



27 April 2022

Ms. Janice Charette
Interim Clerk of the Privy Council and Secretary to the Cabinet
Langevin Block
80 Wellington Street
Ottawa, Ontario K1A 0A3

BY EMAIL info@pco-bcp.gc.ca

Dear Ms. Charette,

Re: ***Petition to the Governor in Council concerning Broadcasting Decision CRTC 2022-76, Shaw Communications Inc. – Change of ownership and effective control***

Petition of the National Pensioners Federation and the Public Interest Advocacy Centre (“NPF-PIAC”)

The following organizations hereby submit a petition to set aside an important decision by the Canadian Radio-television and Telecommunications Commission (the “CRTC”):

- the National Pensioners Federation (“NPF”); and
- the Public Interest Advocacy Centre (“PIAC”)

—together, “NPF-PIAC”.

NPF-PIAC petition the Governor in Council to protect consumers by ensuring affordability of paid television services in Canada. NPF-PIAC therefore respectfully request that the Governor in Council issue an Order pursuant to Section 28 of the *Broadcasting Act*, **setting aside the decision or referring it back to the CRTC for reconsideration and hearing with material details of our requested conditions and emphasizing the importance of affordability of TV service, as the decision, as issued, derogates from the attainment of the broadcasting**

NPF-PIAC - Petition to the Governor in Council pursuant to Section 28 of the Broadcasting Act
Re: Broadcasting Decision CRTC 2022-76, Shaw Communications Inc. – Change of ownership and
effective control

policy objectives in subsection 3(1) of the *Broadcasting Act*, in particular, subs. 3(1)(t)(ii) regarding efficient delivery of programming at affordable rates.

ALL OF WHICH is respectfully submitted this 27th day of April, 2022.

[original signed]

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613-562-4002 x 125

[original signed]

Trish McAuliffe, President
National Pensioners Federation

cc: Claude Doucet, Secretary General, Canadian Radio-television and Telecommunications
Commission (CRTC) (by email: claudio.doucet@crtc.gc.ca)
Ted Woodhead, Senior Vice-President, Rogers Communications Inc. (Rogers) (by email:
regulatory@rci.rogers.com)

Enclosures

1. NPF-PIAC Petition (this document below the letter)
2. App A - Environics PIAC Telecomm Merger Tables ST Sept 8-21.xlsx
3. App B - Environics Phone Survey - Charts for Shaw Customers_12 Apr 2022.xlsx

***Petition to the Governor in Council
pursuant to Section 28 of the Broadcasting Act
Re: Broadcasting Decision CRTC 2022-76, Shaw
Communications Inc. – Change of ownership and effective
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**Petition of the National Pensioners Federation and the Public
Interest Advocacy Centre**



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The Nature of the Petition

1. The National Pensioners Federation and the Public Interest Advocacy Centre (“**NPF-PIAC**”) file this Petition to the Governor in Council **to set aside, or refer back for reconsideration and hearing**, the decision of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**” or the “**Commission**”) in Broadcasting Decision CRTC 2022-76, *Shaw Communications Inc. – Change of ownership and effective control* (24 March 2022) (hereafter “**BD CRTC 2022-76**” or “**Rogers-Shaw Decision**”).
2. NPF-PIAC specifically request that the Governor in Council issue an Order pursuant to Section 28 of the *Broadcasting Act*, **setting aside the decision or referring it back to the CRTC for reconsideration and hearing and set out the details, for consideration, as material to the reconsideration, of our proposed consumer protection conditions and our concerns as to the importance of consumer affordability of TV services to all consumers.**
3. NPF-PIAC contend that the Rogers-Shaw decision **derogates from the attainment of the broadcasting policy objectives in subsection 3(1) of the *Broadcasting Act*, in particular, subs. 3(1)(t)(ii) regarding efficient delivery of programming at affordable rates.**
4. This Petition concerns an Application made by Rogers Communications Inc. (Rogers) on behalf of Shaw Communications Inc. (Shaw) to the CRTC for authority to transfer the effective control of the broadcasting undertakings licensed to Shaw or its subsidiaries to Rogers or its subsidiaries. These broadcasting undertakings include broadcasting distribution undertakings (BDUs), providing cable TV service (“cable TV” and satellite TV service (satellite TV), and, to a much smaller extent, Internet protocol-based TV service (IPTV).
5. The Commission approved the Application, subject to several conditions of approval.¹

