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Date: October 19, 2022
CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRARE

CT-2022-002

OTTAWA, ONT.

Doc. # 437

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

– and –

ROGERS COMMUNICATION INC. AND SHAW COMMUNICATIONS INC.

Respondents

– and –

**ATTORNEY GENERAL OF ALBERTA
and VIDEOTRON LTD.**

Intervenors

**AFFIDAVIT OF TANYA BARBIERO
SWORN OCTOBER 19, 2022
(MOTIONS TO QUASH OF BELL AND TELUS)**

I, Tanya Barbiero, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a senior law clerk at Davies Ward Phillips & Vineberg LLP, lawyers for the Respondent Shaw and as such have knowledge of the matters contained in this Affidavit. Where I have relied on information from others, I state the source of that information and verily believe it to be true.

2. Attached to my Affidavit as Exhibits 1 to 44 are copies of the following documents:
- (a) Exhibit 1: Broadcasting Notice of Consultation CRTC 2021-281
 - (b) Exhibit 2: Intervention of BCE Inc. re Broadcasting Notice of Consultation CRTC 2021-281 dated September 13, 2021
 - (c) Exhibit 3: Comments of TELUS Communications Inc. re Broadcasting Notice of Consultation CRTC 2021-281 dated September 13, 2021
 - (d) Exhibit 4: Letter from John Lawford to Claude Doucet dated November 1, 2021
 - (e) Exhibit 5: Letter from Robert Malcolmson to Claude Doucet dated November 1, 2021
 - (f) Exhibit 6: Letter from Stephen Schmidt to Claude Doucet dated November 2, 2021
 - (g) Exhibit 7: Letter from Ted Woodhead to Claude Doucet dated November 2, 2021
 - (h) Exhibit 8: Letter from Kay Saicheua to Ted Woodhead dated November 3, 2021
 - (i) Exhibit 9: Letter from Paul Cowling to Claude Doucet dated November 3, 2021
 - (j) Exhibit 10: Letter from Ted Woodhead to Claude Doucet dated November 8, 2021
 - (k) Exhibit 11: Letter from Stephen Schmidt to Claude Doucet dated November 8, 2021
 - (l) Exhibit 12: Letter from Ted Woodhead to Claude Doucet dated November 9, 2021
 - (m) Exhibit 13: Letter from Claude Doucet to John Lawford dated November 12, 2021
 - (n) Exhibit 14: Letter from Claude Doucet to Ted Woodhead dated November 12, 2021
 - (o) Exhibit 15: Transcript of Stephen Schmidt submissions on behalf of TELUS re Broadcasting Notice of Consultation CRTC 2021-281 dated November 23, 2021
 - (p) Exhibit 16: Transcript of Robert Malcolmson submissions on behalf of Bell re Broadcasting Notice of Consultation CRTC 2021-281 dated November 25, 2021
 - (q) Exhibit 17: Final Submission of BCE Inc. re Broadcasting Notice of Consultation CRTC 2021-281 dated December 13, 2021
 - (r) Exhibit 18: Final Comments of TELUS Communications Inc. re Broadcasting Notice of Consultation CRTC 2021-281 dated December 13, 2021
 - (s) Exhibit 19: Excerpts from the Annual Report for 2021 of BCE Inc.
 - (t) Exhibit 20: Excerpts from the Annual Information Form for 2021 of BCE Inc.
 - (u) Exhibit 21: Excerpts from the Annual Report for 2021 of TELUS Corporation

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- (v) Exhibit 22: Affidavit of James Senko affirmed March 4, 2022 (without exhibits)
- (w) Exhibit 23: Affidavit of Blaik Kirby affirmed April 28, 2022 (without exhibits)
- (x) Exhibit 24: Excerpt of Schedule B to the Affidavit of Documents of the Commissioner of Competition dated July 15, 2022
- (y) Exhibit 25: Email from Michelle Lally to representatives of the Competition Bureau dated December 3, 2021 regarding "Section 29: Rogers/Shaw Merger: Submission of TELUS Corporation", produced by the Commissioner to Shaw on July 15, 2022 (RBHC00005_000000001).
- (z) Exhibit 26: Excerpt of Schedule A to the Affidavit of Documents of the Commissioner of Competition dated July 15, 2022 This excerpt lists (RBHC00005_000000001), being the email from Ms. Lally referred to immediately above, and five of the seven attachments indicated in Ms. Lally's email (RBHC00005_000000003, RBHC00005_000000004, RBHC00005_000000005, RBHC00005_000000006, and RBHC00005_000000008). However, Schedule A omits the remaining two attachments, including one titled "TELUS Submission to Competition Bureau December 3, 2021 – Confidential" as indicated in Ms. Lally's email. These outstanding two attachments have not been produced.
- (aa) Exhibit 27: BCE submission to the Competition Bureau "Re: Proposed Acquisition of Shaw Communications Inc. by Rogers Communications Inc" dated December 29, 2021, produced by the Commissioner to Shaw on August 8, 2022 (RBCH00009_000000996)
- (bb) Exhibit 28: Excerpt of Commissioner's Responses to Undertakings and Refusals made during the examination of Kristen McLean dated August 24, 2022
- (cc) Exhibit 29: Witness Statement of Charlie Casey signed September 20, 2022 (without exhibits)
- (dd) Exhibit 30: Witness Statement of Nazim Benhadid signed September 20, 2022 (without exhibits)
- (ee) Exhibit 31: Witness Statement of Blaik Kirby signed September 23, 2022 (without exhibits)
- (ff) Exhibit 32: Witness Statement of Stephen Howe signed September 23, 2022 (without exhibits)
- (gg) Exhibit 33: Subpoena served by Shaw on Nazim Benhadid and Charlie Casey of TELUS on October 5, 2022
- (hh) Exhibit 34: Subpoena served by Shaw on Stephen Howe and Blaik Kirby of BCE on October 5, 2022
- (ii) Exhibit 35: Correspondence between Derek Ricci, Crawford Smith and Adam Hirsh dated October 7, 2022 to October 13, 2022

- (jj) Exhibit 36: Email from Derek Ricci to Nicole Henderson and Adam Hirsh dated October 14, 2022
- (kk) Exhibit 37: Subpoena served by Shaw on Nazim Benhadid, Charley Casie and Daniel Stern of TELUS on October 14, 2022
- (ll) Exhibit 38: Subpoena served by Shaw on Stephen Howe, Blaik Kirby and Mark Graham of BCE Inc. on October 14, 2022
- (mm) Exhibit 39: Email from Adam Hirsh to Derek Ricci dated October 14, 2022
- (nn) Exhibit 40: Email from Nicole Henderson to Derek Ricci dated October 14, 2022
- (oo) Exhibit 41: Correspondence between Adam Hirsh, Crawford Smith and Kent Thomson from October 14, 2022 to October 17, 2022
- (pp) Exhibit 42: Excerpted transcript of Case Management Conference dated October 14, 2022
- (qq) Exhibit 43: BCE registered lobbying communications with the CRTC and ISED between March 2021 and present
- (rr) Exhibit 44: TELUS registered lobbying communications with ISED between March 2021 and present

SWORN remotely by Tanya Barbiero stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on the 19th day of October, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

}

Jacqueline Houston

Commissioner for Taking Affidavits
JACQUELINE HOUSTON

Tanya Barbiero

TANYA BARBIERO

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

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THIS IS EXHIBIT "1" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Broadcasting Notice of Consultation CRTC 2021-281

PDF version

Ottawa, 12 August 2021

Public record: 1011-NOC2021-0281

Notice of hearing - 22 November 2021 - Gatineau, Quebec

Deadline for submission of interventions/comments/answers: 13 September 2021

[\[Submit an intervention/comment/answer or view related documents\]](#)

The Commission will hold a hearing commencing on **22 November 2021** at which it intends to consider an application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw and the authority for Rogers to operate various licensed broadcasting distribution undertakings (BDUs) currently owned by Shaw in British Columbia, Alberta, Saskatchewan and Manitoba, the national direct-to-home (DTH) satellite distribution undertaking Shaw Direct, the national satellite relay distribution undertaking (SRDU) Shaw Broadcast Services, and the DTH programming service known as Shaw Pay-Per-View.

Given the evolving situation surrounding the COVID-19 pandemic, in light of public health concerns, and to assure prospective parties to the proceeding that they do not need to travel in order to participate, the Commission intends to hold a hybrid public hearing. Specifically, the Commission intends to hold an in-person hearing in the National Capital Region, at the **Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec**, while making it possible for parties to participate remotely. In addition, given the importance of Shaw and its operations for Western Canada, and given that Shaw's headquarters is located in Calgary, Alberta, a satellite appearing location in Calgary may be made available to facilitate remote participation for parties in that location. Parties interested in appearing remotely, including from the possible satellite appearing location in Calgary, should indicate their preference when filing their interventions.

In recognition of the time difference between the National Capital Region and Western Canada, the hearing will begin at **9 a.m. MST (11 a.m. EST)**, with the agenda for the hearing to be scheduled entirely according to MST.

An audio and video feed of the hearing will also be made available from the Commission's website (www.crtc.gc.ca) for the duration of the hearing.

[Attend the hearing or listen to it online.](#)

Applicant/Licensee and Locality

1. Shaw Communications Inc.

Various locations across Canada
Application 2021-0228-4

Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), filed an application pursuant to paragraph 4(4)(a) of the *Broadcasting Distribution Regulations* for approval to effect a change of ownership and effective control, from Shaw or its subsidiaries to Rogers or its subsidiaries, of the following licensed undertakings:

- 16 terrestrial broadcasting distribution undertakings (BDUs) in British Columbia, Alberta, Saskatchewan and Manitoba, which are currently operated by Shaw Cablesystems Limited;¹
- the national direct-to-home (DTH) BDU Shaw Direct; and
- the national satellite relay distribution undertaking (SRDU) Shaw Broadcast Services.

In addition, pursuant to paragraph 10(4)(a) of the *Discretionary Services Regulations*, Rogers, on behalf of Shaw, requests approval to acquire from Shaw Cablesystems Limited, a subsidiary of Shaw:

- Shaw Cablesystems Limited's 25.17% interest in Cable Public Affairs Channel Inc. (CPAC Inc.), the operator of the two national, English- and French-language discretionary services known as CPAC, which, as set out in *Distribution of the programming services of Cable Public Affairs Channel Inc. (CPAC Inc.) known as Cable Public Affairs Channel and of the exempt services operated by CPAC Inc. by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2018-330, 29 August 2018 (Broadcasting Order 2018-330), benefit from mandatory distribution on the basic service, pursuant to section 9(1)(h) of the *Broadcasting Act*; and
- all the issued and outstanding shares of Shaw Pay-Per-View Ltd.

The proposed change in ownership and control of the licensees is part of a plan of arrangement (the Plan) whereby Rogers would purchase all of the issued and outstanding shares of Shaw and its subsidiaries.

Pursuant to the Plan, the transaction also involves Shaw's wireline telecommunications services (including home telephone and Internet), wireless telecommunications services (including wireless telephony operating under the brands Freedom Mobile and Shaw Mobile), and business automation and security. The present application does not include these services since the change in ownership of these elements does not require prior approval from the Commission. However,

¹ The 16 licensed BDU locations currently operated by Shaw Cablesystems Limited are set out in the appendix to this notice of consultation.

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these elements will be subject to review by the Competition Bureau and Innovation, Science and Economic Development Canada.

Rogers would also acquire Shaw's exempt BDUs' serving locations in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. Prior approval from the Commission is not required for that portion of the transaction since these services operate under an exemption order.

Rogers is a publicly traded company, ultimately owned and controlled by the Rogers Control Trust.

Rogers Communications Canada Inc. (Rogers Communications) is a wholly owned subsidiary of Rogers and is ultimately controlled by the Rogers Control Trust.

Shaw and its wholly owned subsidiaries 7538375 Canada Inc., Shaw Cablesystems Limited and Shaw Pay-Per-View Ltd. are ultimately controlled by the board of directors of SFLTCO, acting as trustee of the Shaw Family Living Trust, pursuant to the terms of the Unanimous Shareholders Agreement dated 31 July 2015, amended and restated on 30 October 2020.

Shaw Satellite Services Inc., licensee of the SRDU Shaw Broadcast Services, is a wholly owned subsidiary of 7538375 Canada Inc.

Star Choice Television Network Incorporated, licensee of the DTH BDU Shaw Direct, is a wholly owned subsidiary of Shaw Satellite Services Inc.

The steps of the proposed transaction affecting the licensed broadcasting undertakings would be as follows:

- **Step one:** Shaw would be continued into British Columbia.
- **Step two:** Members of the Shaw family will have the option to incorporate up to 10 new entities no later than 15 days prior to closing (each a Qualifying Holdco, new entities solely for the purposes of the transaction). If so elected, Shaw family members would transfer their Shaw shares to a Qualifying Holdco and Rogers would acquire the shares of the Qualifying Holdcos on closing. Shaw would be amalgamated with each Qualifying Holdco to form one entity, to be named Shaw Communications Inc. (Shaw Amalco).
- **Step three:** Rogers and Shaw Amalco would amalgamate, and the two companies would continue as Rogers Communications Inc.
- **Step four:** Shaw Cablesystems Limited and Shaw Pay-Per-View Ltd. would be continued into the federal jurisdiction of Canada.
- **Step five:** Shortly thereafter, Rogers's wholly owned subsidiary company Rogers Communications would amalgamate horizontally with Shaw Cablesystems Limited and Shaw Pay-Per-View Ltd., and those three companies would continue as Rogers Communications. As a result of this amalgamation and continuance, Rogers

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Communications would become the licensee of all of Shaw's licensed terrestrial BDUs, as well as the DTH pay-per-view service, and Shaw's current ownership interest in CPAC Inc. would be held by Rogers Communications. In addition, Shaw Satellite Services Inc. and its direct subsidiary Star Choice Television Network Incorporated would become indirect subsidiaries of Rogers.

Immediately before the close of the transaction, Shaw Pay-Per-View Ltd. and Shaw Cablesystems Limited would surrender the licences for the on-demand services Shaw Pay-Per-View and Shaw On Demand, respectively, since Rogers is already licensed nationally to offer these services.

Considering the size and scope of the proposed transaction, the Commission intends to consider whether the proposed transaction is in the public interest. Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval of the proposed transaction is in the public interest, that the tangible and intangible benefits of the transaction are commensurate with the size and nature of the transaction, and that the application represents the best possible proposal in the circumstances.

Impact on the competitive landscape

Shaw is the second largest national BDU and the third largest broadcasting and telecommunications company in Canada, with broadcasting assets in distribution and television services.

- Shaw Cablesystems Limited, the terrestrial BDU licensee, reported \$1.051 billion in revenues with 1.428 million subscribers in the 2019-2020 broadcast year. It operates licensed and exempt BDUs in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.
- Shaw Direct, Shaw's DTH BDU, reported \$670 million in revenues with 687,000 subscribers in the 2019-2020 broadcast year. Shaw Direct operates nationally.
- Collectively, Shaw's licensed terrestrial and DTH BDUs represent 21.3% of national BDU revenues and 20.7% of subscribers.

Rogers is the third largest national BDU and second largest broadcasting and telecommunications company in Canada, with broadcasting assets in distribution, television and radio services.

- Rogers Communications Canada Inc., the terrestrial BDU licensee, reported \$1.306 billion in revenues with 1.509 million subscribers in the 2019-2020 broadcast year. It operates licensed and exempt BDUs in the provinces of Ontario, Quebec, New Brunswick, and Newfoundland and Labrador.
- Rogers's licensed terrestrial BDU operations represent 16.1% of national BDU revenues and 14.8% of subscribers. Should the Commission approve the present application, with

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Rogers's acquisition of Shaw, these shares would increase to 37.4% of national BDU revenues and 35.5% of subscribers.

- Rogers operates 12 over-the-air (OTA) television stations, including the Citytv and OMNI networks. These services accounted for 12.9% of OTA television revenues nationally in the 2019-2020 broadcast year.
- Excluding its service OMNI Regional, which is granted mandatory distribution under paragraph 9(1)(h) of the *Broadcasting Act*, Rogers operates a number of other licensed discretionary television services, including several sports-related services. These services accounted for 16.7% of discretionary service revenues nationally in the 2019-2020 broadcast year.
- Rogers operates 57 radio stations across Canada. These services accounted for 13.8% of private commercial radio revenues nationally in the 2019-2020 broadcast year.

Impact on consumers

In the event the current transaction is approved, the Commission may wish to consider how the proposed transaction will affect current customers, and in particular, the migration of Shaw customers to Rogers. The Commission may wish to consider, among other things, the transition of services and contracts, service calls, billing practices, consumer recourse for complaints, consumer choice, and the consumer awareness of the availability of services. Further, the Commission may wish to consider how the proposed transaction will enhance the accessibility of services and remove barriers for consumers with disabilities.

Since 2016, the Commission has implemented measures to ensure the affordability of television services and to protect consumers by ensuring clarity in offers and promotions.

Specifically, pursuant to the *Broadcasting Distribution Regulations*, BDU licensees must offer, as an option to consumers, a basic service priced at no more than \$25/month (excluding equipment),² as well as all discretionary services both individually and in packages of up to 10 services.

BDU licensees must also adhere to the Television Service Provider Code, set out in the appendix to *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, 7 January 2016. This is a mandatory code that makes it easier for Canadians to understand their television service agreements and empowers customers in their relationships with BDUs.

In addition, in *Licence renewal of broadcasting distribution undertakings – Review of practices relating to the small basic service and flexible packaging options and imposition of various requirements*, Broadcasting Decision CRTC 2016-458, 21 November 2016, the Commission

² Some services must be included in the package, such as local and regional stations, services designated by the Commission under paragraph 9(1)(h) of the Act, educational services and, if offered, the community channel and the proceedings of the provincial legislature. Others are optional, such as stations affiliated with the four U.S. commercial networks (ABC, CBS, FOX, NBC) and PBS, local AM and FM radio stations, and other Canadian over-the-air stations.

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described a list of best practices that would allow Canadians to form their own value proposition for television services, regardless of what services or products they choose.

In the event that the present transaction is approved, the Commission may wish to consider Rogers's strategy for migrating Shaw customers to Rogers, including customers who have disabilities who may have specific arrangements in place to enhance their access and experience, and how the proposed transaction could affect current Shaw and Rogers customers in the short and medium terms. The Commission may also wish to consider whether the transition would be consistent with the best practices referred to above.

Diversity of voices

BDUs play an important role in ensuring a diversity of voices in the broadcasting system by offering programming services in ways that meet the needs of consumers and serve the objectives of the *Broadcasting Act*. BDUs that offer a community channel also contribute to the plurality of editorial voices in local markets.

In *Regulatory policy – Diversity of Voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008 (the Diversity of Voices Policy), the Commission noted that, as a general rule, it would not approve applications for a change in the effective control of BDUs where this would result in one person being in a position to effectively control the delivery of programming services in any given market. Furthermore, in analyzing any such transactions, the Commission is primarily concerned with preserving the diversity of programming voices in a market and will give due consideration to factors such as the following:

- the regulatory framework for BDUs;
- the market share of other BDU services;
- the impact of unregulated distribution services;
- the extent to which a transaction could change the respective negotiating power of the BDU(s) and programming service providers;
- the impact on community channels or community programming undertakings;
- the size of the market; and
- the majority language of the market.

The Commission notes that since the mid-1990s, it has had a competitive and open-entry approach to licensing BDUs, thereby allowing more than one BDU to operate in a licensed service area.³ Rogers submits that it currently does not operate a BDU in a market currently

³ Further, in *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2015-543 and Broadcasting Order CRTC 2015-544, 9 December 2015, the Commission broadened the exemption order for terrestrial BDUs to allow BDUs with fewer

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licensed to Shaw and that approval of its application would therefore not contravene the Diversity of Voices Policy. Furthermore, Rogers notes that the DTH BDU known as Bell Satellite TV is available as a competitor across all markets.

Local and community programming

The Diversity of Voices Policy aims to, among other things, further the objectives of the *Broadcasting Act* by ensuring that consumers have access to a diversity of programming that is of high standard, as well as to a plurality of editorial voices in local markets.

In the event that the current transaction is approved, the Commission may wish to consider the applicant's proposals and commitments regarding local and community programming. More specifically, the Commission may wish to consider the manner in which the proposed transaction may affect the level of locally reflective and locally relevant content that would be provided to Canadians under Rogers's current proposals. In addition, the Commission may wish to consider how this transaction could improve access to and the representation of underrepresented communities⁴ in the Canadian broadcasting system.

Local programming

In *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016 (the Local and Community Television Policy), the Commission permitted the leveraging of resources of vertically integrated groups to support local news by allowing a certain amount of funding flexibility. To that end, BDUs benefit from certain flexibilities that include:

- (a) the ability to transfer a portion of their required local expression contribution to local television stations to fund local news programming; or
- (b) the ability to transfer certain local expression contributions from one community channel to another.

Local news and information

Rogers operates a network of English-language television stations operating under the Citytv brand in markets that include originating stations in Vancouver, British Columbia; Calgary and Edmonton, Alberta; Portage La Prairie/Winnipeg, Manitoba; Toronto, Ontario; and Montréal, Quebec. Additionally, it operates a number of multilingual and multi-ethnic television stations under the OMNI brand, with originating stations in Vancouver, Calgary, Edmonton and Toronto. Corus Entertainment Inc. (Corus) currently operates a network of English-language television stations, operating under the Global brand, with originating stations in 16 markets in British

than 20,000 subscribers to enter and compete in larger markets with licensed BDUs without first having to get a licence, thereby providing Canadians with a greater choice of TV service providers.

⁴ Underrepresented communities would include for example official language minority communities, Canadians from racialized communities and Canadians with diverse ethno-cultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages.

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Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia.⁵

Sections 34 and 35 of the *Broadcasting Distribution Regulations* provide for the funding of local expression by BDUs. In light of the flexibility offered by the Local and Community Television Policy, according to the aggregate annual returns filed by Rogers for the 2019-2020 broadcast year, Rogers directed \$7.2 million to the production of local news on its Citytv stations. In its aggregate annual return, Shaw reported that it devoted \$12.94 million to Corus for the purpose of creating and broadcasting locally reflective news.

In the event that the current transaction is approved, the Commission may want to consider the possible impact on the funding of locally reflective news, as well as on the delivery of such programming to Canadians, to better understand the impact on the diversity of voices, including regional voices, reflected in the Canadian broadcasting system.

Community programming

BDUs that offer a community channel contribute to the plurality of editorial voices in local markets. Licensed BDUs that distribute a linear community channel must ensure that they are doing so in accordance with the applicable sections of the *Broadcasting Distribution Regulations* relating to this type of programming and to contributions to local expression, Canadian programming and community television.⁶

In its application, Rogers, on behalf of Shaw, stated that Rogers's prospective stewardship of Shaw's community channels, which serve various communities throughout Western Canada, constitutes an important intangible benefit of the transaction. The application indicated that Rogers intends to adopt the same model for community programming in communities outside of the metropolitan markets it currently serves and Rogers committed to supporting and strengthening the role of community television within the broadcasting system.

Therefore, the Commission may wish to consider Rogers's community programming strategy for Shaw's community channels and whether there would be any impact on those community channels should the transaction be approved.

⁵ It also operates the English-language education television service "City Saskatchewan." This service, which is licensed as a television station but operates without an over-the-air transmitter, offers commercial-free educational programming for no less than 50% of the broadcast week, as well as Citytv programming for the remainder of the broadcast week.

⁶ The conditions relating to the community channel that are applicable to exempt BDUs are set out in *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2017-319 and Broadcasting Order CRTC 2017-320, 31 August 2017. For BDUs distributing a community programming service on an on-demand basis, the requirements are imposed as conditions of licence on their related on-demand services and set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.

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Certified independent production funds

BDUs are required to make contributions to Canadian programming. At their discretion, BDUs may provide funding to one or more certified independent production funds. A number of these funds are certified by the Commission further to *Policy framework for Certified Independent Production Funds*, Broadcasting Regulatory Policy CRTC 2016-343, 25 August 2016. Certified independent production funds (CIPF), which are governed independently from those entities that provide funding, are nevertheless often branded in a way that reflects where the majority of their funding is derived.

Rogers currently provides funding to the Rogers Documentary Fund and the Rogers Cable Network Fund. In the 2019-2020 broadcast year, Rogers contributed \$7.36 million to CIPFs. Shaw, for its part, provides funding to the Shaw Rocket Fund. According to the Shaw Rocket Fund's 2020 Annual Report, the majority of the contributions that fund the Shaw Rocket Fund came from Shaw Communications Inc. and Shaw Direct. The Commission notes that in the 2019-2020 broadcast year, Shaw made a contribution of \$5.694 million to CIPFs.

Should the transaction be approved, the Commission may wish to consider the impact of the contributions currently made by Shaw to the Shaw Rocket Fund, as well as those contributions made by Rogers to CIPFs. The Commission may also wish to discuss the impact of Rogers's proposal that the contributions it would continue to make to the Shaw Rocket Fund, on the one hand, and to the Rogers funds, on the other, would be combined, with the amount of the contributions being split evenly between the two sets of funds, which would include support for Canadian programming directed at children and youth.

Satellite relay distribution undertakings

SRDUs are licensed undertakings that transport broadcasting services and make those services available to BDUs, which then offer them to their subscribers. SRDU licences encompass the reception of OTA television stations and of some non-Canadian programming services, as well as their delivery to terrestrial BDUs, but not the transport of Canadian discretionary services.

Similarly, terrestrial relay distribution undertakings (TRDU) receive the programming services of programming undertakings, Canadian or non-Canadian, and distribute these programming services to BDUs. However, TRDUs are exempt from licensing.

There are currently only two licensed SRDUs in Canada, those of Shaw Satellite Services Inc., which is part of the proposed transaction, and Bell ExpressVu Inc. (the general partner), and Bell Canada (the limited partner), carrying on business as Bell ExpressVu Limited Partnership.

Given the importance of Shaw's SRDU in the signal transport sector, and in consideration of Rogers's exempt TRDU, the Commission may wish to consider the impact of the proposed acquisition on the delivery of signals to distribution undertakings.

Impact on non-affiliated programming services

If the Commission approves the transaction, the resulting entity would have approximately 3.624 million wireline subscribers in addition to a national reach through Shaw's existing DTH service.

Furthermore, the Commission notes that since the creation of Corus in 1999, Shaw Communications and Corus were effectively controlled by the late JR Shaw pursuant to the Shaw Family Living Trust agreement and have been considered as a vertically integrated entity under the Diversity of Voices Policy. The Commission may pose questions to better understand how this proposed transaction will impact non-affiliated programming services, which conduct business with both Rogers and Shaw, such as Corus.

Therefore, programming services would be required to negotiate affiliation agreements with one larger BDU rather than with two BDUs operating principally in distinct regions of the country.

Additionally, the number of unaffiliated programming services could grow given the proposed structural separation between Rogers and Corus.

The Commission may wish to consider the possible impact of the transaction on the relationship between Rogers and its non-affiliated programming services,⁷ including the impact on current affiliation agreements, longer-term effects on independent programming services, and whether current safeguards remain appropriate.

Additionally, Corus operates various English- and French-language licensed television stations, as well as 29 discretionary services (26 English-language and 3 French-language).

Corus is also considered a related programming undertaking (i.e., a programming undertaking affiliated with Shaw's BDUs) for the purpose of subsection 19(3) of the *Broadcasting Distribution Regulations*, which requires vertically integrated BDUs to provide at least one independent programming service in the same language, where available, for each related programming undertaking that it distributes in the licensed area (also known as the 1:1 ratio).

In its application, Rogers noted that members of the board of directors of the controlling entity of Corus would also be members of the board of directors of Rogers. It confirmed that, following completion of the transaction, the Corus programming services would be considered independent programming undertakings since Corus's current affiliation with Shaw's BDUs would terminate. It also confirmed that the programming services operated by Corus would not be related programming undertakings in relation to the combined company.

Therefore, the Commission may wish to consider how this change in Corus's status from a related undertaking to an independent undertaking could impact the support to existing independent services, as well as the negotiations between Rogers and Corus.

⁷ As defined in section 1 of the *Broadcasting Distribution Regulations* (related programming undertaking and unrelated programming undertaking).

Safeguards and remedies

The Commission may wish to consider the applicant's proposals regarding additional safeguards and current regulatory safeguards that restrict potential anti-competitive behaviour, including, but not limited to:

- (a) adherence to the Code of conduct for commercial arrangements and interactions,⁸ the expansion of the prohibition on tied selling, and the availability of programming rights for competing distributors;
- (b) adherence to the provisions of the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, which is a requirement limited to licensed programming and distribution undertakings, and serves as a guideline for undertakings operating under an exemption order, and
- (c) undue preference or disadvantage clauses contained in various Commission broadcasting regulations and policies.

The Commission may also wish to explore possible remedial actions that could be taken in case of non-compliance with existing safeguards and whether there is a need for imposing new safeguards, should the proposed transaction be approved.

Value of the transaction

The Commission may wish to consider the value of the transaction, the valuation methodology applied to the value of the transaction, and how the value has been allocated between the various broadcasting undertakings.

Rogers submitted that the total value of the transaction is approximately \$26 billion, which includes an equity value of approximately \$20 billion and approximately \$6 billion in assumed debt (\$4.55 billion) and assumed leases (\$704 million). As it relates to the services subject to the Commission's review and approval, Rogers is proposing a value of the transaction of \$57,459,991, representing 0.226% of the total acquisition cost (\$25,447,200,722), which was calculated using the revenue allocation method.

Tangible benefits

In *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014 (the Tangible Benefits Policy), the Commission stated that its practice is to require tangible benefits for ownership transactions involving all broadcasting undertakings except for BDUs. Under the Tangible Benefits Policy, applicants are required to propose tangible benefits amounting to a minimum of 10% of the value of the transaction for all conventional and specialty television assets involved

⁸ Set out in Appendix 1 to *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as corrected by *Regulatory framework relating to vertical integration - Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011

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in the transaction. In regard to Shaw's licensed DTH pay-per-view operations and the change in control of CPAC Inc., these portions of the transaction would be subject to tangible benefits.

Rogers is proposing a tangible benefits package totalling \$5,746,000, which is equivalent to 10% of the proposed applicable value of the transaction, consistent with the Tangible Benefits Policy.

Rogers is requesting the flexibility to contribute the discretionary portion of the tangible benefits package over a shorter period of time than the standard seven years set out in the Tangible Benefits Policy, in order to support recipients who may be in need of an infusion of new funding to help them recover from the COVID-19 pandemic.

Rogers confirmed that it would ensure that all tangible benefits contributions would be expended within the seven-year timeframe.

The Commission may wish to consider the proposed benefits package in terms of how it serves the public interest more broadly and compliance with the Tangible Benefits Policy, as well as alternative proposals with respect to the benefits.

CPAC Inc.

CPAC Inc. is a federally incorporated, not-for-profit company that is owned by companies that own and control BDUs. Through its licensed and exempt programming services, it is unique in its focus of providing coverage of the proceedings of the House of Commons and of the committees of the House and the Senate, as well as in-depth public affairs content in both official languages. Since CPAC Inc. operates on a not-for-profit basis, all revenue generated is used to fund the services' programming to Canadians. As mentioned above, pursuant to Broadcasting Order 2018-330, the CPAC services were granted mandatory distribution on the basic service until 31 August 2023.

Pursuant to the Plan, the proposed transaction includes the transfer of the ownership of 25.17% of the shares currently held by Shaw Cablesystems Limited to Rogers Communications, which already owns 41.58% of the shares. This would make Rogers the majority shareholder, with a cumulative 66.75% ownership of the shares of CPAC Inc.

The Commission may wish to consider the safeguards proposed by Rogers to ensure that the governance of CPAC Inc. at the level of its board of directors, and the programming offered by the service and editorial voice, are not unduly affected in the event that the proposed transaction is approved.

Additional information may be placed on the public record as it becomes available. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Applicant's address

Address: 333 Bloor Street East, 10th Floor

Toronto, Ontario M4W 1G9

Email: Cable.regulatory@rci.rogers.com

Email to request electronic version of application: Cable.regulatory@rci.rogers.com

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Procedure

Deadline for interventions, comments or answers

13 September 2021

The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answer, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "Statutes and Regulations." *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010, provides information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

An intervention or an answer from a respondent must be filed with the Commission and served on the applicant on or before the above-mentioned date. An answer from a respondent must also be served on any other respondent.

Interventions and answers must clearly identify the application referred to and indicate whether parties support or oppose the application, or, if they propose changes to it, include the facts and grounds for their proposal.

The intervention or answer must include one of the following statements in either the first or the last paragraph:

1. I request to appear at the public hearing.
2. I do not want to appear at the public hearing.

If parties wish to appear, they must provide reasons why their written interventions or answers are not sufficient and why an appearance is necessary. Parties requiring communications support must state their request on the first page of their intervention. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the public hearing.

As noted above, the Commission intends to hold a hybrid hearing. Specifically, the Commission intends to hold an in-person hearing in the National Capital Region while making it possible for parties to participate remotely. In addition, given the importance of Shaw and its operations for Western Canada, and given that Shaw's headquarters is located in Calgary, Alberta, a satellite appearing location in Calgary may be made available to facilitate remote participation for parties in that location. Parties interested in appearing remotely, including from the possible satellite appearing location in Calgary, should indicate their preference when filing their interventions.

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Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position but do not wish to appear at the hearing. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010.

Additional information may be placed on the public record as it becomes available. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

Pursuant to *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.

Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

A true copy of each intervention or answer from a respondent must be sent to the applicant and, in the case of a respondent to an application, to any other respondent.

Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was

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completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.

The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Parties requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the Commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.

Important notice

All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and fax numbers, etc.

The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

An electronic version of the application is available on the Commission's website at www.crtc.gc.ca by selecting the application number within this notice. It are also available from

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the applicant, either on its website or upon request by contacting the applicant at its email address, provided above.

Electronic versions of the interventions and answers, as well as of other documents referred to in this notice, are available on the Commission's website at www.crtc.gc.ca by visiting the "Consultations and hearings – Have your say!" section, then selecting "our applications and processes that are open for comment". Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.

Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

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Appendix to Broadcasting Notice of Consultation CRTC 2021-281

**Licensed terrestrial broadcasting distribution undertakings operated by
Shaw Cablesystems Limited**

Province	Location
British Columbia	Coquitlam, Kelowna, Langford, Nanaimo, New Westminister, Vancouver (2 undertakings), Victoria and White Rock
Alberta	Calgary, Edmonton (2 undertakings) and Red Deer
Saskatchewan	Saskatoon
Manitoba	Winnipeg (2 undertakings)

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THIS IS EXHIBIT "2" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

**Broadcasting Notice of Consultation CRTC 2021-281,
*Notice of Hearing to consider an application by Rogers
Communications Inc. on behalf of Shaw Communication Inc.
to acquire all of the issued and outstanding shares of Shaw
and to operate various licensed broadcasting distribution
undertakings, the national direct-to-home satellite
distribution undertaking Shaw Direct, the national satellite
relay distribution undertaking Shaw Broadcast Services and
the direct-to-home programming service Shaw Pay-Per-View
currently owned by Shaw***

**Intervention
of
BCE Inc.**

13 September 2021

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EXECUTIVE SUMMARY

E1. We are providing the following Intervention in response to BNC 2021-281¹, a consultation initiated by the Commission on 12 August 2021 to consider an application (the Application) by Rogers on behalf of Shaw to acquire all the issued and outstanding shares of Shaw and to operate Shaw's various licensed terrestrial and satellite BDUs.² For the reasons outlined herein, we oppose this Application, and ask that it be denied.

E2. The Canadian broadcasting system is undergoing an unprecedented transition – one that is fundamentally transforming the entire broadcasting system and placing the fulfillment of the objectives of the *Broadcasting Act* (the *Act*) at risk. Historically, the relationship between programming services and broadcasting distribution undertakings (BDUs) was heavily regulated, ensuring Canadians had access through regulated BDU platforms to a wide variety of top tier programs, principally through Canadian-owned channels. By maintaining a delicate balance, this system enabled broadcasters to support Canadian creators and independent producers, showcase programs of national interest (PNI) and offer high quality local, regional, and national news coverage. However, the growth of the Internet and the consumption of content on over-the-top (OTT) platforms has deeply challenged the traditional broadcast model. Access to unregulated foreign OTT services is now ubiquitous in Canada and many Canadians are choosing to "cut the cord". These well-documented developments have plunged the Canadian television industry into an existential crisis as it attempts to manage the move to Internet-based distribution in an orderly fashion while continuing to further the objectives of the *Act*.

E3. It is against this backdrop that Rogers comes to the Commission seeking approval to take control of Shaw, an acquisition that, if approved, will bestow upon Rogers an unprecedented level of market dominance with respect to the provision of broadcasting distribution and Internet access services. If the transaction proceeds, it will make Rogers the broadcasting system's dominant linear and OTT gatekeeper with an unparalleled ability to dictate which programming services will

¹ Broadcasting Notice of Consultation CRTC 2021-281, *Notice of Hearing to consider an application by Rogers Communications Inc. on behalf of Shaw Communication Inc. to acquire all of the issued and outstanding shares of Shaw and to operate various licensed broadcasting distribution undertakings, the national direct-to-home satellite distribution undertaking Shaw Direct, the national satellite relay distribution undertaking Shaw Broadcast Services and the direct-to-home programming service Shaw Pay-Per-View currently owned by Shaw* (BNC 2021-281), 12 August 2021.

² Rogers is also seeking permission to purchase Shaw's national direct-to-home satellite distribution undertaking Shaw Direct, the national satellite relay distribution undertaking (SRDU) Shaw Broadcast Services, Shaw's interest in the Cable Public Affairs Channel (CPAC), and the direct-to-home (DTH) programming service Shaw Pay-Per-View (PPV). See BNC 2021-281.

be available to Canadians on platforms controlled by Rogers and under terms and conditions that will be shaped by Rogers' unprecedented level of market power. As we will demonstrate below, this transaction is not about swapping out one local BDU for another; it is about acquiring a stranglehold over programming services' access to BDU and OTT platforms.

E4. Notwithstanding the unparalleled level of market power this transaction will confer upon it, Rogers has not proposed any safeguards or even acknowledged there is a potential for it to abuse its market power. It has put forward no compelling benefits for the broadcasting system apart from a commitment to invest in Internet Protocol Television (IPTV) technology which offers nothing incremental and is something other BDUs have been offering Canadians for more than a decade. This is surprising given the crisis that the broadcasting system is facing. Instead, the focus of Rogers' Application is almost entirely on the benefits it claims Rogers' ownership of Shaw's telecommunications services will provide; these claims are not relevant to the Commission's consideration of this transaction under the *Act*.

Unprecedented Market Dominance

E5. This transaction, if approved, will transform the Canadian broadcasting landscape through the creation of a distribution behemoth that would control (i) 47% of the English-language broadcasting distribution market, a 135% increase in Rogers' market share; (ii) 47% of English-language BDU subscription revenues, a 123% increase in Rogers' market share; and (iii) one of every three Internet connections in Canada, a 82% increase in Rogers' market share.³ Moreover, if Rogers is permitted to control 47% of Anglophone BDU subscribers and revenue, then any repackaging of English-language discretionary services will also have a dramatic effect on the advertising revenue of those services as it will reduce the number of viewers who have access to those services. This simply places far too much control in the hands of one dominant player. The impact of this market power of course extends far beyond just the programming services that will be dependent on Rogers and extends to the level of investment in Canadian programming, including PNI, and news and Canadian programs produced by independent producers. As the Commission is aware, expenditures on Canadian programming are regulated as a percentage of revenue; as revenue declines, investments in these categories of programming correspondingly decline, making a bad situation worse and lessening choice for consumers.

³ See charts and additional details in section 3.1.

E6. The level of market power sought by Rogers exceeds every relevant market power threshold ever established and will confer upon Rogers the ability to unilaterally control both the linear and OTT ecosystems upon which Canadian English-language programming services depend for their current and future viability. While Rogers has argued that it is compliant with the Diversity of Voices policy (DoV Policy)⁴ because it will simply substitute one terrestrial BDU for another, it is clear that the Commission's 13 year-old DoV Policy was never intended to address a takeover of this nature. This deal is not simply about swapping out one BDU with another in a local market. Rogers will be able to control the availability of programming services in every English-language market on all available platforms as even the most popular channels will need carriage on Rogers to survive. As a result, the Commission must focus on Rogers' share of total English-language BDU subscribers and revenues as well as Internet access subscribers, and the level of economic dependence this creates in order to properly evaluate this transaction. Moreover, Rogers' dominance will not just give it monopsony-pricing power relating to discretionary services; it will also provide Rogers with the opportunity and leverage to further its dominance by, for example, securing preferential carriage arrangements with foreign OTT services to the detriment of BDUs who do not have the ability to secure similar arrangements.

E7. This type of dominance is exactly what the Commission highlighted when it denied BCE's initial application to acquire Astral Media (Astral) in 2012. Ironically, Rogers intervened in that process to voice its concern that, if approved, more than one third of BDU wholesale fee payments would be to Bell Media services, significantly enhancing BCE's market power:

BCE/Astral's substantial viewing share is not the only factor that should be considered. The fact that the vertically-integrated company will hold close to 36% of English-language pay and specialty television revenues, that it will increase its presence in the "must have" Category A genres of movies and other premium content, and that third-party distributors, like Rogers Cable, will have to devote more than one-third of their pay and specialty wholesale fee payments to Bell Media means that this transaction would significantly enhance BCE's market power.⁵ [Emphasis added]

E8. In this case, the BDU market share in English Canada of a combined Rogers and Shaw (in English Canada, 47% of subscribers and 47% of subscription revenue) far eclipses the 42.7% English-language audience market share and the 33.1% French-language audience market share that the Commission determined was too great for BCE and Astral. We recognize that these are

⁴ Broadcasting Public Notice CRTC 2008-4, *Diversity of voices*, 15 January 2008.

⁵ Rogers' submission dated 5 April 2013 to Broadcasting Notice of Consultation CRTC 2013-106, paragraph 20.

two separate markets but parallels can and should be drawn given that both markets are part of the same industry. A channel's share of television audience does not in itself make or break a service, but a gatekeeper BDU (i.e., one with a large share of the relevant market combined with control over access to platforms, such as Rogers will have) will make or break a channel. In other words, the market share of BDU subscribers' threshold causing concern should theoretically be lower than those used for programming services, not higher (or completely ignored as Rogers has done here).

E9. In rejecting BCE's initial proposal to acquire Astral, the Commission determined that it was "not convinced that the transaction would provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians sufficient to outweigh the concerns related to competition, ownership concentration in television and radio, vertical integration and the exercise of market power."⁶ This Application represents the opposite side of the same coin. As stated by the Commission in BCE-Astral, "The market power...could threaten the availability of diverse programming for Canadians and endanger the ability of distribution undertakings to deliver programming at affordable rates and on reasonable terms on multiple platforms."⁷ Similarly, the market power of a combined Rogers-Shaw will threaten the ability of linear and OTT programming services to access BDU and Internet platforms on reasonable terms and conditions.

E10. The market share for the combined Rogers-Shaw entity would also far exceed the 35% threshold the Competition Bureau (the Bureau) generally uses to assess whether a merger is likely to be anti-competitive. Furthermore, in the United States, a much larger and less concentrated broadcast distribution market, regulators forced Comcast to abandon its proposed merger with Time Warner Cable, which would have resulted in Comcast having less than 30% of the paid television market (40% less than what Rogers is proposing), as there were significant concerns the approval would not have been in the public interest.⁸ In the Comcast-Time Warner case, the Chairman of the Federal Communications Commission (FCC) said that the termination of the deal was "in the best interests of consumers" and that it "would have posed an unacceptable risk to competition and innovation"⁹. Similarly, the United States Attorney General on behalf of the Department of Justice (DOJ) said that the "decision to abandon this deal is the best outcome for consumers" as the DOJ "had significant concerns that the merger would make Comcast an

⁶ Broadcasting Decision CRTC 2012-574, *Astral broadcasting undertakings – Change of effective control* (Decision 2012-574), 18 October 2012, Introductory paragraph.

⁷ *Ibid*, paragraph 64.

⁸ <https://docs.fcc.gov/public/attachments/DA-14-986A1.pdf>.

⁹ <https://www.fcc.gov/document/chairmans-statement-comcast-twc-merger>.

unavoidable gatekeeper for Internet-based services".¹⁰ It is also in the best interests of Canada's broadcasting stakeholders – consumers, licensees and producers – for this deal to be denied given the risk to competition.

Rogers Ability to Act as the Gatekeeper for the Broadcasting System Would be Unprecedented

E11. In recent years, the Commission's rules and regulations for BDU carriage have been streamlined and now provide limited carriage and packaging protections to programming services, relying instead largely on consumer demand in a competitive market. None of these policies were designed to address the situation where one BDU would have the unprecedented market share Rogers is proposing or for a world in which the BDU ecosystem is transitioning to an unregulated OTT distribution model. Indeed, Rogers has already launched an online distribution product, SmartStream, which they confirm is designed for consumers who are not interested in traditional TV. If permitted to take over Shaw, Rogers' expanded Internet footprint and dominant BDU market share would give it a level of influence over the Canadian broadcasting system that would make it ungovernable. As the Commission determined in the Astral decision: ". . . convergence, integration and scale may lead to a point at which the size of an entity on a national level becomes so large that it hinders effective and healthy competition among Canadian broadcasters."¹¹

E12. A combined Rogers-Shaw would have the necessary size and scale to give it monopsony power, essentially allowing it to dictate pricing and packaging to any programming service, regardless of popularity, or decide not to carry the service at all, and to direct any savings to fuel the expansion of its OTT platform. At a time where we need healthy Canadian programming services in both the traditional BDU ecosystem and on emerging OTT platforms that can compete with unregulated foreign streaming providers, approval of this transaction would lead to the opposite result.

E13. The concern here is not theoretical. Even before the proposed merger, Rogers expressed its desire #

#. Once it controls the BDU market, it will have the ability to single-handedly determine which English-language discretionary services survive and which ones do not.

Filed in confidence with Rogers and the CRTC.

¹⁰ <https://www.justice.gov/opa/pr/comcast-corporation-abandons-proposed-acquisition-time-warner-cable-after-justice-department>.

¹¹ Decision 2012-574, Note 6, paragraph 63.

E14. Moreover, Rogers would not just be in a position to dictate the distribution strategy for the market, it would have a competitive advantage over other BDUs as it could use its scale to negotiate preferential or exclusive distribution arrangements with OTT services in order to further solidify its dominant position relating to the provision of OTT services both as part of its BDU platform and on a direct-to-consumer basis. As recently as 2019, the Commission indicated that it may need to re-examine the role and effectiveness of its regulatory approach to online BDUs to ensure these services benefit Canadians and the Canadian system to the greatest extent possible. Until this review has occurred, this transaction should be denied.

Denial is the Only Option

E15. As the Commission does not solicit competing applications for changes to the ownership of broadcasting undertakings, the burden is on the applicant to show that this transaction is the best proposal, and that approval is in the public interest¹². Yet Rogers has not demonstrated how any of the stakeholders in the system – broadcasters, creators, news organizations or consumers – would benefit from the unprecedented level of consolidation it is proposing.

E16. Denial of the Application would be consistent with the principles expressed in the DoV Policy given that Rogers would control 47% of the English-language BDU subscriber and revenue markets. However, even at a market share that excludes Shaw Direct, the monopsony power that Rogers would exercise would be far too great. In this regard, we note that in BCE's second application to the Commission to acquire Astral, wherein the combined BCE/Astral English-language television audience share decreased from 42.7% to 35.8% with the divestitures that we proposed, the actual increase in Bell Media's share of this market was only 1.8%.¹³

E17. Furthermore, approval of this proposed transaction in the absence of a regulatory framework for OTT distribution would enable Rogers, not the Commission, to dictate the future of the Canadian broadcasting system. If Rogers is allowed to acquire a dominant position and determine what programming choices are available in the market, by the time the Commission sets any regulatory framework for OTT distribution as it has indicated it plans to do, it will be far too late. Until such a framework is established, consideration of this Application would be extremely premature given that, as noted by the Commission in BCE's initial application to acquire

¹² Broadcasting Regulatory Policy CRTC 2014-459, *Simplified approach to tangible benefits and determining the value of the transaction*, 5 September 2014.

¹³ Broadcasting Decision CRTC 2013-310, *Astral broadcasting undertakings – Change of effective control*, (Decision 2013-310), 27 June 2013, paragraphs 45 and 46.

Astral, and as equally applicable to the current Application, "a transaction of this nature goes beyond an operational decision on a change in ownership; indeed its impacts would shape the structure of the industry in the coming years."¹⁴ In view of this, we submit that Rogers has not met its burden of proof to demonstrate that its transaction is in the public interest and the transaction should be denied.

E18. We are filing certain information in this Intervention in confidence with the Commission pursuant the directions provided by the Commission in the Appendix to BTIB 2010-961.¹⁵ Release of this information would provide our competitors and potential competitors with invaluable competitively-sensitive information that would not otherwise be available to them and cause specific direct harm to us. Abridged version of our Intervention is provided for the public record.

E19. Finally, we confirm that we would like to appear at the public hearing to discuss our perspective on this transaction.

1.0 INTRODUCTION

1. As outlined in BNC 2021-281, Rogers has filed an Application to acquire all of the issued and outstanding shares of Shaw and for authority to operate Shaw's various licensed terrestrial and satellite BDUs as well as its' satellite relay distribution undertaking (SRDU) Shaw Broadcast Services. Rogers is also purchasing Shaw's interest in Cable Public Affairs Channel (CPAC) and the Shaw direct-to-home (DTH) Pay-per-view (PPV) programming service.

2. If approved, this transaction will transform the Canadian broadcasting landscape creating a provider that not only controls 47% of the English-language broadcasting distribution market in Canada but also the Internet access platforms that will control the delivery of linear and OTT programming for the foreseeable future. Such dominance is unprecedented in a market of this size and will give Rogers the power to "make or break" programming services, resulting in one provider being able to dictate what content is available to Canadians, on what distribution platforms the content is available, regardless of where they live or which BDU they subscribe to. It will also allow Rogers to create a go-to unregulated distribution platform for foreign content providers in Canada, hastening the demise of the traditional BDU ecosystem.

¹⁴ Decision 2012-574, paragraph 50.

¹⁵ Broadcasting and Telecom Information Bulletin CRTC 2010-961, *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, as amended in BTIB 2010-961-1, 26 October 2012.

3. Notwithstanding these concerns, Rogers has not proposed any potential safeguards in its Application or even acknowledged there is a potential for it to abuse its market power. Moreover, it has essentially highlighted no benefits of this transaction for the broadcasting system other than that it will make investments to realize the advantages of IPTV technology, something other BDUs have been offering Canadians for more than a decade. In fact, the focus of Rogers' Application is the alleged benefits its ownership of Shaw's wireless and wireline telecommunications services provide, even though the acquisition of these services is not relevant to the Commission's obligation to review whether this transaction fulfills the objectives of the *Act*.

4. As the Commission does not solicit competing applications for changes to the ownership of broadcasting undertakings, the burden is on Rogers to show that this transaction is the best proposal, and that approval is in the public interest. As explained in more detail below, we submit that Rogers has failed to meet its burden and as such, the Application must be denied.

2.0 THE BROADCASTING LANDSCAPE

5. The Canadian broadcasting system is undergoing an unprecedented transition – one that puts the entire ecosystem at risk as the growth of the Internet has deeply challenged the traditional broadcast model. Access to unregulated foreign OTT services is now ubiquitous in Canada and many Canadians are choosing to "cut the cord". While consumers have benefited from a plethora of choices, this new environment has detrimentally impacted both Canadian programming services and BDUs. These developments have plunged the Canadian television industry into an existential crisis.

6. Recently we have seen the growth of Canadian online distribution models as part of a transition in how Canadians consume television. However, given the massive BDU market share and Internet footprint that the combined Rogers-Shaw would have if this Application is approved, none of them have the potential to disrupt our broadcasting system as much as Rogers' new SmartStream product, which aggregates content from OTT subscription streaming services. Offered only to Rogers' Internet subscribers, SmartStream aims to rapidly transition subscribers from the traditional BDU ecosystem to one that is completely unregulated.¹⁶

7. In the midst of this, Rogers is proposing a transformational mega-merger with Shaw, which offers nothing to solve this crisis. Instead, it will serve to consolidate unprecedented market power

¹⁶ Toronto Star, *Rogers launches new SmartStream service for cord-cutting internet subscribers*, 21 July 2021.

in the hands of one entity, and further undermine the viability of a broadcasting system presently at high risk of becoming obsolete.

8. The Commission has already stated that our current legislative and regulatory frameworks are not easily adaptable to this new reality, and that, in its view, new tools are necessary to address both the risks and opportunities of this new competitive landscape that unwittingly has placed the Internet at its centre.¹⁷ Importantly, we do not yet have those rules to address the risks and opportunities. And while the Commission proposed that it would "re-examine the role and effectiveness of the existing regulatory approach" to online BDUs, it has yet to do so.¹⁸

9. At this point, the nature of the future Canadian regulatory scheme to manage this new world is completely unknown. Even if Bill C-10, the Government's proposed bill to amend the *Act*, had passed into law, the next steps would involve at least two years of Commission proceedings to determine and implement the new rules for how foreign OTT providers would be brought into the regulatory system and how our system would need to change to accommodate the new reality. It is against this sea of uncertainty that Rogers seeks to get out ahead of the regulator and cement its position as the single and only dominant BDU and OTT distribution platform in English Canada.

3.0 ROGERS' MARKET SHARE WILL EXCEED EVERY RELEVANT THRESHOLD ESTABLISHED

10. The market share of the combined Rogers-Shaw entity would be unprecedented in that it would greatly exceed any existing threshold established to determine whether a merged entity would have too much concentration such that the transaction could not be approved. Moreover, our review of previous acquisitions of other broadcasting undertakings demonstrate that those merged entities come nowhere close to being able to control 47% of the relevant market.

3.1 The Size and Scale of a Combined Rogers-Shaw Would be Unprecedented

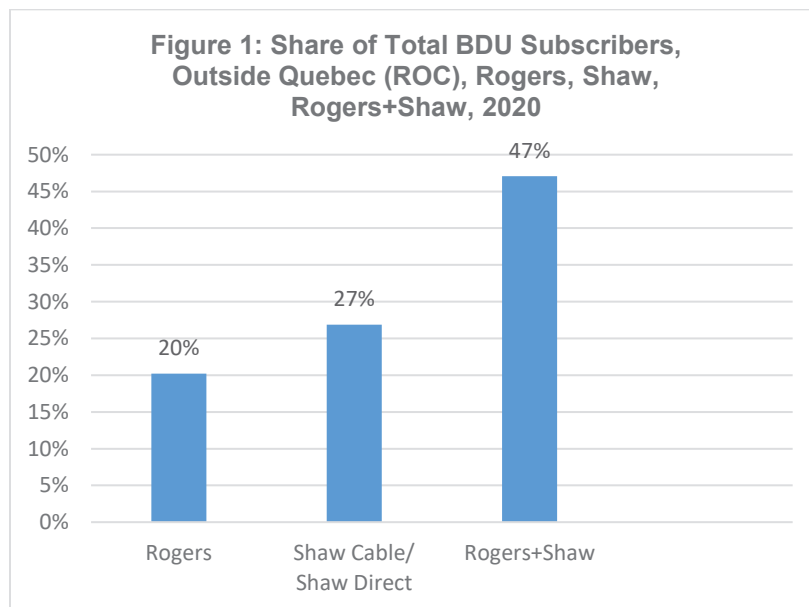
11. In BNC 2021-281, the Commission notes that should the transaction be approved, Rogers' share of national BDU revenues and subscribers would increase to 37.4% and 35.5% respectively. However, these figures dramatically understate the true impact of this merger. The Canadian broadcasting system is effectively split into two markets based on language. English-language programming services rely almost entirely on distribution in their primary language

¹⁷ Harnessing Change: The future of program distribution in Canada, Market Insight 12 (<https://crtc.gc.ca/eng/publications/s15/>), Opportunities and Risks.

¹⁸ *Ibid*, Conclusions and potential options: Short to medium term steps.

market and often discount their rates significantly for BDUs in secondary language markets. The same is true for French services. In this regard, the percentage of our English-language discretionary services' total subscriber revenue that comes from BDUs in English Canada is approximately #. As a result, Rogers' national share is not relevant – it is its share of the English-language BDU market that must be the focus of the Commission's analysis.

12. In this regard, we were able to approximate what Rogers' share of subscribers would be in English Canada post- merger.¹⁹ As shown in the table below, Rogers' share of BDU subscribers outside of Quebec will increase 135% – from 20% to a staggering 47% – effectively half of the BDU market in English Canada. In contrast, Bell TV's share of the BDU market outside of Quebec is significantly smaller at only 28%.

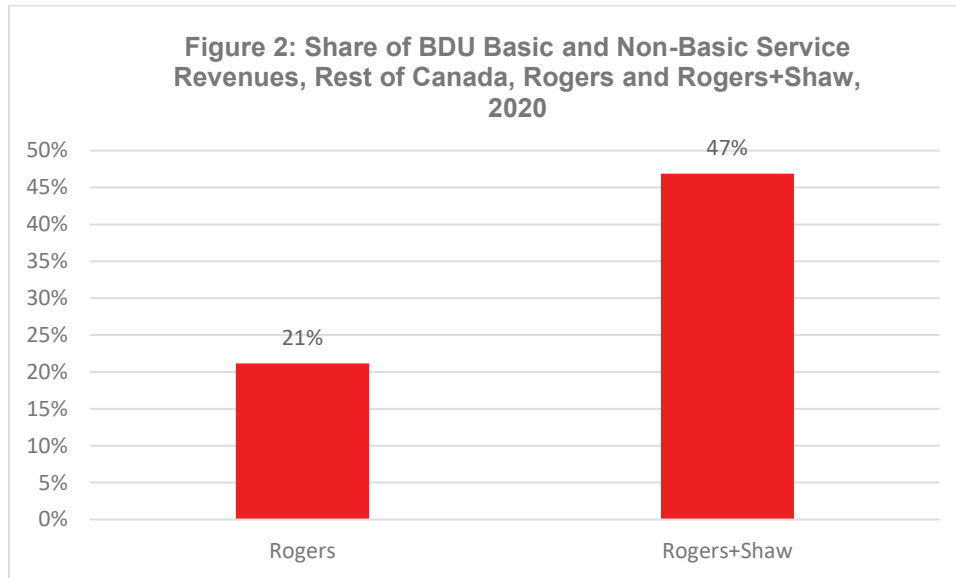


Source: Broadcasting Notice of Consultation CRTC 2021-281. CRTC, Broadcasting Distribution, Statistical and Financial Summaries, 2016 - 2020. Bell Media.

Filed in confidence with the CRTC.

¹⁹ The available data from the Commission separates out BDU terrestrial subscribers by region and thus all of our terrestrial subscriber data for English Canada is based on these reports excluding Quebec. Unfortunately, there is no public data for DTH by region. However, given our ownership of Bell Satellite TV, we know the number of our Quebec-based DTH subscribers. In addition, we also know the Shaw Direct's Quebec subscriber base given its distribution of Bell Media's French-language discretionary services. Accordingly, the number of DTH subscribers in Quebec for both Bell Satellite TV and Shaw Direct were removed from the Commission's total DTH subscriber base which then allowed us to estimate Rogers' pre- and post-merger market share in English Canada.

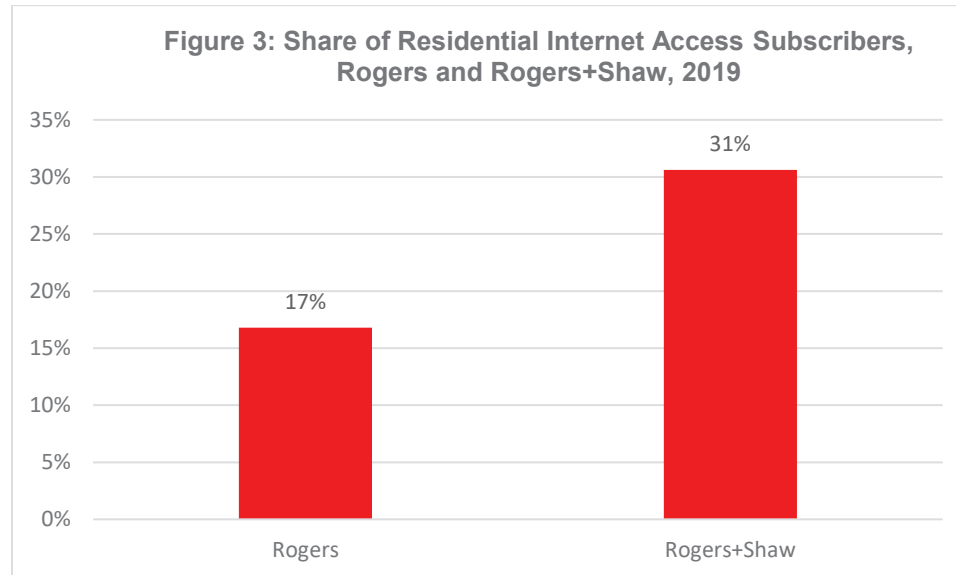
13. The massive English-language BDU market share of a combined Rogers-Shaw is further informed by other metrics, including BDU revenues as well as Internet subscriptions. The proposed acquisition would increase Rogers' share of BDU revenues in English Canada from 21% to 47%, an increase of 123%.²⁰ This revenue share demonstrates the reliance that Canadian programming services would have on Rogers to ensure their continued viability, as we further detail below.



Source: Annual Reports. CRTC, Communications Monitoring Report, 2020.

14. In addition, given that Rogers is transitioning to an OTT distribution model, their Internet footprint becomes relevant. In this regard, Rogers' share of retail access subscribers would increase from 17% to 31%, amounting to a 82% increase.

²⁰ This figure uses the same methodology described in footnote 20. For example, we applied the percentage of Shaw Direct's subscribers that are in Quebec to its total DTH revenue to arrive at the estimated amount for Shaw Direct's revenues in English Canada and then added that to the Shaw and Rogers regional terrestrial BDU revenues.



Source: Annual Reports. CRTC, Communications Monitoring Report, 2020.

15. In order for a mainstream discretionary programming service to be viable it must be able to secure wide distribution on BDUs at reasonable rates in its primary service area. At present, for an English-language service, this means securing carriage and reasonable packaging on at least two of the three largest BDUs in the market – Bell, Rogers and Shaw. The fundamental issue with the proposed transaction is that three will effectively go down to one, as Rogers will control just shy of half of the subscribers in the relevant market. As such, not having carriage on Rogers will make most discretionary services unviable even if they have deals with all other BDUs. To be clear, carriage on Bell and other non-Rogers BDUs (i.e., only half of the BDU market in English Canada) will not be enough to ensure viability.

16. In addition, with its monopsony power, Rogers will have the size and scale to enter into preferential or exclusive distribution arrangements with foreign OTT services, which will help Rogers grow subscribers to its Internet access service to the detriment of its BDU competitors. In effect, Rogers will be establishing Canada's OTT market but without any parameters established by regulatory policies as we discuss further in section 3.3 below.

3.2 Thresholds Established by the Diversity of Voices Policy and the Bureau

17. In its Application, Rogers has argued that this transaction is consistent with existing Commission policies, specifically the DoV Policy relating to BDU acquisitions, which states that:

The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting distribution undertakings (BDUs) in a market that would result in one person being in a position to effectively control the delivery of programming services in that market. The Commission is not prepared to allow one person to control all BDUs in any given market.²¹

18. Rogers' argument that since its and Shaw Cable's operations don't overlap, and Shaw Direct primarily serves rural and remote areas, its merger will have no competitive impact. Rogers states that the intent of the DoV Policy is to "discourage any concentration of ownership that would result in a substantial reduction of effective competition in local markets."²² However, Rogers has mischaracterized the intent of the DoV Policy and ignored the substantial changes in both the regulatory and operational environments for programming services since that decision was issued 13 years ago. The DoV Policy was designed to ensure that Canadians had access to a variety of choices relating to the delivery of programming services in a given market. As the Commission noted:

In a rapidly changing broadcasting environment, the Commission's focus should be on ensuring effective competition for BDU services in local markets. The Commission is of the view that such competition will result in increased programming diversity.²³ [Emphasis added]

19. It is also important to highlight that the regulatory framework in place for BDUs and programming services in 2008 was very different from what is in place today. At the time of the DoV Policy, mainstream Category A discretionary services had carriage guarantees, genre exclusivity and some degree of control over packaging. Custom packs and standalone distribution were not available in English Canada. Today, none of these protections for discretionary services exist and BDUs have widespread control over packaging.

20. While Rogers has argued that it will not be able to control the delivery of programming services in a market, this is incorrect. Rogers will be able to control the availability of programming services in every English-language market as even the most popular channels will need carriage on Rogers to survive. If Rogers does not carry a service, repackages it so that it has poor penetration or depresses its wholesale rate, it would be very difficult for that service to continue to operate. Notably, in analyzing this transaction, the DOV Policy requires the Commission to

²¹ DoV Policy, paragraph 105.

²² *Ibid.*, paragraph 101.

²³ *Ibid.*, paragraph 104.

consider the extent to which a transaction could change the respective negotiating power of the BDU(s) and programming service providers, among other factors.²⁴

21. Consequently, the transaction must be looked at more broadly than just whether there is overlap "in any given [local geographic] market" in order to see the potential impact on programming diversity. The DoV Policy analysis must use at its starting point the monopsony power that Rogers would have in what the Competition Bureau has found is a national market for the supply and carriage of English-language programming services as a result of its English-language BDU market share.²⁵ More specifically, in this transaction, market power is not driven by overlap in specific local markets but in how Rogers could leverage its size against programming services and competing BDUs, and the subsequent impact on consumers in every English-language market.

22. This was the approach taken by the FCC in the United States in its review of a much smaller proposed merger between Time Warner Cable, Charter, and Brighthouse in which the merged entity would have been the third-largest (not by far the largest) serving approximately 17% (not 47%) of the market:

[W]e find that the market for buying and selling cable network programming sold on a nationwide basis is national. The Applicants argue that even within a national programming market, they do not compete with each other as buyers of programming. We disagree. In prior transactions, the Commission has recognized the potential of horizontal consolidation among MVPDs to increase buying power in the video programming market. We find that because cable programmers seek distribution for identical (or nearly identical) programming across multiple distributors on a national or regional scale, Time Warner Cable and Charter represent alternative distribution channels for a programmer seeking to reach a significant number of subscribers. Accordingly, we find that Time Warner Cable and Charter compete as buyers of programming in the national market (as well as in certain regional markets where both companies have a presence today) and that the transactions therefore would reduce the number of purchasers for programming. The loss of Time Warner Cable and Charter as separate distributors likely would reduce competition among the remaining buyers and thereby increase the combined entity's bargaining leverage relative to programmers post-transaction.²⁶ [Emphasis added]

²⁴ *Ibid*, paragraph 106.

²⁵ See Competition Bureau, *Backgrounder: Commissioner of Competition's decision regarding Bell's proposed acquisition of Historia and Séries+* (31 May 2018) (referring to "the supply of French language television programming services to programming distributors"); Competition Bureau, *Competition Bureau review of the proposed acquisition of Astral by Bell* (4 March 2013) (referring to "market power in negotiating the terms of access to programming services... including the carriage fees and packaging terms").

²⁶ Federal Communications Commission, *Charter Communications, Inc., / Time Warner Cable Inc., / Advance/Newhouse Partnership* (5 May 2016), paragraph 214 Table 23, emphasis added.

23. The Competition Bureau's merger enforcement guidelines are also instructive in this regard:

The Bureau is generally concerned with monopsony power when a buyer holds market power in the relevant purchasing market, such that it has the ability to decrease the price of a relevant product below competitive levels with a corresponding reduction in the overall quantity of the input produced or supplied in a relevant market, or a corresponding reduction in any other dimension of competition.²⁷

24. As the Bureau explains, "[i]n order to determine market shares and concentration levels, the Bureau compares the size of the purchases of the relevant product by the merging parties with the total sales of the relevant product."²⁸ In this case, Rogers and Shaw would account for approximately 47% of the affiliate payments (purchases) for the distribution of programming services in English Canada, exceeding the 35% threshold the Bureau uses to identify transactions that may be anti-competitive.²⁹

25. It is this same threshold that the Commission adopted in its DoV Policy to determine whether ownership acquisitions involving television services should be approved. In particular, the Commission determined that "as a general rule, the Commission will not approve transactions that would result in the control by one person of more than 45% of the total television audience share - including audiences to both discretionary and OTA services."³⁰

26. To ensure that we continue to have a strong Canadian broadcasting system, these principles of the DoV Policy, including assessing thresholds on a language-specific basis, should be utilized by the Commission to determine whether this transaction moves forward.³¹ While we recognize that the current thresholds apply to the audience share of programming services, given the significant impact that approval of this Application would have on the Canadian broadcasting system, similar metrics – share of BDU subscribers and revenues – should be used to address this transaction since Rogers would have the ability to control programming diversity within English Canada. We recognize that these are two separate markets but parallels can and should be drawn given that both markets are part of the same industry. Moreover, having a large market share in a sector where there are no barriers to entry (i.e., programming services) is distinctly less

²⁷ Competition Bureau, *Merger Enforcement Guidelines*, paragraph 9.1.

²⁸ Competition Bureau, *Merger Enforcement Guidelines*, paragraph 9.3.

²⁹ As noted earlier, we are using Bell Media's approximate percentage as a proxy.

³⁰ DoV Policy, paragraph 87.

³¹ *Ibid*, paragraph 88.

concerning than having a dominant market share in a sector where are significant barriers to entry (i.e., BDU) given the infrastructure commitment required. In other words, the market share of BDU subscribers' threshold causing concern should theoretically be lower than those used for programming services, not higher (or completely ignored as Rogers has done here). Consequently, with a BDU market share in English Canada of 47%, Rogers fails the DoV Policy test and falls into the category that the transaction will not be approved.

27. Refusing to provide the requested approval for the transaction would be consistent with the approach taken by regulators in other countries, including in the United States. For example, in the Comcast / Time Warner Cable transaction, which would have given Comcast a 30% market share, both the FCC and the DOJ refused to approve the transaction, on any conditions and ultimately the transaction was abandoned by the parties. Former FCC Chair Tom Wheeler said ending the deal was "in the best interests of consumers" and that it "would have posed an unacceptable risk to competition and innovation" and former Attorney General Eric Holder said the "decision to abandon this deal is the best outcome for American consumers" as the DOJ "had significant concerns that the merger would make Comcast an unavoidable gatekeeper."³²

3.3 Guidance from Industry Precedents

3.3.1 The Proposed Acquisition of Astral Media by BCE in 2012

28. In initially denying BCE's proposed acquisition of Astral in 2012, the Commission stated that it was:

...not convinced that the transaction would provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians sufficient to outweigh the concerns related to competition, ownership concentration in television and radio, vertical integration and the exercise of market power.³³

29. In our view, the above statement is equally if not more applicable to the current Application. There are certainly no significant and unequivocal broadcasting benefits. Other determinations made by the Commission in Decision 2012-574 are equally instructive.

³² FCC, <https://docs.fcc.gov/public/attachments/DOC-333175A1.pdf> DOJ, <https://www.justice.gov/opa/pr/comcast-corporation-abandons-proposed-acquisition-time-warner-cable-after-justice-department>.

³³ Decision 2012-574, Introductory paragraph.

30. First, the Commission commented on the transformational nature of the potential acquisition of Astral on the broadcasting ecosystem, recognizing that the transaction was more than just a simple ownership change. Similarly, the Rogers-Shaw transaction is also significantly more than an ownership change given its massive impact on the entire broadcasting ecosystem:

The issues raised by this application involve many intersecting objectives and policies and speak directly to the health and sustainability of the Canadian broadcasting system. A transaction of this magnitude goes beyond an operational decision on a change in ownership; indeed, its impacts would shape the structure of the industry over the coming years.³⁴

31. Second, in rejecting BCE's argument it needed scale to compete with unregulated services, the Commission commented that:

...convergence, integration and scale may lead to a point at which the size of an entity on a national level becomes so large that it hinders effective and healthy competition among Canadian broadcasters. The Commission, as discussed below, considers that a transaction of this magnitude would adversely affect competition and diversity in the Canadian broadcasting system and thereby threaten its ability to achieve the policy objectives set out in the Act. The Commission is mindful that a healthy communications system also requires entities of various sizes that are able to compete and innovate in a fair environment.³⁵

32. The market power resulting from the acquisition of Shaw by Rogers far eclipses what the Commission felt was too much in BCE's initial application to acquire Astral. It is of such significant magnitude that it would adversely affect competition and diversity and impede the policy objectives of the Act. Ultimately, in denying BCE's initial application for effective control of Astral, the Commission considered that BCE's market power would give it an incentive to unduly exert market power to the disadvantage of its competitors and that the regulatory framework would be insufficient to temper this power. The same is equally if not more true here.

33. Ironically, Rogers previously expressed its concern about BCE's size and influence in the context of BCE's acquisition of Astral Media, requesting that BCE be required to divest all of Astral's English-language discretionary services. As Rogers stated:

BCE/Astral's substantial viewing share is not the only factor that should be considered. The fact that the vertically-integrated company will hold close to 36% of English-language pay and specialty television revenues, that it will increase its

³⁴ Decision 2012-574, paragraph 50.

³⁵ Decision 2012-574, paragraph 63.

presence in the "must have" Category A genres of moves and other premium content, and that third-party distributors, like Rogers Cable, will have to devote more than one-third of their pay and specialty wholesale fee payments to Bell Media means that this transaction would significantly enhance BCE's market power.

...

The Code of Conduct alone is simply not an adequate safeguard against a vertically-integrated company that has the size and scope of BCE in the English-language television market.

...

Given its size and its unique mix of broadcasting and distribution assets, BCE is the only entity operating in the Canadian broadcasting system that is capable of undermining competition and hurting consumers by refusing to make non-linear program rights available to third party distributors in a timely manner.³⁶

34. Applying Rogers' statements to the current Application, we note that:

- Rogers' substantial BDU share in English Canada means that all programming undertakings would be reliant on Rogers for nearly half of their wholesale fee payments thereby significantly enhancing Rogers' market power;
- The share that Rogers seeks to acquire exceeds all thresholds and far exceeds what was deemed too much in BCE's initial application to acquire Astral;
- The *Wholesale Code* alone is not an adequate safeguard against a BDU size of a combined Rogers-Shaw as this transaction gives rise to significant issues around scale and not just vertical integration; and
- Given its market share, Rogers is the only BDU in Canada that is capable of undermining the success of all Canadian programming undertakings and BDUs.

3.3.2 The Acquisition of MTS Inc. by BCE

35. Rogers references the Bell MTS transaction as a precedent for the Commission's approval of its own Application. However, it is important to note that BCE's acquisition of MTS could not be more different from this acquisition. With MTS, BCE, which did not operate an incumbent wireline BDU, was acquiring another "new entrant" BDU, in a market where neither BCE, nor MTS

³⁶ Rogers' submission dated 5 April 2013 to Broadcasting Notice of Consultation 2013-106, paragraphs 20, 44 and 56.

operated the largest BDU in the market. In fact, Shaw continued to be the largest BDU operator in Manitoba.³⁷

36. In addition, MTS had roughly 110,000 BDU subscribers, increasing our subscriber base by roughly 3%. Such a limited increase would have little impact on the delivery of programming services in Manitoba or across the country. In contrast, Rogers is acquiring Shaw, the market leading incumbent cable operator in every market it serves and growing its share of English-language BDU subscribers by 135% – from 20% to a staggering 47%. These two acquisitions are as different as night and day, and as such, any attempt by Rogers to use the Bell MTS acquisition as a precedent for its Application must be dismissed by the Commission. We note that beyond MTS, Rogers offers no other relevant precedents, which is not surprising as this transaction is simply unprecedented.

4.0 THE IMPACT OF A ROGERS-SHAW MERGER

37. Rogers' proposed acquisition of Shaw is focused on ensuring that it alone will be the preferred Internet access services by offering a gateway to foreign-owned OTTs at the expense of the entire Canadian broadcast ecosystem. Ignoring telecommunication benefits, the only broadcasting benefit Rogers points to is the various features the Comcast X1 IPTV platform that both Rogers and Shaw can offer, but most of these have been available from other IPTV providers for some time. What Rogers does note is the ease of access to OTT offerings this system provides. In fact, Rogers states:

At a time when Canadians are able to access television programming from a growing number of foreign OTT services, including Netflix, Amazon Prime, Paramount+, Disney Plus, YouTube Premium and others, this transaction will ensure that there continue to be strong Canadian platforms operating as alternatives to these foreign streaming giants. The combined company will have the scale to continue to making the necessary investments in next-generation television services.

38. What Rogers fails to highlight is the lengthy list of foreign OTT services it references are all programming services, not distributors of channels. It will be offering a distribution platform – one that is Canadian-owned but relies entirely on technology licensed from and developed by a foreign supplier, Comcast – that distributes these same services, as well as others. A platform

³⁷ Broadcasting Decision CRTC 2016-487, *Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control*, 20 December 2016, paragraph 26.

does not compete with a programming service – it makes it accessible. The way to compete with Netflix, Amazon Prime and others is to have well-funded Canadian programming alternatives. This transaction will do nothing to help develop such options and instead will undermine the health of Canadian services.

39. Just as important as the impact this transaction will have on Canadian programming services, is what Rogers' monopsony power will do to its BDU competitors. Rogers will have the size and scale to set the distribution strategy for the market and its competitors will struggle to follow as Rogers would be in a position to negotiate preferential or exclusive arrangements with the most attractive foreign services. Rogers SmartStream product will be the "go to" platform for the top content, and destabilizing the traditional OTT ecosystem.

40. In addition, as more and more subscribers move into the unregulated ecosystem, there is another unfortunate consequence. It is not just that consumers are abandoning the traditional broadcasting system, it is that foreign service providers are entering the Canadian market in a way that they have not done historically. In the past, a foreign content provider partnered with a Canadian programming service (for example, FX Networks partnership with Rogers or Bell Media's partnership with Discovery, Inc.). This model benefited Canadian services as it allowed them to broadcast sought after foreign content while at the same time ensuring that they had control over the programming, the marketing and the distribution of the content.

41. However, that control has now been lost; program rights are no longer licensed to Canadian licensees and foreign services are bypassing traditional players to bring their content directly into Canada on an OTT basis. Rogers' SmartStream strategy will only serve to drive consumers to OTT platforms as evidenced by a current promotion offered by Rogers: new subscribers to Ignite TV, SmartStream and mobile phone services receive Disney+ free for six months.³⁸

42. We recognize that the broadcasting landscape is evolving and that further erosion may be inevitable unless the Commission puts in place a new regulatory regime to ensure that Canadian licensees remain at the forefront of the system. In the meantime, Canadian programming services and distributors need to be in a position to manage this transition. But allowing Rogers to control

³⁸ <https://www.rogers.com/iptv/disney-plus>.

46. In 2011, the Commission first introduced what is now widely referred to as the standstill rule. In effect, where a BDU and programming undertaking are in negotiations, the programming service must continue to be offered on the existing terms and conditions.³⁹ This rule has since been adopted into both the *BDU Regulations* as well as the *Discretionary Services Regulations*.

47. Arising out of its policy review on VI, the Commission next developed the *Code of conduct for commercial arrangements and interactions (Code of Conduct)*, which served as a guideline for licensees while negotiating agreements. As stated by the Commission, the principles set out in the *Code of Conduct* were designed to permit all industry players to negotiate on fair and equal terms.⁴⁰

48. Subsequently, in connection with BCE's acquisition of Astral Media in 2013, the Commission imposed a number of conditions of licence (COLs) on both BCE's distribution and programming undertakings that were designed to provide third party licensees with certainty in their dealings with the merged BCE-Astral.⁴¹ Subsequently, these COLs were imposed on other programming licensees in the course of ownership transactions and/or licence renewals.⁴²

49. Finally, as part of the new TV Policy Framework, the Commission proposed a new code of conduct, referred to as the *Wholesale Code* and which would be mandatory on all BDUs and programming services.⁴³ The code came into force in early 2016 and is enforced by COL on licensees. The *Wholesale Code* built upon the provisions established in the *Code of Conduct*; in addition, many of the clauses in the *Wholesale Code* are either exactly the same as the COLs put in place for BCE as part of the Astral acquisition or substantially similar. As with the *Code of Conduct*, the *Wholesale Code* governs certain aspects of the commercial arrangements between licensed BDUs, programming undertakings and exempt digital media undertakings. Most of the competitive safeguards imposed on the services overlap with provisions in the *Wholesale Code*, with the exception of two COLs related to the launch of programming services.

³⁹ Broadcasting Regulatory Policy CRTC 2011-415, *Review of the regulatory framework relating to vertical integration*, 8 July 2011.

⁴⁰ Broadcasting Regulatory Policy CRTC 2011-601, *Regulatory framework relating to vertical integration*, 11 September 2011, paragraph 94.

⁴¹ Decision 2013-310.

