radiocommunication proceedings. A number of models have been proposed to assure such funding. One model proposes a multi-year commitment by government

rather than costs imposed on telecommunications service providers. We are concerned that this may be unrealistic and could be subject to budgetary uncertainty. Another approach explored in the United Kingdom is the creation of an operationally independent “consumer advocate”. This approach is funded directly by government, whose mandate could include conducting research, promoting the consumer interest, advocating on behalf of consumers in key policy and regulatory proceedings, and advising industry on achieving improved consumer outcomes. While we propose a new Public Interest Committee in Recommendation 15 below, which would help inform the CRTC in advance of formal proceedings, there are concerns with an approach that establishes a single public interest advocate to participate in the proceedings themselves. Funding a single entity to advocate on behalf of consumers might narrow the diverse views that would be put forward relative to funding for independent public interest groups that represent a variety of perspectives. Moreover, such an advocate reliant on a single source of government funding may be constrained in its operational independence. Public interest funding that supports multi-stakeholder involvement in proceedings should be considered an essential element of regulatory operations. To ensure a proper and consistent statutory requirement for funding, cost award powers similar to those set out at subsections 56(1) and 56(2) of the Telecommunications Act should be added to the Broadcasting Act. Similarly, under the Radiocommunication Act, participation in consultations held by ISED should be supported with departmental funding. To this end, ISED should establish a program to assess and grant requests for funds from public interest groups that participate in proceedings under that Act.

....

BPF-FPR, *Annual Report 2020*, (“Report from the Board of Directors”)

...

The issue of financing for the BPF and possible fund exhaustion was always on our minds during the year (and continues to be so). To that end, we reached out to claimants to understand and gather data on the anticipated draw on funds in 2020 and 2021. Based on this information, we oversaw the preparation of a financial summary outlining current and prospective claims and operating costs to show fund depletion. Meetings were held with officials of CRTC and the Department of Canadian Heritage [on 8 January 2021]. A letter was sent to the Minister of Canadian Heritage [on 29 January 2021] underlining that, by the end of 2022, the BPF would be unable to fulfill its mandate which would likely result in its probable termination. In light of Bill C- 10, an *Act to amend the Broadcasting Act*, we requested that bridge financing be provided to sustain the operations of the BPF until the new public consultation procedures proposed in the bill are put in place.

A similar submission was sent to Ian Scott, Chair of the CRTC as well as Stephen Guilbeault, Minister of Canadian Heritage [26 January 2021], and Philippe Champagne, Minister of Innovation, Science and Economic Development [29 January 2021]. The submission was sent to all members of the Standing Committee on Canadian Heritage [15 February 2021] with a request to the Committee Clerk to appear before the Standing Committee in its study of Bill C- 10. In the context of the

pre-budget consultations, a submission outlining the Fund's financial situation and requesting bridge financing was made to the Minister of Finance [15 February 2021].

....

Notes to the Financial Statements Year Ended December 31, 2020

1. Nature of Operations

...

The Fund has received finite funds as a result of CRTC Decisions that determined that an applicant desiring to change the control, or effective control, of a broadcasting undertakings, should provide financial contributions to this Fund. The timing and amount of future funding is not determinable by the Fund. The existing funds are finite and, as a result, the Fund may lack sufficient funds to approve and pay costs awards in respect of costs awards applications received by the Fund.

....

2021 21 April 2021 – PIAC and FRPC file a Part 1 application asking the CRTC to stabilize funding of the Broadcasting Participation Fund

On 12 July 2021 BPF-FPR wrote the CRTC to update it on the Fund's financial situation (BPF-FPR, *Annual Report 2021*, Appendix IV)

12 July 2021 BPF-FPR warned potential applicants for cost awards that "the Fund will be materially depleted in 2022 unless significant additional funds are received"; BPF-FPR Board reports that it had met with officials at the CRTC and Department of Canadian Heritage regarding the potential depletion of the Fund – "Caution to Potential Applications for Cost Awards", [Letter to Stakeholders](#) (Ottawa, 12 July 2021)

On July 22, 2021,

the Board of Directors for the Broadcasting Participation Fund approved the internal restriction of \$115,000. These restricted funds have been set aside to cover expenses related to the ongoing costs of running the fund should the fund go into an extended hiatus and will ensure that sufficient funds remain available to cover final expenses in the event that the fund is ultimately unable to secure sufficient ongoing funding and is required to be wound down. (Notes to the Financial Statements – Cont'd. Year Ended December 31, 2021 (at 10), INTERNALLY RESTRICTED RESERVE FUND)

On 5 August BPF-FPR met with Deputy Director of Policy, Office of the Minister of Canadian Heritage (Ibid.)