The Petitioners

6. The National Pensioners Federation (“**NPF**”)² is a democratic, non-partisan, non-sectarian organization which was established in 1945 and incorporated May 1st 1954. We are composed of 350 seniors chapters, clubs, groups, organizations and individual supporters across Canada with a collective membership of 1,000,000 Canadian seniors and retired workers. Our mission is to stimulate public interest in the welfare of aging Canadians. Our goal is to help seniors and retirees have a life of dignity, independence and financial security.
7. The Public Interest Advocacy Centre (“**PIAC**”)³ is a non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and in

¹ See Broadcasting Decision CRTC 2022-76, *Shaw Communications Inc. – Change of ownership and effective control* (24 March 2022); online: <https://crtc.gc.ca/eng/archive/2022/2022-76.htm>

² Online: <http://www.nationalpensionersfederation.ca/>

³ Online: <https://www.piac.ca>

particular, vulnerable consumer interests concerning the provision of important public services. PIAC has pursued this work for over 40 years.

8. NPF-PIAC participated actively in all public stages of the CRTC's consideration of the Application. We filed original evidence and argument on behalf of consumers, and in particular, vulnerable consumers, including a public opinion survey on several aspects of the proposed merger. Our survey evidence is attached to this Petition as Appendix A (App A - Environics PIAC Telecomm Merger Tables ST Sept 8-21.xlsx). An alternate presentation of this evidence, provided only in this Petition, and focusing on Shaw customers, is attached to this Petition as Appendix B (App B - Environics Phone Survey - Charts for Shaw Customers_12 Apr 2022.xlsx).

Forced IPTV Migration Means Significant Price Increases to Consumers

9. The CRTC's Rogers-Shaw decision exposes approximately one million Shaw customers to significant price increases for delivery of essentially the same service – paid TV service, formally designated as “broadcasting distribution” under the *Broadcasting Act*.
10. This will happen due to the Rogers-Shaw decision because the CRTC has not placed sufficient importance on affordability of broadcasting distribution services as a policy goal, which is enumerated in subs. 3(1)(t)(ii) of the *Broadcasting Act*.
11. This policy objective, which is ‘discretionary’ in that it is phrased in a “should” not “shall” manner, nonetheless is crystal clear as to its goal: affordable TV services for Canadians, which now are overwhelmingly delivered to consumers by BDUs as a paid service (that is, no longer “free over the air”).
12. The Rogers-Shaw decision allows Rogers to move customers who wish to have a comparable selection of programming (channels) from “cable TV”, “satellite TV” or “TV-only” services to “IPTV”-delivered services; that is, from cable (or satellite) -delivered service to internet protocol-delivered services, with no real financial safeguards for consumers.
13. Rogers clearly stated to the Commission in its Application, and in submissions in the proceeding, its firm intention to “accelerate” the push to transition most of Shaw’s cable TV-only and satellite TV customers to IPTV.⁴
14. The result of the movement from cable- (or satellite-) delivered service to IPTV service is that customers will be billed for the underlying Internet service just to obtain the same or similar TV services that the customer previously accessed without taking Internet access service.
15. This means consumers will be charged more for TV service and will be required to obtain Internet service to receive their TV signals. It is, in essence, a ‘forced march’ to IPTV.