⁴² See Broadcasting Decision CRTC 2013-737, *TELETOON/TÉLÉTOON, TELETOON Retro, TÉLÉTOON Rétro and Cartoon Network – Change of effective control and TELETOON/TÉLÉTOON, TELETOON Retro and TÉLÉTOON Rétro – Licence renewal and amendment*, 20 December 2013; Broadcasting Decision CRTC 2013-738, *Historia and Série+ - Acquisition of assets and change in effective control*, 20 December 2013; and Broadcasting Decision CRTC 2014-399, *Rogers Media Inc. – Group-based licence renewals*, 13 July 2014.

⁴³ Broadcasting Regulatory Policy CRTC 2015-438, *The Wholesale Code*, 24 September 2015.

50. The TV Policy Framework also mandated that BDUs offer discretionary services both on a standalone basis as well as in small packs in order to enhance consumer choice and provide consumers more control over the programming services to which they subscribe.⁴⁴

51. The Commission's intention with these safeguards was to try to ensure a dynamic marketplace for broadcasting entities and to ensure that consumer choice is maintained. They also give significant flexibility to BDUs with respect to how they carry and package programming services. None of these policies were designed to address the situation where a single BDU controls nearly half of the English-language BDU market and can therefore significantly impact the success of a programming service if it chooses to carry it or not, and on what terms.

52. More importantly, the above rules were made without consideration of a broad shift to Internet-based distribution. The Commission has announced its intention to develop a new OTT distribution regulatory framework. If Rogers is allowed to cement its dominant position and determine what programming choices are available in the market, by the time the Commission sets its regulatory framework for OTT distribution, it will be too late.

53. To be clear, we are not suggesting that even once these new rules are established that the Commission should then approve this transaction; rather we are stating that there is no way to even assess whether the regulatory regime can withstand and control Rogers' monopsony power and its ability to undermine and fundamentally shrink the Canadian broadcast system, until these new rules are established. And once they are, only then can the Commission properly assess the impact of this transaction on the Canadian broadcast ecosystem and determine if it has the tools to combat and control Rogers' market power.

6.0 DENIAL OF THE TRANSACTION MUST BE THE ONLY OUTCOME

54. In the preceding sections, we described our concerns about the overwhelming market power that Rogers would exercise with nearly half of the BDU market share in English Canada.

55. Given these concerns, we submit that the Commission must deny outright Rogers' acquisition of Shaw. This would be consistent with the DoV Policy principles noted above, given that Rogers would control 47% of the English-language BDU market, putting it in a position to

⁴⁴ Broadcasting Regulatory Policy CRTC 2015-96, *A World of Choice – A road map to maximize choice for TV viewers and foster a healthy, dynamic TV market*, 19 March 2015.

dictate the programming options available to Canadians. However, we note that even at a market share that excludes Shaw Direct, the monopsony power that Rogers would exercise would be far too great given its increased Internet footprint. This, in combination with its relevant BDU market share would give it a competitive advantage over other BDUs using its scale to negotiate preferential or exclusive distribution arrangements with OTT services in order to further solidify its dominant position.

56. In this regard, we note that in the Commission's determination of BCE's second application to acquire Astral, wherein the combined BCE/Astral English-language television audience share decreased from 42.7% to 35.8% with the divestitures that we proposed, the actual increase in Bell Media's share of this market was only 1.8%.⁴⁵

57. Rogers has failed to demonstrate that its proposed merger with Shaw is necessary for it to make investments to realize the advantages of IPTV technology. What is clear is that the market power that would be afforded to Rogers as a result of this transaction would threaten the availability of programming for consumers and affect the ability of BDUs to truly deliver choice to them. Moreover, the current regulatory framework does not address the significant issues arising from the proposed acquisition.

58. Rogers has not proposed any safeguards, or even acknowledged that their significant market share is an issue. Instead, they ask the Commission and the broadcasting industry to rely on the current regulatory policies that were never designed for a transaction of this magnitude. This is wholly insufficient. In any event, the Commission's statement in initially denying the application of BCE to acquire Astral Media in 2012 is instructive:

While certain interveners proposed safeguards to address these concerns in the event of an approval, the significance and breadth of the broadcasting assets of a combined BCE/Astral are such that safeguards to properly supervise this level of market power would be extensive and unduly burdensome. The Commission does not consider that such a level of interference would be consistent with the regulatory policy set out in section 5(2) of the Act. The Commission further considers that the onus was on BCE to propose adequate safeguards to address these concerns. In this case, BCE failed to do so.

⁴⁵ Decision 2013-310, paragraphs 45 and 46.

7.0 CONCLUSION

59. In closing, this transaction will transform the Canadian broadcasting landscape by creating a behemoth with monopsony power not only in the traditional broadcasting environment but also the unregulated one as well through its control of nearly half of the English-language broadcasting distribution market in Canada. The Commission's determination in Decision 2012-574 is applicable to the current Application:

The issues raised by this application involve many intersecting objectives and policies and speak directly to the health and sustainability of the Canadian broadcasting system. A transaction of this magnitude goes beyond an operational decision on a change in ownership; indeed, its impacts would shape the structure of the industry over the coming years.⁴⁶

60. We urge the Commission to adopt this outlook in the current matter as it considers whether the acquisition of Shaw by Rogers is in the public interest, which clearly it is not. Granting approval to Rogers to acquire Shaw will have a transformative impact on the Canadian broadcasting system, one that would be highly detrimental overall. In this regard, Rogers has not proposed any safeguards whatsoever in recognition of the fact that it will be the dominant BDU in English Canada, with control over nearly half of the market. We therefore submit that Rogers has not demonstrated that its proposal is the best given the circumstances and that the Commission should conclude that approval is not in the public interest and deny the Application outright.

61. We thank the Commission for the opportunity to provide these comments and we confirm that we would like to appear at the public hearing to consider this Application.

*** End of Document ***

⁴⁶ Decision 2012-574, paragraph 50.

PUBLIC

THIS IS EXHIBIT "3" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

Broadcasting Notice of Consultation CRTC 2021-281

**Application by Rogers Communications Inc., on behalf of Shaw
Communications Inc., for Authority to Acquire Effective Control of Shaw
Communications Inc.**

Comments of TELUS Communications Inc.



13 September 2021

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1.0 Introduction

1. TELUS welcomes the opportunity to comment on this application by Rogers Communications Inc. (“Rogers”) to acquire the licensed broadcasting undertakings owned by Shaw Communications Inc. (“Shaw”), as set out in Broadcasting Notice of Consultation CRTC 2021-281 (“Notice of Consultation”). TELUS requests to appear at the hearing scheduled to commence November 22, 2021 to expand upon the views outlined in this intervention.
2. TELUS opposes this application. Rogers has failed to demonstrate (1) that approval is in the public interest, (2) that the benefits of the transaction are commensurate with the size and nature of the transaction, and (3) that the application represents the best possible proposal under the circumstances.
3. The proposed merger would combine two of the largest vertically integrated entities in the Canadian broadcasting sector to create the largest vertically integrated media and communications company in Canada. This would greatly exacerbate the anti-competitive effects of Canada’s already extremely concentrated broadcasting sector.
4. **Merger would have profound negative effect on competition for BDUs and programming services** - The cumulative effect of vertical integration should be central to the CRTC’s review of this merger. If approved, the proposed transaction will result in just one broadcasting distribution undertaking (“BDU”) controlling 35.5% of national BDU subscribers, and up to 47% of the English-language BDU subscribers. Permitting Rogers to control such a large proportion of BDU subscribers, in combination with its existing control of must-have programming, will have a negative effect on competition for Canadian BDUs and programming services. **Rogers will effectively become a gatekeeper for programming** due to its increased incentive to withhold affiliated content from rival BDUs, and its ability to “make or break” unaffiliated programming services by denying them carriage on Rogers’ distribution platforms.
5. **Merger gives Rogers power to exclude BDUs from online content** – The proliferation of unregulated online programming options, and their increasing viability as substitutes for traditional programming will also provide Rogers with increased ability to foreclose rival BDUs’ access to content by shifting popular programming, such as NHL games, to online platforms, or to deny rival BDUs access to new features or functionality by offering them exclusively online. Rogers’ increased scale could similarly allow it to negotiate exclusive carriage of foreign online services, such as Netflix, Amazon Prime Video or Disney Plus, through its BDU platform. **The existing regulatory framework provides no safeguards to protect against these anti-competitive outcomes.**
6. **Merger gives Rogers ability to impose steep increases to signal transport costs** – Rogers’ increased scale also creates concerns in the area of signal transport services, since the proposed transaction includes the acquisition of Shaw Broadcast Services (“SBS”) – one of two satellite relay distribution undertakings (“SRDUs”) in Canada. Rogers will be able to raise the cost of signal transport for smaller BDUs, because it will be less reliant on them to ensure its own

programming services reach a meaningful proportion of Canadian subscribers. **Smaller BDUs that rely on those signal transport services will have no choice but to accept increased costs, and pass those costs on to their customers.**

7. **Merger would reduce funding for Global news and reduce the diversity of voices** – The proposed merger will also diminish the diversity of voices in local news programming as Rogers will deprive the Global television network of nearly \$13 million in annual funding for local news production that it currently receives from Shaw, impacting its ability to create news programming that attracts strong viewership in Alberta and British Columbia. **The merger will harm diversity of voices and reduce the quality and quantity of critical local news programming available today.**
8. **Accordingly, the Commission should deny Rogers’ application.** Denial is the only response proportionate to the concerns raised by the transaction, and is most compatible with protecting the public interest. The transaction provides no benefit to the broadcasting system that can outweigh the harmful impacts of the merger, and would:
 - increase existing levels of vertical integration, when Canada already has one of the most highly vertically integrated broadcasting sectors in the world;
 - reduce the ability of consumers to access content on the platform they choose, with the service provider of their choice, by increasing Rogers’ incentive and opportunity to shift content to online platforms where it can be offered exclusively to its subscribers;
 - increase regulatory uncertainty, as well as the CRTC’s administrative burden to monitor and enforce behavioural remedies, as vertically integrated entities (“VIs”) are actively challenging the CRTC’s jurisdiction to impose and enforce competitive safeguards; and
 - decrease competition, plurality of ownership, and the diversity of voices in the broadcasting system.
9. If the CRTC takes the view that the public interest concerns can be addressed through conditions, stringent conditions should be applied to ensure that Rogers will not foreclose access to programming or otherwise use its increased scale to impair competition from independent distributors and programming services, or restrict the diversity of voices. TELUS proposes that such conditions should include:
 - ensuring timely access to all programming controlled by Rogers, including all features and functionality, on all platforms, on commercially reasonable rates and terms of carriage;
 - requiring that the Shaw family divest its controlling interest in Corus Media;
 - requiring the divestment of Shaw Direct, including both Shaw's satellite subscribers and the SRDU business upon which independent distributors and programming services rely on for their business models; and
 - requiring that Rogers continue funding local news programming production by Global TV at levels commensurate with the funding previously provided by Shaw.

2.0 Increased vertical integration will harm competition

10. If this transaction is approved, Rogers will gain an unprecedented share of BDU subscribers. That scale will provide it with heightened incentives and opportunities for anti-competitive conduct, with serious ramifications for both independent BDUs and programming services.
11. While Rogers asserts that it will “merely step into Shaw’s shoes” without adversely affecting existing BDU competition,¹ this is not a straightforward horizontal merger. Rogers is a vertically integrated entity, and so any acquisition it makes in the broadcasting industry results in an increase in vertical integration and creates anti-competition concerns.
12. As stated in the Notice of Consultation, the proposed transaction would result in Rogers holding a total of 3.624 million distribution subscribers, representing 35.5% of all Canadian television subscribers. However, that figure is based on national BDU subscribers. When looking at English-language subscribers, where the majority of Rogers’ BDU competition takes place, Rogers’ share of BDU subscribers would be up to 47%,² *i.e.*, nearly half of BDU subscribers.
13. One of the factors the CRTC considers when determining whether to approve an application for a change in effective control is the extent to which the transaction could change the respective negotiating power of the BDUs and programming service providers and the size of the market.³ In the context of this transaction, this important factor leads to the conclusion that competition will be greatly undermined.

2.1 Rogers will be able to forego distribution by other BDUs

14. If the transaction is approved, the resulting scale of Rogers’ BDU network could make it feasible, and profitable, for it to forego broader distribution on competing BDU platforms. This will provide Rogers with significant leverage in any negotiations with other BDUs, allowing it to demand exorbitant rates as it can afford to forego distribution by most of its BDU competitors altogether.

¹ 2021-0228-4, Rogers’ Application, 13 April 2021, “Appendix 1 – Supplementary Brief”, paras. 24-27 [Rogers’ Application].

² For this comparison, TELUS has removed from the national BDU market the 2,443,000 Quebec subscribers as reported at Figure 12 “Subscribers by Region (Cable & IPTV) & National Satellite Subscribers” in the CRTC’s 2020 Broadcasting Financial Summaries. Highlights from the number of national BDU subscribers as determinable through Broadcasting Notice of Consultation CRTC 2021-281, Notice of Hearing, 12 August 2021.

³ Appendix to Broadcasting Public Notice CRTC 2008-4, *Regulatory Policy – Diversity of Voices*, 15 January 2008, and at Broadcasting Notice of Consultation CRTC 2021-281, *Notice of Hearing*, 12 August 2021.

15. As the Commission recognized in its Vertical Integration Framework⁴ it is distribution, rather than content, that drives the revenues of a vertically integrated entity and creates the incentives for foreclosure of rival BDUs' access to programming:

...The potential increase in the market share of the distribution services that form part of the VI entity would provide an incentive for a VI entity to deny competing distribution systems access to popular programming.⁵

16. This dynamic is even more pronounced for entities that control “must have” programming, such as Sportsnet, as such programming services are more likely to draw subscribers away from a competitor that has been denied access to that programming. As noted below, TELUS' own experience with Rogers demonstrates that its existing market power is sufficient to lead to such outcomes.

2.1.1.1 Rogers will have increased incentive to deny access to must-have programming

17. In recent years Rogers has sought to deny TELUS access to the programming it controls, by:

- Attempting to foreclose TELUS' access to Sportsnet in 2017 by purporting to terminate its affiliation agreement with TELUS for its Sportsnet and Sportsnet One services in order to avoid Final Offer Arbitration.⁶
- Defying the “head-start” rule by refusing to provide TELUS access to its 4K programming unless TELUS agreed to pay exorbitant rates.⁷
- Restricting access to VOD programming by challenging the notion that negotiations for the distribution of content for video-on-demand services can be subject to dispute resolution.⁸
- Providing exclusive access to GamePlus, which provides access to unique camera angles during NHL hockey games and other NHL-related content, to Rogers' own wireless or cable subscribers.⁹

⁴ Broadcasting Regulatory Policy CRTC 2011-601, *Regulatory framework relating to vertical integration*, 21 September 2011, paras. 20-22.

⁵ *Id.* para. 19.

⁶ See letter from Susan Wheeler, Rogers to CRTC, dated 21 April 2017, available online at <https://crtc.gc.ca/public/otf/2017/T66_201703091/2873425.pdf>

⁷ CRTC, “Broadcasting Commission Letter Addressed to Susan Wheeler and Ann Mainville-Neeson (Rogers Media Inc. and TELUS Communications Inc.)”, 5 April 2017, online: <<https://crtc.gc.ca/eng/archive/2017/lb170405a.htm>>. In March 2017, the Commission directed Rogers to provide its 4K content to TELUS immediately, despite the absence of a commercial agreement.

⁸ Rogers Media, Corus Entertainment and Bell Media filed joint comments in response to Broadcasting Notice of Consultation CRTC 2017-280, *Call for Comments on measures to provide for dispute resolution between video-on-demand operators and discretionary services*, 4 August 2017, which included a legal opinion challenging the CRTC's jurisdiction over the licensing of video-on-demand programming rights.

⁹ Broadcasting Decision CRTC 2015-89, *Complaint by Bell Canada against Rogers Media Inc., formerly Rogers Broadcasting Limited, alleging violations of the Digital Media Exemption Order*, 16 March 2015.

18. Indeed, at the time of TELUS' 2017 dispute with Rogers over access to the Sportsnet service, Rogers stated that it had "...concluded that it would be better to forgo the revenues we would derive from Telus in order to ensure that we can protect the integrity of our business model."¹⁰
19. Thus, Rogers has already confirmed for the Commission that it values the economic benefits of distribution exclusivity over the economic benefits of broad distribution, notwithstanding the negative impact on competing BDUs and their subscribers who would lose access to the Sportsnet service. The proposed transaction will only serve to amplify this anti-competitive calculus on Rogers' part, and in TELUS' case, will also amplify the harmful effects as Rogers becomes a direct competitor in the western marketplace. In particular, Rogers will have added incentive, and will reap greater potential benefits, for depriving TELUS of "must have" programming that it can use to draw away TELUS' subscribers.

2.1.2 Increased wholesale costs will lead to increased prices for consumers

20. If the transaction is approved, the resulting imbalance in negotiating power between Rogers and smaller BDUs will create a dynamic where independent BDUs or programming services are under increased pressure to accept unreasonable and/or restrictive terms to avoid losing "must have" programming services. The Competition Bureau describes "must have programming" as referring to "...a service whose absence from a BDU's lineup would cause sufficient subscriber losses to rivals such that all BDUs consider the service necessary to remain competitive. The most often cited examples are mainstream sports programming services that offer a wide variety of live sports."¹¹
21. This will inevitably lead to increased wholesale costs for programming, and especially for must-have programming like the NHL programming controlled by Sportsnet. Wholesale rates for Sportsnet have consistently increased year over year, despite the fact that the collective pool of subscribers to traditional BDUs has declined, as did the take-up rate among subscribers for the Sportsnet service. According to data published by the CRTC, the average wholesale rate per subscriber from the period 2016 to 2020 has increased from \$2.91 monthly in 2016, to \$4.25 in 2020,¹² despite Sportsnet's subscribership decreasing from 73% of Canadian subscribers in 2016, to 64% in 2019. Nevertheless, Rogers Media was able to maintain double-

¹⁰ *Supra* note 6.

¹¹ Competition Bureau Canada, *Submission by the Commissioner of competition before the Canadian Radio-television and Telecommunications Commission-broadcasting Notice of Consultation CRTC 2015-97-Call for comments on a Wholesale Code*, 4 May 2015, online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03918.html#sec2>>.

¹² Calculated using distribution revenues and subscriber information available in CRTC, *Individual discretionary and on-demand services: statistical and financial summaries – 2016 - 2020*, Rogers Sportsnet, p. 140, online: <https://publications.gc.ca/collections/collection_2021/crtc/BC9-30-2020-eng.pdf>.

digit profit margins¹³ through substantial increases to wholesale rates despite the declining subscribership to the service.

22. These statistics illustrate just how unbalanced negotiations already are today between vertically integrated programming services and independent BDUs, and negotiations will only become more unbalanced as a result of the transaction. For example, Rogers will be able to undermine negotiations through the use of volume-based rate cards (“VBRCs”), which set out a percentage discount or sliding scale rate based on the number of potential subscribers that a BDU delivers to a programming service.
23. The potential impact of VBRCs can be understood by considering the relative sizes of BDUs if the transaction is permitted to proceed. Post-transaction, Rogers’ and Bell’s BDUs will represent nearly two thirds (~63.5%) of national BDU subscribers, and their subscriber numbers will reset the standard for volume discounts provided through VBRCs. With such a large size differential between the largest and smaller BDUs, VBRCs will ensure that smaller BDUs pay substantially higher rates per subscriber for the same programming since volume-based discounts will be effectively out of reach for all but the largest BDUs.
24. The Commission can also expect wholesale programming costs to continue to rise due to the use of penetration-based rate cards (“PBRCs”), which is a major contributing factor to rising wholesale rates today. PBRCs set out varying wholesale rates based on a programming service’s share of a BDU’s subscriber base, with rates increasing as penetration decreases.
25. The Competition Bureau has recognized that PBRCs make it more expensive for BDUs to offer increased consumer choice, as choice lowers penetration rates, resulting in higher wholesale costs which inevitably push retail prices higher.¹⁴ The Competition Bureau also recognizes that vertical integration motivates entities to raise rivals’ costs and limit their ability to introduce customer choice and flexibility, and that the latter incentive is stronger for a vertically integrated BDU that operates “must have” programming services, like sports.¹⁵
26. In recent years, as more programming undertakings have begun offering direct-to-consumer (“DTC”) products, PBRCs have become increasingly punitive for traditional BDUs. While DTC offerings compete with BDUs and draw away subscribers, PBRCs simultaneously raise the BDU’s wholesale costs to make up the loss of those subscribers for which the programming undertaking is responsible.
27. Thus, if this transaction is approved, the CRTC can expect wholesale costs for programming services to rise at an even greater pace than they do today as the imbalance in negotiating power between vertically integrated entities and independent BDUs becomes more

¹³ In 2019, Rogers Sportsnet reported a PBIT Margin of 22.1%. In 2020, Sportsnet reported a PBIT margin of 11.6%, with the decline being attributable to a considerable dip in national ad sales, presumably as a result of the COVID-19 pandemic when new sports programming was not being produced for most of that broadcasting year.

¹⁴ *Supra* note 11, para. 10.

¹⁵ *Id.* para. 11.

pronounced. The result will be higher prices for consumers, which will perpetuate the cycle of consumer cord-shaving and cord-cutting, especially as over-the-top streaming services become increasingly viable substitutes for the traditional television system.

Mitigate by ensuring access to all content, on all platforms, on reasonable terms

28. The Commission should deny the application. This is the only course of action that is proportionate to the concerns raised by the transaction, and that is most compatible with protecting the public interest. Existing levels of vertical integration have already proven sufficient for VIs to attempt to withhold programming from rival BDUs, which reduces the ability of consumers to access content on the platform of their choice.
29. Further, ongoing attempts by VIs to challenge the CRTC's jurisdiction to impose and enforce competitive safeguards will both increase regulatory uncertainty and add to the CRTC's administrative burden associated with monitoring and enforcing behavioural remedies.
30. However, if the Commission takes the view that the public interest concerns can be addressed through conditions, significant additional safeguards will be required to mitigate the negative impacts of the proposed transaction.
31. TELUS' proposed safeguards include expanded conditions of licence that provide for access to content on all platforms and on a timely basis, including programming offered pursuant to the digital media exemption order, ancillary programming, and multi-platform rights, with advance notice of the impending launch of any new service accompanied by a reasonable commercial offer for carriage.
32. TELUS has also proposed measures to help determine and ensure the commercial reasonableness of rates, by expanding the list of examples of what constitutes commercially unreasonable conduct, such as: requiring restrictions on customer-enabled viewing experiences (*e.g.* multi-view, social media apps); terms preventing distributors from providing a differentiated offer; and requiring penetration-based rates in respect of programming that is offered directly to consumers, or volume-based rates that affect the ability of a competitor to carry the programming.
33. To ensure terms of carriage are based on fair market value, TELUS proposes additional criteria for determining fair market value, such as the consideration of viewership to a programming service as the most important criteria in determining wholesale rates, and the availability of, and rate charged for, any competitive direct-to-consumer offerings by the programming service.
34. The CRTC might also wish to require Rogers to file for its approval standard, industry-wide rate cards for its programming services, to effectively set the basis for what is an acceptable wholesale rate. This would help independent distributors by providing greater certainty when

entering renewal negotiations with Rogers in the future, and would help the CRTC to return timely determinations in the event of a dispute.

35. To assist the Commission in its consideration of these issues, TELUS has drafted proposed additional conditions of licence for Rogers Media that attempt to address these concerns, as attached as Appendix A to this submission. These proposed conditions are intended to be applied in addition to existing competitive safeguards that apply to Rogers.
36. Specifically, Rogers' current conditions of licence on its programming undertakings include specific competitive safeguards that are broader than those included in the Wholesale Code. One such safeguard requires that Rogers Media, where it has not renewed an affiliation agreement within 120 days of its expiry, refer the matter to the CRTC for dispute resolution where the other party has confirmed its intention to renew the agreement.¹⁶ Although these safeguards are currently applied on a suspensive basis, given attempts by VIs to withhold programming from competitors, as discussed later in this intervention, TELUS proposes that they should apply as fully enforceable conditions of licence.

2.2 Rogers will be able to foreclose on unaffiliated programming services

37. The impact of the merger on programming services will also be substantial, as the increased share of subscribers for Rogers' distribution platforms will allow it to foreclose unaffiliated programming services' access to a large proportion of subscribers. Rogers will effectively be able to "make or break" channels – particularly independent programming services – by denying them access to Rogers' distribution platform and thus to nearly half of all English-language subscribers.
38. The Commission has a long-standing policy of supporting independent programming services to meet the objectives of Act, and has expressed concerns that in an increasingly consolidated system "VI entities might prioritize the distribution of related services and of services related to other VI entities over the distribution of independent programming services, thus limiting the programming to which Canadians have access."¹⁷
39. Most recently, in the Let's Talk TV policy, the CRTC recognized that "...independent services are an important source of diversity in the system as they often offer niche program targeted at narrower audiences." As a result, in order to ensure the diversity of voices through the protection of independent services, the CRTC increased the ratio of unrelated programming services that vertically integrated BDUs must carry, so as to require a 1:1 ratio between affiliated and unaffiliated services.¹⁸

¹⁶ Broadcasting Decision CRTC 2017-151, *Rogers Media Inc. – Licence renewals for English-language television stations, services and network*, 15 May 2017, Appendix 3, condition of licence para. 32.

¹⁷ *Supra* note 4, para. 43.

¹⁸ Broadcasting Policy CRTC 2015-96, *Let's Talk TV, A World of Choice - A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, 19 March 2015, para. 118.

40. However, as explained below, the proposed transaction will undermine these policies by reducing distribution opportunities for unaffiliated services.

2.2.1 The Shaw family will have financial incentives to use Corus to benefit Rogers

41. Although Rogers is not acquiring Corus as part of this transaction, the continuing control of the Shaw family over Corus is a relevant consideration to the Commission's analysis of this transaction.
42. The CRTC currently considers Shaw to be a vertically integrated entity by virtue of the effective control exercised by the Shaw family over Corus.¹⁹ However, Rogers has stated that following the completion of the transaction, the Corus programming services should be considered independent programming services because Corus' current affiliation with Shaw's BDUs would terminate.²⁰ Rogers also stated that "...[Rogers] will have no incentive to confer an undue preference on the Corus licensees. Similarly, the Corus licensees will have no incentive to confer an undue preference on Rogers."²¹
43. However, these assurances ignore the financial incentives that the Shaw family will have to favour Rogers over other BDUs following the transaction. In particular, the consideration received by the Shaw family in this transaction includes a very substantial equity stake in Rogers, consisting of over 23.6 million Class B shares, making the Shaw family one of the largest shareholders in Rogers.²² The Shaw family would also be receiving at least two seats on Rogers' Board of Directors.
44. Under the circumstances, Corus cannot be considered to be truly independent from Rogers. Given the terms of the proposed transaction, Rogers can be expected to receive advantageous rates or terms of carriage from Corus' programming services as this will financially benefit the Shaw family.
45. Further, if Corus is considered to be an independent programming undertaking, Rogers' carriage of Corus' programming services will allow it to fulfil its unaffiliated service carriage obligations, resulting in decreased incentives to carry other independent programming services.

¹⁹ Broadcasting Decision CRTC 2016-110, *Various television services and stations - Corporate reorganization (transfer of shares)*, 23 March 2016.

²⁰ Rogers' Application, "Response to CRTC Deficiency Questions", 29 July 2021, p. 8.

²¹ *Id.* p. 13.

²² Rogers News Release, "Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout", (15 March 2021), 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/>.

Mitigate by requiring divestiture of Corus Media services and/or conditions of licence

46. The Commission should deny the application. This is the only course of action that is proportionate to the concerns raised by the transaction, and that is most compatible with protecting the public interest given that independent programming services will necessarily have reduced access to Rogers' distribution platforms once Corus is considered independent (whether or not it truly is). This will decrease competition, plurality of ownership, and the diversity of voices in the broadcasting system.
47. Further, the Shaw family's incentive to use its control over Corus to favour Rogers' over other distributors will undermine competition in the distribution sector. This will result in higher prices for consumers.
48. However, if the Commission takes the view that the public interest concerns can be addressed through conditions, it should at least require the Shaw family to divest its controlling interest in Corus as a condition of approval of this transaction. This would ensure true independence for the Corus services.
49. If the Commission does not require such divestment, then the measures TELUS proposed be imposed on Rogers' programming services should be imposed on those of Corus as well, to ensure independent distributors are not disadvantaged relative to Rogers' distribution services.

3.0 Online distribution provides Rogers with opportunities for content foreclosure

50. TELUS urges the Commission to carefully consider Rogers' ability to use unregulated online streaming services as a means of bypassing important competitive safeguards such as the requirement to provide BDUs with access to the programming that it controls.
51. Over the past decade it has become clear that television programming is gradually migrating to digital media platforms. The last time the Commission examined the Digital Media Exemption Order ("DMEO"), over-the-top ("OTT") services were a nascent form of distribution, but they have increasingly become viable substitutes for traditional television subscriptions as today 79% of Anglophone Canadians watch content online.²³
52. Nevertheless, these programming options remain effectively unregulated and are not subject to the competitive safeguards the Commission relies upon to restrict potential anti-competitive behaviour. This ongoing shift in the broadcasting landscape will allow Rogers to shift the programming it controls to online platforms where it can offer that programming exclusively to its subscribers. Rogers will similarly be able to offer new features or functionality

²³ Media Technology Monitor, "Adoption Report: Anglophone Market", (2020).

associated with programming on an exclusive basis by offering them only through online platforms.²⁴

3.1 Migration of programming to OTT services will allow Rogers to foreclose on rival BDUs

53. The migration of programming to online platforms poses new challenges to the Commission's longstanding policy of requiring that programming services be made available to all BDUs, and to the achievement of the policy objectives of the Act. One source of concern is the regulatory gap that allows services operating pursuant to the DMEQ to offer programming exclusively to a particular BDU's subscribers.
54. When the Commission last reviewed the DMEQ nearly a decade ago, it created a distinction between "programming designed primarily for conventional television, specialty, pay, or VOD services" ("television programming") and programming designed for mobile and retail Internet platforms. Online services were permitted to offer television programming on an exclusive basis provided that exclusivity was not based on a consumer's specific mobile or retail Internet access service.²⁵ However, the Commission did not prohibit undertakings from offering exclusive television programming based on a consumer's specific BDU service.
55. Within a few years of the last DMEQ proceeding, television programming was routinely being offered on both traditional linear and OTT platforms, leading the Commission to conclude that "access to programming for distribution on a multiplatform basis on reasonable terms is an increasingly essential strategy for gaining and keeping customers".²⁶ The Commission thus introduced a provision into the Wholesale Code requiring vertically integrated programming services to offer multiplatform rights to unrelated BDUs along with their linear rights, on reasonable terms and on a timely basis.²⁷
56. However, the DMEQ continues to allow exclusivity for television programming as described above, and today it offers vertically integrated companies a pathway to avoid important regulatory safeguards that would prevent them from denying their competitors access to popular programming to benefit their own distribution arms.
57. For example, Rogers holds the program rights for NHL content that is extremely popular in Canada, and primarily aired on its specialty channel Sportsnet and on its over-the-air channel CityTV. In the future Rogers could choose to air hockey games exclusively via an OTT service, and offer its BDU customers that OTT service through its BDU platform while denying competing BDUs the opportunity to offer their customers the same service. The only

²⁴ Rogers is already taking advantage of these opportunities through the Apple TV App, which provides new features to search for games and receive on-screen notifications. BDUs like TELUS, on the other hand, are prohibited from similar overlay features like notifications that are not user-initiated.

²⁵ Broadcasting Order CRTC 2012-409, *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, 26 July 2012, para. 19.

²⁶ Broadcasting Regulatory Policy CRTC 2015-438, *The Wholesale Code*, para. 115.

²⁷ *Id.* Appendix, s. 12.

countervailing market force would be the loss of potential distribution for its programming services that an exclusive offering to its BDU subscribers would entail.

58. However, if the transaction is approved, Rogers' distribution business will represent almost half of all English BDU subscribers in Canada, meaning Rogers may have no need of wider distribution through other BDUs to achieve profitability for its programming services. This will also greatly increase its incentive to deny its rivals access to that programming, as the increased distribution revenues it would gain will more easily outweigh any unrealized revenues from the loss of viewers associated with denying programming to competing distributors.

3.1.1 Rogers' scale will allow it to foreclose access to foreign OTT programming as well

59. The incentives described above are not limited to Rogers' own programming, but could also extend to foreign OTT services that have become important to traditional BDUs as a means of retaining subscribers and fighting cord-cutting trends.
60. With its dramatically increased scale, Rogers would have the ability to credibly negotiate for exclusive carriage of foreign online services through its BDU platform, as it would be able to offer a foreign OTT service access to over a third of all Canadian BDU subscribers and nearly half of English-language BDU subscribers. This would allow Rogers to weaken the service offered by rival BDUs, without foregoing any distribution for its programming services. This is an especially pertinent concern given the trend of foreign broadcasters moving towards direct to consumer offerings.
61. The Commission should also be skeptical of Rogers' attempts to characterize increased scale as a "benefit" of the transaction. Rogers argues that its proposed acquisition of Shaw will allow it to "achieve the scale necessary to compete more effectively against...foreign streaming giants, which have been a significant contributor to Canadians' cord-cutting and cord-shaving since at least 2012."²⁸ However, there is no evidence to support that dubious claim, and in fact past experience leads to the opposite conclusion.
62. For example, in 2014, when Rogers and Shaw jointly created an OTT streaming service named "Shomi", they chose to initially restrict access to the service to only their own internet and television subscribers,²⁹ which indicates that the service was never meant to compete with foreign OTT services but rather was intended to bolster Rogers' and Shaw's own BDU and internet service offerings.
63. The Shomi example illustrates that Rogers is more likely to attempt to use OTT services to advantage its BDU service offering, and it will be easier for it to do so by seeking exclusive

²⁸ Rogers' Application, *supra* note 1, para. 28.

²⁹ Darrell Etherington, "Rogers and Shaw Team Up to Launch a Netflix Competitor for Canada Called 'Shomi'", Tech Crunch (26 August 2014), online: <<https://techcrunch.com/2014/08/26/rogers-and-shaw-team-up-to-launch-a-netflix-competitor-for-canada-called-shomi/>>.

distribution of foreign OTT services than by competing with them. Rogers' incentive to do so is supported by market research published by Mindshare, a global media and marketing agency, which reveals that more than half of Canadians have subscriptions to Netflix, followed by Amazon Prime Video and Disney+.³⁰

3.1.2 *Similar U.S. transactions indicate that exclusive online distribution is a real risk*

64. A review of similar recent mergers in the U.S. broadcasting sector illustrates not only the harmful consequences of further vertical integration discussed above, but also the ways in which the migration of programming to exclusive OTT distribution has the potential to harm competition between BDUs.
65. In 2011, the FCC approved a transaction in which Comcast Corporation (“Comcast”), the largest cable operator and Internet distributor in the U.S., acquired a majority stake in NBC Universal Inc. (“NBCU”) to form a vertically integrated combined entity (“Comcast-NBCU”).³¹ At the time, the FCC expressed concerns about the substantial harms that could result from the unprecedented vertical integration that would result from the merger, especially with regard to “...an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers offline and, increasingly, online as well” and its concerns the transaction presents to its “statutory mandate to promote diversity and localism in broadcast television and video programming distribution.”³²
66. To mitigate those substantial harms, the FCC relied on a combination of voluntary commitments from Comcast-NBCU and conditions for approval,³³ including, ensuring reasonable access for rival distributors to programming controlled by Comcast-NBCU, protecting the development of online competition, and ensuring access to Comcast-NBCU's distribution systems for non-affiliated programming services.
67. However, the merger conditions imposed by the FCC proved to be insufficient. As early as 2012, Comcast-NBCU was found to have violated multiple merger conditions, including discriminating against unaffiliated programming in 2011,³⁴ breaching its requirement to promote reasonably priced stand-alone broadband for consumers in 2012, which resulted in

³⁰ “Stuff We Watch – Understanding Canadian Video Consumption Habits”, Mindshare (30 September 2020), p. 3, online: <https://content.mindshareapps.com/media/sites/88/2020/09/Mindshare-Stuff-We-Watch_Q2.pdf>.

³¹ *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4381 (2011) [“Comcast-NBCU Merger Order”].

³² *Id.* para. 3.

³³ *Id.* para. 4.

³⁴ See *Bloomberg L.P. v. Comcast Cable Communications*, MB Docket No. 11-104, Memorandum Opinion and Order, 27 FCC Rcd 4891 (MB 2012).

Comcast-NBCU agreeing to pay an \$800,000 (USD) fine,³⁵ and engaging in bullying and delay tactics in coming to an agreement to make its “must see” programming available to online video distributor Project Concord,³⁶ which did not survive the dispute.

68. Notwithstanding the enforcement actions taken by the FCC in 2012, numerous additional complaints were filed in the following years based on violations of the merger conditions, leading a member of the United States Senate, Senator Richard Blumenthal of Connecticut, to write to the DOJ in 2017 to express concerns over the expiry of the conditions in September 2018 and urging the DOJ to consider whether the merger should be allowed to stand without the merger conditions.³⁷
69. Such concerns proved to be well-founded. Once its merger conditions expired in September 2018, Comcast quickly took steps to more aggressively leverage its considerable control over content rights to benefit its distribution business. Only four months after the expiry of its merger conditions, Comcast announced that it would launch a streaming service in early 2020 that would be available at no cost to Comcast’s pay TV subscribers in the U.S., under the brand name “Peacock”.³⁸
70. When Peacock launched in April 2020, it was available exclusively to Comcast Cable subscribers, who received a subscription to the Premium tier of the service for no additional charge.³⁹ On July 15, 2020, when Peacock became available nationally to all U.S. consumers via direct subscription, the only subscribers that could access the service through their cable TV provider were customers of Comcast or of Cox Communications, a cable TV distributor that does not compete in the same geographic areas as Comcast.
71. The Peacock streaming service has exclusive rights to some of NBCU’s most popular programming,⁴⁰ and provides subscribers with access to popular programming before it airs on

³⁵ See Press Release, FCC, “FCC Resolves Investigation of Comcast-NBCU Broadband-Related Merger Conditions; Ensures Consumer Access to Reasonably Priced Broadband Internet Service” (27 June 2012), online: https://transition.fcc.gov/eb/News_Releases/DOC-314879A1.html.

³⁶ See Consumer Rep., *Comcast: A History of Broken Promises* (1 March 2014), online: <https://advocacy.consumerreports.org/research/comcast-a-history-of-broken-promises>.

³⁷ See *Letter from Hon. Richard Blumenthal, Senator, United States Senate, to Hon. Makan Delrahim, Assistant Attorney General, Antitrust Division, Department of Justice* (13 December 2017), p. 1, online: <https://www.blumenthal.senate.gov/imo/media/doc/12.13.17%20Letter%20to%20DOJ%20Antitrust%20re%20Comcast-NBCU.pdf>.

³⁸ Dade Hayes, “NBCUniversal Entering the Streaming Wars with 2020 Launch of Bonnie Hammer-Run Service; Mark Lazarus, Jeff Shell Also Get Major Promotions”, *Deadline* (14 January 2019), online: <https://deadline.com/2019/01/nbcuniversal-entering-the-streaming-wars-with-2020-launch-of-bonnie-hammer-run-service-mark-lazarus-jeff-schell-get-major-promotions-1202534914>.

³⁹ Todd Spangler, “NBCU’s Peacock Pricing and Launch Dates Announced”, *Variety* (16 January 2020), online: <https://variety.com/2020/tv/news/nbc-peacock-pricing-launch-date-1203469722>.

⁴⁰ Nellie Andreeva, “‘Parks & Recreation’ to Join ‘The Office’ on Peacock NBCU Streaming Service”, *Deadline* (17 September 2019), online: <https://deadline.com/2019/09/parks-recreation-acquired-peacock-join-the-office-nbcu-streaming-service-1202736698>.

television on NBC.⁴¹ Further, during the 2021 Major League Baseball season, a three-game series between the Philadelphia Phillies and the San Francisco Giants was aired exclusively and nationally on the Peacock streaming service.⁴² The vertically integrated entity decided to bypass traditional cable distribution of these games by putting them solely on its OTT streaming service.

72. The migration of sports programming from traditional television to online platforms became even more pronounced recently, when for the first time, the afternoon college football home opener game between Notre Dame and Toledo did not air on television, but was exclusively streamed on Peacock Premium, for which membership for the service is \$4.99 per month.⁴³
73. This demonstrates that merger conditions such as behavioural measures were insufficient to preserve competition while they were applicable. It also demonstrates that television programming will increasingly migrate to, and be offered exclusively on, OTT platforms with access to that content restricted to benefit a VI entity's own distribution arm.
74. TELUS urges the Commission to consider the lessons to be learned from these U.S. experiences as it conducts its review of the proposed transaction. In particular, the Commission should bear in mind the difficulties that U.S. regulators faced in enforcing merger conditions, the anti-competitive impacts of the Comcast-NBCU merger once those merger conditions expired, and ultimately the inadequacy of the merger conditions in preventing harm to competition in the U.S. broadcasting sector.

Mitigate by prohibiting Rogers from offering exclusive distribution of online programming

75. The Commission should deny the application. This is the only course of action that is proportionate to the concerns raised by the transaction, and is most compatible with protecting the public interest given that the CRTC's existing framework to regulate online undertakings does not protect against anti-competitive incentives to limit the ability of consumers to access a wide range of programming from the service provider of their choice.

⁴¹ Greg Evans, "NBC's 'Tonight Show Starring Jimmy Fallon' & 'Late Night With Seth Meyers' Get Early Streamings On Peacock Premium", Deadline (16 January 2020), online: <<https://deadline.com/2020/01/peacock-premium-nbc-jimmy-fallon-tonight-seth-meyers-late-night-stream-early-1202832739/>>.

⁴² "Major League Baseball And Peacock Announce Special Coverage Of Phillies/Giants Series This Weekend", NBCUniversal Media Village (14 June 2021), online: <<https://www.nbcumv.com/media/village/interactive/2929fed4187b40648b79a9839e70e91fproduct169208/index.html#/brand/ddfffeac-5bfe-497f-9bfb-d359535d0079/press-releases/497f16bc-70f2-403c-83eb-d465749d8bdb>>.

⁴³ Bill Bender, "Who is going to stream Notre Dame home opener on Peacock?", Sporting News (6 September 2021), online: <<https://www.sportingnews.com/us/ncaa-football/news/who-is-going-to-stream-notre-dame-home-opener-on-peacock/13mvmeyya98yv1n44flspor0j4>>, and Dan Caesar, "Notre Dame game will be streamed only; Dierforf retiring from Michigan broadcasts", St. Louis Post-Dispatch (9 September 2021), online: <https://www.stltoday.com/sports/columns/notre-dame-game-will-be-streamed-only-dierforf-retiring-from-michigan-broadcasts/article_203f16b3-2863-59ca-a21e-579ec33c3365.html>.

76. This will lead to higher prices for consumers and perpetuate the cycle of consumer cord-shaving and cord-cutting, which will imperil the CRTC's ability to ensure the achievement of the policy objectives of the Act.
77. Nevertheless, if the Commission takes the view that the public interest concerns can be addressed through conditions, TELUS has proposed conditions of licence in Appendix B that would prohibit Rogers' licensed BDUs from obtaining exclusive distribution of any online programming services where such exclusivity is tied to Rogers BDU platform.

4.0 Rogers' increased scale will undermine the signal transport sector

78. In addition to operating as a DTH BDU, Shaw operates one of the two satellite relay distribution undertakings (SRDUs) in Canada. SRDUs play an important role in transporting television signals to BDUs across Canada, who in turn provide these signals to subscribers.
79. Following the proposed transaction, Rogers and Bell will operate the only two SRDUs in Canada. As noted earlier in this intervention, Rogers' increased scale after this transaction will make its programming services far less reliant on distribution through other BDUs to be financially viable. At the same time, Rogers will compete directly with independent BDUs, which will create strong incentives for it to increase the costs of signal transport to those competitors.

4.1 Rogers will have incentives to raise rates for, or withhold, signal transport

80. In response to CRTC deficiency questions relating to how the merger will impact the signal transport sector, Rogers noted that it "...will continue to operate both SBS's SRDU and our own terrestrial relay distribution undertaking (TRDU) in the same manner as they are operated today" and that "...[a]pproval of this transaction will have no material impact on either terrestrial or satellite relay distribution in Canada as Rogers will step into SBS's SRDU shoes and the service will remain the main competitor to Bell's SRDU.⁴⁴
81. What these responses ignore is the impact that Rogers' increased scale will have on its ability, and incentive, to raise its competitors' costs for access to signals that are vital to their operations. The existing conditions of licence imposed on SRDUs require over-the-air signals to be offered to BDUs, but are silent on the rates or terms applicable to such transport.
82. Further, SRDUs are currently not obliged to transport discretionary services at all, yet many BDUs currently rely on these transport services to receive discretionary services. Thus, SRDUs could severely disadvantage their competitors by ceasing to provide signal transport for discretionary services, notwithstanding the anti-competitive effect, without contravening any of the existing regulations or their conditions of licence.

⁴⁴ Rogers' Application, *supra* note 20, p. 2.

83. Accordingly, the proposed transaction would very likely undermine the Act’s policy objective that requires distribution undertakings to “provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost”.⁴⁵

Mitigate by requiring divestment of Shaw Direct

84. The Commission should deny the application. The anti-competitive incentives discussed above are intrinsically related to the massive scale that Rogers would gain from the transaction, and the fact that the two VIs left to control the market for satellite relay distribution – an essential input for smaller, independent BDUs – have greater incentive to deny access to their rivals than they have to ensure the wide distribution of their programming services.

85. If the CRTC chooses not to deny the application, it should at least require the divestment of Shaw Direct, which includes SBS, as a means of mitigating Rogers’ ability to further disadvantage its competitors by impairing their ability to receive signals for programming services.

86. While this divestment alone is grossly insufficient to mitigate the negative impacts of this transaction, it has the added benefit of reducing Rogers’ BDU subscriber share by the 687,000 subscribers that are served by Shaw Direct.

5.0 The proposed transaction threatens the diversity of voices in local news

87. In 2016, the CRTC provided BDUs with the flexibility to redirect a portion of their allowable contribution to local expression towards the creation of local news.⁴⁶ In large metropolitan regions, BDUs were permitted to direct 100% of their allowable community programming contribution to local news, while in smaller markets, the flexibility to redirect contribution funding earmarked for community programming was limited to 50%.

88. Following the introduction of this policy, vertically integrated distributors closed or descaled their community channels in large markets, and redirected these funds to their commercial networks for the creation of local news. According to aggregate annual returns published by the CRTC, Rogers directed approximately \$7.2 million to local news broadcasts on its CityTV network, and Shaw directed nearly \$13 million to the creation of local news on its Global network in 2020 alone.⁴⁷

89. If the proposed transaction is approved, Rogers has confirmed that it “does not intend to continue to allocate funds to unaffiliated Corus-owned Global television stations”.⁴⁸ However, as part of its review of the transaction, the Commission has indicated its intention to consider the impact of Rogers’ proposal on the funding of locally reflective news, and its delivery to

⁴⁵ *Broadcasting Act*, SC 1991, c 11, s 3(1)(t)(ii).

⁴⁶ Broadcasting Policy CRTC 2016-224, *Policy framework for local and community television*, 15 June 2016, paras. 90-91.

⁴⁷ As reported in Aggregate annual returns for the 2019-2020 Broadcast Year for Rogers and Shaw.

⁴⁸ Rogers’ Application, *supra* note 20, p. 3.

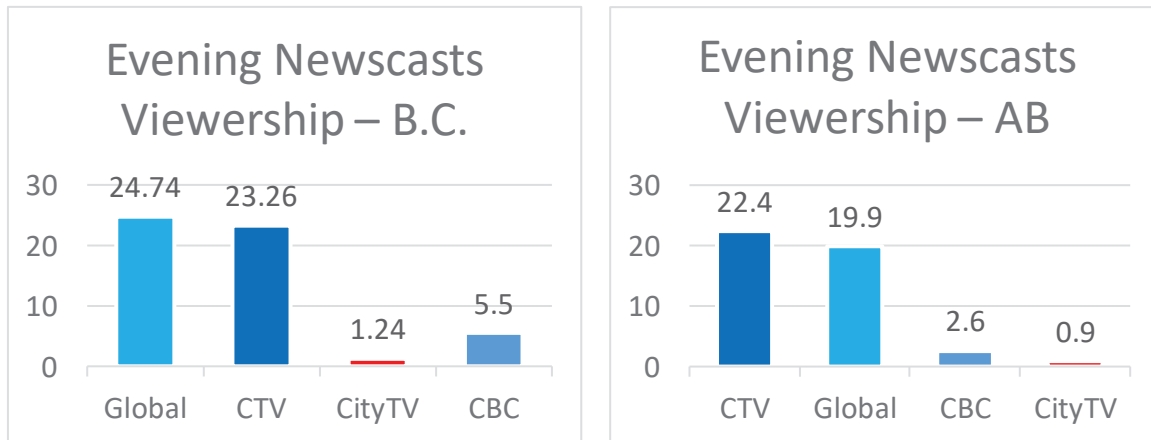
Canadians, in order to better understand its impact on the diversity of voices, including regional voices.

5.1 A redirection of funding will threaten the creation of local news programming

90. The Commission has recognized that local news, information and analysis produced and distributed through the broadcasting system are of central importance to achieving the policy objective under section 3(1)(b) of the Act, which requires that the Canadian broadcasting system provide through its programming a public service essential to maintaining and enhancing Canadians' national identity and cultural sovereignty.⁴⁹

91. This transaction will lower the quality of a trusted editorial news voice, as the loss of approximately \$13 million per year in funding will negatively impact Global TV's ability to provision news programming of the same quality, or quantity, that it produces today. A second, but equally considerable risk is that, as a newly independent television network with a sudden loss of funding, the Global TV network could turn to and deplete the financial resources set aside for the production of local news for independent television channels,⁵⁰ further reducing smaller independent editorial voices to the detriment of consumers.

92. While local news production from a diversity of editorial voices is of national significance, the impact of Rogers' decision to redirect funding previously earmarked for Global TV will be especially harmful in Canada's western marketplace. According to Numeris viewing measurement data, Global TV news programming is substantially more popular and trusted by Western Canadians than CityTV newscasts,⁵¹ as demonstrated below:



⁴⁹ *Supra* note 46, at para. 7.

⁵⁰ The Independent Local News Fund is funded through annual contributions of licensed BDUs, based on 0.3% of their previous year's broadcast revenues, and provides independent television stations support for the production of locally reflective news and information by private independent television stations.

⁵¹ Calculated using Numeris Average Minute Audience viewership data across all months in 2020, using 6PM-7PM and 11PM-12AM time slots (Monday through Friday), within their specific regions.

Mitigate by requiring Rogers to maintain news funding to Global TV

93. The Commission should deny the application. Rogers has failed to address the damaging impact that the proposed transaction would have on important CRTC policies such as the protection for public news programming and independent programming services.
94. Further, Rogers has proposed no benefit to the broadcasting system that would help to mitigate, let alone outweigh, the negative impacts of the merger on the diversity of voices in local news programming. In fact, Rogers' proposal with respect to redirecting community funds to CityTV works solely to the benefit of Rogers, and to the detriment of independent local news production.
95. If the CRTC nevertheless decides to approve this transaction, Rogers must be required to continue funding local news production by Global TV, at levels commensurate with the funding previously provided by Shaw. This would preserve editorial voices in local news, and help protect the diversity of voices that the Commission has long held to be essential to achieving the objectives of the Act. TELUS has proposed a condition of licence to ensure the continued funding of local news in Appendix B to this submission.

6.0 Safeguards may be inadequate to protect competition

96. In recent years, vertically integrated entities have created regulatory uncertainty by challenging the CRTC's authority to implement the competitive safeguards through which it has sought to regulate anti-competitive conduct.
97. For example, in 2018, Bell successfully invalidated the CRTC's mandatory order, issued under section 9(1)(h) of the Act, requiring licensees to abide by the Wholesale Code.
98. The following year, Quebecor defied the standstill rule by denying Bell access to its TVA Sports signal just prior to the broadcast of the first NHL playoff game, notwithstanding the fact that the CRTC had confirmed that the parties were engaged in a dispute, and that the standstill rule applied. When the CRTC issued a mandatory order requiring Quebecor to comply with the standstill rule and restore the TVA Sports signal, that mandatory order was promptly appealed to the Federal Court of Appeal, where both parties, *i.e.*, Quebecor and Bell, took the position that the CRTC had no jurisdiction to implement the standstill rule. Although the Federal Court of Appeal ultimately dismissed the appeal earlier this year, it remains open to the parties to appeal the decision to the Supreme Court of Canada.
99. Denial of the application is the best way to protect against further challenges to the CRTC's authority that would undermine the certainty that the regulatory framework is supposed to provide to licensees, and especially to independent licensees that rely on competitive safeguards to ensure fair competition

100. Thus, if the Commission were to approve the proposed transaction and allow the creation of a VI of unprecedented scale, the consequences would include greater uncertainty regarding the resiliency of the regulatory framework for vertical integration.

7.0 Conclusion

101. The Commission should deny Rogers' application. The transaction is not in the public interest, given that it would:

- increase existing levels of vertical integration, when Canada already has one of the most highly vertically integrated broadcasting sectors in the world;
- reduce the ability of consumers to access content on the platform they choose, with the service provider of their choice, by increasing Rogers' incentive and opportunity to shift content to online platforms where it can be offered exclusively to its subscribers;
- increase regulatory uncertainty, as well as the CRTC's administrative burden to monitor and enforce behavioural remedies, as vertically integrated entities ("VIs") are actively challenging the CRTC's jurisdiction to impose and enforce competitive safeguards; and
- decrease competition, plurality of ownership, and the diversity of voices in the broadcasting system.

102. Denial of the application is the only course of action that is proportionate to the concerns raised by the transaction, and that is most compatible with protecting the public interest. Further, denial of the application would not prejudice Shaw's ability to enter into a transaction with a non-vertically integrated entity, provided such a transaction is in the public interest.

103. If the Commission nevertheless decides to approve the proposed transaction, wholly or in part, then it is essential that it include sufficient safeguards to ensure meaningful access to content on all platforms, at commercially reasonable rates and on a timely basis, and on terms which allow for innovation by content distributors. This will best ensure that the Canadian broadcasting sector is able to remain competitive notwithstanding its extreme levels of vertical integration.

104. TELUS has commissioned a legal opinion from Michael Ryan, which is provided as Appendix C, that confirms the CRTC has the necessary powers to adopt the various alternative safeguards proposed by TELUS to regulate potential anti-competitive behaviour by Rogers.

105. TELUS thanks the Commission for the opportunity to comment on this proceeding, and requests to appear at the public hearing to consider this transaction to expand upon the views expressed in this intervention.

* * *End of document* * *

Appendix A

Additional proposed conditions of licence to be applied to all programming undertakings operated by Rogers Media

106. The licensee shall allow carriage of its programming services by all unaffiliated broadcasting distribution undertakings (BDUs), including their affiliated video-on-demand (VOD) undertakings, on terms negotiated between the parties and consistent with the Wholesale Code, or on terms set via the Commission's dispute resolution processes.
107. The licensee shall make available to BDUs, including their affiliated VOD undertakings, the linear rights and the non-linear multiplatform rights for all programming that it controls, on terms negotiated between the parties and consistent with the Wholesale Code or on terms set via the Commission's dispute resolution processes.
 - This shall include all features and functionality for which the undertaking has secured rights, and which it is making available to its subscribers.
108. Where the licensee has acquired exclusive rights to programming, it shall not make that programming available to an affiliated entity unless it also makes the programming available to all BDUs, including their affiliated VOD undertakings, that have communicated an intent to distribute the programming, on any platform, notwithstanding the absence of a commercial agreement.
 - Where programming is provided in the absence of a commercial agreement pursuant to this section, it shall be provided subject to commercially reasonable terms of carriage until a commercial agreement is reached between the parties or until terms are set via the Commission's dispute resolution processes.
109. The licensee is prohibited from requiring a penetration-based rate card (PBRC) from a BDU in respect of programming that the licensee offers directly to consumers in a manner that is competitive with that BDU.
110. In negotiating a wholesale rate for a programming service based on fair market value, the licensee shall not require a wholesale rate that has the effect of requiring a BDU, including its affiliated VOD undertaking, to charge consumers a rate that is substantially higher than the rate licensee charges to consumers in any direct-to-consumer offering, including other platforms or retailers.
111. The licensee is prohibited from requiring a volume-based rate card ("VBRC") where doing so would have an anti-competitive effect on the ability of independent BDUs, including their affiliated VOD undertakings, to carry the licensee's programming.
112. The licensee shall file with the Commission all affiliation agreements to which it is a party with a broadcasting undertaking within five days following the execution of the agreement by the parties.
113. The licensee shall provide rates and terms for each programming service individually on the basis of fair market value, and shall not require a party to negotiate terms of carriage for programming services on an aggregate basis.

- When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:
 - viewership of the service;
 - historical rates;
 - penetration levels and volume discounts;
 - the packaging of the service;
 - rates paid by unaffiliated broadcasting distribution undertakings for the programming service;
 - rates paid for programming services of similar value to consumers;
 - the availability and retail price of any direct-to-consumer offering;
 - the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
 - the retail rate charged for the service on a stand-alone basis; and
 - the retail rate for any packages in which the service is included.
114. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

Appendix B

Additional proposed conditions of licence to be applied to all terrestrial broadcasting distribution undertakings operated by Rogers Communications Inc.

1. As an exception to section 34(2) of the Broadcasting Distribution Regulations, the licensee shall, for each licensed serving area in which the licensee operates in the markets previously served by Shaw Communications Inc., continue to direct:
 - a) 100% of its allowable contribution to local expression in metropolitan markets to the production of local news by the Global Television Network; and
 - b) up to 50% of its allowable contribution to local expression in non-metropolitan markets to the production of local news by the Global Television Network, as required to maintain funding levels.
2. The licensee is prohibited from entering into any agreement for exclusive or preferential distribution of any online programming services through its own distribution platforms.

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THIS IS EXHIBIT "4" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

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PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

285 McLeod Street, Suite 200, Ottawa, ON K2P 1A1

1 November 2021

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

Filed via GCKey

Re: *Broadcasting Notice of Consultation CRTC 2021-281, Application 2021-0228-4 Rogers Communications Inc. on behalf of Shaw Communications Inc. for approval to effect a change of ownership and effective control, from Shaw or its subsidiaries to Rogers or its subsidiaries of various licenced undertakings and subsidiaries forming part of a plan of arrangement whereby Rogers would purchase all of the issued and outstanding shares of Shaw and its subsidiaries*

Notice of Hearing: 22 November 2021

Request for Adjournment of the Oral Public Hearing due to due to uncertainty regarding corporate control of the Applicant

Dear Mr. Doucet,

The Public Interest Advocacy Centre (PIAC) and the National Pensioners Federation (NPF) ("PIAC-NPF") hereby request that the Commission adjourn, in accordance with this letter, the oral public hearing scheduled to commence 22 November 2021. PIAC-NPF presently are scheduled to appear at the public hearing.

Introduction and Relief Requested

As the Commission is no doubt aware from numerous public news reports, there is an active and serious dispute at Rogers Communications Inc., ("Rogers"), the Applicant in this proceeding, regarding corporate control of Rogers.

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The press has reported on a series of events unfolding at Rogers that call into question the legal status of the existing board of directors,¹ and whether the current officers of the company have the confidence of the board of directors or whether they will even remain as officers of the company in the near future.² As one recent headline stated, “Rogers Chairman Fires Board for Firing Him for Firing CEO.”³ It is therefore uncertain whether any submissions made in the name of Rogers continue to be supported by the company’s board of directors—or whether the officers of the company continue to have authority to act on behalf of the corporation.

PIAC-NPF are concerned that the Commission will not be able to conduct the hearing in a manner that is fair to all parties and protects the public interest until and unless the confusion surrounding the effective control of Rogers is adequately resolved.

Accordingly, PIAC-NPF request that the Commission adjourn the public hearing until the present uncertainty regarding the status of the board of directors and the officers of the company has been resolved by Rogers and attested thereto by the eventual Applicant.

Uncertainty regarding leadership and corporate control of Rogers

As reported in the press, there are currently two competing boards of directors at Rogers – both claiming to have the authority to supervise the company’s affairs. One is the board of directors that existed prior to the recent developments (“the First Board”). On Thursday, October 21, 2021, the First Board voted to remove Edward Rogers from his role as Chair of the First Board. The First Board then appointed director John A. MacDonald as the new chair.

Edward Rogers, in his capacity as chair of the Rogers Control Trust, which controls approximately 97.5 percent of the voting share of Rogers, purported to remove five directors from the First Board and replace those directors with new directors to create a new board of directors (the “Second Board”).⁴ The Second Board then re-appointed Edward Rogers as Chair of the Board of Director of Rogers. The First Board disputes that Edward Rogers had the authority to remove directors from the First Board and appoint new directors, and therefore disputes the legitimacy of the Second Board.

As a result, both the First Board and the Second Board claim to be the legitimate board of directors of Rogers, and each claims that the other board has no legal standing. Edward Rogers has stated

¹ CTV News, “Duelling Rogers boards creating uncertainty for company, CEO and Shaw deal”, October 25, 2021, available online at < <https://www.ctvnews.ca/business/rogers-in-uncharted-territory-amid-duelling-boards-legal-manoeuvres-1.5637083>>

² The Globe and Mail, “Board votes, backroom deals and betrayal: The battle for control at Rogers”, October 22, 2021 (updated October 23, 2021), available online at <<https://www.theglobeandmail.com/business/article-ceo-joe-natale-and-executive-prepared-to-depart-if-edward-rogers-move/>>

³ Bloomberg, “Rogers Chairman Fires Board for Firing Him for Firing CEO”, October 25, 2021, available online at <<https://www.bloomberg.com/opinion/articles/2021-10-25/rogers-chairman-fires-board-for-firing-him-for-firing-ceo>>

⁴ Rogers Early Warning Report, 21 October 2021, available at sedar.com.

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that he intends to launch a court proceeding before the British Columbia Supreme Court for a declaration that the Second Board, and not the First Board, is the legitimate Board of Directors.⁵

On October 25, 2021, the press reported that the Ontario Securities Commission has additionally inquired into the state of corporate governance at Rogers “amid uncertainty over the leadership of Rogers”.⁶ It has also been reported in the press that should the Second Board become the legitimate Board, the CEO and the majority of his executive team are prepared to leave Rogers.⁷ Most recently, different narratives of the events leading to the Board schism have emerged and the parties have joined issue in the B.C. Supreme Court over the legal moves to install the Second Board and the effect of the Second Board’s creation on public equity markets.⁸

Even if the court moves quickly to resolve the dispute, a central aspect of which is before the Court today, any decision it makes could be appealed, and it may therefore be a matter of months before the status of Rogers’ corporate governance is certain.

Cable Public Affairs Channel and Potential Directors

Form 2A of the CPAC-related application for a transfer of control lists anticipated directors of CPAC post-transaction. Director Phil Lind is listed as potential nominee from Rogers. Once again, Mr. Lind is a part of one of the two groups jousting for control of Rogers and this makes the CPAC application likewise less certain than should be proposed for the Commission to fully evaluate this proposed ownership transfer. We request that the oral hearing into this change of control also should be adjourned with the Rogers-Shaw matter.

The CRTC should adjourn the public hearing

There are three reasons why the Commission should adjourn the public hearing pursuant to subs. 10(a) of the *Rules of Practice and Procedure*, given the circumstances and considerations of fairness:

- a. the identity of Rogers officers and directors is currently in doubt, and this prevents the Commission from conducting an effective review of the proposed transaction or determining ‘effective control’ under subs. 4(4)(a) of the *Broadcasting Distribution Regulations* and subs. 10(4)(a) of the *Discretionary Services Regulation*;
- b. the Commission needs to be able to assess the strategies and commitments of the officers of the Applicant corporation at the public hearing; and

⁵ CBC News, “Edward Rogers declares victory in battle for telco — but family and company vow to fight on”, available online at <<https://www.cbc.ca/news/business/rogers-chairman-board-takeover-1.6223557>>

⁶ The Globe and Mail, “Edward Rogers’s lawyers ask company to back expedited court hearing amid OSC inquiries”, October 25, 2021, available online at <<https://www.theglobeandmail.com/business/article-edward-rogers-lawyers-seek-company-rival-board-support-for-expedited/>>

⁷ *Supra* note 2

⁸ The Globe and Mail, “Loretta Rogers says son misled her on Rogers CEO Joe Natale’s performance”, October 26, 2021, available online at <<https://www.theglobeandmail.com/business/article-rogers-ceo-joe-natale-was-set-to-retire-before-board-reversed-course/>>

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- c. while there is some prejudice to Rogers or Shaw in postponing the hearing, there is more prejudice to and indeed potential harm to the public interest and to interested parties by proceeding in a situation where the Commission, the public and intervenors cannot be assured that they are:
 - i. hearing from authorized representatives of the Applicant; and
 - ii. that any answers or assurances it receives will be accurate and will be respected by the eventual controllers of Rogers.

Adjourn the hearing until Rogers can identify its officers and directors

Rogers applied to the Commission by completing Form 139 (Application for authority to effect a change in ownership or control of a licensed broadcasting undertaking (Shares)). Appendix 2A of that form requires information about the current/proposed directors and officers of the corporation that will control the Shaw broadcasting undertakings should a change in ownership be approved.

In section 2.3 of Section B of Appendix 2A, Rogers identified the current and proposed officers of Rogers. That information is no longer correct, since Anthony Staffieri is identified as an officer of Rogers, yet Anthony Staffieri is no longer employed at Rogers.⁹ More importantly, however, it is impossible for the Commission to determine who the proposed officers of Rogers will be. The Second Board purports to be the legitimate board of directors and as such can be expected to replace most or all of Rogers' officers (or alternatively, those officers will leave of their own accord). In either case, the information contained in Section B of Appendix 2A will be incorrect. Until it has been determined whether the First Board or the Second Board controls Rogers, it is impossible to list the proposed officers of Rogers.

So long as the identity of the officers and directors of Rogers is in serious doubt, the CRTC cannot properly discharge its obligation under the *Broadcasting Act* to consider the impacts of the proposed transaction on the broadcasting system, and whether allowing the transaction to proceed is in the public interest. The CRTC cannot be certain that the officers on the Rogers panel that will be answering its questions at the hearing, or the board of directors that is instructing them, will actually be the persons in charge of executing the proposed transaction.

The CRTC must be able to assess the commitments of Rogers' officers

At the hearing, the Commission may request commitments from the officers on the Rogers panel. They will also need to understand the strategies of those officers. For example, BNC CRTC 2021-281 states that:

⁹ Rogers press release, "Rogers Communications announces CFO transition", September 29, 2021, available online at <<https://www.globenewswire.com/news-release/2021/09/29/2305840/0/en/Rogers-Communications-announces-CFO-transition.html>>

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- “the Commission may wish to consider how the proposed transaction will affect current customers, and in particular, the migration of Shaw customers to Rogers. The Commission may wish to consider, among other things, the transition of services and contracts, service calls, billing practices, consumer recourse for complaints, consumer choice, and the consumer awareness of the availability of services. Further, the Commission may wish to consider how the proposed transaction will enhance the accessibility of services and remove barriers for consumers with disabilities.”
- “the Commission may wish to consider Rogers’s strategy for migrating Shaw customers to Rogers, including customers who have disabilities who may have specific arrangements in place to enhance their access and experience, and how the proposed transaction could affect current Shaw and Rogers customers in the short and medium terms”;
- “the Commission may wish to consider the applicant’s proposals and commitments regarding local and community programming.” In particular, “the Commission may wish to consider Rogers’s community programming strategy for Shaw’s community channels and whether there would be any impact on those community channels should the transaction be approved”;
- “The Commission may wish to consider the possible impact of the transaction on the relationship between Rogers and its non-affiliated programming services, including the impact on current affiliation agreements, longer-term effects on independent programming services, and whether current safeguards remain appropriate”; and
- “The Commission may wish to consider the proposed benefits package in terms of how it serves the public interest more broadly and compliance with the Tangible Benefits Policy, as well as alternative proposals with respect to the benefits.”

Questioning the officers of Rogers that are on the Rogers panel regarding their strategies and commitments will not be helpful if a different group of officers are managing the transition of the Shaw undertakings to Rogers. Furthermore, those strategies and commitments will reflect the explicit or implicit instructions of the Rogers board of directors. If that board changes, then the strategies and commitments may also change. There is also a risk the eventual officers of Rogers may disavow the commitments made at any hearing held during this corporate struggle.

Postponing the hearing causes some prejudice to Rogers or Shaw but more to the public

Postponing the hearing will cause some prejudice to Rogers or Shaw due to the delay in awaiting the potential approval of the broadcasting assets transfer of ownership by the Commission. We note, however, that the transaction is currently slated to close on March 15, 2022, pursuant to the Plan of Arrangement filed with the Application, Rogers and Shaw can agree to extend that date.¹⁰

¹⁰ Arrangement Agreement entered into on March 13, 2021, Article 1.1 (definition of “Outside Date”).

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Conversely, given the significant uncertainty that exists today regarding the corporate control of Rogers, proceeding with the hearing would cause prejudice to the public, the CRTC and to interveners. It would require the expenditure of resources that may prove to be wasted if it is confirmed in the coming months that corporate control of Rogers has changed, and it creates doubt about the accuracy of the Application that interveners must address, and that the CRTC must review. Postponing the hearing will thus ensure that the CRTC can consider a complete and accurate record when reviewing the transaction.

Conclusion

For the reasons outlined above, the public hearing should be adjourned until such time as the eventual corporate control of Rogers is affirmed by the courts or agreed amongst Rogers' controlling interests and Rogers can satisfy the Commission of the identity and legal status of the Rogers board of directors and officers. If the hearing proceeds on November 22, 2021, the Commission almost surely will not have that information, and cannot properly discharge its statutory obligations under the *Broadcasting Act*.

The public interest is therefore best served by adjourning the public hearing until the uncertainty over Rogers' corporate governance has been resolved and Rogers has satisfied the Commission that this is so. PIAC-NPF reiterate our desire to appear at a public hearing, which should be held once this situation has been resolved and with adequate notice to all parties. We are not in favour of removing the public hearing as this is a transaction that deeply affects the public interest.

Yours truly,

**John
Lawford** Digitally signed
by John Lawford
Date: 2021.11.01
12:58:31 -04'00'

John Lawford
Counsel to PIAC-NPF

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

Ms. Colette Watson
President and General Manager
Cable Public Affairs Channel Inc.
cwatson@cpac.ca

End of document

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THIS IS EXHIBIT "5" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

2021 11 01

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

Subject: **Broadcasting Notice of Consultation CRTC 2021-281, Notice of Hearing to consider an application by Rogers Communications Inc. on behalf of Shaw Communication Inc. to acquire all of the issued and outstanding shares of Shaw and to operate various licensed broadcasting distribution undertakings, the national direct-to-home satellite distribution undertaking Shaw Direct, the national satellite relay distribution undertaking Shaw Broadcast Services and the direct-to-home programming service Shaw Pay-Per-View currently owned by Shaw – Response to Public Interest Advocacy Centre and the National Pensioners Federation**

Dear Mr. Doucet,

1. BCE Inc. is in receipt of a request by the Public Interest Advocacy Centre and the National Pensioners Federation (PIAC-NPF) that the Commission adjourn the oral public hearing scheduled to commence on 22 November 2021 to review the application by Rogers Communications Inc. (Rogers or RCI) to acquire the broadcast licences of Shaw Communications Inc. (Shaw). For reasons set out below, we fully support the PIAC-NPF request.
2. The situation before the Commission is unprecedented and places the Commission and parties to the proceeding in an impossible position. To our knowledge, the Commission has never before been asked to approve a change of control transaction in circumstances where the legal control of the acquirer is itself uncertain. This should be reason enough to suspend consideration.
3. This is not a small transaction but represents the largest Broadcasting Distribution Undertaking (BDU) change of control transaction in Canadian history. If approved, it will have a transformative impact on the Canadian broadcasting system as it will place almost 50% of BDU subscribers and revenues across English Canada in the hands of one entity: Rogers. The unparalleled market power this will confer upon Rogers requires careful consideration and regulatory scrutiny; as evidenced by the numerous affected parties who have asked to appear at the public hearing to make submissions. The significance of the issues that need to be addressed in considering Rogers' proposed acquisition of Shaw has led the Commission to set aside a full week of public hearings. Given these unprecedented circumstances and the importance of the issues that Rogers' proposed acquisition of Shaw raises, the Commission, in our view, has no choice but to adjourn the hearing.

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4. The Commission and all parties to the proceeding must clearly know who speaks for and controls Rogers and who would control Shaw post-transaction in order to evaluate and address the core issues in the proceeding. These issues include determining whether Rogers' application remains accurate (i.e., as to its control and the composition of the Rogers board and officers following the transaction), assessing any commitments that Rogers and Shaw have made or may make at the hearing, and ensuring these commitments will be honoured by those who ultimately control and manage Rogers.

5. We therefore submit that for the reasons outlined in PIAC-NPF's letter as well as below, the proceeding should be suspended until the present uncertainty regarding the effective control of Rogers and the status of its board of directors, its officers and senior management, has been fully and finally resolved.

Two Separate Groups Claim to be the Legitimate Board of Directors of Rogers

6. The recent dispute over the direction of Rogers appears to have arisen with Edward Rogers, who controls Rogers' voting shares through the Rogers Control Trust and Chair of the Rogers Board, seeking to replace the Chief Executive Officer (CEO) and members of the executive team. In response, the sitting Rogers Board elected to remove Edward Rogers as Board Chair and replace him with John A. MacDonald.¹

7. In response, on 21 October 2021, Rogers Control Trust issued a press release which stated, in part:

Today, Edward Rogers, the Control Trust Chair of Rogers Control Trust (the "**Control Trust**"), announced that he intends to make changes to the Board of Directors of Rogers Communications Inc. ("**RCI**")

...

The Control Trust Chair believes that it would be in the best interests of RCI to reconstitute the Board. To achieve this, the Control Trust Chair intends to remove John Clappison, David Peterson, Bonnie Brooks, Ellis Jacob and John MacDonald as directors of RCI and to appoint Michael Cooper, Jack Cockwell, Jan Innes, Ivan Fecan and John Kerr in their place and stead.²

8. The Control Trust went on to explain that they have the requisite authority to change directors through a shareholder resolution:

The Resolution is effective after (i) it has been submitted to registered Class A Shareholders and (ii) it has been signed by Class A Shareholders representing at least 66 2/3% of the outstanding Class A Shares. The Control Trust beneficially owns, together with private Rogers family holding companies controlled by the Control Trust, 108,403,398 Class A Shares, representing approximately 97.53% of the issued and outstanding Class A Shares, and the Control Trust Chair intends to cause the Resolution to be signed and delivered to RCI on or about October 22, 2021, following which the Resolution and reconstituted board will be effective.³

¹ <https://about.rogers.com/news-ideas/john-a-macdonald-becomes-chairman-of-the-board-of-directors-of-rogers-communications-inc/>

² <https://www.globenewswire.com/en/news-release/2021/10/22/2318865/0/en/Change-of-Directors-of-Rogers-Communications-Inc.html>

³ <https://www.globenewswire.com/en/news-release/2021/10/22/2318865/0/en/Change-of-Directors-of-Rogers-Communications-Inc.html>

9. In response to the purported reconstitution of the Rogers Board by the Control Trust, Rogers issued its own news release dated 23 October 2021 stating:

The proposal by Mr. Edward Rogers to hold a purported Board meeting with his proposed slate of directors this weekend does not comply with laws of British Columbia, where Rogers Communications Inc. is incorporated, and is therefore not valid. Accordingly, the purported Board meeting and anything that may arise from such a meeting is also invalid.⁴

10. In response, the Board as recently reconstituted by the Rogers Control Trust issued a press release on 24 October 2021 indicating that Edward Rogers has been appointed Chair of the Board of Rogers.⁵ Subsequently, Edward Rogers petitioned the Supreme Court of British Columbia seeking a declaration that his written resolution is valid and effective. A court hearing to examine this issue began today, 1 November 2021.⁶

11. In an affidavit filed with the Court, Edward Rogers describes that the Rogers Board including his mother and sisters supported the removal of Joe Natale as CEO and replacing him with Anthony Staffieri (the Chief Financial Officer of Rogers at the time) and also installing Robert Depatie (a member of the Board of Rogers) as President of Rogers Cable. However, according to the affidavit, the Board changed their mind and elected instead to terminate Mr. Staffieri.

12. On 25 October 2021, the press reported that the Ontario Securities Commission has additionally inquired into the state of corporate governance at Rogers "amid uncertainty over the leadership of Rogers".⁷

13. The result is that control of Rogers is in a complete state of uncertainty; there are two boards that claim to control one company, each with two different visions of how the company should be operated and managed going forward.

14. It also appears that the current dispute over Rogers' control and governance will be a protracted one. In an affidavit filed with the Supreme Court of British Columbia, Loretta Rogers states that "if the Court determines that a shareholders' meeting was required and Edward proceeds to call a meeting, I intend to challenge the decision of Edward in his capacity as Control Trust Chair to replace the independent directors."⁸ It seems that the uncertainty around control of Rogers will linger until all possible legal avenues have been exhausted by the parties and a final judicial determination has been made.

It is Not Appropriate to Proceed With the Oral Hearing at This Time

15. It would not be appropriate or fair to interested parties who are participating in this proceeding to proceed with the oral hearing prior to a final resolution of the current dispute over control of Rogers.

16. First, as a result of the developments summarized above, significant aspects of Rogers' application are either no longer accurate or in doubt, and the Commission must ask Rogers to file

⁴ <https://about.rogers.com/news-ideas/a-statement-on-behalf-of-john-a-macdonald-chair-of-the-board-of-directors-of-rogers-communications-inc/>

⁵ <https://stockhouse.com/news/press-releases/2021/10/24/a-statement-on-behalf-of-the-board-of-directors-of-rogers-communications-inc>

⁶ <https://about.rogers.com/news-ideas/a-statement-on-behalf-of-rogers-communications-inc-3/>

⁷ The Globe and Mail, "Edward Rogers's lawyers ask company to back expedited court hearing amid OSC inquiries", 25 October 2021, available online at <<https://www.theglobeandmail.com/business/article-edward-rogerss-lawyers-seek-company-rival-board-support-for-expedited/>>

⁸ Affidavit of Loretta Anne Rogers to the Supreme Court of British Columbia dated 28 October 2021, paragraph 70.

a revised application correcting or confirming these aspects before it can be considered further in an oral hearing. This includes who would constitute the Rogers board and the boards of various other entities post-transaction and the strategic plans of the company following the transaction.

17. With respect to who would be on the Rogers and other boards, section 2 of the Application Form requires Rogers to file information regarding the ownership and control of the merged entity. In this regard, Appendix 2A of what Rogers filed contained a list of individuals that are proposed directors for a number of the Shaw and Rogers companies involved in this application. The Appendix lists senior Rogers executives including Joe Natale, Anthony Staffieri and many other existing or former members of the executive team. As noted above, Anthony Staffieri has already departed Rogers. Other executives have indicated they may leave the company or may be asked to leave depending on how the Board's governance of Rogers is ultimately determined. Given all this uncertainty, we fail to see how Rogers' application can be deemed to be complete and accurate at this point.

18. With respect to some of the strategic plans of the company following the transaction that are relevant to the issues before the Commission, these will depend at least in part on who controls Rogers and is represented on its board of directors, as noted in the following Application documents:

- Rogers' Supplementary Brief notes that one of the broader intangible benefits of the transaction will be the appointment of Brad Shaw and another director appointed by Shaw to the Rogers' Board of Directors;⁹
- In its 29 July 2021 response to the Commission's deficiency letter, Rogers spoke about the independence of Corus Entertainment Inc., noting that the Rogers' Board of Directors would have no ability to influence decisions regarding Corus;¹⁰ and
- A similar statement was made in Rogers' Written Reply to interventions.¹¹

19. Each of these items is directly implicated in the current unresolved dispute within Rogers and is an issue raised by parties in this proceeding.

20. Second, until the dispute has been resolved parties will not be able to make submissions on, and the Commission will not be able to make the factual findings it is required to make in relation to issues under the *Broadcasting Act* (the *Act*) and the *Broadcasting Distribution Regulations*. For example, under section 3(h) of the *Act*, "all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast". The Commission must ensure that whoever controls the applicant will adhere to this obligation; yet with Rogers' current organizational turmoil it is impossible to identify those who will be responsible for the programs Rogers (or eventually Shaw) broadcasts going forward. Moreover, under subsection 4(4) of the *Broadcasting Distribution Regulations*, Commission approval is required for a change in the effective control of licensees. The Commission is required to review the proposed transaction to determine if it is in the public interest. As the Commission stated in the Consultation:

Considering the size and scope of the proposed transaction, the Commission intends to consider whether the proposed transaction is in the public interest. Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval of the proposed transaction is in the public interest, that the tangible and intangible benefits of the transaction are commensurate with the

⁹ Supplementary Brief, page 20.

¹⁰ Rogers 29 July 2021 response to Question 11.

