



Broadcasting Decision CRTC 2009-488

Route reference:
Broadcasting Public Notice 2008-118

Ottawa, 13 August 2009

Shaw Communications Inc., on behalf of Shaw Cablesystems Limited and Videon CableSystems Inc.

Various locations

Application 2008-1381-7, received 10 October 2008

Various cable broadcasting distribution undertakings across Canada – Licence amendments

*The Commission **approves in part** the application by Shaw Communications Inc. (Shaw), on behalf of Shaw Cablesystems Limited and Videon CableSystems Inc., to amend the broadcasting licences for certain Class 1, Class 2 and Class 3 cable broadcasting distribution undertakings serving various locations across Canada.*

*Specifically, the Commission **approves** conditions of licence authorizing the 22 cable systems that are the subject of this decision to distribute HD U.S. 4+1 signals originating in Seattle, Washington, in lieu of HD U.S. 4+1 signals originating in Spokane, Washington. The Commission **denies**, however, the request by Shaw for authorization to distribute certain of the U.S. 4+1 signals originating in Detroit, Michigan.*

The Commission also requires Shaw to file, as soon as possible, an application for an amendment to the broadcasting licences for its cable systems serving Kamloops, Kelowna, Penticton, Prince George and Vernon, British Columbia, so as to change the source of the FOX signal distributed as part of the basic service from Spokane to Seattle.

Original application

1. The Commission received an application by Shaw Communications Inc. (Shaw), on behalf of Shaw Cablesystems Limited and Videon CableSystems Inc., to amend the broadcasting licences for its Class 1, Class 2 and Class 3 cable broadcasting distribution undertakings (BDUs) serving various locations in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. Specifically, Shaw proposed the addition of a condition of licence relating to the distribution of “alternative” U.S. 4+1 signals.¹ In the present case, “alternative signals” refer to U.S. 4+1 signals distributed by Shaw in high definition (HD) format that are not sourced from the same cities as are the U.S. 4+1 signals that Shaw is authorized to distribute on the basic service and on a digital discretionary basis.

¹ The expression “U.S. 4+1 signals” refers to the set of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network.

2. The condition of licence as requested by Shaw is as follows:

The licensee is authorized to distribute on a digital discretionary basis two alternative sets of signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (hereafter referred to as the U.S. 4+1 signals), provided that such signals are distributed solely in a high definition (HD) format and provided that the maximum number of sets of U.S. 4+1 HD signals that the licensee is authorized to distribute on an HD basis does not exceed two.

The distribution on a discretionary basis on the licensee's digital service of these two sets of U.S. 4+1 HD signals is also subject to the provision that, with respect to such signals, the licensee shall source the signals from the same time zones that it sources the two sets of U.S. 4+1 signals that it distributes on an analog and standard definition basis.

3. The Commission received an intervention in opposition to this application from the Canadian Association of Broadcasters (CAB), as well as an intervention offering general comments. The interventions and the licensee's reply to the CAB's intervention can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Amended application

4. In reply to a Commission request for clarification, Shaw reduced the scope of its application so as to request the above-noted licence amendment only for the 22 cable systems that, at the time of its original application, were distributing alternative signals. These systems serve the following areas: Castlegar/Trail/Nelson, Cranbrook, Creston and Invermere, British Columbia; Calgary, Edmonton (two systems, one licensed to Shaw Cablesystems Limited and one licensed to Videon CableSystems Inc.), Fort McMurray, Lethbridge, Medicine Hat, Red Deer, Okotoks and High River, Alberta; Saskatoon, Prince Albert and Moose Jaw, Saskatchewan; Headingley, Selkirk and Winnipeg (two systems, one licensed to Shaw Cablesystems Limited and one licensed to Videon CableSystems Inc.), Manitoba; and Sault Ste. Marie and Thunder Bay, Ontario.
5. Specifically, these 22 systems distribute an alternative set of signals from Seattle (Seattle HD signals instead of Spokane HD signals). Four of these systems (all of which are located in Manitoba) also distribute some alternative Detroit HD signals (Detroit HD CBC, NBC and ABC signals instead of the HD ABC signal from Minneapolis, Minnesota and the HD CBS and NBC signals from Grand Forks, North Dakota).
6. Shaw indicated that, should the Commission not be inclined to grant this request, it would be willing to accept authorization on an interim basis (i.e., until 31 August 2011).