⁴ Rogers, Application, Supplementary Brief, at para. 28. Online:
<https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?AppNo=202102284>

16. The Commission had evidence from NPF-PIAC on the record of the proceeding as to the likely increase in the cost of TV service to all Shaw customers as a result of this change of service (estimated at an additional \$50 per month additional per “cable” or “satellite” Shaw TV subscriber) and an estimate of the number of affected Shaw customers (likely, approximately 450,000 ‘cable TV’ and approximately 650,000 ‘satellite TV’ subscribers).⁵
17. Rogers did not deny or correct our premise of a significant price increase of approximately \$50 per month to add Internet service costs to transition these TV customers to IPTV, nor our estimates of the likely numbers of affected customers, either in their written replies, in the oral hearing, or in their final written reply.
18. Instead, Rogers stood on a promise to make available some form of “TV-only” option and to remain in compliance with ‘CRTC Best Practices’.⁶ However, Rogers did not commit to offering a comparable, similarly priced TV-only option to what most Shaw (cable and satellite) TV customers presently enjoy at similar prices.
19. The TV-only option was left vaguely undescribed by Rogers during the proceeding,⁷ but it appeared to be based on what follows. NPF-PIAC posited in the hearing that it would be the \$25 a month “small basic” mandated TV package required by the Commission in Broadcasting Regulatory Policy CRTC 2015-96,⁸ at para. 26, or, a very similar low channel-count offering based on those offered in Rogers’ charitable “Connected for Success” TV-add-on offerings.⁹
20. The result of the removal of ‘cable TV’ and ‘satellite TV’ options means permanent and major price increases effectively to nearly all former Shaw TV customers.
21. The Rogers-Shaw decision does nothing to counter this permanent and major price hike – an evident detriment to these 1 million or more consumers – aside from a non-enforceable ‘expectation’ of the Commission, and an equally unenforceable ‘confirmation’ by Rogers, that Shaw TV customers’ current contracts will be ‘honoured’ until their termination date (that is, there will be no immediate, unilateral change of delivery method or terms like pricing until the end of each individual contract). After each contract ‘ends’ (or customers are persuaded to enter a new one early) Rogers can require migration to IPTV and with it, a major price rise.
22. The Commission accepted Rogers’ ‘commitment’ that it would “continue offering television-only packages” and that that commitment (which is unenforceable) addressed the Commission’s “concerns regarding pricing increases for low-income households and seniors.”¹⁰

⁵ NPF-PIAC, Intervention, 13 September 2021, at paras. 45-55. Online:

<https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=4094793>

⁶ See, for example, Rogers’ Reply, 23 September 2021, at para. 121; online:

<https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=4098842> and Rogers’ Final Reply, at para. 9 ; online: <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=4132891>

⁷ See, Transcript, Day 1, para. 256; paras. 979-996; line 1092; and paras. 1108-1114. Online:

https://crtc.gc.ca/eng/transcripts/2021/tb11_22.htm

⁸ Online: <https://crtc.gc.ca/eng/archive/2015/2015-96.htm>

⁹ See, Transcript, Day 3, para. 3571. Online: https://crtc.gc.ca/eng/transcripts/2021/tb11_24.htm

¹⁰ BD CRTC 2022-76, at para. 20.

23. NPF-PIAC note that in making this determination, the CRTC ignored the bulk of Shaw’s present TV customers, who are not necessarily low-income or seniors. The CRTC appears to have considered that subs. 3(1)(t)(ii) provides for affordable BDU services only for low-income Canadians or seniors, or that only these groups would find the sudden price jump occasioned by this transition to IPTV to be ‘unaffordable’. This is both a legal and factual error.

24. The affordability policy goal subsection of the *Broadcasting Act* reads:

3 (1) It is hereby declared as the broadcasting policy for Canada that [...]

(t) distribution undertakings

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

25. This section is not limited to groups that the CRTC has determined it will consider in its deliberations; it applies to all BDU consumers. We submit that in considering only low-income Canadians and seniors, and them only to a very limited extent by issuing only expectations and not conditions, the CRTC has derogated from the achievement of the objectives of the broadcasting policy of Canada, in particular, subs. 3(1)(t)(ii), in not achieving affordability of BDU services for all Canadians and in particular, all former Shaw TV customers.