¹¹ See paragraph 38.

size and nature of the transaction, and that the application represents the best possible proposal in the circumstances. [Emphasis added]

21. Under Circular 2008-8,¹² it is for the Commission to determine whether to issue a public notice in the face of such an application and where "the importance of the transaction is such that, in the Commission's opinion, it warrants further discussion in an oral public hearing". In this case the Commission has quite properly decided that this transaction warrants an oral hearing.

22. The uncertainty around control of Rogers, with two competing boards of directors, and potentially different management teams, makes it impossible to make the necessary public interest determinations in a case of this importance. Not only is it unclear who can make commitments related to tangible and intangible benefits on behalf of the company, but interveners cannot be assured that any positions taken by Rogers in the hearing will be honoured in the long term.

23. As the Commission notes in section 3 of Circular 2008-8, "[t]he Commission is always concerned with changes in the effective control of broadcasting undertakings and, as such, has the discretion to decide for any application the route that will best serve the public interest." In this case it is clear that the best route (and in our view, the only route) is for the Commission to suspend its consideration of Rogers' proposed acquisition of Shaw until there is a final determination as to who will ultimately control and operate Rogers.

Yours truly,

[Original signed by R. Malcolmson]

Robert Malcolmson

EVP & Chief Legal and Regulatory Officer

c.c.: PIAC-NPF

Rogers

Distribution List as per PIAC-NPF letter dated 1 November 2021

*** End of Document ***

¹² Broadcasting Circular CRTC 2008-8, *A guide to the CRTC application process for changes in effective control and certain transfers of shares of broadcasting undertakings as well as for the acquisition of assets of broadcasting undertakings.*

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THIS IS EXHIBIT "6" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



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Stephen Schmidt
Vice-President – Telecom Policy & Chief Regulatory Legal Counsel
Telecom Policy & Regulatory Affairs

November 2, 2021

Filed via GCKey

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2021-281 (“BNC 2021-281”) – Application by Rogers Communications Inc. for Authority to Acquire Effective Control of Shaw Communications Inc. (Application No. 2021-0228-4) – Procedural request by PIAC to adjourn the public hearing due to uncertainty regarding corporate control of the Applicant

Introduction

1. TELUS Communications Inc. (“TELUS”) is in receipt of a letter dated November 1, 2021, in which PIAC filed a procedural request for adjournment of the public hearing in the above noted proceeding that is currently scheduled to begin on November 22, 2021. The reason for PIAC’s request for adjournment is the uncertainty regarding the leadership and corporate control of the Applicant, Rogers Communications Inc. (“Rogers”), which calls into question fundamental issues such as whether any submissions made in the name of Rogers continue to be supported by the company’s board of directors, or whether the officers of the company continue to have authority to act on behalf of the corporation.
2. TELUS supports PIAC’s request for an adjournment of the public hearing. TELUS shares PIAC’s view that “the Commission will not be able to conduct the hearing in a manner that is fair to all parties and protects the public interest until and unless the confusion surrounding the effective control of Rogers is adequately resolved.”
3. Further, any potential prejudice to Rogers or Shaw Communications Inc. (“Shaw”) that might result from an adjournment is far outweighed by the public interest in ensuring an effective review of the proposed transaction, given its size and potential impact on the broadcasting sector in Canada.
4. The Commission and its processes do not exist to serve the private interests of Edward Rogers and the Rogers Control Trust. Rather, it is Edward Rogers and the Rogers Control Trust that are subordinate to the public interest. In the present circumstances, the public

interest requires that the CRTC's public hearing not proceed until the issue of corporate control of Rogers has been ascertained with certainty. This is the only way to ensure a fair and effective public review process.

The CRTC will not be able to effectively review the transaction

5. There are presently two boards of directors asserting legitimacy and control over Rogers. The question of which board of directors is legitimate is currently the subject of a proceeding before the Supreme Court of British Columbia, and a hearing before that court was held on November 1, 2021 to consider these issues.
6. However, any decision by that court is subject to appeal, and is almost certain to be appealed given that at least one member of the Rogers family has vowed to “spend every penny” to win the legal battle.¹ As a result, it may be several months before there is certainty regarding the corporate governance of Rogers, and a decision by the Supreme Court of Canada may ultimately be required.
7. According to affidavit evidence filed in the B.C. Supreme Court proceeding,² the existing conflict is the result of efforts by the controlling shareholder, Edward Rogers, to replace the CEO of Rogers. Those efforts began as early as September 15, 2021,³ and resulted in a “breakdown in the relationship between [several members of the board of directors] and the controlling shareholder.”⁴
8. Thus, it is clear that the outcome of the legal proceeding will affect not only the identity of the board of directors of Rogers, but also the identity of the officers of the company. This will not necessarily be limited to the identity of the CEO, as news reports indicate that should the board of directors created by Edward Rogers be deemed legitimate, the CEO and the majority of the remaining officers are prepared to leave Rogers.⁵
9. In contrast to this uncertainty, it is clear that neither the CRTC nor the intervenors in this application, nor even Rogers itself, can identify with certainty the directors and officers of the applicant in this proceeding. It is also clear that neither the CRTC nor the interested parties can be certain that the application filed by Rogers on April 13, 2021 continues to be accurate, or that the Rogers representatives that would appear at the hearing on November

¹ Financial Post, “We’ll spend every penny,’ Rogers sister warns amid family war”, October 23, 2021, available online at <<https://financialpost.com/telecom/well-spend-every-penny-rogers-sister-warns-amid-family-war>> .

² 1st Affidavit of Edward Rogers, filed in *Edward Rogers v. Rogers Communications Inc.*, Supreme Court of British Columbia, Court File No. VLC-S-S-219325.

³ *Id.* at paras. 26-47.

⁴ *Id.* at para. 73.

⁵ The Globe and Mail, “Board votes, backroom deals and betrayal: The battle for control at Rogers”, October 22, 2021 (updated October 23, 2021), available online at <<https://www.theglobeandmail.com/business/article-ceo-joe-natale-and-executive-prepared-to-depart-if-edward-rogers-move/>>.

22, 2021 will be speaking for the company that exists months from now, and that will be executing the transaction if it is approved.

10. This is not merely a theoretical concern. Only last week, it was reported that Vidéotron has sued Rogers for alleged breach of contract and a lack of “cooperation, loyalty and good faith” in negotiating upgrades to their joint network in Quebec and Ottawa.⁶ According to the news reports, Vidéotron claims that changes to Rogers’ management in early 2018 led Rogers to resile from its own proposal that Vidéotron had accepted in late 2017.⁷
11. Accordingly, it is important that the CRTC be certain that the Rogers representatives at the hearing actually speak for the company that may be executing the transaction. Otherwise the CRTC will be unable to properly discharge its statutory obligation to consider the impacts of the proposed transaction on the broadcasting system, and to determine whether allowing the transaction to proceed is in the public interest.

Adjournment of the hearing is in the public interest

12. PIAC states that postponing the hearing causes some prejudice to Rogers or Shaw due to the delay in awaiting potential approval of the proposed transaction, but that proceeding with the hearing would cause greater prejudice to the public.
13. TELUS agrees that the public interest is best served by adjournment of the hearing, and this consideration should be paramount in the Commission’s review of PIAC’s request. There is no urgency for the CRTC to proceed with the hearing in November because:
 - a. the proposed transaction cannot close without the approval of the Competition Bureau;
 - b. the Competition Bureau’s review of the proposed transaction is not likely to be completed until next year; and
 - c. the Arrangement Agreement between Rogers and Shaw allows them to mutually extend the closing date as needed.
14. The deadline for members of the public to provide the Competition Bureau with any relevant information pertaining to the proposed transaction was last Thursday, October 29, 2021. Thus, it is clear that the Competition Bureau’s review process is not at an advanced stage, and is unlikely to be completed until sometime in 2022.
15. Further, in past CRTC proceedings involving proposed mergers in the broadcasting sector, it has taken the Commission six weeks or less to issue a decision following the conclusion

⁶ National Post, “Vidéotron sues Rogers for \$850M, claiming breach of contract and 'bad faith' negotiations over shared network in Quebec”, October 29, 2021, available online at <<https://nationalpost.com/news/canada/videotron-sues-rogers-for-850m-claiming-breach-of-contract-and-bad-faith-negotiations-over-shared-network-in-quebec>>.

⁷ *Id.*

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TELUS Communications Inc.
November 2, 2021

of its public consultation process.⁸ The proposed transaction is currently scheduled to close on March 15, 2022, suggesting that a few months' delay in the CRTC's review may not even require a delay to that scheduled closing date (this assumes the transaction is approved by the CRTC and the Competition Bureau, which may not be the case). Even if a delay is required, the Arrangement Agreement between Rogers and Shaw empowers them to extend the closing of the transaction to a mutually agreed upon date.⁹

16. More importantly, however, the public interest must take precedence over any asserted inconvenience or prejudice to Rogers' private interests. To insist on conducting the hearing now, in the face of manifest uncertainty about the governance of Rogers, the identity of its executive team, and its capacity to make binding commitments to the Commission would invert and make hollow Parliament's vision of private interests being subordinate to the public interest and the supervisory authority of the Commission.

Conclusion

17. PIAC's request for an adjournment of the public hearing in this matter should be granted. The present uncertainty regarding corporate control of Rogers creates serious concerns regarding the reliability of the information that the CRTC would receive at the public hearing if it proceeds on November 22, 2021. This will undermine the CRTC's ability to conduct an effective review of the transaction, as well as the ability of interveners to address the issues raised by the application.
18. The public interest is thus best served by waiting until the uncertainty over Rogers' corporate governance has been resolved. This would cause no appreciable prejudice to Rogers or Shaw, while avoiding considerable prejudice to the CRTC and to interested parties.
19. TELUS reiterates its desire to appear at the public hearing, which should be held once the question of corporate control of Rogers has been resolved.

Yours truly,

{Original signed by Stephen Schmidt}

Stephen Schmidt
Vice-President - Telecom Policy & Chief Regulatory Legal Counsel
Telecom Policy & Regulatory Affairs

AM/jr

⁸ For example, the CRTC approved the Shaw/Canwest transaction in just over three weeks, the BCE/CTV transaction in just four weeks, the first BCE/Astral consultation in three weeks, and the second consultation in just under five weeks, following the end of the CRTC's formal public consultation in each instance.

⁹ Arrangement Agreement dated March 13, 2021, Article 1.1.

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THIS IS EXHIBIT "7" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Ted Woodhead

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Electronically via GCKey

November 2, 2021

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

Dear Mr. Doucet:

Re: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw – Broadcasting Notice of Consultation CRTC 2021-281 – Response to Request for Adjournment

1. Rogers is in receipt of a letter dated November 1, 2021 filed by the Public Interest Advocacy Centre and the National Pensioners Federation (PIAC-NPF) requesting that the Commission adjourn the public hearing announced in Broadcasting Notice of Consultation CRTC 2021-281, which is scheduled to begin on November 22, 2021. We subsequently received letters responding to PIAC-NPF's request from BCE Inc. (Bell) and from Vaxination Informatique (Vaxination) yesterday, and from Telus Communications Inc. (Telus) and JP Roman today. Both Vaxination and JP Roman oppose the PIAC-NPF request.
2. In its letter, PIAC-NPF suggests that the Commission will “not be able to conduct the hearing in a manner that is fair to all parties and protects the public interest until and unless the confusion surrounding the effective control of Rogers is adequately resolved.” In an obviously choreographed letter that we received a mere 87 minutes after the PIAC-NPF letter, Bell largely restated the arguments made by PIAC-NPF. Telus did the same in its letter.
3. Rogers strongly opposes the requests for adjournment. The requests are without merit. Rogers and Shaw remain steadfastly committed to the timely receipt of the necessary regulatory approvals and closing of this transaction.
4. None of PIAC-NPF, Bell or Telus has demonstrated any public interest that would be served by a Commission decision to delay the hearing, nor has any of them provided any credible evidence that the public interest would be harmed by moving forward with the public hearing into our application as scheduled on November 22, 2021.
5. Any suggestion that the current legal dispute creates any uncertainty in respect of the process before the Commission is tactical and should be given no consideration.

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Furthermore, in the case of Bell and Telus, they are obviously both concerned that a combined Rogers/Shaw will become a more effective competitor and are looking for any way to try to derail our transaction. Their requests should be viewed as nothing more than anti-competitive responses to our application.

6. The Rogers family and Rogers are aligned on the importance of this transaction. They fully support the application that Rogers has filed with the Commission. They have stated this publicly multiple times.
7. All submissions and commitments made by Rogers as part of this Commission proceeding will be honored and respected by the Company, regardless of any changes to the directors and officers that may occur in the future. This is the case for all companies that appear before the Commission.
8. The officers of Rogers who will be appearing at the hearing will be fully empowered to make commitments on behalf of the company. More importantly, in making its decision (which will be informed by the commitments made at the hearing) the Commission has (and will use) the power under the *Broadcasting Act* to impose any applicable obligations on Rogers, which will apply regardless of who its directors and officers are at the time of the Commission's decision. Accordingly, there is no real or perceived risk that any obligations imposed on Rogers by the Commission will not be honoured or upheld.
9. It is universally recognized within both Rogers and Shaw that the merger is important for the future of our companies, and will yield unprecedented benefits to Canadians, to the broadcasting system and to Canada's economy. Since the transaction was announced, Rogers and Shaw have met every filing deadline, responded to every request for information and submitted over a million pages of documents and materials to various regulatory bodies reviewing the transaction, including to the Commission. Rogers' and Shaw's commitment to this transaction has never waived.
10. Neither the public nor any party to this proceeding would be prejudiced by a Commission decision to proceed with the public hearing as scheduled on November 22, 2021. Postponing the hearing, however, would result in substantial prejudice to Rogers and Shaw. It would create further uncertainty in the marketplace and would unfairly and unreasonably delay the Commission's consideration of our application. It would also delay Canadians receiving the considerable benefits that will result from the implementation of the transaction.
11. For all of these reasons, Rogers submits that the Commission must deny PIAC-NPF's request for an adjournment, as well as Bell's and Telus' support for it.

Yours truly,



Ted Woodhead
Senior Vice President
Regulatory
Rogers Communications Inc.

cc: John Lawford (j.lawford@sympatico.ca)
Bell (bell.regulatory@bell.ca)
Telus (Jessica.Robb@telus.com)
Jean-François Mezei (jfmezei@vaxination.ca)
JP Roman (johnphiliproman@gmail.com)

*** End of Document ***

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THIS IS EXHIBIT "8" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Canadian Radio-television and Telecommunications Commission

[Home](#) → [Business](#) → [Commission Letters](#) → [2021](#)

Broadcasting - Commission Letter addressed to Ted Woodhead (Rogers Communications Inc.)

Ottawa, 3 November 2021

Our reference: [1011-NOC2021-0281](#)

BY EMAIL

Ted Woodhead
Senior Vice President
Regulatory
Rogers Communications Inc.

RE: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw

Ted Woodhead,

The Commission is in receipt of a letter containing a procedural request from the Public Interest Advocacy Centre and the National Pensioners Federation (PIAC-NPF) dated 1 November 2021. In that letter, PIAC-NPF requests that the Commission adjourn the public hearing initiated by Broadcasting Notice of Consultation CRTC 2021-281, scheduled to begin on 22 November 2021.

Commission staff acknowledges that Rogers has already replied to PIAC-NPF's procedural request, but will provide the opportunity for Rogers to submit any supplemental information it wishes before the panel renders a decision on the PIAC-NPF request. Rogers will have until Monday, 8 November 2021 at 1 p.m. EST to provide the supplemental information. A copy of this letter and all related correspondence will be added to the public record of the proceeding.

The Commission requires that your response or other documents be submitted electronically by using the secured service "[My CRTC Account](#)" ([Partner Log In](#) or [GCKey](#)) and be accompanied by the "Broadcasting and Telecom Cover page" located on this web page. Information on the submission of applications to the Commission is available on the following web page: [Submitting applications and other documents to the CRTC using My CRTC Account](#)).

Sincerely,

Original signed by

PUBLIC

Kay Saicheua
Director, Ownership and Acquisitions
Consumer, Research and Communications

[c.c. jlawford@piac.ca](mailto:c.c.jlawford@piac.ca)
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Date modified:

2021-11-03

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THIS IS EXHIBIT "9" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
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Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



November 3, 2021

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

Dear Mr. Doucet,

**Re: Broadcasting Notice of Consultation CRTC 2021-281 (BNC 2021-281) – Shaw
Response to Procedural Requests**

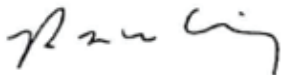
1. Shaw Communications Inc. (**Shaw**) provides this response to procedural requests to adjourn the public hearing that was announced in BNC 2021-281 and is scheduled to commence on 22 November 2021. The original request – filed on 1 November 2021 by Public Interest Advocacy Centre and the National Pensioners Federation (**PIAC-NPF**), and opportunistically supported by BCE and Telus – lacks any merit and must be summarily dismissed.
2. Contrary to PIAC-NPF's misplaced concern, there is no uncertainty concerning the application before the Commission, and there is no uncertainty concerning Rogers' and Shaw's complete and unwavering commitment to the historic combination of two great, Canadian, family-founded companies and to delivering incredible benefits and opportunities to Canadians, and in particular, to Western Canada.
3. The oral hearing has been scheduled for months, and the process has afforded interveners sufficient time to review and comment on all aspects of BNC 2021-281 and to prepare for the oral hearing. The opportunistic proponents of delay have raised no merit to, or need for, adjournment. On the other hand, delaying the hearing would create significant uncertainty – especially for Shaw's business, customers, employees, shareholders, and suppliers. Delay and uncertainty are especially harmful to a company that is being acquired. Our competitors are acutely aware of the risks that an unnecessary delay would pose to Shaw and its various stakeholders, as well as to the competitive and consumer benefits that will result to the system with a timely approval of the application. Therefore, the procedural requests are clearly not in the public interest.
4. It is not surprising that Bell and Telus have filed letters supporting PIAC-NCF's procedural request, in a transparent attempt to game the Commission's process and create unacceptable regulatory uncertainty surrounding a transaction that is clearly in the public

PUBLIC

interest. Bell and Telus oppose the prospect of a more effective competitor with the scale to match their combined investments and drive increased consumer choice, affordability, and value. Their arguments for delaying the hearing are disingenuous and entirely driven by their competitive interests.

5. Shaw looks forward to appearing before the Commission to demonstrate that the transaction will serve the public interest by increasing competition, investment, innovation, and customer choice.
6. For each of these reasons, Shaw strongly opposes the procedural requests for adjournment and submits that they must be expeditiously denied.

Sincerely,



Paul Cowling
Senior Vice President
General Counsel & Regulatory Affairs
Shaw Communications Inc.

CC: John Lawford, Public Interest Advocacy Centre and the National Pensioners Federation – jlawford@piac.ca

Ted Woodhead, Rogers Communications Inc. – cable.regulatory@rci.rogers.com

Colette Watson, Cable Public Affairs Channel Inc. – cwatson@cpac.ca

Robert Malcolmson, BCE Inc. – bell.regulatory@bell.ca

Stephen Schmidt, TELUS Communications Inc. – regulatory.affairs@telus.com

Jean-François Mezei, Vaxination Informatique – jfmezei@vaxination.ca

John P. Roman – johnphiliproman@gmail.com

*****End of Document*****

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AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Ted Woodhead

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cable.regulatory@rci.rogers.com

Electronically via GCKey

November 8, 2021

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

Dear Mr. Doucet:

Re: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw – Broadcasting Notice of Consultation CRTC 2021-281 – Additional Information in Response to Request for Adjournment

1. Rogers is responding to the letter issued by Commission staff on November 3, 2021 in respect of the procedural request by PIAC-NPF that the Commission adjourn the public hearing initiated by Broadcasting Notice of Consultation CRTC 2021-281. In its letter, Commission staff acknowledge that Rogers has already replied to PIAC-NPF's procedural request but provided us with an opportunity to submit supplemental information before the panel renders a decision on the request.
2. Rogers is hereby filing the judgment that was issued by The Honourable Madam Justice Fitzpatrick of the British Columbia Supreme Court on November 5, 2021 (attached as Appendix A). The judgment concludes that "the process by which Edward [Rogers] obtained the Consent Resolution was available [to] him under the Articles and the *Act*. In accordance with the Articles and the *Act*, the Consent Resolution is deemed to be valid and enforceable." On November 7, Rogers announced that it will not seek an appeal of this judgement.
3. Furthermore, in a statement released on November 5, Edward Rogers, Chair of the Rogers Control Trust and Chair of the Rogers Board of Directors, noted: "Mr. Natale remains CEO and a director of Rogers Communications and has the Board's support. Our focus must be on the business, a return to stability, and closing our transformational merger with Shaw Communications."¹
4. The judgment of the British Columbia Supreme Court effectively resolves the matter that gave rise to the PIAC-NPF procedural request and should, therefore, result in a denial of that request.

¹ See: <https://www.newswire.ca/news-releases/a-statement-from-edward-rogers-873907046.html>.

Yours truly,



Ted Woodhead
Senior Vice President
Regulatory
Rogers Communications Inc.

Encl.

cc: John Lawford (j.lawford@sympatico.ca)
Bell (bell.regulatory@bell.ca)
Telus (Jessica.Robb@telus.com)
Jean-François Mezei (jfmezei@vaxination.ca)
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Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



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Stephen Schmidt
Vice-President – Telecom Policy & Chief Regulatory Legal Counsel
Telecom Policy & Regulatory Affairs

November 8, 2021

Filed via GCKey

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2021-281 (“BNC 2021-281”) – Application by Rogers Communications Inc. for Authority to Acquire Effective Control of Shaw Communications Inc. – Procedural request by PIAC-NPF to adjourn the public hearing due to uncertainty regarding corporate control of the Applicant

Overview of TELUS position

1. On November 1, 2021, PIAC-NPF filed a procedural request for adjournment of the public hearing in the above noted proceeding due to the uncertainty regarding the leadership and corporate control of the Applicant, Rogers Communications Inc. (“Rogers”). PIAC-NPF’s request was supported by TELUS Communications Inc. (“TELUS”) and BCE Inc. (“Bell”). Rogers and Shaw Communications Inc. (“Shaw”) filed letters opposing the request on November 2, 2021 and November 3, 2021, respectively.
2. On November 3, 2021, Commission staff issued a letter to acknowledge Rogers’ response and to provide Rogers with the opportunity to submit any supplemental information before the panel renders a decision on the PIAC-NPF request.
3. Subsequently, on November 5, 2021, the Supreme Court of British Columbia issued a decision (the “Court Decision”) addressing the narrow legal issue of whether the consent resolution dated October 22, 2021, initiated by Edward Rogers to remove five members of Rogers’ board of directors and replace them with another five directors, was valid.¹ The court ruled against Rogers by validating Edward Rogers’ consent resolution.
4. On November 8, 2021, Rogers filed a brief reply to the letter issued by Commission staff in which it provided a copy of the Court Decision, and asserted that it “effectively resolves the

¹ *Edward Rogers v. Rogers Communications Inc.*, 2021 BCSC 2184

matter that gave rise to the PIAC-NPF procedural request and should, therefore, result in a denial of that request.”

5. However, when the totality of the circumstances is assessed, it is clear that there remains considerable uncertainty regarding the leadership and governance of Rogers, and that the information before the Commission does not adequately address or resolve the fundamental concerns underlying PIAC-NPF’s request.
6. For the reasons outlined below:
 - The information available to the Commission at this time, and upon which Rogers is asking the Commission to rely in denying PIAC-NPF’s request, is both incomplete and inconsistent and does not provide certainty regarding the leadership and governance of Rogers in the immediate or near future;
 - The public interest is best served by adjourning the hearing until the uncertainty created by the internal power struggle at Rogers has been unequivocally resolved, and the Commission can be assured that proceeding with the hearing will not be prejudicial to the public, its own process, and to interested parties; and
 - An adjournment of the hearing causes no appreciable prejudice to Rogers or Shaw, particularly when compared to the prejudice already caused by the corporate governance issues at Rogers. There remains ample time for the Commission to complete its review prior to the currently scheduled closing date.
7. Accordingly, TELUS urges the Commission to grant PIAC-NPF’s request and adjourn the hearing for a short period of time. A short adjournment will afford the Commission additional time to evaluate whether the uncertainty regarding corporate control and governance of Rogers has truly been resolved, and help the Commission avoid potential prejudice to its process and to the public.

It is unclear whether the battle for corporate control of Rogers has ended

8. It has been reported that after the Court Decision was announced, Rogers’ lawyer, Stephen Schachter, urged the court to stay the ruling for several days to give Rogers time to file an expedited appeal. Mr. Schachter requested the stay because Rogers was concerned that the new board could terminate the management of Rogers or order it not to pursue an appeal. A lawyer representing Edward Rogers assured the court that no such steps would be taken, prompting the court to deny the request for a stay.²
9. Further, shortly after the ruling was issued, the Rogers family members that oppose Edward Rogers issued a statement in which they clearly indicated their disappointment with the Court

² Globe and Mail, “Rogers says it won’t appeal B.C. court decision that seals Edward Rogers’s control over the telecom giant”, November 7, 2021, available online at: <
<https://www.theglobeandmail.com/business/article-rogers-says-it-wont-appeal-bc-court-decision-that-gives-edward-rogers/>>

TELUS Communications Inc.
November 8, 2021

Decision and their intention to continue the battle for corporate control of Rogers, including through the appeal process:

“We are very disappointed with the court’s ruling, which represents a black eye for good governance and shareholder rights and sets a dangerous new precedent for Canada’s capital markets by allowing the independent directors of a public company to be removed with the stroke of a pen. We believe that today’s ruling also ushers in a particularly dangerous time for RCI. The company now faces a very real prospect of management upheaval and a prolonged period of uncertainty, at perhaps the worst possible time. While the appeal process unfolds, we plan to remain steadfast in our advocacy for good governance and responsible stewardship at Rogers on behalf of all our employees, customers and all shareholders. We also plan to do everything we can to help the company successfully conclude the transformative Shaw transaction for the benefit of all stakeholders. What we can take away from this is that we have elevated the discussion around corporate governance to the national stage. We plan to continue to amplify the voices of shareholders such that, whether they hold ordinary shares or those with multiple voting rights, all are equally worthy to be heard in the discourse of good governance and responsible company management.”³ (Emphasis added)

10. Following this statement, on the evening of Sunday, November 7, 2021, Rogers released a terse one-line statement announcing that it would not seek an appeal of the Court Decision.⁴ However, no statement has been released by the Rogers family members, either to support the abandonment of the appeal process or to retract the previous unequivocal statements vowing to continue the legal battle. Presently, it remains unclear what action(s) they intend to take next.
11. Thus, the information on which that the Commission is being asked to rely in deciding PIAC-NPF’s request is materially incomplete. Further, to the extent that additional relevant information exists but is not public, it could have been, and ought to have been, provided to the Commission in Rogers’ reply dated November 8, 2021, but was not.

Inconsistent statements by Edward Rogers

12. The information available to the Commission is not only incomplete, it is also inconsistent. In its reply filed November 8, Rogers references a statement released by Edward Rogers on November 5, 2021, indicating that Joe Natale “remains CEO and a director of Rogers Communications and has the Board’s support.”⁵

³ Martha Rogers, @MarthaLRogers. (2021, November 5). Twitter.
<<https://twitter.com/marthalrogers/status/1456764863846436866?s=21>>

⁴ Rogers News Release, “A statement on behalf of Rogers Communications Inc.”, November 7, 2021, online at <<https://about.rogers.com/news-ideas/a-statement-on-behalf-of-rogers-communications-inc-5/>>

⁵ Newswire, “A Statement from Edward Rogers”, November 5, 2021, available online at <<https://www.newswire.ca/news-releases/a-statement-from-edward-rogers-873907046.html>>

13. However, this statement is completely contradicted by the sworn evidence provided by Edward Rogers (who is the Chairman of Rogers' new board of directors) in last week's court proceeding, in which he made the following statements indicating a distinct lack of confidence in Mr. Natale:
 - "I have grown increasingly concerned with Mr. Natale's performance over the last two years";⁶
 - "After careful consideration over this past summer, I had formed the view by September that Mr. Natale's performance was not going to improve and I had serious concerns about his ability to lead RCI following the company's integration of Shaw Communications in the spring of 2022";⁷ and
 - "my strong preference was to replace Mr. Natale with Mr. Staffieri."⁸
14. Edward Rogers' statement of November 5 is also hard to reconcile with the fact that the chain of events that resulted in the creation of the current board of directors of Rogers began with Edward Rogers' failed attempt to terminate Mr. Natale, and subsequently led to the corporate governance crisis at Rogers and the current "civil war" between the Rogers family members.
15. These inconsistencies call into question the sincerity of Edward Rogers' support for Mr. Natale, and whether the statement issued on November 5 was merely made for expediency. Further, at the time the statement was issued Edward Rogers would have been prevented from taking any action to terminate Mr. Natale anyhow, since he had given assurances to the court that he would not make any management changes until the following week so Rogers could pursue a stay and appeal of the Court Decision.

The public interest is best served by an adjournment

16. The proposed transaction has the potential to dramatically alter the broadcasting sector in Canada and its future direction. It is therefore essential that the Commission be able to conduct an effective review that will enable it to properly discharge its statutory mandate to assess whether the transaction is in the public interest.
17. In BNC 2021-281, the Commission indicated that it wished to assess at the public hearing how the proposed transaction would affect the public in a variety of ways, many of which depend on Rogers' business plans and strategy for execution of the transaction. These include, for example, "the transition of services and contracts, service calls, billing practices, consumer recourse for complaints, consumer choice, and the consumer awareness of the availability of services", and "Rogers's strategy for migrating Shaw customers to Rogers, including customers who have disabilities who may have specific arrangements in place to enhance their access and experience, and how the proposed transaction could affect current Shaw and Rogers customers in the short and medium terms."⁹

⁶ 1st Affidavit of Edward Rogers, filed in *Edward Rogers v. Rogers Communications Inc.*, Supreme Court of British Columbia, Court File No. VLC-S-S-219325, at para. 15.

⁷ *Id.* at para. 19.

⁸ *Id.* at para. 25.

⁹ Broadcasting Notice of Consultation CRTC 2021-281, *Notice of hearing*, 12 August 2021

18. Rogers' business plans and strategy are inextricably linked to and dependent on the leadership and corporate governance of Rogers, which for the reasons outlined above remain uncertain. So long as that uncertainty remains, the Commission will not be able to fully rely on the answers it receives at the public hearing on such issues. As a result, there will be unavoidable doubt regarding the accuracy of the evidentiary record that the public hearing is supposed to provide.
19. Furthermore, as discussed above, the publicly available information regarding the internal power struggle at Rogers is incomplete and inconsistent, and new information continues to come to light on an almost daily basis. Under these circumstances, the public interest is best served by adjourning the hearing until the uncertainty created by the internal power struggle at Rogers has been unequivocally resolved, and until the Commission can be assured that proceeding with the hearing will cause no prejudice to the public, its own process, and to interested parties.
20. Doing so may only require a short adjournment, and the Commission has ample time to consider Rogers' Application for the reasons outlined by TELUS in its letter of November 2, 2021. The proposed transaction is currently scheduled to close on March 15, 2022, and historical precedents indicate that the Commission typically issues a decision in six weeks or less following the conclusion of its public consultation process.¹⁰ Thus, for example, adjourning the hearing to January of 2022 would be entirely compatible with completing the Commission's review process by March 15, 2022 – a date that in any event can be extended by Rogers and Shaw pursuant to the Arrangement Agreement between them.¹¹
21. More importantly, proceeding with the public hearing in the face of continued uncertainty is prejudicial to the public interest – a fact that neither Rogers nor Shaw attempted to address in the responses they filed with the Commission last week. To the extent that either response discussed the impact that proceeding with the hearing would have on the public interest, it was to assert that adjournment of the hearing would “delay Canadians receiving the considerable benefits that will result from the implementation of the transaction”,¹² or that delay would pose risks to “the competitive and consumer benefits that will result to the system with a timely approval of the application”.¹³ However, those arguments presume the outcome of the review process, and treat the Commission's review as a mere formality – a mechanism for conveying property interests between cable families – rather than an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act*.

No appreciable prejudice to Rogers and Shaw

22. Granting PIAC-NPF's request for an adjournment would also cause no appreciable prejudice to Rogers and Shaw, particularly when measured against the impact that Edward Rogers' actions have already had. For example, in the Court Decision, the judge recognized that “[s]ignificant

¹⁰ For example, the Commission approved the Shaw/Canwest transaction in just over three weeks, the BCE/CTV transaction in just four weeks, the first BCE/Astral consultation in three weeks, and the second consultation in just under five weeks, following the end of the Commission's formal public consultation in each instance.

¹¹ Arrangement Agreement dated March 13, 2021, Article 1.1.

¹² Rogers Response to PIAC-NPF Request for Adjournment, November 2, 2021, at para. 10.

¹³ Shaw Response to PIAC-NPF Request for Adjournment, November 3, 2021, at para. 3.

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TELUS Communications Inc.
November 8, 2021

and negative consequences have already arisen in the public markets, including loss of RCI share value”, as a result of the internal power struggle over control of Rogers.

23. Further, it appears those negative consequences may not be limited to the short term. In an announcement dated November 4, 2021, Moody’s Investors Service commented that “governance risk at Rogers Communications Inc. is high, as a result of the company's decision in March 2021 to potentially increase leverage materially to buy Shaw Communications Inc., and now, additionally, because of recent family and Board-level disagreements and related management uncertainties. Rogers' Baa1 senior unsecured rating is under review for downgrade, and governance matters will be considered in resolving the review.”¹⁴ (Emphasis added)
24. Accordingly, any prejudice that adjournment of the hearing might cause for Rogers and Shaw is dwarfed by the prejudice already created due to the corporate governance issues at Rogers. More importantly, the public interest in granting an adjournment cannot be subservient to Rogers’ and Shaw’s private interests in this matter.

Conclusion

25. Notwithstanding Rogers’ assertion to the contrary, it remains highly uncertain whether the corporate governance crisis at Rogers has been resolved with finality. The information available to the Commission at this time is both incomplete and plagued by inconsistencies. It is therefore incapable of providing confidence that proceeding with a public hearing in two weeks would be in the public interest. This is the fundamental concern underlying PIAC-NPF’s request, and it remains unresolved.
26. Conversely, there is no urgency to hold a hearing this month, and a short adjournment would create no appreciable prejudice to Rogers and Shaw, especially when compared to the prejudice already inflicted by the internal power struggle within Rogers.
27. Accordingly, TELUS urges the Commission to grant PIAC-NPF’s request and adjourn the hearing for a short period of time. This will allow the Commission to better evaluate whether the uncertainty regarding corporate control and governance of Rogers has truly been resolved, and will help the Commission avoid potential prejudice to its process and to the public

Yours truly,

{Original signed by Stephen Schmidt}

Stephen Schmidt
Vice-President - Telecom Policy & Chief Regulatory Legal Counsel
Telecom Policy & Regulatory Affairs

¹⁴ Moody’s Investors Service, “Moody's says Rogers' governance is materially credit negative”, November 4, 2021, available online at <https://www.moodys.com/research/Moodys-says-Rogers-governance-is-materially-credit-negative--PR_457654>

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TELUS Communications Inc.
November 8, 2021

AM/jr

Cc: Kay Saicheua, Director, Ownership and Acquisitions, CRTC (kay.saicheua@crtc.gc.ca)
John Lawford (j.lawford@sympatico.ca)
Bell (bell.regulatory@bell.ca)
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Jean-François Mezei (jfmezei@vaxination.ca)
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ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Ted Woodhead

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Electronically via GCKey

November 9, 2021

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

Dear Mr. Doucet:

Re: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw – Broadcasting Notice of Consultation CRTC 2021-281 – Response to Telus Regarding PIAC-NPF Request for Adjournment

1. Rogers Communications Inc. (Rogers) is in receipt of a letter, dated November 8, 2021, filed by Telus Communications Inc. (Telus), which purports to be some sort of further intervention in support of the procedural request filed by the Public Interest Advocacy Centre and the National Pensioners Federation (PIAC-NPF) on November 1, 2021.¹ In its most recent letter, Telus merely recites the filings that were made in response to PIAC-NPF's procedural request and then reiterates many of the same preposterous arguments it made in its previous intervention.
2. Rogers strongly objects to Telus' second intervention. Telus is not the applicant that initiated the procedural request and has no right to continue to file new submissions in response to PIAC-NPF's application. Its second submission is not in anyway informed by the most recent develops and adds nothing of substance to the public record. This is an abuse of process that must be soundly rejected by the Commission.
3. Further, there is no merit to the arguments relating to corporate "uncertainty" that are alleged in Telus' two interventions. Not only has Telus continued to grossly exaggerate its concerns surrounding Rogers' corporate governance, but its suggestion that the Commission could not proceed with a hearing until it is certain that there will be no change to a company's senior management team remains untenable and absurd.
4. Our application is complete and the Commission's consideration of it should proceed in the manner set out in Broadcasting Notice of Consultation CRTC 2021-281 without

¹ Telus filed its initial intervention on November 2, 2021.

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further delay. Self-serving requests by our competitors to delay or adjourn the proceeding must be denied.

5. In view of this, Rogers submits that Telus' follow-up intervention should be rejected and removed from the record.

Yours truly,



Ted Woodhead
Senior Vice President
Regulatory
Rogers Communications Inc.

Encl.

cc: Kay Saicheua, Director, Ownership & Acquisitions, CRTC
(kay.saicheua@crtc.gc.ca)
John Lawford (j.lawford@sympatico.ca)
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Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Canadian Radio-television and
Telecommunications Commission

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Conseil de la radiodiffusion et des
télécommunications canadiennes

Ottawa, Canada
K1A 0N2

Gatineau, 12 November 2021

Our reference: [1011-NOC2021-0281](#)

BY EMAIL:

John Lawford
Council to the Public Interest Advocacy Centre and the National Pensioners Federation
piac@piac.ca

RE: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw

John Lawford,

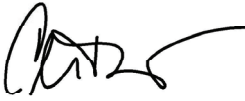
The Commission is in receipt of the procedural request filed by the Public Interest Advocacy Centre and National Pensioners Federation (PIAC-NPF) dated 1 November 2021 and has considered the submissions filed by Rogers Communications Inc., TELUS Communications Inc., BCE Inc., Shaw Communications Inc., Vaxination Informatique and John Roman in response to PIAC-NPF's request.

The Commission considers that the ruling by the Supreme Court of British Columbia (the Court) dated 5 November 2021 in the case of *Rogers v. Rogers Communications Inc.*, 2021 BCSC 2184, is dispositive of the matter and addresses the concerns raised by PIAC-NPF and the supporting intervenors concerning the Board of Directors of Rogers. Consequently, the Commission **denies** the procedural request by PIAC-NPF to adjourn the hearing. The Commission will therefore hold the hearing to consider the application by Rogers on 22 November 2021, as set out in Broadcasting Notice of Consultation CRTC 2021-281.

The Commission acknowledges that [Appendix 2A – Ownership Information](#) filed in support of Rogers' application may no longer reflect the current composition of the board of directors and officers. The Commission has therefore issued a letter to Rogers Communications Inc. dated 12 November 2021, in which it requires that Appendix 2A filed in support of Rogers' application be amended to reflect the changes within their directors and officers, as applicable, as well as any

corporate documentation to support the accuracy of Appendix 2A, by no later than 19 November 2021, 1:00 P.M. EST.

Sincerely,

A handwritten signature in black ink, appearing to read 'Claude', with a long horizontal stroke extending to the right.

Doucet, Claude

2021.11.12 14:

35:22 -05'00'

Claude Doucet
Secretary General

cc. cable.regulatory@rci.rogers.com

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THIS IS EXHIBIT "14" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.



Gatineau, 12 November 2021

Our reference: [1011-NOC2021-0281](#)

BY EMAIL:

Ted Woodhead
Senior Vice President
Regulatory
Rogers Communications Inc.

RE: Application 2021-0228-4 – Application by Rogers Communications Inc. (Rogers), on behalf of Shaw Communications Inc. (Shaw), for Rogers to acquire all of the issued and outstanding shares of Shaw

Ted Woodhead,

The Commission has issued a letter to the Public Interest Advocacy Centre and National Pensioners Federation (PIAC-NPF) dated 12 November 2021. In that letter, the Commission states that it considers that the ruling by the Supreme Court of British Columbia (the Court) dated 5 November 2021 in the case of *Rogers v. Rogers Communications Inc.*, 2021 BCSC 2184 to be dispositive of the matter and addresses the concerns raised by PIAC-NPF and the supporting intervenors concerning the Board of Directors of Rogers. Consequently, the Commission denied the procedural request by PIAC-NPF to adjourn the hearing. The Commission will therefore hold the hearing to consider the application by Rogers on 22 November 2021, as set out in Broadcasting Notice of Consultation CRTC 2021-281.

The Commission acknowledges that [appendix 2A – Ownership Information](#) filed in support of Rogers' application may no longer reflect the current composition of the board of directors and officers. The Commission therefore requires that appendix 2A filed in support of Rogers' application be amended to reflect the changes within their directors and officers, as applicable, as well as any supporting corporate documentation to support the accuracy of appendix 2A, by **no later than 19 November 2021, 1:00 P.M. EST.**

Sincerely,

Doucet, Claude
2021.11.12 14:44:
18 -05'00'

Claude Doucet
Secretary General

cc. piac@piac.ca

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THIS IS EXHIBIT "15" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

Transcript, Hearing November 23, 2021

Volume: 2

Location: Gatineau, Québec

Date: November 23, 2021

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Attendees and Location

Held at:

Outaouais Room
Conference Centre
140 Promenade du Portage
Gatineau, Québec

Attendees:

- **Chairperson: Ian Scott**
- **Commissioner, Ontario: Monique Lafontaine**
- **Commissioner, Alberta and the Northwest Territories: Nirmala Naidoo**
- **Commissioner, Atlantic Region and Nunavut: Ellen Desmond**
- **Commissioner, British Columbia and Yukon: Claire Anderson**
- **Legal Advisors: Christina Maheux, Matthew Welch**
- **Hearing Secretary: Jade Roy**
- **Hearing Manager: Cédrick Lelièvre**

Online: https://crtc.gc.ca/eng/transcripts/2021/tb11_23.htm

PRESENTATION / PRÉSENTATION:

1460 MR. SCHMIDT: Thank you.

1461 Good morning, Chairman Scott. Good morning Commissioners.

1462 I would like to acknowledge that the land on which we gather today is the traditional unceded territory of the Anishnaabeg People.

1463 Thank you for the opportunity to appear before you today, and thank you for the opportunity to expand on our written submissions in this proceeding.

1464 My name is Stephen Schmidt and I am Vice President, Telecom Policy and Chief Regulatory Legal Counsel at TELUS.

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1465 With me today on my left, are Zainul Mawji, Executive Vice President Home Solutions. Further to her left, Lecia Simpson, Director Broadcasting Policy and Regulatory Affairs; and further still to the left, Jeff Yurchesyn, Vice President Strategy and Data Insights.

1466 To my right is Antoine Malek, Director Broadcasting and Copyright Policy; and further to his right is Wayne Lindo, Manager of Content Acquisitions.

1467 The merger that you are considering in this proceeding is one of the most significant ever proposed in the Canadian broadcasting system, but you would be hard-pressed to find any evidence of it in the application before you. Rogers fails to acknowledge, let alone address, the risks to the broadcasting system that the merger creates, and the harms to competition and to consumers that are certain to follow.

1468 Those harms are real, substantial, and non-remediable. This merger will greatly reduce competition and consumer choice, and will impoverish the diversity of voices in the broadcasting system.

1469 The Canadian broadcasting system was built around a principle of non-exclusivity of programming to create healthy competition between BDUs. This merger will change that, as Rogers will be able to use content exclusivity to force consumers to subscribe to their distribution service.

1470 As we will explain, this will happen because Rogers will gain the scale to buy exclusive access to foreign content and use that exclusivity to benefit their distribution business, at the expense of their competitors and the customers of their competitors.

1471 The unprecedented scale will also turn Rogers into a gatekeeper for Canadian programming services, because these services will depend on Rogers for their continued survival.

1472 Further, Rogers will use its own vertically integrated affiliates to give themselves exclusive access to content.

1473 Contrary to Rogers' assertions, the Commission's existing competitive safeguards do not prevent these outcomes, and indeed no safeguards will be able to effectively protect against the scale that Rogers will gain.

1474 We therefore urge the Commission to deny this application. Rogers has failed to discharge their burden to demonstrate that approval of the transaction is in the public interest, that the tangible and intangible benefits of the transaction are commensurate with its size and nature, and that the application represents the best possible proposal in the circumstances.

1475 Zainul?

1476 MS. MAWJI: Thank you, Stephen.

1477 There are two primary reasons from a distribution standpoint that this merger will be bad for Canadians. The first is the scale that Rogers will gain, and the second is that

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it will worsen vertical integration issues that are already prevalent in the broadcasting sector.

1478 Even if Rogers was not vertically integrated, the scale they would gain would do tremendous harm to competition in the broadcasting and broadband markets. Rogers would have unmatched distribution that covers about 36 percent of all BDU subscribers, and nearly 47 percent of all English-language subscribers. Their network would pass 80 percent of all homes in English Canada.

1479 The scale that Rogers will achieve will lessen competition in at least two important ways.

1480 First, Rogers will have the scale to secure exclusivity from foreign streaming services across Canada, at a time when foreign broadcasters are rapidly embracing online distribution in the Canadian market. Leveraging their relationship with Comcast, Rogers could buy the national rights to a foreign streaming service such as NBC Universal Peacock, which has 54 million U.S. subscribers, is owned by Comcast, and is already integrated into the XFINITY platform. They could make it available to their BDU customers, and only their customers.

1481 If they do that, no other BDU would be able to offer that content to their customers, and Canadians will also be unable to buy it directly. Buying those national rights would be expensive, but it would make economic sense when you use those rights to serve nearly half of the English-language market, and use exclusivity to grow to 80 percent of the market.

1482 For many foreign streaming services, that will be an attractive offer. It will allow them to avoid or defer the significant costs of selling directly to consumers and of integrating their app with multiple BDUs, which is costly.

1483 Second, with this scale that Rogers will gain, they cannot help but become a gatekeeper for Canadian programming services that operate in the English-language market. If a programming service cannot secure carriage and reasonable packaging on the Rogers network, it will not be viable. Rogers will essentially become the de facto licensing authority for programming services in the English-language market, and will single-handedly determine the available programming options for all English Canadian customers, whether they are a Rogers consumer or not.

1484 This level of market power will also allow Rogers to dictate rates and terms of carriage for independent programming services, which will inevitably weaken those services. This is a structural problem to which there is no viable solution.

1485 The only practical way for competitors to combat the scale that Rogers will gain through this proposed merger will be to seek competitive parity through similar scale. This merger, if approved, will become the blueprint for further consolidation in the broadcasting and broadband industries.

1486 Lecia?

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1487 MS. SIMPSON: Vertical integration abuses will make sense for Rogers to pursue after this merger. According to publicly reported data, Rogers earns around \$50 million in operating profits from their media business each year, but their wireline distribution business contributes around \$2 billion of operating profits each year.

1488 These numbers make it abundantly clear how Rogers can maximize their revenues. Where they can, they will deny competing BDUs and their customers access to content in order to drive those customers to their own service. By foreclosing access to their own content, Rogers will increase their overall corporate profitability. The Commission can be sure that Rogers will do this because it is rational, profit-maximizing behaviour.

1489 If Rogers cannot deny content to competing BDUs, they will undermine them by unreasonably raising their rates, and by denying or delaying their access to the newest features and functionalities that our customers have come to expect. They will do these things with the goal of impairing the ability of rival BDUs to offer their customers a better value proposition, which will only make Rogers' cable TV service more attractive in comparison.

1490 Rogers has not proposed any safeguards in their application, but even if they had, our experience over the last decade leads us to conclude that regulatory safeguards will not provide sufficient protection from these anti-competitive incentives.

1491 The existing regulatory framework is not sufficiently robust to prevent Rogers from denying other BDUs, and their customers, access to programming. For example, the Commission has a longstanding principle of programming non-exclusivity, which requires that programming services be offered to all BDUs. The purpose of this policy is to ensure that Canadians have access to content that has been acquired on an exclusive basis, regardless of their television service provider. This also protects consumers by ensuring that BDUs compete on price, packaging, and on creating the best customer experience rather than by offering exclusives.

1492 There is no regulation to implement this important policy. Even the access policy has been actively challenged and undermined by vertically integrated entities. In 2017 Rogers tried to bypass the principal and deny Telus access to their Sportsnet service when it attempted to withdraw from dispute resolution.

1493 While that attempt proved unsuccessful, it was part of a trend in which vertically integrated companies have challenged the Commission's access policies.

1494 In the past few years vertically integrated companies have challenged the validity of competitive safeguards that will address vertical integration such as the wholesale code and the standstill rule before the Federal Court of Appeal. These challenges to the Commission's policies and jurisdiction have become a significant and growing source of uncertainty in today's wholesale market.

1495 Even where the distribution resolution framework provides a remedy, the practical reality is that the damage is often done before the remedy is obtained. Disputes are often slow to resolve, and if customers are denied the full suite of services they have

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paid for they are forced to switch providers in the meantime. This is especially true in cases involving access to new features and functionalities, where access is not guaranteed, and a head start in the market will be difficult for a competitor to overcome.

1496 And in recent years the online distribution market has grown in importance, and this has created additional risks of foreclosure.

1497 Wayne?

1498 MR. LINDO: Thank you, Lecia.

1499 The vast majority of customers today no longer watch television on only traditional platforms. BDU service offerings have evolved to integrate online content with linear television signals in a seamless experience. However, the regulatory framework has not similarly evolved to prevent exclusivity in the online market.

1500 The Digital Media Exemption Order, or DMEO, does not prohibit exclusivity that is tied to a BDU subscription. It only prohibits exclusivity when it is dependent on subscription to a specific mobile or retail Internet access service. This means that the DMEO does not prohibit Rogers from airing some hockey games on an online service rather than on Sportsnet. They could then make that online service exclusively available to their cable subscribers. If Rogers did this, Canadians that are not Rogers cable customers would lose access to those games.

1501 Rogers has already demonstrated their appetite for exclusivity in the online market, when they launched an online service named GamePlus in 2014. GamePlus gives access to different camera angles in hockey games as well as replays, analysis, interviews, news and other programming.

1502 Rogers offered GamePlus to their own customers, at no additional charge, but no other BDU in Canada was able to offer GamePlus. Only customers of Rogers cable, Internet, or mobility services could access this content, because Rogers wanted to drive subscriptions to those more profitable lines of business. Since the Commission did not consider the service to be “television programming”, GamePlus did not violate the DMEO.

1503 The ongoing control of the Shaw family over CORUS is another element of this merger that will create anti-competitive harms.

1504 Rogers states in their application that CORUS will become independent as a result of this merger, but that is only true on paper. In reality, the Shaw Family will continue to control CORUS through their control of the voting shares, while becoming heavily invested in Rogers and their commercial success. In fact, the commercial success of Rogers will be more lucrative for the Shaw Family than the commercial success of CORUS, since their investment in Rogers will be several times larger.

1505 As an independent entity CORUS will benefit from all of the privileges and protections associated with independent programming services, such as the right to demand minimum penetration, minimum revenue, and minimum subscription levels, while being mandated by the Shaw family to favour Rogers.

1506 Stephen?

1507 MR. SCHMIDT: When the Commission rejected Bell's first attempt to purchase Astral Media, it said it was not convinced that the transaction "would provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians sufficient to outweigh the concerns related to competition, ownership concentration, vertical integration and the exercise of market power."

1508 In this case, the benefits are emphatically not significant, and they are certainly not unequivocal. They are vague, unspecified, not legally binding, and are what any company would do in the normal course of business. Indeed they will happen regardless of whether the merger proceeds or not.

1509 The primary benefits that Rogers has offered relate to unspecified investments in 5G and enhanced connectivity for rural and Indigenous communities. On 5G, they say they will spend \$2.5 billion over the next 5 years, but TELUS has announced investments totalling \$27.5 billion over the next 3 years to expand its fibre and 5G networks in Alberta and British Columbia, without the need for merger. More importantly, the investments Rogers is proposing will happen anyway, because they will be driven by the need to compete.

1510 Rogers also says that they will spend \$1 billion to expand into rural and Indigenous communities. But they have not specified where, when, or how they will build. The proposal is a mirage, and will be impossible to enforce. On the other hand, TELUS has made concrete investments in expanding connectivity to rural and Indigenous communities, spending billions since 2014 to expand service to hundreds of rural communities. These include 129 Indigenous communities, 63 of which were in partnership with Indigenous peoples. Again, all without the need for a merger.

1511 The policy action most compatible with expanding rural and Indigenous connectivity in Western Canada is the complete rejection of the transaction, by all federal reviewers including the Commission, followed by the repurposing of the Shaw's unused rural spectrum.

1512 The concerns created by this merger also extend beyond the anti-competitive outcomes. The merger will contribute to the hollowing out of Western Canada's business community at a time when it can be ill afforded, especially in Alberta where Shaw is headquartered. The large amount of debt that Rogers is taking on to pay a 70 percent premium for Shaw will inevitably lead to job losses in Western Canada. The merger will also reduce the number of actors that control Canada's essential broadband infrastructure, and concentrate an enormous amount of power into the hands of one of the wealthiest families in Canada.

1513 All of these issues will challenge the Commission's ability to fulfill its mandate, and its authority to supervise and regulate the broadcasting system. The concerns that animated the Commission in Astral are therefore present even more acutely in this case.

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1514 These are structural defects of the application that existing regulatory safeguards cannot adequately address. Moreover, the assurances Rogers has given to the Commission are wholly insufficient and incapable of outweighing the harms this merger would cause to the broadcasting system, if approved.

1515 Recent events demonstrate that statements made by Rogers to the financial markets, to the public, and indeed to the Commission itself, are not durable, credible, or reliable. The financial markets have reacted by applying a corporate governance discount to Rogers, and the Commission should do the same.

1516 For all of these reasons, denial of the application is the only response that is proportionate to the concerns that it raises.

1517 Thank you. We would be pleased to answer your questions.

1518 THE CHAIRPERSON: Thank you, Mr. Schmidt and your colleagues.

1519 I will turn the microphone over to Commissioner Anderson.

1520 COMMISSIONER ANDERSON: Thank you very much for your presentation. And thank you as well for your submission. It is an important submission and I've got quite a few questions to ask you for clarification and to add to the record.

1521 So I was wondering if we could please start or turn our attention to your submissions with respect to local news production by Global. And I understand that you've recommended that Rogers continue to provide contributions or funding to Global stations at levels commensurate with what Global is currently getting from Shaw. I was wondering why you think that those funds would be better spent on Global than on City TV?

1522 MR. SCHMIDT: My colleagues, Zainul and Lecia, will both address this. Thank you, Commissioner.

1523 MS. MAWJI: Thank you for the question, Commissioner. As a Western Canadian, I can tell you that Global News is a service that many Western Canadians rely on. The difference between the viewership can tell you those results very clearly. City TV has about 1-percent viewership across the board in both provinces, where Global is north of 20-percent, and is actively leveraged by many people in Western Canada, and dependent on many in Western Canada.

1524 The challenge that we see here is that -- is many, in terms of the fact that it will take, even if City TV is successful in claiming that viewership, it will take a long time. We have a dependable voice, customers will be penalised in the process, and it is a station that many depend on today.

1525 Lecia can tell you more about how the impact of those funds would actually deplete services overall for local news.

1526 MS. SIMPSON: Thank you.

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1527 So the problem here is that, while it's the same \$13 million, what happens when Global becomes independent or Corus becomes independent is they will then turn to the independent local news fund to seek the same \$13 million to make themselves whole. That fund is actually supported by all BDUs, and is expressly set aside for those who aren't vertically integrated to be able to support their production. And \$13 million would be more than half of the fund today.

1528 So the only two solutions that have been put before you, and I believe that was Corus and Shaw themselves, was to externalize the cost to all BDUs again, but that cost comes at the expense of more community programming.

1529 So when Shaw decided to fund Global after the 2016 policy that allowed them to do that, they shut down their community channel in Calgary, Edmonton, and Vancouver, and put that towards their Global private commercial networks, and that was allowed. And in fact, Rogers did the same thing in the East by sending some of their community programming money to City TV stations. So now just by coming out West, they're going to take that 13 million that Shaw has relied on to support their local news production, send it to City, and then try to draw from either the community or the CMF or -- we aren't sure who else.

1530 So their entire proposal relies on externalizing that to the detriment of truly independent news productions. So that in itself is a problem.

1531 And further, having listened yesterday to Rogers in response to their questions, and the questions you posed to them, there were no guarantees made, no commitments made, no actual firm commitments on how they would be spending the \$13 million, and that also concerns us because the Global, we know that customers watch that, that's their favourite, or in some cases, their second favourite out West, where City, I think is the third or fourth watched, and by a lot, by big metric differences. So we would have to see the proposal also for -- and I would encourage you to really look at the proposal of how they're going to spend that money that they're going to take at the hands of an independent broadcaster's.

1532 COMMISSIONER ANDERSON: Yeah, I understand your concern. Thank you.

1533 In light of the fact that our local community -- local and community policy does not require a BDU to provide funding to a non-related entity, what reasons would you provide that would indicate that they ought to be providing funding to Corus when they don't have to under our policy?

1534 MS. SIMPSON: It is -- you're correct, it's not under your policy. It's not a rule, it's not a -- it's not ordered, it's not forced, but aside from this merger, it wouldn't -- we wouldn't be discussing that. It is only the result of this merger that leaves Global seeking funding through some other source. So I think it's incumbent on them to first acknowledge, but then address the harms that flow from this merger.

1535 COMMISSIONER ANDERSON: So just to clarify, then, are there, in your view, any legal or regulatory mechanisms that would justify deviating from a policy's minimum standards?

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1536 MS. SIMPSON: Commissioner Anderson, do you mean the policy's minimum standards in the sense of the 50-percent in some communities?

1537 COMMISSIONER ANDERSON: Yeah, yeah, and also that would incentivise a BDU to maybe go above and beyond policies generally. So with respect to local and community policies, to not keep all the money say in-house and provide it to their own affiliated local news programming, but like an incentive to say contribute to Corus or continue the contribution to Global.

1538 MS. SIMPSON: So we've proposed a condition of licence. I think you can -- you can apply that as an exception to policy, and you can apply an exception as a condition of licence to regulation that's in place. So I don't -- I don't see any reason you couldn't do that in this case.

1539 COMMISSIONER ANDERSON: Thank you. Can you explain why you think that transfers to Global stations would be the best option to ensure that diversity of voices are maintained?

1540 MS. MAWJI: I think in this case, as Lecia highlighted, it's the merger itself that's creating the harm. Today, Global News is actively viewed by Western Canadians. The funding that supports Global News is critical to making that happen in order to ensure that it can provide quality programming for the citizens that are dependent on that. So it's the result of the merger that is creating the outcome where that voice and those sets of voices will be depleted. And as Lecia highlighted, because of that depletion, that creates a domino impact if Global were to be able to access funding from other sources of funding that BDUs provide.

1541 So we feel that it's incumbent for Rogers to acknowledge that harm and to address that harm, and we don't feel that consumers should be penalised in that process, which would be the ultimate outcome if that funding was redirected or lost.

1542 COMMISSIONER ANDERSON: Thank you very much. So speaking of the \$13 million in annual funding, I wanted to take you to paragraph 7 of your intervention, where you indicate -- I'll just give you a minute. At paragraph 7, you indicate that:

1543 "The merger would reduce funding for Global News and reduce the diversity of voices, and specifically, that the proposed merger would also diminish the diversity of voices in local news programming, as Rogers will deprive the Global Television Network of nearly \$13 million in annual funding for local news production that it currently receives from Shaw, impacting its ability to create news programming that attracts strong viewership from Alberta and British Columbia. The merger will harm diversity of voices and reduce the quality and quantity of critical local news programming available today. (As read)

1544 So I note that you are essentially saying that the transaction will lower the quality of news on Global stations, but I understand that Corus has not stated that the loss of funding will result in a change or a decline in the quality of news offered on its Global stations. So how -- what would you say in response to that?

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1545 MS. SIMPSON: Commissioner, I believe in the Corus response or Corus submission, they do note, though, that they are concerned about the \$13 million. So I have to assume that where you're taking away \$13 million and the party is concerned, that they're going to source that money in another place and their independence will, on paper, allow them to take that from the independent local news fund.

1546 So I think it's kind of implied when you lose \$13 million that you lose some of the quality or quantity, and if that weren't the case, we wouldn't probably be talking about where it should be, because I assume City would have the same response to that.

1547 In paragraph 7, we do address Global, specifically, but wherever Global gets that - if they go and try to get that \$13 million through other forums, and especially the Independent Local News Fund, the relative size of the funding to a truly independent service, or -- and remember, a lot of these services are in non-metropolitan cities, so it's not just Vancouver, Calgary, Edmonton; there are some in Lloydminster, Medicine Hat, Kamloops, Prince George.

1548 So they might take half a million to take some of those stations. That's a big difference for their ability, if you have that. That's a really big difference for their ability to meet the news standards. And I think quality or quantity suffer. One of the two must, you know?

1549 COMMISSIONER ANDERSON: Thank you.

1550 So on the topic of Corus and it potentially being, in your view, related or somehow associated with Rogers, post-transaction, are you suggesting that the legislative safeguards and as well the corporate governance documents provisions relating to conflicts of interest and prohibiting directors from participating in decisions or making decisions when they have got an interest in the topic are not strong enough?

1551 MR. MALEK: Thank you for that question, Commissioner.

1552 I think what you heard from Rogers yesterday related to conflict of interest provisions for Rogers' Board, but that's not actually the concern. The concern is that that the Shaw family has the voting control of Corus, and can influence the decisions made at Corus, and that they would be heavily invested in Rogers and its commercial success.

1553 So that's looking -- you know, the answer they gave you is looking at it in the wrong direction.

1554 The real issue is their ability to influence the decisions that Corus makes in its agreements with Rogers in a way that will advantage Rogers and disadvantage its competitors.

1555 COMMISSIONER ANDERSON: And would you say that the directors of Corus have a fiduciary duty to the shareholder which would prevent acting in the best interests of say, Rogers?

1556 MR. MALEK: I do think that they should have the fiduciary duty. I don't know what their conflict of interest policy is or any of their corporate documents say, but I do know

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that ultimately, they are answerable to the people who have the voting shares and can constitute that Board, and that is the Shaw family.

1557 COMMISSIONER ANDERSON: All right. Thank you very much.

1558 MR. MALEK: Thank you.

1559 COMMISSIONER ANDERSON: Let's go on to talking about your submissions or your concerns with respect to Rogers post-transaction being in a position to withhold its must-have programming from other BDUs, and in particular, transitioning their programming onto an online platform to try to avoid some of the regulatory protections that exist.

1560 So considering that Rogers Media's programming assets represent only a small portion of the available programming services, can you please elaborate on the potential impacts of Rogers choosing to solely distribute its programming services over Rogers BDU network or DMEO offerings?

1561 MR. SCHMIDT: Thank you for the question. I'm going to have my colleague Antoine start off with a regulatory perspective and Zainul and potentially Wayne can follow on from a business perspective.

1562 MR. MALEK: Thank you, Stephen.

1563 The problem, Commissioner Anderson, is that in the online space, the regulatory framework, which is the digital media exemption order, allows for exclusivity if it's tied to a BDU subscription.

1564 So what you have in a vertically-integrated entity is the incentive to use content as an exclusive rather than to seek the broadest distribution possible. And with online distribution, they have the means -- there's a regulatory allowance for it -- and that's how -- that's what they would do.

1565 And they can do it in a few ways. They can move their own content that airs currently on a linear channel like Sportsnet. They could start airing those games, for example, or some subset of those games exclusively on an online service such as Sportsnet Now. And if they do that, they don't have to offer that service to any other BDU subscriber except their own.

1566 And the DMEO, the Digital Media Exemption Order, allows for that.

1567 There's also a problem, an intractable problem, I would say, related to their scale. They will have access or be able to provide access to over -- to I think 50 percent of the English-language market, and what that will do is give them the market power to be able to negotiate exclusivity with foreign streaming services.

1568 So for example, NBC Universal's Peacock service, they could negotiate an exclusivity deal with them where that content is only offered to Rogers' customers. They get the app, they integrate it into their set top box, which is the same platform that Comcast uses, and then the only way, as a Canadian, you would be able to get that content is by subscribing to Rogers cable. And that would be a powerful incentive for

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many customers to switch to Rogers, which is the whole point, because those distribution revenues are far more valuable to them.

1569 I'll now -- sorry.

1570 MS. MAWJI: Maybe I'll top up a little bit. I think that there's really two or three key points. There's incentive, there's opportunity, and there's a blueprint and a roadmap for this that can be easily followed, and you can look to the U.S. for that. And I'll explain that further.

1571 On the incentive, when it comes to licensing revenues from a media standpoint, Rogers would charge a BDU dollars for a Sportsnet subscription. In many cases, the dollars that they would charge us per subscriber actually don't change if we lose subscribers, so there's penetration-base pricing, where if we lose subscribers, we actually have to still pay the same amount.

1572 If they are able to get that subscriber from a BDU perspective and move them over to the cable, that's hundreds of dollars of profitability. And once you get a cable subscriber and you start bundling in internet and wireless, that's hundreds more dollars and thousands of dollars of customer lifetime value.

1573 So the incentive is absolutely there.

1574 On the opportunity, as Antoine mentioned, there's the scale factor. In many cases, a content provider wants to ensure that they have access to advertising, revenue, and several thousands, millions, billions of ad loss.

1575 Once you hit critical mass on scale, you're able to actually exploit that advantage very effectively because you have -- you are able to maintain that advertising and you're able to maintain the composition of that content so that you can ensure that the media revenues and profitability stays intact.

1576 So we talked about incentive, opportunity, right? Now, let's talk about the roadmap.

1577 I mentioned the Peacock example in my opening remarks for a very specific reason. Ten (10) years ago, Comcast acquired NBC, and the FCC proposed a number and enforced a number of consent decrees so that Comcast would not be able to use NBC's content exclusively.

1578 The consent agrees were seven years long. As soon as they expired, within three months, Comcast launched their Peacock platform, so the NBC content is now on Peacock.

1579 That content is now free for Comcast subscribers, and slowly, they are looking and experimenting with ways to drive exclusivity over that platform. They started with MLB Regional Baseball games. They extended that to College Football, Notre Dame, which is a highly sought-after franchise in the U.S. And then in the Tokyo Olympics, with all of the focus on Simone Biles and her performance, if you wanted to watch gymnastics live from Tokyo, or if you wanted to watch track and field live from Tokyo, the only way you could do that was on the Peacock platform, the only way.

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1580 Rogers has the Xfinity platform from Comcast. Shaw also has the Xfinity Comcast platform.

1581 So there's incentive, opportunity, and the roadmap for exclusivity to be clearly delivered, and that is a very real outcome that could be -- that could come from this merger.

1582 COMMISSIONER ANDERSON: Yeah, I understand those concerns. Thank you. So what safeguards would you suggest would address or reduce some of the concerns that you've just cited should the Commission approve the transactions?

1583 And I do understand that your view, initially, is that there aren't sufficient safeguards and that the transaction should be denied. But if it were to go ahead, can you please discuss some of the safeguards that you would like to see in place.

1584 MR. MALAK: Thank you. If I could take you to Appendix B of our intervention, you'll see that we have -- we have proposed there a condition of licence that would prohibit Rogers' cable business from entering into agreement for exclusive or preferential distribution of any online programming service through its own platforms.

1585 And I want to be clear that this is, we think, the best that we can do, and the best that you can do. But it won't really solve the problem that scale creates. And that's because they don't have to call it an exclusive if they're big enough. It can be a de facto exclusive.

1586 So for example, building on the NBCUniversal/Peacock example, if they were to offer them a guarantee of at minimum three million subscribers through their platforms, no other BDU in Canada has that many subscribers. They can't match that offer even if NBC -- even if Peacock comes to every BDU and says, "We'll give you the same deal."

1587 So the Commission doesn't really intervene or put itself in the middle of negotiations between program suppliers, especially foreign program suppliers, and the people that they sell the rights to. You would effectively have to do that in order to ensure that every BDU had a reasonable chance at the same kind of distribution that the rates that they were paying were appropriate, that the commercial terms were reasonable.

1588 And I would -- you know, I think it's relevant here that vertically integrated companies have told you that you cannot do this, that you don't have that jurisdiction. They've done it in the context of video-on-demand services, which are a multi-platform right. And I believe we asked for clarification on that issue about four years ago and are still waiting.

1589 So there is real uncertainty about whether or not you'd have the jurisdiction to do it, and then there's the, I think, immense administrative burden that would come with that if you tried.

1590 But we've offered what we think is feasible under the circumstances.

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1591 MS. MAWJI: I think the other aspect of exclusivity is that there is contractual, clear exclusivity, and there's practical, de facto outcomes in the market. And I'll give you a very specific example.

1592 We've been negotiating with Disney for Disney+ access on our platform. And when the Shaw/Rogers merger was announced, Rogers made a deal with Disney, and Disney pulled out of our negotiations. Well, they said, "Well defer." And they said they will do a deal with us but we had to step up to a very, very significant guarantee of revenue to them. And we don't have the subscriber base to do that.

1593 And so they don't want to incur the cost of coming onto our platform if they have access to a broader market, and they don't really need to have a second partner in the market if they have access to 80 percent of English-speaking subscribers in Canada.

1594 And so the challenge that we have is that, I think, Canadian content and some of the safety mechanisms that we have identified could address some of the components of Canadian content and independent programming in Canada, but the scale that Rogers will gain from this merger, it will be very difficult to apply that to foreign providers. And customers want that access, and they're integrating -- they want an integrated experience.

1595 So, you know, there's de facto exclusivity that comes with those arrangements.

1596 COMMISSIONER ANDERSON: Thank you very much. And so, in your view, in order to change the restrictions or the regulation about exclusivity for online programming, would we, in your view, be required to change the DMEO, or is this something that we could deal with through condition of licence on an adhoc basis and specifically just giving this condition only to Rogers?

1597 MR. MALAK: I think closing the loophole in the DMEO is a necessary a good start. But I don't think it's enough.

1598 I do think conditions of licence are also appropriate. But as I had explained in my earlier answer, I don't think they will be enough.

1599 I think problem that scale creates in the -- the commercial reality and the market power that it creates will be very difficult and, practically speaking, impossible to govern.

1600 So I would say, if you're going to start, those would be good places, but I don't think it will be enough.

1601 COMMISSIONER ANDERSON: But since the existing DMEO is what we have to work with, you're proposing that we deal with online exclusivity via condition of licence. Does that present any fairness issues with respect other BDUs that don't have a similar condition?

1602 MR. MALAK: I don't believe it does because it's a question of opportunity. I don't think any other BDU has that opportunity. And I also think that there is another way that you can deal with the problem, and that's denial of the merger.

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1603 COMMISSIONER ANDERSON: Thank you for that. I'll just take a moment to review some of the questions because I think that in the last few minutes you've already addressed several of the questions, and I don't want to make you repeat yourself too much. So just bear with me for one second, please.

1604 Okay. So you did discuss just now the fact that OTT services and direct-to-consumer services are exacerbating the situation with respect to penetration-based rate card. Is that right?

1605 MR. LINDO: That's correct.

1606 COMMISSIONER ANDERSON: Okay, so I was wondering if you could what it is about the current transaction that is causing you to raise this concern? What is it about the nature of the transaction, if you will?

1607 MR. LINDO: Thanks for the question, Commissioner.

1608 So the penetration-based rate cards result the remaining customers to the programming service having to pay more.

1609 So in that specific case that you're referring to, Rogers owns Sportsnet now, which is a direct-to-consumer product, and they're also a programming service.

1610 So in the traditional system, where the BDU had exclusivity to content, meaning someone such as myself would negotiate with Rogers for a linear signal, TV-everywhere content, or content on-the-go, video-on-demand, look-back, restart, all the ancillary rights that come along with that programming -- and so with the influx of over-the-top products, or direct-to-consumer products, it's created a situation, as Zainul mentioned earlier, where the penetration-based rate cards result in a substantial -- the same payment as the BDU loses subscribers and the rate per customer increase. And so Rogers is now directly competing with the BDU for the same subscriber.

1611 So with the penetration-based rate card, what that means is that as our penetration moved from 50 percent to 40 percent to 30 percent, as we continue to offer choice and flexibility, it means that our payment is substantially the same and Rogers is able to pick up the customer who leaves the BDU system and collect -- Sportsnet now, I think, believe, starts at \$14.99. They're able to collect from that customer, while the customers who remain on the BDU end up paying more as a result of increased pricing.

1612 COMMISSIONER ANDERSON: Okay, thank you. And are there provisions in the Wholesale Code -- while I understand that your view is that the provisions in the Wholesale Code are insufficient to address that concern.

1613 Can you elaborate on that?

1614 MR. LINDO: Thank you.

1615 The wholesale code considers PBRCs to be a commercially reasonable practice. And that may have made sense many years ago when it was created but not that direct to consumer competition is a reality in the market, it doesn't work the same way

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anymore and we think for that reason it doesn't address it and it needs to be looked at again from the commercial reality that exists today from that perspective.

1616 COMMISSIONER ANDERSON: Okay. So I understand that since the wholesale code was drafted and finalized that the transition onto online broadcasting, if you will, has created a different market. Are there any other considerations that would indicate that the wholesale code is insufficient to address any concerns with respect to the rate negotiation?

1617 MR. MALEK: Thank you. Yes, I think there are additional issues and I will go back to an issue that I mentioned before which was video on demand.

1618 The wholesale code requires that BDUs be given multi-platform rights at the same time that they negotiate linear rights. And one of the most important is video on demand content. It allows customers to catch up to prior season or shows that they were unable to see. It is part of what customers expect now with a service.

1619 When they subscribe to a linear service they expect to have that available because in most cases they do, and that has been true for years.

1620 Four years ago the vertically integrated companies like Rogers told you that you are not able to force them to provide that kind of content because, as they see it, they are acting as program suppliers when they do that. So they don't think it is subject to your jurisdiction or to the scope of the wholesale code.

1621 And that's a big problem. And I think we are still waiting for a solution to it. But in the meantime it has created a great deal of uncertainty and we have see vertically integrated providers leverage it in negotiations by threatening to withhold that content. So that is a real problem today that the wholesale code is not addressing.

1622 More broadly, though, that multi-platform right provision does not address online distribution so if something airs exclusively online, it's not really a multi-platform right because it is not being offered alongside the linear right. And that is where the issues that we discussed before under the Digital Media Exemption Order arise. So unfortunately, the wholesale code is of no assistance in too many cases.

1623 COMMISSIONER ANDERSON: Thank you for that response.

1624 So keeping on the topic of the wholesale code, have you ever faced constraints to filing a complaint by virtue of the wholesale code regarding an unreasonable PBRC or volume based rate card in your negotiations with Rogers?

1625 And if so, would you be willing to detail you experience, distinguishing between regulatory constraints and market constraints?

1626 MR. SCHMIDT: Lecia?

1627 MS. SIMPSON: So one of the biggest issues you face when you are in negotiations from a regulatory standpoint, especially -- I will let Wayne speak to the negotiations themselves.

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1628 But when you think you have reached the end of what you can, you know, just do party to party, or you're facing threats of withholding things like video on demand or features and functions especially, the biggest problem is you are entering a world of delay. So unfortunately, it's not that the Commission doesn't have good dispute resolution processes; but they do take time to work out. So you have to go to mediation a couple of times, and you try and you really go trying. It's best to get this done.

1629 And then you have to -- if that doesn't work then one of you has to apply and if you don't agree on, you know, what kind of rate card you're going to propose, then you have to fight that out. Then when you finally get a -- you fight that out, you still have a very long process of -- you're in flux, waiting for the decision.

1630 And the hard thing about that is that it favours -- all those delays favour the programming service. They are actually a detriment when you're waiting to find out how much your fees are actually going to have increased for a service. So you're actually, you know, accruing for something you don't know is going to happen.

1631 And during that time, the party you're dealing with holds all the cards. They know how much everybody else is paying for the service. They know they are holding -- this is -- they're holding the features and functions in some cases if they have threatened to -- or they haven't given you it all. And they're offering it to their subscribers so while that delay happens, they are happy to take your subscribers off your hands. And you're just sitting there waiting for what your increase is going to be.

1632 It's a very bad situation where it just always favours the party that is in the driver seat, the programming service, and they will actually seek to delay it; they know that.

1633 But maybe Wayne can speak a little more to what happens in a negotiation standpoint.

1634 MR. LINDO: Thanks, Lecia.

1635 So during the negotiation, as Lecia pointed out, we have the ADR 120 which is the period in which we have to indicate to the Commission how the negotiations are going. We typically start 180 days or six months just so that we get a sense of how the negotiations are going.

1636 So typically that initial proposal if the parties are far apart, then you start to get threats about what will be withheld if we don't come to an arrangement before expiry of the deal.

1637 So as Lecia pointed out, the dispute resolution process is something that we -- I wouldn't say we often enter. We try to negotiate commercial deals but in many instances there are threats about what would be withheld if the parties are far apart.

1638 COMMISSIONER ANDERSON: Thank you.

1639 Apologies for going back on a previous subject, but I am going to ask you a question about your proposal to set industry-wide rate cards for programming services. Are you suggesting that we regulate discretionary service whole rates on an industry-wide basis or only as pertains to Rogers?

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1640 MS. SIMPSON: I'm sorry. Would you repeat the question? I think you are asking if we are looking for rate regulation on discretionary services?

1641 COMMISSIONER ANDERSON: Rate regulation on discretionary services. So in your submission I understood that you were proposing that Rogers programming services be subject to an industry-wide rate regulation. So what I'm asking is, do you think that the Commission should be regulating discretionary service wholesale rates on an industry-wide basis or specifically only Rogers.

1642 And if it's only Rogers, then again what would be the rationale behind this?

1643 MS. SIMPSON: So I will say that is certainly not our first suggestion of how to handle this. We do think that the conditions of licence and beefed-up wholesale code with respect to the fair market value is probably the first line of defence you could take.

1644 I do know that -- and I don't have the paragraph number in front of me. But we have said you know, another solution might be to have a public rate card so that people could see what they're looking at. I wouldn't -- I don't think we would propose to have rate regulation again. That was something that is long gone now. And it is gone in a world where we want customer choice and we want to allow our subscribers first to choose which services they want but also normally a BDU would act in the best interests of the consumers and try to formulate packages that their subscribers do want.

1645 So I don't think going back that direction, like your Category As, your Category Bs, necessarily is the solution to that. I think this was just a possible way that when you are in negotiation with Rogers or FOA, that that advantage that I spoke about earlier where they know what their rate is and you don't. They know what they're offering other people. They know what they're paying and you don't. That if you had some sort of guideline you could reasonably figure out where you -- where you are on the penetration or the volume of that.

1646 And I -- and I -- if you -- if you may, I think earlier you had asked about our FOA, you know, being in dispute resolution, and perhaps I spoke too broadly. I think you were looking for an example, perhaps, where we had been in that situation with Rogers specifically, and we did -- we did talk about that in our opening comments.

1647 But in 2017, we did have a dispute with Rogers for the negotiation of our carriage of Sportsnet, and Rogers tried to leave the final offer arbitration and decide to instead terminate our affiliation agreement, saying, "Well, we just won't give you the service, then, and we'll go on our -- go on our ways." And during that time, they also withheld a new version of a signal, which was 4K, it was all the rage, it had just come out, from us as a -- as a leverage tactic, I suspect, in the negotiations. So we have -- we have indeed had some rough patches together negotiating.

1648 COMMISSIONER ANDERSON: Thank you very much. And so speaking about beefing up provisions in the Wholesale Code, what kind of safeguards above and beyond the Wholesale Code would be necessary to ensure that Rogers isn't entering into any agreement for exclusive or preferential distribution of any online programming services through its distribution platforms?

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1649 MR. SCHMIDT: I'm going to start, and then my colleague, Lecia, and others, may pick up.

1650 I think in this sequence of questioning, there's kind of one theme I want to surface and step back from, which is that it's about the efficacy of rules in any regulatory context; right? You know, they are -- inherently they have gaps, inherently they have uncertainty, the ambulance always arrives after the accident, and you're just always going to be chasing market power.

1651 And if you process this through a competition lens, you'd say the structural remedy, once and done, fixing the market structure to be the primary guarantor of better outcomes, you know, is the more durable effect of sustainable solution. And that's -- and that's our kind of headline view here, and it's a significantly secondary or very distant Plan B to kind of tinker with stuff.

1652 And the Commission's not the problem, just behavioural rules anywhere are the problem. So it's super challenging. We can make suggestions, but the durable solution is the structural one to say no.

1653 Lecia?

1654 MS. SIMPSON: So I'll just start briefly and pass it to my friend, Antoine, to speak more expressly about the online question you had with the Wholesale Code.

1655 So I'll just point out that the Wholesale Code itself is a bit confusing. So there's a Wholesale Code as part of the back of a policy, and that was challenged in the courts, and during the time that it was being challenged, the Commission, very smartly, made the suspension of conditions of licences a suspended condition of licence in a lot of the big vertically integrated licences. And the idea there was that when there was -- things were still unknown that you could still enforce the prohibitions and the things you wanted, the outcomes of the Code, even when the Code was being challenged.

