



## Broadcasting Notice of Public Hearing CRTC 2007-16

Ottawa, 23 November 2007

*The Commission will hold a public hearing commencing on 15 January 2008 at 9:30 a.m., at the Conference Centre, Portage IV, 140 Promenade du Portage, Gatineau, Quebec, to inquire into the matter described below. The deadline for filing of submissions is 13 December 2007.*

[\[Broadcasting intervention/comments form\]](#)

### Background

On 1 August 2007, the Commission issued letter decisions setting out its determinations with respect to a complaint filed by the Canadian Association of Broadcasters (CAB) that certain broadcasting distribution undertakings (BDUs) had not been performing simultaneous substitution with respect to certain high definition (HD) signals. In its letter decisions, the Commission directed certain BDUs, including Shaw Cablesystems and Star Choice, to undertake simultaneous substitution with respect to all HD television stations, and in particular, the CITY-TV station in Toronto and the CTV stations in Toronto and Vancouver, by the end of the calendar year. The Commission further directed Shaw Cablesystems and Star Choice to file detailed plans to implement HD substitution within that time frame.

On 7 September 2007, Shaw Communications Inc. (Shaw) filed a letter on behalf of Shaw Cablesystems and Star Choice in response to the Commission's direction of 1 August 2007. In its letter, Shaw described what it considered to be difficulties with regard to the implementation of HD substitution, and reiterated its belief, first expressed in response to the CAB's complaint, that broadcasters should bear the costs of such implementation. Shaw did not provide a plan to implement HD substitution within the time frame set out in the Commission's direction, nor did it express an intention to comply with the Commission's instruction to implement HD substitution by the end of the year.

In a letter to the Commission dated 11 October 2007, the CAB submitted that, by failing to file detailed implementation plans for HD substitution, as directed by the Commission, Shaw has clearly demonstrated that it has no intention of complying with its regulatory obligations respecting the simultaneous substitution of HD programming. The CAB urged the Commission to take immediate action to require Shaw Cablesystems and Star Choice to comply with the regulatory framework for the substitution of HD signals. The CAB added that the Canadian HD signals in question have been operational for several years, and an increasing number of consumers are interested in these signals.

The CAB stated that the specific HD signals entitled to substitution pursuant to the Commission's determination are:

- The CTV HD signal in Vancouver, as distributed by the Class 1 cable systems operated by Shaw Cablesystems in the Vancouver area; and
- The CTV and CITY-TV HD signals in Toronto and the CTV HD signal in Vancouver, as distributed by Star Choice.

### ***Application of Regulations and Policies***

In *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003 (Public Notice 2003-61), the Commission established a policy framework that would require BDUs, absent a condition of licence to the contrary, to carry the primary digital signals of those Canadian over-the-air television signals identified in sections 17, 32 and 37 of the *Broadcasting Distribution Regulations* (the Regulations). The Commission also stated that such digital signals would have the same substitution rights as their analog counterparts, provided that the signal to be substituted was the same or higher quality than the signal to be replaced. In support of these determinations, the Commission set out definitions of "local", "regional" and "extra-regional" expressed in terms relevant to digital signals.<sup>1</sup>

While these determinations and the related definitions have yet to be enacted into the Regulations, the Commission notes that, under the definitions currently set out in the Regulations, a "local television station" includes "a licensed television station that, [...] (b) has, if there is no Grade A official contour, a transmitting antenna that is located within 15 km of the licensed area." The Commission finds that this definition would apply to digital transmitting antennas, provided that the condition set out is met, i.e., that the antenna in question is within 15 kilometres of the licensed area.

Information on file with the Commission indicates that the CTV Vancouver transitional digital television station has a transmitter that is located within the licensed area of Shaw Cablesystems' North Vancouver system and within 15 kilometres of the licensed area of Shaw Cablesystems' Vancouver system. Accordingly, pursuant to section 30 of the current Regulations, these two systems are required to perform simultaneous substitution with respect to programming broadcast by this station, in the circumstances set out in that section. Not to do so is a violation of the Regulations.

