



Broadcasting Decision CRTC 2008-29

Ottawa, 15 February 2008

**Shaw Communications Inc., on behalf of its subsidiary
Shaw Cablesystems Limited**
Calgary and Edmonton, Alberta

*Application 2007-1376-0, received 1 October 2007
Broadcasting Public Notice CRTC 2007-119
24 October 2007*

Relief from section 17 of the *Broadcasting Distribution Regulations*

*The Commission **approves** an application by Shaw Communications Inc., on behalf of its subsidiary Shaw Cablesystems Limited (Shaw), to be relieved of the requirement to distribute CKCS-TV Calgary and CKES-TV Edmonton as part of the basic service beginning with the basic band (channels 2 to 13). CKCS-TV Calgary must be distributed as part of the basic service on channel 51 of Shaw's Calgary system; and CKES-TV Edmonton must be distributed as part of the basic service on channel 51 of Shaw's Edmonton system. Approval is subject to the implementation by Shaw of a media plan to promote the channel placement of CKCS-TV and CKES-TV on its cable systems. The details of this media plan are set out in the decision.*

Introduction

1. The Commission received an application by Shaw Communications Inc., on behalf of its subsidiary Shaw Cablesystems Limited (Shaw), to amend the broadcasting licences for its Class 1 cable broadcasting distribution undertakings (BDUs) serving Calgary and Edmonton, Alberta. Shaw requested to be relieved, by condition of licence, of the requirement set out in section 17 of the *Broadcasting Distribution Regulations* (the Regulations) that it distribute CKCS-TV Calgary and CKES-TV Edmonton (the CTS stations) as part of the basic service beginning with the basic band (channels 2 to 13). Instead, Shaw proposed to distribute the CTS stations on channel 51 on each of the above-mentioned systems. Channel 51 is part of Shaw's basic service and is an unrestricted channel.
2. Shaw stated that it had developed a media plan, which it valued at approximately \$250,000, to support the launch of the CTS stations on channel 51 in Calgary and Edmonton. This plan would include the following elements:
 - announcements during local availabilities occurring in the schedules of 14 U.S. specialty services that would be broadcast at least 1,560 times over six weeks;
 - a front page banner on the Shaw website;

- e-mails to Shaw customers;
 - an electronic newsletter to Shaw customers.
3. The Commission received interventions opposing the Shaw application from Crossroads Television System (CTS) as well as from VPM Marketing and Consulting (VPM) and DDR Media Inc. (DDR). The interventions and Shaw's reply to them are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
 4. After examining the application, the interventions and Shaw's reply to the interventions, the Commission is of the view that the issue raised by this application is whether the Commission should approve Shaw's request for an exception to the Regulations, notwithstanding the opposition of CTS, in light of the particular circumstances cited by Shaw as justification.

Should Shaw's request for an exception to the Regulations be approved?

Positions of parties

The applicant

5. In Broadcasting Decision 2007-167, the Commission authorized CTS to implement for profit, English-language religious television stations in Calgary and Edmonton. At the same time, in Broadcasting Decision 2007-166, the Commission approved applications by Rogers Broadcasting Limited to operate new multilingual ethnic television programming undertakings to serve Calgary and Edmonton (the OMNI stations). In addition, in Broadcasting Decision 2007-168, the Commission approved an application by CanWest MediaWorks Inc.¹ (CanWest) to add local retransmitters in Calgary and Edmonton to rebroadcast CHCA-TV Red Deer as a local service in each of those markets.
6. According to Shaw, the regulatory requirement to accommodate the distribution of two new analog television services – the CTS stations and the OMNI stations – and to change the channel placement of an existing service – CHCA-TV Red Deer – on its Calgary and Edmonton systems, poses an unprecedented customer and network management challenge. Shaw submitted that its customers do not like it when the channels on which they view television services are changed. It is Shaw's view that the distribution of the CTS stations on channel 51 of the basic service in both Calgary and Edmonton would allow Shaw to accommodate the distribution of new analog and digital services in the most customer-friendly manner with the least disruption, in consideration of the extremely competitive BDU marketplace. In this regard, Shaw noted that the U.S. channels carried on the basic band have been distributed there for almost 40 years and the specialty services distributed below channel 22 have been distributed there for almost 10 years. Shaw was of the view that disruption of the placement of such channels would be unreasonable.