TV-only Commitment is Inadequate – Constitutes a Detriment, not a Benefit

26. NPF-PIAC provided evidence that the likely form of such “TV-only packaging” would be highly undesirable to current average subscribers and that limited channel offerings, in a “starter” or similarly named package, would not to be a substitute for current TV packaging that most present Shaw “cable-TV” and “satellite TV” subscribers enjoy.

27. Instead, Rogers’ future “TV-only” IPTV offering will be an undesirable, limited channel package, available as the sole “TV-only” substitute to all former Shaw “cable-TV” and “satellite TV” subscribers, regardless of their previous channel selection. We submit that this will be a deliberate Rogers strategy to encourage these subscribers to upgrade to IPTV (which, as noted, will cost up to \$50 more per month).

28. The Commission claimed in its opening “Summary” to the Rogers-Shaw decision that:

“Canadians as consumers will benefit from this transaction.”

29. We disagree. The Commission’s claim that “the transaction benefits Canadians and the Canadian broadcasting system” is refuted by the price increase for over a million former Shaw customers. That price rise is an unequivocal detriment to them that is not outweighed by any other supposed benefits of the transaction.

30. The Rogers-Shaw decision on the ‘benefit’ of the transaction to customers is contrary to the evidence of permanent and major increased pricing for essentially the same service, derogates from the broadcasting distribution (TV) affordability policy goal in subs. 3(1)(t)(ii) of the *Act*.

31. We go further and invite the government to send a signal, via the setting aside of this decision, that this government has made a commitment to control Canadians' communications expenses, **including TV services**, during a pandemic and worldwide challenge to our economic circumstances that requires Canadians to be properly informed, via the Canadian broadcasting system. Making TV service more expensive without other benefit to consumers works against that system and encourages Canadians to leave it, not to support it.
32. Due to the threat of these negative price effects upon all consumers, not merely low-income Canadians and seniors, NPF-PIAC submit that this decision should be set aside.

Price Freeze Condition and Contract Changes Protection

33. Should the Governor in Council not be persuaded to set aside the decision, but wishes to refer it back for reconsideration, NPF-PIAC note that in the proceeding, we requested that the Commission protect consumers by imposing "a condition of approval to protect consumers' BDU affordability under subsection 3(1)(t)(ii) of the *Broadcasting Act* with a three-year price freeze on former Shaw customers' TV packages during their [transition] to IPTV" and therefore would request that Cabinet note this proposed condition as material to a CRTC reconsideration.
34. Three year price protection was offered by Rogers to all of Shaw's former (Freedom/Shaw) brands' wireless customers in its announcement of the deal.¹¹ The condition we sought was to treat Shaw TV customers with the same concern (for affordability of communications services prices) and fairness as with Shaw wireless customers.
35. NPF-PIAC also raised in the hearing the spectre of aggressive and confusing sales practices to lead otherwise unwilling or confused customers who want to maintain their level of TV service (in terms of channel offerings) to transition to IPTV despite a likely large price increase. We noted that this would be particularly devastating to seniors,¹² who are disproportionately targeted with such tactics, as determined by the CRTC in its previous "Report on Misleading or Aggressive Communications Retail Sales Practices".¹³
36. Therefore to protect all consumers during this three year period, we also request that Cabinet note as material to reconsideration a right of rescission within 90 days for all former Shaw customers who move or are moved to Rogers' IPTV, on the assumption that many will not be

¹¹ See, Rogers "Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout", online: <https://about.rogers.com/news-ideas/rogers-and-shaw-to-come-together-in-26-billion-transaction-creating-new-jobs-and-investment-in-western-canada-and-accelerating-canadas-5g-rollout/> : "The combined company is committed to continue offering affordable wireless plans, with no overage fees, that meet the budgets and needs of Canadians. As part of this commitment, Rogers will not increase wireless prices for Freedom Mobile customers for at least three years following the close of the transaction" [emphasis added].