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<sup>1</sup> For example, the Commission set out the following definition for a local digital television station:

A local digital television station, in relation to a BDU, is one that has a local service contour that includes any part of the licensed area of the distribution undertaking. A local service contour means a service contour with a field strength of seven decibels above the field strength obtained at its [digital service area] contour, as defined in the [Department of Industry's Broadcasting Procedures and Rules], Part 7.

With respect to Star Choice, section 42(1)(a) of the Regulations requires that a direct-to-home licensee “delete a non-Canadian programming service and substitute the comparable and simultaneously broadcast programming service of the Canadian television programming undertaking whose signal is distributed by the licensee”, if it receives a written request from a licensed Canadian television programming undertaking at least four days before the program in question. Since each of the stations identified by the CAB is a “licensed Canadian television programming undertaking”, the Regulations require Star Choice to perform simultaneous substitution with respect to these signals, when so requested in the circumstances described in section 42(1)(a). Not to do so is a violation of the Regulations.

Consistent with the policies established in Public Notice 2003-61, Shaw Cablesystems and Star Choice are required to perform substitution of Canadian HD signals over non-Canadian signals when the Canadian signal is of equal or superior quality.

***Direction to appear***

In its determination of 1 August 2007, the Commission indicated that, in the absence of a specific implementation plan, the Commission would consider further enforcement of its direction that Shaw Cablesystems and Star Choice undertake HD substitution with respect to all HD stations by the end of the current calendar year. In light of the failure of Shaw Cablesystems and Star Choice to provide a detailed implementation plan to implement HD substitution within the time frame specified in the Commission’s determination of 1 August 2007, the Commission directs Shaw to appear at a public hearing to inquire into, hear and determine whether, pursuant to section 12 of the *Broadcasting Act*, a mandatory order should be issued requiring Shaw Cablesystems and Star Choice to implement HD substitution with respect to digital television stations meeting the criteria set out in the Regulations, and in particular those television stations noted by the CAB in its letter of 11 October 2007.

*Licensee’s address:*

Shaw Communications Inc.  
 440 Laurier Avenue West  
 Suite 330  
 Ottawa, Ontario  
 K1R 7X6  
 Fax: 613-234-2997  
 E-Mail: [michael.ferras@srjb.ca](mailto:michael.ferras@srjb.ca)

*Examination of documents:*

At the licensee’s address

## **Public Participation**

### **Deadline for interventions/comments**

**13 December 2007**

The intervention must be received by the CRTC and by the licensee on or before the above-mentioned date. The Commission cannot be held responsible for postal delays.

The intervention 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.

Your intervention will be considered by the Commission, and will form part of the public record of the proceeding without further notification to you, provided the procedure set out below has been followed. You will be contacted only if your submission raises procedural questions.

Submit your written intervention to the Secretary General of the Commission in **only one** of the following formats:

**by using the**  
[\[Broadcasting intervention/comments form\]](#)

Or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**  
819-994-0218

A true copy **must** be sent to the licensee and proof that this has been done must accompany the intervention sent to the Commission.

The Commission advises those who file and serve by electronic mode to exercise caution when using e-mail for service of documents or notification, as it may be difficult to establish that service has occurred.

Before initiating service through electronic mode, please ensure that you will be able to satisfy the Commission, upon request, that service of the notification was completed.

Where the intervention is filed by electronic means, the line **\*\*\*End of document\*\*\*** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Each paragraph of the document should be numbered.

If you wish to appear at the public hearing, you must provide reasons why your written comments are not sufficient and why an appearance is necessary.

Persons 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**

Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's Web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

The personal information you 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 web site in their entirety exactly as you send them, 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.

Please note that the information you 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 webpage of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

### **Examination of documents**

An electronic version of the documents is available on the Commission's Web site under "Related Documents" for this proceeding.

A list of all interventions/comments will also be available on the Commission's Web site. An electronic version of all interventions/comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's Web site.

Documents are also available during normal office hours at the local address provided in this notice and at the Commission offices and documentation centres directly involved with these applications or, upon request, within 2 working days, at any other CRTC offices and documentation centres.

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Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*