



April 27, 2007

Our file: P5100-R029-20-0

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**Re: *Pension Plan for the Employees of Premier Cable Systems Limited (Plan)*
Pension Plan for the Employees of Rogers Communications Inc. (RCI Plan)
*Pension Benefits Standards Act, 1985 (PBSA)***

Following the decision of the Supreme Court of Canada in *Rogers v. Buschau*, [2006] 1 S.C.R. 976 (Rogers Decision), the legal representative of the members and former members of the Plan (Members) and the legal representative of Rogers Communications Incorporated (RCI) and Rogers Cable Communications Inc. (the employer and administrator of the Plan) have made submissions to the Office of the Superintendent of Financial Institutions (OSFI) concerning the RCI Plan and, in particular, in respect of the portion of that plan previously known as the Pension Plan for the Employees of Premier Cable Systems Limited.

In summary, as set out in the letter dated June 30, 2006, the Members request that I:

- (i) consider the Plan already terminated; or
- (ii) terminate their pension plan under s. 29 of the PBSA; or
- (iii) direct Rogers to terminate and wind up the Plan under s. 11 of the PBSA;
- (iv) after termination of the Plan, under s. 29.1 of the PBSA remove the present administrator of the Plan (Rogers or RCI) and appoint Albert Poy as a replacement administrator on the grounds that such removal and replacement is in the best interest of the Members further to the order of Justice Loo of the Supreme Court of British Columbia; and
- (v) after termination, wind up the Plan by allowing the pension fund to be used to buy annuities to cover existing pension benefits and the balance of the surplus to be distributed to the Members in cash.

RCI has submitted that the merger of the RCI Plan and the Plan was not completed. Because of past court decisions, RCI cannot complete the merger as the fund for the Plan could not merge with the fund for the remainder of the RCI Plan. Following the Supreme Court of Canada's decision, RCI has decided to revoke the merger of the Plan with the RCI Plan thereby separating the Plan from the RCI Plan. The fund established for the



Plan will continue to be the pension fund in respect of the Plan. It has also been submitted that through a number of corporate acquisitions and mergers, Premier Cable has become Rogers Cable Communications Inc. (Cable Inc.). Cable Inc. has decided to amend the Plan so that new employees of Cable Inc. can join the Plan (reopening).

While the original requests were made separately, they are related and each has made written submissions on the other's requests. Further, certain decisions or responses in respect of one submission may be relevant to, or have implications for, the other submission. Consequently, in writing this letter, I am issuing my decision to both the legal representative of the Members and the legal representative of RCI and Cable Inc.

After careful consideration of the submissions, I have decided that the decision by RCI to revoke the merger of the Plan with the RCI Plan and the reopening of the Plan by Cable Inc. do not contravene the terms of the Plan or the PBSA. I also find as a matter of fact that the Plan has not been terminated under the PBSA or by the employer. In addition, I have decided not to exercise my discretion to declare the Plan terminated and not to issue a direction pursuant to section 11 of the PBSA. I am satisfied, after reviewing all the evidence and submissions of the parties, that the continued existence of this pension plan is a worthy goal and that the employer is continuing to provide the promised benefits and complying with solvency requirements.

Private Pension Plans and OSFI

Private pension plans serve broad societal goals. Many individuals depend upon pension plans and their continuation for their future financial support. In respect of a defined benefit pension plan, the terms of the plan set out the level of promised pension benefits to a class of employees eligible to join the plan.

The PBSA requires that a plan meet the prescribed tests and standards for solvency. These requirements are primarily set out in section 9 of the *Pension Benefits Standards Regulations, 1985* (PBSR). If there is an actuarial surplus, the prescribed tests and standards for solvency permit an employer to take a contribution holiday.

The legislative scheme of the PBSA is primarily aimed at ensuring minimum standards for pension plans and presumes that the continued existence of a pension plan is a worthy goal. In respect of the solvency requirements, the PBSA provides for funding of a plan that is adequate to provide for the payment of promised pension benefits, but at any point in time a plan could operate in a deficit position or with an actuarial surplus.

OSFI's mandate also reflects these objectives. I have attached as an Appendix to this letter a copy of the mandate. One part of this mandate is particularly noteworthy. Paragraph 4(3)(b) of the *Office of the Superintendent of Financial Institutions Act* provides that in carrying out its objects, OSFI shall strive "to protect the rights and interests of members of pension plans, former members and any other persons who are entitled to pension benefits or refunds under pension plans." OSFI's supervision of pension plans in order to determine whether they meet the minimum funding and other

requirements of the PBSA, and OSFI's responsibility to take, or require plan administrators to take, corrective actions when necessary, are central to our mandate.