¹² See, Transcript, Day 3, paras. 3573-3576. Online: https://crtc.gc.ca/eng/transcripts/2021/tb11_24.htm

¹³ See, online: https://crtc.gc.ca/pubs/2018_246-en.pdf especially at p. 11: "On the basis of the record, the CRTC finds that seniors are more vulnerable to misleading or aggressive sales practices."

adequately informed of the price increase attendant on transferring from cable-TV or satellite-TV packages to IPTV.

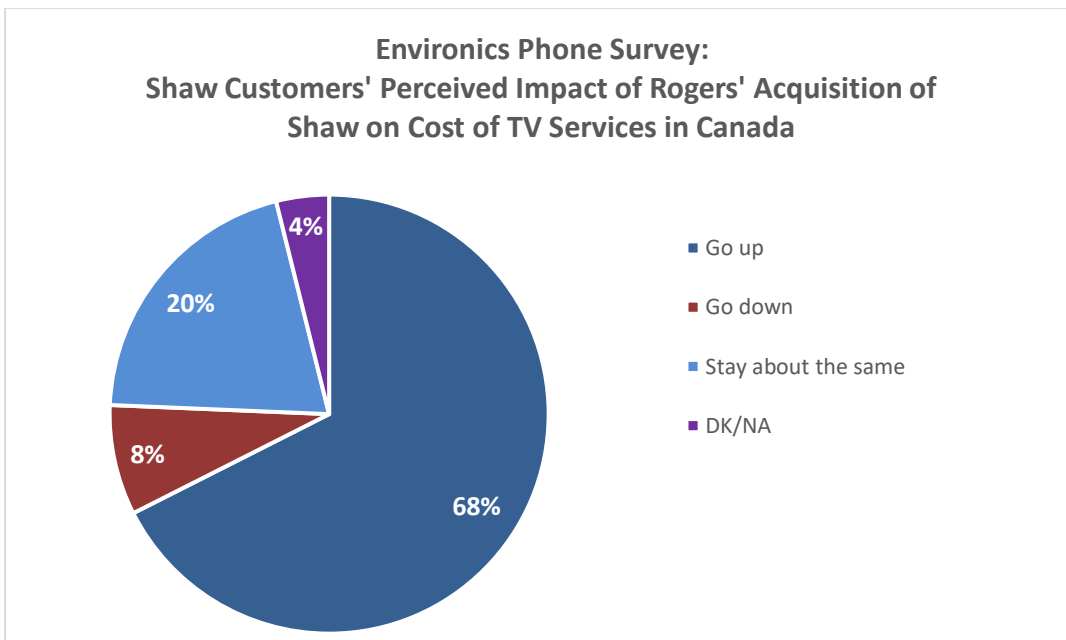
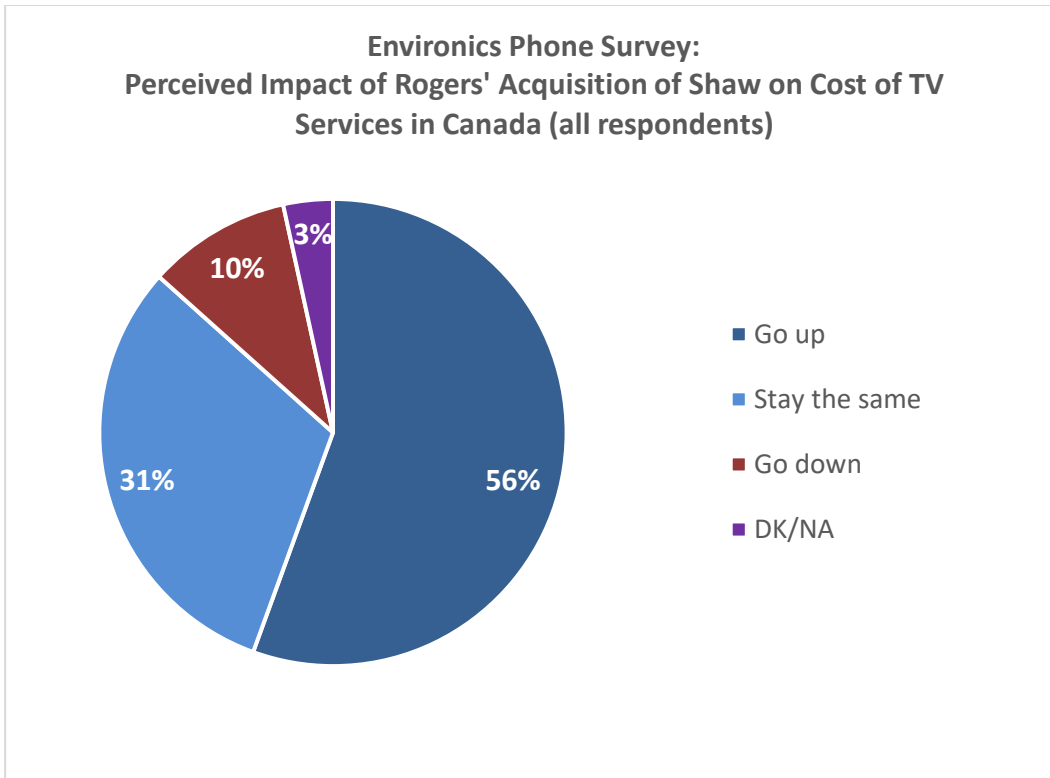
37. In addition, and in accordance with the CRTC's recent ruling on paper billing requirements in Telecom and Broadcasting Decision 2022-28,¹⁴ we request a notation as material to any reconsideration, that all seniors, disabled persons, or those who do not otherwise subscribe to home internet from Shaw (Rogers) may be provided a paper confirmation of any contractual change leading to IPTV with clear indication of the right of rescission of the IPTV contract and return to cable- or satellite-TV service at no charge and including information on consumers' rights to contact the Commission for Complaints for Telecom-television Services (CCTS).