¹ On 10 January 2008, CanWest MediaWorks Inc. changed its name to Canwest Media Inc.

7. Shaw further argued that distribution of the CTS stations on channel 51 would have many positive aspects, including the following:
 - the CTS stations would be distributed on a common channel in both Edmonton and Calgary, as CTS requested;
 - the CTS stations would be on a channel adjacent to the popular HGTV and CTV NewsNet specialty services;
 - the CTS stations would still be part of the basic analog service, which is available to all Shaw customers; and
 - Channel 51 follows the channels on which Shaw distributes popular analog tier services.
8. Shaw was further of the view that its media plan, which it valued at \$250,000, would be effective in promoting the CTS stations on channel 51.

CTS

9. Even though the Regulations provide for carriage of local stations beginning on channels 2 to 13, CTS submitted that it had made it clear from the outset that it would accept carriage of the CTS stations as part of the basic service up to channel 22 on unrestricted channels. CTS noted that Shaw had agreed to a similar request from CanWest by distributing CHCA-TV on channels 18 and 19 in Calgary and Edmonton.
10. CTS argued, among other things, that changes in channel alignments are a fact of life for cable BDUs, noting that the CTS service had been added on lower channels of the basic service in Southern Ontario. It argued that the financial impact of the channel realignment on Shaw would be minimal, given that Shaw has a virtual monopoly in the Calgary and Edmonton markets and is in a healthy financial position.
11. CTS expressed concern that placement on channel 51 would have a negative financial impact on its operations. In support of this argument, CTS submitted that one agency had requested and was granted an advertising rate adjustment after it had been informed that the CTS stations would be distributed on channel 51. CTS also argued that, when CHCA-TV Red Deer moved from the basic band in Calgary and Edmonton to channels above 50, there was a significant negative impact on the audiences and revenues that the station enjoyed.
12. CTS further submitted that the media plan proposed by Shaw is not adequate to compensate for the decrease in revenues that the CTS stations would experience if distributed on channel 51.

DDR and VPM

13. DDR submitted that, if the Commission approved Shaw's application, the local CTS stations would be relegated to dial positions that are out of reach, out of sight and out of mind of local residents.

14. VPM submitted that the CTS stations must be able to compete with other local over-the-air stations. It questioned whether the CTS stations would be able to compete effectively if they were distributed on channel 51 instead of on lower channels.

Regulatory framework

15. The requirement for distribution of a priority service on the basic service, beginning with the “basic band,” is set out in sections 17(1) and 17(2) of the Regulations. Section 17(1) states:

Except as otherwise provided in subsections (3) to (6) or under a condition of its licence, a licensee shall distribute in each licensed area the following as part of its basic service, in the following order of priority ...

16. The section then lists the priority stations, which include all local CBC stations, provincial educational stations, all other local stations, CBC regional and extra-regional stations, all other regional and extra-regional stations, and the House of Commons programming service.

17. Section 17(2) of the Regulations states:

A licensee of a cable distribution undertaking shall distribute in each licensed area the programming services referred to in subsection (1) beginning with the basic band.

18. The basic band is defined in the Regulations as “the 12 analog cable channels that are commonly identified by the numbers 2 to 13 and that are used in the frequency bands 54 to 72 MHz, 76 to 88 MHz and 174 to 216 MHz.”

Commission’s analysis and determinations

19. The CTS stations, which Shaw currently distributes on channel 51 in both Calgary and Edmonton, qualify as local stations in those markets and therefore are entitled to distribution on the basic service beginning with the basic band, absent the distributor having obtained a condition of licence permitting alternate distribution. While the Commission has, in the past, approved several applications for distribution of local television stations on higher channels, in most cases the local stations have agreed to the channel placement applied for by the BDUs in question. In this case CTS has indicated that it would accept distribution up to channel 22, while Shaw has proposed distribution on channel 51.
20. The Commission notes that negotiations on this matter took place over several months, and included a conference call between CTS and Shaw before the application was filed that was mediated by Commission staff. It was during this conference call that Shaw first presented its media plan to promote the availability of the CTS stations on channel 51. The Commission is of the view that both sides have negotiated in good faith on this matter.

