



July 19, 2023

Filed Electronically

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

Dear Mr. Doucet:

Re: Application No. 2023-0373-3: Part 1 Application for an expenditure order amending certain conditions of licence for undertakings that form the Rogers Media Group, Broadcasting Decision CRTC 2017-151

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.
2. In this Part 1 application, Rogers Media Inc. (Rogers) requests the Commission to:

...issue orders pursuant to subsection 11.1(2) of the Act replacing [conditions of licence requiring Rogers Group to spend 5% of their annual gross revenues on programs of national interest (PNI) and 75% of those expenditures must be made to an independent production company] in order to allow Rogers to direct 100% of our current PNI expenditure requirements to independent production companies provided that we are also given the flexibility to devote those expenditures to other television program categories (as defined in Broadcasting Regulatory Policy CRTC 2010-808, Definitions for television program categories BRP 2010-808).¹
3. The WGC **opposes this application.**
4. Rogers's application joins several other broadcaster applications over recent months that effectively seek to overturn or drastically alter fundamental pillars of the Canadian broadcasting regulatory

¹ Rogers application, para. 3.

framework, doing so in the guise of a Part 1 application, entirely outside of a policy proceeding, and while the Commission is in the middle of the modernization of the Canadian broadcasting system following passage of Bill C-11, the *Online Streaming Act*, pursuant to Broadcasting Notices CRTC 2023-138, -139 and -140.² These applications are inappropriate and clear attempts by broadcasters to undermine the larger policy framework review by undercutting its foundations before it can even be built. These applications raise issues that are far more appropriately dealt with in the context of the very policy framework proceeding the Commission has already embarked upon. The applications, if granted, would seriously hurt Canadian creators, deprive Canadian audiences of programming choice, and fail to further the objectives of the *Broadcasting Act* (the Act). The WGC has opposed, or will oppose, these other applications on similar grounds, as we oppose this one.

5. Rogers' characterization of its application as a "small adjustment"³ is frankly ridiculous. In proposing to provide "increased flexibility to Rogers to invest in all Canadian program categories other than news and sports,"⁴ Rogers is effectively proposing to eliminate PNI as a concept for its group. The very definition of PNI is in relation to the specific genres of drama, documentary, and certain awards shows. PNI has no effective meaning outside of those genres—it's definition is essentially: a) Canadian programming, b) in the PNI genres. If you eliminate the applicability of those genres, you eliminate PNI, and are left simply with Canadian programming, and not PNI. The entire purpose of PNI is to single out these particular genres that are in need of support. As the Commission stated when it created PNI:

The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.⁵

6. PNI was created as a foundational element of the Group-based licensing policy,⁶ it was continued in an even more central role in the "Let's Talk TV" "Create" decision⁷ of 2015, and it was upheld through the group-based licence renewal proceedings of 2017 and 2018, including the PNI reconsideration decision in which the Governor in Council found the issue to be so vitally important that it sent it back to the Commission after the Commission had set PNI levels too low.⁸ Killing PNI in a Part 1 application is not a "small adjustment". It is a strike at the jugular.
7. As Rogers is well aware, the *Broadcasting Act* has recently been amended by Bill C-11, and the modernization of the Canadian broadcasting system following its passage is now underway, pursuant to Broadcasting Notices CRTC 2023-138, -139 and -140. These Notices form part of a structural review

² Other such applications include Corus Entertainment Inc., Application No. 2022-0946-0, and Bell Media Inc., Application No. 2023-0379-1.

³ Rogers application, para. 5.

⁴ Rogers application, para. 5.

⁵ Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

⁶ Broadcasting Regulatory Policy CRTC 2010-167.

⁷ Broadcasting Regulatory Policy CRTC 2015-86.

⁸ Broadcasting Decision CRTC 2018-335.

of the regulatory framework for Canadian broadcasting, including PNI, and such a structural review is by far the more appropriate place for the Commission to consider the best way(s) for traditional broadcasters like Rogers to contribute to Canadian programming, including the types to which they must contribute. It is through this process, and only this process, that regulatory equity—the very thing that broadcasters keep insisting they want in the broadcasting system—can be achieved, because it is only through a structural review that system-wide equity, taking into account all the elements of that system, can be properly considered.