Survey Shows Canadians and Shaw Customers are Concerned

38. NPF-PIAC also placed on the record its statistically significant telephone survey of Canadians regarding various broadcasting and related internet service aspects of the proposed Rogers-Shaw merger. This survey is reproduced in Appendix A.
39. The survey showed a high disapproval of the transaction in general as reducing competition, raising prices and reducing consumer choice. These negative opinions were strongest amongst Canadians in the western Canada (where Shaw operates) and indeed, disproportionately negative for present Shaw customers. In short, Shaw customers are more concerned the deal will not be beneficial for them and that the benefits, if any, will flow to the merging companies, not consumers and viewers.
40. We have therefore appended a separate spreadsheet and chart isolating the answers of Shaw customers only to the survey in Appendix B.¹⁵ It demonstrates approximately 10% additional disapproval of Shaw customers vis-à-vis all TV subscribers combined on the major concerns noted above. For example, concern with price rises is significantly higher for Shaw customers:

¹⁴ See, online: <https://crtc.gc.ca/eng/archive/2022/2022-28.htm> at para. 142.

¹⁵ Although this data was not presented in this form to the CRTC in the hearing, NPF-PIAC did provide the CRTC the whole spreadsheet (cross-tabs) with the data which we have simply isolated here. In other words, it was open to the CRTC to examine the data from the viewpoint of Shaw customers versus other TV customers in the hearing.



41. Shaw customers consistently expressed more concern about the deal than other Canadians. This reflects their direct exposure to TV price increases and related costs (Internet access).