7. Shaw presented historical and technical reasons in support of its request to distribute Seattle HD signals instead of Spokane HD signals in the 22 cable systems noted above. Noting that customers have received the Spokane signals since it first began delivering cable service over 35 years ago and that these customers “would be forced to take a different set of U.S. 4+1 signals” if its request is denied, Shaw argued that its request seeks to minimize customer disruption across these systems.
8. Shaw further stated that, while the Spokane U.S. 4+1 signals have launched in HD, they are not “readily available” to Shaw in that they are not currently available by microwave or satellite. Shaw also noted that its fibre network does not, at present, extend to the systems in question, but that it anticipates that its fibre network will expand across western Canada in the next few years, thereby allowing systems that will be connected to the fibre network to receive the HD signals from Spokane.
9. Shaw submitted that this request is “reasonable and critical” because it resolves its issue relating to the unavailability or inaccessibility of the Spokane HD U.S. 4+1 signals. It also noted that the 31 August 2011 date coincides with the implementation of regulatory changes, including new linkage rules for U.S. 4+1 and distant Canadian signals and a new compensation regime for distant Canadian signals, which “make it premature and problematic for Shaw to make reasonable and informed decisions respecting the continued selection, distribution and packaging of network signals.” Shaw therefore submitted that approval of its request would not only minimize customer disruption across many of Shaw’s systems but would also “[allow] for an orderly transition respecting the distribution of network signals that would be reflective of the outcome of pending regulatory proceedings.”

Commission’s analysis and determinations

10. The Commission notes that approving Shaw’s request for relief would entail making an exception to the Commission’s policy relating to the distribution of U.S. 4+1 signals in HD on the 22 cable systems that are the subject of the amended request.
11. Currently, the majority of terrestrial BDUs are authorized, by condition of licence, to distribute a first set of U.S. 4+1 signals on the basic service and a second set of U.S. 4+1 signals on a digital discretionary basis. In *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003, the Commission determined that, subject to access requirements, the authority to distribute a discretionary or optional service, Canadian or non-Canadian, would also include the “upgraded version” of that service, that is, a version with any amount of HD content. Thus, in the normal course, a BDU is authorized to distribute upgraded versions of those signals that it is authorized to distribute on the basic service or on a digital discretionary basis.
12. As noted above, the HD U.S. 4+1 signals that Shaw currently distributes on the above-mentioned 22 cable systems are not sourced from the same cities as are the signals it is authorized to distribute on the basic service and/or on a digital discretionary basis. Since it would appear that Shaw will continue to experience difficulty in obtaining

Spokane HD signals at least in the medium term, the Commission notes that denial of this application would oblige Shaw to change the signals it currently distributes on the basic service and/or on a digital discretionary basis so that they coincide with those that are distributed in HD (currently sourced from Seattle). In regard to changing the U.S. 4+1 signals distributed as part of the basic service, the Commission notes that Shaw would be required to file an application to amend its broadcasting licences in order to request this change. Alternatively, Shaw would be obliged to delete the HD signals that it currently sources from Seattle. The Commission further notes that either of these two options would result in significant customer disruption in these 22 cable systems.

13. In regard to the Seattle U.S. 4+1 signals specifically, the Commission notes the CAB's intervention, in which it submitted that approval of Shaw's application would have an undue negative impact on Canadian television licensees. Specifically, the CAB argued that it would fragment viewing and remove opportunities for simultaneous substitution, leading to a serious devaluation of program rights for Canadian broadcasters. The Commission has examined programming schedules provided by Shaw for the Seattle and Spokane U.S. 4+1 signals offered in HD and concludes that there is a high level of identical programming for the commercial stations from each city, especially during prime time. Given the relatively small amount of different programming available on the alternative stations, the Commission considers that approval of the distribution of the Seattle HD signals would be unlikely to have a material impact on simultaneous substitution opportunities for Canadian broadcasters.
14. In regard to the distribution of alternative (Seattle) U.S. 4+1 signals, the Commission considers that an exception to its approach is warranted, given Shaw's long-standing history of providing Spokane signals to its subscribers and with a view to avoiding customer disruption in the markets served by the 22 cable systems. The Commission notes Shaw's statement that it expects to have its fibre network expand across western Canada by 2011, which will enable it to distribute Spokane HD signals. While granting a condition of licence until 2011 would be appropriate in this regard, the Commission notes that most of Shaw's broadcasting licences are set to expire on 31 August 2010. Accordingly, the Commission considers it appropriate to grant a condition of licence authorizing Shaw to distribute Seattle HD signals instead of Spokane HD signals until 31 August 2010.
15. However, in regard to the alternative Detroit signals distributed on the systems in Manitoba (specifically, the Detroit HD CBS, NBC and ABC signals), the Commission notes that Shaw did not provide any historical or technical reasons for distributing these signals. Moreover, in regard to the systems in question, the Detroit signals are time-shifted vis-à-vis the signals authorized for distribution on the basic service, i.e., they originate from the Eastern time zone, rather than the central or pacific time zone. The Commission further notes that the distribution of time-shifted alternative signals could have a greater impact on simultaneous substitution opportunities.
16. Accordingly, the Commission considers that an exception to its approach in order to allow the distribution of Detroit alternative signals is not warranted.

