



Broadcasting Decision CRTC 2008-330

Ottawa, 27 November 2008

Complaints by Quebecor Media Inc. and the CBC regarding changes in the channel line-up of Star Choice Television Network Incorporated

*The Commission finds that Star Choice Television Network Incorporated did not contravene the Broadcasting Distribution Regulations or its conditions of licence by removing CKXT-TV (SUN TV) Toronto and CBKT Regina from its channel line-up. Accordingly, the Commission **dismisses** the complaints by Quebecor Media Inc. and the Canadian Broadcasting Corporation to that effect.*

Introduction

1. On 7 May 2008, Star Choice Television Network Incorporated (Star Choice), licensee of the direct-to-home (DTH) satellite broadcasting distribution undertaking (BDU) known as Star Choice, removed five television stations from its channel line-up, including CKXT-TV (SUN TV) Toronto, owned by Quebecor Media Inc. (QMI), and CBKT Regina, owned by the Canadian Broadcasting Corporation (CBC).
2. The Commission subsequently received separate complaints by QMI and the CBC relating to the removal of their respective stations from Star Choice's channel line-up. The complaints each alleged, among other things, that Star Choice had violated the *Broadcasting Distribution Regulations* (the Regulations) and/or specific conditions of its licence by ceasing to distribute these services. The complaints are addressed separately below.

Complaint by QMI relating to the removal of CKXT-TV

3. QMI alleged that the removal of CKXT-TV from Star Choice's channel line-up was:
 - in breach of the notice provision set out in section 26 of the Regulations;
 - inconsistent with the equitable distribution provision related to Star Choice's condition of licence suspending program deletion requirements; and
 - damaging to CKXT-TV and other BDUs since, due to Star Choice's relationship with the satellite relay distribution undertaking (SRDU) operated by Shaw Broadcast Services (SBS),¹ other BDUs would no longer be able to receive CKXT-TV from this SRDU.
4. These issues are discussed individually below.

¹ SRDUs are licensed by the Commission to transport certain Canadian and non-Canadian services from where they originate or are produced to the facilities of BDUs, which, in turn, distribute these services to their subscribers. Shaw's SRDU is licensed to Shaw Satellite Services Inc.

Did Star Choice breach section 26 of the Regulations?

5. Section 26 of the Regulations states:

If a licensee intends to change the channel on which a Canadian programming service is distributed, the licensee shall not implement the change unless, at least 60 days before the proposed effective date of the change, it sends a written notice indicating the intended date of the change and the channel number on which the programming service will be distributed to each of the operators of the programming services whose channel placements will be affected by the proposed realignment.

6. QMI submitted that Star Choice did not meet this requirement since it provided QMI with no notice that CKXT-TV would be removed. QMI alleged that it first discovered that its station would be removed on 7 May 2008.
7. For its part, Star Choice argued that section 26 only requires BDUs to notify programming services of a “change in channel placement.” In its view, removing a programming service does not constitute a change in channel placement for the purposes of section 26.
8. The Commission notes that section 26 applies only to Class 1 and Class 2 terrestrial BDUs. Given that Star Choice is licensed as a DTH BDU, it is not subject to this section. Therefore, Star Choice is not obligated to meet the notice requirement and cannot be considered to be in breach of this regulation. However, with respect to Star Choice’s argument cited above, in Broadcasting Public Notice 2008-100, the Commission indicated its intention to clarify in the future regulations that dropping a programming service would constitute a change in channel placement for the purposes of a requirement such as that currently set out in section 26.
9. The Commission further notes that in Broadcasting Public Notice 2008-100, it announced its determination that a notice requirement substantially similar to that set out in section 26 should be included in the new Regulations and that this provision should be applied to all BDUs, including DTH BDUs. Accordingly, Star Choice will be subject to this requirement once the amendments announced in Broadcasting Public Notice 2008-100 take effect.