If CRTC Cannot or Will not Rely Upon Legislation to Protect Consumers, then Cabinet Can Set Aside the Decision Until CRTC Does

42. The Commission did not impose conditions of approval related to its expectations for Rogers' pricing and other behaviours with respect to Shaw TV customers. Instead, the Commission, in relevant paragraphs 18-21 and as summarized in Appendix 2, page vi of the Rogers-Shaw decision, clearly only 'expects' Rogers to "inform Shaw customers that their contracts will be honoured and, 90 days before the end of their current contracts with Shaw, to inform them of what options will be available once their contracts end, including how they will be able to continue to receive the same or a similar level of service." (para. 20)
43. Such expectations are not legally enforceable. If Rogers does not abide by them, the Commission cannot directly sanction Rogers under its licensing regime. Instead, the Commission can at best remind Rogers of its voluntary commitments and the Commission's expectations and consider any divergence at Rogers' next BDU licensing hearing.
44. These expectations will not protect former Shaw TV customers from the likely price increases we foresee and that NPF-PIAC warned the Commission about, in an effort to protect these consumers from in accordance with subs. 3(1)(t)(ii) of the *Broadcasting Act*.
45. Even if Rogers abides fully with the Commission's expectations, we submit that these do not cover the price increases attendant on the transfer of these customers to IPTV service. The Commission's expectations only require Rogers to offer similar TV service, not similar prices, under IPTV, to the same channel packaging as Shaw's present cable-TV and satellite-TV customers enjoy.
46. The Commission's further expectation that Rogers will offer a 'TV-only' type IPTV product (without explicit subscription to Internet service and its concomitant billing) does not preclude Rogers from offering a very limited channel selection that is not comparable to the channel packaging that present TV-only Shaw customers enjoy. The Commission has not implemented any measures to protect consumers (especially seniors) from aggressive or confusing migration tactics even though Rogers' admitted in its Application and evidence its incentive and opportunity to 'accelerate' Shaw customers' migration to IPTV post-transaction.
47. Finally, should the Governor in Council consider that the Commission was nonetheless not required by the *Broadcasting Act*, as written, including subs. 3(1)(t)(ii), to ensure consumer affordability of TV services, especially in an IPTV environment, we urge Cabinet to nonetheless set aside or refer for reconsideration this decision as a clear signal to the CRTC and Parliament that going forward, the *Broadcasting Act* must be interpreted or amended to make consumer interests, and in particular, consumer affordability issues, a requirement.
48. Consumers now pay for nearly all broadcasting distribution (TV) services, no matter the BDU technology. Those considerable consumer costs, in an environment where the government is seeking to make the Canadian broadcasting system stronger despite Internet- and IP-based delivery methods and new, often foreign content challenges, should not be unreasonably borne

by consumers. Consumers cannot pay for all of the changes this industry must face, all while guaranteeing its present expectations of high profits. Consumer affordability is required.

49. Should the Governor in Council, given the statutory or other context, simply opt to refer the Rogers-Shaw decision back to the Commission for reconsideration and hearing rather than to set it aside, we respectfully request that Cabinet in its order set out the details, for consideration, as material to the reconsideration, of our proposed consumer protection conditions and our concerns as to the importance of consumer affordability of TV services to all consumers, noted above.

Conclusion and Relief Requested

50. NPF-PIAC respectfully **requests, for the reasons given above,** that Cabinet **grant our petition,** and **set aside the Rogers-Shaw decision.** **If Cabinet does not consider it appropriate to set aside the decision, we request Cabinet refer the Rogers-Shaw decision back for reconsideration and hearing and to include in the details of its order as material to the reconsideration and hearing our affordability concerns and suggested consumer protection conditions, noted above.**

Appendix A

Please see attached file: App A - Environics PIAC Telecomm Merger Tables ST Sept 8-21.xlsx

Appendix B

Please see attached file: App B - Environics Phone Survey - Charts for Shaw Customers_12 Apr 2022.xlsx

End of Submission