17. In light of all of the above, the Commission **approves in part** the application by Shaw Communications Inc., on behalf of Shaw Cablesystems Limited and Videon CableSystems Inc., to amend the broadcasting licences for certain Class 1, Class 2 and Class 3 cable broadcasting distribution undertakings serving various locations across Canada. Specifically, the Commission **approves** conditions of licence authorizing the above-mentioned 22 cable systems to distribute HD U.S. 4+1 signals originating in Seattle, Washington, in lieu of HD U.S. 4+1 signals originating in Spokane, Washington. The Commission **denies** the request by Shaw for the authorization to distribute alternative U.S. 4+1 signals originating in Detroit, Michigan.

18. The **condition of licence** for the undertakings serving Castlegar, Cranbrook, Creston, Invermere, Fort McMurray, Edmonton (Shaw Cablesystems Limited), Edmonton (Videon CableSystems Inc.), Red Deer, Calgary, Okotoks, High River, Medicine Hat and Lethbridge, where the Spokane signals are distributed as part of the basic service, shall read as follows:

Until 31 August 2010, the licensee is authorized to distribute, on a digital discretionary basis, the signals of KIRO-TV (CBS), KING-TV (NBC) and KOMO-TV (ABC), Seattle, KCPQ (FOX) Tacoma and KCTS (PBS) Seattle, Washington, as an alternative to the set of Spokane U.S. 4+1 signals authorized for distribution as part of the basic service, provided that:

- the alternative signals are distributed only in high definition format; and
- the licensee distributes a maximum of two sets of U.S. 4+1 signals in high definition format.

19. The **condition of licence** for the undertakings serving Saskatoon, Prince Albert, Moose Jaw, Winnipeg (Shaw Cablesystems Limited), Winnipeg (Videon CableSystems Inc.), Headingley, Selkirk, Sault Ste. Marie and Thunder Bay, where the Spokane signals are distributed on a digital discretionary basis, shall read as follows:

Until 31 August 2010, the licensee is authorized to distribute, on a digital discretionary basis, the signals of KIRO-TV (CBS), KING-TV (NBC), and KOMO-TV (ABC) Seattle, KCPQ (FOX) Tacoma and KCTS (PBS) Seattle, Washington, as an alternative to the set of Spokane U.S. 4+1 signals distributed on a digital discretionary basis, provided that:

- the alternative signals are distributed only in high definition format; and
- the licensee distributes a maximum of two sets of U.S. 4+1 signals in high definition format.

20. In regard to the alternative U.S. 4+1 signals originating in Detroit distributed on the systems in Manitoba, the Commission requires Shaw, within 60 days of the date of the present decision, to replace those Detroit signals with HD signals originating in the same cities from which the signals authorized for basic distribution originate (that is, Grand Forks, North Dakota and Minneapolis, Minnesota). Further, the Commission requires that Shaw confirm with the Commission, in writing, when this replacement of signals has been completed.

Other matters

21. In its five systems serving Kamloops, Kelowna, Penticton, Prince George and Vernon, British Columbia, which are not the subject of the present decision, Shaw distributes the FOX signal KAYU-TV Spokane as part of the basic service. However, instead of the HD signal of KAYU-TV, Shaw distributes the HD signal of the FOX affiliate KCPQ-TV Seattle. Shaw indicated that this is a historic anomaly and that it was not seeking approval for this alternative signal at the present time. It also indicated that it plans to file an application requesting a licence amendment in order to change the source of the FOX signal distributed as part of the basic service from Spokane to Seattle. In this regard, the Commission requires Shaw to file, as soon as possible, an application for an amendment to the broadcasting licences for these systems so as to request this change.

Secretary General

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>.