Is Star Choice required to distribute CKXT-TV under the equitable distribution provision?

10. The schedule appended to the conditions of licence for Star Choice set out in Broadcasting Decision 2004-130 establishes alternative measures that Star Choice may undertake to be relieved of the requirement to perform program deletions under the Regulations. Among these alternative measures is the following:

[...] the licensee shall provide equitable distribution for the television stations of the broadcast groups listed in Appendix B (the larger broadcast groups).

11. The larger broadcast groups identified in Appendix B were:
- Bell Globemedia Inc. (CTV);
 - Canwest Media Inc. (Global);
 - CHUM Limited (now known as CTV Limited);
 - Cogeco Radio-Télévision inc. (TQS);
 - Quebecor Media Inc. (TVA);
 - Craig Media Inc.;
 - Corus Entertainment Inc.; and
 - Rogers Media Inc.
12. QMI submitted that this requirement is intended to ensure that the television stations of each broadcast ownership group have adequate representation in Star Choice's channel line-up. While it acknowledged that distribution of CKXT-TV is not specifically mandated, it argued that the station has a unique role and should be distributed by Star Choice. QMI requested that the Commission clarify that the equitable distribution provision should be interpreted as requiring Star Choice to distribute CKXT-TV.
13. In reply, Star Choice argued that the removal of CKXT-TV from its channel line-up was consistent with its regulatory and licensing requirements, as well as with Canadian broadcasting policy generally. It indicated that it distributes eight TVA stations and that, in its view, this is sufficient to meet the equitable distribution requirement with respect to the QMI broadcast group. Star Choice also disagreed with QMI's assertion that CKXT-TV is a unique station and should therefore be entitled to mandatory distribution. It noted that no such requirement exists in the Regulations or in its conditions of licence.
14. The Commission notes that CKXT-TV was acquired by TVA in November 2004, subsequent to the issuance of Broadcasting Decision 2004-130. When Broadcasting Decision 2004-130 was issued, CKXT-TV was owned by Craig Media Inc. The Commission also notes that the station has its own English-language programming distinct from that of the TVA network and does not operate as part of that network. As a result, the Commission considers that, for the purposes of the equitable distribution provision, CKXT-TV is more appropriately regarded as a stand-alone station rather than as part of the "Quebecor Media Inc. (TVA)" broadcast group. In any event, there is nothing in the Regulations or in Star Choice's conditions of licence that would give CKXT-TV a particular right to distribution by this BDU.

Should the Commission require Star Choice to offer CKXT-TV to maintain SRDU distribution of this station?

15. Star Choice and the SRDU operated by SBS are both a part of the Shaw Communications Inc. ownership group and both provide their services using the same satellite platform. As such, services that are not part of Star Choice's channel line-up are also generally not distributed by SBS. QMI argued that the removal of CKXT-TV from the SBS line-up will result in substantial financial harm to CKXT-TV.

16. In reply, Star Choice submitted that SBS is not required to distribute CKXT-TV to cable companies. It argued that there is a competitive market for SRDU services, adding that CKXT-TV could also seek terrestrial transport of its service. Star Choice noted that SBS had complied with its agreements with cable companies by providing notice of its intentions to cease distributing CKXT-TV.
17. The Commission confirms that SBS is not required to distribute CKXT-TV. Further, it notes that the only BDUs that are generally required to distribute CKXT-TV are those that are within its local, regional or extra-regional licensed area and can receive the station directly over-the-air or through a direct feed, if desired. For all other BDUs, the CKXT-TV signal would be a “distant” signal. Distribution of distant signals by BDUs is optional. Further, as indicated by Star Choice, there are multiple methods by which a BDU could choose to obtain such a distant signal.

Commission’s determination

18. In light of the preceding, the Commission finds that Star Choice did not contravene the Regulations or its conditions of licence by removing CKXT-TV from its channel line-up. Accordingly, the Commission **dismisses** QMI’s complaint to that effect.