1656 Sometimes, those suspended conditions are a little different than what's actually in the Code. And then also, as part of things like the Discretionary Services Standard conditions of licence, they also tie everybody to the provisions in the Code, and there's a little confusion. The policy stands, but which one is everybody thinking they're using as their guidelines?

1657 So as a quick example for access, Rogers has a suspended condition of licence that requires it to enter into dispute resolution if the other party is having problems in a negotiation. The actual Wholesale Code says both parties have to.

1658 So I think part of the -- you know, when we talk about beefing up the Code, maybe just making the Code very, very clear that there's no two versions of it, that it's applicable evenly, and that -- and where it isn't. And I would say today, these don't have to be Wholesale Code, we could just put these conditions directly on Rogers. They are the people who are in front of you asking for this license transfer, and they are the ones that the scale that incents them to and gives them the opportunity to act on it.

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1659 But I think partly it's just starting by making sure there's not conflict in the various places the Code exists.

1660 And Antoine, if you could address from an over the top standpoint.

1661 MR. MALEK: Thank you, Lecia.

1662 I think -- it's important to start with the fact that the Wholesale Code, insofar as it applies to DMBUs, which are Digital Media Broadcasting Undertakings, is applicable only as a suggestion for best practices, and many of the rights that are guaranteed to be used as we mentioned before, for example, multi-platform rights, don't apply in the online space.

1663 So if you were going to look at revising the Wholesale Code, I think generally making that binding on DMBUs would be a necessary start, and expanding the suite of protections to cover off the online space would be necessary. However, I'm not sure that the existing framework and laws are up -- you know, make it clear that you have the ability to do that. I think there has been some doubt about that.

1664 And Bill C-10, as you know, is partially meant to address that. But we don't know what that's going to look like. It hasn't been tabled again, and it hasn't passed, so at this point it's just speculation, really, what that's going to, you know, enable you to do.

1665 COMMISSIONER ANDERSON: Thank you very much. And apologies if some of my questions seem a bit repetitive, but we did hear yesterday that the existing regulatory provisions are going to be secure enough to ensure that the transaction is in the public interest. And so I just wanted to clarify or confirm what your response is to that. So I thank you for your patience, and the thoroughness of your responses.

1666 I'm going to talk about signal transportation services. And I note that you have expressed concern that Rogers will be acquiring the satellite relay distribution undertaking, and you've also noted in your written submissions that you're concerned that Rogers might increase the price of signal transporting -- signal transport services.

1667 Can you elaborate on why you think Rogers would have the incentive to do this, please?

1668 MS. SIMPSON: Sure. Thank you for the question.

1669 So signal transport, in this case, you've got Rogers who is our BDU competitor; Rogers who holds one of the most important and popular programming services in Canada; and it will be Rogers who is relied upon to provide its own competitors access to those signals. And I think anytime you have that many abilities in a chain to thwart competition, foreclose, raise rates for your competitors, it's just -- it's too tempting not to take those opportunities, and this is one of them.

1670 So I do think that, especially given where the Shaw satellite relay distribution undertaking, where that is most important to Canadians tends to be rural, remote, Indigenous often communities, and without having affordable, stable, and you know, just same as always, I'm at a lack for a word here, but, predictable I guess is the word, service and rates, you really do create a problem where smaller, very small independent

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BDUs could find it unviable to even provide their service anymore. And that is really, it's to protect those areas.

1671 MS. MAWJI: Maybe I'll top up, if that's okay, Commissioner Anderson.

1672 I think Rogers -- one of the things that we are seeing about this particular transaction, and one of the arguments that have been made, is that the cable specific footprint is separate, but in this case, with satellite and direct-to-home satellite, which is SRDUs, of course, the feeder service for satellite is its competing service.

1673 And so there is potentially an incentive over time. We come back to the fact that Rogers is paying a 70 percent premium for this transaction. The reality is that through the course of the competitive and other proceedings, there will be a desire to ensure that wireless and other assets might get divested. And in this case, on the SRDU, satellite transmission is a profitable and mature business, but then at the time where you have to launch new satellites, it's a very capital-intensive business.

1674 So there's no guarantees that have been provided with respect to this particular business, and we're, as well as other very small and independent BDUs, dependent on those signals to provide service to many remote and Indigenous communities.

1675 COMMISSIONER ANDERSON: Thank you.

1676 So yesterday we did put to Rogers, or propose, would they be agreeable to some type of rate freeze. And my understanding is that they don't intend to increase prices, but that they refuse to commit to say, a condition.

1677 Similarly, we put to them Cogeco -- I believe it was Cogeco's suggestion -- that SRDUs also adhere to the Wholesale Code and the standstill rule. And I understand that Rogers equally was of the view that that was not necessary and they wouldn't agree to that.

1678 Do you have anything to say about Rogers' position yesterday?

1679 MR. SCHMIDT: I have a big picture sense of -- in an application where they are bearing the onus and they have -- saying it's all horizontal, so they have defined away the vertical problems that the Commission recognizes in the Wholesale Code and other frameworks. They have said it's just horizontal, just horizontal, and everything's fine, so they can buy every cable system in the country under that analysis, right, no problem.

1680 They have defined away the vertical problems that can't be in an answer and then fairly systematically yesterday, they have said, "Everything's fine, and no, I wouldn't accept any sort of creative or net new changes."

1681 And I look at that and say, "Well, how are you possibly discharging your burden here, not even engaging in the process at all?"

1682 So there's lots of problems and their only answer is, "I'm on the right track. The framework is fine." And they have defined away the biggest problems, and that's their prerogative, I suppose, and maybe the value of the Telus submission that technically is

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the obverse of the Rogers submission, and it grounds the circle for you and let's you see more.

1683 But they have said, "Everything's fine. You don't need to do anything."

1684 I just think they're not discharging the burden, would be my answer.

1685 MS. SIMPSON: If I may add, this is an opportunity the CRTC has in front of them, in our eyes, to ensure there's competition in this market. So if you had them divest of the SRDUs we have, you know, put forward, you can essentially assure that you have taken out part of this -- you know, this structure under which they will foreclose or raise rates or create problems.

1686 I mean, obviously, if somebody is unwilling to take conditions that just hold it to reasonable behaviour, I think it's a good sign that they're not really that committed.

1687 So I think this is an opportunity for the CRTC to ensure there's more competition in the market by divesting that undertaking.

1688 COMMISSIONER ANDERSON: Thank you for that response.

1689 I have come to the end of my questions, but I realize that there is a potential follow-up question, and so once again, I'm sorry for bouncing around, but this will be the last time I'll do it, I think. And ---

1690 MR. SCHMIDT: We love talking to you, so it's okay.

1691 COMMISSIONER ANDERSON: Okay.

1692 MR. SCHMIDT: Yeah.

1693 COMMISSIONER ANDERSON: Well, that's very kind.

1694 So this relates back to entering into -- or your concern that Rogers would have the subscriber base, so it would be in a position to enter into an exclusive arrangement or an exclusive agreement with a foreign streamer.

1695 What would prompt a foreign streamer to agree to limit themselves to distribution only by Rogers? Like, why would Peacock, say, want to do that?

1696 MS. MAWJI: Commissioner, there are actually several reasons. I think if you look at the market, they are looking at the market from a global lens, not from a Canadian or a U.S. lens.

1697 And there are practical realities with respect to these integration costs. You know, you can have your -- you can have a direct-to-consumer service and it can be deployed on a Smart TV application or you know, Roku or those kinds of set top boxes.

1698 But if you want to launch clearly a direct-to-consumer service, you start to get to a point, depending on the content, where you have to really manage your subscriber base, right? You have to go and acquire customers, you have to manage the churn, you

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have to support those customers. And if you can offload all of that to the country or someone else in the country that you are entering into, there is an attraction to do that.

1699 And so -- but there's a cost, right? You have to go to integrate into the platform. That can take -- those development cycles can be six months to a year. What we did, I mean, we -- you know, Rogers talked at length about the Ignite platform. We launched IPTV in 2005. We have done three iterations of the platform and we're on our fourth now.

1700 We launched OTT integrated apps in 2012. We launched integrated billing so that when you buy an optic subscription, you can buy a sports package and a Netflix package integrated into your bill.

1701 Those development cycles take a long time, but that's how customers want to watch TV. They don't just want to watch linear TV or local news, or Netflix, or Disney. They want to watch it all, and they want it in a seamless experience.

1702 And so those costs for development cycles and billing integration can be very extensive, and what typically, the foreign OTT companies do is they go into a country, they find one partner, and they're done, because they don't have the cycles to spend in a country and get the scale they need. They will just go to the next country.

1703 So those are the behaviours that we see.

1704 And in Canada today, we have been able to compete successfully for those partnerships because by being the best partner and being able to offer the best value to customers and saying that, you know, "We can -- we offer services to this portion of the market, and we can be the best partner in this portion of the market," so they have no choice but to do multiple partnerships today.

1705 But if they had one player of scale that they could do a partnership with -- and we just saw it with Disney, and it's not even approved yet, the merger is not approved, and the behaviour changed overnight.

1706 So those are the practical realities of working with these foreign entities. And when you talk about the safeguards and the conditions of licence, unfortunately, you know, it confuses us in terms of okay, well, how would the Commission regulate what Disney can offer, you know, what Disney has to do with us or Eastlink or Cogeco or someone else? You know, you start to get it to a point where only one BDU can offer those integrated experiences to customers that customers desire. And we want to get customers what they want to watch. That's our whole premise.

1707 COMMISSIONER ANDERSON: So the only way, really, to address that concern would be, in your view, to deny the transaction?

1708 MS. MAWJI: That's absolutely right. We have competition in the market today and you know, many of your questions yesterday focused on areas of pricing, for example, in western Canada. You can see it in the western pricing. You can see it in the innovation.

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1709 Rogers made the statement yesterday that through the Ignite platform and you know, what they have done with Xfinity, they were nets positive, so they grew their subscriber base last quarter.

1710 We have grown our television subscriber base for 51 consecutive quarters because we listen to our customers, we innovate, we make significant investments, and we give them fair value. And we want to continue to be able to provide those services.

1711 COMMISSIONER ANDERSON: I think on that note, I have got no further questions, but congratulations on that feat, and I'll open the floor or pass the mic onto you, Chair. Thank you.

1712 THE CHAIRPERSON: Thank you, Commissioner Anderson.

1713 Commissioner Lafontaine, you had a question?

1714 COMMISSIONER LAFONTAINE: Thank you, Mr. Chair.

1715 Yes, I have a couple of questions, and I am very mindful of the time, so I will ask them quickly and then if the response -- if you could provide sort of a concise response. And if you need more time, or you need -- you can provide more details, rather, in a submission later.

1716 So we've talked a lot about competition. Or you just talked a lot about competition and the impact of this transaction on competition with your exchange with my colleague.

1717 And one of the reasons that Rogers provided yesterday -- one of the main reasons they provided yesterday for the Commission not to be concerned about the impact of the transaction on the marketplace is that Telus exits in Western Canada, and you're a very aggressive competitor, and that will keep everything in check. So I'm wondering if you could just speak very briefly to that point.

1718 MS. MAWJI: Well, I think this comes back to we have to have an environment where we can all compete. We have created innovation and great value in Western Canada because we've invested. We didn't need to make a merger. Why do they need make a merger? We've invested billions of dollars in our fibre to the home-build. We've innovated in our platforms. So it's not clear to us why anyone needs to merge.

1719 Shaw's been on the Ignite platform -- or sorry, the same Comcast Xfinity platform since 2017. We don't see the benefits that Rogers is actually articulating that they would bring to the competitive environment. So we're confused, quite honestly, on why a merger is required.

1720 COMMISSIONER LAFONTAINE: But does your presence keep them in check, and therefore no additional requirements are required?

1721 MR. SCHMIDT: Under our thesis of the case, which is all about vertical harms, you know, foreclosing access to content, frustrating access to content, we can't possibly serve as any form of check on them because we're the supplicant wholesale customer looking for content. You know, you're the check, or denial of the transaction is the check.

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1722 COMMISSIONER LAFONTAINE: Thank you.

1723 A couple more questions, if I may, Mr. Chair. Thank you.

1724 Sorry, I'm trying to say them quickly and then I'm stuttering as I -- it's taking me longer to say them.

1725 Anyway, so my next question relates to your proposal regarding local news, and I have Appendix B here before me, your recommendation for a condition of licence. I'm wondering whether you have any views on whether that obligation with regard to Rogers contributing to the Global news stations -- whether there should be a time constraint on that, or whether your proposal is just that they should be required to do this for however long?

1726 MS. SIMPSON: I wouldn't put a time limit on it. As long as there's this policy and we have a problem funding local news in Canada, and there's a policy in place to fund it, they should have to fund it.

1727 COMMISSIONER LAFONTAINE: Okay, thank you. Yesterday, Rogers spoke about its IPTV platform and indicated that it was -- or suggested that it was superior to other IPTV platforms in the market. And so I'm wondering if you could speak briefly to that in terms of your IPTV platform and Rogers'.

1728 MR. YURCHESYN: Yes. Thank you, Commissioner. We were a bit confused by some of Rogers' comments yesterday around the Xfinity X1 platform. There was an assertion that this merger is required to modernize -- it sounded like, to modernize their network in the west and migrate vast numbers of customers.

1729 Shaw launched the Xfinity X1 platform, the exact same platform that Rogers uses in the east, and was licenced from Comcast in 2017. So we believe that a significant amount of Shaw's base is likely already based on IPTV. As Zainul pointed out, we've delivered IPTV service across three platforms since 2015.

1730 So ultimately, their platform was asserted to be superior but, in fact, it's no better. It's the same as what we've been able to create and offer without the need for a merger. So our platform seamlessly integrates linear TV along with OTT, brings the benefits of universal search, the ability to find all of your content from a home screen.

1731 Rogers spoke a lot about the ability to search by voice. Our service can do that as well via Amazon Alexa or Google Home, which many Canadians have. You can say, "TV, please show me X." I believe they used an example similar to that yesterday. Our platform can do that.

1732 And, you know, we've been able to do that without the need to merge and without the need for scale. And because we've been able to do that with a million customers -- and we have led over the last 10 years in this space.

1733 So they said that their platform was superior. Maybe I would better characterize it as "catching-up". But we've held the pole position on IPTV and the capabilities, and it's simply not a valid reason to support the merger application as it was put forward yesterday.

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1734 COMMISSIONER LAFONTAINE: Thank you, and one final question with regard to your proposal on a condition of licence, or a requirement that would impede Rogers from providing OTT content exclusively -- or content exclusively on OTT platforms.

1735 And you, in your response to Commissioner Anderson's question, you indicated that there wasn't a concern to fairness because there was no other service in the industry that could do the same kind of thing that Rogers could do. And I was curious about that.

1736 Wouldn't there be another vertically integrated company that could -- that might be able to provide content exclusively online in the same way, and therefore that there may well be a fairness issue if the obligation is imposed only on Rogers?

1737 MR. SCHMIDT: I think our -- we were keying in on -- in this proceeding, on these parties, on these facts with the quite unprecedented magnitude of market share they will have in the English-language market, they are uniquely deserving of remedies. So we were keying it to the facts.

1738 And it's a proceeding about them. And it can become a condition of licence. And I think it's -- if it's not an unfairness to allow them to merge, it's not an unfairness to allow them to have additional conditions, I think would be our -- the way I would put it. I hope I'm being helpful.

1739 COMMISSIONER LAFONTAINE: That is one -- I guess one piece, but I do believe that your colleague responded that there wouldn't be, if the Commission were to impose this obligation -- because the question was, if we impose this obligation on Rogers, would it create an unfairness or a regulatory asymmetry in the industry if this obligation is imposed only on Rogers, that is to not be able to provide content exclusively online, to stop Rogers from being able to provide particular content online to the detriment of others, or others wouldn't have access to?

1740 And so I think that you said that nobody else could do it, anyway, so it's not a problem. I think that's what I'd understood. Maybe I wrote the ---

1741 MS. MAWJI: I think maybe I was misunderstood then, because the question was about if there is a way to impose a condition of exclusivity or of non-exclusivity on OTT, can that condition satisfy, you know, the concern of the scale in the merger?

1742 And my response to that will be no, it can't, because the challenge is not just the contractual exclusivity, as I highlighted. It's the pragmatic outcomes of dealing with a partner -- a foreign partner and dealing with a domestic, and having the opportunity to partner with a domestic organization that has 46 percent of the English-speaking market and 80 percent of the homes passed.

1743 And that is, I think -- I know that we want to be very specific and restrict the proceeding to the broadcast market, but as we've all seen in terms of the dynamics of how our industry has unfolded, the broadband market and the broadcast market are inextricably linked.

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1744 And so it's that opportunity to go from the 46 to the 80 that challenges the ability for anyone else to really compete in that environment.

1745 MR. SCHMIDT: Commissioner Lafontaine, I'm going try to be helpful at peril of making the answer too long.

1746 So I think Zainul is saying that, you know, practically speaking, you can't -- it's super hard to fix. Even if you had rules, you're just not going to fix it.

1747 But in the long term, do you have to renovate the DMEO and other things to catch up with the digital economy? I mean, that the work of government all around the globe.

1748 So I don't want us to appear evasive. Do you have to kind of modernize your approach for all actors in the system over time? Yes.

1749 But here today on this issue I don't think any short term fixes are going to be genuinely effective. It will make us feel good, maybe, that we got a rule, but it probably won't work in practice. But over time, yeah, I think you've got to renovate your approach for all similarly situated player sin the system.

1750 COMMISSIONER LAFONTAINE: Thank you very much for responding to my questions.

1751 Thank you, Mr. Chair.

1752 THE CHAIRPERSON: Thank you, Commissioner Lafontaine.

1753 Commissioner Desmond, you had a question too?

1754 COMMISSIONER DESMOND: I just have one question.

1755 Earlier today my colleague asked you about the impact the transaction would have on the availability of local news offered by Global. And Ms. Simpson, when you responded, I think you spoke primarily about communities that had both a Global News station and a City news station.

1756 And I'm just wondering if perhaps you could add a little more clarity with respect to those communities where there is no City News, so only where they have a Global News station, and what impact would be experienced in those communities.

1757 MS. SIMPSON: Well, assuming that outside of Vancouver, Calgary, and Edmonton where City TV exists, if Global just lost the funding and didn't get it made up in any other way, you would lose some support of the voice that our subscribers trust and like. They have chosen that channel as their favourite, so I can only speak -- I'm not even from the west so I can only assume they would be really upset to lose their news.

1758 And in the cases where that extended to places like Lloydminster or the smaller communities, the smaller cities -- I suspect they are still cities -- but I mean, I think it would harm those communities a great deal to have their only local news source depleted so much.

1759 Zainul?

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1760 MS. MAWJI: Maybe I can top up as well if that's okay, Commissioner?

1761 I think that when you take a look at the issue of local news as you really clearly highlight, you could look at Edmonton, Calgary, and Vancouver where there are dual stations. But in the communities where --there are two sets of communities that I think we have to look at -- communities that have a Global News station that don't have City TV, and then communities that have local news that are dependent on the local news fund that would also be impacted if CORUS tries to go and get -- is able to act as an independent and get that funding.

1762 So in the case where Global -- Global is a commercial entity; it's going to make its decisions, right, in terms of where it can get revenue, profits, et cetera, and how many areas it can afford to support. If it loses \$13 million and it doesn't have a way to replace that, then many of those smaller markets would be impacted.

1763 And in addition to that, if they do go and get that funding from the local independent news funds that is supporting the Lloydminsters and the Medicine Hats today, those entities will be impacted.

1764 So the point that is really clear here is again, the merger is creating a burden. That burden should not be borne -- that burden should be acknowledged and that burden should be managed and enforced by the entity that is asking for the merger.

1765 COMMISSIONER DESMOND: Thank you.

1766 THE CHAIRPERSON: Thank you, Commissioner Desmond.

1767 We are almost done.

1768 I would note, with respect to some of the examples you have given, that it is ultimately before the Commission and the Commission's discretion as to how we would treat CORUS in the future. And it is not a direct outcome of this proceeding.

1769 A quick question if I could about the SRDU.

1770 You have expressed concerns about if Rogers hold it what the possible negative consequences might be. Can you just explain to me today why it is any different than the situation today with Shaw holding it?

1771 MS. SIMPSON: Yeah, I think the incentives change. Thank you.

1772 Right now Shaw has 30 discretionary services and a larger network for Global than Rogers will have. They have, it think, nine discretionary services and far fewer signals for their City TV stations.

1773 So from an SRDU perspective, Shaw has a good incentive to make sure that everybody gets their own signal. They are also one of the largest stable of programming services. So there is a good incentive to make sure they are all passed and they are all passed in an affordable rate, all of the outskirts and all of the areas throughout Canada that offer their services. They want eyeballs.

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1774 When you get to Rogers and you have that kind of scale that this merger would create and create an opportunity for them to use these incentives that they have, I think that they are going to use that delivery as another means to thwart or delay, raise rates, or deny service altogether to smaller BDUs.

1775 THE CHAIRPERSON: Thank you.

1776 Those are all of our questions. I thank you very much for your presentation and participation at the hearing.

1777 And we will now recess for lunch.

1778 Madam Secretary?

1779 MR. SCHMIDT: Thank you for your generosity with our expansive answers as well.

1780 THE CHAIRPERSON: Not at all.

1781 MS. ROY: We will come back from lunch at 2:15. Thank you.

--- Upon recessing at 1:11 p.m.

--- L'audience est suspendue à 13h11

--- Upon resuming at 2:20 p.m./

--- L'audience est reprise à 14h20

1782 MS. ROY: Good afternoon, Mr. Edwards and Mr. Thompson. Can you hear me? Perfect.

1783 MR. THOMPSON: Yes.

1784 MS. ROY: Perfect. Thank you very much.

1785 We will now hear the presentation of the CCSA. Please introduce yourself and your colleague. You may begin.

1786 MR. THOMPSON: Thank you.

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THIS IS EXHIBIT "16" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

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Attendees and Location

Held at:

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Attendees:

- **Chairperson: Ian Scott**
- **Commissioner, Ontario: Monique Lafontaine**
- **Commissioner, Alberta and the Northwest Territories: Nirmala Naidoo**
- **Commissioner, Atlantic Region and Nunavut: Ellen Desmond**
- **Commissioner, British Columbia and Yukon: Claire Anderson**
- **Legal Advisors: Christina Maheux, Matthew Welch**
- **Hearing Secretary: Jade Roy**
- **Hearing Manager: Cédric Lelièvre**

Online: https://crtc.gc.ca/eng/transcripts/2021/tb11_25.htm

PRESENTATION/PRÉSENTATION

4815 MR. MALCOLMSON: Good afternoon, Mr. Chairperson, Commissioners and Commission staff. My name is Robert Malcolmson, and I am Executive Vice-President and Chief Legal and Regulatory Officer at BCE and Bell Canada.

4816 Before beginning our presentation, I would like to introduce my colleagues. To my right, Stewart Johnston, Senior Vice-President, Bell Media Sales and Sports, and Ben Keys, Director of Content Sales and Distribution at Bell Media. To my left, Jonathan Daniels, Vice-President Regulatory Law; Sarah Farrugia, Vice-President, Content and Business Intelligence at Bell Canada; and Lenore Gibson, Senior Legal Counsel at BCE.

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4817 We are here today to highlight why the Commission should act in the best interests of the Canadian broadcasting system and reject the proposed acquisition by Rogers of Shaw's licenced broadcasting operations.

4818 It is critical to take into account the negative impacts the proposed transaction will have on other industry players across the Canadian broadcasting ecosystem, the broadcasters that are dependent on BDUs to reach subscribers and audiences, and the producers, creators and distributors that in turn depend on broadcasters to make their content available to Canadian audiences. The market power that Rogers seeks to acquire will have a long-lasting negative impact that will echo throughout this interdependent ecosystem.

4819 While Rogers would have you believe there is nothing to see here, this application goes well beyond the narrow issue of one cable company stepping into the shoes of another. The merger of Rogers and Shaw would anoint Rogers as the unavoidable gatekeeper of the linear and OTT platforms that programmers depend on for access to audiences and subscribers. For English-language programmers, it will be Rogers that decides who gets carried and the terms of carriage.

4820 Today, we have a relatively balanced English-language BDU market with three large distributors that have a similar share of subscribers and revenues. More specifically, Bell and Shaw each have a 27 per cent market share and Rogers has 20 per cent. This market equilibrium ensures that access to BDU platforms is competitive, and that broadcasters seeking to reach Canadians are not unduly dependent on one dominant BDU. Approval of the Rogers application will destroy this balance. Having secured a combined 47 per cent market share, the Commission will be handing control over the market to one player: Rogers.

4821 Mr. Chairperson and Commissioners, this transaction represents the largest BDU change of control transaction in Canadian history and was recently described by one Rogers director as the "most transformative, strategic transaction in the industry's history". If successful, Rogers will achieve a degree of control over the broadcasting sector at levels never before contemplated with no clear countervailing benefits for the Canadian broadcasting system. Just as the Commission did when it denied Bell Media's acquisition of Astral in 2012 due to market power concerns, the Commission should deny Rogers' acquisition of Shaw.

4822 In Astral, the Commission stated, and I quote, "The Commission is not convinced that the transaction would provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians sufficient to outweigh the concerns related to competition, ownership concentration...vertical integration and the exercise of market power." In our view, the concerns that caused the Commission to initially deny Bell's acquisition of Astral are equally, if not more applicable, to the Rogers-Shaw transaction.

4823 Stu?

4824 MR. JOHNSTON: Thank you and good afternoon.

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4825 Granting control to one entity over almost half of all English-language broadcasting subscribers across Canada would give Rogers control over which programming undertakings survive and thrive, and which do not.

4826 Rogers would dictate how and if that content will be shared with Canadians.

4827 Importantly, programmers, including ourselves at Bell Media, do not negotiate the wholesale prices paid for our services by geographic market. Rather, we negotiate for the entire English-language market.

4828 Today, for English programmers to have a viable business case requires distribution from at least two of Rogers, Shaw, or Bell.

4829 And this is because every channel, with a few exceptions, requires sufficient reach to ensure audiences are large enough to attract the advertisers, as well as sufficient subscriber revenues necessary to support the investment.

4830 If one of the three largest English-language BDUs refuses to carry the service or does not provide appropriate packaging and marketing support, carriage on the remaining two major BDUs should be sufficient to ensure commercial viability. This is because a programmer would count on the remaining two big BDUs and the very small to mid-sized BDUs to deliver to over two-thirds of the national market. Take that away and the business case for investment can quickly disintegrate.

4831 If this transaction moves forward as proposed, programmers will only be able to survive if they secure carriage and reasonable revenues from the entity controlling half the market. This will be the deciding factor, and it will allow Rogers unprecedented leverage as part of any negotiation.

4832 I have dealt with Rogers for many years and I say with respect that they are very good negotiators and will fully leverage their market power as effectively as possible to ensure the best deal for Rogers' shareholders. That deal will come at the expense of programmers, as Rogers will inevitably use that market power to reduce what it pays to programmers.

4833 If Rogers successfully acquires a dominant share of the English BDU market in Canada, I am convinced there will be less revenue available for programming undertakings because of the massive leverage Rogers will apply. Less revenue means less funding for CPE and PNI expenditures, and this will, without doubt, erode our ability to produce made-in-Canada original content, and the ability of many independent producers to do so as well.

4834 So fewer Canadian programs and fewer choices for Canadian consumers, resulting in weaker channels just as they have to navigate the OTT transition.

4835 Sarah?

4836 MS. FARRUGIA: Thank you, Stu.

4837 In reviewing this transaction, we urge the Commission to focus on Rogers' market position as a dominant English-language BDU and as a large internet service provider.

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4838 Should this transaction go ahead, there is no doubt that Rogers' dominant position in the BDU market will give it greater pricing power over discretionary programming services.

4839 It will also provide Rogers with opportunities to extend its dominant position even further by becoming the leading aggregator of OTT services on a platform designed to drive subscribers to streaming platforms dominated by non-Canadian services.

4840 Rogers is already well on its way down the path of acting as a gatekeeper with the launch of its SmartStream service. Available to Rogers' Internet subscribers only, the subscription service aggregates content from global OTT players on a single platform.

4841 This combination of a dominant market position in the BDU market combined with a focus on distributing global OTT content via SmartStream provides Rogers with economic incentives to direct less resources towards the traditional regulated BDU system, and conversely, more resources towards securing non-Canadian, unregulated content available from worldwide OTT players.

4842 I would ask that you consider the ramifications of Rogers adding American-controlled OTT services that compete directly against Canadian linear services.

4843 For example, if Rogers includes the American OTT app Discovery Plus on its SmartStream service, this could enable Rogers to remove the linear Canadian equivalent, Discovery Canada, complete with Canadian content such as the very popular and independently produced shows Highway Thru Hell and Heavy Rescue: 401.

4844 It is very clear that the transaction will result in Rogers benefiting from a dominant position in negotiations for carriage that, in turn, will lead to reduced revenues for Canadian channels.

4845 Again, more dollars exiting Canada's broadcasting ecosystem, leading to fewer consumer choices and fewer Canadian voices.

4846 Lenore?

4847 MS. GIBSON:

4848 Thank you Sarah.

4849 As part of any Commission review of ownership transfers like this, it is incumbent on the applicant to explain how the transaction serves the public interest.

4850 In our view, Rogers has failed to do so. To be blunt, Rogers has not offered benefits to the Canadian Broadcasting System that come anywhere close to addressing the unprecedented market power they are asking you to confer upon them.

4851 There are no specific commitments to support policies like Diversity of Voices. There are no specific commitments applicable to all of the English programming services that will become dependent on Rogers for distribution on linear and OTT

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platforms. There are no commitments to maintain wholesale rates, packaging and marketing.

4852 What's left is a commitment to carry on business as usual in the telecom space, including the deployment of technology that is already well on its way to market. In any event, these intangible benefits are irrelevant to the Commission's consideration as to whether the transaction meets the public interest test under the *Broadcasting Act*.

4853 For broadcasting, Rogers' lone commitment is to independent programmers. The commitment is limited to not dropping a programming service for three years if that service can prove to Rogers that it is still worthy of carriage. All this commitment does is reinforce the gatekeeper role that Rogers' unprecedented market power will enable it to wield.

4854 In summary, Rogers does not provide any compelling evidence that the transaction will provide material benefits to the Canadian broadcasting system.

4855 To the extent Rogers does address possible consumer benefits, it essentially identifies how the company will make it easier for consumers to leave the regulated system, a system specifically designed to ensure Canadian voices are heard and our stories told.

4856 Jonathan?

4857 MR. DANIELS: Thank you Lenore.

4858 The scale of the proposed merger is unprecedented. Rogers would control 47 percent of the English-language broadcasting distribution market and 40 percent of internet connections. The level of market power sought by Rogers exceeds every relevant threshold ever established within Canada's regulated broadcasting system.

4859 For example, the Commission's Diversity of Voices decision set a market share limit of 35 percent for programming undertakings, adding that it would closely scrutinize transactions that exceeded that threshold and would deny applications to increase market shares that exceed 45 percent. These thresholds were based on Competition Bureau thresholds found in their merger guidelines.

4860 There is no reason for the Commission to apply these thresholds differently, or set them aside entirely, when evaluating this transaction, nor should the Commission ignore the standards it set for BDU change-of-control transactions included in its Diversity of Voices policy. In that decision, the Commission states that it will examine BDU market share and the change in negotiating leverage between BDUs and programmers that will result from a merger. Applying this test to this merger can only lead to the conclusion that the transaction should not be approved.

4861 Mr. Chair and Commissioners, earlier -- or last week, I should say -- Mr. Chair, you referred to the importance of regulatory certainty during a recent speech. We concur with this view and suggest that regulatory consistency is a hallmark of sound public policy.

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4862 Consider, for example, that the level of market dominance that would result from this transaction is greater than that used by the Commission to rationalize its denial of Bell's initial application to acquire Astral in 2012.

4863 While that transaction was eventually able to proceed, approval only came after a second application was filed, an additional proceeding was held, and an agreed-to set of divestitures were made that reduced Bell Media's share of the English-language market to the Diversity of Voices 35 percent guideline. We expect that the same level of rigour and analysis will be applied in this transaction.

4864 Now, Rogers positions their acquisition of Shaw as affecting a different market than what was before the Commission in Astral. And this is our key point. The Commission rejected Bell's initial application to acquire Astral because of the impact it would have on the market negotiations between programmers and BDUs. And that is precisely the same issue before us today.

4865 Rob?

4866 MR. MALCOLMSON: Thanks, Jonathan.

4867 Some interveners have suggested that a combination of market safeguards and enhanced benefits can adequately compensate for Rogers' market power that would result from the proposed transaction. We strongly disagree. With the market power that Rogers will have, including its ability to act as a gatekeeper for linear and OTT content, Rogers will be able to extract unreasonable concessions from all discretionary English-language programming services.

4868 Even if the Commission is prepared to change existing safeguards or reintroduce packaging and carriage regulations, it is highly unlikely that these changes, however well intended, could ever fully address the market power that Rogers will be able to leverage.

4869 As the Commission knows very well, Canada's broadcasting ecosystem is extremely fragile as online services continue to emerge as alternatives to linear broadcasting. We also note that the Commission is planning to examine the evolution of online TV in Canada as it considers what a future regulatory framework for online BDU and OTT services should look like.

4870 Against this backdrop, we submit that the Commission should not approve a transaction that will drastically alter the BDU industry structure until an appropriate policy and regulatory framework for OTT is in place.

4871 Mr. Chair, Commissioners, what is decided here will set a precedent and chart the course for the future; it will establish the permissible level of consolidation for the industry going forward and it will set the terms for what behaviour is permitted in the BDU and OTT programming marketplace.

4872 In closing, Rogers has not demonstrated that the proposed transaction will deliver material benefits to Canada's broadcasting system. What it does demonstrate is that

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Rogers will have unfettered market power to dictate which English-language programming services are carried and on what terms.

4873 This horizontal merger of two of the three largest BDUs in the country will create an imbalance in the market that will cause material harm to programmers that are dependent on access to the Rogers' platform to reach audiences and subscribers. That harm will in turn extend to those in the Canadian content production business who depend on broadcasters for the display and discoverability of their content.

4874 As such, this transaction does not meet the Commission's public interest test under the *Broadcasting Act* nor does it meet the Commission's own analytical framework in the Diversity of Voices policy and for these reasons, it should be denied.

4875 We thank the Commission for the opportunity to provide our comments and we are ready hopefully for your questions.

4876 THE CHAIRPERSON: Thank you very much for your presentation. Your hopes will be fulfilled. I have a few questions for you.

4877 THE CHAIRPERSON: Lets' start a little bit -- I think it was paragraph six of your opening remarks you made reference to the currently relatively equal shares of the larger BDUs.

4878 And in your various submissions and again today your submission is that Rogers will have the size and scale to enter into preferential or exclusive distribution arrangements with foreign OTT services that will help Rogers grow subscribers to its internet access service to the detriment of its BDU competitors.

4879 So taking that statement into account, explain to me what the real difference is between a combined -- you know, the current situation where we have the top four distributors with 85 percent of the market versus the combined Rogers-Shaw market share.

4880 MR. MALCOLMSON: Sure. So today the market functions well because you have -- in the English-language BDU market you have three large BDUs with comparable market shares. That ensures an equilibrium in the marketplace. It ensures that programmers like Stu, when they go knocking on doors, have three doors to knock on, each with comparable market share to offer, and he can get carriage on each of the three. He can potentially get carriage on two of the three. He can say to one BDU, "Look, I've got the other two BDUs with their market share to carry my service." So it creates an equilibrium, a balance of negotiating power.

4881 When you pivot to the world that Rogers wants you to approve, all of a sudden Rogers is increasing its share of BDU revenues and subscribers from 20 percent to 47 percent in the case of its subscribers that's 135 percent increase. It sets it so far apart from its next closest competitor, which will be Bell, that it will acquire a dominant position in the marketplace and it will be able to use that dominance to do the things we talked about in paragraph 6 and in our submission.

4882 It will, for example -- you asked about OTT. It will ---

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4883 THE CHAIRPERSON: Exactly. That was the focus of my question; I was trying to understand that better.

4884 MR. MALCOLMSON: So it will make itself quite attractive, as you heard from the folks at Telus, to global OTT aggregators who are seeking to enter the Canadian market, are looking for one-stop shopping, and a place to acquire a platform to display their wares, so to speak.

4885 As they attract -- as Rogers attracts more and more non-Canadian OTT content, or popular content, it will make its platform more attractive to subscribers than the subscribers that are subscribers to other BDUs. The market share will constrain the ability of other BDUs, like Bell, to obtain that same content and offer it to its customers. And that will create, in our view, a bit of a vicious circle. As Rogers gets stronger and acquires market share, the other services get weaker and can't offer the same type of programming as Rogers can.

4886 THE CHAIRPERSON: I understand the sort of theoretical construct. I'm still struggling a little bit with the notion that, you know, pick one.

4887 A foreign OTT looks at the Canadian market and says, "Great. I can go do a deal with the -- if it existed -- newly enlarged Rogers and I can get access to a little less than half the market. Or I could go visit Rogers and Bell and get two-thirds of the market. Or I can go visit the three of them, you know, the next one, and get 85 percent or 80 percent of the market."

4888 I am still struggling a little bit with the business logic of targeting, at the most, 47 percent of the market.

4889 MR. MALCOLMSON: I will ask Sarah, because Sarah runs our BDU business, in a minute.

4890 But I think in the last part of your question you hit the nail on the head. In terms of that first knock on the door, if an OTT aggregate or OTT service wants to access Canada, wants to do it on a one-stop basis, there may only be one knock on one door and that's Rogers' door. And once that deal is done, it may become extremely difficult for the other BDUs in the marketplace to be able to offer that OTT aggregator the same terms that Rogers can. And why is that? It's a function of Rogers' market share relative to its next closest competitor, in this case Bell. We would have 30 percent less market share. That's a real difference in relative market share and leverage.

4891 I will ask Sarah to respond as well.

4892 MS. FERGUSON: Thanks, Rob. I think Rob covered it very well. Any player with 47 percent market share is going to be the first one that any global OTT player approaches.

4893 And what I would add to what Rob says is that again, when you are a global player you are making deals across the globe. And so you might decide how deep you go in any country and you might also, you know, decide on how much effort you're going to put in in terms of integrations and contracts, et cetera. So at 47 percent market

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share, again, Rogers would be their first stop and would potentially be able to get preferential or exclusive carriage.

4894 MR. DANIELS: Mr. Chair, if I can just add something because I think -- I have been listening to some of this discussion that's happening this week and I think it's very real about the exclusive nature of it. But we also started talking about preferential treatment. And I think maybe we're spending a minute and just talking about what that means in practice because, you know, you can have a rule that says, "No exclusive." But p[referential gets harder.

4895 So what are we talking about here? And on the one hand, Rogers has got their smart stream service that they're talking about. And we can talk a little bit more about that because we do have a couple of things to say about it.

4896 But putting that aside, you know, they're talking about bringing people, let's even say within their BDU. What they want to do -- and they are not alone. We want to do this too. Every BDU is looking at trying to bring together the OTTs and the Canadian programming undertakings and your -- basically your BDU product together and be aggregative because you want to be -- you want to keep yourself in front of the customer and have the customer pay attention to you.

4897 Now, think about this from a perspective of someone who is not as, you know, digitally savvy. We all have those people in our lives. We've probably all dealt with them in -- you know, over the last couple years, helping them with all sorts of different things, how does it make it easier?

4898 What the BDUs are looking at doing to make it easier for that kind of person, and - - is they are bringing -- you know, we're putting channels, the OTTs, on the BDU. That's another channel. In our case, Netflix is a channel, so that it makes it easier that -- because these -- you know, most of our customers don't understand the difference between OTT and a programming undertaking. They just want to flip the channel and watch whatever product they want. We're all doing that. There's nothing wrong if that's the reality, and we're going to market together and put these things together, and that's what Rogers was talking about.

4899 But how you -- whether we can put it on our BDU platform as a channel, whether how -- whether there are special features or content or something like that that may be there, that may be preferential treatments, those are the kinds of things that can get picked up in negotiations between a large internet service provider, because that's really how the OTTs will look at it, and the OTTs.

4900 And so, I think what I'm a little worried about in this discussion, we are worried about exclusives, but I'm worried that the Commission will sort of think, "Oh, we can just stop exclusives by making a rule that says it's not allowed." It's bigger, it's deeper, it's things we haven't thought about, it's things we have thought about in terms of the ways that -- you know, the kind of ways that it will play out, and all we're really trying to say is don't kid yourself, don't be kidded by Rogers. Forty-seven per cent makes them the first door and gives them extra power even compared to

4901 us.

4902 THE CHAIRPERSON: Thank you, Mr. Daniels. I hope I'm not one of those ones lacking technological savvy you're referring to. But your comment about exclusivity or other potential measures is a good segue perhaps to a slightly different -- a nuanced version of that question. Look, understanding that BCE recommends the outright denial of the proposed transaction, if you could consider for a moment, should the Commission approve it, how do you suggest, then, we address the very concerns you just raised with respect to Rogers? And I'm sure you were waiting for that question, so...

4903 MR. MALCOLMSON: Well, it's an important question, so we want to do it justice. So, I'll start, and Jonathan and then some of my other colleagues may weigh in if you'll permit us, because it is an important question.

4904 But, you know, coming into this -- looking at this transaction, coming into this proceeding, preparing our intervention, we did seriously consider what's in the public interest here. Is it in the public interest to try to come up with a list of behavioral remedies in addition to those that already exist today in order to allow this transaction to proceed and, at the same time, replicate the balance in the marketplace that I was talking about earlier?

4905 And as we went through formulating our position, it became clear to us that that wasn't going to be realistic, practical or sustainable. And we did look back at the Astral transaction in 2012. And as Jonathan said, this transaction is really the flipside of the same coin. It's about negotiation of the value of content between BDUs and programming providers. In 2012, you looked at what Bell proposed, and you said 42 per cent market share, no commitment to divestitures, no remedies, not in the public interest, because that level of market share was simply going to make, in the eyes of the Commission, Bell too dominant and it was going to harm the BDU ecosystem.

4906 Well, here we are now. It's, as I said, the flipside of the same coin. There are a couple of differences. One is that Rogers is seeking to acquire a 47 per cent market share, not what we came in with in 2012. And Commission, you sent us back to the drawing board, and you said, "Not good enough. If you want to acquire Astral, you're going to have to come back with a better package, a package of divestitures to shed some market share to get it down to the levels that are aligned with Commission policy, you're going to have to come back with some remedies and your benefits are going to have to be significant." So, that's the lens through which we looked at this.

4907 We've followed closely the hearing, and we've listened to all of those who have come in front of you, the independent broadcasters, the multicultural broadcasters, the CCSA, Cogeco, Telus and others clear that they're universally fearful of the market power Rogers is asking you to confer upon them. And I listened to the various additional remedies that they proposed. I lost count at 10 additional safeguards, there were more, but -- and I'll just go through a couple of them: a ban on BDU/OTT program exclusives on digital platforms. That was identified as a loophole; a ban on de facto exclusives where someone uses their market power to, as we said, sort of make one door to knock on; changes -- endless changes to the Commission's dispute resolution process; regulating wholesale fees; implementing packaging guarantees.

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4908 We looked at all of those, and we said to ourselves, and I believe that this is in the public interest, that those safeguards are simply not practical or realistic. It will force upon the regulator an administrative and enforcement burden that will be impossible to meet, in our view. It will result in a never-ending cycle of new claims of abuse of market power and new pleas for a new safeguard to address a newly discovered use case, to Jonathan's point.

4909 So, in our view, that should signal to you that the market power Rogers is seeking to acquire here can't be fixed by a basket of remedies. That's our position. Jonathan, I don't know if you have anything to add.

4910 THE CHAIRPERSON: Microphone is the equivalent of the mute button on Zoom calls. Thank you. You've also probably saved us some time. You've answered the next couple of questions about some of the proposals that we have heard over the past few days, so your position is clear. I think Mr. Daniels said he wanted to talk more about the influence of foreign streaming services on the system, so let's pick up that theme.

4911 Throughout your intervention, you've referenced that role, that presence. And specifically, you've indicated that a combined Rogers and Shaw would undermine the health, I believe was the quote, of Canadian programming services that compete with American online programming services. So, can you elaborate on that for us, please?

4912 MR. DANIELS: Sure. So, let me first start off by just talking about that what I'm about to say -- like, Rogers' SmartStream service, they've talked about it, it's something that they offer, and I think Sarah can give you a couple of examples of equivalents that they have in the market, it's not unheard of on the market. I'm not -- I don't want to be faulting them for their discussion, but they presented the SmartStream service as if it's one of innovation, I'll let Sarah handle that in a minute if you don't mind, but more importantly, they've been trumpeting it as some sort of benefit that's going to happen that -- as part of this transaction, that they're going to somehow bring more Canadians and programmers into it. And they've even come to you and say, "Oh, we're going to help with the digital transition," which is for programming undertakings just some amorphous will help you get on to do that. I don't know exactly what they have in mind. I doubt they do. But whether they do or don't, I don't really -- you know, let's suggest whether it's an actual benefit associated with this transaction.

4913 But if you look at it today, just on SmartStream today, we looked at the top 15 Canadian streaming apps out there, and I'm excluding Rogers, like Sportsnet NOW and so on. The top 15, today, on Rogers' SmartStream, they carry only three. Two of them are music based. Now, contrast that with Amazon, Google, Apple. Amazon Fire Stick has 12, Google Compress has 13, Apple TV has 13. And we're not talking about these services; I'm talking about well-known Canadian services on the American platforms. Like, these are the ones that are on all of those, Global TV, CBC Gem, Radio Canada's 2TV, TVA PLUS, not to mention the one from Bell, or maybe I am mentioning the ones from Bell, Crave, CTV, TSN Direct, Indigo.

4914 So, Sarah, I'm wondering if maybe you could carry on.

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4915 MS. FARRUGIA: Yes, I think it's important to note that, you know, there are four BDUs in Canada who have launched a sort of lighter TV offering, if you will. And all three of the others have aggregated those OTT players alongside linear regulated content, so that's our own Fibe TV App product, Telus' Pik TV and Videotron's Helix app.

4916 So SmartStream is the only one that has elected to go the route of only aggregating the OTT players and, as Jonathon mentioned, very bias towards American players today. And why is that?

4917 Since SmartStream is based on the X1 platform, apps have to be specifically developed for that platform. And of course, Comcast is the gatekeeper, so it naturally lends itself to American and Global OTT players.

4918 You know, by contract, our own streamer box runs on the Google platform. So our customers have access to all 8000 apps that are available in the Google Play store.

4919 And so that's what really sets the product apart. They actually have far fewer apps. They're harder for Canadian content providers to develop apps for that platform as compared to other platforms available.

4920 MR. MALCOLMSON: May I add, Mr. Chair -- and I'll try not to be verbose, but when you look at how Rogers markets Ignite SmartStream today -- you know, Jonathan, referred to the breakdown of apps, but this is from the Rogers Website -- their description to their customers that they're trying to sell this service to, of Ignite SmartStream, "It integrates popular streaming services like Netflix, Amazon Prime Video, Hey You, YouTube, and SportsNet Now." So they're marketing non-Canadian global streaming services, plus their own SportsNet Now.

4921 So I guess the point being, don't get fooled into thinking that the SmartStream platform is some panacea for helping Canadian programming service manage the transition from the regulated ecosystem to OTT world.

4922 THE CHAIRPERSON: Thank you. So from your perspective, how are the foreign streaming services currently competing for rights to programming services?

4923 MR. MALCOLMSON: I'll ask Stu ---

4924 THE CHAIRPERSON: No, just -- I can give you the obvious example. Prime offers their subscribers an option to subscribe to Slack TV, as an obvious example. But can you give us a sense of what's happening with respect to the negotiation of ---

4925 MR. MALCOLMSON: So what we're finding -- and Stu does this every day, so he should speak to it -- but as they become more omnipresent here, as they gain more subscribers here and worldwide, they are able to acquire exclusives for markets like Canada. So we find ourselves negotiating for rights for something like Crave, our streaming service, our attempt to provide a Canadian alternative Netflix -- we find ourselves negotiating with our very small Crave subscriber base vis-à-vis Netflix's 214 million worldwide customers, over which they can amortize their programming costs.

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4926 So long way of saying, the leverage rests with the US OTT services, contains our ability to acquire content.

4927 Stu?

4928 MR. JOHNSTON: Thank you, Rob. I think you described it well. I think there's been an evolution over the last 10 years where we've seen more and more, in negotiations for content, that we are competing with one, two, or more global OTT players, whether it's specifically for the Canadian territory or more as a global deal for content, as Rob said.

4929 I'm not sure if that's answering your question, Chair, but that is simply the case.

4930 THE CHAIRPERSON: That's helpful, thank you.

4931 Let's move on, sideways, at least, a little bit more about the affect on competition. I think in your intervention -- and again you emphasized it today in your opening remarks where you characterize it as not a simple horizontal transaction. This deal is not about swapping out one BDU with another in a local market, and you've stressed your belief that they will be able to control the availability of programming services in every English-language market.

4932 But turning to yourselves for a second -- I mean, obviously BCU is a BDU of very significant size and reach on multiple platforms. So could you tell me how you can help? How can BCE provide opportunities for the carriage of programming services? And I guess to add on to that, the logical extension is, and why won't that offset the concern about Rogers if the transaction were approved?

4933 MR. MALCOLMSON: Mr. Chair, we'd love to be able to help. We do help today in terms of the carriage and promotion and marketing of Canadian Programming Services. As you know, we're the largest spender on Canadian content in Canada given the stable of programming service we have. So it' in our interests to help, and we do help.

4934 You asked how we can help more in the face of Rogers market share if the transaction is approved. That's the problem. When you upset the equilibrium that exists in the market with three comparably-sized BDUs, all the leverage over content goes to the largest player in the game.

4935 And we've talked a lot to this point about the impact in the OTT ecosystem. It would be, I think, useful to also talk about how that leverage, that 47 percent market share, will affect programming services, not just us, seeking to access the linear BDU system.

4936 And if I could for a minute, just to put a -- to point it out to you, currently, we generate \$348M of BDU subscriber revenue per year from Rogers and Shaw. If and when those two entities combine, that's \$348M of subscriber revenue which we become dependent on the new Rogers for. That creates market power.

4937 Now, you may be sitting there thinking, "Well BCE will be just fine. It'll be able to fend for itself." But as you know, there's a ripple effect throughout the system. And that's why we said in our remarks this will echo throughout the system.

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4938 That \$348M of subscriber revenue goes to fund Canadian programming. Thirty (30) percent of each of our channels' revenues got to CPE. So in a world where Rogers takes -- says to itself, "I need to reduce my costs. I'll go to Bell and I'll pay the 35 percent less for their content." That would be a \$37M annual reduction in Canadian programming expenditures. Money that goes to independent producers. Money that goes into the system to help Canadians voices be heard and reflected. That's \$185M over five years. And that's just us.

4939 THE CHAIRPERSON: It's not very often that BCE gets to describe itself as little guy.

4940 MR. MALCOLMSON: No, and we're not pretending to be little. What we want -- the message we want to convey to you is, if this happens, here are the impacts. We'll manage the impacts.

4941 THE CHAIRPERSON: I understand. I'm being provocative.

4942 We haven't talked very much about Shaw Direct, with whom you compete. If we think about BDU services, for example, in Ontario and Atlantic provinces, the acquisition of Shaw Direct by Rogers would effectively reduce the number of competitors by one. In your view, what impact would that have on competitive balance and competitive choice for consumers in those regions?

4943 MR. MALCOLMSON: So the angle we've come at it from -- and I know the folks at Rogers would have you believe there's a difference between terrestrial BDUs and DTH BDUs, and therefore no competitive impact -- you should consider the competitive impact separately.

4944 But the perspective we come at it from is the impact on programming services. And so the way that -- you know, when Stu goes and negotiates an affiliation agreement for the distribution of Discovery, he doesn't go to Shaw Cable in Calgary and say, "Okay, we're going to do an affiliation agreement for Calgary," and then he goes and does another one Winnipeg. He negotiates nationally in the English-language market for those subscribers.

4945 So the DTH subs that Rogers will acquire and the terrestrial subs that Rogers will acquire will be combined. And that's what creates that market share. And Stu will have to go negotiate against that. Rogers will use that to reduce what it pays us on a wholesale basis.

4946 In terms of consumer impacts, fewer BDUs means less choices for consumers. Less fully-funded Canadian programming on channels that are reliant on BDUs means less viewing options for Canadian consumers, and less choices.

4947 And that's why we say this transaction, as structured, without divestitures, without material remedies is not in the interests of the broadcasting system.

4948 THE CHAIRPERSON: Thank you.

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4949 I have a number of questions for you in relation to competitive safeguards. And bearing in mind your earlier response, it might be a short set of questions, but we will start down that path in any event.

4950 You have already drawn a number of parallels to your proposed acquisition of Astral in 2012, as we all know, initially denied by the Commission, in that it wasn't -- simply not convinced that there were sufficient benefits, and as you point out, there were competitive market share and other competitive concerns.

4951 But since then, and following the approval of the revised proposal, the Commission has put in place a regulatory framework to deal with vertical integration of broadcasting companies, and it's developed a range of regulatory safeguards with which you are very familiar, the Wholesale Code and so on, head start rules. I won't go through them. I think we're all familiar with them.

4952 And so as I said, I had a number of questions, but you may have answered it in the aggregate. But for the record, I'll still pursue, at least, on a nominal way, my questions.

4953 So what do you think of the specific risks that the Commission should address through additional safeguards?

4954 MR. MALCOLMSON: Well, as I said earlier, we don't think there are additional safeguards that can curb the market power that Rogers will acquire, so -- and that's not a novel position or an overstatement by us, I don't think.

4955 I take you back to the first Astral transaction where, in the Commission's decision at paragraph 66, the Commission said, while certain interveners proposed safeguards to address these market power concerns, the significance and breadth of the broadcasting assets that BCE was trying to acquire are such that:

4956 "Safeguards to properly supervise this level of market power would be extensive and unduly burdensome." (As read)

4957 And the Commission concluded that such a level of interference would be -- not be consistent with the regulatory policy set out in the Act.

4958 So that's what we're saying to you.

4959 Yes, in the second iteration of Astral, there were safeguards proposed, and those safeguards eventually became the model for the Wholesale Code.

4960 What I would point out to you is that when those safeguards were first put in place in the Astral case, they were accompanied by material divestitures. So it wasn't just, "Okay. You're going to acquire 47 percent. Here's a bunch of safeguards. Off you go."

4961 It was, "No. First of all, you need to address the market power problem. You need to reduce the amount of market share you're going to have, and then you're going to have to lay out on top of that safeguards."

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4962 So I'll let Jonathan walk you through our thoughts on specific safeguards, because you asked about the Wholesale Code, if you wish.

4963 THE CHAIRPERSON: Pardon me. And before you do, Mr. Daniels, I was going to -- and may do this in any event -- my next question was really going to be to try and dive down a little into, for example, the specifics around the Wholesale Code and go, well, why not? Why is it insufficient? Why would the Wholesale Code be insufficient to address the concerns that have been -- that you're raising and others have raised with respect to an enlarged Rogers, if the transaction were approved?

4964 MR. DANIELS: So when we look at the Wholesale Code -- and when I -- I should say the collection of CRTC safeguards, because it includes other things -- but the first point is that it wasn't designed to handle a BDU having 50 percent market share.

4965 It was designed around three different things. It was designed about concerns about vertical integration. It was designed about large programming undertakings and forcing terms on small BDUs, especially, in terms of the Astral kind of issues that came up. And then the third one is about protecting customers from disputes between programming undertakings and BDUs so that they wouldn't be caught in the middle. Like, for example, they didn't want a programming undertaking withholding -- you didn't want a programming undertaking withholding a signal in the dispute, and so customers are left not able to watch the channel.

4966 So when you look at the rules -- and again, I'm happy to go through every single one, but I don't propose to, you will be happy to know -- I think there are three major things that show why it won't work when you're dealing with programmers and a 47 percent Rogers BDU.

4967 The first one is interpretation. Most, if not all of the provisions that you look at that are designed to protect programming undertakings in the BDU in the rules, all come back to reasonableness rules. They're requirements that are open to interpretation.

4968 Now, I think IBG earlier gave you some examples of the problems with practice. But if you just look at, like, the terms, just, you flip through the Wholesale Code, section 10, Comparable Marketing Support; section 11, Reasonable Terms of Access; section 9, Best Available Pre-assembled or Theme Package consistent with its Theme; all of these are debatable points. They're not straightforward rules one way or another.

4969 And that really gets down to the second and what the concern about that, it gets to the second issue, which is timing, that it takes a long time to get a dispute for the CRTC.

4970 And I have heard a lot of people come here and present to you and talk about, well, if the CRTC were faster or it could be done things faster.

4971 We're a BDU. We're a programming undertaking. We're involved in all sorts of negotiations, and I can tell you from -- even I have only been in this space for a year -- I can tell you, we learn quickly, things take time. Negotiations take time. It's not just the CRTC, it's the parties, and it's all parties, big and small, for different reasons. And sometimes you make progress on one issue so something else gets held up, and then you come back and it was a thorny issue, and so on. These things take time.

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4972 But the difference is that if you're a programming undertaking looking at a debatable point about oh, am I right in my interpretation that I think what they're proposing is totally unreasonable, can you really afford to give up and not give up?

4973 Because in the meantime, as time goes on, BDU doesn't control the price. It's not always about the price, and it's not necessarily about the package, but it's all the other issues that go along with that, the marketing, the promotion. Where is it placed on the website? What's the default one when you go to your pick categories? Where is your service listed? What are they telling the call centre? What's going on with free previews?

4974 I think that TLN and ethnic channels referred -- their counsel referred to this as death by 50 cuts.

4975 It's the notion that there's all sorts of other aspects that aren't part of and can't be part of CRTC regulation, that puts a programming undertaking in the situation where they just have to concede on certain issues because they don't have the time.

4976 So my point I was coming to, I said there's three main problems with the Code. One is interpretation. I have explained that, hopefully. Timing is the second. The third is the loopholes. Loopholes are a way that people can interpret and step away from what the actual concept is, but go by and live by the words.

4977 You have heard others talk about it. I want to raise one about a new possible commitment that came up.

4978 Rogers has come to you and said on Monday that they will carry 40 independent channels, and people have talked about this being a commitment, a significant commitment. But as IBG pointed out, Rogers also said they have 46 channels for Rogers, 38 for Shaw terrestrial, and 47 for Shaw Direct.

4979 So as IBG pointed out, there's at least seven channels, and I think possibly more - - I didn't sit down and count because it doesn't really matter -- seven channels that aren't being guaranteed coverage.

4980 But here's the point about market power. It's not seven channels not being guaranteed coverage, it's 47 channels being told that you're 1 of the 7, because when you go to negotiate, what are you going to hear from Rogers at the beginning of every negotiation?

4981 "I'm not carrying you."

4982 "Oh, but you have to carry 40."

4983 "But I have chosen not to carry you."

4984 And in the end, you're going to agree to concessions. You're going to have to, because you need carriage by Rogers. You agree to concessions and take less, and that's going to affect the quality of the service.

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4985 So when I come back and talk about our three concerns and how we looked at and honestly -- and I don't mean this pejoratively -- we sat down and came up with what kind of terms could come up? What would be a Wholesale Code? We sat there and brainstormed, and this wasn't an hour exercise. It went on for days, and so on.

4986 ` And we kept coming up with things, and then we thought, oh, but you could get around it this way. Yeah, that's impossible to enforce because of this. And we came up and had you guys getting so involved in the marketing and the promotion and approving, change on the website, it was ridiculous. We don't want it. We don't want it as a programmer. We don't want it as a BDU. We don't want -- and I don't think you want that level of interference either. eAnd that's why we came back to the conclusion that it just couldn't be done, which is not to say that if you did look at divestures that additional safeguards couldn't work, but with 47 per cent, we just couldn't didn't see how it could add up.

4987 I don't know, Rob, if there was anything else you wanted to add?

4988 MR. MALCOLMSON: If I may? I think the application in front of you puts you in a difficult, almost impossible position in the sense that you're being to -- you're being asked to approve an unprecedented level of market share, the type of market share the Commission has rejected in the past, and you're being asked to sort of Gerrymander existing remedies to find a way to put enough Band-Aids on the market share to solve all the problems.

4989 And what we're trying to say to you, and hopefully conveying, is there aren't enough Band-Aids in the box to stop the bleeding that's going to result. And the bleeding is not going to just flow to the BCEs of the world. The bleeding is going to flow throughout the system to the creation and presentation of Canadian programming and the funding of Canadian programming. That's what's going to happen.

4990 THE CHAIRPERSON: Thank you. You persuaded me not to push my last question about, come on, give me some improvements to safeguards.

4991 Just before we leave this subject, though, you've probably heard us, if you've been monitoring the hearing, ask a number of parties to provide specific examples involving Rogers and the Wholesale Code or other mechanisms relating to undue preference or a specific dispute resolution tools have not worked, and we've invited parties to provide a further response by undertaking, if they so desire. I should offer you the same opportunity. If you have specific cases/issues that you think would be helpful to us, I would welcome their submission through an undertaking for which you can obviously claim confidentiality.

4992 MR. MALCOLMSON: We can answer your question now if you wish.

4993 THE CHAIRPERSON: Certainly.

4994 MR. MALCOLMSON: So, Jonathan can point you to our confidential filing. I think it was at paragraph 44 where we discussed one instance vis-à-vis Rogers. But I think the more important point is Rogers doesn't have the market share that it seeks to inquire, so it doesn't have it today. As I said earlier, the market is balanced. The market works.

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People complain about the Wholesale Code, they complain about the remedies, but it works.

4995 We do have examples, in Quebec, of a BDU that has market share in the range of what Rogers is seeking to acquire. And Sarah can walk you through how that BDU has exercised its 50 per cent market share power in a manner that, in our opinion, is a detriment to the broadcasting system. And that may give you a little bit of foreshadowing of how another BDU with equivalent market share will act in the future.

4996 THE CHAIRPERSON: You can or, as I suggested, you can do it via undertaking. I'll leave it to you.

4997 MR. MALCOLMSON: It'll be quick if you...

4998 THE CHAIRPERSON: Fair enough. Please go ahead.

4999 MS. FARRUGIA: Sure. So, maybe just to set the context. If you're, you know, Videotron as a BDU, adding a TV and internet subscriber brings in, you know, well over \$100 of revenue a month; whereas, by comparison, selling some TV content by your distribution channels might bring in pennies or dollars depending on what that content is.

5000 So, as your market share gets hired, you reach a tipping point where keeping the content for yourself and gaining the subscriber benefits that that content exclusivity provides to you outweighs the benefit of reselling your content to others in the market. And you know, to put a real example on that for you, I think the most notable one is Club Illico and Vray.

5001 Videotron has kept both of these products exclusive to their BDU set top boxes and not other BDUs. And while they have created D2C products, I would argue that these D2C versions are really not built in a way so as to be compelling to the customer.

5002 And the way they've done this is by pricing these services significantly higher than they do to their own Helix customers, they offer fewer streams, and they also limit the number of endpoints over which these services are offered in a direct to consumer manner. And moreover, to purchase Vray, a customer is actually redirected to the Helix website, has to turn down an offer to buy Helix and get Vray before they are able to purchase the product direct to consumer.

5003 And I would note, in addition, that when Quebecor first launched Vray, it was made only available on their BDU platform. And it was only after we, BCE, filed a complaint that that was in violation of the HVOD licence that they launched a direct to consumer product. So, that's, I think, one very powerful example.

5004 A couple others just to touch on more briefly. The Commission will recall, in 2019, that TVA pulled the TVA sports signal from Bell on the eve of the NHL Playoffs, an act that I think the Commission ruled was illegal. And I don't believe they would have done this had they not had the market share that they do in the Quebec market.

5005 And then the last example that I'll also provide is, for years, Quebecor managed to withhold TVA VOD content from Bell simply by setting a price that was untenable in the

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marketplace making it really unviable for us to purchase that content. Now, in that case, we did eventually decide to pay the price and purchase that content because we felt it was very important for our consumers to have that and we wanted to provide, you know, the biggest breadth of content for our customers. However, you know, the result of that is, to this day, we're paying well above market prices for that content.

5006 MR. DANIELS: So, if I can turn it back, then, just a second for Rogers, and I'm going to come back on Videotron as well in a second. So, I think Rob mentioned we only have, I think, one thing in confidence which is our negotiations about Rogers, paragraph 44. So, you can just look at it. It describes what Rogers came in as an offer to us.

5007 I have to say when we wrote that and so on, it's Rogers' initial position and negotiation -- or not quite initial, far from initial, but it's a position that they've taken, and I don't want to say that, in and of itself, making -- saying I'm going to cut services or massively reduce services, your penetration to the service, in itself an anti-competitive act is a leverage point in negotiation. That's what happens all the time.

5008 The difference between what we're talking about here is that it's less concerning in the case when we have some negotiating power and leverage in BCE and their negotiations with Rogers, ourselves or even anyone else would in terms of, as a programming undertaking today, because you don't need carriage on Rogers. But even we will need carriage on Rogers because we can't survive without Rogers and Shaw in the future.

5009 And I think to give you a real example of that, I'm going to actually, Sarah, ask you to just explain about what Videotron -- like, the impact of Super Écran, because it's a real live example. And that's the big problem that I just want to point out. You're asking for real examples. I don't think you're going to find real examples too much about Rogers because they don't have the market power Videotron does. And so, maybe you could briefly talk about what happened with Super Écran.

5010 MR. KEYS: I can take that, Jonathan.

5011 MR. DANIELS: Oh, I'm sorry. I'm mixing it up. That's Ben. My apologies.

5012 MR. KEYS: That's fine. Yes, to piggyback on Sarah's example, the Club Illico, I think we can just describe quickly how our relationship with Videotron have been affecting us on the programming side at Bell Media as well.

5013 So, Super Écran, our premium SVOD and linear channel, in the last three years, Videotron has taken two actions to sort of harm our position in that market. About three years ago, they repackaged Super Écran reducing our subscribers and penetration. And about a year after that, they also refused to pay our commercial rates for multi-platform rights, which resulted in them no longer offering Super Écran VOD on their set top boxes.

5014 And the result of those two actions over the course of just under three years is that our Super Écran subscriber account on Videotron has declined by over 60 per cent, and our penetration for that service is now less than half of what it was before those actions

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were taken. And I think it's safe to say, it's certainly our opinion, that marginalizing Super Écran that way has definitely benefited their own Club Illico service over that same period of time.

5015 MR. MALCOLMSON: I was just going to say, Chairman, because I know you want to move on, but I think that range of examples you've been given, I hope, help eliminate our skepticism about the effectiveness of timely remedies when an entity has market power to that degree.

5016 THE CHAIRPERSON: Thank you. Thank you for the examples.

5017 I have just a couple of questions left. I will save this one to the end. I think I omitted it earlier.

5018 When we were talking about SRDUs, I talked about a lessening of a competitor in some regional markets. I should have also asked a couple of other questions about SRDUs. Again, as you have been monitoring the hearing you have heard from a number of parties that there is a concern specifically about the availability or the ongoing availability of particular signals or their ability to access important signals at reasonable rates.

5019 As the other SRDU player in the marketplace, what are your thoughts about how this transaction may or may not impact the SRDU? And you can guess that I might also ask you if you had any comments about -- or wanted to provide us something via undertaking about the cost of change, of switching suppliers as we have asked a number of others.

5020 So I will put both of those questions to you if I could.

5021 MR. MALCOLMSON: So to answer your second question first, we are happy to take an undertaking to provide you with that information if it's helpful to you, maybe on a confidential basis.

5022 THE CHAIRPERSON: As you please.

5023 (UNDERTAKING/ENGAGEMENT)

5024 MR. MALCOLMSON: And then my friend, Mr. Daniels can give you our views on the SRDU market before and after.

5025 MR. DANIELS: I guess the first key point to note about it is we -- there are a lot of problems with this transaction and you might have heard that we are opposed to it. But it's not on this basis.

5026 And what I'm worried-- I'm actually going to ask Sarah to just describe to you what actually happens in our experience in the SRD market and then maybe come back and just put it in context because I am a little worried about being misconstrued about it, and I will explain why in a second.

5027 Go ahead, Sarah.

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5028 MS. FARRUGIA: Yeah, I mean, I think that to echo what Johnathan has already said, there were two players in the SRDU market before. There will be two players in the SRDU market after this transaction. Rates and prices in the market have been declining which I think signifies competition.

5029 You know, we have Bell plan to continue to offer services in this area. We plan to continue to compete. And so this is one area where we don't feel the transaction should have a bearing.

5030 THE CHAIRPERSON: Thank you. And I will let you finish, Mr. Daniels. But maybe I can just add one small point. You have also heard parties say that the Wholesale Code could be applied in this marketplace so that you might well give us your response to that which I think I can anticipate. But we should hear it from you.

5031 MR. DANIELS: Yeah. I think Sarah has explained that there is really no change in the SRDU market. And the evidence is out there that prices are falling. Our revenues have been going down year over year and we re the new entrant, if you will, and a smaller player in the market. So the notion that there should be some sort of Wholesale Code protection necessary.

5032 The other thing to just keep in mind is that the SRDU market -- part of the competitive forces that's happening is it's the build-out of terrestrial and terrestrial alternatives. And that is really going to pick up steam because if you think of all the programs that are out there to expand broadband, that means more terrestrial. That means more options.

5033 So I think that in the face of the facts of where we've seen a declining revenue and that thee is different alternatives, that there is really no need to intervene in this market. Not a reason to approve the transaction, mind you, but...

5034 THE CHAIRPERSON: Last question from me and then I will check in with my colleagues.

5035 It's a very general one. Most of your intervention and earlier submissions have focused on the impact on the wholesale market. And I wonder -- or I should give you an opportunity to simply express what you think the impact of a transaction, if approved, would be on the retail market.

5036 MR. MALCOLMSON: Sure. I will start.

5037 So I think there will be as a result of the market power Rogers acquires there will be an opportunity and incentive on their part to increase retail rates. The argument that competition at the retail level is going to somehow govern their conduct is one that at least we don't necessarily buy. We think that there will be an incentive and a reason to increase retail rates.

5038 The incentive and reason is they will have just acquired a \$26 billion company. They have taken on \$20 billion of acquisition debt. The new CEO has a mandate to close the Shaw transaction and to pay down acquisition debt and the best way to do that is in two places, retail rates spread over your market share and reducing your

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wholesale costs. We have talked a lot about the wholesale cost reduction but I think there is an incentive to increase retail pricing.

5039 Secondly, in terms of retail impact, if we are right and that market share will result in a diminution of the money in the system to fund the creation and production of Canadian content, you will see either fewer channels or if you see the same number of channels they will be of lesser quality and there will be less Canadian voices and stories told because there will be less money in the system to do that.

5040 THE CHAIRPERSON: Thank you. Thank you for your responses to my questions.

5041 I think my colleagues have some.

5042 Commissioner Anderson?

5043 COMMISSIONER ANDERSON: Thank you. Thank you very much for your submission as well as your written and your oral submissions.

5044 I just have one question. And really, so what I'm hearing is that we should not approve the proposed transaction because of the detrimental effects to the broadcast system. And then the other thing that I'm hearing is that there are so many remedies that are needed from our current regulatory framework that it just doesn't make sense to continue.

5045 So what I'm going to put to you is what we have been hearing all week from the independent discretionary service providers, is that it's not in their interest for this transaction to not go ahead, and it's also -- they have reminded us that time is of the essence when we start thinking or asking them, questions about regulatory framework or visions.

5046 So what would you say directly on those two points?

5047 MR. MALCOLMSON: I would say that I don't envy the position the independents find themselves in. If you think of B.C. and its stable of programming services, relative to the independents, and you see the level of concern we are expressing here and we don't express it lightly relative to Rogers market power, I think the independents are -- I don't know if terrified is the right word. But they are gravely concerned about their future and I'm not sure they are sharing with you their inner fears about what is going to happen.

5048 That's what I would say to you.

5049 The second thing I would say to you is sometimes it's okay for a regulator to say, "No" and ask for more. And I think this is one of those rare instances where you can and you should do that. And I think you can make the system healthier, more vibrant, more competitive if you say, "Rogers, go back to the drawing board. Come back with some divestitures to take your market share down. Come back with some" -- maybe there are remedies.

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5050 Maybe there are safeguards that will save this thing, combined with divestitures, but they are not on the table. And I don't think what they have put in front of you is good enough. And I think it has put you in a difficult position. I don't envy your deliberations.

5051 MR. DANIELS: If I could just add for a second, Commissioner Anderson. In listening to people earlier this week who came out in support of the deal -- TLN and the Ethnic Channels Group said -- and I'm paraphrasing. "We just don't want to be worse off. Protect us from being worse off."

5052 You heard IBG say, "Oh, we have been negotiating with Rogers up to the last minute." And then you have seen some other independent producers suddenly change their position or drop out of participating, making deals with Rogers in order to not oppose the transaction, I think because they are forced into the position of grabbing anything while they can right now while they are negotiating, while the hearing is going on, while this issue is still in front, they're making those deals.

5053 I don't know for sure what is going on but that's what I'm reading between the lines, and I'm just putting it out there to say it.

5054 So when you say that they have come forward, I have heard, "I don't want to be worse off, but we support the deal. At best I'm hoping just not to be worse off." That doesn't really sound like someone is supporting the deal. That sounds like someone who has made the deal to survive for the next couple of years on the condition that they don't oppose the transaction. And again, I could be wrong. I'm not part of the negotiations. I'm just trying to read between the lines of what's going on this week.

5055 And the real question is, well, where are the benefits coming from this transaction? I've heard a lot of people talk about maybe it should be this or that, but we're talking about real harm to the wholesale system, and we don't see how that can be solved without re-examining and re-approaching this transaction entirely.

5056 THE CHAIRPERSON: Thank you, Commissioner Anderson.

5057 Commissioner Desmond?

5058 COMMISSIONER DESMOND: Thank you. I just have a quick question. It's with respect to paragraph 47 of your submission this afternoon. And in your comments, you've referred to the Astral decision in 2012, which now is almost 10 years old, and I suspect that Rogers will tell us that the market has changed considerably since that time. The circumstances are different. So I'm just curious how you would respond to that. Why should we look at Astral as sort of a precedent, or something to rely upon when things have changed significantly in the last 10 years?

5059 MR. MALCOLMSON: It's been 10 years. I'm getting old. I had the misfortune of being outside counsel on that file and losing the case.

5060 But anyway, yes, 10 years have passed, but it's the same -- the issue is the same. And when I say that, the market that you're considering, the wholesale market, the relationship between the programmer and the BDU, is the exact same market that existed in 2012.

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5061 And by that, I mean the exact same market. It's the same issue. It's the question of how much leverage does the programmer have, which was the issue in Astral, versus the BDU. And you concluded too much leverage for the programmer, too much market share that's going to result in the smaller BDUs, the CCSAs of the world, being charged exorbitant rates for content. That was the issue then.

5062 We've now flipped the coin 10 years later, and the issue is a large BDU and programmers seeking access to that BDU platform. And as we said in our presentation, we think that the -- if a denial of Astral was justified in 2012, a denial of this transaction is even more justified. And I say that because of the gatekeeper role that the BDU plays.

5063 Programmers are dependent on BDUs for access to the linear system, and they're dependent on BDU internet service providers for access to the new frontier of internet distribution. So that's why the precedent remain relevant.

5064 And I'll just leave you with one thought. In the US, Comcast and Time Warner tried to merge. So it was a BDU transaction. Programming services were opposed. Comcast and Time Warner were trying to acquire a 30 percent market share.

5065 And the regulators looked at it in that instance and they said that the combined entity would become a "unavoidable gatekeeper". "Unavoidable" meaning, if you wanted to have a viable business, you needed to go to them. You needed to access to their platform. You needed them to pay your reasonable rates in order to survive. And that transaction couldn't proceed due to concerns on the part of the regulators.

5066 This is more market share in a smaller market, and it's the same issue. They will become an unavoidable gatekeeper.

5067 COMMISSIONER DESMOND: Okay. Thank you.

5068 THE CHAIRPERSON: Commissioner Lafontaine?

5069 COMMISSIONER LAFONTAINE: Thank you very much, Mr. Chair.

5070 And thank you very much for your presentation this afternoon. I just have a quick question for you about the SRDU TRDU. I appreciate that this is not the crux of the proceeding for you as an intervenor, but it has been raised as a key issue for other intervenors.

5071 And so, Mr. Daniels, I'm wondering if you could speak a little bit more about the terrestrial relay distribution buildout, because you'd indicated that that is coming and we shouldn't really worry about competition in this market -- this portion of the marketplace because of this potential for buildouts.

5072 So if you could just talk a little bit about that and how -- what kind of time horizon you would see this as taking place.

5073 MR. DANIELS: What I'm referring to, they're satellite-only communities, right, like, in terms of communities that only -- their only access is satellite in terms of them. So what you're talking about here are cable companies who get their back-call, and

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because they're in a satellite-only community, the only option that they really have is either us or Shaw Direct.

5074 And our first point was, "Well, that's the SRDU market and things are changing" -- sorry, that our market -- like, we're competing vigorously in it.

5075 What I was trying to say about -- in terms of that there's dynamic changing is that more fibre is being built. So when we build fibre, it's either us or others. There's the UBF, the Universal Broadband Fund; there's the CRTC Fund; there's all these that are building fibre. In many cases, what that means is that fibre backbones be expended to communities.

5076 And I don't want to say that's always the case. There are cases in Northern Quebec, in Nunavut -- sorry, not Nunavut -- I'm mispronouncing the word -- but ---

5077 THE CHAIRPERSON: Nunavik.

5078 MR. DANIELS: Thank you -- so where you're still going to have satellite as the backbone even though you have fibre within the community. But there are many, many situations where it's a fibre backbone, and if there's a company that's there, that's going to open up terrestrial backbone options for those cable companies.

5079 It's also going to impact the DTH market, as it's going to decrease as well. The DTH market's going to go down because there's going to be cable as alternatives. And that -- I mean, I can see that ourselves in Northwestel, right, where we're building fibre to the home. In partnership and thanks to the support of the CRTC, that's going to provide a cable alternate or a BDU alternative over fibre. That's at the retail, but you're asking me about the wholesale.

5080 I don't know, Sarah, if there's anything else I'm missing in that.

5081 MS. FARRUGIA: No, I think you covered it, Jonathan.

5082 COMMISSIONER LAFONTAINE: So it's really a matter of -- it's years? It's not -- in terms of a time horizon as an alternative relay distribution service for, say, CCSA members?

5083 MR. DANIELS: Yeah. Like, it's not tomorrow this is going to happen, or anything like that. But the difference is everyone's been expanding, but it's happening -- now the funds are starting to flow, and the build is happening over the next three years. This transaction and what the market dynamics -- and I'm just saying the trajectory of it suggests that there's going to be more alternatives available.

5084 COMMISSIONER LAFONTAINE: Perfect. Thank you very much.

5085 Thank you, Mr. Chair.

5086 THE CHAIRPERSON: Thank you. Thank you for your presence today and your participation throughout the proceeding.

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THIS IS EXHIBIT "17" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

**Broadcasting Notice of Consultation CRTC 2021-281,
*Notice of Hearing to consider an application by Rogers
Communications Inc. on behalf of Shaw Communication Inc. to
acquire all of the issued and outstanding shares of Shaw and to
operate various licensed broadcasting distribution undertakings,
the national direct-to-home satellite distribution undertaking
Shaw Direct, the national satellite relay distribution undertaking
Shaw Broadcast Services and the direct-to-home programming
service Shaw Pay-Per-View currently owned by Shaw***

**Final Submission
of
BCE Inc.**

13 December 2021

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1.0 INTRODUCTION

1. We are providing this Final Submission in response to BNC 2021-281, including the oral testimony provided at the public hearing held during the week of 22 November 2021 and the undertakings provided by Rogers. The record of this proceeding clearly shows that this transaction as currently constituted should not be approved.

2. Granting approval to Rogers to acquire Shaw would be highly detrimental to the Canadian broadcasting system. In this regard, and despite having the burden to prove otherwise, Rogers has not demonstrated that this transaction is in the public interest. It has not proposed any divestitures or safeguards whatsoever in recognition of the fact that it will control 47% of the English-language broadcasting distribution market in Canada as well as the Internet access platforms that will control the delivery of linear and over-the-top (OTT) programming for the foreseeable future. Such a level of dominance is unprecedented in a market of this size and will give Rogers the power to "make or break" Canadian programming services, resulting in one provider being able to dictate what content is available to Canadians, on what distribution platforms the content is available, regardless of where they live or which broadcasting distribution undertaking (BDU) they subscribe to. It will also allow Rogers to create a go-to unregulated distribution platform for foreign content providers in Canada.

3. Rogers' strategy to address this problem is to deny the significant impact of the transaction by hiding behind a clear misinterpretation of the Diversity of Voices (DoV) Policy regarding horizontal mergers between BDUs in a manner that ignores the key principles underlying the policy.