The solvency valuation of an ongoing pension plan may, at any given time, show that if the plan were terminated as at the valuation date the assets would cover and exceed the liabilities i.e., the value of the promised pension benefits. In respect of an ongoing plan, this is an actuarial surplus. It is not until the plan terminates that a valuation is undertaken to determine the actual surplus and a report is filed as to how the pension benefits and other benefits, including any surplus, will be distributed. In this case, no member is entitled to make a claim to share in an actuarial surplus unless or until a plan is terminated.

A plan is generally established as a long term arrangement to provide pension benefits for a class of eligible employees. Termination by the regulator, either directly by way of declaration or by directing the employer or administrator to terminate a plan, is an extreme measure, usually done only after other regulatory intervention measures have failed. It is a decision that I do not take lightly. Termination of a plan affects all plan beneficiaries and participants, including the employer. For example, termination may be appropriate where the pension benefits are jeopardized, the plan's funding level is not in accordance with the PBSA and cannot be rectified or the purpose of the plan is frustrated.

Amendments and Reopening the Plan

While the Plan has been closed to new membership since 1984, no submissions were made to OSFI that the amendment closing the Plan was irrevocable. Following the Rogers Decision, RCI and Cable Inc. now seek to continue the purpose of the Plan by revoking the merger of the Plan with the RCI Plan and reopening it to new cable employees.

The Plan was established in 1974. The Trust Agreement between "Premier Cablevision Ltd. and its Associated and Subsidiary Companies" and Canada Trust Company and the Premier Plan provided similar wording in defining or describing the "Company". The Plan was attached as an exhibit to the Trust Agreement. Premier went through a number of amalgamations involving RCI and other related or associated companies. The submissions made on behalf of RCI outline its history and the history of the Cable Inc. I accept the submissions made by RCI and Cable Inc. that the current amendments are being made by the "Company" as defined in the Plan, and the "employer" as defined in the PBSA.

The Plan documents (including Trust Agreement) allowed the "Company" to amend the Plan and Trust Agreement. The Plan documents do not provide this right to amend to Members. Amendments could not provide that the fund be used for or diverted to purposes other than for the exclusive benefit of such persons as may be designated in the Plan as amended from time to time. I am of the opinion that in reopening the Plan, Cable Inc. is not acting contrary to the PBSA or contrary to the terms of the Plan and terms of

the Trust Agreement establishing the funds. I am satisfied that the general purpose of the Plan is continuing and the Plan meets prescribed tests and standards for funding. The terms of the Plan, Trust Agreement and PBSA do not prevent Cable Inc. from making these amendments opening membership to new Cable Inc. employees. The decision by Cable Inc. to reopen the Plan was also made in conjunction with a decision to close another pension plan established for Cable Inc. employees (“Cable employees”). There is no merger of the newly closed Cable Inc. plan and the reopened Plan. Pension benefits that have accrued in that other plan remain in that other Cable Inc. pension plan. The amendments implementing these decisions do not take away existing rights or entitlements. The reopened Plan will be funded by Cable Inc. I am of the opinion that in deciding to revoke the merger and to reopen the Plan to new employees, RCI and Cable Inc. are not acting contrary to safe and sound financial or business practices, are not jeopardizing the pension benefits of the Members, and are not contravening the PBSA nor the terms of the Plan.

Termination

The Members have submitted that either the Plan has terminated or that I should declare the Plan terminated. Since the employer is a key participant in a pension plan, I must also consider Cable Inc.’s position. Cable Inc. does not want the Plan to terminate. Rather, it wants the Plan to continue and to provide defined pension benefits for Cable Inc. employees.

It is not disputed that neither RCI nor Cable Inc. has terminated the Plan. However, it has been submitted on behalf of the Members that there are no further accruals in the Plan and that in respect of the Plan there has been a general cessation of the crediting of benefits to Plan members. Therefore, the Members have submitted that the Plan should already be considered terminated.

The PBSA defines “termination” as “in relation to a pension plan, means the cessation of crediting of benefits to plan members generally, and includes the situations described in subsections 29(1) and (2)”.