Complaint by the CBC relating to the removal of CBKT Regina

19. The CBC alleged that Star Choice’s removal of CBKT Regina places it in breach of its condition of licence related to the number of CBC stations it is required to distribute. Specifically, the CBC noted that Star Choice is subject to the following condition of licence, as set out in Broadcasting Decision 2004-130:
 6. Effective 1 September 2004, the licensee shall distribute a minimum of five (5) Canadian Broadcasting Corporation (CBC) English-language conventional television stations, owned and operated by the CBC, including at least one from each time zone. Further, *the licensee shall not, at any time, distribute a number of English-language conventional television stations owned and operated by the CBC that is less than the number of English-language conventional television stations owned or operated by any other individual broadcasting group [emphasis added], including the groups listed in Appendix B to the schedule attached to these conditions, that are distributed by the undertaking.*
20. The CBC noted that following the removal of CBKT Regina, Star Choice now distributes 8 CBC and 12 CTV stations. The CBC argued that since Star Choice is required to distribute at least as many English-language CBC stations as stations from any other English-language broadcasting ownership group, Star Choice should be required to distribute a minimum of 12 CBC English-language television stations.

21. In reply, Star Choice indicated that it currently carries nine English-language CBC stations (as well as seven CBC affiliate stations), compared to eight CTV stations and four additional A-Channel stations purchased by CTVglobemedia (CTVgm) in June 2007.
22. Star Choice requested that it be relieved from the requirements of the above-noted condition of licence should the Commission interpret its condition of licence as including the A-Channel stations as part of the total number of CTV stations it distributes. If such relief were not granted, Star Choice indicated that it would reduce the number of CTV stations it distributes rather than add further CBC stations.
23. The Commission considers that the extent of Star Choice's obligation to distribute CBC stations in this particular instance hinges on the proper interpretation of the words "individual broadcasting group" in the above-noted condition of licence. In particular, the matter at issue is whether the A-Channel stations should be considered as CTV stations for the purposes of this condition of licence.
24. At the time that the above-noted condition was imposed, the A-Channel stations currently distributed by Star Choice were owned by CHUM Limited, a separately named broadcast group for the purposes of the alternative measure requiring equitable distribution.
25. The Commission notes that CTVgm in fact operates the CTV and the A-Channel stations as separate networks with different content. As part of its approval of the purchase of the A-Channel stations by CTVgm, the Commission approved conditions of licence that would minimize program overlap so as to ensure that A-Channel stations continue to offer programming distinct from that offered by CTV stations. Such requirements ensure that these two groups of stations will, from a programming perspective, continue to operate as "individual broadcasting groups."
26. The Commission finds that the A-Channel stations are more properly viewed as an "individual broadcasting group" and should be considered separate from other CTV stations for the purposes of the condition of licence cited above. Accordingly, since Star Choice continues to distribute nine CBC stations, the Commission finds that it is in compliance with the condition of licence in question.

Commission's determination

27. In light of the above, the Commission **dismisses** the CBC's complaint against Star Choice on the basis that it remains in compliance with its condition of licence pertaining to the distribution of CBC English-language stations.

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007
- *Transfer of effective control of Toronto One to TVA Group Inc. and Sun Media Corporation*, Broadcasting Decision CRTC 2004-503, 19 November 2004
- *Transfer of effective control of Craig Media Inc. to CHUM Limited; and Acquisition of assets – reorganization of Toronto One*, Broadcasting Decision CRTC 2004-502, 19 November 2004
- *Star Choice – Licence renewal*, Broadcasting Decision CRTC 2004-130, 31 March 2004
- *Introductory statement to Broadcasting Decisions CRTC 2004-129 and 2004-130, which renew the licences of the ExpressVu and Star Choice direct-to-home satellite distribution undertaking*, Broadcasting Public Notice CRTC 2004-19, 31 March 2004

This decision 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>.