4. This submission focuses on the real issue at hand: the detrimental impact this merger will have on programming undertakings and by extension, the entire production industry and Canadian content available to consumers. In particular, we address the following issues, which we firmly believe are key to why this transaction should not be approved:

- Rogers' purposeful misinterpretation of the DoV Policy;
- The appropriate test and analytical framework to assess the market power that a combined Rogers-Shaw would be able to exercise;
- The ability of Rogers to exercise exclusives or preferential treatment; and
- The inadequacies of existing safeguards to address the potential detrimental impact and market power of this proposed merger.

2.0 THE MARKET POWER OF A COMBINED ROGERS-SHAW CLEARLY FAILS THE COMMISSION'S REGULATORY TESTS

5. In Phase III of the public hearing, Commissioner Desmond posed the following questioning to Rogers:

I just wanted to give you the opportunity to respond with respect to the Astral case. ...

And I think you framed the case as being one of exclusivity but yesterday we heard Bell frame it as being a situation of the relationship between the programmer and the BDU and how much leverage there is for one party.

So I'm just curious if you could respond to the comments of Bell in particular where they say this case is more about the bargaining power and the leverage of any one party. And why would the Commission not consider that as something -- as a guide going forward?¹

6. In response, Rogers accused Bell of fabricating the relevant test under the DoV Policy and then simply pointed to the existing safeguards as a reason to approve the transaction.² They assert that the Commission's ownership concerns are correlated to the exclusive rights held by programming services, and do not apply to horizontal BDU mergers such as Rogers-Shaw.

7. Rogers is wrong. The merger review standards set out in the DoV Policy apply to concentration of ownership, not programming exclusivity. Moreover, while programming services may hold exclusive rights, they are also required, by regulation, to offer their services to all BDUs.

8. In initiating the DoV proceeding, the Commission's objective was to examine the existing ownership frameworks, and to consider, in the context of an increasing number of ownership transactions (both horizontal and vertical) whether to introduce new ownership policies. In its Notice, the Commission outlined a relevant distinction between common ownership and concentration of ownership:

While issues of common ownership are generally market-specific, issues of concentration of ownership tend to be on a larger scale. Concerns respecting concentration of ownership most often occur during ownership transactions, when the potential market dominance of the acquiring entity can be measured in terms of revenues and overall audience share. **In other words, "common ownership" issues tend to focus on the impact on a particular market; "concentration of ownership" issues tend to focus on the impact on the system as a whole.**³ [Emphasis added]

9. This distinction has been obfuscated by Rogers as they have repeatedly framed their proposed merger with Shaw as a common ownership issue, arguing that they are simply stepping into the shoes of Shaw, and that, as a result, there is no impact on a particular local market. However, as we and other interveners have argued, the issue is properly framed as one of concentration of ownership, given the impact that this transaction would have on the broadcasting system as a whole.

10. Subsequently, in its DoV Policy, the Commission stated:

With respect to market dominance, the Commission recognizes that, while this concern is largely an economic issue relating to questions of competition, issues of dominance also have social and cultural dimensions. **The gate keeping powers that can result from market dominance may affect the diversity of programming within the Canadian broadcasting system. What is carried, what is commissioned, what is broadcast - these are all issues that intersect with the question of market dominance.**⁴ [Emphasis added]

¹ BNC 2021-281, Transcript, lines 5497 to 5499.

² BNC 2021-281, Transcript, line 5500.

³ Broadcasting Notice of Public Hearing CRTC 2007-5, *Diversity of Voices Proceeding*, paragraph 27.

⁴ Broadcasting Public Notice CRTC 2008-4, Regulatory policy, *Diversity of voices*, (BPN 2008-4), paragraphs 37 and 38.

11. Thus, in order to assess Rogers' proposed merger with Shaw, it is necessary to examine the ownership policy applicable to BDU transactions as well as the analytical framework outlined by the Commission. In this regard, the DoV Policy very clearly outlines the importance that BDU ownership plays in the carriage and packaging of programming services:

BDUs play an important role in ensuring a diversity of voices in the broadcasting system by acquiring and packaging programming services in ways that meet the needs of consumers and serve the objectives of the Act.⁵

12. Specifically, at paragraph 105, the Commission set out ownership policies for BDUs:

The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting distribution undertakings (BDUs) in a market that would result in one person being in a position to effectively control the delivery of programming services in that market. The Commission is not prepared to allow one person to control all BDUs in any given market.⁶

13. Rogers has focused on the last sentence of paragraph 105 to state that the DoV Policy only prohibits BDU mergers in the same retail market. In essence, since there is no overlap of BDU systems with those of Shaw (except for Shaw Direct), Rogers would simply be "stepping into Shaw's shoes". As such, Rogers claims its proposed merger with Shaw is compliant with the DoV Policy.

14. This is a deliberate misreading of the BDU ownership policies in the DoV Policy as well as the entire theory underlying it. The last sentence of paragraph 105 is merely a description of **one** type of BDU transaction that the Commission will (rightly) not allow. Moreover, it was a specific response to concerns about common ownership of BDUs in a local market. More importantly, it is the sentence before it that relates directly to the Rogers-Shaw transaction. As a matter of policy, the Commission will not allow BDU mergers that "effectively control the delivery of programming services". And that is a specific response by the Commission to concerns about concentration of ownership.

15. In fact, in the very next paragraph after 105, the Commission addresses the distinction between these separate common ownership and concentration of ownership tests by further elaborating by the different factors the Commission must consider in its analysis of any BDU transaction:

In analyzing any such transaction, the Commission will be primarily concerned with preserving the diversity of programming voices in a market. It will give due consideration to factors such as:

- the regulatory framework for BDUs;
- **the market share of other BDU services;**
- the impact of unregulated distribution services;
- **the extent to which a transaction could change the respective negotiating power of the BDU(s) and programming service providers;**
- the impact on community channels or community programming undertakings;
- the size of the market; and

⁵ BPN 2008-4, paragraph 98.

⁶ BPN 2008-4, paragraph 105.

- the majority language of the market.⁷ [Emphasis added]

16. The point could be no clearer. The Commission has committed to analyzing BDU mergers on the basis of their impact on market power. The record of this proceeding clearly shows that, with its potential market share of 47%, Rogers would control the delivery of programming services in every English-language market. It is not that Rogers would control the delivery of programming services in any local market.

17. Finally, the DoV Policy specifies market thresholds under which the Commission will approve ownership transactions. In this regard, the Commission will not approve transactions that would result in the control by one person of more than 45% of the total audience share and will closely scrutinize any transaction over 35%.⁸

18. Of note, the 47% market share that a combined Rogers-Shaw would have in English Canada far eclipses the 42.7% English-language audience market share and the 33.1% French-language audience market share that the Commission determined was too great for BCE and Astral.⁹ Moreover, in the Commission's determination of BCE's second application to acquire Astral, wherein the combined BCE-Astral English-language television audience share decreased from 42.7% to 35.8% with the divestitures that we proposed, the actual increase in Bell Media's share of this market was only 1.8%, clearly far below the 20% increase that Rogers would have.¹⁰

19. The same conclusion must be reached here. We recognize that these market thresholds specifically apply to television viewing in the context of a programming undertaking merger rather than BDU market share in the context of a BDU merger. However, as we and others made clear at the oral hearing, this Application is the flipside of the BCE-Astral transaction as both mergers impact the negotiation of the value of content between BDUs and programming undertakings. They are one in the same market.

20. In response to this fact, Rogers argued that:

Bell's claim that the merger of Rogers and Shaw raises the same concerns as the first Bell-Astral application in 2012 is patently false. Bell and Astral both operated television services in the most popular genres and held exclusive rights to many of the most-watched programs and programming services in Canada. It was that exclusivity that compelled the Commission to issue its denial.

21. However, a simple read of the Commission's decision demonstrates that the Astral acquisition raised concerns about market power and concentration of ownership. More specifically, Astral was not about exclusivity, but rather about the extent of horizontal integration proposed by that transaction. As stated by the Commission:

⁷ BPN 2008-4, paragraph 106.

⁸ BPN 2008-4, paragraph 87.

⁹ Broadcasting Decision CRTC 2012-574, *Astral broadcasting undertakings – Change of effective control*, (BD 2012-574) paragraph 53.

¹⁰ Broadcasting Decision CRTC 2013-310, *Astral broadcasting undertakings – Change of effective control*, paragraphs 45 and 46.

However, in the Commission's view, the proposed transaction warrants close scrutiny due to concentration of ownership and market dominance in television and radio in both English- and French-language markets.

...

The Commission...considers that a transaction of this magnitude would adversely affect competition and diversity in the Canadian broadcasting system and thereby threaten its ability to achieve the policy objectives set out in the Act.

...

While BCE submitted that it would be in its own best interest to make content available as widely as possible, **the Commission shares the concerns of many interveners about the ability of a distributor with the content properties of a combined BCE/Astral to exert market power in an anti-competitive manner. These concerns are based on the business incentive of a vertically integrated entity to give an undue preference to its own distribution facilities by restricting access to its programming services or offering them at above market rates to its competitors.**¹¹

22. The above statements make it clear that at the heart of the 2012 Astral application was the potential impact on the relative market power vis-à-vis BDUs and an expanded Bell Media, and in particular, the ability of Bell Media to use its bargaining leverage to not only unduly impact BDUs but also wireless service providers. At the time, this was even acknowledged by Rogers:

Approving the proposed acquisition of Astral will provide the company with an even greater ability to dictate the terms under which Rogers and other BDUs and wireless service providers offer BCE-affiliated services and programming. It will enable BCE to impose unreasonable and anti-competitive terms on those distributors, which will increase costs for consumers and limit their ability to access programming. Those consumers that subscribe to one of BCE's competitors will be forced to pay more for content and, in some instances, will simply be unable to access the content on all platforms unless they switch to BCE's affiliated BDU or wireless service. Clearly, as BCE's broadcasting assets grow larger, it will acquire an enhanced ability to prefer its own BCE-affiliated services and disadvantage third party BDUs, wireless distributors and broadcasters with whom its affiliated distributors and programming services compete.¹²

23. Nowhere in the discussion above is the focus on exclusivity, but rather the focus is on the market power and the negotiating leverage that a company with 42% market share would have – in the same market (but the flip side) that is at issue in this transaction.

24. Thus, the same metric of 45% market share (resulting in transactions not being approved) must be applied to the Rogers-Shaw transaction as parallels can and should be drawn given that both markets are part of the same industry and given the gatekeeper role that Rogers would have over nearly 50% of the English-language BDU market. It is this market share that is the most relevant for the Commission to consider given that the carriage of programming services is negotiated on a national market basis, and not a local-by-local market basis.

25. It is important to understand the significance of this threshold and what it means from a market power perspective. Today, the English-language BDU market functions well because there are three large BDUs (Rogers, Bell and Shaw) with comparable market shares. That ensures an equilibrium in

¹¹ BD 2012-574, paragraphs 54 and 63-64, emphasis added.

¹² Broadcasting Notice of Consultation CRTC 2012-370, *Notice of Hearing*, Rogers Intervention, 9 August 2012, paragraph 28.

the marketplace. A programming service does not need any particular BDU, it can survive with carriage on at least two of the three large BDUs. **No one BDU is a gatekeeper**. The existing market shares of these BDUs provides an equilibrium, which creates a further balance of market power between programming services and BDUs.

26. But if this transaction is approved and Rogers becomes the dominant provider without which no programmer's service can survive, that equilibrium will be destroyed. In effect, Rogers will become the sole determinant as to what services are carried, and therefore, what Canadians get to watch. The equilibrium that protects programmers and the system as a whole will disappear.

27. Rogers simply ignores this fact and meagrely commits to carry 45 independent services and again tries to hide the issue of its market power by claiming this remedy is about preserving its commitments to existing independents given that Corus will no longer be exempted from the linkage requirements. However, this solution is wholly inadequate. It ignores non-independents including Bell Media; it ignores third language services; and, is cleverly designed to preserve the market power threat over independents as well, as Rogers will not commit to carrying all independent programming services. Unless Rogers commits to continued carriage of **all** programming services carried by Rogers and Shaw today, its market share will enable it to use the threat of non-carriage to extract unreasonable and damaging concessions from all Canadian programming services.

28. In their oral reply during Phase III, Rogers was asked whether they use the threat of dropping a service as a negotiating tactic and provided the following response:

I guess I'll say at the outset that using the threat of dropping channels is not the way or is not our usual practice in terms of negotiating with a partner with whom we're going to renew an agreement. So as we all know, four months prior to renewal, we enter into discussions to renew, and insofar as that takes place and we both intend to renew, then we have negotiations. And I will honestly say that using that threat to drop is not our practice.

...

And I will tell you quite honestly, the only instances where a channel has not made it is where the penetration has fallen to an extremely low threshold, and that would be the only occasion where we have made that determination.¹³ [Emphasis added]

29. Our own experience with Rogers proves that is not the case. #

#

Filed in confidence with the CRTC.

¹³ BNC 2021-281, Transcript, lines 5490 and 5492 (emphasis added).

30. We have already witnessed the impact of the market power that a combined Rogers-Shaw would have. At the hearing, we saw a number of independent programming services not providing further comments, changing their position and/or dropping out of the process entirely. It appears they made carriage deals with Rogers. Facing the uncertainty of a BDU with that kind of potential market power, these services have essentially grabbed the deal they could get – especially as this hearing represented the last vestige of any negotiating power they would have against Rogers. In so doing, we have heard them explain their actions as hoping not to be worse off following the transaction. That does not sound like an endorsement of this transaction by these services, but rather their response to being exposed, with little option but to make a deal with Rogers now, and survive the next few years. However, as we pointed out at the hearing, the concern that is relevant for the long term is the harmful impact that Rogers' market power would have on the entire broadcasting system.

31. While Rogers would like to interpret our opposition to their Application as ironic since we also attempted to acquire Shaw, it is important to note that we did not lose that bid on the basis of price. As is clear [in Shaw's document], we matched the price offered by Rogers. However, we also foresaw the very real regulatory concerns with the transaction. Unlike Rogers, we were not prepared to solely carry that risk. As stated in Shaw's Notice of Special Meeting of Shareholders:

Mr. Shaw contacted the Chief Executive Officer of Party A on March 2, 2021 to provide feedback on Party's A proposal, including to advise him that the regulatory issues with Party A's proposal would need to be addressed if Party A was to move forward in the process. Party A's CEO advised Mr. Shaw that Party A was not prepared to amend its proposal to address those issues.¹⁴

32. To be clear, our regulatory approach recognized that we would not have been able to have a market share of the size that Rogers is now proposing for itself. Divestitures of terrestrial BDU licences would have to be required to lower our market share to levels permitted under the DoV Policy.

33. However, if the Commission decides to allow the level of ownership concentration proposed by Rogers, then it opens the door for more mergers of this size and scale. Without a doubt, approval of the Rogers-Shaw transaction as well as the regulatory arguments that underpinned Rogers' justification for a 47% market share will establish new permissible levels of consolidation for the industry going forward. This concern was also expressed Channel Zero.

And you've got two of Canada's biggest cable companies coming together to take 50 percent of the market. That may -- I doubt that's the end of it. I mean, there is going to be more acquisitions because scale does help if it's directed in the right way. And all I would say about Bell and Telus is, you know, it would not surprise you, I'm sure, if some merger acquisition -- some merger application or some merger occurred at some point there.¹⁵

34. In addition, not only will it set the threshold for acceptable market shares, it will also set the terms for what behaviour is permitted in the BDU and OTT programming marketplace.

¹⁴ <https://www.sec.gov/Archives/edgar/data/932872/000119312521129224/d99422dex992.htm> at pages 39. For the record, BCE is Party A.

¹⁵ BNC 2021-281, Transcript, lines 4375 and 4376.

2.1 Exclusive or preferential distribution programming content

35. Throughout this merger review process, interveners, including Bell, have expressed concerns about the ability for a BDU with the scale and size of Rogers-Shaw to grant itself exclusive or preferential access to must-have programming content. In response, Rogers asserts that any such action would be contrary to the basic strategy of any programming service (i.e. reaching the largest number subscribers possible). Whether it be an affiliated service such as Sportsnet or an online VOD service like Disney+, Rogers argues that the benefits of the widest distribution possible outweigh the costs of limiting distribution to any one platform.

36. We disagree. Any such strategy is not a principle in and of itself. It is simply a reflection of the market and of the factors involved. If those factors change, especially in such a fundamental way as is being proposed by the merger of Rogers-Shaw, then the market itself will also change.

37. With close to 50% of BDU subscriptions, Rogers would be incentivized to harness that market power by securing exclusive and/or preferential rights to content. Similarly, a programming service could be incentivized to limit its distribution to Rogers-Shaw. For example, Rogers could offer minimum revenue guarantees to foreign streaming services, guarantees that cannot be matched by BDUs with much less market power. In effect, Rogers could pay more, or at least enough to match the costs of services forgoing distribution with other BDUs. As a result, Rogers would act as the gatekeeper, becoming the first and only place with which these services would negotiate access arrangements.

38. Our concerns are not far-fetched, nor are they hypothetical. Videotron has launched two hybrid VOD services: Club Illico and Vrai. In each case, distribution of these services is not maximized. According to Rogers this outcome is not rational. But at 50% market share, Videotron has proven that it is economically rational. Videotron clearly decided to limit these programming undertakings to only its own BDU in order to leverage its significant BDU market power to increase Videotron BDU subscriptions (as well as those for Internet, Mobile and other telecommunications services). While also available on a direct-to-consumer (DTC) basis, those options for Club Illico and Vrai are clearly inferior, essentially designed not to sell and instead maximize the *de facto* exclusivity available from Videotron.

39. During the hearing, a number of interveners, including us, noted that Rogers had recently entered into an agreement with Disney+ for direct access to that application for Rogers Ignite customers. In its reply at the hearing, Rogers downplayed the impact of such an agreement, asserting that any carriage deal with Disney+ is based on innovation (i.e. the Ignite platform), and not market power.

The power that Rogers had is the power of the platform; it's not market power, and the power of that platform is technology innovation, and that technology innovation is good for Canadian consumers.¹⁶

40. The initial launch of Netflix by IPTV BDUs was an example of platform power. Only that platform had the technology capacity needed to provide BDU subscribers with access to the Netflix application. Cable BDUs did not.

¹⁶ BNC 2021-281, Transcript, line 5443.

41. Rogers' assertions are false, and are an attempt to mislead the Commission about the commercial rationale for these carriage agreements. There is no technological basis for Disney+ to have entered into an agreement with Rogers. There are no technological impediments to competing IPTV BDUs also accessing the Disney+ application and also making it available to their subscribers. Instead, this is all about market power. It is about a potentially dominant BDU securing exclusive/preferential access to programming content, not only to drive more BDU subscriptions, but also other bundled offers for Internet, Mobile and other telecommunications services.

42. The current market is more balanced. Neither Rogers, Shaw, nor Bell, have sufficient size or scale to affect the normal course strategies for programming services and BDUs. It is much more difficult for these BDUs to secure exclusive offers, and it provides a greater incentive for programming services to work with multiple BDUs to fulfill their distribution objectives and targets.

2.2 Both current and potentially additional safeguards are inadequate

43. In its testimony during the public hearing, Rogers argued that the current set of regulatory safeguards are effective and sufficient to address any concern that might arise as a result of their Application being approved. However, as we noted during our Phase II appearance, this is not the case.

44. With respect to the Wholesale Code, it was not designed to protect programming undertakings from a BDU with a 47% market share. Rather, it was designed to address concerns about vertical integration; to prevent large programming undertakings from forcing terms on small BDUs; and to protect consumers from disputes between programming undertakings and BDUs. To be clear, the Wholesale Code does not and cannot address the market power that a combined Rogers-Shaw would have.

45. In any event, there are three issues with the Wholesale Code and other safeguards. First, the Wholesale Code is subject to each party's interpretation of it. For example, what is a reasonable rate, what is an unreasonable penetration-based or volume-based rate card, what is comparable marketing support and what is the best available package, will vary depending on whether you are a BDU or a programming service. A BDU with almost a 50% market share will set the bar for "reasonableness" at a much different level than one that knows it must compete with other BDUs with comparable market share in order to secure deals with Canadian programming services.

46. Second, and related to this is that safeguards have loopholes, such that parties can interpret and step away from the spirit of the safeguard but still technically be compliant with the letter. In this regard, as we noted above, Rogers has committed to carrying 45 independent services; however, they have not identified those services, thus preserving for themselves the power to threaten every independent service that they are the one to be dropped. Moreover, Rogers did not make any commitments for Bell Media nor third-language services ensuring that they can threaten to drop any such service unless they acquiesce to Rogers' unreasonable demands.

47. Third, with respect to dispute resolution processes, this Commission process always takes time to resolve. Time is something that programming undertakings do not have the luxury of when Rogers is trying to extract concessions in order to maintain carriage. To quote Rogers from its 2012 intervention in BNC 2012-370, "An after-the-fact complaints-driven mechanism to resolve disputes is an imperfect, expensive and time-consuming tool."¹⁷ Moreover, dispute resolution, and the imposition of standstill, have been developed with the specific objective of avoiding disruption of service. Laudable as it may be, it clearly acts in favour of BDUs. Rates and carriage are frozen until the dispute is resolved.

48. It is worth noting that the pre-cursor to the Wholesale Code was the conditions of licence (COLs) that BCE itself proposed in its second application to acquire Astral in order to address the Commission's concerns expressed in BD 2012-574 regarding the market power of BCE-Astral. Of note, these safeguards were only acceptable as they were combined with significant divestitures of programming services that decreased BCE's proposed market share from 42.7% to 35.8%. To clarify, it was only after committing to both divestitures and safeguards that the Commission determined that BCE had addressed the harm to the broadcasting ecosystem that would have resulted had the Commission approved the first application to acquire Astral.

49. None of the current safeguards, nor any new safeguards, address the more fundamental concerns about market power and concentration of ownership that this transaction presents. While we recognize that several interveners have proposed new safeguards, in our view, those safeguards are not practical or realistic. The Commission would have an administrative and enforcement burden that will be impossible to meet; without a doubt, there will be numerous claims of abuse of market power and renewed claims for even more safeguards.

3.0 CONCLUSION

50. Granting approval to Rogers to acquire Shaw will have a transformative impact on the Canadian broadcasting system, one that would be highly detrimental overall. In this regard, Rogers has not proposed any divestitures or safeguards whatsoever in recognition of the fact that it will be the dominant BDU in English Canada, with control over nearly half of the market. As the Commission determined with BCE's 2012 application to acquire Astral, this Application by Rogers should be rejected as they have not demonstrated that its proposal is the best possible in the circumstances. It would, of course, be open to Rogers to return with an amended application that includes significant divestitures and safeguards that would ensure that the current equilibrium between BDUs and programmers is maintained. Consequently, the Commission should conclude that approval is not in the public interest and deny the Application outright.

*** End of Document ***

¹⁷ BNC 2012-370, Rogers Intervention, 9 August 2012, paragraph 49.

PUBLIC

THIS IS EXHIBIT "18" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

Broadcasting Notice of Consultation CRTC 2021-281

**Application by Rogers Communications Inc., on behalf of Shaw
Communications Inc., for Authority to Acquire Effective Control of Shaw
Communications Inc.**

Final Comments of TELUS Communications Inc.



13 December 2021

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1.0 Introduction

1. At the outset of the hearing in this proceeding, the Chair stated that “...it is the responsibility of the Applicant to demonstrate that a transaction is in the public interest. In this case, Rogers bears the burden of proof.”¹
2. To satisfy its burden of proof, Rogers was required to demonstrate that:
 - approval of the proposed transaction is in the public interest;
 - the tangible and intangible benefits of the transaction are commensurate with the size and nature of the transaction; and
 - the application represents the best possible proposal in the circumstances.²
3. The Commission considers this analysis to be particularly important when dealing with a large transaction that has the potential to reshape the Canadian broadcasting system.³ This is *a fortiori* such a transaction. It will give Rogers unprecedented scale and market power in the broadcasting and broadband sectors. This will allow Rogers to foreclose competition in ways that will dictate the future direction of the broadcasting sector, including by 1) abusing its vertically integrated status to sharply raise costs for its competitors or deny them content altogether by migrating it to online platforms, 2) gaining exclusive access to foreign streaming services, and 3) becoming an unavoidable gatekeeper for Canadian programming services.
4. More broadly, if it is approved this transaction will also drive the need for further consolidation in the broadcasting sector, by TELUS and others, in an attempt to seek competitive parity through comparable scale. It will become the blueprint for future consolidation in the sector.
5. Nevertheless, Rogers has steadfastly refused to acknowledge, let alone address, any of the concerns raised by the transaction. Incredibly, Rogers has even refused to acknowledge that the proposed transaction would result in any consolidation within the broadcasting system.⁴
6. Consistent with that wilfully myopic approach, Rogers proposed no meaningful safeguards in its application. It has only belatedly and begrudgingly offered or accepted a few minor safeguards that are inadequate to address the concerns raised by the transaction. Rogers’ refusal to meaningfully engage in the regulatory process is far from sufficient to satisfy the applicant’s onus, which includes an onus to propose adequate safeguards to address the concerns raised by its application.⁵
7. Rogers has also failed to offer any meaningful benefits for the broadcasting system. The tangible benefits are insubstantial compared to the overall value of the transaction, and any

¹ Broadcasting Notice of Consultation CRTC 2021-281, Transcript at para. 14 [“Transcript”].

² Broadcasting Notice of Consultation CRTC 2021-281, *Notice of Hearing*, 12 August 2021 [“BNOC 2021-281”].

³ Broadcasting Decision CRTC 2012-574, *BCE Inc., on behalf of Astral Media inc.*, 18 October 2012, at para. 9.

⁴ Transcript, at paras. 1226-1231.

⁵ *Supra* note 3, at para. 66.

purported intangible benefits are largely unrelated to the broadcasting system and incapable of outweighing the harms created by the transaction. Those that can be considered relevant to the broadcasting system largely consist of investments that are already being made, or that will be made irrespective of the merger.

8. When conducting its analysis of a proposed ownership transaction, the Commission must be satisfied that the transaction would provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians sufficient to outweigh the concerns raised by the transaction.⁶ What Rogers has offered falls far short of that threshold, and surely cannot represent the best possible proposal in the circumstances.
9. It is therefore abundantly clear that Rogers has failed to discharge its burden to demonstrate that the proposed transaction is in the public interest. Accordingly, its application must be denied.

2.0 Rogers has failed to meaningfully engage with the regulatory framework

10. The Commission's decision on whether a proposed transaction is in the public interest must take into account a wide set of factors under the Act. The public interest is reflected in the numerous objectives of the Act and the Canadian broadcasting policy set out in section 3(1) of the *Broadcasting Act* ("Act").⁷
11. The principles articulated in the Diversity of Voices Policy ("DoV Policy") inform the Commission's determination of whether a transaction is in the public interest. In analyzing transactions involving changes of ownership, the Commission is primarily concerned with preserving the diversity of programming voices in a market, and will give due consideration to a broad array of factors.⁸ The DoV Policy also explicitly recognizes that preserving the diversity of programming voices in a market requires the Commission to focus on ensuring effective competition for BDU services.⁹
12. Throughout this proceeding, Rogers has repeatedly tried to avoid addressing the public interest issues raised by its application by mischaracterizing the analytical framework under the DoV Policy.¹⁰ In particular, it has focused very narrowly on the lack of overlap between Rogers and Shaw in Western BDU markets to argue that the proposed transaction will not reduce competition and is consistent with the DoV Policy.
13. Rogers has used this approach to try to narrow the scope of issues under consideration and brush aside all of the obvious concerns relating to competition and diversity that flow from the transaction – whether they were raised by intervenors or by the Commission itself at the

⁶ *Id.* at para. 68.

⁷ *Id.* at paras. 13 and 17.

⁸ CRTC 2008-4, at para. 106. See also BNO 2021-281, where the Commission cites this framework.

⁹ *Id.* at para. 103.

¹⁰ See, for example, 2021-0228-4, Rogers' Application, 13 April 2021, "Appendix 1 – Supplementary Brief", at paras. 23-29 ["Rogers Application"]; see also Transcript at para. 1227.

hearing. For example, Rogers argued that this transaction, which combines two of the largest vertically integrated entities in the Canadian broadcasting sector, would not result in any further consolidation in the broadcasting system. Its basis for that conclusion was that “[w]e do not compete with Shaw today in any market. Therefore, there is no consolidation.”¹¹

14. However, that position is clearly untenable. First, it is inaccurate since Rogers does currently compete with Shaw in Eastern markets. If approved, the merger would immediately remove a competitor (Shaw Direct) in Eastern Canada. Second, and more importantly, it completely ignores the unprecedented scale that Rogers will gain if the transaction is approved, and all of the anti-competitive effects that scale will create. These anti-competitive effects are obviously relevant to the question of whether the transaction is in the public interest.
15. Similarly, when the Commission asked Rogers to comment on the substantial imbalance in leverage and negotiating power between Rogers and other BDUs and programming services that would result from this merger, Rogers tried to avoid addressing the issue by stating: “That is not the test under the Diversity of Voices. Bell has fabricated that. That is not the test.”¹²
16. However, what Rogers calls “the test” under the DoV Policy is not a test at all. It is a policy articulated by the Commission, namely, that it “will not approve applications...that would result in one person being in a position to effectively control the delivery of programming services in [a given BDU] market.”¹³ This is merely a “bright line rule” for denial of an application, and cannot be used to derogate from an applicant’s burden to demonstrate that a transaction is in the public interest.
17. As a result of this approach, Rogers has failed to meaningfully address the impact of the proposed transaction on the public interest, including the impacts on competition and the diversity of programming voices in the market. As the applicant bearing the onus to demonstrate that the transaction is in the public interest, it was incumbent on Rogers to engage in good faith with the regulatory framework set out by the Commission. Instead it chose to adopt a narrow lens that would allow it to avoid any serious attempt to grapple with the anti-competitive effects of the merger.
18. This is a critical deficiency in Rogers’ application. Rogers cannot meet its burden of proof when it has effectively chosen to disregard that burden.

3.0 The proposed transaction is not in the public interest

19. The Commission has recognized that a transaction of sufficient magnitude can adversely affect competition and diversity in the Canadian broadcasting system, and threaten the Commission’s ability to achieve the policy objectives (which reflect the public interest) set

¹¹ Transcript, at para. 1227.

¹² Transcript, at paras. 5497-5500.

¹³ *Supra* note 8 at para. 105.

out in the Act.¹⁴ That principle is clearly applicable to the proposed transaction, which is one of the most significant ever examined by the Commission.

20. The intractable problem at the heart of this transaction is the unprecedented scale that it will bestow upon Rogers, and the market power and dominance that scale will create. Rogers will have a distribution network that covers 47% of English-language subscribers, and its network will pass 80% of homes in English Canada, giving it significant incentive and ability to leverage its scale to grow its broadcasting and broadband market control even further. The scale that Rogers will gain from this transaction will allow it to effectively control the terms and conditions on which programming will be available to Canadian consumers, or even whether programming is available to Canadians, and enable it to act in a number of ways that will undermine the health of the Canadian broadcasting system and the public interest.

3.1 Rogers will have increased incentive and ability to deny rivals access to programming

21. Rogers is a vertically integrated entity that controls some of the most popular “must have” sports programming in Canada. It therefore has the incentive to use programming exclusivity to drive subscriptions to its distribution business instead of seeking the broadest possible distribution for its programming services. Scale will make it more profitable for Rogers to forego distribution of its content by rival BDUs, since its own distribution platforms alone will reach nearly half of English language subscribers, with the potential to grow to 80%. Gaining subscribers to its BDU service will also allow Rogers to potentially sell higher margin Internet and mobility subscriptions to those customers. Rogers will therefore have sharply increased incentives to foreclose access to the content its controls.

22. The existing regulatory framework provides a pathway for Rogers to deny its rivals access to content, by migrating programming to online platforms where exclusivity is permitted if it is tied to a BDU subscription. Even for linear services, Rogers will be able to deny rival BDUs access to new features and functionalities, for which there is no guarantee of access under the existing framework.¹⁵ Rogers will also be able to effectively delay or deny rival BDUs’ access to content by demanding unreasonable rates or terms of carriage, which will impair their ability to offer an attractive service to their customers.

23. As outlined later in this submission, existing competitive safeguards are insufficient to prevent these anti-competitive behaviours, or the resulting harm to competition and to consumers.

3.2 Rogers’ scale will lead to *de facto* exclusivity for foreign streaming services

24. Scale will also allow Rogers to secure exclusivity from foreign streaming services for its own BDU customers. Rogers argues that the Digital Media Exemption Order (“DMEO”) prohibits exclusive or preferential arrangements with non-Canadian online services,¹⁶ but that is

¹⁴ *Supra* note 3, para. 63.

¹⁵ Broadcasting Decision CRTC 2021-341, *Complaint by the CCSA against Bell Media alleging undue preference and disadvantage*. 15 October 2021.

¹⁶ Rogers Response to CRTC Undertakings, RFI Answer 8.

incorrect. Section 5 of the DMEO only prohibits offering television programming on an exclusive or preferential basis in a manner that is dependent on subscription to a specific mobile or Internet access service. The DMEO does not prohibit offering television programming on an exclusive or preferential basis in a manner that is dependent on subscription to a specific BDU service.

25. At the hearing, Rogers sought to cast doubt on the notion that they would be able to acquire exclusive access to foreign content. In response to statements made by TELUS regarding the impact of the merger on its negotiations with Disney, Rogers said that its arrangement with Disney does not provide it with exclusive BDU distribution rights. However, that statement misses the mark. TELUS did not suggest that Disney had provided Rogers with contractual exclusivity tied to its BDU service. On the contrary, TELUS stated that Disney was prepared to enter into a distribution arrangement with TELUS, subject to a significant revenue guarantee. From TELUS' perspective, that amounted to *de facto* exclusivity since no other BDU has the scale that Rogers expects to gain from this merger, which is what allowed Rogers to set that precedent. TELUS' perspective was based on its perception of the timing of events surrounding its negotiations with Disney and the public statements made by Rogers, and not on any knowledge of the terms of Rogers' agreement with Disney.
26. Thus, while the DMEO does not prohibit Rogers from securing exclusivity for its BDU service directly through contractual means, in practice, the far more significant risk posed by the merger is that Rogers' scale will lead to *de facto* exclusivity because it will be able to agree to distribution terms that other BDUs cannot hope to match. Rogers' commitment not to enter into exclusive arrangements following the close of the transaction¹⁷ is therefore inadequate to address this concern.
27. Further, because Rogers will be able to offer access to nearly half of English language subscribers in Canada, many foreign streaming services will be able to forego the significant costs associated with selling directly to Canadian consumers, or integrating their application with multiple BDU systems, and rely exclusively on distribution through Rogers. This will be an attractive option for foreign streamers as they seek to launch in multiple countries around the world as quickly as possible. Thus, a foreign streaming service may well decide to forego launching a direct-to-consumer product in Canada after securing distribution through Rogers, and the result will be that all Canadians that are not subscribed to Rogers' BDU service will not have access to that content.
28. It will be impossible for the Commission to effectively prevent such outcomes. The Commission can (and must, if it approves this application) impose, as a condition of approval, a condition of licence on Rogers requiring that it not enter into exclusive or preferential arrangements with foreign streaming services. However, that condition of licence cannot protect against *de facto* outcomes such as those described above, which would be the result of rational economic choices made by foreign streaming services.

¹⁷ *Id.*

3.3 Rogers will necessarily become a gatekeeper for Canadian programming services

29. The scale Rogers will gain will impoverish the diversity of programming voices in the broadcasting system. Rogers will unavoidably become a gatekeeper for Canadian programming services, as their viability will depend on carriage on Rogers' distribution platforms. Any service that is not carried by Rogers will lose access to half the English language market. Its cost structure will remain the same, but its potential revenues will be halved. This will allow Rogers to "make or break" programming services, and give it tremendous negotiating leverage that will allow it to dictate rates and terms of carriage for services, especially for independent services.
30. Rogers' commitment to carry at least 45 independent programming services for the next three years - which is fewer than the number of services it carries today - is both underwhelming and fails to address the underlying issue. What protection will independent programming services have after the commitment period expires? Will they be forced to accept unreasonable rates and terms or carriage in the meantime, and how will this affect their ability to maintain the quality of their service in the future? Rogers has not only failed to address these relevant questions, at the hearing they suggested that if, in their view, the quality of programming offered by these services were to decline they would cease to carry them after the three year period.¹⁸ This will inevitably threaten the viability of those programming services.
31. The diversity of voices in local news programming will also be diminished. Rogers will deprive the Global television network of nearly \$13 million in annual funding for local news production that it currently receives from Shaw, affecting its ability to create news programming that attracts strong viewership in Alberta and British Columbia. When Global news seeks to replace that lost funding from the Independent Local News Fund, this will greatly reduce the funding available for smaller independent local news stations, many of whom serve smaller markets where neither Global news nor City TV have a presence. The quantity and quality of local news that those stations can produce will suffer as a result.

3.4 Rogers' control over signal transport will undermine competition

32. At the hearing Rogers told the Commission that it would behave no differently than Shaw after taking over its satellite relay distribution undertaking ("SRDU"). Yet it refused to agree to conditions that would implement a rate freeze, or require them to adhere to the Wholesale Code or the standstill rule. Rogers' unwillingness to accept conditions that would hold it to commercially reasonable behaviour is a red flag that the Commission should not ignore.
33. Rogers is a different economic actor than Shaw, and this will be particularly true if this merger is permitted. Shaw does not have the scale to withhold access to its 30 affiliated discretionary services (the Corus channels), so it is in its best interest to ensure that its programming services are available to as many Canadians as possible.

¹⁸ Transcript, at paras. 756-761.

34. However, following the merger Rogers will have sufficient scale that it will not need to rely on other BDUs for distribution of its affiliated services, and in fact, it will want to withhold its programming services from rival BDUs. It will therefore have the ability and the incentive to deny or raise rates for signal transport, as this will be an indirect means of weakening its competition in the BDU market.
35. This will be particularly damaging to smaller independent BDUs that serve rural and remote regions, for whom Shaw's signal transport service is an essential input. Rogers will be able to weaken those BDUs to such an extent that it can acquire them at a substantial discount, thereby further entrenching its market power in both broadcasting and broadband markets.

3.5 Consumers will be harmed

36. The Commission has always recognized that the best way to protect Canadian consumers is by fostering healthy competition in the market for BDU services, and that "a healthy communications system requires entities of various sizes that are able to compete and innovate in a fair environment."¹⁹
37. This transaction will inevitably undermine the welfare of Canadian consumers. By undermining competition in the market for BDU services, Rogers will ensure that consumers have less choice and flexibility, yet pay higher prices. Consumers will pay higher prices because Rogers will have the market power to demand higher prices for its affiliated services, and to demand lower prices from unaffiliated services. Those unaffiliated services will have no protection through the regulatory framework since they are not entitled to dispute resolution if Rogers decides not to carry them. As a result, they will look to other BDUs to recoup that shortfall in revenues. In both cases, those higher prices will be reflected in the cost of the service, or the range of programming, that other BDUs can offer to their customers.
38. Consumers will also be harmed because their ability to access programming will be impaired. The *de facto* exclusivity for foreign streaming services that Rogers' scale is likely to create, as well as Rogers' ability to shift its own programming to online platforms to make it exclusive to its subscribers, will cause consumers to lose access to programming unless they are Rogers subscribers.
39. There will also be little competitive pressure on Rogers to force it to innovate or invest in delivering a better consumer experience, whether in terms of pricing, packaging, or customer service. Even today, pre-merger, Rogers has a very poor track record in customer service as measured by CCTS complaints. For example, the recent annual report released by the CCTS shows a 39.3% year over year increase in complaints across all of Rogers' brands. When combined with Shaw's brands, the post-merger entity would represent a total of 35.9% of overall CCTS complaints.

¹⁹ *Supra* note 3, para 63.

40. These harms to consumer outcomes will only reinforce the existing trend of cord-cutting that is causing Canadian consumers to abandon the regulated system. It will undermine the public interest and further weaken the Canadian broadcasting system.

3.6 Safeguards will not effectively mitigate these harms

41. Notwithstanding the predictable anti-competitive harms outlined above, Rogers refuses to acknowledge these issues and has proposed no meaningful safeguards to address any of the concerns raised by the transaction. Further, it has only begrudgingly accepted a few minor safeguards, such as the application of dispute resolution to the Shaw signal transport business (while refusing to accept more meaningful safeguards such as the Wholesale Code or standstill rule).

42. Rogers has argued that the existing regulatory framework is sufficient on its own to address any potential anti-competitive concerns arising from the transaction. However, the regulatory framework is incapable of adequately addressing the harms outlined above. In some cases, there is no remedy available, and even where a remedy is available, the damage will often be done before it can be obtained.

43. Dispute resolution and final offer arbitration are lengthy processes, and delay works to the advantage of an anti-competitive actor. While a remedy is being sought, it has a *de facto* head start in the marketplace, and its competitors have to live with significant uncertainty regarding their cost for a service while waiting for a regulatory remedy that is not guaranteed. This unequal sharing of risk in dispute resolution and final offer arbitration is a significant problem, and it favours vertically integrated entities (“VIs”) that engage in anti-competitive behaviour.

44. The existing framework also does not guarantee access for features and functionalities, which have become important to the value of a service and which customers expect to have as part of their subscription. The existing framework therefore offers incomplete protection.

45. VIs have also been aggressively challenging the Commission’s jurisdiction to impose competitive safeguards, or to regulate any aspect of the wholesale relationship, before the Courts. They have achieved some success with those efforts, such as when Bell successfully invalidated the Commission’s mandatory order that all licensees comply with the Wholesale Code. If the provisions of the Wholesale Code had not been included as conditions of licence, those safeguards could have vanished overnight.

46. It is therefore clearly inadequate, and self-serving, for Rogers to assert that the Commission should rely on existing competitive safeguards alone. If the transaction is approved, significant and stringent safeguards are required, and conditions of licence to this end (including those proposed by TELUS in the Appendices to its intervention) must be imposed on Rogers as conditions of approval. At minimum, new safeguards must include:

- requiring timely access to all programming controlled by Rogers, including all features and functionality, on all platforms, on commercially reasonable rates and terms of carriage;

- prohibiting penetration-based rate cards for programming that is offered directly to consumers in a competitive manner;
- requiring that the Shaw family divest its controlling interest in Corus Media; and
- requiring the divestment of Shaw Direct, including both Shaw's satellite subscribers and the SRDU business upon which independent distributors and programming services rely on for their business models.

47. However, TELUS reiterates that there is no basis for approval of the transaction. Rogers did not even acknowledge most of these harms in its application, and when they were raised by intervenors or by the Commission, it declined to take any meaningful steps to ameliorate them. It has therefore failed to demonstrate that the transaction is in the public interest.

4.0 Rogers has offered no genuine benefits for the broadcasting system

48. Rogers' burden to prove that the transaction is in the public interest includes a requirement to demonstrate that the tangible and intangible benefits of the transaction are commensurate with the size and nature of the transaction. However, Rogers has offered no genuine benefits to the broadcasting system.
49. The majority of intangible benefits on which Rogers relies are not related to the broadcasting system at all. They include proposals such as entering into R&D partnerships with universities, making unspecified investments in 5G and broadband infrastructure, or even the nomination of Brad Shaw and another member of the Shaw family to the Rogers Board of Directors (which Rogers is required to do under its Arrangement Agreement with Shaw).²⁰ None of these purported benefits are relevant to the Commission's review of this transaction.
50. Any intangible benefits that are related to the broadcasting system are vague, non-specific, non-binding, and self-serving. For example, promises to accelerate to an all-IP platform, to provide new functionalities or services, or to expand into rural and Indigenous communities,²¹ lack any specificity as to when, where, or how those investments would be made. They are as unreliable as they are unenforceable.
51. More significantly, whether they are relevant to the broadcasting system or not, the vast majority of these purported benefits consist of investments that will be made, or are already being made, in the normal course of business regardless of whether the transaction is approved or not.
52. For example, many BDUs have been offering IPTV platforms to Canadians for over a decade without the need for any consolidation. In fact, both Rogers and Shaw partnered with Comcast nearly 5 years ago to offer Comcast's all-IP distribution platform to their customers.

²⁰ Rogers Application para. 59.

²¹ Rogers Application paras. 46-51.

53. Similarly, in respect of 5G, Rogers already claims to operate Canada's largest 5G network,²² an investment it was perfectly capable of making without acquiring Shaw. Further, public statements by Rogers to the investment community undermine this rationale for the merger by affirming Rogers' commitment to continued network expansion in 5G.²³
54. Rogers has therefore failed to demonstrate that the tangible and intangible benefits are commensurate with the size and nature of the transaction. The transaction clearly does not provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians that would be sufficient to outweigh the concerns outlined above regarding competition, scale, vertical integration, and the exercise of market power.

5.0 Conclusion

55. Rogers has manifestly failed to demonstrate that this transaction is in the public interest.
56. For the reasons outlined in these comments, in TELUS' intervention dated September 13, 2021, and during TELUS' appearance at the public hearing, the transaction will undermine competition and the diversity of programming voices in the broadcasting sector, and it will harm consumers. The existing regulatory framework cannot adequately address these harms, and newly imposed safeguards would be an imperfect solution at best.
57. Further, the fact that Rogers is one of the largest vertically integrated companies in the broadcasting sector, and the scale of the resulting entity if it were to acquire Shaw, should preclude its application from qualifying as "the best possible proposal in the circumstances". The best possible proposal would be one that does not acutely magnify concerns relating to vertical integration while creating entirely new and intractable difficulties relating to scale.
58. The best possible proposal also would not force others in the broadcasting and broadband sectors to actively seek consolidation opportunities to maintain competitive parity, while serving as a blueprint for that further consolidation.
59. For all these reasons, TELUS respectfully urges the Commission to deny the application.

*** END OF DOCUMENT ***

²² For example, see "Rogers 5G Network Now Reaches Prince George and Port Alberni in British Columbia" (December 16, 2020), available online at: <https://about.rogers.com/news-ideas/rogers-5g-network-now-reaches-prince-george-and-port-alberni-in-british-columbia> which describes the Rogers network as "Canada's first and largest 5G network" and as offering "10x more coverage than any other carrier".

²³ See, for example, Rogers Communications Inc., "Third Quarter 2021 Results Conference Call Transcript" (October 21, 2021) at 4, available online at: <https://1vjoxz2ghhkclty&c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2021/10/Rogers-Q321-Call-Transcript.pdf>.

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Jacqueline Houston

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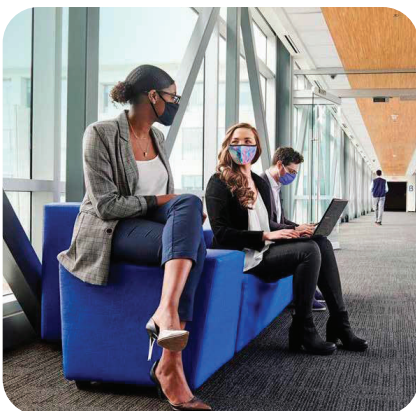
Engage and invest in our people and create a sustainable future

The Bell team brings our strategy to life every day, making an impact on how Canadians connect, work, learn and play as they deliver leading edge technology, develop compelling new content, and support our company and communities. We're committed to providing growth opportunities for our 50,000 employees across the country and to foster a dynamic culture that creates a better today and tomorrow.

CREATING A SUSTAINABLE FUTURE

Reflecting our long-standing commitment to the highest ESG standards, we're now embedding our focus on creating a more sustainable future directly into our six strategic imperatives. As one of Canada's largest companies, we are driven to continually improve our impact and our contribution to society with our connectivity commitments, investments in mental health initiatives, environmental sustainability and an engaged workplace.

We are helping build better communities across the country, and contributing to Canada's pandemic recovery and economic growth in every region. In 2021, we accelerated our investment to deliver broadband connectivity to Canadians in locations large and small. We're donating refurbished computers, printers and other electronic devices to schools through the national Computers for Schools Plus program. And Bell's capital expenditures in R&D of approximately \$500 million annually includes support for university research in 5G, AI and cybersecurity, delivering a stream of new innovation to Canadian homes and businesses. Consistently named one of Canada's Greenest Employers, Bell is working to reduce greenhouse gas emissions and plans to achieve carbon neutral operations by 2025.



Across the country, almost 50,000 dedicated Bell employees are innovating, adapting and ensuring our customers have the best possible experience.

BELL'S EVOLVING COVID-19 RESPONSE

Throughout the COVID crisis, the team has consistently stepped up to provide critical support, connections and information for our customers, communities and each other. We continued to evolve our health and safety protocols in line with the latest public health guidance to protect everyone's health and safety.

This included introducing Bell Workways, a flexible hybrid work model that provides the Bell team with more flexibility, collaboration and support in how and where it works, while continuing to deliver the best networks, services and content to Canadians everywhere. The program builds on the experiences of the pandemic, recognizing the team's strong ability to adapt and deliver results as we move forward from the challenges of COVID-19.

Bell also adapted its COVID protocols throughout 2021, including enhanced health and safety measures in the field, retail stores and other Bell workplaces, prioritizing the well-being of our employees and communities, and developing a phased, adaptable plan for resuming more normal business operations.

Recognizing the ongoing challenges of the pandemic, Bell also continued to lead with enhanced workplace and community mental health supports, including significant investments in community mental health partnerships, and most recently adding to our programs and resources with unlimited mental health benefit coverage for team members and their eligible family members.

AN INCLUSIVE WORKPLACE WHERE EVERYONE BELONGS

Bell is committed to enhancing diversity, equity and inclusion, understanding that different backgrounds, experiences and ideas create a positive work culture and lead to better outcomes. Bell continued to accelerate our work to create an inclusive, equitable and accessible workplace, building new partnerships and making new commitments for action.

BCE 2021 CONSOLIDATED RESULTS

Operating revenues

\$23,449

million
+2.5% vs. 2020

Net earnings

\$2,892

million
+7.2% vs. 2020Adjusted EBITDA ⁽¹⁾

\$9,893

million
+3.0% vs. 2020Net earnings attributable
to common shareholders

\$2,709

million
+8.4% vs. 2020Adjusted net earnings ⁽¹⁾

\$2,895

million
+6.0% vs. 2020Cash flows from
operating activities

\$8,008

million
+3.3% vs. 2020Free cash flow ⁽¹⁾

\$2,995

million
(10.5%) vs. 2020

BCE CUSTOMER CONNECTIONS

Wireless
Total mobile phones ⁽²⁾

+3.2%

9.5 million subscribers
at the end of 2021Retail high-speed
Internet ⁽³⁾

+4.2%

3.9 million subscribers
at the end of 2021Retail TV ⁽⁴⁾

(0.1%)

2.7 million subscribers
at the end of 2021Retail residential network
access services (NAS) lines

(7.5%)

2.3 million subscribers
at the end of 2021

OUR PURPOSE

BCE's purpose is to advance how Canadians connect with each other and the world. Our strategy builds on our longstanding strengths in networks, service innovation and content creation, and positions the company for continued growth and innovation leadership. Our primary business objectives are to grow our subscriber base profitably and to maximize revenues, operating profit, free cash flow and return on invested capital by further enhancing our position as the foremost provider in Canada of comprehensive communications services to residential, business and wholesale customers, and as Canada's leading content creation company. We seek to take advantage of opportunities to leverage our networks, infrastructure, sales channels, and brand and marketing resources across our various lines of business to create value for our customers and other stakeholders.

Our strategy is centred on our disciplined focus and execution of six strategic imperatives that position us to deliver continued success in a fast-changing communications marketplace. The six strategic imperatives that underlie BCE's business plan are:

Bell's
six strategic
imperativesBuild the
best networksDrive growth with
innovative servicesDeliver the most
compelling contentChampion
customer experienceOperate with agility
and cost efficiencyEngage and invest in
our people and create
a sustainable future

In 2022, we embedded our focus on creating a more sustainable future directly into our six strategic imperatives, reflecting our long-standing commitment to the highest ESG standards. As one of Canada's largest companies, we are driven to continually improve our impact and our contribution to society with our connectivity commitments, investments in mental health initiatives, environmental sustainability and an engaged workplace.

(1) Adjusted EBITDA is a total of segments measure, and adjusted net earnings and free cash flow are non-GAAP financial measures. See section 11.3, Total of segments measures and section 11.1, Non-GAAP financial measures in this MD&A for more information on these measures.

(2) Effective January 1, 2021, we changed our wireless operating metrics to reflect our revised approach to reporting wireless subscriber units. Consequently, we are now reporting in two categories, mobile phone subscriber units and mobile connected device subscriber units (e.g. tablets, wearables and mobile Internet devices). Additionally, mobile connected device subscribers now include previously undisclosed Internet of Things (IoT) units (e.g. connected telematics services, monitoring devices, connected cars and fleet management solutions). These changes are consistent with the way we manage our business, reflect our focus on mobile phone subscribers and align to industry peers. As a result, previously reported 2020 subscribers and associated operating metrics (gross and net activations (losses) and churn) have been restated for comparability. See section 11.6, KPIs, in this MD&A for more details.

(3) At the beginning of Q1 2021, our retail high-speed Internet subscriber base was increased by 4,778 subscribers due to the transfer of fixed wireless Internet subscribers from our mobile connected devices subscriber base.

(4) At the beginning of Q1 2021, we adjusted our satellite TV subscriber base to remove 6,125 non-revenue generating units.

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Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

3.7 Employees

The table below shows the number of BCE employees at December 31, 2021 and 2020.

NUMBER OF EMPLOYEES AT DECEMBER 31	2021	2020
Bell Wireless	8,415	8,926
Bell Wireline	35,691	35,559
Bell Media	5,675	6,219
Total ⁽¹⁾	49,781	50,704

(1) The total number of BCE employees at the end of 2021 was 49,781, down from 50,704 at December 31, 2020 due to natural attrition, retirements and workforce reductions, partly offset by call centre hiring.

Approximately 39% of BCE employees were represented by unions and were covered by collective agreements at December 31, 2021.

The following collective agreements covering 250 or more employees were ratified in 2021 or early 2022:

- the collective agreement between Unifor and Bell Canada (Craft) covering approximately 2,950 craft employees expired on November 30, 2020. A new collective agreement was ratified on August 13, 2021.
- the collective agreement between Unifor and Bell Media (CTV Agincourt) covering approximately 465 employees expired on December 31, 2020. A new collective agreement was ratified on July 21, 2021.
- the collective agreement between International Brotherhood of Electrical Workers (IBEW) and Bell MTS covering approximately 420 craft employees expired on January 31, 2021. A new collective agreement was ratified on March 19, 2021.

- the collective agreement between International Brotherhood of Electrical Workers (IBEW) and Northwestel Inc. covering approximately 315 craft and clerical employees expired on December 31, 2021. A new collective agreement was ratified on December 10, 2021.

The following collective agreements covering 250 or more employees will expire in 2022:

- the collective agreement between Unifor and BTS (Ontario, Craft) covering approximately 2,990 craft employees will expire on May 6, 2022. Negotiations are ongoing.
- the collective agreement between Unifor and BTS (Quebec, Craft) covering approximately 1,815 craft employees will expire on May 6, 2022.
- the collective agreement between Unifor and Bell Media (CTV Toronto Specialties) covering approximately 575 employees will expire on May 31, 2022.
- the collective agreement between Unifor and Bell MTS covering approximately 535 clerical employees will expire on December 19, 2022.

The following describes the status of collective agreements covering 250 or more employees that have already expired:

- the collective agreement between Unifor and Bell Canada (Clerical) covering approximately 4,175 clerical employees expired on November 30, 2021. Negotiations are ongoing.
- the collective agreement between Unifor and Bell Canada (Atlantic, Craft and Clerical) covering approximately 1,575 craft and clerical employees expired on December 31, 2021. Negotiations are ongoing.
- the collective agreement between TEAM and Bell MTS covering approximately 600 employees expired on February 19, 2022. Negotiations are ongoing.

3.8 Corporate responsibility

GENERAL

ESG practices form an integral part of BCE's corporate responsibility approach. Since our founding in 1880, Bell has been enabling Canadians to connect with each other and the world around them. Our approach to corporate responsibility is to manage the company in ways that support the social and economic prosperity of our communities while safeguarding the environment, with a commitment to the highest ESG standards.

BCE has implemented a range of ESG policies that are supported by various programs and initiatives. These policies address issues of importance to our many stakeholders, including: preventing conflicts of interest; protecting company assets; safeguarding privacy and confidentiality; treating clients, business partners, team members and competitors with respect and honesty; fostering a diverse and safe workplace; and protecting the environment.

These BCE policies include, among others, the following:

- Code of Business Conduct
- Data Governance Policy
- Information Security Policy
- Privacy Policy
- Environmental Policy
- Supplier Code of Conduct
- Procurement Policy
- Political Contributions Policy

- Journalistic Independence Policy
- Mandatory Reporting of Internet Child Pornography
- Health & Safety Policy
- Employee Privacy Policy
- Mental Health Policy Statement
- Workplace Violence and Harassment Prevention Policy
- Community Investment Policy

We report annually on our corporate responsibility performance and our ESG practices in our Corporate Responsibility Report, available at [BCE.ca](https://www.bce.ca). The report, together with the information and documents available in the Responsibility section of BCE's website, presents Bell's corporate responsibility performance. We report on the ESG topics that are of greatest importance to our stakeholders and which could have a relevant impact on our business. These include diversity, equity and inclusion, employees' wellbeing and mental health in the workplace and the community through our Bell Let's Talk mental health initiative, climate change, circular economy, and data governance and information security. In our Corporate Responsibility Report, we describe how we manage these topics and we also report on our performance against targets we have set for ourselves. It has been prepared in accordance with the Global Reporting Initiative (GRI) Standards-Core option and adheres to the principles of the United Nations Global Compact (UNGC). It describes actions we have taken to implement these guidelines and principles, and serves as our Communication on Progress (COP), as required for all companies that endorse the UNGC. In addition, we report

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Jacqueline Houston

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JACQUELINE HOUSTON

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Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

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The power of our purpose



2021 ANNUAL REPORT



2021 financial and operating highlights

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(\$ in millions except per share amounts)	2021	2020	% change
Operations			
Operating revenues	\$ 16,838	\$ 15,341	9.8
Operating income	\$ 3,074	\$ 2,482	23.9
Net income	\$ 1,698	\$ 1,260	34.8
Earnings before interest, taxes, depreciation and amortization (EBITDA) ¹	\$ 6,290	\$ 5,494	14.5
Adjusted EBITDA ¹	\$ 6,069	\$ 5,701	6.4
Adjusted EBITDA margin ¹ (%)	36.0	37.0	-
Basic EPS	\$ 1.23	\$ 0.95	29.5
Adjusted basic EPS ²	\$ 1.07	\$ 1.06	0.9
Dividends declared per share	\$ 1.2710	\$ 1.18495	7.3
TTech segment			
Operating revenues	\$ 14,528	\$ 13,604	6.8
Adjusted EBITDA	\$ 5,476	\$ 5,177	5.7
Adjusted EBITDA margin ¹ (%)	37.6	37.9	-
DLCX segment			
Operating revenues	\$ 2,310	\$ 1,737	33.0
Adjusted EBITDA	\$ 593	\$ 524	13.2
Adjusted EBITDA margin ¹ (%)	21.6	24.0	-
Financial position			
Total assets	\$ 47,994	\$ 43,273	10.9
Long-term debt	\$ 20,852	\$ 20,288	2.8
Net debt ³	\$ 20,535	\$ 19,826	3.6
Return on common equity ⁴ (%)	11.8	10.1	-
Liquidity and capital resources			
Cash from operations	\$ 4,388	\$ 4,574	(4.1)
Capital expenditures (excluding spectrum licenses)	\$ 3,498	\$ 2,775	26.1
Capital expenditure intensity (%)	20	18	-
Free cash flow ¹	\$ 777	\$ 1,435	(45.9)
Net debt to EBITDA – excluding restructuring and other costs ¹	3.17	3.45	-
Customer and health connections³ (thousands)			
Mobile phone subscribers	9,290	8,923	4.1
Connected device subscribers	2,134	1,796	18.8
Internet subscribers	2,271	2,138	6.2
TV subscribers	1,265	1,215	4.1
Residential voice subscribers	1,123	1,164	(3.5)
Security subscribers	804	707	13.7
Healthcare lives covered	20,600	16,900	21.9

1 These are non-GAAP and other specified financial measures, which do not have standardized meanings under IFRS-IASB and might not be comparable to those presented by other issuers. For more information, see Section 111 of the MD&A.

2 Net income attributed to equity shares for a 12-month trailing period, divided by the average common equity for the 12-month period.

3 Certain customer connections have been adjusted effective January 1, 2021. For details, see Section 113 of the MD&A.

Note: Certain comparative information has been restated to conform with the 2021 presentation.

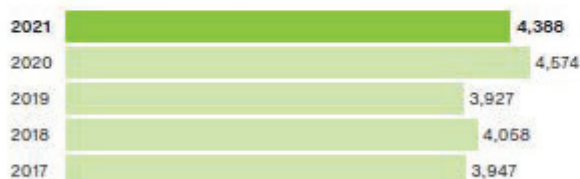
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Annual operating statistics

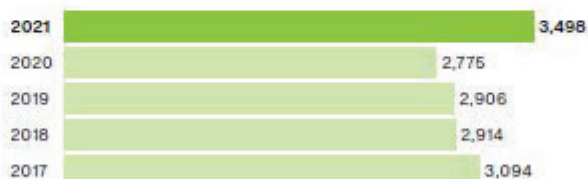
	Applying IFRS 16			Excluding IFRS 16	
	2021	2020	2019	2018	2017
Cash flow statement information					
Cash provided by operating activities (millions)	\$ 4,388	\$ 4,574	\$ 3,927	\$ 4,058	\$ 3,947
Cash used by investing activities (millions)	(5,466)	(6,165)	(5,044)	(2,977)	(3,643)
Cash provided (used) by financing activities (millions)	953	1,904	1,238	(1,176)	(227)
Profitability ratios					
Ratio of dividends declared to cash provided by operating activities less capital expenditures (excluding spectrum licences) ¹	192%	84%	133%	n/a	n/a
Dividend payout ratio, net of dividend reinvestment plan effects ²	140%	67%	115%	n/a	n/a
Return on common equity ³	11.6%	10.1%	16.7%	16.4%	17.1%
Debt and coverage ratios					
Earnings coverage ratio	3.9	3.2	4.0	4.4	4.6
EBITDA interest coverage ratio ²	8.4	7.3	7.5	8.4	8.9
Net debt to EBITDA – excluding restructuring and other costs ²	3.17	3.45	3.20	2.54	2.67
Other metrics					
Free cash flow ² (millions)	\$ 777	\$ 1,435	\$ 932	\$ 1,207	\$ 966
EBITDA ⁴ less capital expenditures (millions)	\$ 2,978	\$ 2,978	\$ 2,782	\$ 2,507	\$ 1,933
Capital expenditures (excluding spectrum licences) (millions)	\$ 3,498	\$ 2,775	\$ 2,906	\$ 2,914	\$ 3,094
Capital expenditure intensity ⁵	20%	18%	20%	20%	23%
Cash payments for spectrum licences (millions)	\$ 2,219	-	\$ 942	\$ 1	-
Total customer connections ⁶ (thousands)	16,887	15,943	15,166	13,947	13,050
Employee-related information					
Total salaries and benefits ⁴ (millions)	\$ 4,775	\$ 4,200	\$ 3,493	\$ 3,254	\$ 3,036
Total active employees ⁷	90,800	78,100	65,600	58,000	53,600
Full-time equivalent employees	90,000	77,200	64,600	58,900	52,900

n/a – not applicable

Cash provided by operating activities (\$ millions)



Capital expenditures (excluding spectrum licences) (\$ millions)



4.2 Operational resources

RESOURCES

Our team

- We had approximately 90,800 employees at December 31, 2021, including 62,100 from TI. Of our 90,800 employees, 28,100 were located in Canada and 62,700 were located internationally. We also use external consultants and contractors, including crowdsourced providers through TELUS International AI Data Solutions (TIAI).
- Approximately 8,070 of our employees are covered by collective agreements. The agreement with the Telecommunications Workers Union (TWU), United Steelworkers Local 1944, which covers approximately 6,515 employees, expired on December 31, 2021. Negotiations to renew this collective bargaining agreement began in October 2021 and are scheduled to continue into 2022. The expired contract remains in effect while the parties are bargaining, until a new agreement is reached.
- The agreement with the Syndicat québécois des employés de TELUS (SQET), which covers approximately 705 employees in Quebec, expires on December 31, 2022. The agreement with the Syndicat des agents de maîtrise de TELUS (SAMT), which covers approximately 555 employees in Quebec, expires on March 31, 2022. Our TELUS Employer Solutions Inc. subsidiary is signatory to a collective agreement with the B.C. Government and Services Employees' Union, which covers fewer than 100 employees and expires on July 31, 2023.
- Approximately 235 employees within the ADT Security Services Canada, Inc. subsidiary (ADT Canada) are unionized. These employees are covered by 10 separate collective agreements between ADT Canada and a number of different unions in multiple provinces. The expiry dates of these collective agreements vary.
- TI has access to labour across 28 countries for both management as well as support. Digital solutions are primarily resourced from North America, India, Philippines, Central America and Europe.
- Our objective is to attract, develop and retain talented employees in Canada and internationally. We achieve this objective by investing in our people throughout their careers, and by offering diverse and inclusive employment prospects and development opportunities.
- Team member engagement was measured again through our annual fall Pulsecheck survey, resulting in an engagement score of 84%, which is an encouraging accomplishment against the backdrop of the highly competitive and dynamic environment in which we work and reinforces the strength of the culture our team members have built together. TELUS is the most engaged organization globally compared to organizations of our size and composition according to our survey provider, Kincentric.
- In our team member surveys, we continue to include questions to assess our team's health and well-being and gather their insights about our work environment, including changes due to the COVID-19 pandemic. Key highlights include team members confirming their belief that their safety is a priority for their leaders; their leader is providing the support they need during this extraordinary time; and their work arrangements allow them to collaborate productively while also allowing them to meet the needs of customers.
- Having engaged teams leads to a better team member experience, which in turn drives an improved customer service experience – our customers are more satisfied, resulting in a lower churn rate with our products and services.
- In 2021, reinforcement of our culture continued to focus on diversity and inclusion, human capital development and team member engagement, through:
 - Leveraging our strong culture with a focus on listening to team members
 - Putting customers first and leaders engaging their teams through our fair process engagement model, and
 - Utilizing Pulsecheck feedback, including our inclusion index results, to build and create action plans for improvements.
- We aim to attract and retain key team members through both monetary and non-monetary approaches. Our compensation and benefits program is designed to support our high-performance culture and is both market-driven and performance-based. Where required, we implement targeted retention solutions for team members with critical skills or talents that are scarce in the marketplace, and we have a succession planning process to identify top talent for senior-level positions.
- For further details related to our team, see the description under *Mitigation in Section 10.11 Our team*.

Our major brands and distribution channels

- TELUS – A national communications and information technology company serving customers across mobile, data, IP, voice, television, entertainment, video and security, driven by a social purpose to connect all Canadians for good.
- Koodo Mobile – A national provider of postpaid and prepaid mobile voice and data services with a broad distribution network, including TELUS-owned stores, dealers and third-party electronics retailers.
- Public Mobile – A prepaid mobile service provider with web-based and physical distribution, providing customers with a SIM-only service.
- Mobile Klinik – A provider of device performance and professional smartphone and tablet repair offering high-quality, certified pre-owned mobile devices.
- Optik TV, launched in 2010. Pk TV, launched in 2017.
- TELUS PureFibre – Our next-generation fibre-optic network, which delivers fast internet and provides the backbone for our 5G network.
- TELUS SmartHome Security and TELUS Secure Business – Full-service security offerings for residential and business customers.
- TELUS International – A digital customer experience innovator that designs, builds and delivers high-tech, high-touch next-generation solutions, including AI and content moderation, for global and disruptive brands.
- TELUS Health – A national provider of electronic medical and personal health records, home health monitoring, benefits and pharmacy management solutions, preventive healthcare services and virtual care solutions for consumers, employers and insurers. We are improving health outcomes for all Canadians, including those in rural and Indigenous communities, through our virtual care offerings including TELUS Health MyCare, TELUS Health Virtual Care and TELUS Health Virtual Pharmacy, as well as through our TELUS Health Care Centres, LivingWell Companion personal emergency response service, the TELUS Healthy Living Network and Health for Good mobile health clinics.

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Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

THE COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. or an affiliate thereof of Shaw Communications Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the Competition Act;

AND IN THE MATTER OF an application by the Commissioner of Competition for an interim order pursuant to section 104 of the Competition Act;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

ROGERS COMMUNICATIONS INC.

SHAW COMMUNICATIONS INC.

Respondents

AFFIDAVIT OF JAMES SENKO
Affirmed March 4, 2022

I, James Senko, of the City of Toronto, in the Province of Ontario state as follows:

- 2 -

1. I am the Executive Vice-president and President, Mobility Solutions of TELUS Corporation (“**TELUS**”). Since joining TELUS in 2001, I have held a variety of leadership positions in the TELUS wireless business spanning channel distribution, marketing, and product development. I am currently responsible for the overall management of TELUS’ consumer wireless business.
2. I have personal knowledge of the matters in this affidavit, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS AFFIDAVIT

3. I make this affidavit in connection with the applications under sections 92 and 104 of the *Competition Act* made by the Commissioner of Competition (the “Commissioner”) against Rogers Communications Inc. (“Rogers”) and Shaw Communications Inc. (“Shaw”), relating to their merger (the “Proposed Transaction”).

OPERATIONS OF TELUS

4. TELUS is a communications company that provides wireless and wireline services to individual subscribers, governments, and businesses across Canada. TELUS’ mobile wireless business includes TELUS’ 3G, 4G LTE, and 5G network through which it offers subscribers voice, data transmission and messaging services across Canada and worldwide delivered on subscribers’ mobile devices, as well as TELUS’ smartphone, tablet, and mobile devices offered to subscribers across the country. TELUS also offers a number of other services, including Internet access, TV, and virtual health care.

- 3 -

COMLINK DATA

5. As of October 2020, TELUS commenced subscribing to Commiscent Technologies Inc. (“Comlink”) for porting data and analytics for the Canadian wireless industry. TELUS believes Comlink is a reliable source of porting data and analytics for the Canadian wireless industry.
6. TELUS provides its porting data to Comlink. For context, a port occurs when a subscriber switches from one wireless carrier (e.g., Shaw) or a landline carrier to another wireless carrier (e.g., TELUS) and keeps their phone number. The term “net ports” refers to number of ports into a carrier minus the number of ports out from the carrier during the same defined time period. For purposes of my affidavit, unless I specifically indicate otherwise, references to Shaw relate to Shaw’s wireless business which operates under the Shaw Mobile and Freedom Mobile brands. Comlink uses the term “Freedom” to cover both Shaw Mobile and Freedom Mobile.
7. TELUS utilizes the porting data and analytics provided by Comlink (via an electronic portal which TELUS can access at any time) in its regular course of business, together with other information, to better inform its competitive response. Most importantly, the Comlink data and analytics provides TELUS with directional insights on:
 - a) TELUS’ wireless performance relative to our principal wireless competitors (Bell, Rogers, Shaw, Videotron, SaskTel, Eastlink and Xplore Mobile) by, for example, identifying which competitors are gaining or losing subscribers on a daily, weekly, monthly or quarterly basis nationally and by province; and
 - b) the competitive impact of promotional and advertising activities undertaken by TELUS and/or our wireless competitors (as listed above) in terms of which competitors lost subscribers and which competitors gained subscribers during the period where such activities were undertaken.

- 4 -

8. The types of business decisions impacted by the insight provided by the Comlink data and reports include, for example:
- a) During Black Friday 2021, TELUS used the porting data to understand how TELUS was performing relative to competitors after promotions were launched, and whether or not TELUS would match the promotions of its competitors.
 - b) Post-Black Friday 2021, TELUS undertook a detailed post-mortem analysis using porting data to understand how TELUS performed during the Black Friday promotion period and more specifically what type of promotions worked and what did not work (i.e., did not drive the desired performance). This analysis informed TELUS' December 2021 Boxing Week promotional strategy.
 - c) The data regularly informs TELUS' determination to undertake competitor-targeted campaigns and promotional activity to increase share and win back subscribers and it informs TELUS' actions during the time period of such campaigns. For example, in Q3 and Q4 2020 TELUS launched Operation Freedom which included: (a) win back offers targeting subscribers who ported out from TELUS to Shaw; and (b) promotions to win share against Shaw by offering Shaw subscribers incentives to port-in (i.e., switch) to TELUS.

CHANGES IN SHAW'S COMPETITIVE INTENSITY SINCE ROGERS ANNOUNCED ITS PROPOSED ACQUISITION OF SHAW

9. I believe that Shaw's competitive intensity in Alberta, British Columbia and in Ontario has decreased materially since the announcement of the Proposed Transaction on March 15, 2021. My belief is based on a number of data points and observations, including the following:
- a) The Comlink data: Attached to my affidavit as Exhibit A are true copies of three Comlink reports which show the net ports for Shaw on a monthly basis for the period commencing January 1, 2021 and ending December 31, 2021 on a national basis, on a combined Alberta and British Columbia basis; and on an

- 5 -

Ontario only basis. [REDACTED]
[REDACTED]
[REDACTED] More specifically,

- i. The national report shows that Shaw gained [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 235% decrease in the number of net ports.
 - ii. The combined Alberta and British Columbia report shows that Shaw gained [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 103% decrease in net ports.
 - iii. [REDACTED]
[REDACTED] since the Proposed Transaction was announced. Shaw lost [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 374% decrease in net ports.
- b) TELUS' review of Shaw's First Quarter Results for the three-month period ending November 30, 2021 (Q1 2022) and comparison to Shaw's First Quarter Results for the three-month period ending November 30, 2020 (Q1 2021) and which shows, among other matters, that:
- i. Shaw's total wireless net adds (i.e., the total number of new wireless subscribers minus the total number of lost wireless subscribers) has decreased substantially with only 55,600 net adds Q1 2022 versus 101,000 for Q1 2021;
 - ii. Shaw's Q1 2022 postpaid net adds were 40% below its net adds in Q1 2021 (Q1 2022 postpaid net adds of 36,100 versus Q1 2021 net adds of 87,300);
and

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- iii. Shaw stated that its Q1 wireless net adds were driven by Shaw Mobile, not Freedom, which suggests to TELUS that Shaw is focussed on bundling their existing subscriber base (i.e., selling Shaw Mobile to their internet subscribers) and not on acquiring net new wireless subscribers.

all of which is occurring despite the fact that the number of wireless subscribers in each of British Columbia, Alberta, and Ontario (being the provinces in which Shaw competes) increased in Q1 2022 relative to Q2 2021.

- c) TELUS' own internal porting data shows that in the three quarters between April 1, 2020 and December 31, 2020 Shaw won [REDACTED] net ports from TELUS and in the three quarters following the announcement of the Proposed Transaction, being April 1 2021 to December 31, 2021, Shaw only won [REDACTED] net ports from TELUS. This represents a 91% decrease in net ports ([REDACTED]) won from TELUS.
- d) I have observed that Shaw's promotional activity has substantially decreased since the Proposed Transaction was announced. TELUS monitors the media and other public sources daily to gather information about its competitors' pricing promotional activity and monitors these sources even more frequently during the heavy price promotional periods which occur in the third and fourth quarters of the year, specifically the Back-to-School period (mid-August to mid-September), the Black Friday-Cyber Monday period (late November) and the Boxing Week period (late December). Until 2021 Shaw was a price aggressor through heavy price promotional periods which occur in the third and fourth quarters of the year, specifically the Back-to-School period (mid-August to mid-September), the Black Friday-Cyber Monday period (late November) and the Boxing Week period (late December). In the third and fourth quarters of 2020 TELUS lost [REDACTED] net ports to Shaw. In the third and fourth quarters of 2021 (following the announcement of the Proposed Transaction) not only did TELUS not lose any net ports to Shaw, TELUS won [REDACTED] net ports from Shaw.

- 7 -

INFORMATION SUPPLIED PURSUANT TO SECTION 11 ORDER

10. In response to an order the Federal Court issued under section 11 of the *Competition Act*, R.S.C. 1985, c. C-34 on August 1, 2021 (the "Order"), TELUS supplied data, records and information to Laura Sonley at the Competition Bureau relating to its wireless business and such production was completed November 29, 2021 ("Records").
11. The Records were reviewed by Andrea Wood, Chief Legal and Governance Officer of TELUS, who certified that the information so supplied is, to the best of her knowledge and belief, correct and complete in all material respects. Following this certification TELUS provided clarifications to the Bureau about certain data aspects of the Records. Andrea Wood, Chief Legal and Governance Officer of TELUS, has certified that these such clarifications are to the best of her knowledge and belief, correct and complete in all material respects.
12. Included with the Records TELUS produced to the Competition Bureau, and pursuant to the Order, TELUS provided the Competition Bureau with internal company data and access to Comlink's porting data and analytics.
13. Attached to my affidavit as Appendix 1 is a list of certain of the Records TELUS produced to the Competition Bureau pursuant to the Order identified by the unique numbers TELUS assigned to them. I attest that each of the Records listed in Appendix 1:
 - a) are true copies of the originals that are in the possession, power, or control of TELUS.
 - b) were prepared by TELUS employees in the ordinary course of business and the facts stated therein are to the best of my knowledge, information, and belief, true.
14. Attached to my affidavit as Appendix 2 is a list of certain data sets included in the Records TELUS produced to the Competition Bureau pursuant to the

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Specifications 11, 17 and 19 of the Order (the "Data"). I attest that the Data was collected and maintained by TELUS in the usual and ordinary course of business.

Affirmed remotely by James Senko of the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on March 4, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Daniel Stern
Director, Regulatory Law and Policy

TELUS Corporation



James Senko
Executive Vice-president and President,
Mobility Solutions

TELUS Corporation

PUBLIC

THIS IS EXHIBIT "23" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

CT-2022-

THE COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. or an affiliate thereof of Shaw Communications Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the Competition Act; and

AND IN THE MATTER OF an application by the Commissioner of Competition for an interim order pursuant to section 104 of the Competition Act.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

ROGERS COMMUNICATIONS INC.

SHAW COMMUNICATIONS INC.

Respondents

AFFIDAVIT OF BLAIK KIRBY

I, Blaik Kirby, of the city of King City, in the Province of Ontario solemnly affirm:

1. I am the Group President, Consumer and Small & Medium Business (SMB) for BCE Inc. (“**Bell**”). In this role I lead the teams responsible for sales, marketing, and product development for Bell’s consumer and SMB wireless and wireline businesses. From 2015 to 2020, I was President of Bell Mobility and prior to that I held a series of progressively senior roles in marketing and sales for Bell Mobility.
2. Throughout this time my main responsibilities have included, among others, understanding and responding to market and competitive dynamics in Canada’s wireless industry, including with respect to the pricing, competitive strategies, and market positioning of Bell and its competitors.
3. I have personal knowledge of the matters in this affidavit, except where I have otherwise indicated that I am relying on information from others, in which case I have stated the source of that information and that I believe such information to be true.

PURPOSE OF THIS AFFIDAVIT

4. I make this affidavit in connection with the application by the Commissioner of Competition (the “**Commissioner**”) under section 104 of the *Competition Act* against Rogers Communications Inc. (“**Rogers**”) and Shaw Communications Inc. (“**Shaw**”) relating to their proposed merger (the “**Proposed Acquisition**”) (“**Application**”).
5. The remainder of this affidavit is organized as follows.

- a) First, I briefly describe the operations of Bell and its past integration of acquired companies.
- b) Second, I describe how Shaw, operating through both the Freedom and the Shaw Mobile brands, was a successful and disruptive competitor in the Canadian wireless industry up to the announcement of the Proposed Acquisition. In this section I refer to data and documents prepared or received by Bell in the ordinary course of business that address, among other things, Shaw's success in winning customers and influencing the competitive dynamic in the wireless market including through responses from other wireless carriers such as Rogers, Telus, and Bell.
- c) Third, I describe a particular feature of the competitive dynamic in the Canadian wireless industry – namely that Rogers and Shaw are usually each other's closest competitors. In this section, I refer to data and documents prepared or received by Bell in the ordinary course of business that address, among other things, the fact that Rogers and Shaw compete for the same customers and are most likely to generate competitive responses from each other.
- d) Fourth, I describe my observations, made during the ordinary course of our participation in the wireless market, with respect to Shaw's competitive conduct since the announcement of the Proposed Acquisition.

OPERATIONS OF BELL

6. Bell is a Canadian communications and media company headquartered in Verdun, Québec that offers wireline and wireless telecommunication services, television distribution and media products. Bell offers mobile wireless services nationally through our Bell Mobility, Virgin Plus, and Lucky Mobile brands.
7. Bell has acquired MTS, Aliant, and other companies in the past, and has integrated telecommunications assets, which involves significant integration costs and can take a long time (e.g., five years or more) to complete. For

example, there are interdependencies between the wireless SIM card (i.e., the chip inserted in a wireless device to instruct the device on which wireless networks to communicate with), wireless network, and billing system. As a result, more than five years following Bell's acquisition of MTS, we continue to maintain the separate MTS wireless billing system given the material number of customers that have not yet updated their SIM card (and therefore must still be served by the separate billing system). In our experience, achieving integration efficiencies requires significant management focus and continuity, senior leaders with a long-standing and deep knowledge of the business, and a long-term focus and commitment to an established plan. Without these factors, it is much more difficult to achieve efficiency goals.