CRTC, *Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Fund*, Broadcasting, [Commission Letter addressed to John Lawford \(Public Interest Advocacy Centre\) and Monica Auer \(Forum for Research and Policy in Communications \(FRPC\)\)](#) (Ottawa, 6 August 2021)

...

Subject: Part 1 application asking the CRTC to stabilize the funding of the Broadcasting Participation Fund

....

2021

This letter is in response to the above-noted application, dated 21 April 2021, in which the Public Interest Advocacy Centre (PIAC) and the Forum for Research and Policy in Communications (FRPC) (collectively referred to as the applicants), requested that the CRTC initiate public proceedings with the purpose of stabilizing the funding for the Broadcasting Participation Fund (BPF) under subsections 5(1) and 5(3) of the *Broadcasting Act* and Part 1 and section 3 of the *Canadian Radio-television and Telecommunications Rules of Practice and Procedure*.

...

The CRTC recognizes the important role played by Canadian public interest and consumer organizations and the needs of these organizations for resources to support their participation in CRTC broadcasting proceedings. However, the *Broadcasting Act*, unlike the *Telecommunications Act*, does not allow the CRTC to award costs in relation to a CRTC broadcasting proceeding. It was for that reason that the CRTC approved the proposal for the establishment and operation of the BPF in 2012^{[Footnote 2](#)} and [amended the CRTC Tangible Benefits Policy in 2014](#) to, among other things, explicitly identify the BPF and the BAF in its list of eligible discretionary initiatives.

The CRTC is also aware that “supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission” under the *Broadcasting Act* is currently a proposed amendment set out in Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* (Bill C-10).

...

The CRTC will be examining Rogers Communications Inc.’s application to acquire all of the issued and outstanding shares of Shaw Communications Inc. (Rogers/Shaw transaction) in the context of a future proceeding. This application will be filed and considered based on the CRTC’s existing policies and regulatory requirements and all interested stakeholders will be able to comment on the application and the proposed tangible benefits package. However, the CRTC does not consider that a review of the 2014 Tangible Benefits Policy, concurrent with the consideration of the Rogers/Shaw transaction, would be in keeping with the principles of regulatory certainty and predictability upon which the agreement between Shaw Communications Inc. and Rogers Communications Inc. was negotiated and concluded.

With respect to tangible benefits, the CRTC recognizes that the nature of funding through tangible benefits already results in unstable and unpredictable ongoing support for the BPF and that when licensees do not make their scheduled tangible benefits payments that exacerbates the instability and unpredictability. In January 2021, CRTC staff were made aware by the BPF Cost Officer that there may be issues related to Sirius XM Canada making its full tangible benefit payments to the BPF. Though the CRTC acknowledges that some broadcasting undertakings may have been and continue to be negatively impacted by the COVID-19 Pandemic, Sirius XM Canada has been reminded of its existing and ongoing obligations with respect to

2021 the payment of tangible benefits and that a failure to remit required payments would be taken into account by the CRTC at licence renewal.

The CRTC expects all licensees to abide by their regulatory obligations and make their required contributions consistent with those obligations. Sirius XM Canada has assured CRTC staff that despite delays related to the COVID-19 Pandemic, full payments of tangible benefit obligations have and are being made. The BPF has further confirmed that the Sirius XM Canada tangible benefits payments are now up to date.

In light of the above, the CRTC, by majority decision, is declining to launch the proceedings requested by the applicants.