8. We submit that this alone is reason enough for the Commission to dismiss Rogers' application in favour of addressing these issues at a structural level. Rogers makes several arguments in its application, however, that we will also address.
9. Despite making a request that goes to the very heart of the social, cultural, and economic objectives of the *Broadcasting Act*, Rogers makes virtually no mention of these objectives anywhere in its application. Rogers is clearly interested in the technical workings of section 11.1(2) of the Act,⁹ and a cherry-picked rendition of the draft Policy Direction¹⁰ that represents approximately 6% of that text, but there is no broader discussion of the objectives of the Act and how this proposal fits with them. It is an entirely unserious treatment of this important subject, and a good example of why such issues should not be dealt with, piecemeal, in Part 1 applications generally.
10. Rogers' application is also another example of broadcasters' attempts to reduce their regulatory obligations by pitting one type of important Canadian programming against another. Rogers itself has tried this before, in the context of Broadcasting Notice of Consultation CRTC 2020-336, *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic*. In its decision in that proceeding, the Commission stated:

Rogers Media Inc. (Rogers) stated that it wishes to redirect, by the end of its licence term (i.e., 31 August 2022), shortfall amounts relating to PNI expenditures and contributions to FACTOR from the 2019-2020 broadcast year to news and information programs. In support of its proposal, Rogers explained that this would, among other things, allow it to continue producing quality news and information content, which is consistent with the Commission's third expected outcome relating to the maintenance of news and information programming.

The CMPA and the WGC opposed Rogers' proposal because it unfairly positions one type of important Canadian programming against another. The WGC added that Rogers benefits from the current flexibility for supporting news programming and from the synergies of a vertically integrated entity, and has the lowest PNI expenditure threshold of any English-language group (5%).

The Commission notes that although Rogers' proposal would meet the third expected outcome set out in the Notice (i.e., the maintenance of news and information programming), it would come at the expense of supporting the production of PNI, the

⁹ Rogers application, paras. 1, 3.

¹⁰ Rogers application, para. 43.

primary vehicle for conveying Canadian values and stories. Accepting Rogers' proposal would also imply that the Commission is prioritizing one type of Canadian programming (news programs) over another (PNI), whereas both types, as noted by the CMPA and the WGC, are important and essential for the support of the policy objectives of the Act.

Consequently, the Commission considers that it would not be appropriate to adopt Rogers' proposal.¹¹

11. The Commission has effectively already spoken on this matter, yet here Rogers is again, making essentially the same arguments. We submit that these arguments were poor in relation to the COVID-19 regulatory relief proceeding, and they are poor now. At least then, however, Rogers appeared to actually be making commitments with respect to news and information programming. In the present application, Rogers makes it clear that PNI spending will *not* be directed into news.¹² Rogers states that they, "demonstrate that by providing increased flexibility to Rogers to invest in all Canadian program categories other than news and sports, we will fulfill the Commission's objective of supporting Canada's independent production sector without compromising funding for other important program genres."¹³
12. The example of "other important program genres" that Rogers provides is not news or PNI, but *Canada's Got Talent*, a program that Rogers calls both "expensive and difficult to produce,"¹⁴ yet also has such "success and popularity"¹⁵ that it clearly didn't need the support of the PNI policy to get produced in the first place, *and* is apparently siphoning off money from news and local programming to finance it.¹⁶ So much for Rogers' argument that PNI must be sacrificed for important news and information programming! Now, PNI *and* news must be sacrificed for a foreign format buy reality TV show that they "can commercialize and make profitable."¹⁷ And in one of the most striking logical sleight-of-hands, Rogers actually argues that it is diverting money away from news to put into *Canada's Got Talent*, because *Canada's Got Talent* is more profitable, which Rogers has to do so that it can invest in news, which it is diverting money away from. This vies in head-scratching power only with Rogers' claim that the requirement to invest in PNI means that half their PNI expenditure is on *Hudson & Rex*, with leaves them with, "a limited budget to invest in other drama projects."¹⁸ In other words, the requirement to invest in drama is preventing Rogers from investing in *other* drama, which they don't want to invest in because that's PNI. The mind reels.
13. To be clear, nowhere is Rogers actually making any commitment to increase its investment in local news and information programming. Not that that would be alright if they did, for the reasons discussed above. News and information are important programming, but so is PNI, and one should

¹¹ Broadcasting Decision CRTC 2021-274, at para. 86.

¹² Rogers proposes to expand flexibility on spending otherwise dedicated to PNI to, "programs drawn from categories 2(a) Analysis and interpretation, 8(a) Music and dance other than music video programs or clips, 9 Variety, 10 Game shows, and 11(a) General entertainment and human interest, and 11(b) Reality television."