SHAW'S ROLE IN THE MOBILE WIRELESS SERVICES MARKET IN CANADA

8. Generally, Shaw had been a strong competitive force in the wireless market in recent years through both its Freedom and Shaw Mobile brands. Shaw's impact on competition is documented in Bell's internal strategic planning documents, [REDACTED]

[REDACTED]

9. For example, Bell Mobility's 2019 business plan, produced in 2018, recognized that [REDACTED]

[REDACTED]

[REDACTED]

¹ [REDACTED] produced to the Commissioner of Competition pursuant to the order of Mr. Justice A.D. Little dated August 1, 2021 and varied September 13, 2021, made under section 11 of the *Competition Act* (the "Section 11 Order"), [REDACTED]. All Bates numbers cited below in my Affidavit refer to documents produced by Bell pursuant to the Section 11 Order.

² [REDACTED] I note that Industry analysts including TD Securities and Canaccord Genuity Capital Markets have also recognized Freedom's pricing strategy as "aggressive" – See Bell0403345 and Bell0046800, attached to my affidavit as Exhibits "D" and "E", respectively.

³ [REDACTED]

a) [REDACTED]

b) [REDACTED] and
[REDACTED]

12. We have observed, directly in our business, that the competitive performance of Shaw's wireless business has consistently increased over time. Our data show that, since at least the acquisition of Wind Mobile by Shaw in 2016, there has been [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]
[REDACTED]

Figure 1. [REDACTED]



Freedom Mobile

- 13. The Freedom wireless brand operated by Shaw originated as an independent wireless operator, Wind Mobile, which launched in 2009. Wind Mobile was acquired by Shaw in 2016 and subsequently rebranded to Freedom. Following the acquisition, Shaw made significant improvements to the wireless network, secured the ability to offer the iPhone to subscribers, and launched new wireless plans with large data buckets.

- 14. In response to these “Big Gig” plans launched in 2017, Rogers and the other national wireless carriers introduced significant discounts and promotions on their own wireless plans throughout 2018 and into 2019.¹³ In our case, these included 10 GB plans (which was then the largest data bucket typically offered in the Canadian market) launched broadly for a brief time in December 2017 at prices \$60 lower than those available before the Big Gig plans had been launched, [REDACTED]

13 [REDACTED]



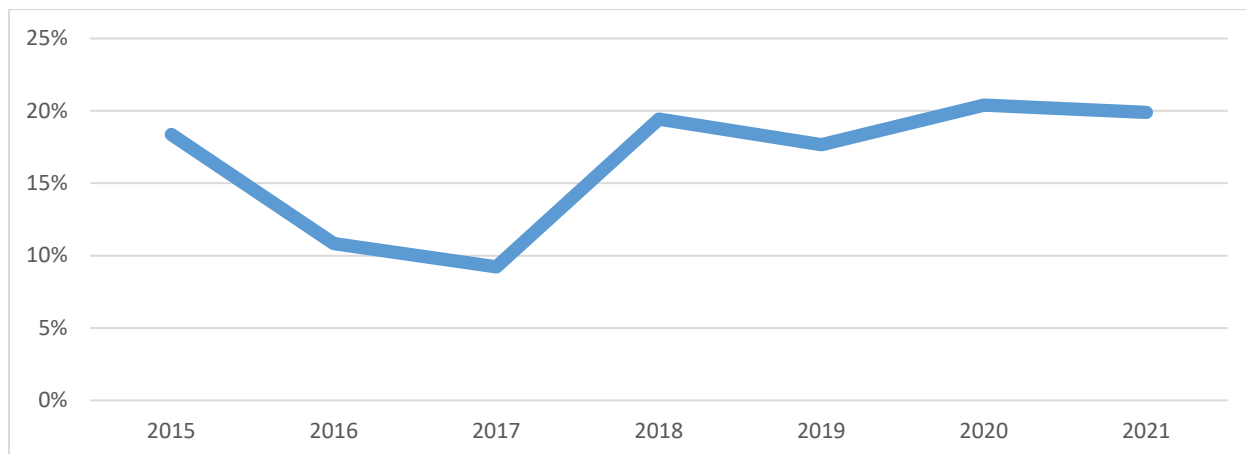
15. According to data Bell obtained in the ordinary course of business from the Canadian Wireless Telecommunications Association (“**CWTA**”), which Bell relies upon as accurate in light of our own internally generated data and the publicly reported data of other companies, Freedom’s share of net subscriber additions¹⁵ in Canada’s wireless industry climbed from less than 10% nationally in 2017 to 20% in 2020 and 2021 (based on CWTA figures for 2021 that exclude Q4 2021). Because Freedom and Shaw Mobile operate only in Ontario, Alberta, and BC, I believe that its share of net subscriber additions would be significantly higher if calculated specifically for those provinces.¹⁶ The graph below was prepared by Bell using the above-referenced data obtained from the CWTA.

¹⁴ [REDACTED]

¹⁵ Net subscriber additions are a metric that is commonly used in the wireless industry to assess competitive performance. A company’s net subscriber additions during a period is equal to the total number of subscribers gained by that company (i.e., new subscribers who signed up for service with the company or subscribers who switched to the company from another provider) less the total number of subscribers lost by the company during that period (i.e., subscribers who deactivated their service or switched from the company to another provider). A company’s share of net subscriber additions is equal to its net subscriber additions divided by the sum of the net subscriber additions of all competitors in the market.

¹⁶ CWTA, “Facts & Figures, Industry Statistics, Canadian wireless subscriber numbers 2015-2021”, online: <https://www.cwta.ca/facts-figures/>.

Figure 2. Freedom's Share of Net Additions (2015 to 2021)



16. Our documents throughout this period (2017 to 2020) consistently [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17. One of the most significant events in the wireless industry in recent years was the launch of large unlimited data plans by Rogers, and Telus in the summer of 2019. The competitive activity I describe above led to the introduction of these unlimited data plans by Rogers in the summer of 2019.²⁰ Leading up to the launch of these plans, Bell's internal assessment of these developments was that [REDACTED]
[REDACTED]
[REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]
[REDACTED]

[REDACTED] We launched similar unlimited data plans at that time in response to Rogers and Telus.

18. Freedom's aggressive marketing initiatives continued up to the time of the announcement of the Proposed Acquisition. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This in turn led to competitive responses from others, including Bell²³ and Virgin Plus, which had offers directly identified as [REDACTED].²⁴ In 2021 Bell was also [REDACTED] and planning and targeting [REDACTED]

19. Our internal porting data demonstrate the impact of Freedom over this period.

[REDACTED]

[REDACTED]

[REDACTED] The graph below was prepared by Bell using our internal porting data between 2017 and 2020 in British Columbia, Alberta and Ontario.

21 [REDACTED]

22 [REDACTED]

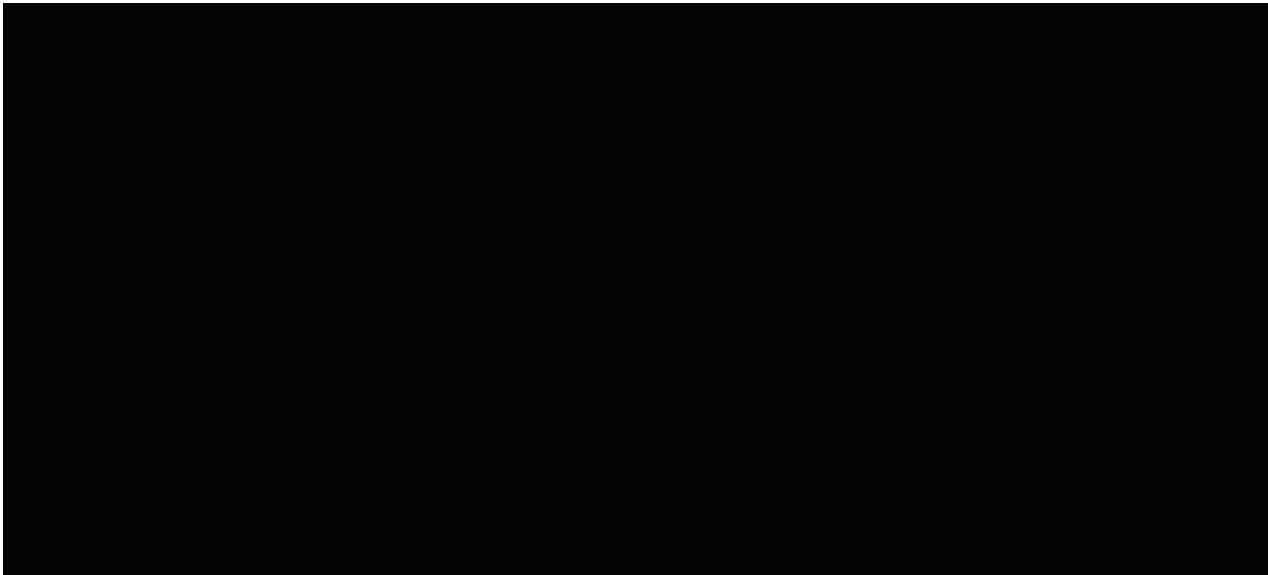
23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

Figure 3. [REDACTED]



Shaw Mobile

20. The Shaw Mobile brand was introduced on July 30, 2020, offering discounted wireless plans to Shaw internet customers in British Columbia and Alberta.²⁷

[REDACTED]
[REDACTED] Rogers also immediately launched [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21. Shaw Mobile’s launch was highly successful. As of August 2020, we estimated that it already had approximately [REDACTED] in British Columbia and Alberta.³⁰ Shaw Mobile’s offerings were highly attractive to all consumer segments including price-conscious consumers and multi-line family households.

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

22. Shaw Mobile’s growth was most prominent in regions where Rogers was the largest competitor, and it was gaining significant subscribers from the Rogers and Fido brands. Our internal analysis based on data obtained from [REDACTED]

[REDACTED] showed that [REDACTED]
[REDACTED]

[REDACTED] Our analysis conducted in September 2020 concluded that [REDACTED]
[REDACTED]

23. In 2021, Shaw Mobile continued to expand its competitive impact. Our 2021 plan for wireless (prepared in October 2020) identified [REDACTED]

[REDACTED]
[REDACTED] We noted that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24. Based on my experience at Bell, operating as an integrated service provider has allowed Bell to spread common costs over a larger base, enhance the value of our brand marketing (which reinforces both our wireline and wireless offerings), creates more points of contact between Bell and our customers, and affords us the opportunity to create bundled offerings that appeal to consumers. My experience at Bell indicates that subscribers of multiple services from a provider (i.e. internet and mobile wireless services) tend to have a lower churn rate and a higher expected lifetime value proposition than

31 [REDACTED]
[REDACTED]

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

customers who only subscribe to a single service. Without our wireline infrastructure, Bell would not be as effective a wireless competitor as we are today;³⁵ my experience at Bell indicates that is true for all integrated wireless competitors in Canada, including Shaw/Freedom Mobile. While these factors apply most comprehensively to Shaw Mobile, they also apply to Freedom including in respect of its network build in Alberta and BC. [REDACTED]

[REDACTED]

[REDACTED]

Rogers and Shaw Are Often Each Other’s Closest Wireless Competitor

25. Based on my observation of the wireless market in Canada since 2008, I consider that Rogers and Shaw are often each other’s closest wireless competitor. By this I mean that Shaw’s competitive behaviour (pricing, promotions, etc.) in the wireless market appears to be most heavily influenced by the competitive behaviour of Rogers and, conversely, that Rogers’ competitive behaviour appears to be most heavily influenced by the competitive behaviour of Shaw.

26. In the ordinary course of my day to day responsibilities, I am regularly involved in assessing competitive initiatives in the market and, where appropriate, responding to them. This involves, for example, tracking changes to pricing or other changes to the offers of our competitors. In doing so, I have observed and Bell’s internal documents reflect that the impact of Shaw on the market has most frequently been seen in the first instance through its impact on Rogers. [REDACTED] In other words, changes in the offers available in the market (such as the introduction of a particular promotion or a reduction in the cost of a wireless service plan) often

35 [REDACTED]

36 [REDACTED]

37 [REDACTED]

result from a change made by Shaw, to which Rogers then responds, [REDACTED]
[REDACTED]

27. Indeed, Rogers and Shaw have often [REDACTED]
[REDACTED]

28. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

29. I have also observed that Shaw has targeted areas where Rogers has long been the market leader – in particular, the Greater Toronto Area and the Greater Vancouver Area, where the combined market shares of Shaw and Rogers [REDACTED] Shaw and Rogers compete closely in other areas of British Columbia, Alberta, and Ontario as well, and I expect competition between them to continue and to increase absent the Proposed Acquisition.

30. In British Columbia and Alberta this increase in the level of competition between Rogers and Shaw would result in particular from the recent launch of Shaw Mobile and its strategy of aggressively selling wireless services to Shaw's existing wireline customer base. In July 2020, Bell estimated that [REDACTED]
[REDACTED] Our estimate was [REDACTED]
[REDACTED]
[REDACTED]

38 [REDACTED]

39 [REDACTED]

40 [REDACTED]

[REDACTED]
[REDACTED] These are the customers that we observe are being targeted by Shaw Mobile.

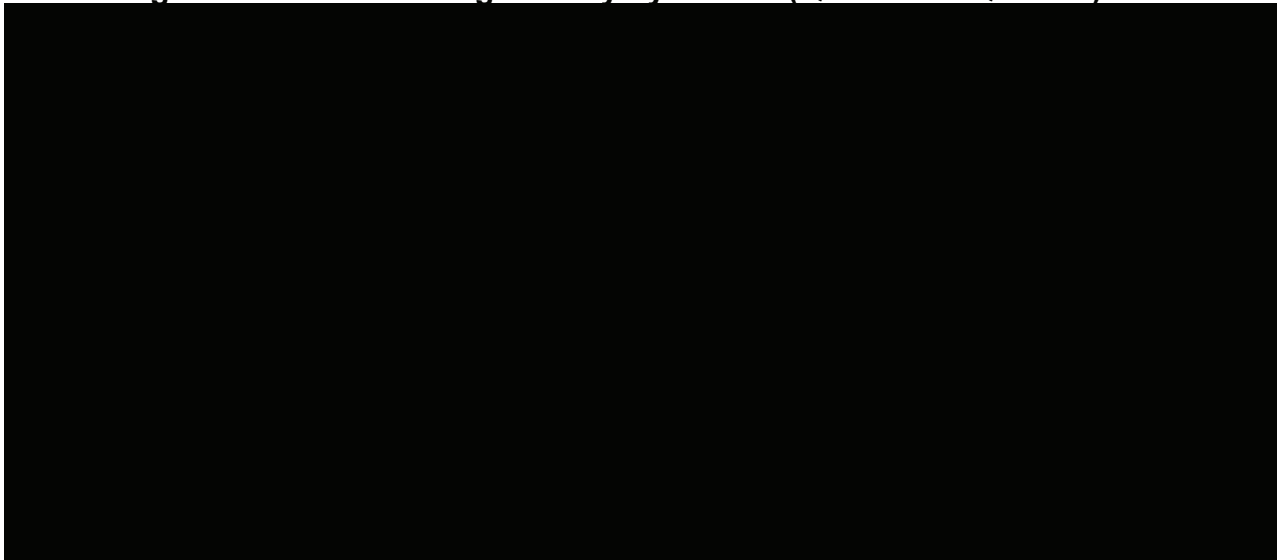
31. Data obtained from [REDACTED] which for the reasons set out above I consider to be reliable, indicates that, in the time period from July 1, 2020 to June 30, 2021, the number of customers switching between Shaw and Rogers nationally [REDACTED]

[REDACTED] These data are summarized in the graph below, which Bell prepared. They show that nearly

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This leads me to conclude that, across the Shaw footprint, competition between Rogers and Shaw is disproportionately relevant to the competitive dynamic.

Figure 4. Shaw's Porting Activity by Carrier (Q3 2020 to Q2 2021)



32. This high level of competition (and customer switching) between Shaw and Rogers is a feature of the competitive dynamic that is well-understood within Bell and is frequently reflected in documents we prepare in the ordinary course of business. For example, a Bell analysis of data on market dynamics in April 2019 indicated that [REDACTED]

Shaw’s Competitive Conduct Since the Announcement of the Proposed Acquisition

33. We have noticed a significant change in Shaw’s competitive behaviour in the market since the announcement of the Proposed Acquisition. [REDACTED]

34. Black Friday (i.e., the day after the U.S. Thanksgiving holiday) and the full five day Black Friday period (i.e., the Tuesday before U.S. Thanksgiving to the Saturday immediately following it) is a key sales period in the wireless industry. Based on our internal data, on Black Friday in 2019 [REDACTED]

[REDACTED] In 2020, prior to the announcement of the Proposed Acquisition, [REDACTED] In 2021, the first Black Friday after the announcement of the Proposed Acquisition, [REDACTED]

[REDACTED] Similarly, over the full five day Black Friday period, [REDACTED]

35. Net ports are another metric that Bell commonly uses to assess competitive performance and the competitive dynamics in the wireless industry. A company's net ports over a period is equal to the total increase or decline in that company's wireless subscribers that results from customers switching to or from other carriers during the period.

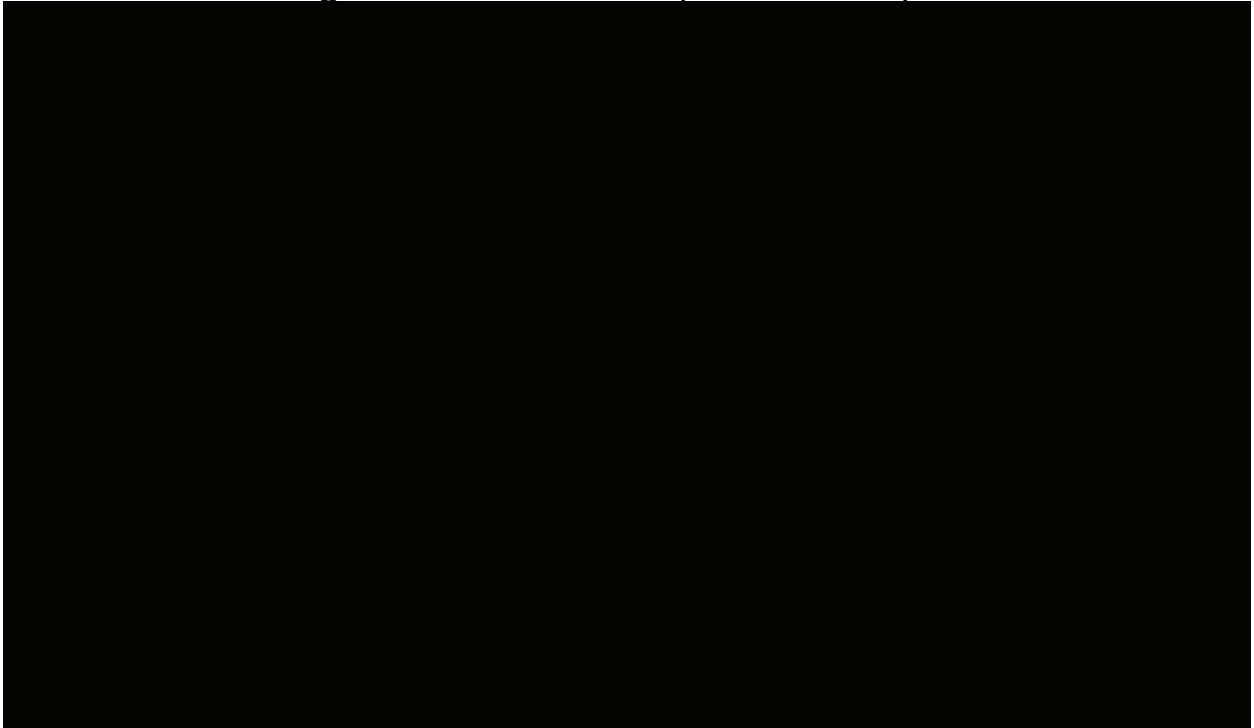
36. According to data Bell obtained from [REDACTED] (which, as described above, I consider to be reliable), Shaw had net ports of [REDACTED]
[REDACTED]
[REDACTED] This means that [REDACTED]
[REDACTED] By Q3 2021 Shaw's net ports for the quarter were [REDACTED]
[REDACTED]
[REDACTED]

37. Rogers has been the largest beneficiary of the reduction in Shaw's competitive efforts following the announcement of the Proposed Acquisition. [REDACTED]
[REDACTED]
[REDACTED]

38. Looking just at the port outflows from Shaw in Q3 2021, Rogers accounts for [REDACTED]% (i.e., [REDACTED]% of customers switching to other carriers from Shaw switched to Rogers). Because Rogers typically captures just [REDACTED]% of wireless net additions, I understand the fact that it accounts for [REDACTED]% of Shaw's net port swing and captures [REDACTED]% of port outflows from Shaw to be a consequence of the particularly close competition between Rogers and Shaw prior to the Proposed Acquisition. These data are reflected in the graph below, which Bell prepared based on the data from [REDACTED].

⁴³ In other words, whereas in Q1 Rogers had [REDACTED]
[REDACTED]

Figure 5. Shaw Net Ports (Q1 to Q3 2021)



INFORMATION SUPPLIED TO THE COMPETITION BUREAU

39. In response to an order pursuant to section 11 of the *Competition Act*, RSC 1985, c C-34 (the “**Act**”) on August 1, 2021, Bell supplied to the Competition Bureau certain records specified by their record numbers and listed in Appendix “A” (“**Records**”),
40. Copies of the Records listed in section a. of Appendix “A” are referred to above and attached to my affidavit as Exhibits “A” to “KK”.
41. Copies of the Records listed in section b. of Appendix “A” are attached to my affidavit as Exhibits “LL” to “VV”.
42. I am informed by Robert Malcolmson, Chief Legal & Regulatory Officer of Bell and believe that each of the copies of the Records attached as Exhibits “A” to “VV” are true copies of the originals that are in the possession, power, or

control of Bell and that the contents thereof are true to the best of my knowledge, information and belief. A certificate from Robert Malcolmson, Chief Legal & Regulatory Officer of Bell, attesting as to the authenticity of the Records described in paragraphs 40 and 41 above is attached to my affidavit as Exhibit "KK".

- 43. In response to an order pursuant to section 11 of the Act on August 1, 2021, Bell supplied to the Competition Bureau certain data ("**Data**") specified in Appendix "B".

- 44. I am informed by Mark Graham, Vice President, Legal & Regulatory at Bell and verily believe that the Data and any email clarifications sent by Bell to the Competition Bureau in response to questions arising from the section 11 specification responses were based on information collected and maintained by Bell in the usual and ordinary course of business.

SWORN by Blaik Kirby, of the city of King City, in the Province of Ontario before me at the City of Toronto, in the Province of Ontario, on April 28, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

(Signature of deponent)

Blaik Kirby

APPENDIX "A"**a. Documents contained in this affidavit**

Exhibit	Description
A.	Bell0229823
B.	Bell0357226
C.	Bell0041120
D.	Bell0403345
E.	Bell0046800
F.	Bell0400993
G.	Bell0538129
H.	Bell0365765
I.	Bell0856841
J.	Bell0765850
K.	Bell0537518
L.	Bell0244334
M.	Bell0583281
N.	Bell0497033
O.	Bell0348853
P.	Bell0353616
Q.	Bell0353659
R.	Bell0403731
S.	Bell0377969
T.	Bell0407328
U.	Bell0698368
V.	Bell0650623
W.	Bell0551690
X.	Bell0774572
Y.	Bell0698615
Z.	Bell0545066

AA.	Bell0575633
BB.	Bell0664013
CC.	Bell0594070
DD.	Bell0774470
EE.	Bell0773643
FF.	Bell0830544
GG.	Bell0065637
HH.	Bell0347518
II.	Bell0596549
JJ.	Bell0351108
KK.	Section 11 Order

b. Other documents

Exhibit	Description
LL.	Bell0584732
MM.	Bell0005031
NN.	Bell0000880
OO.	Bell0091902
PP.	Bell0000824
QQ.	Bell0000827
RR.	Bell0290091
SS.	Bell0226936
TT.	Bell0226128
UU.	Bell0356197
VV.	Bell0405122

APPENDIX “B”

1. Data from Specification 11
 - a. “Postpaid Feature to Feature Desc mapping.xlsx”
 - b. “Summary and Data Dictionaries.xlsx”
 - c. Files with names in the format “Postpaid [Bell Mobility/Virgin Mobile] Billing Details [Year]” for 2017-2021 (files produced on 11/9/2021 and some corrected files produced by Bell on 11/29/2021, 20 files in total)
 - d. Appendix 11 - 1 Usage – 2021, Appendix 11 - 1 Usage - CONS - 2017-2018, Appendix 11 - 1 Usage - CONS - 2019-2020, Appendix 11 - 1 Usage - CORP - 2017-2020 folders: “Usage_extract” files (more than 20 separate files)
 - e. “CB_11_PP_v1.12.xlsx”
2. Data from Specification 18
 - a. “CB_18_PP.xlsx”
3. Data from Appendix 10
 - a. “FO-912 10A Bell Mobility Postpaid”
 - b. “FO-912 10A Bell Mobility Prepaid”
 - c. “FO-912 10A Virgin Mobile Postpaid”
 - d. “FO-912 10A Virgin Mobile Prepaid”
 - e. “FO-912 10A Lucky Mobile Prepaid”
4. Data from Appendix 16
 - a. “Q16a_EOP_20170101_20210701_NAT_EXCL_MB.txt”
 - b. “Q16_b_c_acts_20170101_20210701_NAT_EXC_MB_2017.txt”
(20220113_corrected)
 - c. “Q16_b_c_acts_20170101_20210701_NAT_EXC_MB_2018.txt”
(20220113_corrected)
 - d. “Q16_b_c_acts_20170101_20210701_NAT_EXC_MB_2019.txt”
(20220113_corrected)
 - e. “Q16_b_c_acts_20170101_20210701_NAT_EXC_MB_2020.txt”
(20220113_corrected)

- f. "Q16_b_c_acts_20170101_20210701_NAT_EXC_MB_2021.txt"
(20220113_corrected)

PUBLIC

THIS IS EXHIBIT "24" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

DOCID	DOCDATE	DOCTITLE	PEOPLE/ORGANIZATIONS FROM	PEOPLE/ORGANIZATIONS TO	PEOPLE/ORGANIZATIONS CC	DOCTYPE	CONFIDENTIALITY LEVEL	PRIVILEGE
RBCH00007_00 0000890							Level A	Litigation Privilege
RBCH00007_00 0001384							Level A	Litigation Privilege

PUBLIC

DOCID	DOCDATE	DOCTITLE	PEOPLE/ORGANIZATIONS FROM	PEOPLE/ORGANIZATIONS TO	PEOPLE/ORGANIZATIONS CC	DOCTYPE	CONFIDENTIALITY LEVEL	PRIVILEGE
RBCH00007_00 0003581							Level A	Litigation Privilege
RBCH00008_00 0001834							Level A	Litigation Privilege

PUBLIC

DOCID	DOCDATE	DOCTITLE	PEOPLE/ORGANIZATIONS FROM	PEOPLE/ORGANIZATIONS TO	PEOPLE/ORGANIZATIONS CC	DOCTYPE	CONFIDENTIALITY LEVEL	PRIVILEGE
RBCH00014_00 0000562							Level A	Litigation Privilege

PUBLIC

THIS IS EXHIBIT "25" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

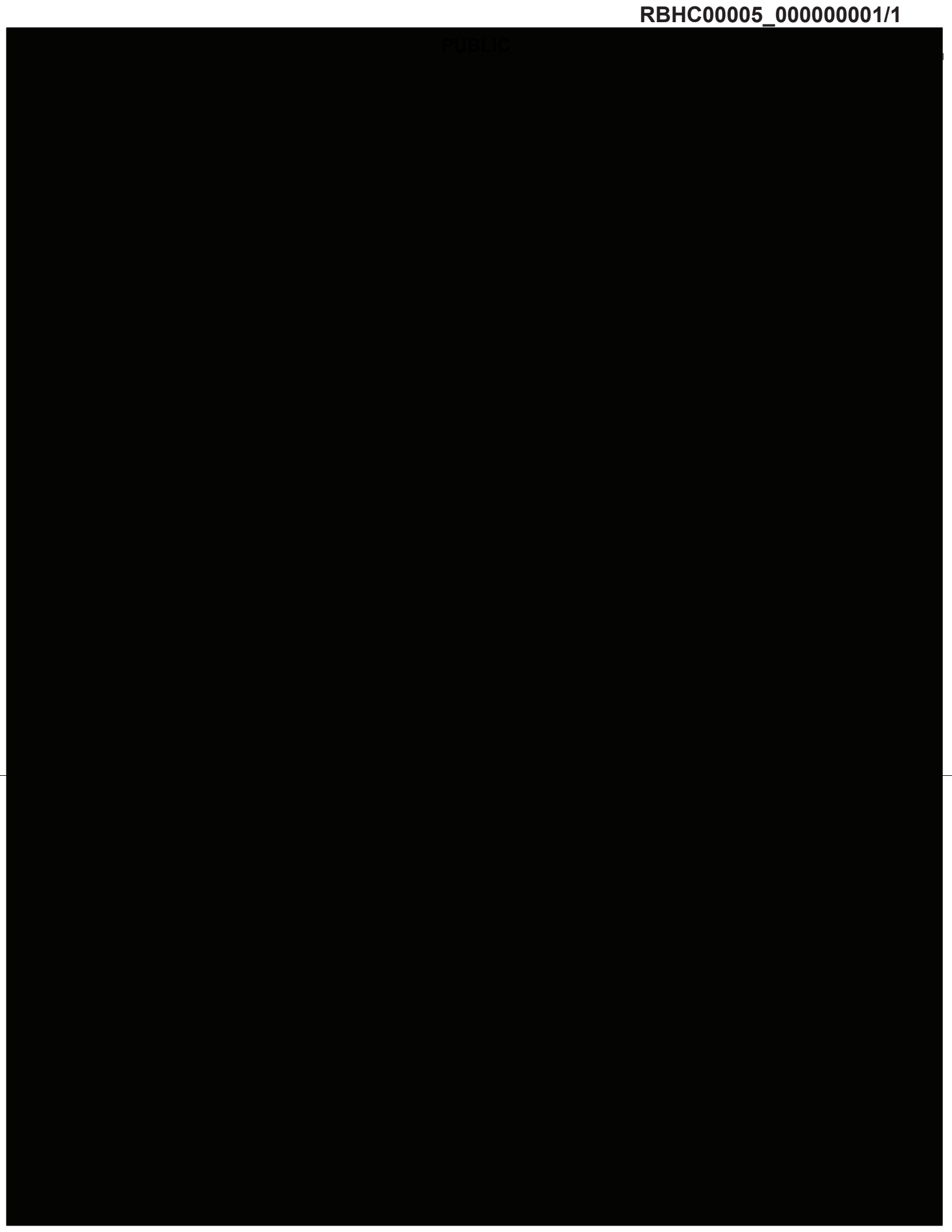
Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC



PUBLIC

THIS IS EXHIBIT "26" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

DOCID	DOCDATE	DOCTITLE	AUTHOR	TO	FROM	DOCTYPE	CONFIDENTIALITY LEVEL
RBHC00005_000000 001							Level A
RBHC00005_000000 003							Level A
RBHC00005_000000 004							Level A
RBHC00005_000000 005							Level A
RBHC00005_000000 006							Level A
RBHC00005_000000 008							Level A

PUBLIC

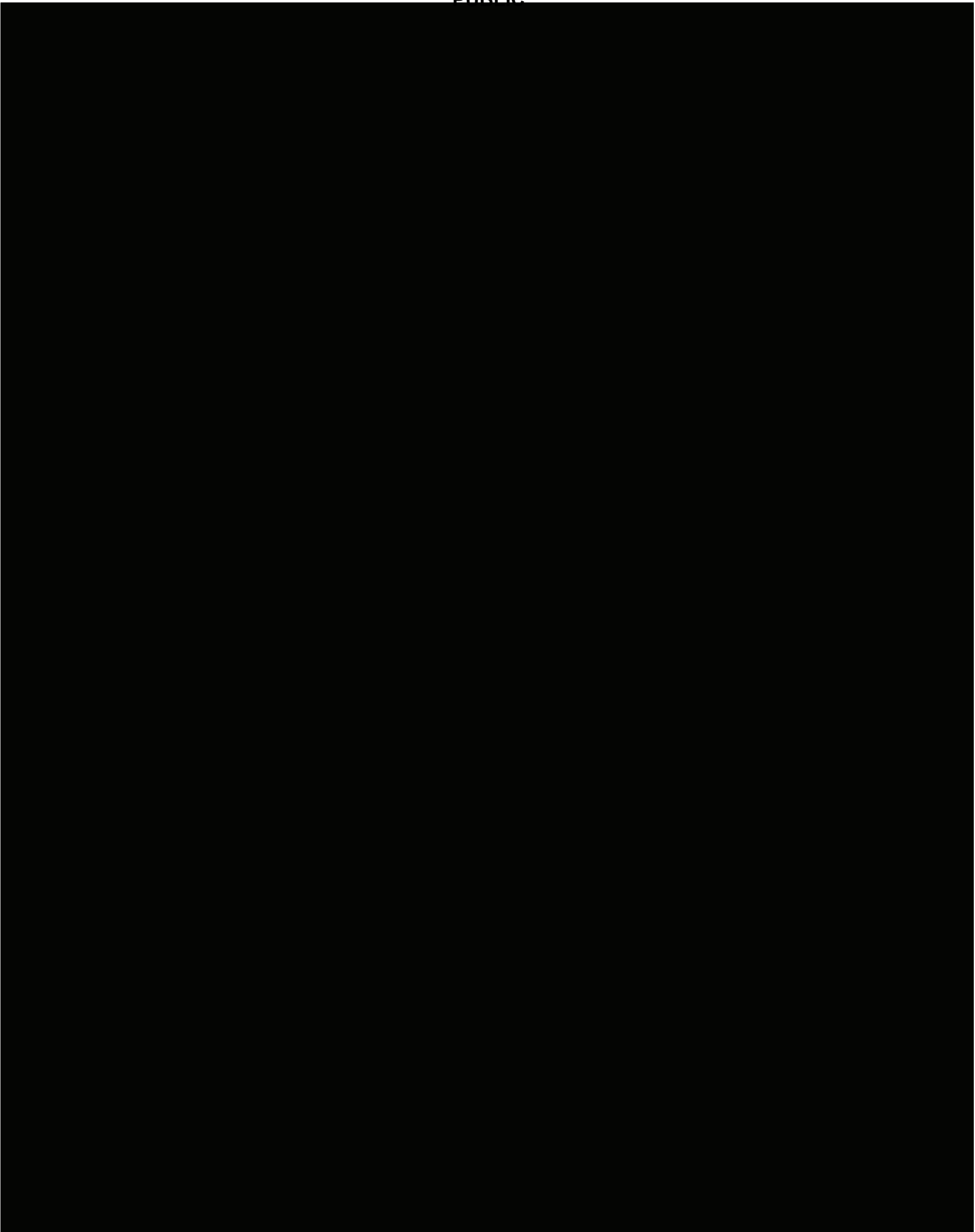
THIS IS EXHIBIT "27" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

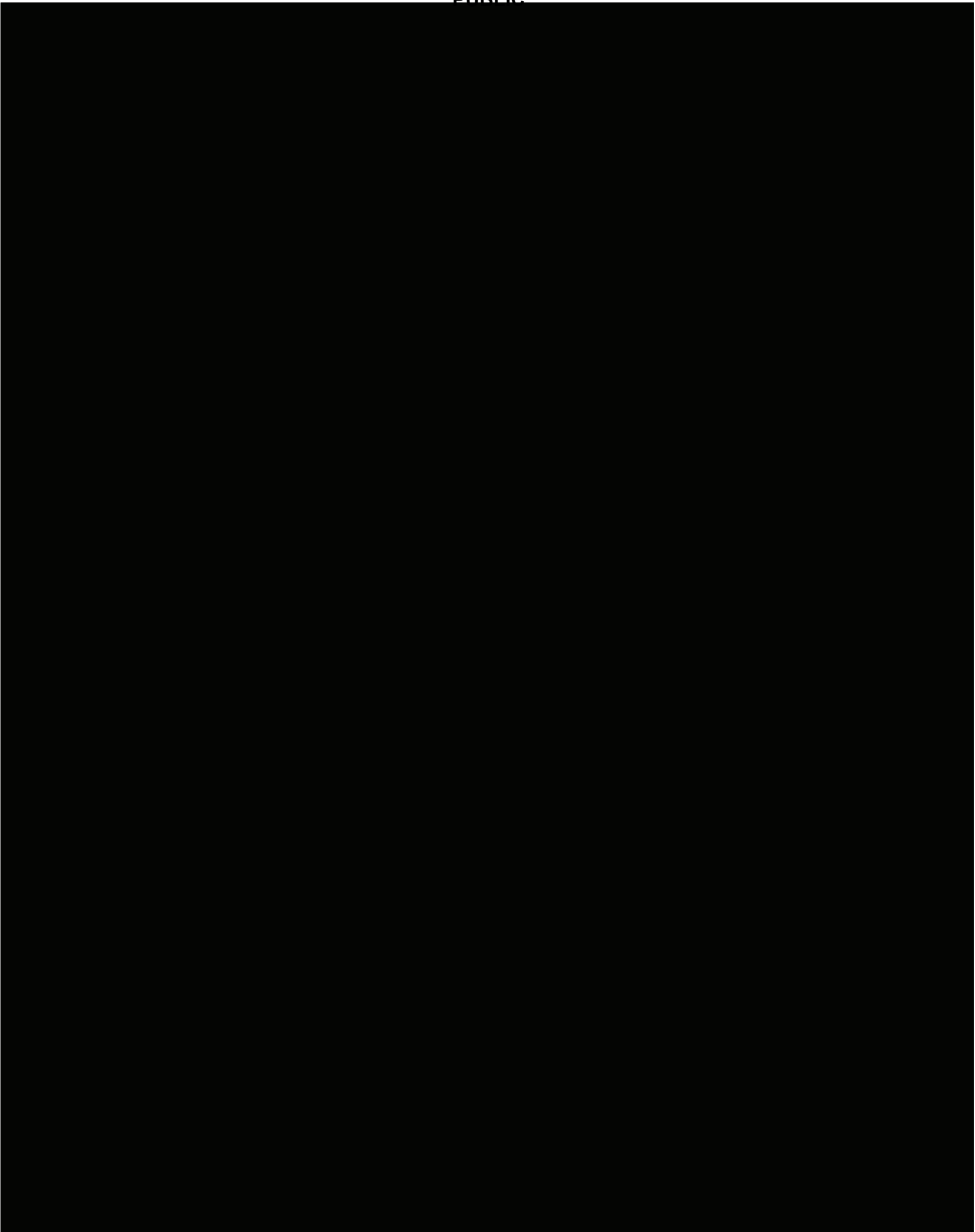
Jacqueline Houston

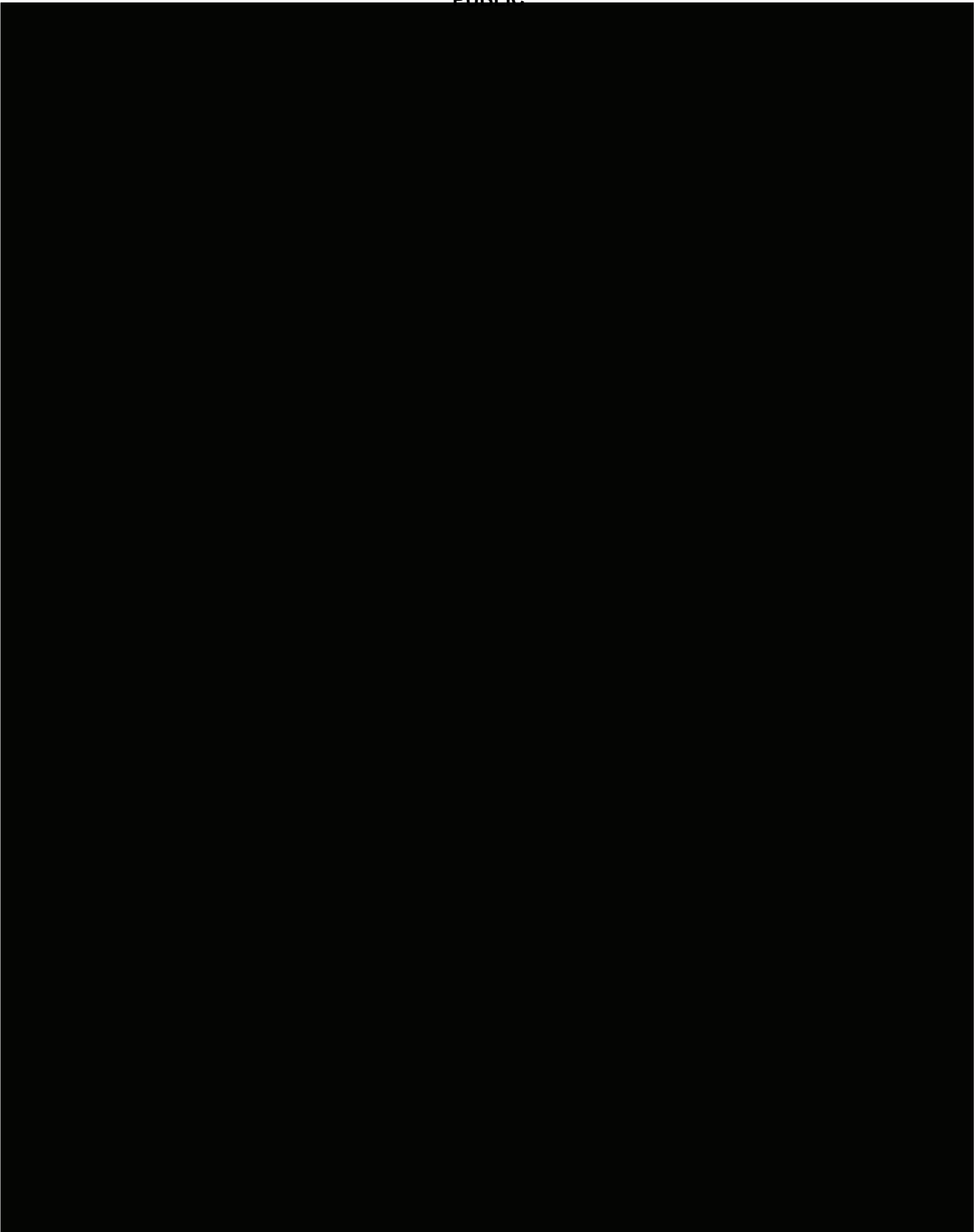
A Commissioner for Taking Affidavits

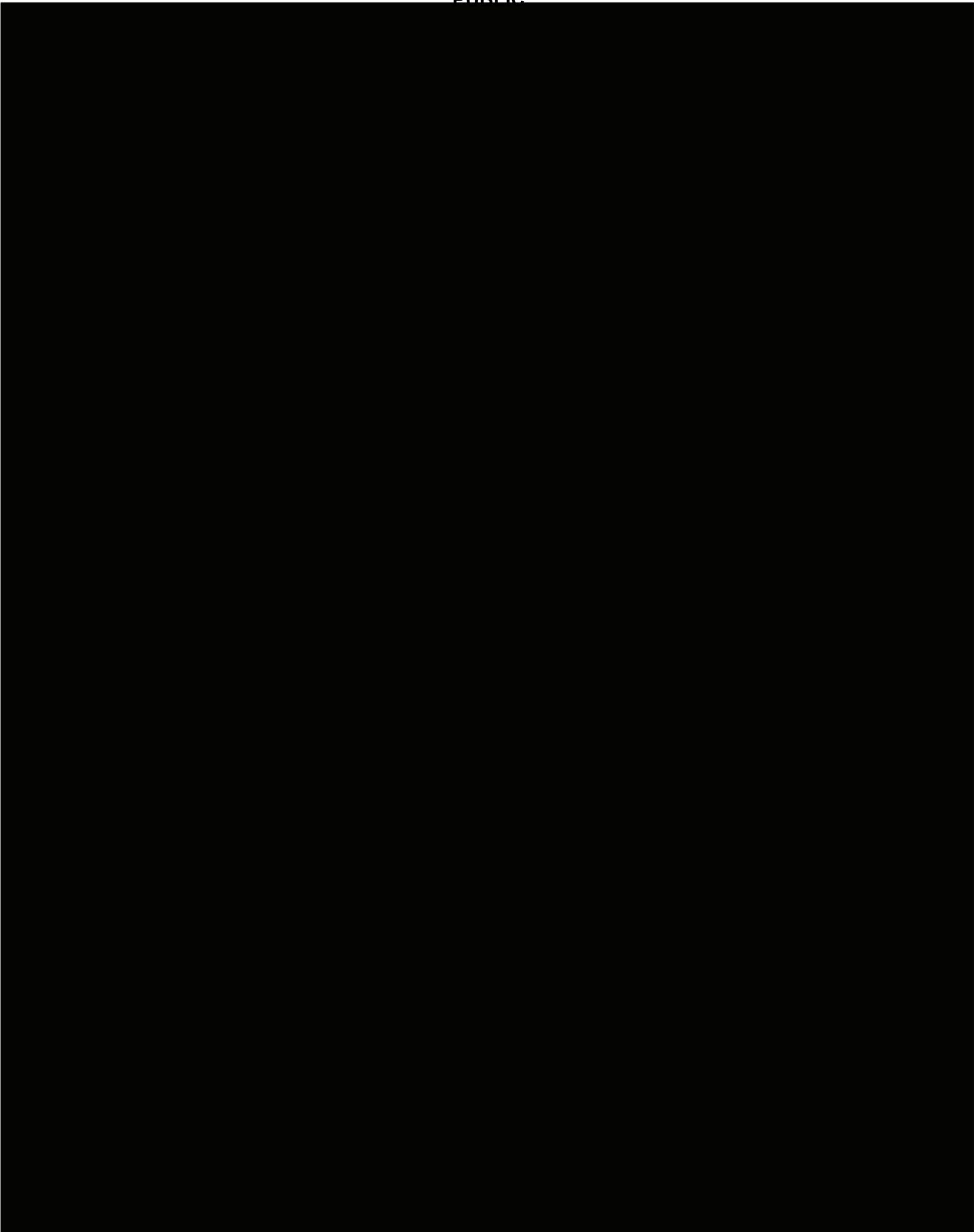
JACQUELINE HOUSTON

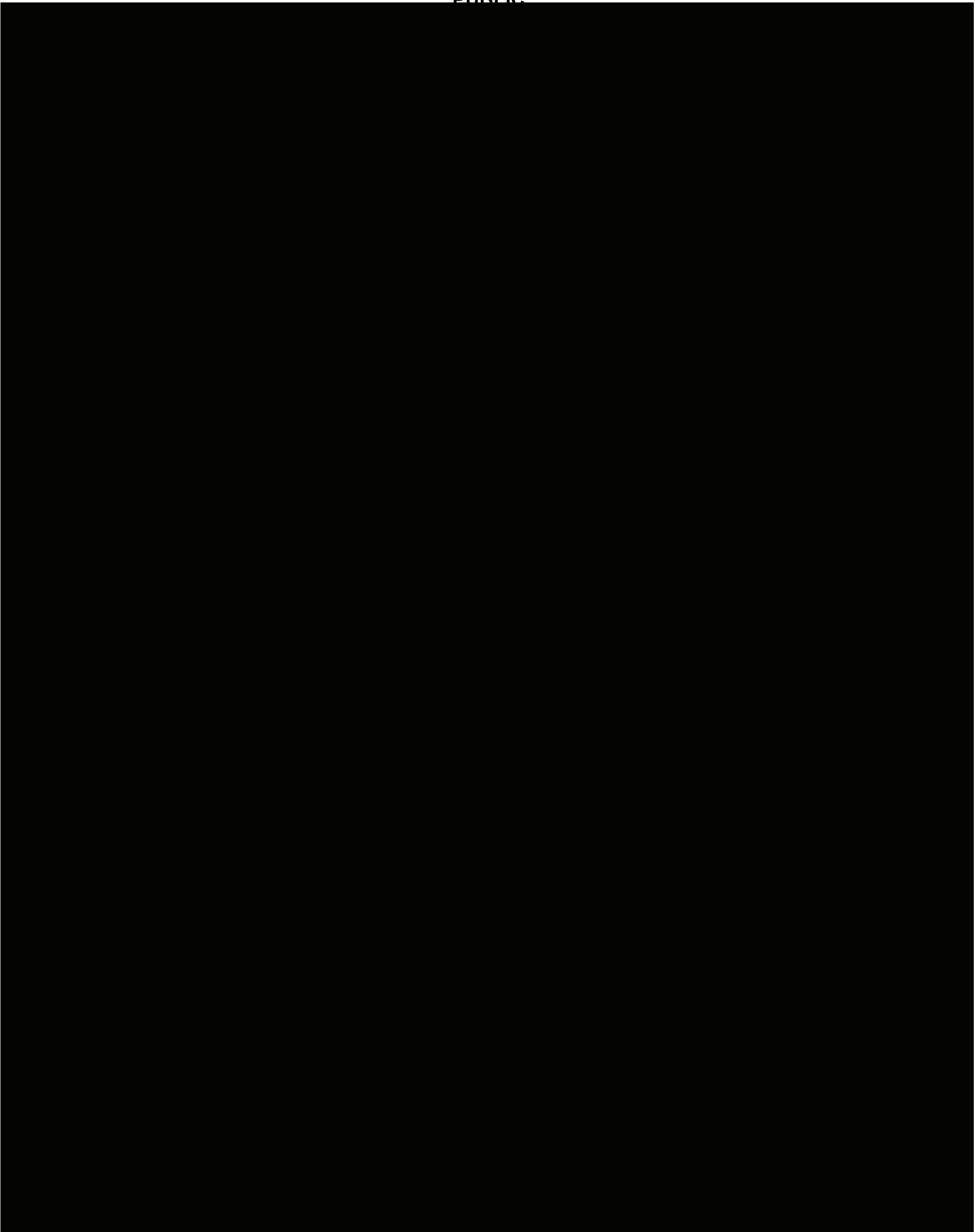
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Expires July 7, 2024.