RCI and Cable Inc. have submitted that there are two members still being credited with benefits and that Cable Inc. has chosen to continue the Plan for new employees in its cable operations in its capacity as employer of these two members and as administrator of the reopened Plan. I accept these representations and it is my view that there has not been a cessation of crediting of benefits to plan members generally and the Plan has not “terminated” under the PBSA.

The Members have also asked that I terminate the Plan under subsection 29(2) of the PBSA. The members have not specified under what paragraph of subsection 29(2) they are making the request.

Subsection 29(2) of the PBSA allows me to declare a plan terminated, in whole or in part, in the circumstances set out in that subsection. As I have stated previously, it is my

opinion that the Plan meets the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1) of the PBSA. Therefore, paragraph 29(2)(c) is not applicable. I am also of the view that the business operations of Premier Cable Systems Inc. have not been discontinued, but are being continued by Cable Inc. Therefore, paragraph 29(2)(b) is not applicable.

With respect to paragraph 29(2)(a), I have discretion to terminate a pension plan where there is any suspension or cessation of employer contributions in respect of all or part of the plan members. In this case, the suspension or cessation of contributions by the employer was the result of taking contribution holidays taken in accordance with the PBSA. The Plan meets the prescribed standards for solvency, the pension benefits of the Members are not being jeopardized, the Plan meets the requirements of the PBSA and the purpose of the Plan has not been frustrated.

Termination of the Plan in this case will not result in the protection of the Plan's purpose or the protection of the pension benefits of all members of the Plan. In these circumstances, in deciding whether to terminate the Plan I must also consider the views of the employer, another party to the contract. Cable Inc. opposes the termination of the Plan. The Plan reserves the decision to amend and terminate to the employer, and Cable Inc. has not taken any steps, and there is no indication that it plans to take any steps, to terminate the Plan. The fact that the Plan's fund might be wound up following a termination and the Members receive surplus is not a sufficient basis for me to decide to terminate the Plan. Termination is an extreme measure and there are not sufficient reasons for me to interfere in the administration and operation of the Plan by declaring the Plan terminated.

I have decided, in these circumstances, not to exercise my discretion to terminate the Plan under paragraph 29(2)(a).

Direction to Terminate

With respect to these submissions, it is my opinion that both RCI and Cable Inc. are complying with the terms of the Plan and other supporting documents, and with the PBSA. Consequently, I decline to issue a direction to either RCI or Cable Inc. pursuant to subsection 11(2) of the PBSA. Also, I am of the opinion that neither RCI nor Cable Inc., in respect of the Plan, is acting contrary to safe and sound business practices. Consequently, I decline to issue a direction pursuant to subsection 11(1) of the PBSA.

Wind-up of the Pension Fund

Since the Plan has not been terminated, I need not address whether the pension fund should be wound up.

Replacement Administrator

While issues concerning RCI's administration of the Plan in the past have come under question, I do not find that RCI (or the new administrator, Cable Inc.) is currently administering the Plan and fund in contravention of the terms of the Plan (including those applicable to the Plan's fund) or the PBSA or acting contrary to safe and sound financial or business practices. I am therefore of the view that it would not be in the best interest of the Plan members to replace the administrator of the Plan and I decline to remove the current administrator and appoint a replacement administrator.

If you wish to challenge this decision, you have 30 days from the time the decision is first communicated to you to apply for judicial review, pursuant to section 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. 41.

Yours very truly,

Julie Dickson
Acting Superintendent

c.c. Administrator
Encl.

Appendix

OSFI's Mandate in relation to Pension Plans (*Office of the Superintendent of Financial Institutions Act, 1985*):

4. (2.1) The objects of the Office, in respect of pension plans, are
 - (a) to supervise pension plans in order to determine whether they meet the minimum funding requirements and are complying with the other requirements of the *Pension Benefits Standards Act, 1985* and its regulations and supervisory requirements under that legislation;
 - (b) to promptly advise the administrator of a pension plan in the event that the plan is not meeting the minimum funding requirements or is not complying with other requirements of the *Pension Benefits Standards Act, 1985* or its regulations or supervisory requirements under that legislation and, in such a case, to take, or require the administrator to take, the necessary corrective measures or series of measures to deal with the situation in an expeditious manner; and
 - (c) to promote the adoption by administrators of pension plans of policies and procedures designed to control and manage risk.
- (3) In pursuing its objects, the Office shall strive
 - (b) in respect of pension plans, to protect the rights and interests of members of pension plans, former members and any other persons who are entitled to pension benefits or refunds under pension plans.