However, as previously mentioned, Bill C-10 proposes to provide the CRTC with the explicit authority “to make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of supporting participation by persons, groups of persons or organizations representing the public interest in proceedings” before the CRTC under the *Broadcasting Act*.

If the Act is amended in this way or in another way that would provide a similar authority, the CRTC would be able to develop new regulations that could represent a more stable source of funding for an organization like the BPF, or another fund that would support public interest participation. That being said, the Commission recognizes the issue of support for Canadian public interest and consumer organizations to participate in CRTC broadcasting proceedings is both broader and more immediate than Bill C-10, which itself is currently only draft legislation that is before Parliament. Accordingly, the Commission wishes to inform you that we have directed staff to organize a virtual meeting in the coming months in order to engage with Canadian public interest and consumer organizations.

This meeting will serve to enhance understanding of the challenges and barriers facing these organizations when they intervene in Commission proceedings and begin the process of identifying the most appropriate and effective model(s) of funding to provide support for such organizations in the future.

The CRTC, by majority decision, considers this application closed and deems this application to be returned.

....

On 18 August 2021 BPF-FPR met with Department of Canadian Heritage officials regarding its situation (BPF-FPR, *Annual Report 2021*, Appendix IV)

On 27 August 2021 BPF-FPR announces it will reduce costs awarded by 25%:

As of October 1, 2021, \$0.75 on the dollar will be paid on claims received for work performed after October 01, 2021. When and if significant funds are received, the Fund will review reimbursement of the remaining \$0.25.

BPF-FPR, NOTICE TO BPF STAKEHOLDERS AND CLAIMANTS REGARDING BROADCASTING PARTICIPATION FUND DIMINISHMENT, [Press Release](#) (Ottawa, 27 August 2021)

On 7 September 2021 BPF-FPR wrote “to CRTC Chair re further depletion of BPF funds and plans to pay claimants \$0.75 on the dollar of each claim received.” (*Ibid.*)

2021 CRTC, *Invitation à une table ronde virtuelle | You are invited to a virtual roundtable!* (Ottawa, 6 December 2021)

...

We want to hear from you about your organization's experience with the CRTC's processes, including any challenges or barriers you may have encountered. If you have not participated in the past, we would like to know why.

If you would like to participate in a half-day roundtable via Zoom in early February 2022, we invite you to read more about the sessions and reply this by Friday, December 10, 2021.

....

2022 **Shaw Communications Inc. – Change of ownership and effective control, [Broadcasting Decision CRTC 2022-76](#)** (Ottawa, 24 March 2022)

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.

...

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.

...

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.

...

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.

...

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.

...

70. ... 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.

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

Appendix 2, “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”

“The Broadcasting Participation Fund (\$725,439) in equal annual payments over three consecutive broadcast years”

2023

Innovation, Science and Economic Development Canada, [Statement from Minister Champagne concerning competition in the telecommunication sector](#), (Ottawa, 31 March 2023)

...

“Today, I am informing Canadians that I have secured on their behalf unprecedented and legally binding commitments from Rogers and Videotron. And, after imposing strict conditions, the spectrum licences of Freedom Mobile will be transferred to Videotron.

...

“The establishment of an effective national fourth player who can compete and drive down prices has been the goal of successive governments for decades. Today’s announcement allows for the establishment of that fourth national player for the first time in Canada’s history.

“If Canadians do not begin to see a clear and meaningful reduction in prices within a reasonable amount of time as a result of this decision, I will have no choice but to use further legislative and regulatory powers to drive down prices.

“Canadians rightfully expect and deserve more from their telecom sector. We will continue to ensure the industry meets these standards, including improving competition, reliability and affordability.”