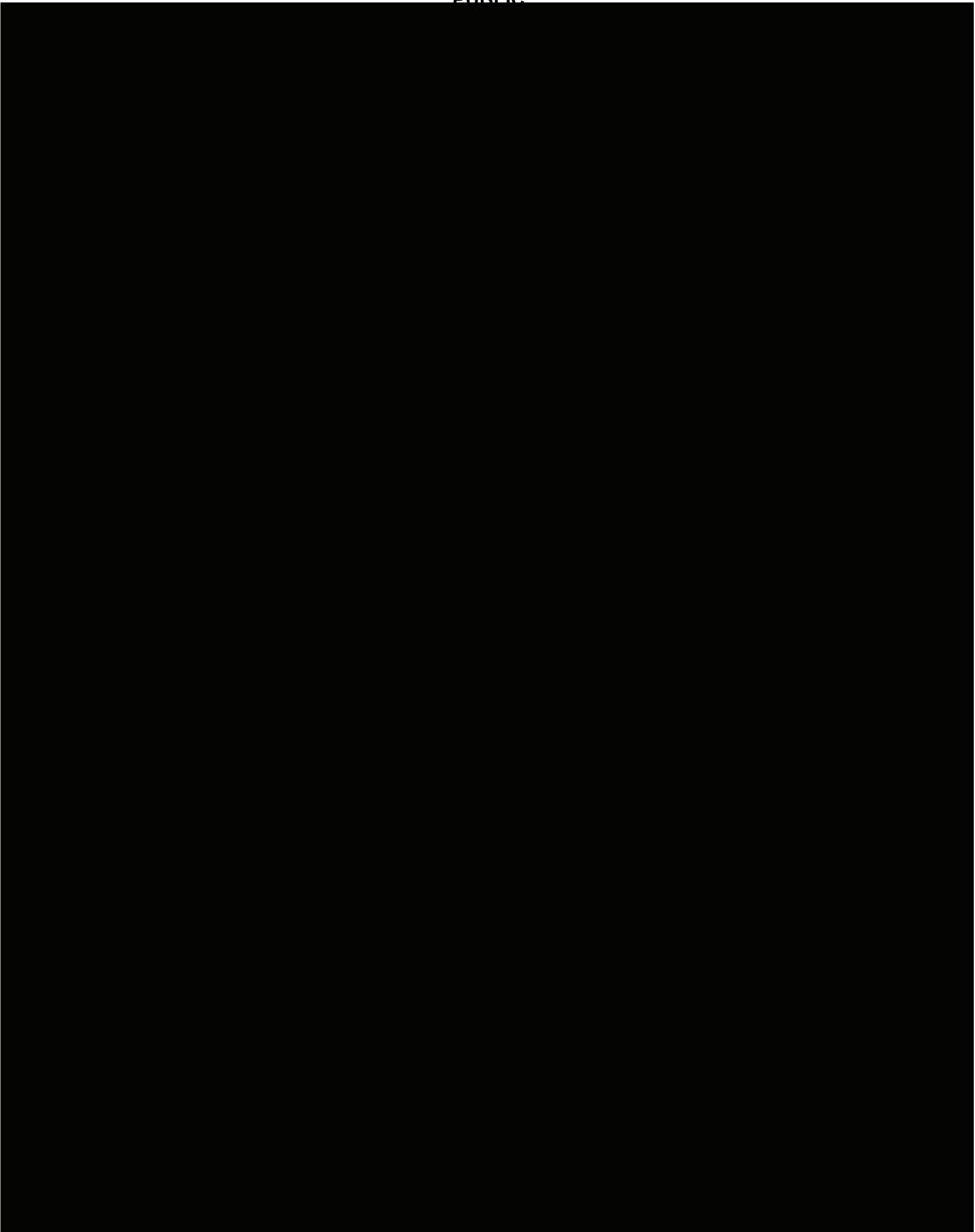


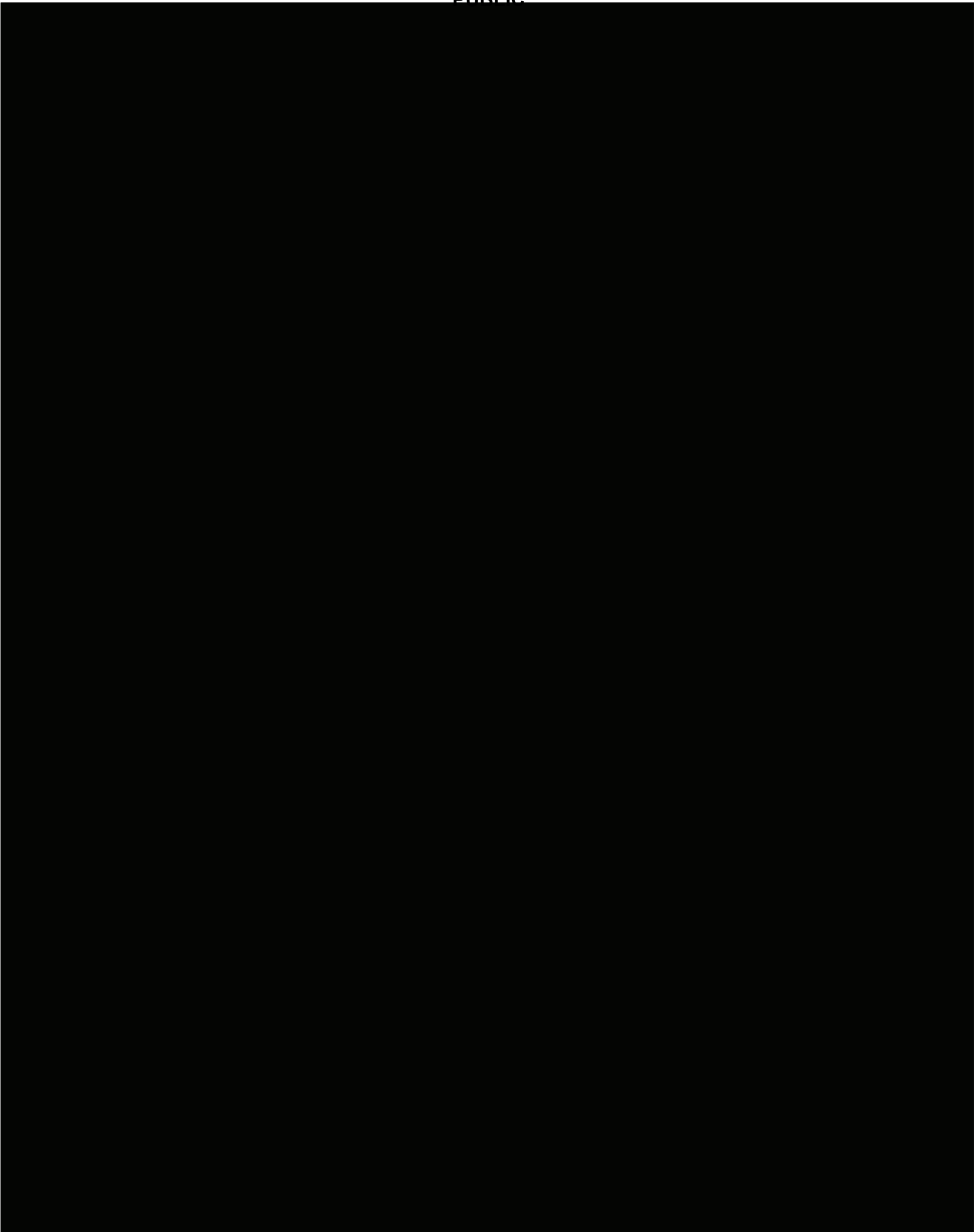


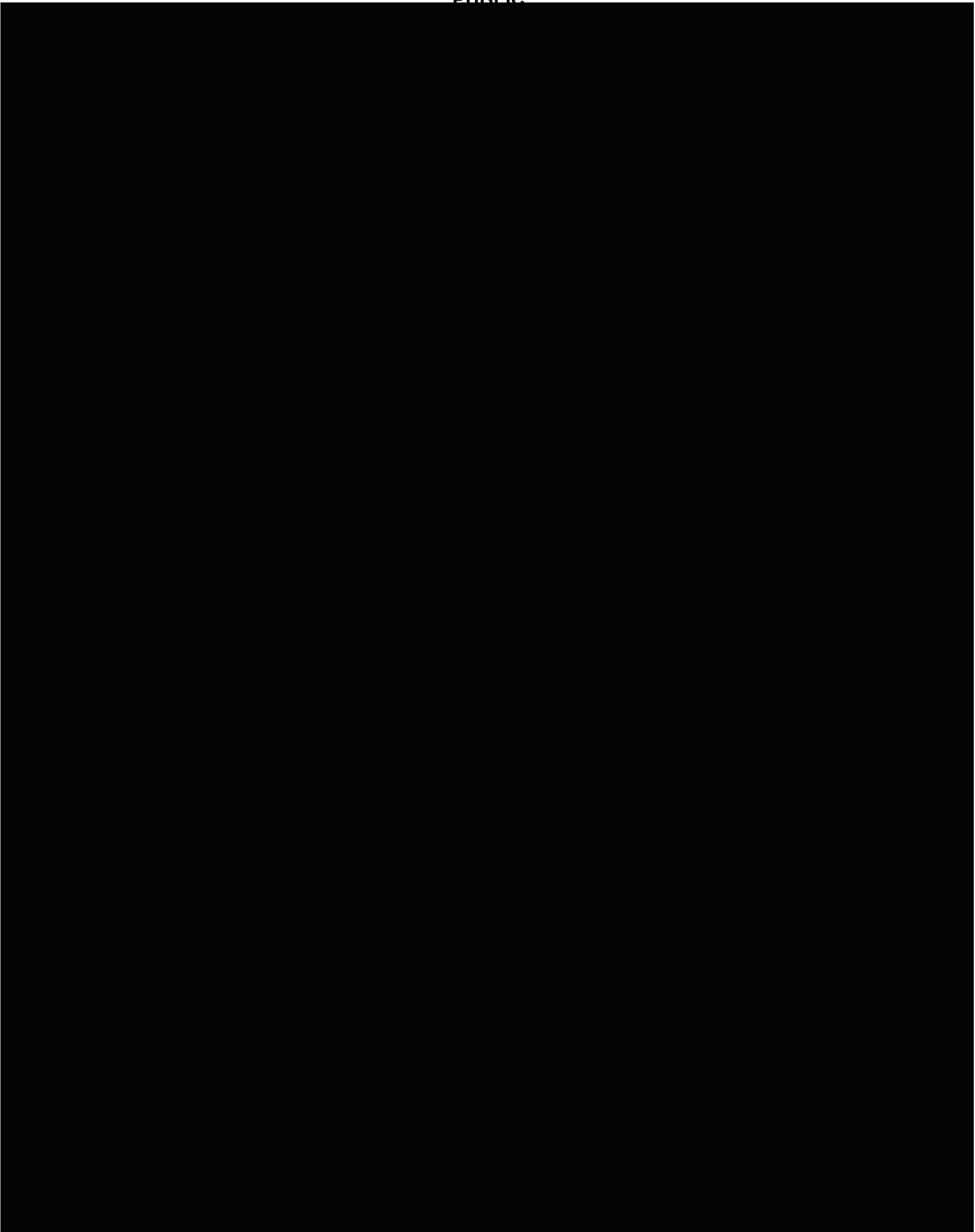


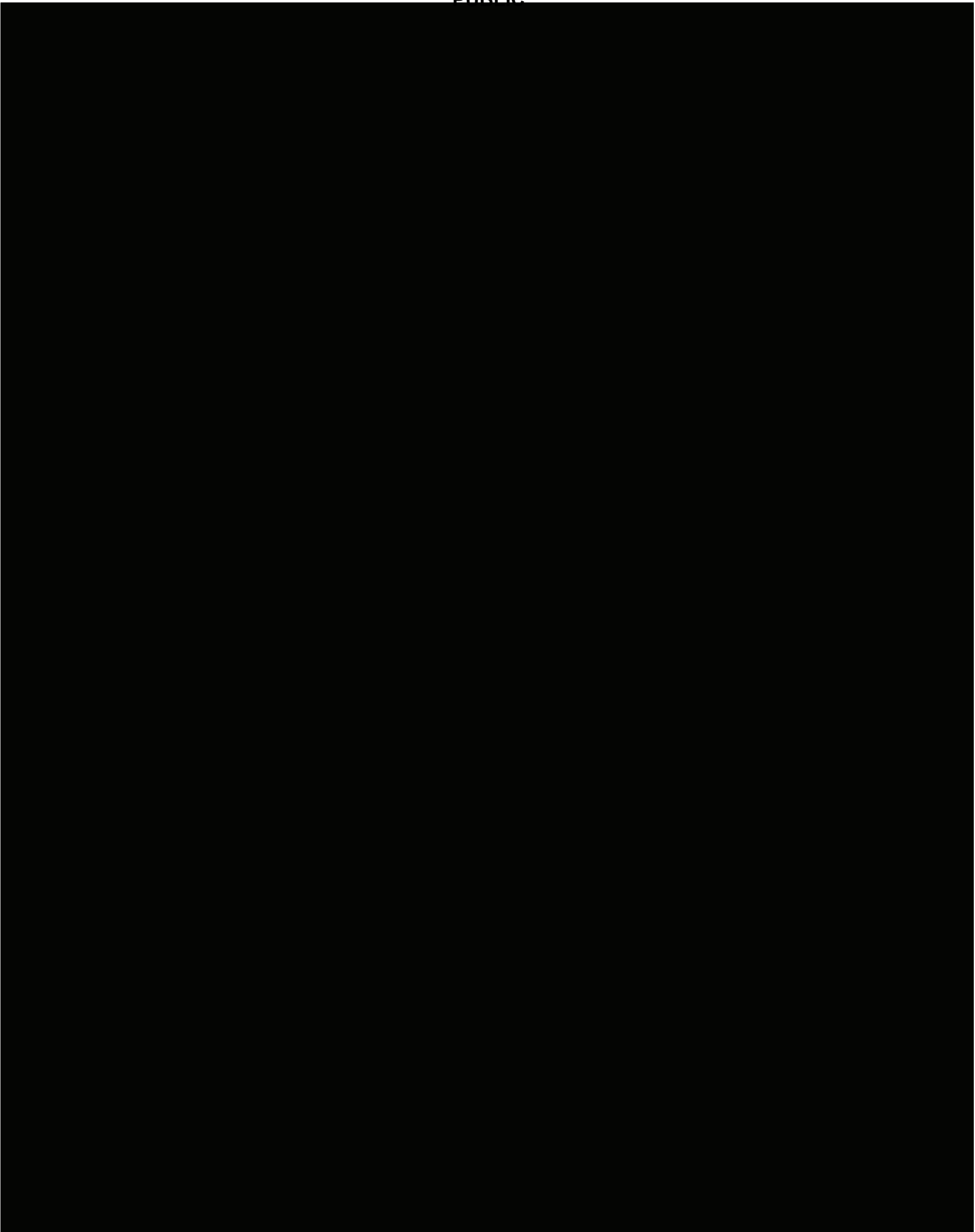


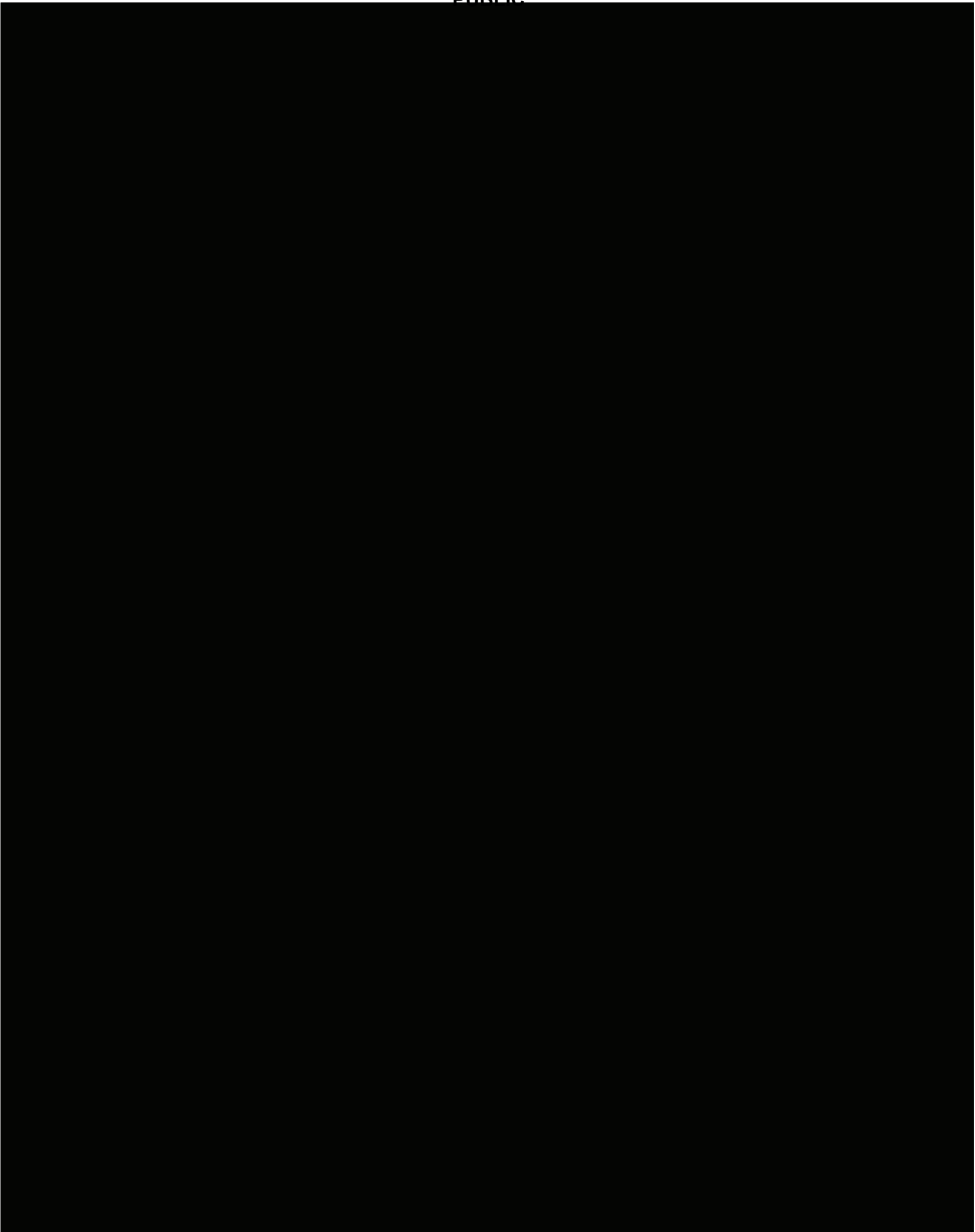


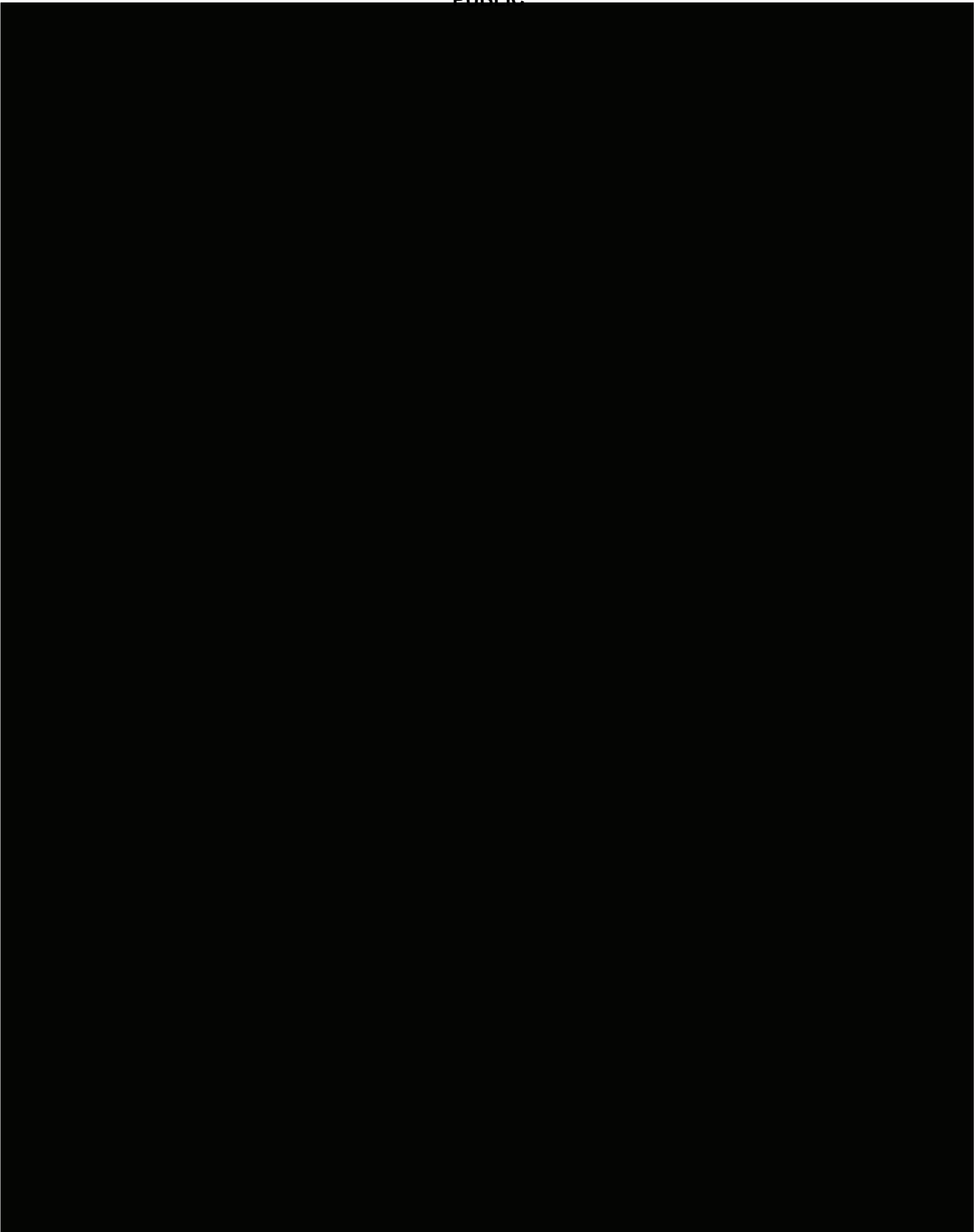


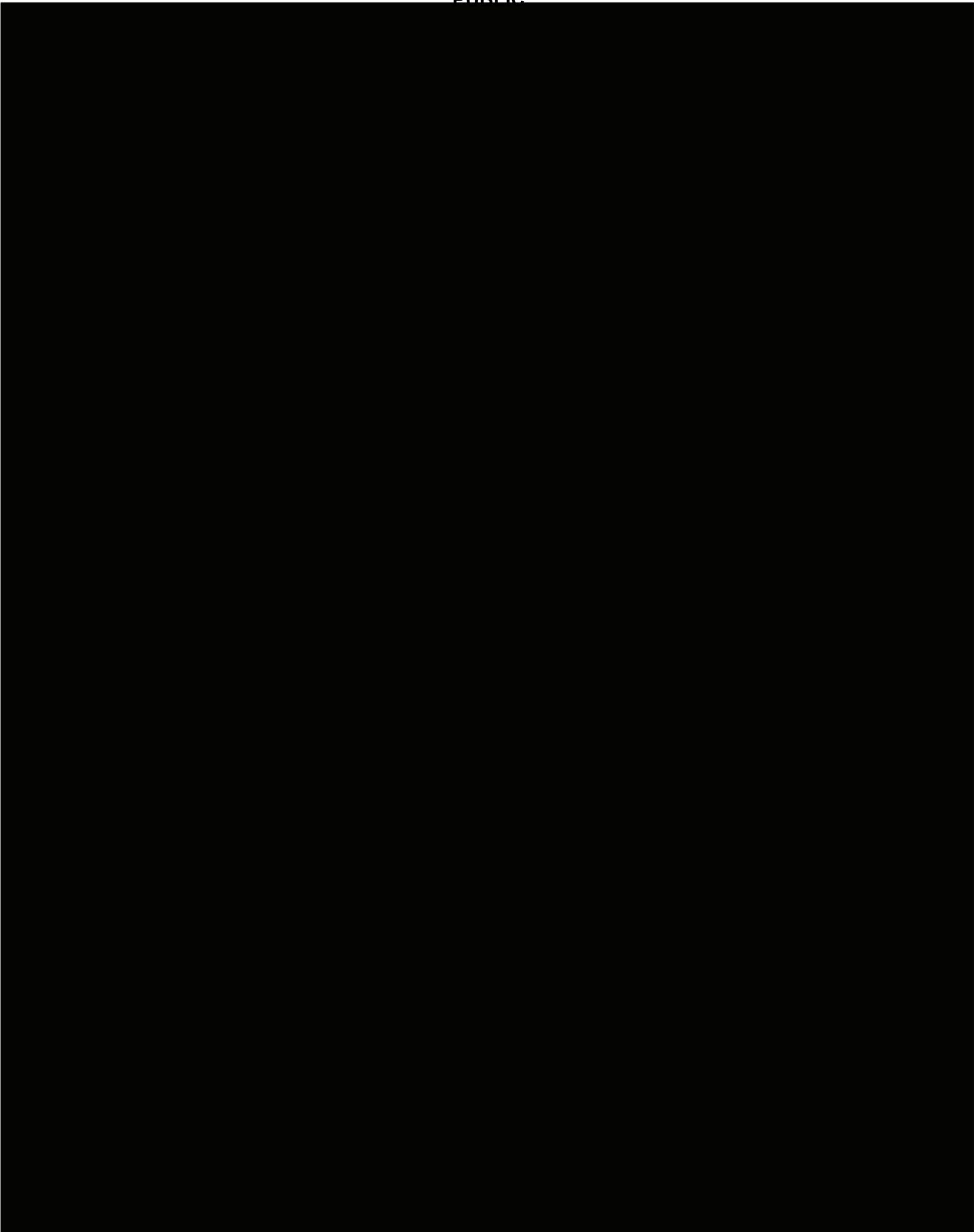


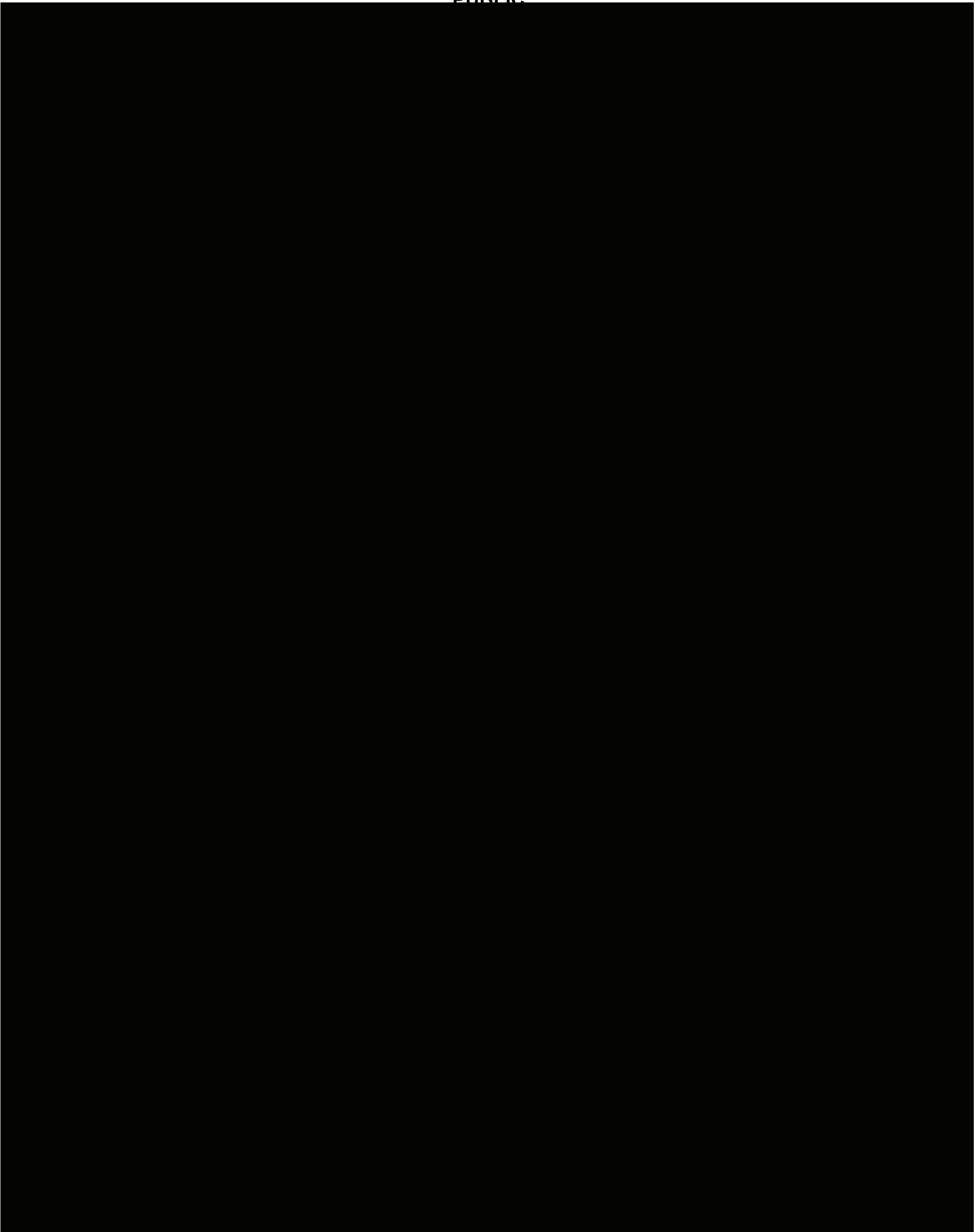


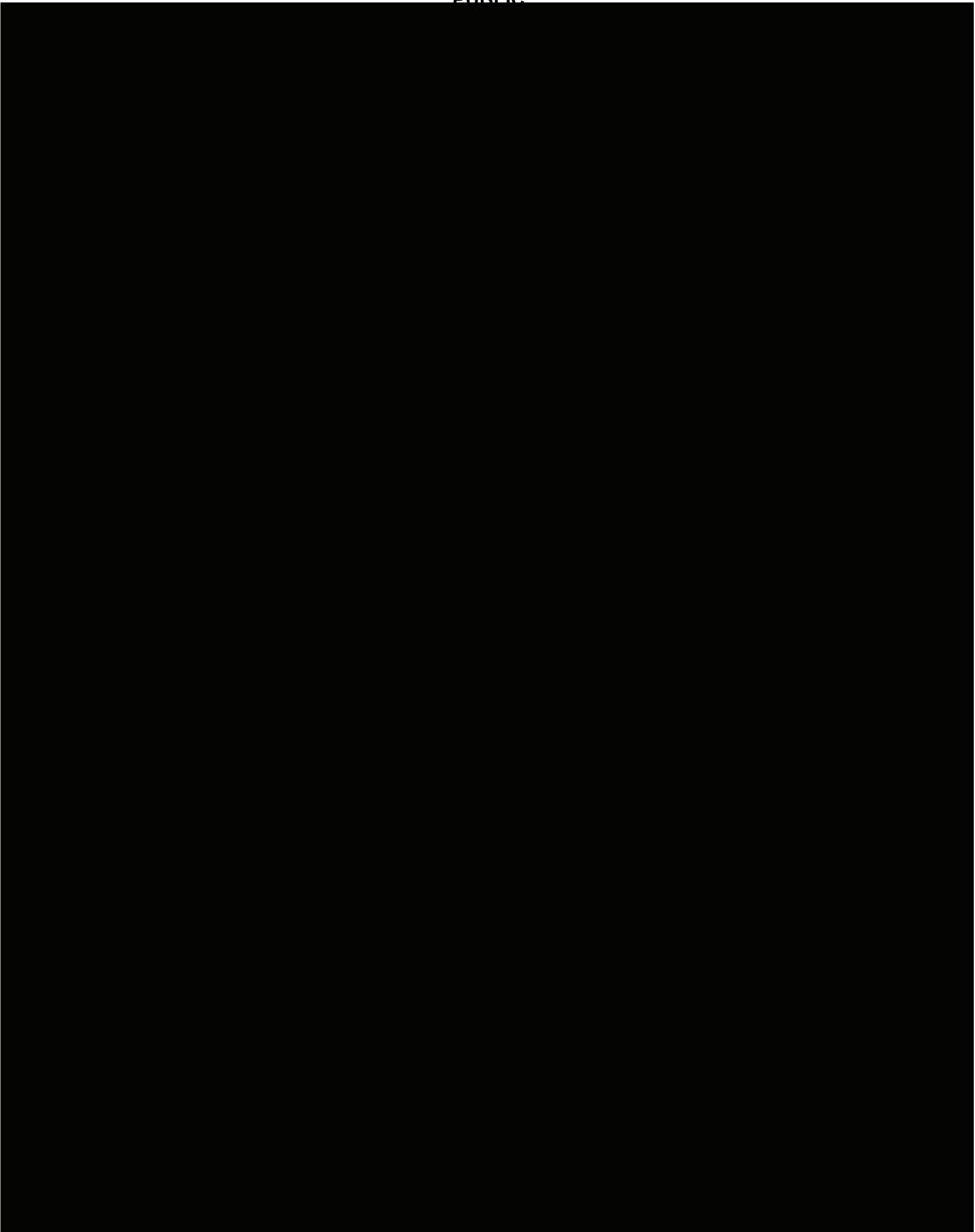


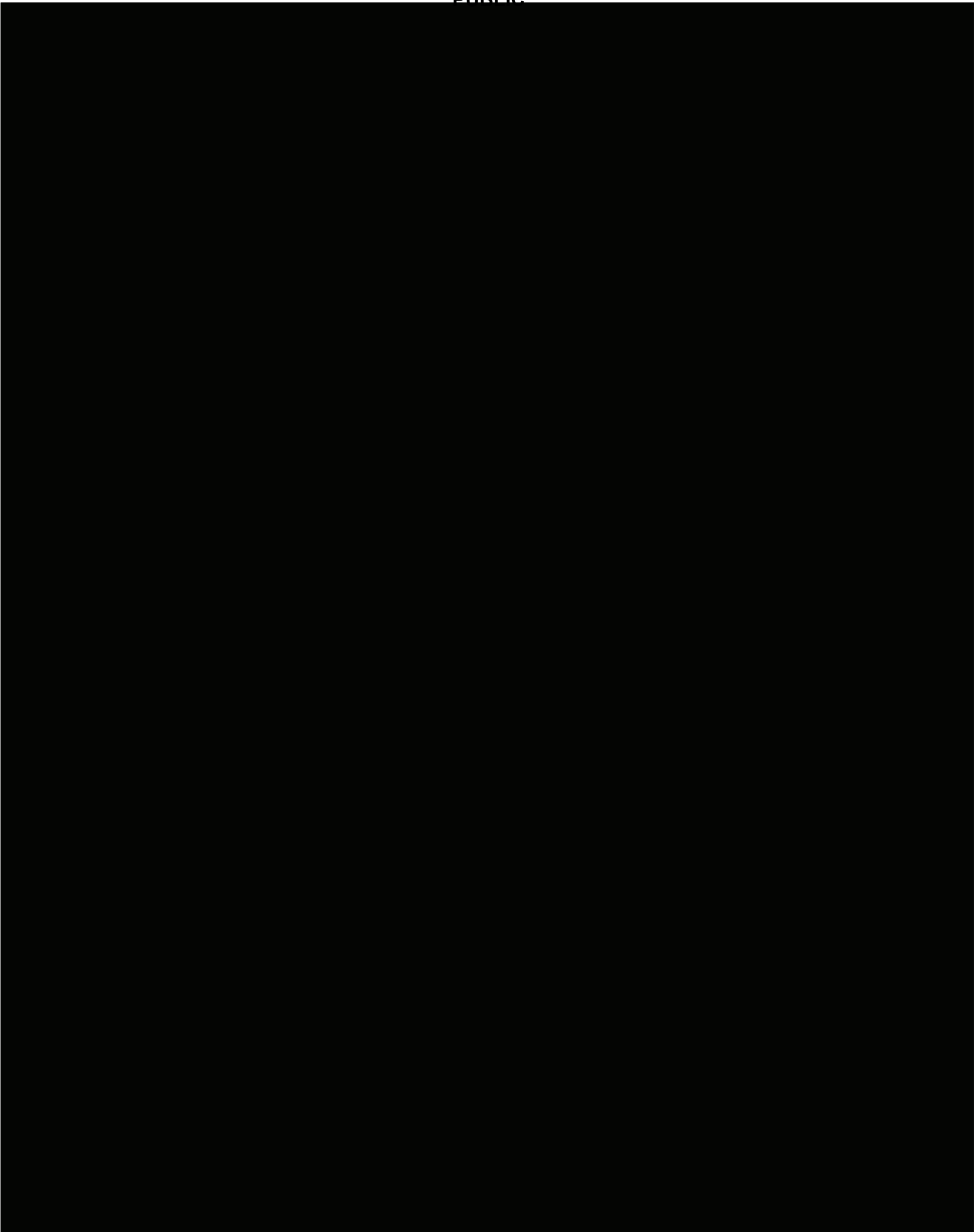


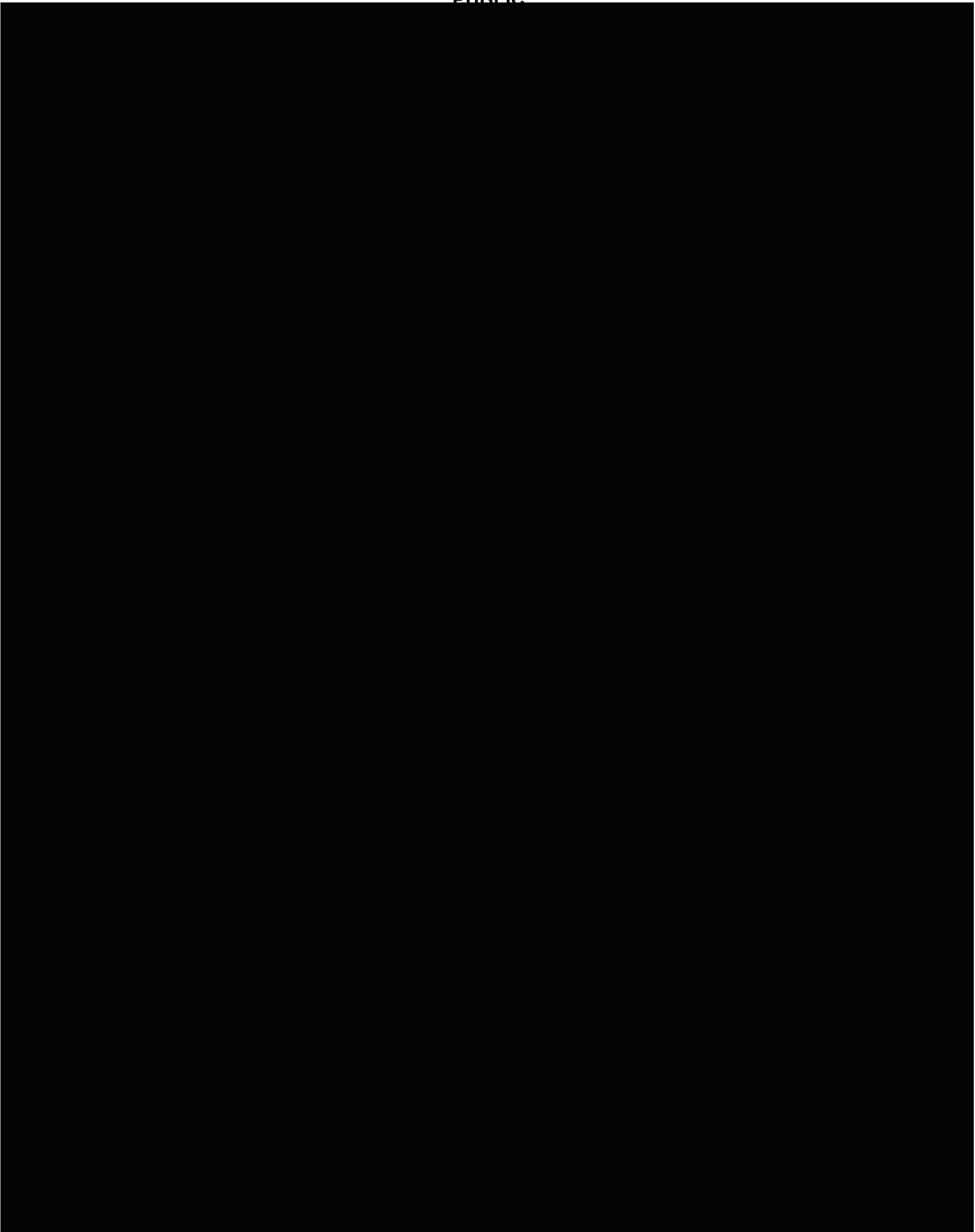


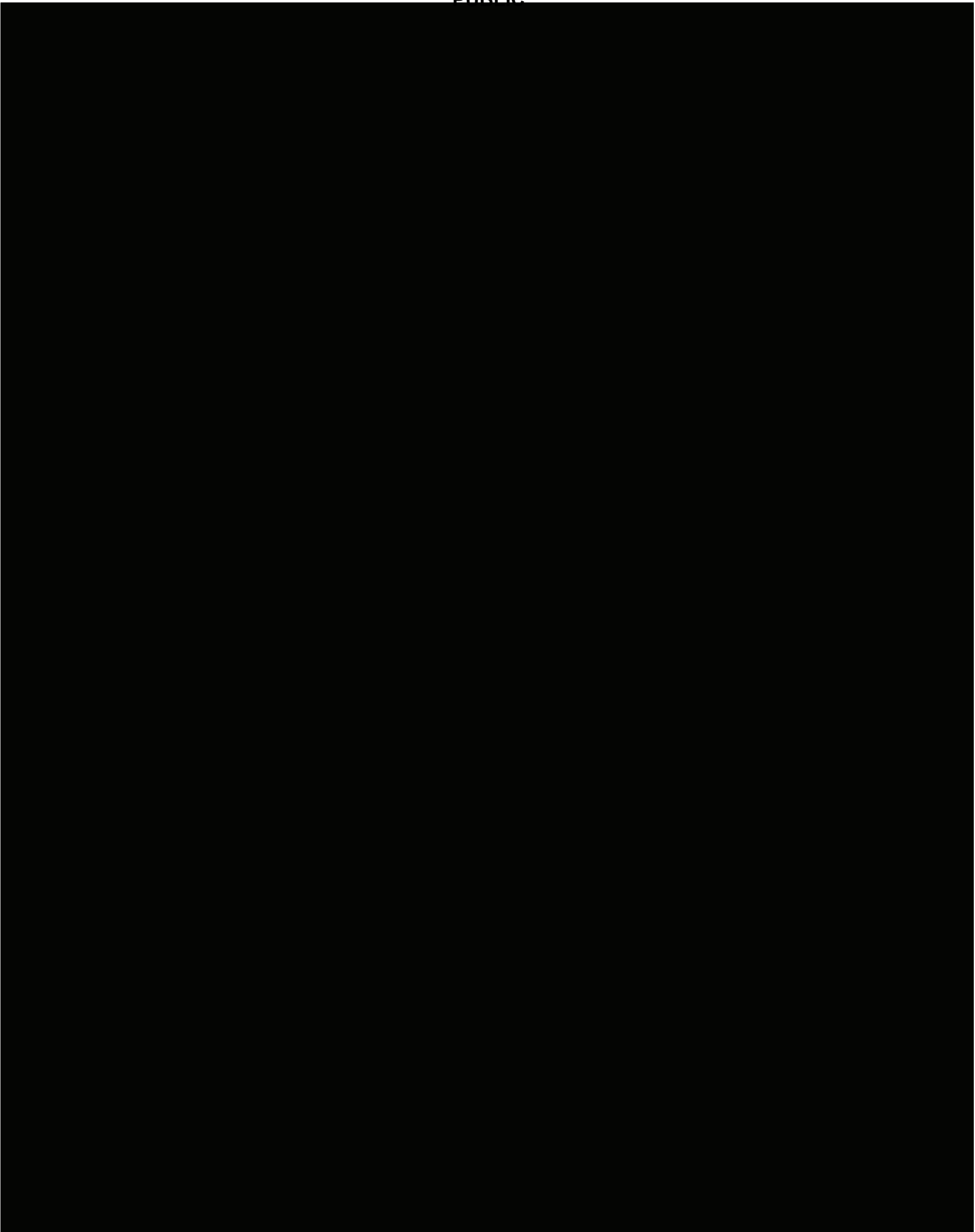


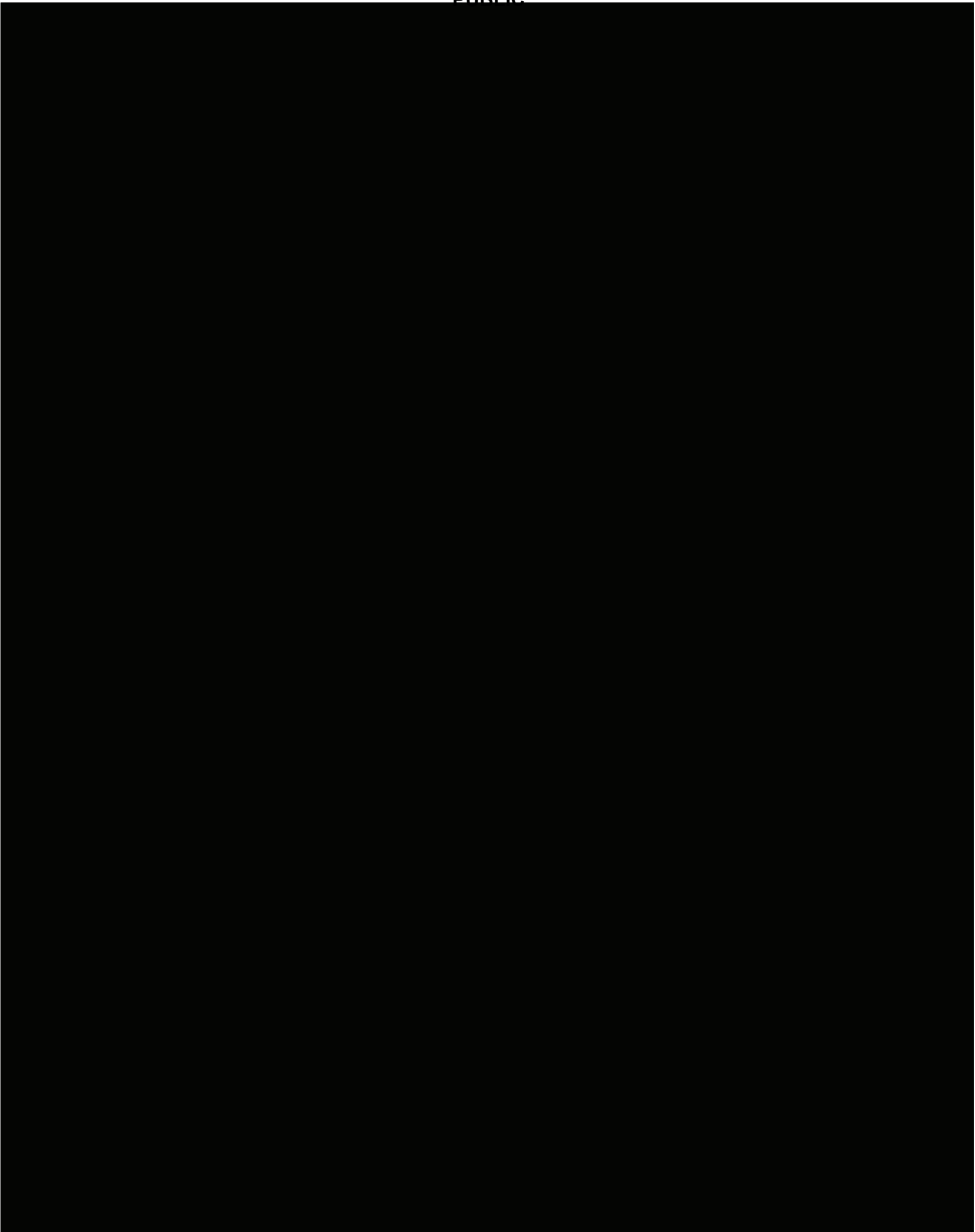


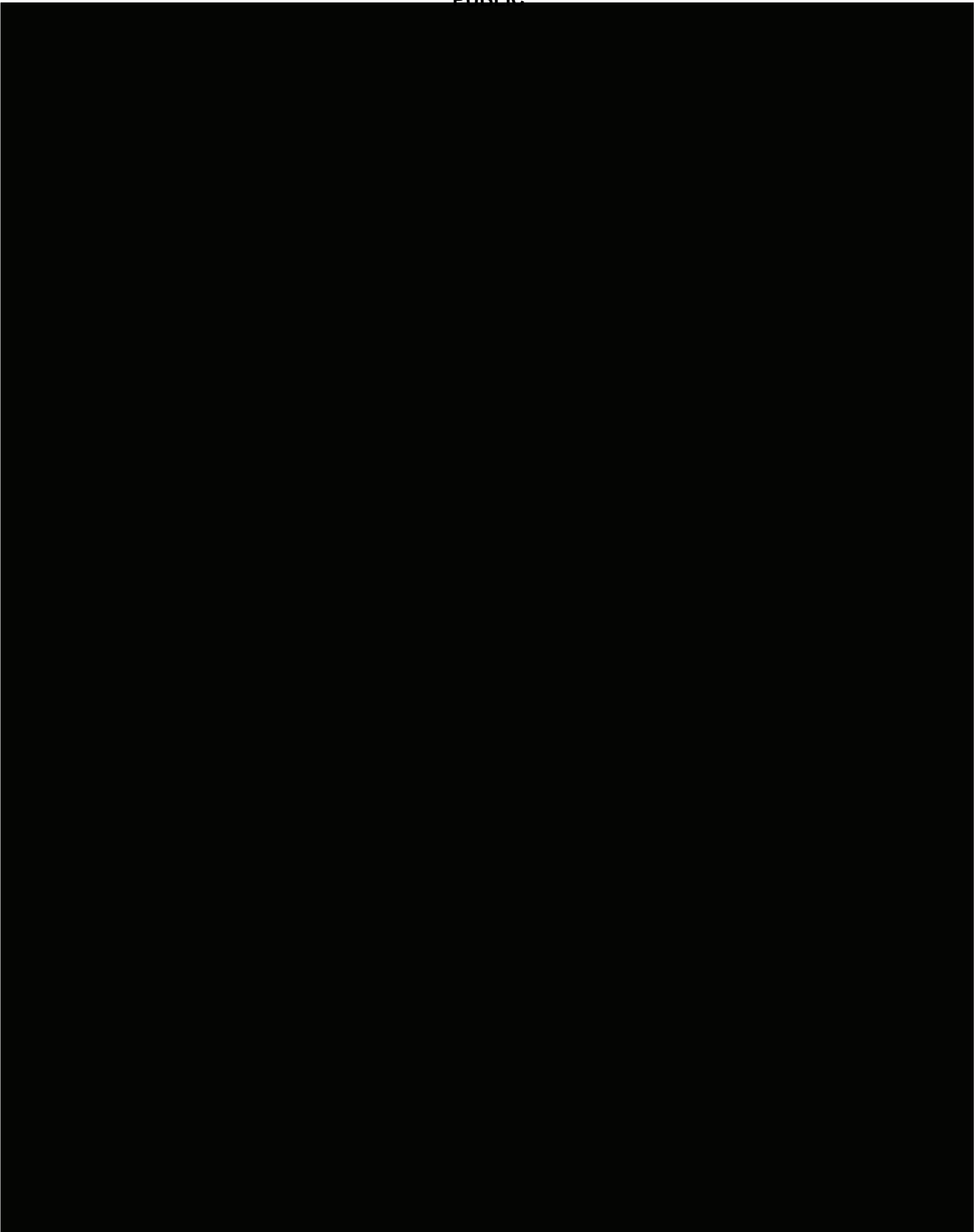


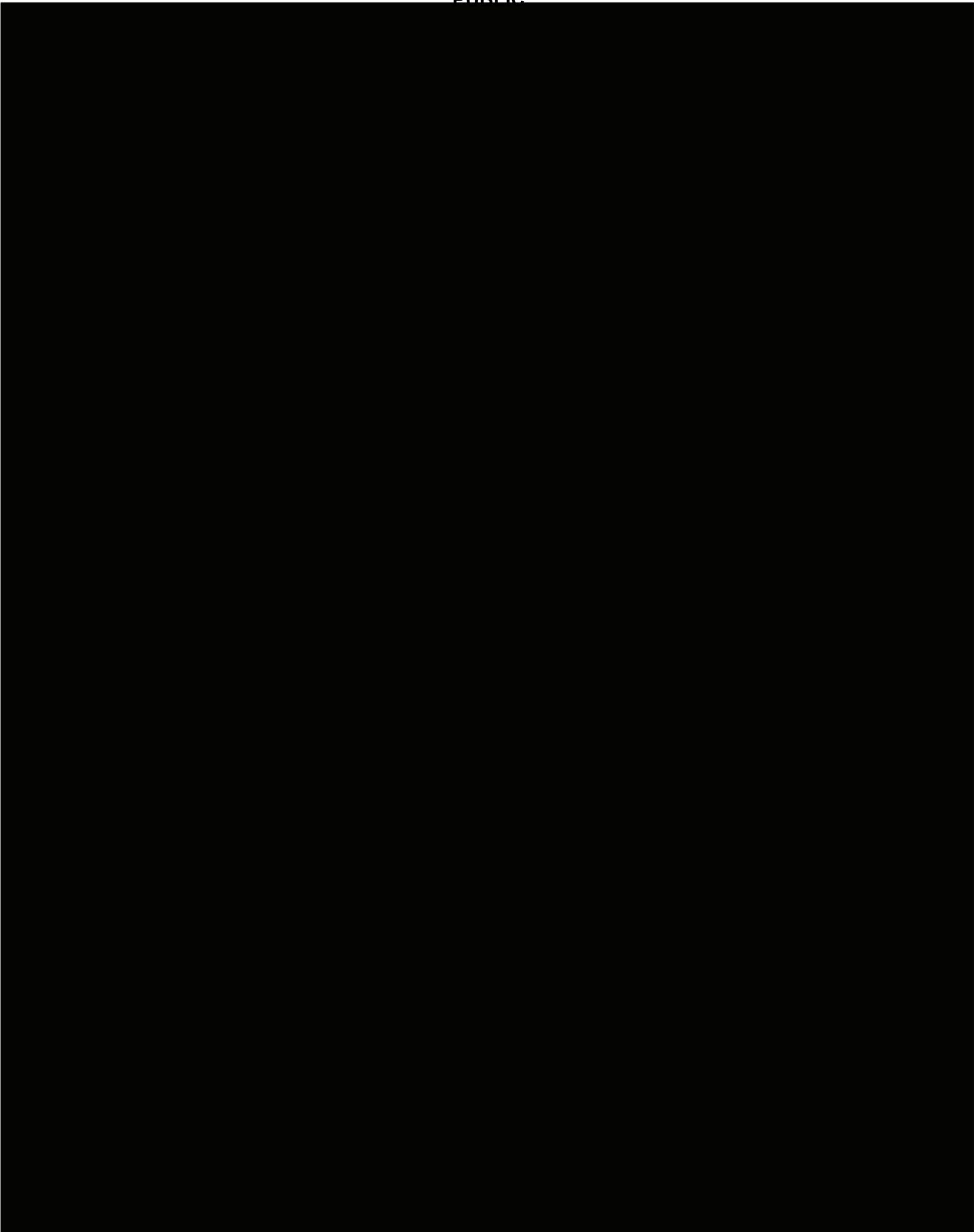


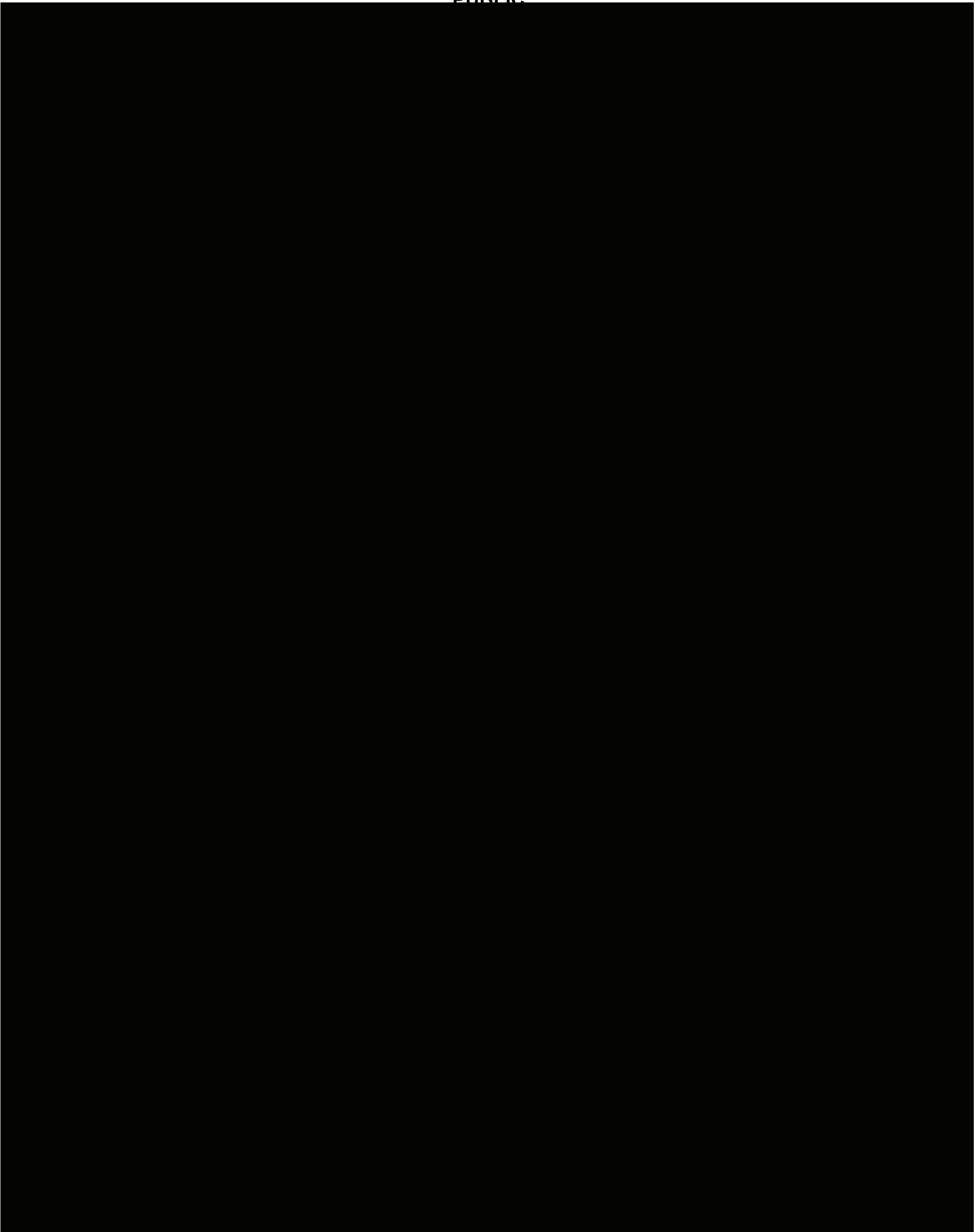


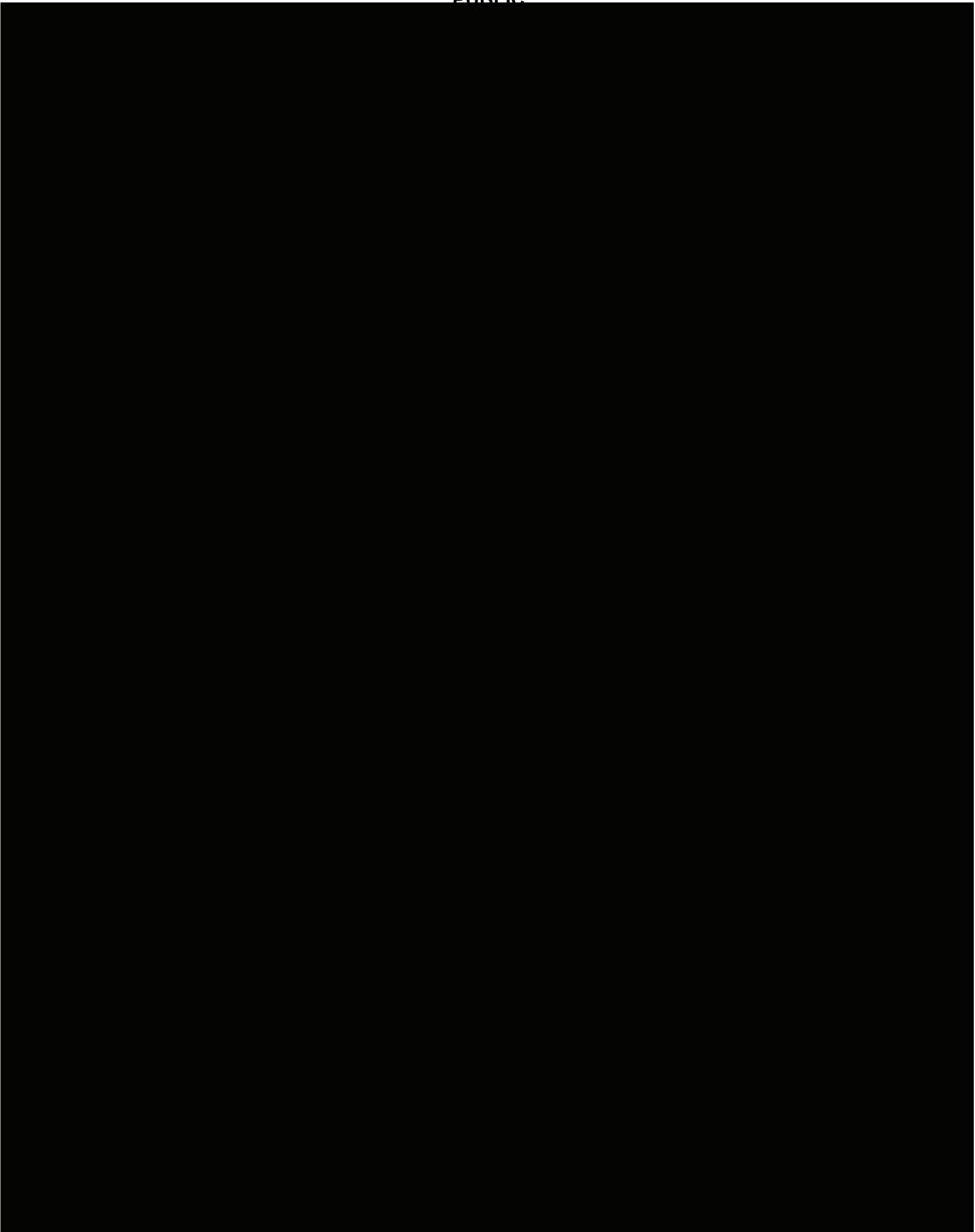


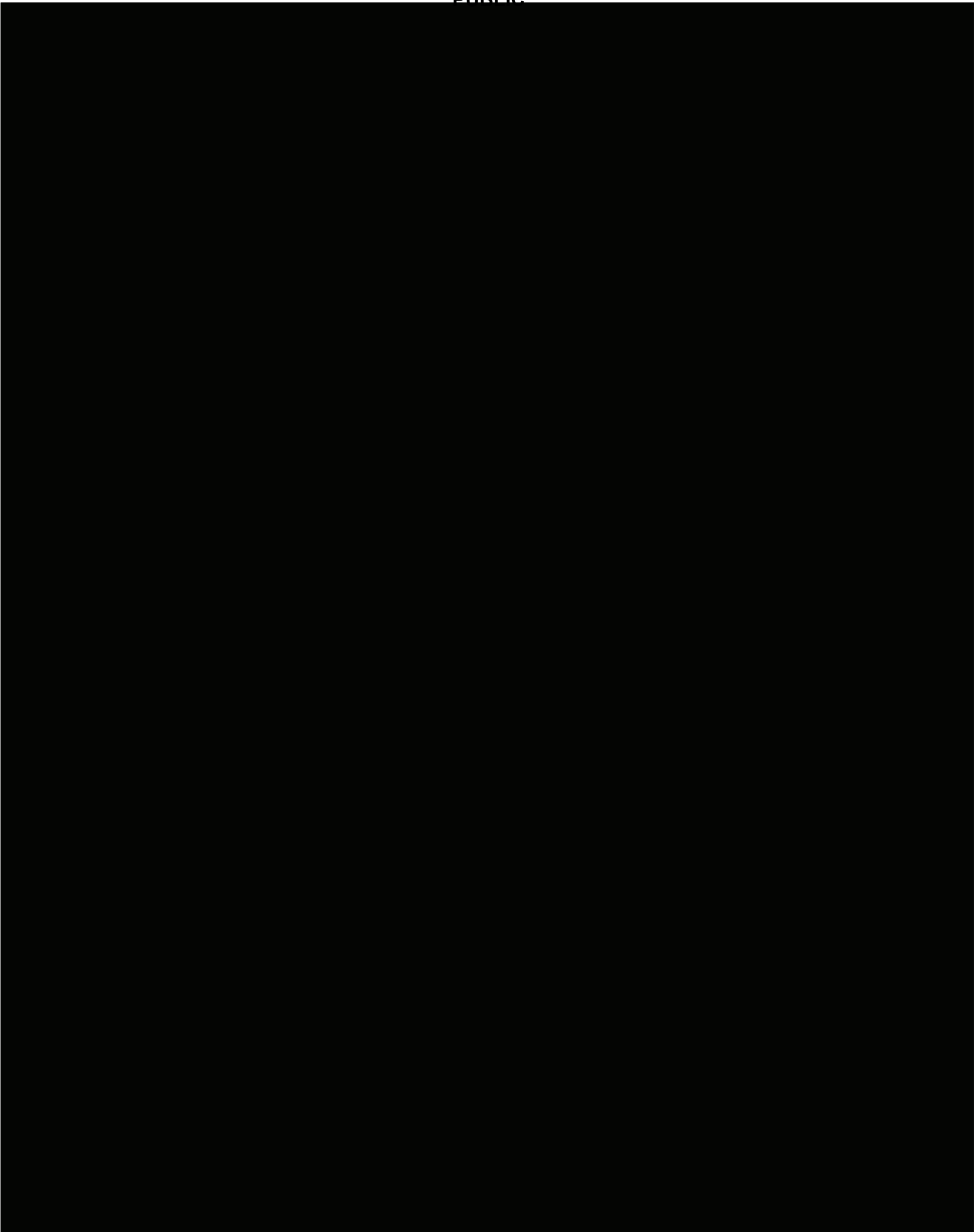


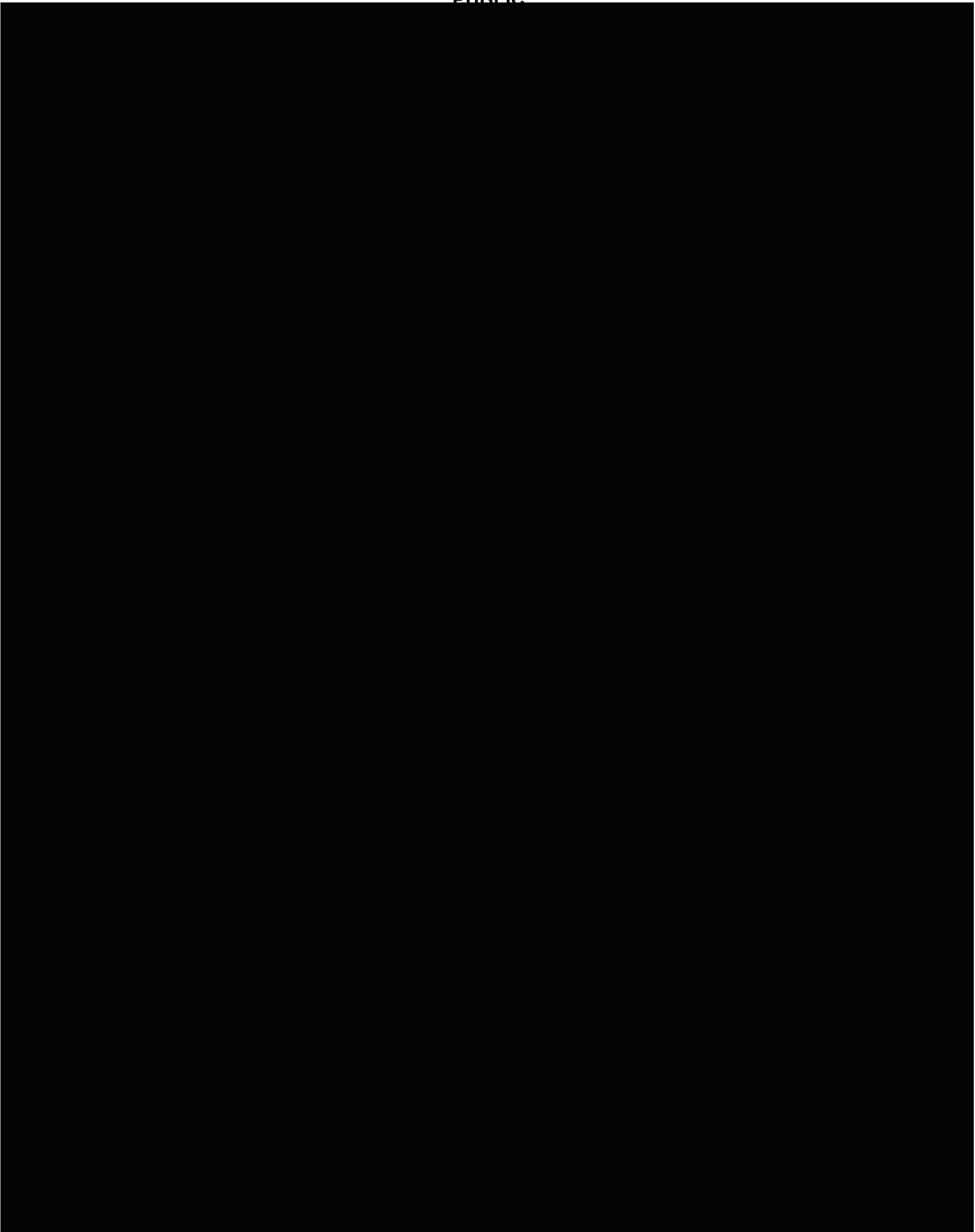


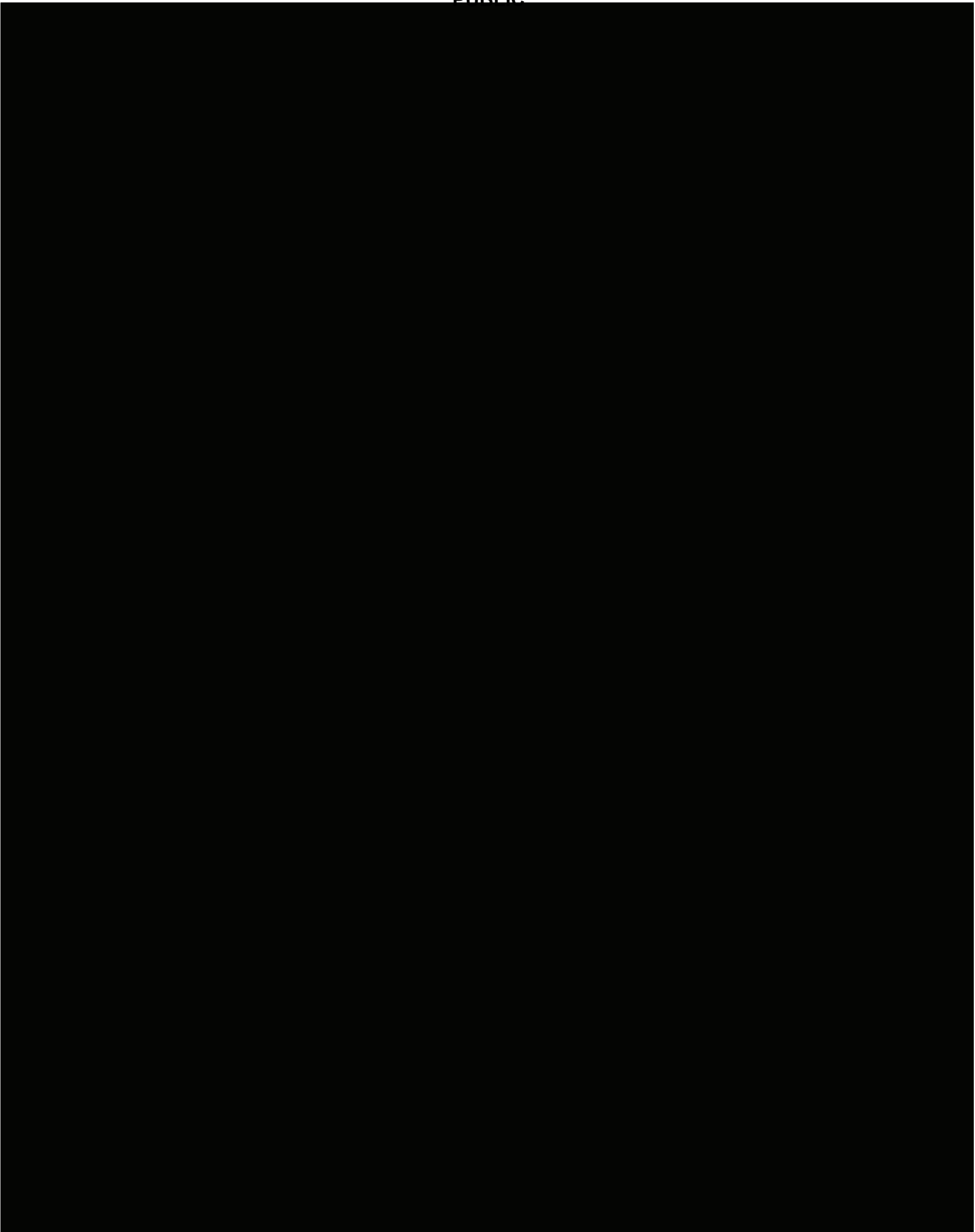


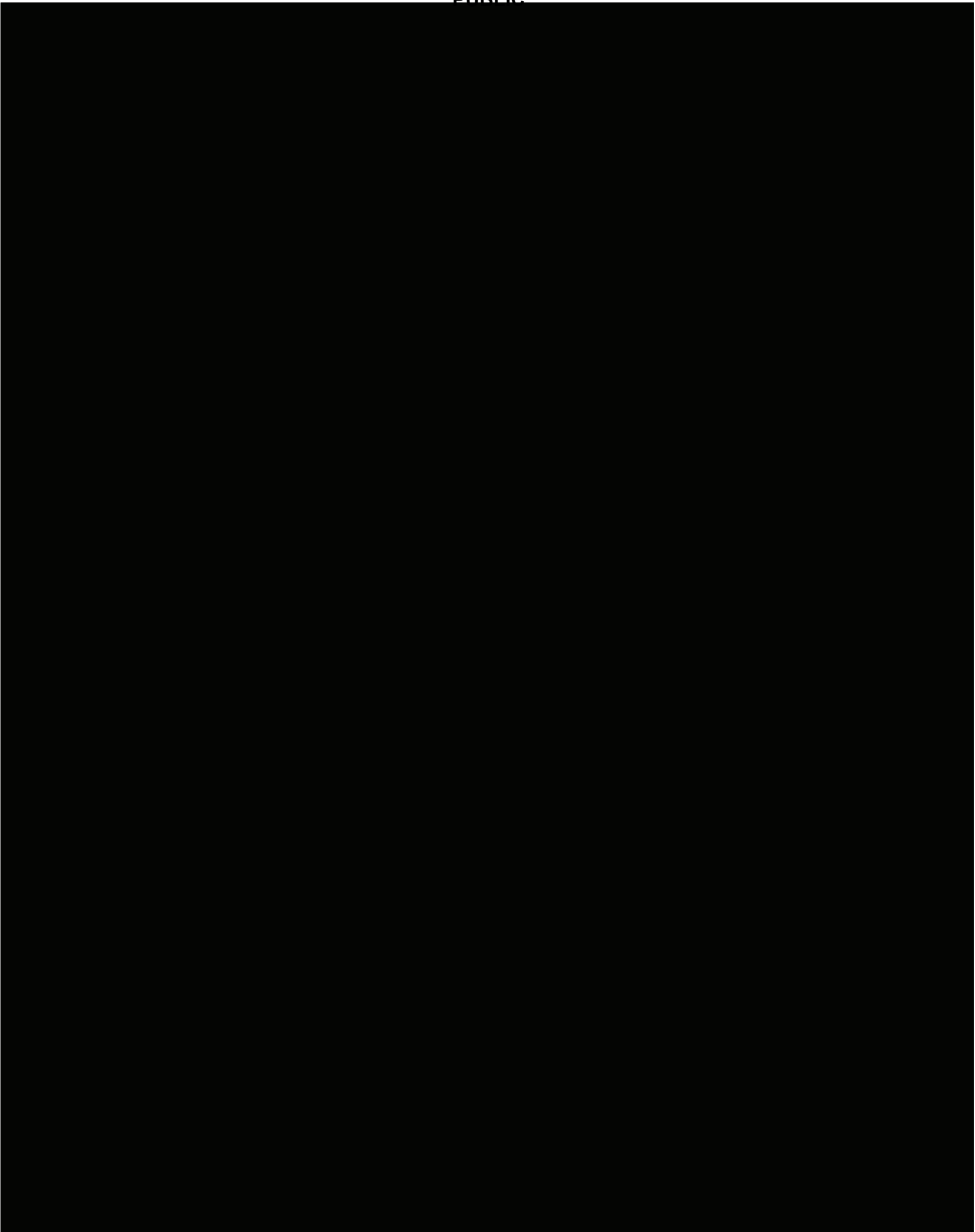


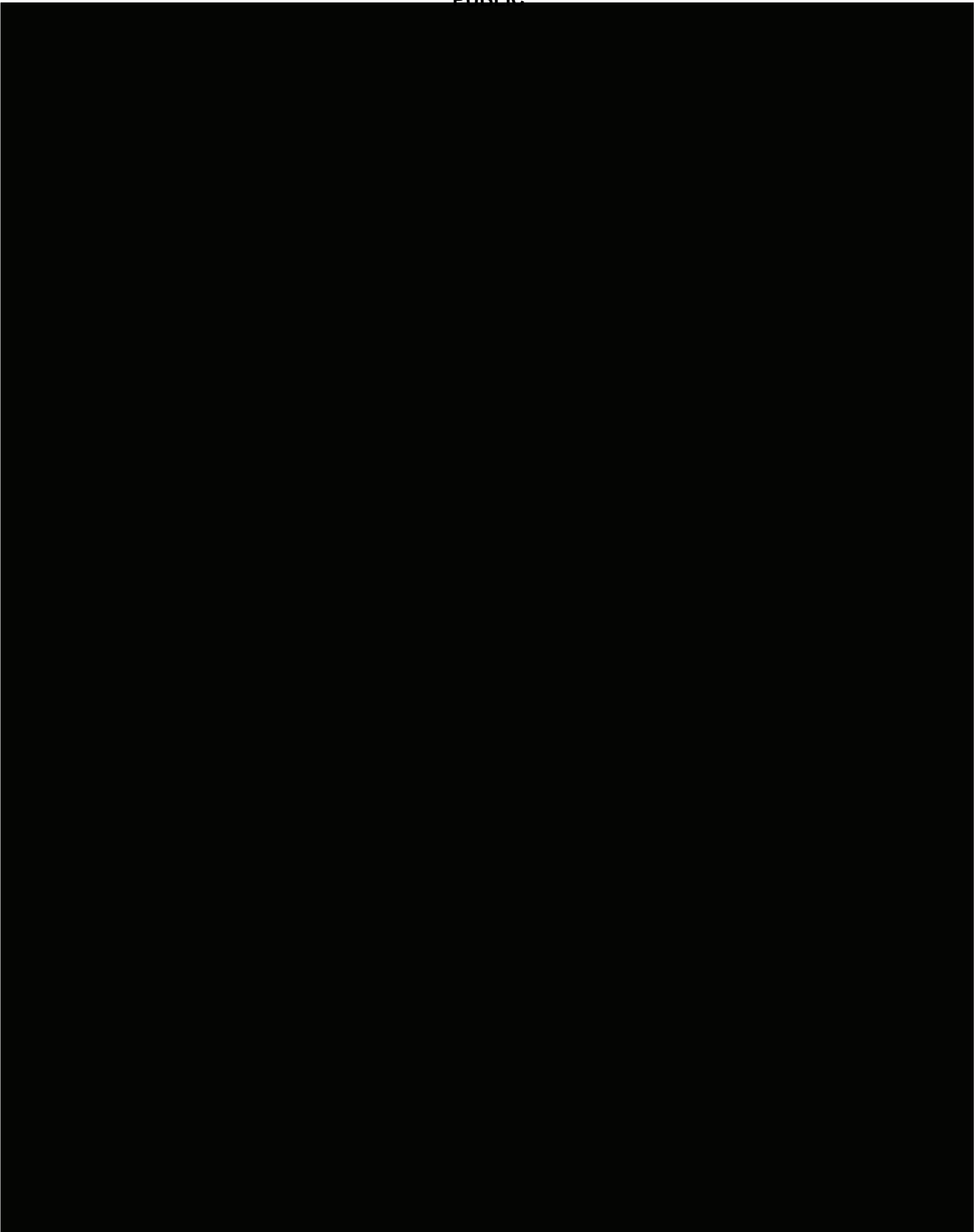


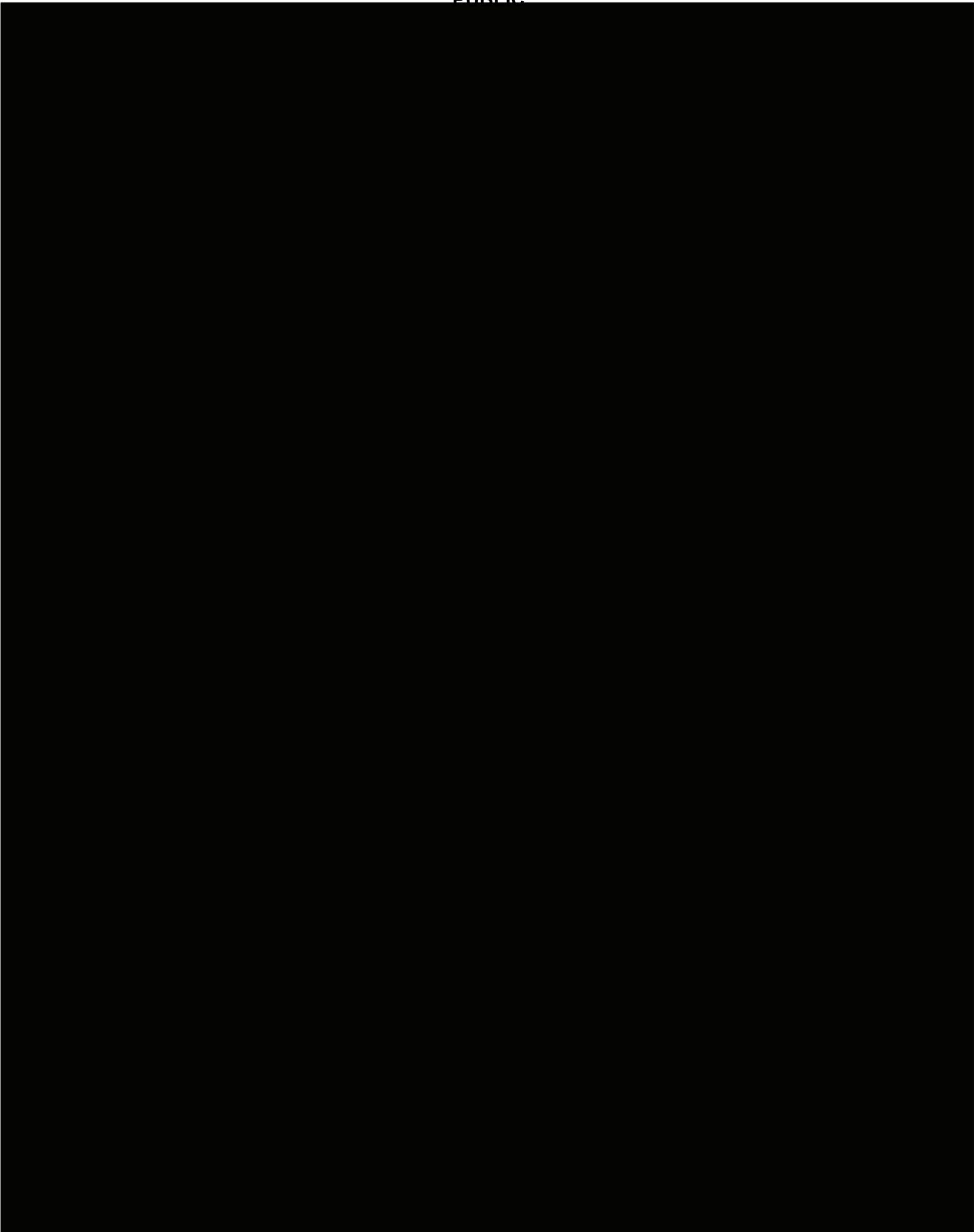


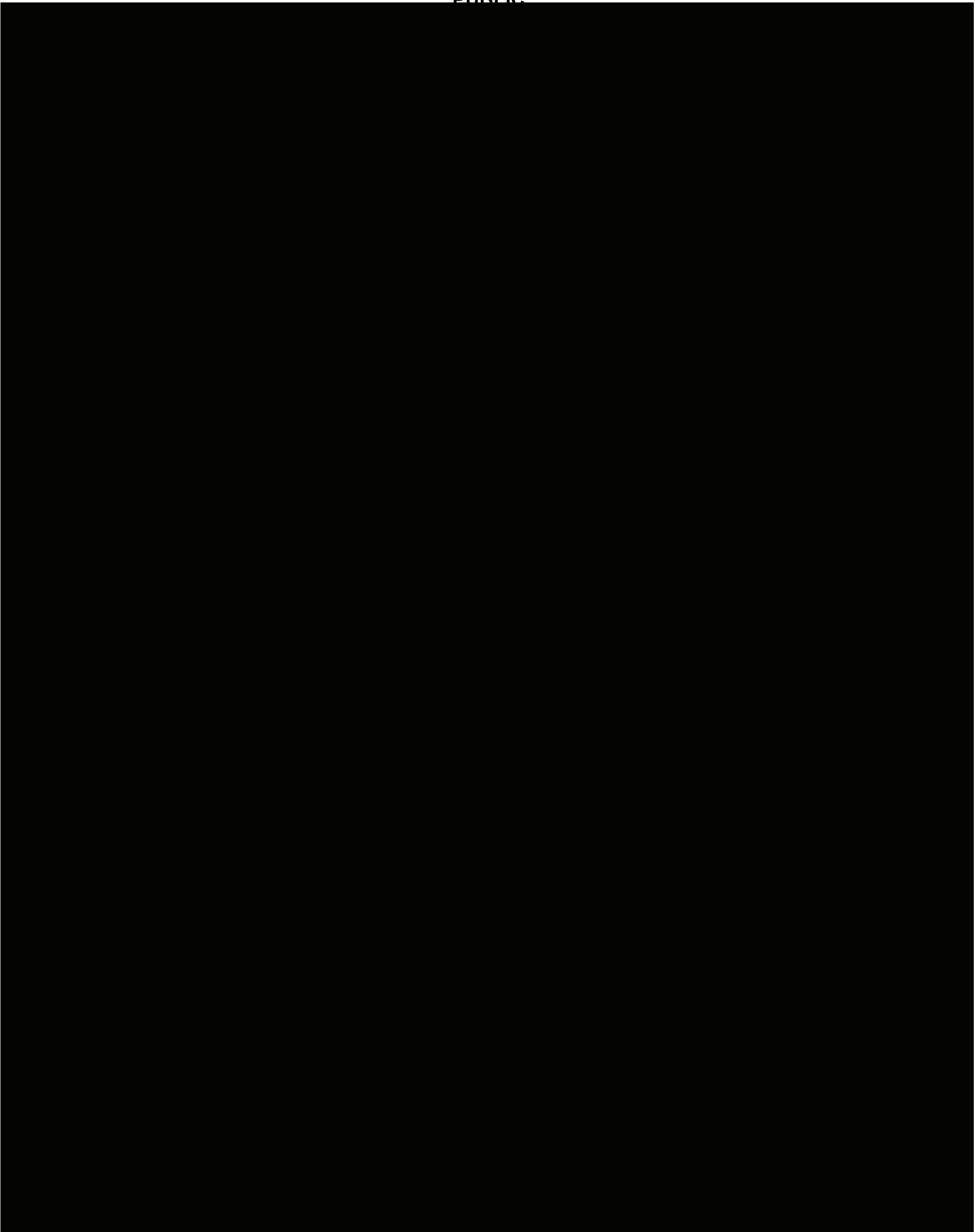


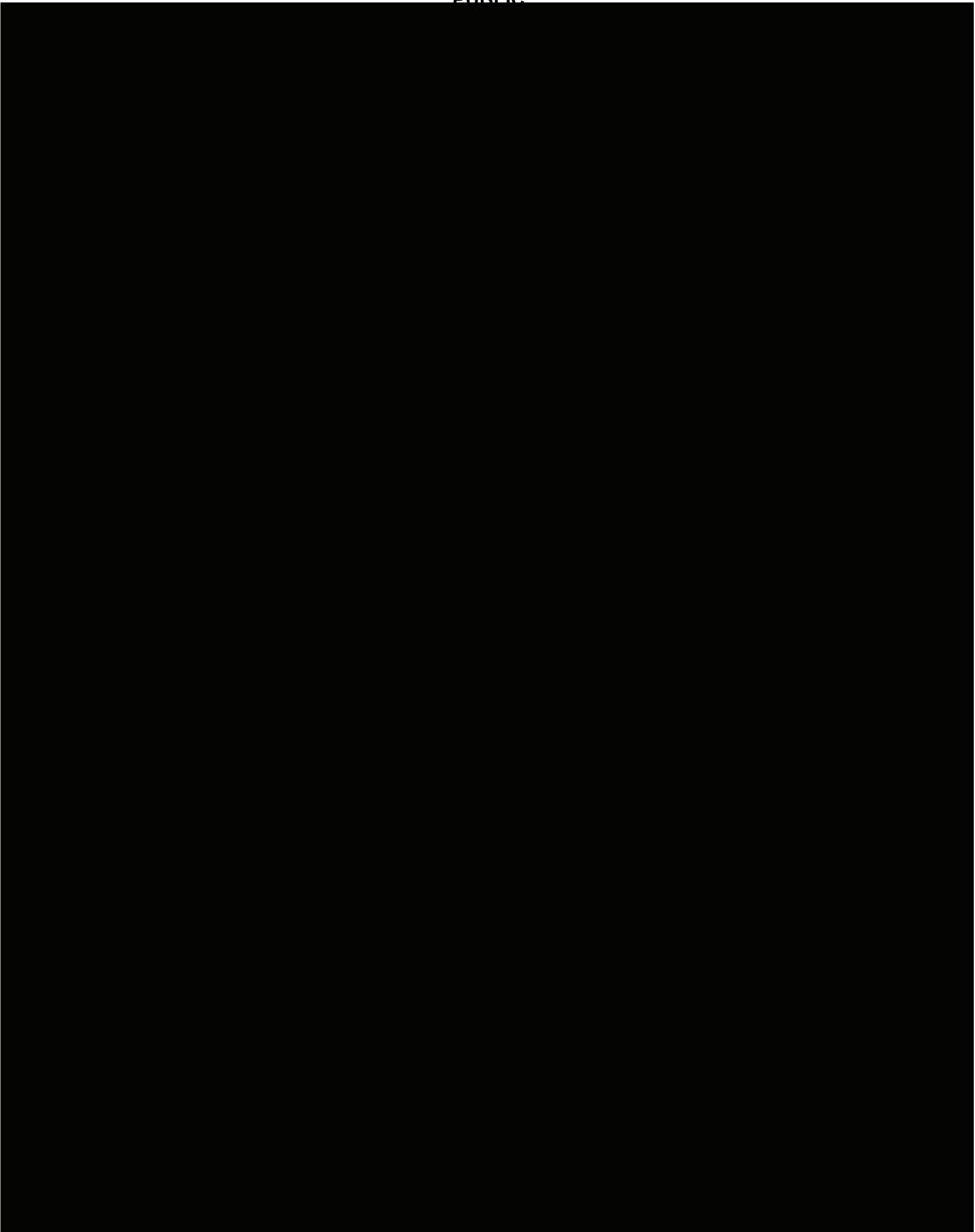


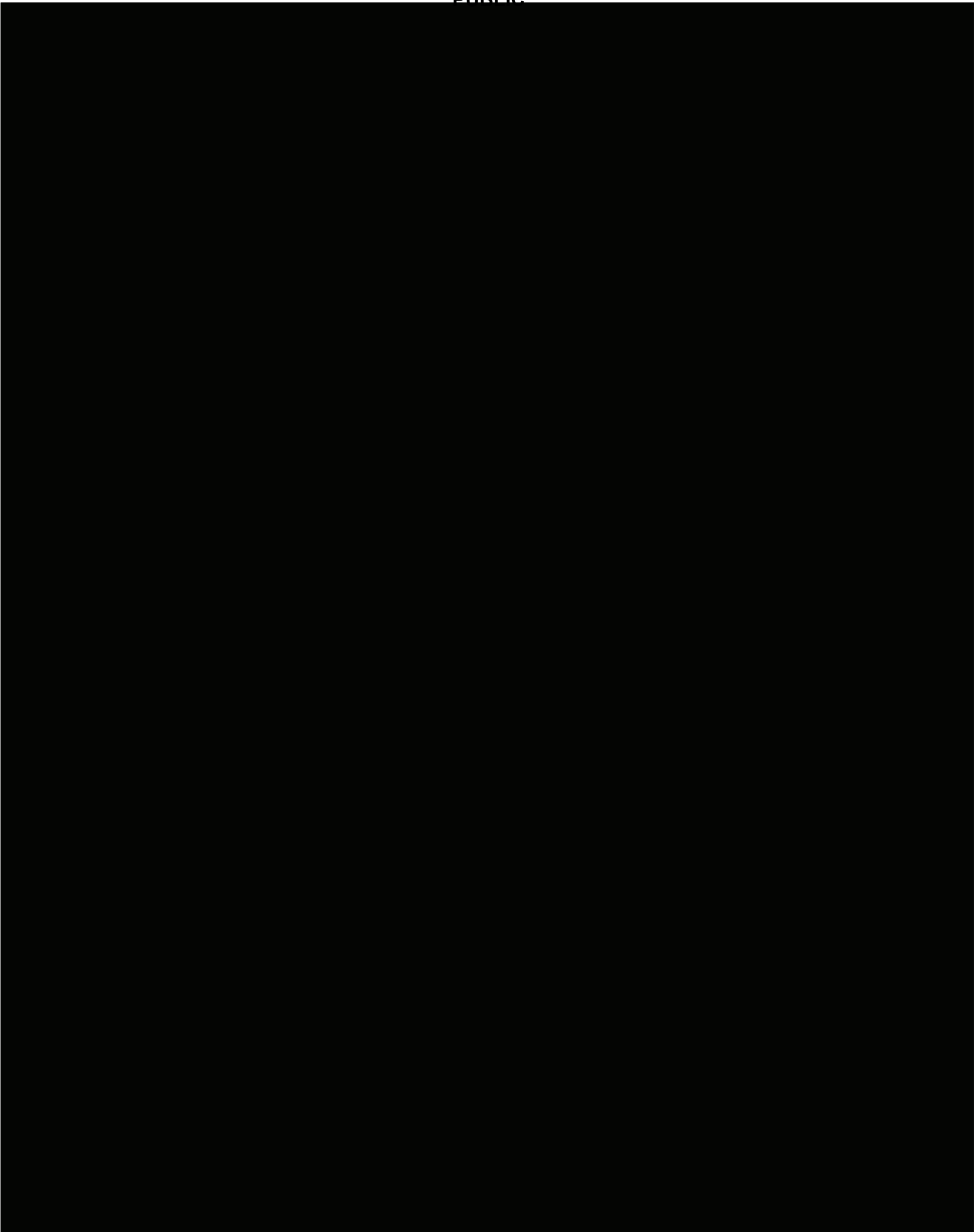


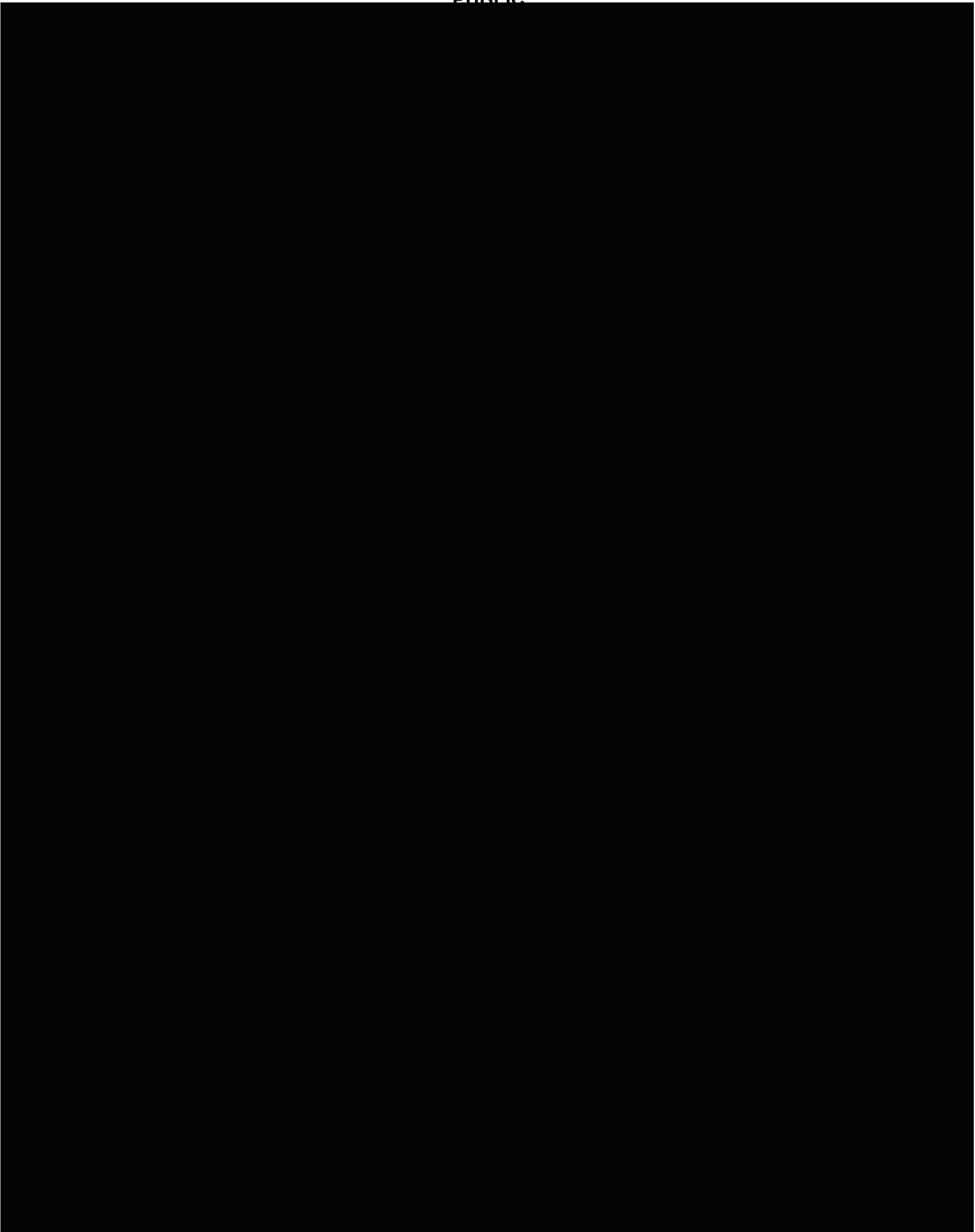


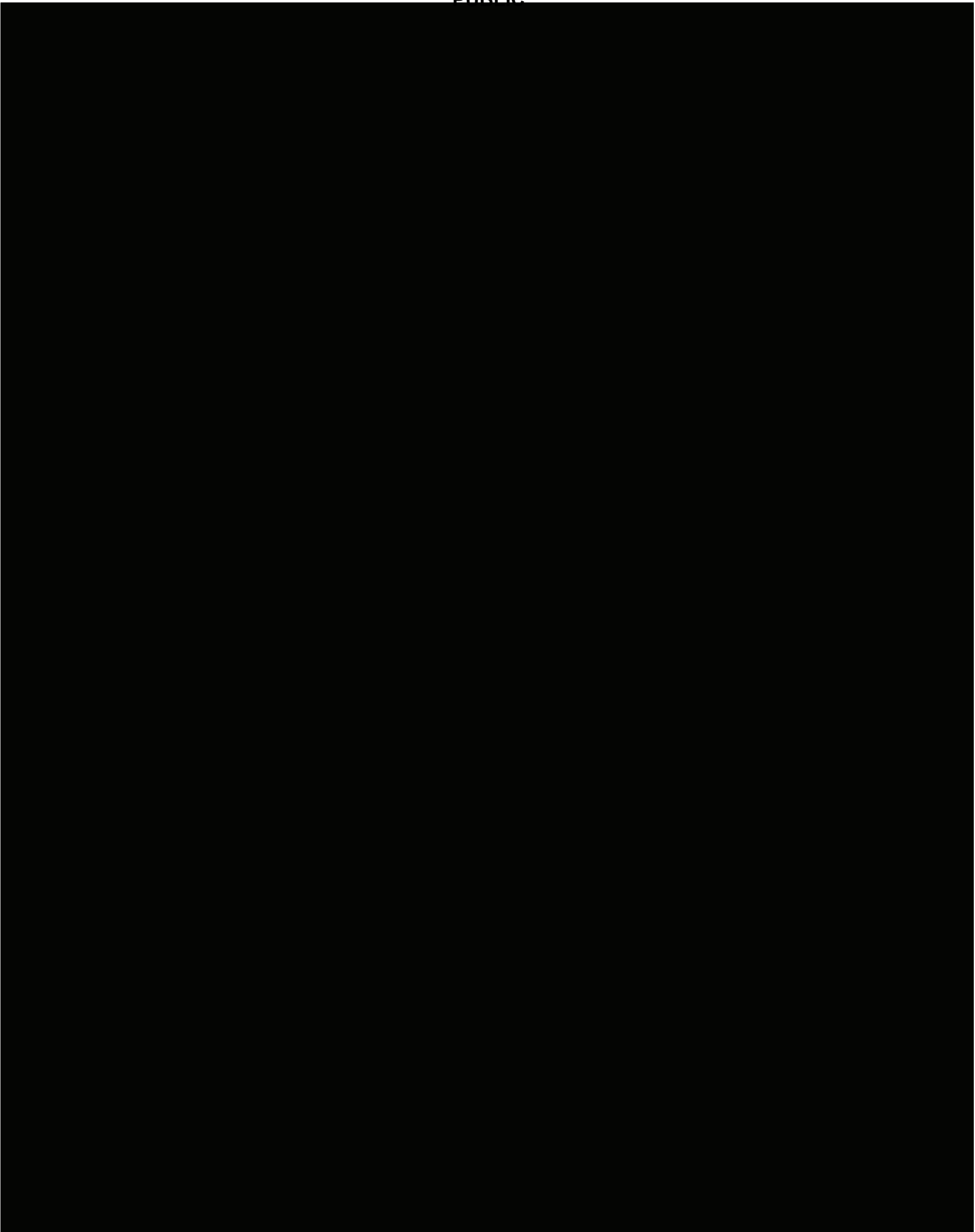


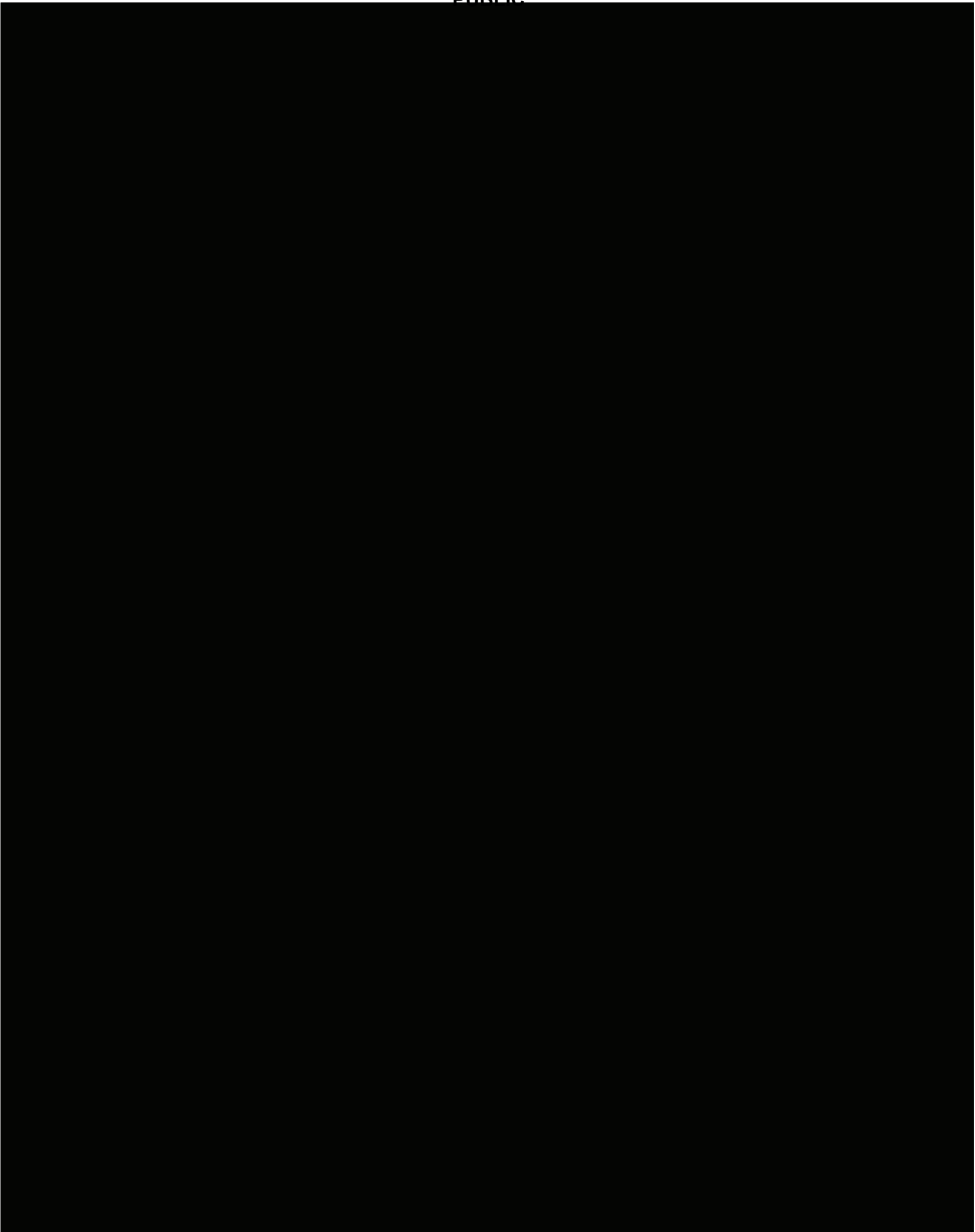


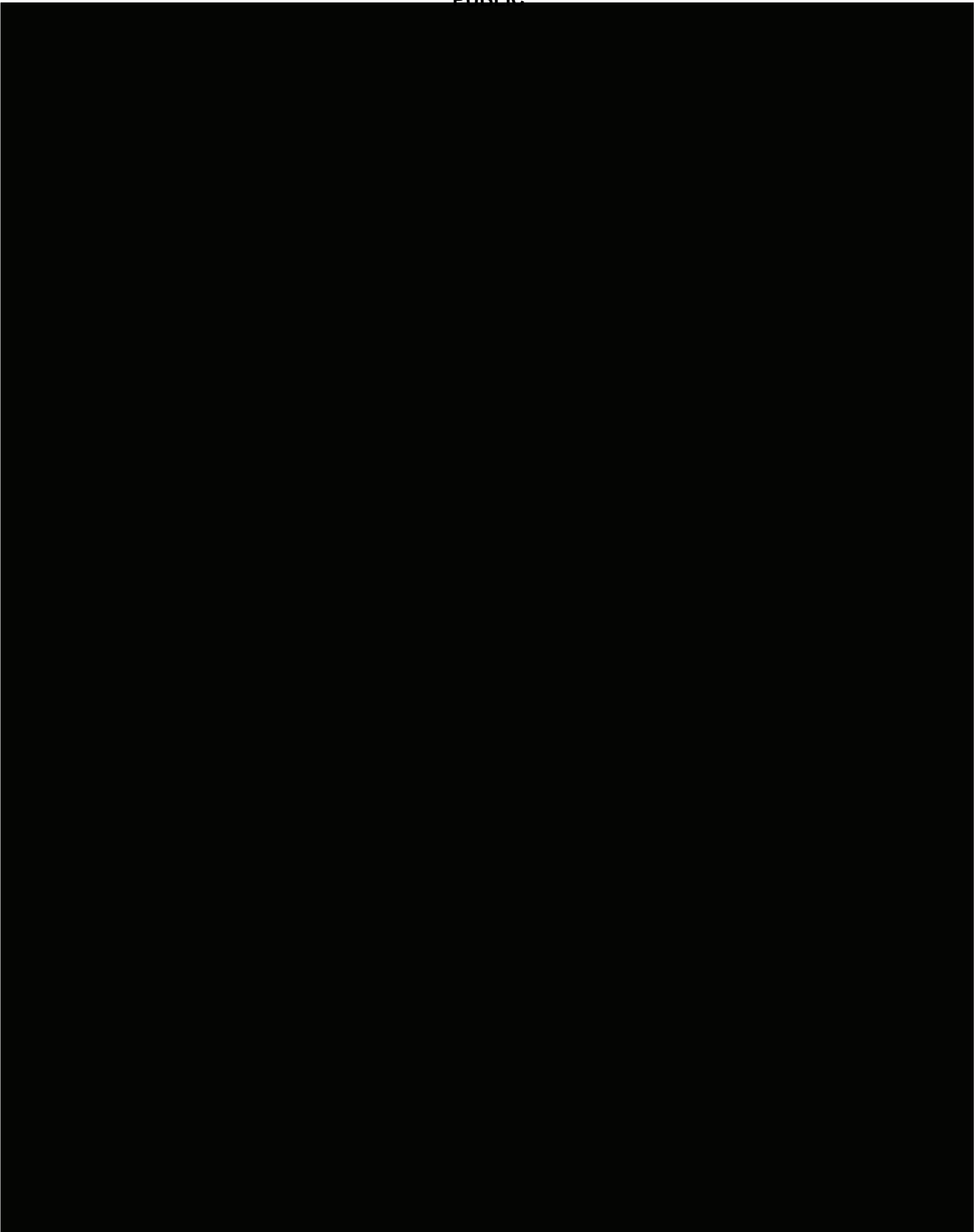


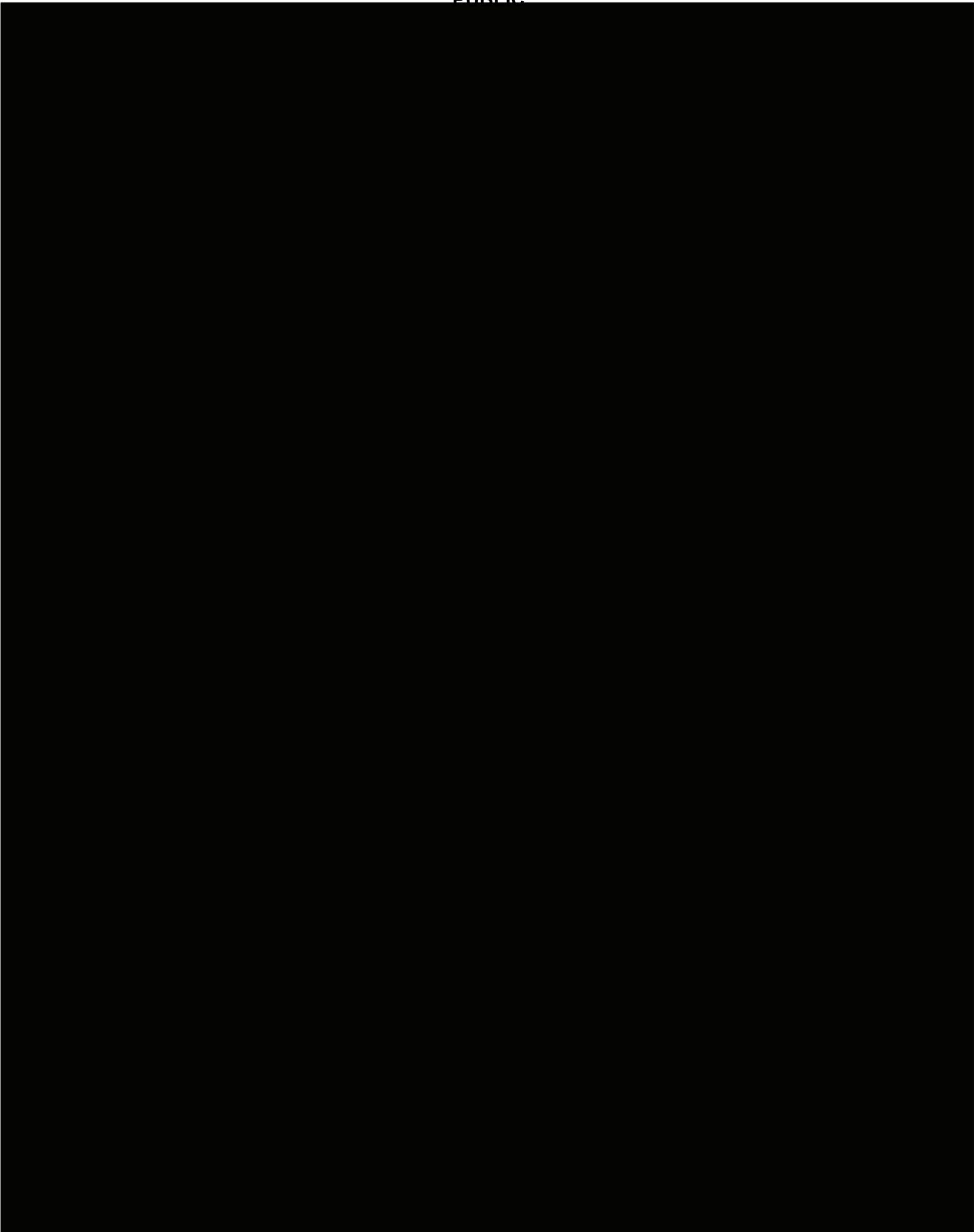


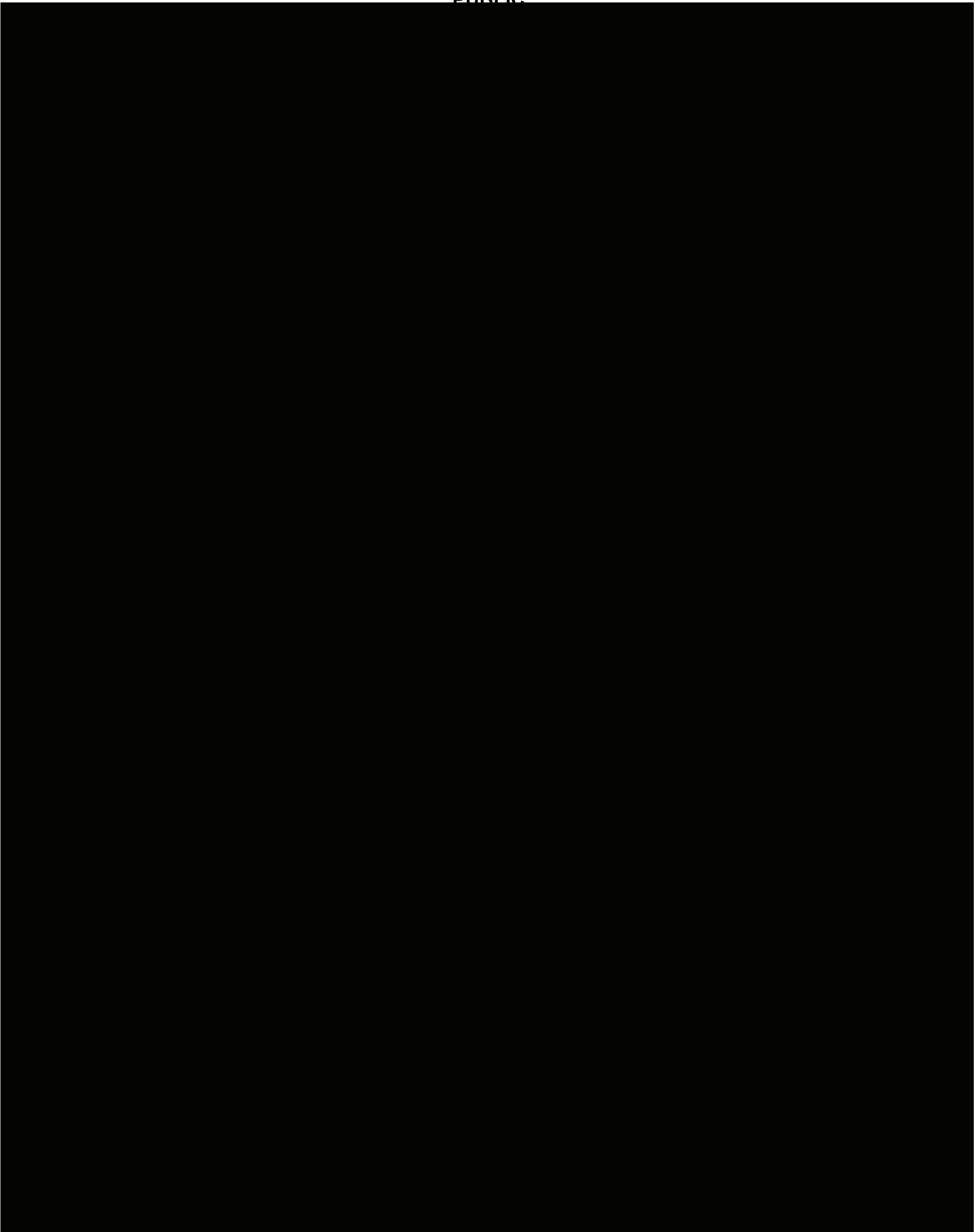


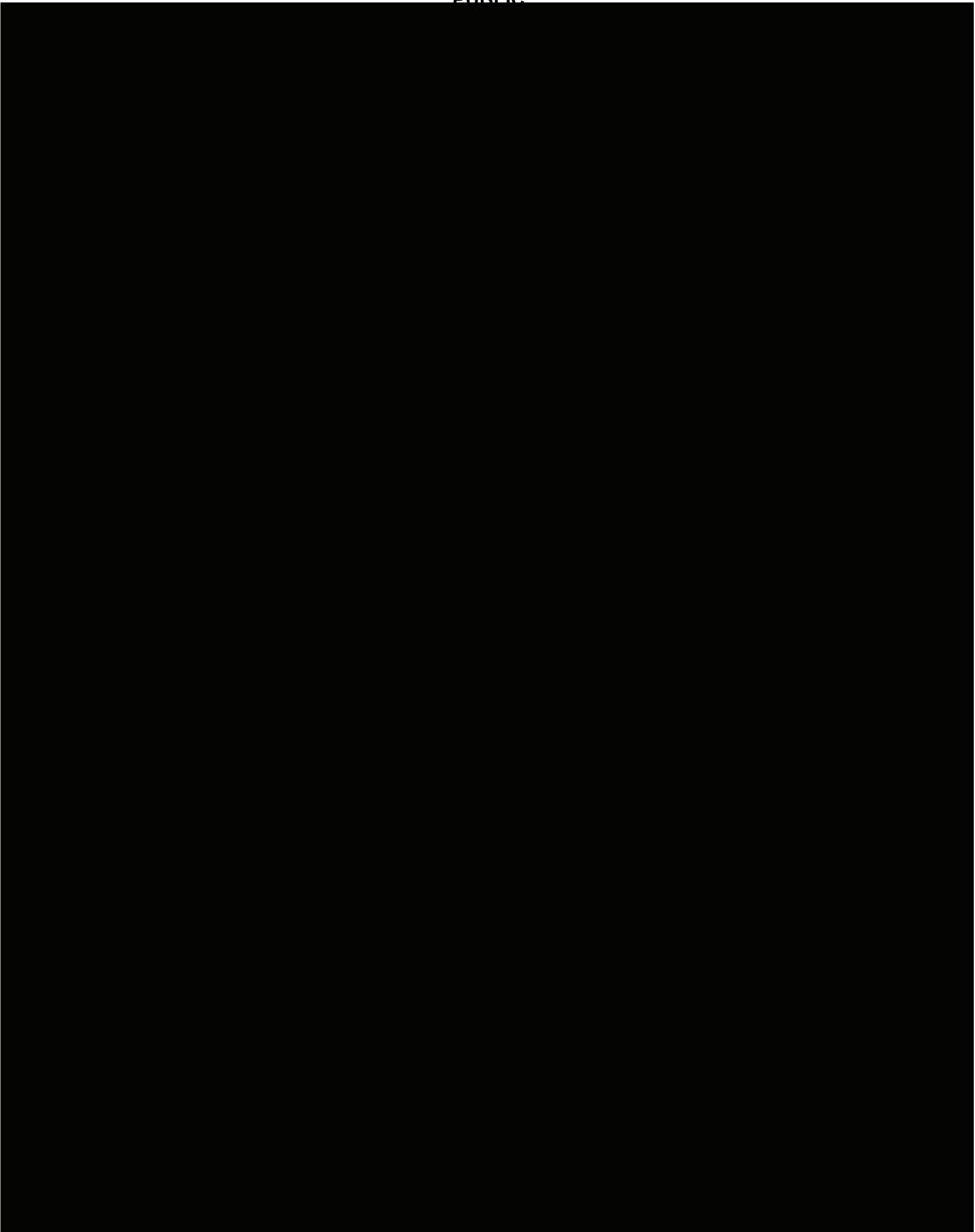


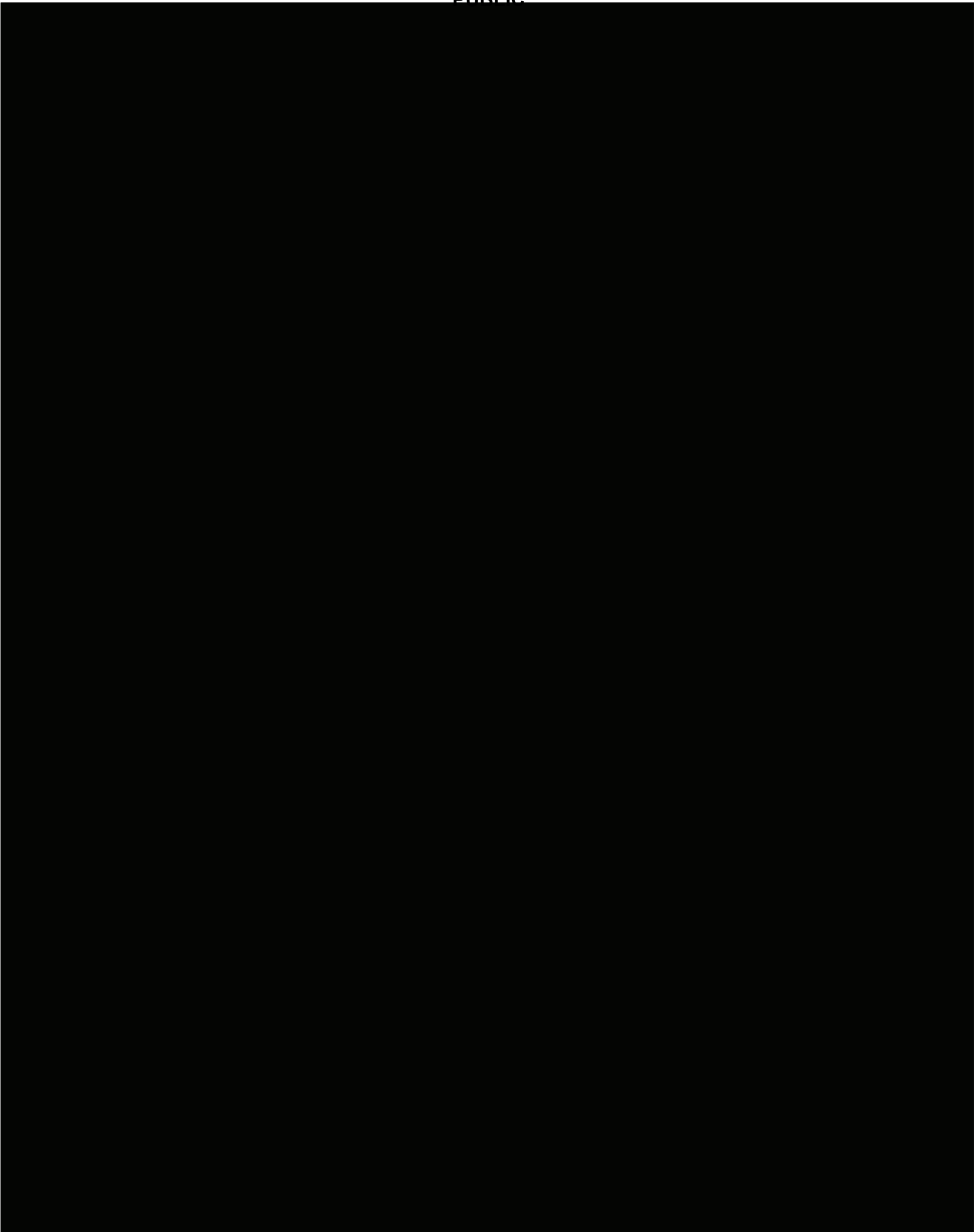












PUBLIC

THIS IS EXHIBIT "28" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.

Respondents

- and -

ATTORNEY GENERAL OF ALBERTA AND VIDEOTRON LTD.

Intervenors

PUBLIC

**Examination of Kristen McLean
August 24, 2022 – Day 1
Rogers**

Responses to Undertakings

#	Pinpoint	Undertaking	Response
1.	15: 2-4	To provide the date of when Ms. Sonley commenced her employment at the Bureau.	Response provided at 16: 6-9. See also the CV of Ms. Sonley.
2.	16: 10-14	To provide a copy of Ms. Sonley's CV.	See the CV of Ms. Sonley.
3.	29: 1-3	To provide the date on which the recommendation was made to the Commissioner to commence litigation.	The recommendation was made on March 3, 2022.
4.	32: 10-15	To the extent that there was a recommendation that was made, either by email or by way of letter, to confirm the presence of a transaction, the presence of such a communication.	Written communication exists.
5.	39: 2-5 & 12-25	To confirm whether there was one recommendation or a series of recommendations that were made to the Commissioner.	One recommendation was made to the Commissioner.
6.	51: 19-23	To provide the date(s) on which a recommendation would have been made relating to the Stonepeak remedy proposal.	The dates on which recommendations were made relating to Stonepeak are: April 1, 2022; April 20, 2022; April 25, 2022; May 1, 2022; May 2, 2022; and May 6, 2022.

PUBLIC

THIS IS EXHIBIT "29" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

THIS IS EXHIBIT "30" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
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Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

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Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

THIS IS EXHIBIT "31" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

THIS IS EXHIBIT "32" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

THIS IS EXHIBIT "33" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

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Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

IN THE MATTER of the *Competition Act*,
RSC 1985, c C-34, as amended;

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

BETWEEN :

ENTRE :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

Nazim Benhadid
SVP, Network & Build
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

Charlie Casey
VP, Consumer, Controller
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

À

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 am, before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

1. All emails and other documents dated on or after May 7, 2022 that were sent or received by Darren Entwistle or Charlie Casey that consider the proposed divestiture of Freedom Mobile Inc. to Videotron Inc.

2. All documents dated on or after March 15, 2021 provided by or on behalf of TELUS Communications Inc. and/or its various subsidiaries and affiliates ("**TELUS**") to the Competition Bureau prior to, during, or after meetings and/or calls between representatives from TELUS and representatives from the Competition Bureau concerning or addressing a proposed transaction involving Shaw Communications Inc. ("**Shaw**") and Rogers Communications Inc. ("**Rogers**");

3. All documents dated on or after March 15, 2021 provided by or on behalf of TELUS to Industry, Science and Economic Development Canada ("**ISED**") prior to, during, or after meetings and/or calls between representatives of TELUS and representatives of ISED concerning or addressing a proposed transaction involving Shaw and Rogers;

4. All documents dated on or after July 1, 2020 provided by or on behalf of TELUS to the Competition Bureau prior to, during, or after meetings and/or calls between representatives from TELUS and representatives from the Competition Bureau concerning or addressing plans of BCE Inc. or its subsidiaries or affiliates (collectively, "**Bell**") to acquire Shaw, including all notes from any such meetings and/or calls, as well as any written communications between representatives of TELUS and representatives of the Competition Bureau concerning or addressing Bell's plans to acquire Shaw; and

5. All documents dated on or after July 1, 2020 provided by or on behalf of TELUS to ISED prior to, during, or after meetings and/or calls between representatives from TELUS and representatives from ISED concerning or addressing Bell's plans to

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le _____ jour du mois de _____, à _____ h, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

PUBLIC

acquire Shaw, including all notes from any such meetings and/or calls, as well as any written communications between representatives of TELUS and representatives of ISED concerning or addressing Bell's plans to acquire Shaw.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

DATED at Ottawa, Ontario, this 5th day of October, 2022.

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

FAIT à Ottawa (Ontario) ce 5^{ième} jour d'octobre, 2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and inquiries may be directed to:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

Should the details set out above be provided in only one official language, a translation to the other official language is available from the counsel or party / intervenor serving this summons.

La présente assignation a été émise à la demande de l'avocat dont le nom apparaît ci-dessous et les demandes de renseignements peuvent lui être adressées au:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

Si les particularités ajoutées ci-haut sont dans une langue officielle seulement, la traduction est disponible auprès de l'avocat ou de la partie / intervenant qui signifie l'assignation.

PUBLIC

THIS IS EXHIBIT "34" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

IN THE MATTER of the *Competition Act*,
RSC 1985, c C-34, as amended;

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

BETWEEN :

ENTRE :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

PUBLIC

To

Stephen Howe
Chief Technology Officer
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

Blaik Kirby
Group President, Consumer and Small
& Medium Business (SMB)
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

À

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 am, before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le _____ jour du mois de _____, à _____ h _____, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

PUBLIC

[2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

1. All emails and other documents dated on or after May 7, 2022 that were sent or received by Mirko Bibic or Blaik Kirby that consider the proposed divestiture of Freedom Mobile Inc. to Videotron Inc.;
2. All documents dated on or after March 15, 2021 provided by or on behalf of BCE Inc. and/or its various subsidiaries and affiliates (collectively, “**Bell**”) to the Competition Bureau prior to, during, or after meetings and/or calls between representatives from Bell and representatives from the Competition Bureau concerning or addressing a proposed transaction involving Shaw Communications Inc. (“**Shaw**”) and Rogers Communications Inc. (“**Rogers**”);
3. All documents dated on or after March 15, 2021 provided by or on behalf of Bell to Industry, Science and Economic Development Canada (“**ISED**”) prior to, during, or after meetings and/or calls between representatives of Bell and representatives of ISED concerning or addressing a proposed transaction involving Shaw and Rogers;
4. All documents dated on or after July 1, 2020 provided by or on behalf of Bell to the Competition Bureau prior to, during, or after meetings and/or calls between representatives from Bell and representatives from the Competition Bureau concerning or addressing Bell’s plans to acquire Shaw, including all notes from any such meetings and/or calls, as well as any written communications between representatives of Bell and representatives of the Bureau concerning or addressing Bell’s plans to acquire Shaw;
5. All documents dated on or after July 1, 2020 provided by or on behalf of Bell to ISED prior to, during, or after meetings and/or calls between representatives from Bell and representatives from ISED concerning or addressing Bell’s plans to acquire Shaw, including all notes from any such meetings and/or calls, as well as any written communications between representatives of Bell and representatives of ISED concerning or addressing Bell’s plans to acquire Shaw; and
6. Copies of all network and spectrum sharing agreements between Bell and TELUS Communications Inc. (“**TELUS**”), including all agreements between Bell and TELUS concerning the network reciprocity arrangement described in paragraph 9 of the Witness Statement of Stephen Howe in this proceeding dated September 23, 2022.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

DATED at Ottawa, Ontario, this 5th day of October, 2022.

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

FAIT à Ottawa (Ontario) ce 5^{ième} jour d'octobre, 2022.

PUBLIC



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and inquiries may be directed to:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

La présente assignation a été émise à la demande de l'avocat dont le nom apparaît ci-dessous et les demandes de renseignements peuvent lui être adressées au:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

Should the details set out above be provided in only one official language, a translation to the other official language is available from the counsel or party / intervenor serving this summons.

Si les particularités ajoutées ci-haut sont dans une langue officielle seulement, la traduction est disponible auprès de l'avocat ou de la partie / intervenant qui signifie l'assignation.

PUBLIC

THIS IS EXHIBIT "35" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

From: Hirsh, Adam <AHirsh@osler.com>
Sent: October 13, 2022 4:40 PM
To: Ricci, Derek; Crawford Smith
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Henderson, Nicole; Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Chu, Danielle
Subject: RE: Rogers/Shaw ats Commissioner of Competition
Attachments: 2022 10 13 - Motion Record (Motion to Quash Subpoenas Issued on October 3 5 2022) (Final Compiled) (Executed).pdf

External Email / Courriel externe

Derek, Crawford:

Please find our motion record attached.

Once you've had a chance to review this, if you'd like to have a discussion in advance of tomorrow's case conference, we are available. Let us know what times you propose. To be clear, and as reflected in our record, we strongly disagree with your statement that the subpoenas "focus on a small number of discrete categories of documents".

With respect to your comments on the schedule, we'll get back to you later tonight or tomorrow morning.

Thanks,
Adam

OSLER

Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

From: Ricci, Derek <dricci@dwpv.com>
Sent: Wednesday, October 12, 2022 6:47 PM
To: Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam:

Crawford and I have conferred regarding your proposed schedule. We are generally fine with your proposal, subject to the following:

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1. The Moving parties' factums to be delivered by noon on Friday, Oct 21.
2. We may need to be flexible concerning the proposed hearing date, including to ensure that Chief Justice Crampton is available. If necessary, we may need to adjust the schedule to accommodate the Chief Justice's availability.

We look forward to receiving the Moving Parties' records by 5:00 pm tomorrow.

As I have indicated to you and Nicole on multiple occasions now, we would be happy to discuss any specific concerns your clients may have regarding the scope of the subpoenas with a goal of narrowing the issues that must be resolved by the Chief Justice.

I also want to make it clear – in the event it was not already clear to both Bell and TELUS – that we are not expecting or requesting that your clients to re-collect or re-produce any documents that have already been produced to the Commissioner in response to section 11 orders in connection with this matter. Rather, the intention of the subpoenas was to focus on a small number of discrete categories of documents that do not appear to us to have been produced to date by your clients.

Regards,

Derek.

From: Hirsh, Adam <AHirsh@osler.com>

Sent: October 11, 2022 9:28 AM

To: Ricci, Derek <dricci@dpvp.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>;

Thomson, Kent <KentThomson@dpvp.com>; Frankel, Steven <sfrankel@dpvp.com>; Sethi, Chanakya

<CSethi@dpvp.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC)

<derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall

<randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris

<CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good morning Derek, Crawford,

We hope you enjoyed the long weekend.

Neither we nor Bell will be in a position to argue these motions on Friday. However, we've conferred with Blakes over the weekend and would propose the following expedited schedule, which we also intend to propose to Tribunal. We'd be pleased to discuss this with you in advance of any case conference.

1. Moving parties' records (notice of motion & affidavits): Thursday October 13 by 5 pm
2. Responding parties' record (if any): Monday October 17 by 5 pm
3. Reply evidence (if any): Tuesday, October 18 by 5 pm
4. Cross examination (if any): Wednesday Oct. 19 (Telus witness) & Thursday Oct. 20 (Bell witness); Respondents' witness(s) TBD.

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5. Moving parties' factums: Friday October 21
6. Responding parties' factums: Monday October 24
7. Reply factum: Wednesday October 26 by noon
8. Hearing: Thursday October 27 or Friday October 28

Regards,

Adam



Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Ricci, Derek <dricci@dpvp.com>

Sent: Friday, October 07, 2022 6:26 PM

To: Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>;

Thomson, Kent <KentThomson@dpvp.com>; Frankel, Steven <sFrankel@dpvp.com>; Sethi, Chanakya

<CSethi@dpvp.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC)

<derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall

<randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris

<CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam:

Thank you for your letter, which we received a few minutes ago on behalf of your client, TELUS.

We strongly disagree with your client's proposed bases for seeking to quash the subpoenas, including the suggestion that the subpoenas are "framed in extremely broad terms" that require responses by TELUS to "sweeping categories" of documents. To the contrary, the requests are highly focused both in terms of their subject matter and time frame.

You will, by now, have seen my email to Ms. Henderson sent at 5:03 pm today concerning the virtually identical position being taken by her client, Bell, concerning the two summonses. As I indicated in my email to Ms. Henderson, the parties were advised today during a Case Conference with Chief Justice Crampton that the Chief Justice is available on Friday, October 14 to hear motions such as your client's proposed motion. If this motion is going to proceed on October 14, we will require your client's motion materials by no later than Tuesday, October 11.

We would be happy to discuss the subpoenas and scheduling with you over the weekend or on Monday.

Regards,

Derek.

Derek Ricci

T 416.367.7471
dricci@dwpv.com
[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7
dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

From: Hirsh, Adam <AHirsh@osler.com>

Sent: October 7, 2022 5:13 PM

To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sFrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good afternoon Derek, Crawford:

Please see our letter attached.

Regards,

Adam



Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

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THIS IS EXHIBIT "36" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

From: Ricci, Derek <dricci@dwpv.com>
Sent: October 14, 2022 2:03 PM
To: Henderson, Nicole; Hirsh, Adam
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Littlejohn, Maureen; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC); Crawford Smith
Subject: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS
Attachments: 2022-10-14 - Bell Subpoena.pdf; 2022-10-14 - TELUS Subpoena.pdf

Nicole and Adam:

Thank you for the productive call that we just completed.

As discussed, we have received your Motion Materials that were served late yesterday, including the Affidavit affirmed by Mark Graham on October 13, 2022, as well as the Affidavit affirmed by Daniel Stern on October 13, 2022.

It is apparent from these Motion Materials that your clients have been labouring under a misapprehension concerning the documents Shaw seeks production of pursuant to its subpoenas in relation to the hearing that will be conducted by the Competition Tribunal commencing on November 7, 2022.

It is disappointing that we were unable to speak before these Motion Materials were served. You will no doubt recall that I wrote to you on a number of occasions to invite such a discussion, in an effort to avoid the very confusion that appears to have arisen.

My objective in doing so was to engage in a constructive discussion with you to clarify with precision the documents Shaw seeks production of. I wanted to ensure that Shaw receives documents it requires to proceed properly and fairly with the hearing of this matter without imposing on your client unnecessary or excessive burdens that can easily be avoided.

That said, we have reviewed your clients' Motion Materials carefully with a view to addressing on a timely basis the concerns they have raised.

In that regard, we have obtained fresh subpoenas that specify with precision and limits carefully the scope of documents Shaw seeks production of.

A copy of these fresh subpoenas are attached.

You will see that the enclosed subpoenas are addressed to each of Stephen Howe, Blaik Kirby and Mark Graham (in the case of Bell), and Nazim Benhadid, Charlie Casey and Daniel Stern (in the case of TELUS).

We are confident having regard to the contents of the Affidavits included in your clients' Motion Materials that Messrs. Stern and Graham will have readily available to them all of the documents in question, with the result that there will be no need for Bell or TELUS to search the records of multiple employees to respond properly and immediately to the enclosed subpoenas.

Please advise as soon as possible if you are authorized to accept service of the enclosed subpoenas on behalf of your respective clients. If you are not, we will make the necessary arrangements to have them served.

Shaw's original subpoenas served on Bell and TELUS dated October 5 are formally withdrawn.

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Please be advised that in view of the position taken by Bell and TELUS in its Motion Materials served late yesterday that it is immunized from producing to Shaw documents it previously provided to the Competition Bureau, Shaw intends to bring a Cross-Motion against the Commissioner returnable at the same time as the motions of Bell and TELUS, in which Shaw will seek an Order compelling the production by the Commissioner of documents that fall within the scope of the enclosed subpoenas.

We wish to ensure that the demands for production made in the enclosed subpoenas are well understood by your clients and that those demands can easily be complied with if an Order dismissing your clients' Motions is made by the Tribunal.

Although we have made every effort to ensure that the enclosed subpoenas are carefully confined in scope, we would be happy to modify the wording of these subpoenas if doing so is necessary or appropriate to address remaining concerns your clients may have.

Best regards,

Derek

PUBLIC

THIS IS EXHIBIT "37" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

IN THE MATTER of the *Competition Act*,
RSC 1985, c C-34, as amended;

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

BETWEEN :

ENTRE :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

À

Nazim Benhadid

SVP, Network & Build
TELUS Communications Inc.
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

Charlie Casey

VP, Consumer, Controller
TELUS Communications Inc.
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

Daniel Stern

Director, Regulatory Law and Policy
TELUS Communications Inc.
25 York Street
Toronto, Ontario
M5J 2V5

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 am, before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le 7^{ième} jour du mois de Novembre 2022, à 10h00, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

[2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

1. Written submissions dated on or after March 15, 2021 provided by or on behalf of TELUS Communications Inc. and/or its various subsidiaries and affiliates (“TELUS”) to representatives of the Competition Bureau concerning the proposed transaction involving Shaw Communications Inc. (“Shaw”) and Rogers Communications Inc. (“Rogers”), including any written submission provided to representatives of the Competition Bureau on [REDACTED];

2. Written submissions dated on or after March 15, 2021 provided by or on behalf of TELUS to representatives of Industry, Science and Economic Development Canada (“ISED”) concerning the proposed transaction involving Shaw and Rogers;

3. Written submissions dated on or after June 17, 2022 provided by or on behalf of TELUS to representatives of the Competition Bureau concerning the proposed transaction involving Shaw, Rogers and Quebecor Inc.; and

4. Written submissions dated on or after June 17, 2022 provided by or on behalf of TELUS to representatives of ISED concerning a proposed transaction involving Shaw, Rogers and Quebecor Inc.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

PUBLIC

DATED at Ottawa, Ontario, this 14th day of
October, 2022.

FAIT à Ottawa (Ontario) ce 14^{ième} jour d'octobre,
2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and
inquiries may be directed to:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

La présente assignation a été émise à la demande de
l'avocat dont le nom apparaît ci-dessous et les
demandes de renseignements peuvent lui être
adressées au:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

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official language is available from the counsel or
party / intervenor serving this summons.

Si les particularités ajoutées ci-haut sont dans une
langue officielle seulement, la traduction est
disponible auprès de l'avocat ou de la partie /
intervenant qui signifie l'assignation.

PUBLIC

THIS IS EXHIBIT "38" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

IN THE MATTER of the *Competition Act*,
RSC 1985, c C-34, as amended;

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

B E T W E E N :

E N T R E :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

À

Stephen Howe

Chief Technology Officer
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

Blaik Kirby

Group President, Consumer and Small & Medium
Business (SMB)
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

Mark Graham

Vice President, Legal and Regulatory
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 am, before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le 7^{ième} jour du mois de Novembre 2022, à 10h00, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

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[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

1. Written submissions dated on or after March 15, 2021 provided by or on behalf of BCE Inc. and/or its various subsidiaries and affiliates (“**Bell**”) to representatives of the Competition Bureau concerning the proposed transaction involving Shaw Communications Inc. (“**Shaw**”) and Rogers Communications Inc. (“**Rogers**”), including written submissions provided to representatives of the Competition Bureau on [REDACTED];

2. Written submissions dated on or after March 15, 2021 provided by or on behalf of Bell to Industry, Science and Economic Development Canada (“**ISED**”) concerning the proposed transaction involving Shaw and Rogers;

3. Written submissions dated on or after June 17, 2022 provided by or on behalf of Bell to representatives of the Competition Bureau concerning the proposed transaction involving Shaw, Rogers and Quebecor Inc.;

4. Written submissions dated on or after June 17, 2022 provided by or on behalf of Bell to representatives of ISED concerning a proposed transaction involving Shaw, Rogers and Quebecor Inc.;

5. Written submissions dated on or after July 1, 2020 provided by or on behalf of Bell to representatives of the Competition Bureau concerning Bell’s proposed

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plans to acquire Shaw;

6. Written submissions dated on or after July 1, 2020 provided by or on behalf of Bell to representatives of ISED concerning Bell's proposed plans to acquire Shaw; and

7. Agreements between Bell and TELUS concerning the network reciprocity arrangement described in paragraph 9 of the Witness Statement of Stephen Howe in this proceeding dated September 23, 2022, to the extent such agreements have not been produced by the Commissioner to the Respondents, Shaw and Rogers.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

DATED at Ottawa, Ontario, this 14th day of October, 2022.

FAIT à Ottawa (Ontario) ce 14^{ième} jour d'octobre, 2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and inquiries may be directed to:

Derek Ricci, Counsel
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

La présente assignation a été émise à la demande de l'avocat dont le nom apparaît ci-dessous et les demandes de renseignements peuvent lui être adressées au:

Derek Ricci, Counsel
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

Should the details set out above be provided in only one official language, a translation to the other official language is available from the counsel or party / intervenor serving this summons.

Si les particularités ajoutées ci-haut sont dans une langue officielle seulement, la traduction est disponible auprès de l'avocat ou de la partie / intervenant qui signifie l'assignation.

PUBLIC

THIS IS EXHIBIT "39" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

From: Hirsh, Adam <AHirsh@osler.com>
Sent: October 14, 2022 3:50 PM
To: Henderson, Nicole; Ricci, Derek
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Littlejohn, Maureen; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC); Crawford Smith
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

External Email / Courriel externe

Derek,

We adopt and echo Ms. Henderson's email. Notwithstanding any professed intent, the subpoenas speak for themselves, and their effect was to conduct a fishing expedition and abuse the Tribunal's process. Telus will also be seeking its costs, cognizant of the fact that this is now the second time the Respondents have put our client to significant expense and inconvenience to respond on an expedited basis to a tactical and unreasonable position taken by the Respondents, only for that position to be abandoned.

In terms of the fresh subpoenas (one of which we received less than 60 seconds ago), we are seeking instructions, including whether to file additional evidence, but also do not expect to have those instructions before 4. We will let know our position as soon as we are in a position to do so.

Regards,
Adam

OSLER

Adam Hirsh
Partner
416.862.6635 | AHirsh@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Henderson, Nicole <nicole.henderson@blakes.com>
Sent: Friday, October 14, 2022 3:25 PM
To: Ricci, Derek <dricci@dwpv.com>; Hirsh, Adam <AHirsh@osler.com>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

Derek,

This is to confirm that we have instructions to accept service of the fresh subpoena issued to Bell.

PUBLIC

We are surprised by the tone of your email considering the call we had this afternoon and, frankly, astonished at the suggestion that there was any “misapprehension” about the scope of your client’s initial subpoena. It is entirely disingenuous to suggest that the initial subpoena was “precise” or tailored to the documents your client apparently now seeks—that is made all the more clear by the issuance of this fresh subpoena (which among other things, drops several of the specifications in the earlier document). The companion subpoena issued by your co-respondent, Rogers, was of course even more obviously burdensome and overbroad, and a blatant abuse of process.

Had you truly wanted to “clarify” that—contrary to the express language of the initial subpoena—Shaw was only interested production of a narrower subset of those documents, you could have done so at any time over the past two weeks instead of vaguely inviting us to calls to identify concerns that we had already set out in writing. Instead, by serving the initial subpoena with no prior notice and a demand that Bell produce the documents sought within ten days (which included a holiday weekend), you immediately put our client to the burden of investigating what efforts would be required to comply with the subpoena and preparing motion materials to quash it.

It does not escape us that this is the second time in the last four months that our client has been put to enormous inconvenience and expense to respond on an expedited basis to a tactical maneuver by Rogers and Shaw, only to have the respondents drop their initial demands once Bell’s materials have been served. Regardless of the outcome of the motions to quash, we expect that Bell will be seeking its costs.

We appreciated the desire to cooperate that Kent expressed on the call earlier, and hope that we can move forward in that spirit rather than exchanging self-serving emails. As discussed, we will need to take instructions from our client after reviewing the fresh subpoena, including as to whether we intend to file additional or different evidence on the motion to quash. We will revert on that as soon as we are able, but it will not be before the case conference at 4:00 today.

Regards,
Nicole

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. +1-416-863-2399

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9 ([Map](#))
blakes.com | [LinkedIn](#)

 | **Blakes Means Business**

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From: Ricci, Derek <dricci@dpvp.com>
Sent: Friday, October 14, 2022 2:03 PM
To: Henderson, Nicole <nicole.henderson@blakes.com>; Hirsh, Adam <AHirsh@osler.com>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dpvp.com>; Frankel, Steven <sfrankel@dpvp.com>; Sethi, Chanakya <CSethi@dpvp.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dpvp.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>
Subject: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

External Email | Courrier électronique externe

PUBLIC

Nicole and Adam:

Thank you for the productive call that we just completed.

As discussed, we have received your Motion Materials that were served late yesterday, including the Affidavit affirmed by Mark Graham on October 13, 2022, as well as the Affidavit affirmed by Daniel Stern on October 13, 2022.

It is apparent from these Motion Materials that your clients have been labouring under a misapprehension concerning the documents Shaw seeks production of pursuant to its subpoenas in relation to the hearing that will be conducted by the Competition Tribunal commencing on November 7, 2022.

It is disappointing that we were unable to speak before these Motion Materials were served. You will no doubt recall that I wrote to you on a number of occasions to invite such a discussion, in an effort to avoid the very confusion that appears to have arisen.

My objective in doing so was to engage in a constructive discussion with you to clarify with precision the documents Shaw seeks production of. I wanted to ensure that Shaw receives documents it requires to proceed properly and fairly with the hearing of this matter without imposing on your client unnecessary or excessive burdens that can easily be avoided.

That said, we have reviewed your clients' Motion Materials carefully with a view to addressing on a timely basis the concerns they have raised.

In that regard, we have obtained fresh subpoenas that specify with precision and limits carefully the scope of documents Shaw seeks production of.

A copy of these fresh subpoenas are attached.

You will see that the enclosed subpoenas are addressed to each of Stephen Howe, Blaik Kirby and Mark Graham (in the case of Bell), and Nazim Benhadid, Charlie Casey and Daniel Stern (in the case of TELUS).

We are confident having regard to the contents of the Affidavits included in your clients' Motion Materials that Messrs. Stern and Graham will have readily available to them all of the documents in question, with the result that there will be no need for Bell or TELUS to search the records of multiple employees to respond properly and immediately to the enclosed subpoenas.

Please advise as soon as possible if you are authorized to accept service of the enclosed subpoenas on behalf of your respective clients. If you are not, we will make the necessary arrangements to have them served.

Shaw's original subpoenas served on Bell and TELUS dated October 5 are formally withdrawn.

Please be advised that in view of the position taken by Bell and TELUS in its Motion Materials served late yesterday that it is immunized from producing to Shaw documents it previously provided to the Competition Bureau, Shaw intends to bring a Cross-Motion against the Commissioner returnable at the same time as the motions of Bell and TELUS, in which Shaw will seek an Order compelling the production by the Commissioner of documents that fall within the scope of the enclosed subpoenas.

We wish to ensure that the demands for production made in the enclosed subpoenas are well understood by your clients and that those demands can easily be complied with if an Order dismissing your clients' Motions is made by the Tribunal.

Although we have made every effort to ensure that the enclosed subpoenas are carefully confined in scope, we would be happy to modify the wording of these subpoenas if doing so is necessary or appropriate to address remaining concerns your clients may have.

Best regards,

Derek

Derek Ricci
T 416.367.7471
dricci@dwpv.com
[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7
dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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THIS IS EXHIBIT "40" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

From: Henderson, Nicole <nicole.henderson@blakes.com>
Sent: October 14, 2022 3:25 PM
To: Ricci, Derek; Hirsh, Adam
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Littlejohn, Maureen; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC); Crawford Smith
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

External Email / Courriel externe

Derek,

This is to confirm that we have instructions to accept service of the fresh subpoena issued to Bell.

We are surprised by the tone of your email considering the call we had this afternoon and, frankly, astonished at the suggestion that there was any “misapprehension” about the scope of your client’s initial subpoena. It is entirely disingenuous to suggest that the initial subpoena was “precise” or tailored to the documents your client apparently now seeks—that is made all the more clear by the issuance of this fresh subpoena (which among other things, drops several of the specifications in the earlier document). The companion subpoena issued by your co-respondent, Rogers, was of course even more obviously burdensome and overbroad, and a blatant abuse of process.

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It does not escape us that this is the second time in the last four months that our client has been put to enormous inconvenience and expense to respond on an expedited basis to a tactical maneuver by Rogers and Shaw, only to have the respondents drop their initial demands once Bell’s materials have been served. Regardless of the outcome of the motions to quash, we expect that Bell will be seeking its costs.

We appreciated the desire to cooperate that Kent expressed on the call earlier, and hope that we can move forward in that spirit rather than exchanging self-serving emails. As discussed, we will need to take instructions from our client after reviewing the fresh subpoena, including as to whether we intend to file additional or different evidence on the motion to quash. We will revert on that as soon as we are able, but it will not be before the case conference at 4:00 today.

Regards,
Nicole

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. +1-416-863-2399

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9 ([Map](#))
[blakes.com](https://www.blakes.com) | [LinkedIn](#)

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From: Ricci, Derek <dricci@dwpv.com>

Sent: Friday, October 14, 2022 2:03 PM

To: Henderson, Nicole <nicole.henderson@blakes.com>; Hirsh, Adam <AHirsh@osler.com>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>;

Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya

<CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC)

<derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe

<joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>;

Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel,

Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>

Subject: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

External Email | Courriel électronique externe

Nicole and Adam:

Thank you for the productive call that we just completed.

As discussed, we have received your Motion Materials that were served late yesterday, including the Affidavit affirmed by Mark Graham on October 13, 2022, as well as the Affidavit affirmed by Daniel Stern on October 13, 2022.

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We are confident having regard to the contents of the Affidavits included in your clients' Motion Materials that Messrs. Stern and Graham will have readily available to them all of the documents in question, with the result

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that there will be no need for Bell or TELUS to search the records of multiple employees to respond properly and immediately to the enclosed subpoenas.

Please advise as soon as possible if you are authorized to accept service of the enclosed subpoenas on behalf of your respective clients. If you are not, we will make the necessary arrangements to have them served.

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We wish to ensure that the demands for production made in the enclosed subpoenas are well understood by your clients and that those demands can easily be complied with if an Order dismissing your clients' Motions is made by the Tribunal.

Although we have made every effort to ensure that the enclosed subpoenas are carefully confined in scope, we would be happy to modify the wording of these subpoenas if doing so is necessary or appropriate to address remaining concerns your clients may have.

Best regards,

Derek

Derek Ricci
T 416.367.7471
dricci@dpvp.com
[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7
dpvp.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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THIS IS EXHIBIT "41" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.

Jacqueline Houston

A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

From: [Hirsh, Adam](#)
To: [Crawford Smith](#); [Ricci, Derek](#)
Cc: [Thomson, Kent](#); [Henderson, Nicole](#); [Jonathan Lisus](#); [Matthew Law](#); [Brad Vermeersch](#); [Frankel, Steven](#); [Sethi, Chanakya](#); [Tyhurst, John \(CB/BC\)](#); [Leschinsky, Derek \(CB/BC\)](#); [Hofley, Randall](#); [McGrade, Joe](#); [Zain Naqi](#); [Naudie, Chris](#); [Lally, Michelle](#); [Kuzma, Kaeleigh](#); [Littlejohn, Maureen](#); [Elle.Nekiar@cb-bc.gc.ca](#); [Rydel, Katherine \(CB/BC\)](#); [Ronke Akinyemi](#)
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]
Date: October 17, 2022 5:09:40 PM
Attachments: [D. Stern Supplementary Affidavit \(Final Compiled Executed\) \(October 17, 2022\).pdf](#)

External Email / Courriel externe

Counsel,

Please find our Supplementary Affidavit attached.

We look forward to hearing back from you regarding your expected timing for your response.

Regards,
Adam

OSLER

Adam Hirsh
Partner
416.862.6635 | AHirsh@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Hirsh, Adam
Sent: Monday, October 17, 2022 2:34 PM
To: Crawford Smith <csmith@lolg.ca>
Cc: Thomson, Kent <KentThomson@dwpv.com>; Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Ronke Akinyemi <rakinyemi@lolg.ca>
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

Yes.

OSLER

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Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Crawford Smith <csmith@lolg.ca>

Sent: Monday, October 17, 2022 2:32 PM

To: Hirsh, Adam <AHirsh@osler.com>

Cc: Thomson, Kent <KentThomson@dwpv.com>; Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Ronke Akinyemi <rakinyemi@lolg.ca>

Subject: Re: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

Adam,

That is disappointing. We will review your supplementary evidence and revert with our expected timing. Are you still contesting the Shaw summons?

Nicole, may we please have your client's position.

Regards,

Sent from my iPad

On Oct 17, 2022, at 2:13 PM, Hirsh, Adam <AHirsh@osler.com> wrote:

Crawford:

Thank you for your email. As you know, we received your client's revised subpoena on 3:46 PM on Friday, only 14 minutes before our case conference on Friday. That said, we have reviewed the revised Rogers subpoena over the weekend, and we continue to maintain the objections set out our original Notice of Motion. Among other grounds, we are of the view that Rogers' demands for new productions on the eve of trial seek to circumvent the existing discovery process for this matter that has been conducted over a period of months. Moreover, these demands appear to have no connection whatsoever to the discrete evidence that is set out in the witness statements that have been filed by the Commissioner in this matter. During our case conference, Chief Justice Crampton was clear that any documents covered by the subpoenas should have