21. After examination of the record of this proceeding, the Commission accepts Shaw's contention that the accommodation of three new priority channels on its Edmonton and Calgary systems represents a significant challenge for Shaw, and that the resulting channel realignment could be unduly disruptive to its customers.
22. CTS has argued that placement on channel 51 could have a negative impact on viewing to the CTS stations. The Commission addressed the issue of channel placement and its impact on viewing to programming services in Broadcasting Public Notice CRTC 2004-46, in the context of the placement of services whose distribution has been required pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act). The Commission stated:

... the Commission has weighed the fact that, while some older television sets may not be able to display top-end analog channels, the television equipment available in Canadian households increasingly allows access to these channels. The Commission also finds that there is no conclusive evidence that channel surfing diminishes the amount of tuning to services distributed on top-end channels. On balance, although there may be some correlation between channel position and viewing share, the Commission is not satisfied that the potential increase in tuning that the mandated services might experience on lower channels is sufficient to outweigh the substantial costs that the BDU industry would incur if obliged to realign their channel assignments to accommodate these services on lower channels. This is particularly the case at this time, as the industry is in transition from analog to digital distribution. Accordingly, the Commission has decided not to regulate the channel placement of the mandatory services.

Instead, the Commission considers that the objectives of section 9(1)(h) of the Act would be more appropriately achieved by improving the visibility of the services through improved promotion, not only by the services themselves, but also by BDUs. Among other benefits, such an approach would offer a long-term solution as the industry makes the transition to digital distribution.

23. Although the current application involves the distribution of local television stations rather than services that must be distributed by virtue of orders issued under section 9(1)(h) of the Act, the Commission is of the view that similar logic would apply. In this case, the Commission considers that the media plan proposed by Shaw can be an effective tool in promoting the channel placement of the CTS stations in the Calgary and Edmonton markets. Thus, it is an integral element of the Commission's determination in this matter.
24. The Commission also notes that, by providing for exceptions by condition of licence to the general requirement for distribution of priority stations beginning on channels 2 to 13, the Regulations specifically contemplate that there may be circumstances that justify variations as to the channels on which such stations may be distributed by BDUs.

25. In light of the above, the Commission **approves** the application by Shaw Communications Inc., on behalf of its subsidiary Shaw Cablesystems Limited, to be relieved of the requirement to distribute CKCS-TV Calgary and CKES-TV Edmonton as part of the basic service beginning with the basic band (channels 2 to 13). Shaw will be subject to the following **condition of licence** respecting the distribution of CKCS-TV Calgary and CKES-TV Edmonton on its Class 1 BDUs serving Calgary and Edmonton, respectively.

The licensee shall, as an exception to section 17 of the *Broadcasting Distribution Regulations*, distribute the signal of CKCS-TV Calgary as part of the basic service on channel 51 of its Calgary BDU, and distribute the signal of CKES-TV Edmonton as part of the basic service on channel 51 of its Edmonton BDU. Shaw shall further implement the media plan described in support of its application with respect to the channel placement of CKCS-TV Calgary and CKES-TV Edmonton, which includes the following elements:

- announcements during local availabilities occurring in the schedules of 14 U.S. specialty services that shall be broadcast at least 1,560 times over six weeks;
- a front page banner on the Shaw website;
- e-mails to Shaw customers;
- an electronic newsletter to Shaw customers.

Shaw shall pay reasonable production and other costs associated with the implementation of the media plan and shall collaborate with CTS in the development and execution of this media plan.

Secretary General

Related documents

- *CHCA-TV Red Deer – New transmitters in Calgary and Edmonton*, Broadcasting Decision CRTC 2007-168, 8 June 2007
- *Religious television stations in Calgary and Edmonton*, Broadcasting Decision CRTC 2007-167, 8 June 2007
- *Ethnic television stations in Calgary and Edmonton*, Broadcasting Decision CRTC 2007-166, 8 June 2007

- *Channel placement of certain services whose national distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act – Call for comments on tools to promote and improve the visibility of these services, Broadcasting Public Notice CRTC 2004-46, 9 July 2004*

This decision is to be appended to each licence. It 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>.