5 April 2023 e-mail from BPF-FPR Costs Officer noting that BPF-FPR Board has decided to extend its 25% reduction on costs awards

Appendix 5 CRTC proceedings in which public participation was supported by BPF-FPR

BPF-FPR Proceeding description	CRTC PROCEEDING
Let's Talk TV - BDU regulations	1. 2015-304
2013 CBC licence renewal	2. 2011-379
Application - Small Market Local Programming Fund	3. 2012-0755
Application for a national, multilingual multi-ethnic TV service	4. 2018-127
Application for change in ownership (BCE_Astral)	5. 2013-106
Application for change in ownership (BCE-Astral)	6. 2012-370
Application for ownership change	7. 2012-295
Applications for mandatory distribution & renewal	8. 2013-19
Applications for radio in Toronto	9. 2012-126
BCE/Astral - tangible benefits	10. 2013-1120
Call for Comments on Future Programming Distribution Models	11. 2017-359
Call for radio station applications	12. 2015-399
Canadian programming expenditures policy	13. 2019-91
Category C national news discretionary services	14. 2013-394
CBC - licence renewal	15. 2019-379
CBC - local programming	16. 2013-1475
CCTS structure and mandate	17. 2015-239
Change in ownership (BCE & Corus services)	18. 2018-95
Change in ownership (BCE & V-Media)	19. 2019-358
Change in ownership (Shaw & Corus)	20. 2016-22
Changes in ownership (DHX & Disney channels)	21. 2014-162
Commercial radio policy review	22. 2020-374
CRTC RoPP	23. 2015-115
English-language closed captioning accuracy	24. 2015-325
	25. 2019-9
Exemption order - BDUs < 20K subs	26. 2017-201
Large ownership groups	27. 2016-225
Let's Talk TV	28. 2014-190
Licence application	29. 2014-1167
Local and Community TV Policy Review	30. 2015-421
Measuring local requirements for conventional TV stations	31. 2013-529
Monitoring linear and on-demand community services	32. 2020-227
New annual digital media survey	33. 2019-90
New radio station applications	34. 2014-102
Provision of Paper Bills by Communications Service Providers	35. 2020-336
	36. 2020-81
Radio station applications	37. 2016-465
Renewal of Services with Mandatory Distribution	38. 2017-365
Retail sales practices of large carriers	39. 2018-246

BPF-FPR Proceeding description	CRTC PROCEEDING
Review - Local Programming Improvement Fund	40. 2011-788
Rogers - amendment to French-language community TV	41. 2013-1334
Rogers renewal of OMNI	42. 2014-26
Standard requirements for television services	43. 2016-195
Tangible benefits policy	44. 2013-558
	45. 2013-563
	46. 2013-572
Terrestrial BDUs - renewals	47. 2016-197
	48. 2017-160
TVA - licence amendments	49. 2017-1028
TVSP Code of Conduct	50. 2015-105
Other proceedings	51. 2012-114
	52. 2012-507
	53. 2012-516
	54. 2013-1693
	55. 2013-1746
	56. 2013-800
	57. 2014-0417
	58. 2014-1056
	59. 2014-1130
	60. 2014-1178
	61. 2014-541
	62. 2014-79
	63. 2014-85
	64. 2015-0051
	65. 2015-0217
	66. 2015-0379
	67. 2015-0414
	68. 2015-0560
	69. 2015-0576
	70. 2015-0701
	71. 2015-0726
	72. 2015-085
	73. 2015-111
	74. 2015-1264
	75. 2015-1264-0
	76. 2015-134
	77. 2015-136
	78. 2015-141
	79. 2015-191
	80. 2015-87

BPF-FPR Proceeding description	CRTC PROCEEDING
	81. 2015-97
	82. 2016-0056
	83. 2016-0063
	84. 2016-0063-5
	85. 2016-0064
	86. 2016-0065-01
	87. 2016-0067-7
	88. 2016-0080-0
	89. 2016-063
	90. 2016-064
	91. 2016-065
	92. 2016-067
	93. 2016-098
	94. 2016-349
	95. 2017-050
	96. 2017-0560
	97. 2017-0685
	98. 2017-0909
	99. 2017-0975
	100. 2017-1
	101. 2017-1065
	102. 2017-520
	103. 2019-0700
	104. 2019-1019
	105. 2019-1026
	106. 2019-20
	107. 2019-600
	108. 2020-492
	109. Bell Part 1
Various broadcasting applications	110. 2013-330
	111. 2013-448
Videotron - 2% community channel contribution	112. 2013-1216
	113. 2013-1216-5