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a clear connection to the anticipated evidence of the Commissioner's witnesses at trial, and we do not see any connection at all.

We expect to deliver a supplementary affidavit today that sets out supporting facts relating to our objections. As for your suggestion to share these documents with counsel on an advance basis, we don't believe that is a viable alternative given the time line arising from Rogers' new subpoenas and the nature of the dispute. We are still in the process of assessing the scope of documents covered by the proposed second subpoena, and we expect that any collection will take time and there will be claims of confidentiality and/or privilege given the nature of these documents. Obviously, we cannot share documents in advance that are subject to such claims, and moreover the very issue in dispute on the motion is whether these documents should be produced to you at all.

Please let us know when you expect to deliver responding materials.

Regards,

Adam

OSLER

Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Crawford Smith <csmith@lolg.ca>

Sent: Monday, October 17, 2022 9:36 AM

To: Thomson, Kent <KentThomson@dwpv.com>; Hirsh, Adam <AHirsh@osler.com>

Cc: Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Ronke Akinyemi <rakinyemi@lolg.ca>; Zain Naqi <znaqi@lolg.ca>; Crawford Smith <csmith@lolg.ca>

Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

Adam and Nicole,

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I am following up on Kent's note below and on Friday's case conference for your respective clients' position and to repeat our offer to discuss and to review the requested material on a counsel's eyes only basis.

If you intend to continue with your motions, please confirm that you do not intend to serve any further material or, if you do, that we will receive such material today. Once we have your position, we can revert on the remaining steps in the schedule to the hearing date.

Regards,

Crawford G. Smith

Direct 416 598 8648

Cell 416 419 6442

csmith@lolg.ca

Lax O'Sullivan Lius Gottlieb LLP

Suite 2750, 145 King St W

Toronto ON M5H 1J8 Canada

T 416 598 1744 F 416 598 3730

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From: Thomson, Kent <KentThomson@dwpv.com>

Sent: October-14-22 5:45 PM

To: Hirsh, Adam <AHirsh@osler.com>

Cc: Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lius <jlius@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>

Subject: Re: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

Adam and Nicole: It was nice chatting with you , Chris , Nicole and others earlier today.

With respect to the threats you and Nicole have now both made to seek costs against

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our clients , we look forward to walking Chief Justice Crampton through: (i) our various efforts to engage with both of you (as well as your colleagues) concerning the original Subpoenas in an effort to minimize the burden to Bell and Telus in the period before your clients' Motion Materials were served late yesterday; and (ii) steps that were taken by Shaw and Rogers immediately after those Materials were served to address concerns that Bell and Telus identified.

We join hands with Mr. Lisus in offering to resolve this matter by reviewing on a counsel's eyes only basis documents that fall within the scope of the fresh Subpoenas issued today by Shaw and Rogers . We look forward to hearing back from you in that regard at your earliest convenience.

Best regards,

Kent

Kent E. Thomson

T 416.863.5566

kentthomson@dwpv.com

[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West

Toronto, ON M5V 3J7

dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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THIS IS EXHIBIT "42" REFERRED TO IN THE
AFFIDAVIT OF TANYA BARBIERO, SWORN BEFORE
ME THIS 19TH DAY OF OCTOBER, 2022.


A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

PUBLIC

File No. / Dossier no. CT-2022-002

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C., 1985, c. C-34 as amended;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

BEFORE:

The Honourable Chief Justice Paul Crampton
The Honourable Justice Andrew D. Little

Presiding

HELD VIA VIDEOCONFERENCE

14 October 2022

**Case Management Conference
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613.521.0703



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1 during the discovery process, and it's essentially just a
2 discovery motion. If they do bring that cross motion
3 against us, they will be using this process as a discovery
4 motion.

5 So we do believe that it is disruptive to
6 the hearing, given how close it is to the hearing at this
7 point in time. We're very close to the hearing and we're
8 not sure what rules they are proceeding under, and we'll
9 need to see their motion materials, but we would like to
10 see how exactly they're proceeding, and we expect our
11 response to be quite short as well.

12 **CHIEF JUSTICE CRAMPTON:** Okay. Well,
13 look, what I would encourage everybody to reflect upon
14 between now and October 28th is how the fact that these
15 witness statements were filed, and I gather that was three
16 weeks ago, how they change the landscape. Because, you
17 know, if they didn't ask for them before there may have
18 been a reason, and if they are now asking for them now in
19 the light of having seen the witness statements, then that
20 kind of changes things a little bit.

21 So that's something I'm going to be
22 interested in probing if we have this motion. So it's --
23 I've flagged that again, just for your reflection over the
24 next couple weeks.

25 Okay. So --

1 **MR. LISUS:** Chief Justice -- sorry.

2 Jonathan Lisus. If I may just offer an observation?

3 I don't think anyone wants sideshows given
4 the time constraints we're operating under. And I would
5 just offer to my friends the observation that it is
6 sometimes very productive to have these discussions which
7 you have directed us to have and which we will have, not in
8 the abstract by practical -- in the practical sense. And I
9 have found it helpful to look at the documents that we are
10 fighting about on the counsel eyes only basis with our
11 friends, to see if there is something that really is
12 important to the process and that we consider in our
13 judgement to be important to the Tribunal.

14 And so, I am putting that on the table as
15 an invitation to my friends. I've done this in other cases
16 with Mr. Naudie, where we look at them on -- as I say,
17 external counsel eyes only, and see if we can settle the
18 issue and certainly narrow it. But I have never found that
19 to be unproductive.

20 **CHIEF JUSTICE CRAMPTON:** Well, that sounds
21 like a constructive suggestion just at first blush.
22 Anyway, I think you've all been around the block, you all
23 know what's at stake, you all know what I'm focussed on,
24 which is 16 days and how they are going to be used, and the
25 outside closing date. So ---

1 **MR. THOMSON:** And Chief Justice let me
2 just give my -- give you and my friends a bit of comfort on
3 one issue that was raised both by Mr. Naudie and by Ms.
4 Henderson. They said there's a new witness that's been
5 added to the Shaw subpoenas, that is the counsel who swore
6 the Affidavits we received last night at 6:00 or 7:00.

7 The only reason -- no one requires them to
8 testify about anything. The only reason the subpoenas were
9 amended to add them in is because, based on the Affidavits
10 we received late yesterday, it is crystal clear that they,
11 these two individuals, have the documents that we on behalf
12 of Shaw require. The position being put forward in the
13 motion materials, as you would have read from Telus, and to
14 a lesser extent from Bell, was if these particular
15 witnesses that are going to be called by the Commissioner
16 don't personally have the documents, we can't get them by
17 using subpoenas.

18 So we just added the regulatory lawyers
19 because they do have the documents, as they basically
20 concede in the Affidavits, and for that reason, no other
21 reason. There will be no requirement that they testify at
22 trial. If we have to get that far, the worst that can
23 happen is they show up the first day of the trial with the
24 documents, and that's the end of it. So we're not trying
25 to add them into the trial process. They will not be

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THIS IS EXHIBIT "43" REFERRED TO IN THE
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ME THIS 19TH DAY OF OCTOBER, 2022.


A Commissioner for Taking Affidavits

JACQUELINE HOUSTON

Jacqueline Mary Houston, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 7, 2024.

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Registration - In-house Corporation

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Bell Canada / MIRKO BIBIC, President and CEO

Registration Information

In-house Corporation name: **Bell Canada**[Previous in-house corporation names](#)Responsible Officer Name: **MIRKO BIBIC, President and CEO** [Responsible Officer Change History](#)Initial registration start date: **2005-08-26**Registration status: **Active**Registration Number: **779497-4971**

Associated Communications

Total Number of Communication Reports: **647**Monthly communication reports in the last 6 months: **38**

« < Registration versions: 44 of 44: 2022-08-16 to present ▾

Version 44 of 44 (2022-08-16 to present)

▼ Lobbying Information

Subject Matters

- Arts and Culture
- Broadcasting
- Budget

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- Consumer Issues
- Government Procurement
- Industry
- Infrastructure
- Intellectual Property
- International Trade
- Justice and Law Enforcement
- Labour
- National Security/Security
- Pensions
- Privacy and Access to Information
- Regional Development
- Research and Development
- Science and Technology
- Small Business
- Taxation and Finance
- Telecommunications

Subject Matter Details**Legislative Proposal, Bill or Resolution**

- Act respecting online communications platforms that make news content available to persons in Canada
- Bills related to lawful access obligations that will have a direct impact on the Company from a financial and operational perspective, as well as impact on Bell customers from a privacy perspective, and with respect to obligations imposed on carriers with respect to intercept and subscriber information.
- Copyright Act amendments affecting internet service providers and broadcasting distribution undertakings and broadcasting programming undertakings
- Potential Amendments to the Broadcast Act and Telecommunications Act as per legislative review.
- Potential Amendments to the Broadcasting Act, with respect to streamlining regulation of broadcasting industry.
- Proposing amendments pursuant to Income Tax Act concerning Capital Cost Allowance deductions and concerning electronic commerce
- Regulatory modernization legislation to reduce the regulatory burden faced by businesses.
- Replacement Worker Legislation - legislation that bans replacement workers during a labour dispute hindering our ability to operate our networks and serve our customers
- Review of the Personal Information Protection and Electronic Documents Act (PIPEDA) as relates to communications service providers' obligations
- The Comprehensive Progressive Agreement for Trans-Pacific Partnership (CPTPP), provisions related to copyright, culture, telecommunications and broadcasting.

PUBLIC

- The North American Free Trade Agreement (NAFTA), provisions related to copyright, culture, telecommunications and broadcasting.

Policies or Program

- Broadcasting Policies Relating to Commercial Radio
- Broadcasting Policies Relating to Conventional Television
- Broadcasting Policies Relating to Specialty and Pay Television
- Information and Communications Technologies (ICT) labour force -- policies related to increasing the talent supply in Canada
- Participation in the recently launched Innovation Agenda Consultation by Innovation, Science and Economic Development Canada
- Policies Relating to Broadcasting Distribution Undertakings with regard to the terms of carriage of our services by terrestrial and satellite television distributors
- Policies relating to signal piracy, and copyright infringement
- Procurement - as a supplier to the Government of Canada, Bell engages in discussions related to best practices and reducing costs in procurement associated with end user devices, networks, support services and solutions.
- Proposed government broadband programs related to rural deployment and affordable internet.
- Spectrum policy framework with respect to technological and financial implications of government policies.
- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), provisions related to copyright, culture, telecommunications and broadcasting.

Regulation

- Broadcasting Licence Fee Regulations, 1997 under section 11 of the Broadcasting Act.
- Pension plan regulations with regard to their impact on the solvency funding and other requirements for Bell as a plan sponsor
- Regulatory modernization focused on supporting innovation and business investment to make the Canadian regulatory system more agile, transparent and responsive.
- Regulatory modernization of the Canada Labour Code.

Communication Techniques

- Written communication
- Oral communication
- Grass-roots communication

Government Institutions

PUBLIC

- Agriculture and Agri-Food Canada (AAFC)
- Canada Economic Development for Quebec Regions
- Canada Revenue Agency (CRA)
- Canadian Heritage (PCH)
- Canadian International Trade Tribunal (CITT)
- Canadian Northern Economic Development Agency (CanNor)
- Canadian Radio-television and Telecommunications Commission (CRTC)
- Canadian Space Agency (CSA)
- Communications Security Establishment Canada (CSEC)
- Competition Tribunal (CT)
- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)
- Employment and Social Development Canada (ESDC)
- Environment and Climate Change Canada (ECCC)
- Finance Canada (FIN)
- Fisheries and Oceans Canada (DFO)
- Global Affairs Canada (GAC)
- Health Canada (HC)
- House of Commons
- Immigration, Refugees and Citizenship Canada (IRCC)
- Infrastructure Canada (INFC)
- Innovation, Science and Economic Development Canada (ISED)
- National Capital Commission (NCC)
- National Defence (DND)
- Office of the Privacy Commissioner of Canada (OPC)
- Prime Minister's Office (PMO)
- Privy Council Office (PCO)
- Public Safety Canada (PS)
- Public Services and Procurement Canada (PSPC)
- Rural Economic Development (Minister's Office)
- Senate of Canada
- Shared Services Canada (SSC)
- Transport Canada (TC)
- Treasury Board Of Canada Secretariat (TBS)
- Women and Gender Equality (WAGE)

▼ In-house Corporation Details**Description of activities**

Bell Canada and its affiliates deliver a wide range of service innovations to consumers, businesses and government customers across Canada including wireless, Internet and TV, Wireless Home Internet, cloud and data hosting, IP voice and collaboration and Internet of Things. Bell Media operates the country's top media brands, and is a leading investor in

PUBLIC

Canadian content creation, including local television and radio news, sports and entertainment programming, and other original TV and film productions. We are also one of Canada's biggest retailers, with retail points of distribution across Canada.

Responsible officer name and position during the period of this registration

MIRKO BIBIC, President and CEO

Government funding

End date of the last completed financial year: 2021-12-31

List of Government Funding

Government Institution	Funding Received in Last Financial Year	Funding Expected in Current Financial Year
Canadian Radio-television and Telecommunications Commission (CRTC)	\$9,047,924.00	Yes
Government of Newfoundland and Labrador	\$1,340,964.00	No
Government of Ontario	\$3,667,655.00	Yes
Government of Quebec	\$166,141,327.00	No
Innovation, Science and Economic Development Canada (ISED)	\$11,006,629.00	Yes
Southwestern Integrated Fibre Technology (SWIFT)	\$5,136,664.00	No

In-house Corporation Contact Information

Address:

1, Carrefour Alexander Graham Bell, Building A, 6th Floor
Verdun, QC H3E 3B3
Canada

Telephone number: 613-781-6015

Parent Company Information

- BCE Inc.

PUBLIC

- 1, Carrefour Alexander Graham Bell, Building A, 6th Floor
Verdun, QC H3E 3B3
Canada

Subsidiary Beneficiary Information

- Bell ExpressVu
 - 100 Wynford Drive #3
Don Mills, ON M3C 4B4
Canada
- Bell Media and its Media Affiliates
 - 299 Queen St. W.
Toronto, ON M5V 2Z5
Canada
- Bell Mobility
 - 5099 Creebank Road 6E
Mississauga, ON L4W 5N2
Canada
- Bimcor Inc. / Bimcor Inc.
 - 1000 de la Gauchetiere West
Suite 1300
Montreal, QC H3B 5A7
Canada
- NorthernTel
 - 76 Adelaide St. West, 15th Floor S
Toronto, ON M5H 1P6
Canada
- Northwestel
 - 301 Lambert Street
Whitehorse, YT Y1A 4Y4
Canada
- Telebec
 - 76 Adelaide St. West, 15th Floor S
Toronto, ON M5H 1P6
Canada
- The Source / La Source
 - 279 Bayview Drive
Barrie, Ontario, ON L4M 4W5
Canada

▼ Lobbyists Details

List of Senior Officers whose ^{PUBLIC}lobbying activities represent less than 20% of their Duties

- **MIRKO BIBIC**, President and CEO | No public offices held
- **Stephen Howe**, Chief Technology and Information Officer | No public offices held
- **Blaik Kirby**, Group President, Consumer and Small and Medium Business | No public offices held
- **Glen LeBlanc**, Chief Financial Officer and Vice Chair, Atlantic Canada | No public offices held
- **Thomas Little**, President - Bell Business Markets | No public offices held
- **Robert Malcolmson**, Chief Legal and Regulatory Officer | No public offices held
- **Nikki Moffat**, Chief Human Resources Officer and EVP Corporate Services | No public offices held
- **Karine Moses**, Senior Vice President, Content Development and News and Vice Chair, Québec | No public offices held
- **Wade Oosterman**, President, Bell Media and Vice Chair, BCE and Bell | No public offices held
- **John Watson**, Group President, Customer Experience | No public offices held

List of Senior Officers and Employees whose lobbying activities represent 20% or more of their Duties

- **Isabelle Boulet**, Senior Manager, Government Affairs | No public offices held
- **Simon Dwyer**, Director-Government Affairs | Public offices held
- **Charles Gosselin**, Director, Government Affairs | No public offices held
- **Maggie Papoulias**, Director, Government Affairs | Public offices held
- **Andrew Parkinson**, Senior Advisor of Government Affairs | No public offices held
- **Pierre Rodrigue**, Vice-President Quebec Affairs | No public offices held

Date Modified:

2022-10-04

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of Lobbying of CanadaCommissariat au lobbying
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Activity Type

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Subject Matter of the Lobbying Activity

[Telecommunications](#)

31

Government Institutions

[Innovation, Science and Economic Development Canada \(ISED\)](#)

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Results: 1-31 of 31

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In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-09-28****Bell Canada** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-09-02****Bell Canada** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-08-30****Bell Canada** 

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-08-25****Bell Canada** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-07-27****Bell Canada** 

In-house Corporation

Designated Public Office Holders:

- **Boyan Gerasimov**, Director of Policy, Minister's Office | Innovation, Science and Economic Development Canada (ISED)
- **Ian Foucher**, Chief of Staff, Minister's Office | Innovation, Science and Economic Development Canada (ISED)
- **Peter Opdam**, Policy Advisor, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-07-26****Bell Canada** 

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In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-05-25**

Bell Canada

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor, Minister's Office | Innovation, Science and Economic Development Canada (ISED)
- **Ian Foucher**, Chief of Staff, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-05-02**

Bell Canada

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-04-27**

Bell Canada

In-house Corporation

Designated Public Office Holders:

- **Simon Kennedy**, Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)
- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-04-14**

Bell Canada

In-house Corporation

Designated Public Office Holders:

- **François-Philippe Champagne**, Minister Innovation, Science and Economic Development | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-23**

Bell Canada

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-23**

Bell Canada

In-house Corporation

Designated Public Office Holders:

PUBLIC

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-02-23****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-01-26****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Sarah Hussaini**, Chief of Staff, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-12-02****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-11-22****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **David Hurl**, Director of Policy, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-11-19****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Simon Kennedy**, Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)
- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-11-18****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **François-Philippe Champagne**, Minister, Minister's Office | Innovation, Science and Economic Development Canada (ISED)
- **Sarah Hussaini**, Chief of Staff | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-11-01**

PUBLIC**Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **François-Philippe Champagne**, Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-10-21****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Brook Simpson**, Director (Parliamentary Affairs) | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-10-20****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-10-07****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Spectrum & Telecommunications | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-09-01****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Simpson Brook**, Director of Parliamentary Affairs, Minister's Office | Innovation, Science and Economic Development Canada (ISED)
- **Sarah Hussaini**, Chief of Staff, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-22****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Brook Simpson**, Director of Parliamentary Affairs, OFFICE OF MINISTER OF INNOVATION, SCIENCE AND INDUSTRY | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-10****Bell Canada**

In-house Corporation

Designated Public Office Holders:

PUBLIC

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)
- **Simon Kennedy**, Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-09****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-09****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Francois-Philippe Champagne**, MINISTER OF INNOVATION, SCIENCE AND INDUSTRY | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-05-31****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Brook Simpson**, Director of Parliamentary Affairs, OFFICE OF MINISTER OF INNOVATION, SCIENCE AND INDUSTRY | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-05-31****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-05-07****Bell Canada**

In-house Corporation

Designated Public Office Holders:

- **David Hurl**, Director of Policy, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-03-19**

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Date Modified:

2022-10-04

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Activity Type

[In-house Corporation](#)

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Subject Matter of the Lobbying Activity

[Telecommunications](#)

1

[Broadcasting](#)

1

Government Institutions

[Canadian Radio-television and Telecommunications Commission \(CRTC\)](#)

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In-house Corporation

Designated Public Office Holders:

- **Ian Scott**, Chairperson & CEO | Canadian Radio-television and Telecommunications Commission (CRTC)
- **Stephen Millington**, Senior General Counsel and Executive Director | Canadian Radio-television and Telecommunications Commission (CRTC)

Communication Date: **2022-09-02****Bell Canada** 

In-house Corporation

Designated Public Office Holders:

- **Stephen Millington**, Senior General Counsel and Executive Director | Canadian Radio-television and Telecommunications Commission (CRTC)

Communication Date: **2021-07-20****Date Modified:**

2022-10-04

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JACQUELINE HOUSTON

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TELUS Corporation / Darren Entwistle, President and Chief Executive Officer

Registration Information

In-house Corporation name: **TELUS Corporation**

Responsible Officer Name: **Darren Entwistle, President and Chief Executive Officer** ⓘ

Initial registration start date: **2008-12-19**

Registration status: **Active**

Registration Number: **781813-235601**

Associated Communications

Total Number of Communication Reports: **1059**

Monthly communication reports in the last 6 months: **45**

⏪ < Registration versions: 68 of 68: 2022-04-22 to present ▾

Version 68 of 68 (2022-04-22 to present)

▼ Lobbying Information

Subject Matters

- Aboriginal Affairs
- Agriculture
- Broadcasting
- Climate

PUBLIC

- Consumer Issues
- Defence
- Economic Development
- Environment
- Government Procurement
- Health
- Industry
- Infrastructure
- Intellectual Property
- Labour
- Privacy and Access to Information
- Regional Development
- Science and Technology
- Taxation and Finance
- Telecommunications

Subject Matter Details**Legislative Proposal, Bill or Resolution**

- As a supplier to the Government of Canada, TELUS regularly engages in discussions related approaches to reduce costs in the procurement of end-user devices, networks and associated support services and solutions.
- Bills related to lawful access obligations that will have a direct impact on the Company from a financial and operational perspective, as well as impact on TELUS customers from a privacy perspective, and with respect to obligations imposed on carriers with respect to intercept and subscriber information.
- Informing Federal officials around TELUS initiatives in the Health Care field and communicating the need for increased cooperation in developing next generation health care services between all levels of Government.
- Potential Amendments to the Broadcasting and Telecommunication Acts, with respect to streamlining regulation of the broadcasting and telecommunication industry.
- Replacement Worker Legislation - TELUS is interested in legislation that bans replacement workers during a labour dispute as it would hinder our ability to operate our organization and serve our customers.
- Review of the Personal Information Protection and Electronic Documents Act (PIPEDA) as relates to communications and data service providers' obligations

Legislative Proposal, Bill or Resolution, Policies or Program, Regulation

- Critical infrastructure and cyber security - protection of facilities, networks, technology, assets and systems.

Policies or Program

PUBLIC

- Broadband Canada – Connect to Innovate program which is of interest to TELUS, with respect to advancing rural and remote network connectivity in Canada.
- Broadcasting Policies Relating to Conventional Television
- Broadcasting Policies Relating to Specialty Television
- Communicating with the government about adopting digital tools in the agriculture sector.
- Policy Framework with regard to the terms and conditions of auction for Spectrum Licences
- Proposed Digital Economy Strategy with respect to spectrum policy.
- Regulatory environment affecting the Canadian wireless market, including regulatory framework with regard to the requirements around rural network infrastructure builds, the policy framework around spectrum auction rules and regulations on the purchase of existing Canadian wireless companies.
- Spectrum policy framework as related to incumbent wireless carriers with respect to all technological and financial implications of proposed government policies.

Regulation

- Canadian Radio-television and Telecommunications Commission review of Basic Telecommunications Services
- Copyright regulations and the Copyright Modernization Act with respect to the scheduled five year review.

Communication Techniques

- Written communication
- Oral communication
- Grass-roots communication

Government Institutions

- Agriculture and Agri-Food Canada (AAFC)
- Canada Revenue Agency (CRA)
- Canadian Food Inspection Agency (CFIA)
- Canadian Heritage (PCH)
- Canadian Radio-television and Telecommunications Commission (CRTC)
- Competition Bureau Canada (COBU)
- Copyright Board of Canada (CB)
- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)
- Employment and Social Development Canada (ESDC)
- Environment and Climate Change Canada (ECCC)
- Federal Economic Development Agency for Southern Ontario (FedDev)
- Finance Canada (FIN)
- Global Affairs Canada (GAC)

PUBLIC

- Health Canada (HC)
- House of Commons
- Immigration, Refugees and Citizenship Canada (IRCC)
- Indigenous Services Canada (ISC)
- Infrastructure Canada (INFC)
- Innovation, Science and Economic Development Canada (ISED)
- Justice Canada (JC)
- National Defence (DND)
- Natural Resources Canada (NRCan)
- Office of the Privacy Commissioner of Canada (OPC)
- Pacific Economic Development Canada (PacifiCan)
- Prime Minister's Office (PMO)
- Privy Council Office (PCO)
- Public Safety Canada (PS)
- Public Services and Procurement Canada (PSPC)
- Rural Economic Development (Minister's Office)
- Senate of Canada
- Statistics Canada (StatCan)
- Transport Canada (TC)
- Treasury Board Of Canada Secretariat (TBS)
- Veterans Affairs Canada (VAC)
- Western Economic Diversification Canada (WD)
- Women and Gender Equality (WAGE)

▼ In-house Corporation Details**Description of activities**

TELUS is a dynamic, world-leading communications and information technology company spanning wireless, data, IP, voice, television, entertainment, video and security. We leverage our global-leading technology and compassion to enable remarkable human outcomes. Our longstanding commitment to putting our customers first fuels every aspect of our business, making us a distinct leader in customer service excellence and loyalty. TELUS is the world leader in social capitalism, committing \$150 million to support Canadians through the COVID-19 crisis, more than any other Canadian company. Driven by our passionate social purpose to connect all Canadians for good, TELUS, our team members, and retirees have contributed over \$1.3B in giving and 1.4 million days of volunteering since 2000.

Responsible officer name and position during the period of this registration

Darren Entwistle, President and Chief Executive Officer

Government funding

PUBLIC

End date of the last completed financial year: 2021-12-31

List of Government Funding

Government Institution	Funding Received in Last Financial Year	Funding Expected in Current Financial Year
Canada Revenue Agency (CRA)	\$49,935,674.70	Yes

In-house Corporation Contact Information

Address:

555 Robson Street
Vancouver, BC V6B 3K9
Canada

Telephone number: 604-697-8000

Parent Company Information

TELUS Corporation is not a subsidiary of any other parent companies.

Subsidiary Beneficiary Information

- 9370-9954 Quebec Inc.
 - 630 boul Rene-Levesque Ouest
Montreal, QC H3B 1S6
Canada
- Mascon Communications Inc.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- Medisys Health Group Inc.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- TELUS Accelerate Solutions Inc
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- TELUS Communications Inc.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3

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Canada

- TELUS Employer Solutions Inc.
 - 10th Floor, 10020 100 St NW
Edmonton, AB T5J 0N5
Canada
- TELUS Expertise Inc.
 - 29th Floor, 630 Rene-Levesque ouest
Montreal, QC H3B 1S6
Canada
- TELUS Health & Payment Solutions GP Inc.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- TELUS Health & Payment Solutions LP
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- TELUS Health Living Labs Ltd.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- TELUS Health Solutions Inc.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada
- TELUS Retail Limited
 - 10th Floor, 10020 100 St NW
Edmonton, AB T5J 0N5
Canada
- TELUS Right Health
 - 320 Pinebush Road
Cambridge, ON N1T 1Z6
Canada
- TM Mobile Inc.
 - 7th Floor, 510 West Georgia Street
Vancouver, BC V6B 0M3
Canada

▼ Lobbyists Details**List of Senior Officers whose lobbying activities represent less than 20% of their Duties**

PUBLIC

- **Tony Geheran**, EVP and President Broadband Networks | No public offices held

List of Senior Officers and Employees whose lobbying activities represent 20% or more of their Duties

- **Bernard Bureau**, Vice President - 5G Spectrum & Wireless Networks | No public offices held
- **Tom Chervinsky**, Sr. Strategy Manager | Public offices held
- **Darren Entwistle**, President and Chief Executive Officer | No public offices held
- **Jacob Glick**, Vice President - Public Policy | No public offices held
- **Kathryn Hughes**, National Lead, Government & Stakeholder Relations TELUS Health | No public offices held
- **Nicholas Moore**, Sr. Strat Manager | No public offices held
- **Katherine Preiss**, Government Relations Director | Public offices held
- **Rhys Sandner**, Sr. Strategy Manager | Public offices held
- **Stephen Schmidt**, Vice President - Telecoms Policy and Chief Regulatory Legal Counsel | No public offices held

Date Modified:

2022-10-04

Office of the Commissioner
of Lobbying of CanadaCommissariat au lobbying
du Canada

Registry of Lobbyists

[Registry Dashboard](#) → [Advanced Registry Search](#) → Advanced Registry Search Results

Q Advanced Registry Search Results

Search Criteria

1. Occurred between these dates: **2021-03-01, 2022-10-18** AND;
2. Client, organization or corporation name: **TELUS**

[Start over](#)[Modify criteria](#)

Refine By

Document Type

[Monthly communication reports](#)**48**


Registrations Status

Activity Type

[In-house Corporation](#)**44**[Consultant](#)**4**

Subject Matter of the Lobbying Activity

[Telecommunications](#)**47**[Consumer Issues](#)**4**[Industry](#)**3**[Broadcasting](#)**1**[Health](#)**1**[Infrastructure](#)**1**

PUBLIC**Government Institutions**Innovation, Science and Economic Development Canada (ISED) Finance Canada (FIN) **1**

If you would like to view a summary of the last 12 months for a lobbying activity, use the [12-Month Lobbying Activity Search](#)

Results: 1-48 of 48**TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor, Office of the Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-09-22****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-08-29****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor, Office of the Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-08-24****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-08-05****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Kevin Deagle**, Policy Advisor, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

PUBLIC

- **François-Philippe Champagne**, Minister of Innovation, Sciences and Economic Development, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-07-15****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-06-30****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-05-02****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Leslie Church**, Director of Policy, Office of the Deputy Prime Minister and Minister of Finance | Finance Canada (FIN)
- **Miles Hopper**, Policy Advisor, Minister's Office | Finance Canada (FIN)
- **David Hurl**, Director of Policy, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-04-28****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Ian Foucher**, Chief of Staff, Office of the Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-04-25****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-29****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-25****TELUS Corporation**

PUBLIC

In-house Corporation

Designated Public Office Holders:

- **Anne-Marie Monteith**, Chief of Staff | Innovation, Science and Economic Development Canada (ISED)
- **Simon Kennedy**, Deputy Minister | Innovation, Science and Economic Development Canada (ISED)
- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-22****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **David Hurl**, Director of Policy | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-22****Telus Corporation** Consultant: **Kevin Bosch, Hill+Knowlton Strategies**

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-16****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-03-09****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **François-Philippe Champagne**, Minister of Innovation, Science and Industry | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-02-22****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Randy Boissonnault**, Minister of Tourism and Associate Minister of Finance | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-02-21****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-01-27**

PUBLIC**Telus Corporation**Consultant: **Kevin Bosch, Hill+Knowlton Strategies**

Designated Public Office Holders:

- **Peter Opdam**, Policy Advisor, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-01-27****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Sarah Hussaini**, Chief of Staff | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2022-01-18****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-12-22****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Mark Schaan**, Associate Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)
- **Francis Bilodeau**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-12-14****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Mitch Davies**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-12-02****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Adam Scott**, Director General | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-12-02****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-11-19**

PUBLIC**TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Simon Kennedy**, Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-11-11****Telus Corporation** Consultant: **Kevin Bosch, Hill+Knowlton Strategies**

Designated Public Office Holders:

- **Sarah Hussaini**, Chief of Staff, Office of the Minister | Innovation, Science and Economic Development Canada (ISED)
- **Brook Simpson**, Director of Parliamentary Affairs, Office of the Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-10-12****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Brook Simpson**, Director, Parliamentary Affairs | Innovation, Science and Economic Development Canada (ISED)
- **Sarah Hussaini**, Chief of Staff | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-10-12****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Mark Schaan**, Associate Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-09-22****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Fiona Gilfillan**, Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)
- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-09-15****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-08-18****TELUS Corporation** 

PUBLIC**In-house Corporation**

Designated Public Office Holders:

- **Mark Schaan**, Associate Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-08-17****Telus Corporation**Consultant: **Kevin Bosch, Hill+Knowlton Strategies**

Designated Public Office Holders:

- **David Hurl**, Director of Policy, Office of the Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-08-10****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **David Hurl**, Director of Policy, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-08-10****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Brook Simpson**, Director, Parliamentary Affairs | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-08-03****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Jane Rooney**, Director, Tech & Talent - Connected Canada Branch | Innovation, Science and Economic Development Canada (ISED)
- **Pamela Miller**, Director General, Telecommunications and Digital Policy Branch | Innovation, Science and Economic Development Canada (ISED)
- **Radina Petrova**, Program Officer, Tech & Talent - Connected Canada Branch | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-07-09****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Galen Richardson**, Regional Advisor, Office of the Minister of Economic Development and Official Languages | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-07-06****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

PUBLIC

- **Brook Simpson**, Director, Parliamentary Affairs | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-30****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Jane Rooney**, Director, Tech & Talent - Connected Canada Branch | Innovation, Science and Economic Development Canada (ISED)
- **Alex Meduri**, Sr Program Officer, Digital Inclusion Program Directorate - Connected Canada Branch | Innovation, Science and Economic Development Canada (ISED)
- **Radina Petrova**, Program Officer, Tech & Talent - Connected Canada Branch | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-29****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister, Broadband Programs Branch | Innovation, Science and Economic Development Canada (ISED)
- **Susan Hart**, Director General | Innovation, Science and Economic Development Canada (ISED)
- **Marc-Andre Rochon**, Senior Director | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-06-24****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Tim Logan**, Special Assistant, BC Desk | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-05-20****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Brook Simpson**, Director, Parliamentary Affairs | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-05-14****TELUS Corporation**

In-house Corporation

Designated Public Office Holders:

- **Mark Schaan**, Associate Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-04-29****TELUS Corporation**

PUBLIC**In-house Corporation**

Designated Public Office Holders:

- **Brook Simpson**, Director of Parliamentary Affairs, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-04-23****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Adam Scott**, Director General | Innovation, Science and Economic Development Canada (ISED)
- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)
- **Marc-Andre Rochon**, Senior Director | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-04-23****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **David Hurl**, Director of Policy, Minister's Office | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-03-18****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **Eric Dagenais**, Senior Assistant Deputy Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-03-17****TELUS Corporation** 

In-house Corporation

Designated Public Office Holders:

- **François-Philippe Champagne**, Minister | Innovation, Science and Economic Development Canada (ISED)

Communication Date: **2021-03-09****Date Modified:**

2022-10-04

PUBLIC