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Copyright Board  
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Commission du droit  
d'auteur du Canada

Filed by / Déposé par: BDU

Date: 2023-01-17

To whom it may concern,

## **Re: Notice of Grounds for Objection- Television Retransmission Tariff 2024 to 2028**

This is the Notice of Grounds for Objection of Bell Canada, Rogers Communications Canada Inc., Shaw Communications Inc., Cogeco Communications Inc., Québecor Média Inc., TELUS Communications Company, and the Canadian Cable Systems Alliance (the “BDUs”), to the Statement of Proposed Royalties to be Collected for the Retransmission of Distant Television Signals, in Canada, for the Years 2024 to 2028 (the “Statement of Proposed Royalties”) filed by the television retransmission collectives and published on the Copyright Board website on November 18, 2022 pursuant to the provisions of section 68.2 of the *Copyright Act*.

The BDUs respectfully reserve the right to rely upon objections raised by other parties to the proceedings, *mutatis mutandis*. The BDUs also reserve their right to raise additional substantive points of objection throughout the proceedings related to the Statement of Proposed Royalties.

These objections are filed in accordance with the *Copyright Act* and the Practice Notice on the Filing of Grounds for Objection.

*Inter alia*, and without limiting their general objection, the BDUs object to the following:

### **Grounds for Objecting to Royalty Rates in the Proposed Tariff**

The BDUs object to the rates set out in sections 4(1), 5, and 9 of the Statement of Proposed Royalties.

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Said proposed fees do not reflect the fair, reasonable, and appropriate value of the retransmission of the works within the collectives' repertoires on distant television signals. Said proposed fees do not reasonably reflect either the amount or the type or the impact of retransmission of distant television signals by a licensee. They also do not reflect the criteria to which the Board must have regard in establishing fair and equitable royalty rates, as set out in the Retransmission Royalties Criteria Regulations, SOR/91-690, i.e.:

- (i) royalties paid for the retransmission of distant signals in the United States under the retransmission regime in the United States;
- (ii) the effects on the retransmission of distant signals in Canada of the application of the Broadcasting Act and regulations made thereunder; and
- (iii) royalties and related terms and conditions stipulated in written agreements in respect of royalties for the retransmission of distant signals in Canada that have been reached between collecting bodies and retransmitters and that are submitted to the Board in their entirety

The BDUs also object to the fact that the Statement of Proposed Royalties does not adequately reflect the principle of technological neutrality in that it seeks to impose excessive royalty rates that do not reflect the fact that the exact same programming that is retransmitted on distant signals to which the royalties apply is available from a number of competing sources including video-on-demand services, local television signals and online video services such as Netflix and CraveTV.

### **Grounds for Objecting to Terms and Conditions in the Proposed Tariff**

The BDUs object to the reporting and auditing provisions contained in the Statement of Proposed Royalties from sections 16 to 28. Said provisions are intrusive, require the disclosure of potentially sensitive confidential information, and place a disproportionate burden on licensees.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**



Jay Kerr-Wilson