¹³ Rogers application, para. 5. Emphasis added.

¹⁴ Rogers application, para. 25.

¹⁵ Rogers application, para. 30.

¹⁶ Rogers application, para. 19.

¹⁷ Rogers application, para. 19.

¹⁸ Rogers application, para. 17.

not come at the expense of the other. But Rogers is *not even* asking to take PNI money and put it into news. Rogers is asking to take PNI money and put it into *Canada's Got Talent*, a program that is already being made and is successful. Which implies that ultimately, the money is going to Rogers' bottom line.

14. Rogers' proposal to direct 100% of their current PNI expenditure requirements to independent production companies is not a meaningful regulatory *quid pro quo*, and it certainly provides the members of the WGC with no benefit. There is no reason to think that most, if not all, of Roger's PNI expenditures aren't *already* going to independent production companies, given how PNI is financially structured, including the use of federal tax credits and other financing. Indeed, Rogers provides no evidence of an incremental benefit to independent production companies. Bu even if there were such a benefit, it would accrue to those companies alone. The creators of PNI programming, including Canadian screenwriters, who do not work on reality programming, would be severely damaged by the decision to effectively eliminate the requirement for any scripted programming at Rogers. Rogers is offering nothing to those creators.
15. Rogers argues being granted "PNI flexibility" will not materially impact PNI programming in Canada.¹⁹ Rogers' argument is essentially that it is a smaller player in the overall production sector, so the negative impact this will have—and there will be a negative impact is clear—will be proportionally small. But Rogers knows full well that whatever "flexibility" it receives in this instance will be requested by every other applicable broadcasting undertaking in the broadcasting system, and the Commission will have set a striking precedent to granting it. As noted above, it's happening already now, with a virtually identical request by Bell Media Inc. currently with the Commission.²⁰ The granting of Rogers' application would lead to a cascade of similar applications and place the Canadian broadcasting system on a downward spiral of deregulation that would kill the promise of the *Online Streaming Act* before it even got a chance. This is precisely the concern we pointed out in our written submission to Broadcasting Notice of Consultation 2023-138.²¹
16. As other broadcasters also do, Rogers cites the well-known fact that until now, traditional Canadian broadcasters have been regulated to support Canadian programming while online undertakings have not. There is nothing new here. It may indeed be regrettable that the *Online Streaming Act* has taken so long to become law, but now it is law and the solution to the issue of "two-tiered regulation" is at hand, as the Commission addresses it through the structural process begun by Broadcasting Notices CRTC 2023-138, -139 and -140. This structural approach—launched quickly, just weeks after the passage of C-11, and proceeding at an ambitious pace—is by far the more appropriate forum to consider these matters.

¹⁹ Rogers application, paras. 32-38.

²⁰ Application No. 2023-0379-1.

²¹ https://www.wgc.ca/sites/default/files/resource/2023-07/Broadcasting%20Notice%20of%20Consultation%20CRTC%202023-138_The%20Path%20Forward%20.pdf, paras.59-62.

17. Canadian broadcasters have already received significant regulatory relief through the elimination of Part II licence fees to the Commission,²² valued at over \$120 million.²³ CPE and PNI obligations already self-adjust to the financial fortunes of broadcasters, since they are expressed as a percentage of gross revenues of the previous broadcast year. This means that revenue declines have *automatically* translated into lower spending obligations, as a matter of course. And the Commission has already said that, “regulated entities will remain subject to the same requirements to which they were bound prior to the coming into force of the current *Broadcasting Act*,”²⁴ and, “existing contributions by traditional broadcasters will not change as a result of Step 1, but will form part of the Step 2 discussion.”²⁵
18. For all of these reasons, the WGC submits that the Commission should deny this application by Rogers, and focus instead on resolving the structural issues raised in this application through the structural process that the Commission has already initiated.

Yours very truly,



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²² *Broadcasting Act*, section 11(3.1).

²³ In Broadcasting Order CRTC 2022-295, *Broadcasting Licence Fees – Part II*, the Commission set Part II licence fees at \$123,706,535 for 2022.

²⁴ Broadcasting Information Bulletin CRTC 2023-137, *Guidance on the current Broadcasting Act and the transitional provisions of the Online Streaming Act*, para. 4.

²⁵ Broadcasting Notice of Consultation CRTC 2023-138, para. 54.

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