



Broadcasting Decision CRTC 2016-84

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Ottawa, 3 March 2016

Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership

Province of British Columbia

Application 2015-0701-3

BC News 1 – Licence amendment relating to closed captioning, and inclusion as part of the licensee’s group licences

*The Commission **denies** the licensee’s request that BC News 1 be exempted from the requirements relating to the quality standards regarding the provision of closed captioning. Although it generally supports innovation regarding the provision of accessible programming, the Commission does not support such innovation at the cost of public policy objectives, one of which is to ensure that high-quality closed captioning is provided to viewers who depend on it. Further, given the scope of the proposed exemption in terms of the number of subscribers who could be affected, and that the licensee should be able to innovate without the requested exemption, the Commission finds that it would be inappropriate to approve the licensee’s request.*

*Further, the Commission **denies** the licensee’s request to include BC News 1 as part of its group licences.*

Application

1. Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership (Shaw), filed an application relating to the regional, English-language specialty Category B service BC News 1.
2. In its application, Shaw set out requests to amend the broadcasting licence for BC News 1 by exempting the service from the closed captioning quality standards set out in the appendix to Broadcasting Regulatory Policy 2012-362 (the Quality Standards) and to include the service as part of the group licences for Shaw Media conventional and specialty services. These requests are addressed separately below.
3. The Commission received interventions in opposition to and providing general comments on this application from the Canadian Association of the Deaf (CAD-ASC), Media Access Canada (MAC), the Public Interest Advocacy Centre (PIAC),

the Forum for Research and Policy in Communications (FRPC) and the Canadian Media Production Association (CMPA). Shaw replied collectively to the interventions. The public record for this application can be found on the Commission's website at www.crtc.gc.ca, or by clicking on the application number provided above.

4. The Commission also received a procedural request in the present proceeding from PIAC, dated 21 August 2015, regarding a letter that was issued by the Broadcasting Accessibility Fund (BAF) and that Shaw filed as part of its reply to the interventions. In that letter, the BAF approved an application for funding for a project proposed by Shaw to develop and test various new methods of providing closed captioning on BC News 1.¹ The BAF was created as part of the tangible benefits package associated with the change in the effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries to BCE Inc. (see Broadcasting Decision 2011-163). The mandate of the BAF, as set out in Broadcasting Regulatory Policy 2012-430 and approved by the Commission, is to "act as an independent and impartial funding body to support and fund innovative projects that provide platform-neutral solutions to promote accessibility of all broadcasting content in Canada."
5. In its procedural request, PIAC expressed the view that the BAF should not have approved the funding while Shaw had a related application before the Commission. It stated that filing the BAF approval letter with the Commission was prejudicial to the present proceeding given that the proceeding has implications on the project's eligibility for BAF funding. To promote transparency and assist the Commission in its consideration of the present application, PIAC requested that the Commission:
 - direct the BAF to revoke its decision on Shaw's application for funding;
 - strike the BAF's letter from the record of the present proceeding; and
 - require Shaw to file its funding application with the BAF on the record of the proceeding.
6. Both the BAF and Shaw replied to PIAC's procedural request. The BAF submitted that the request contains a number of assumptions and conclusions about the operations and objectives of the fund that are factually incorrect. It noted that it sets its own schedule based on an annual cycle of applications and funding, and determines itself whether a grant application meets its mandate and standards.
7. For its part, Shaw argued that it is unable to achieve the accuracy level set out in the Quality Standards. It specified that its goal is to work on voice recognition software to determine whether it can be used to deliver better captioning that will meet the existing Quality Standards, or any new quality standards established by the

¹ In its application to the Commission, Shaw indicated that it would apply to the BAF for such funding.

Commission. In Shaw's view, its project supports all funding requirements indicated on the BAF website.²

8. Although the Commission approved the BAF's mandate, the BAF is an independent organization. The actual exercise of that mandate is therefore undertaken by the BAF, under the supervision of its board of directors. The BAF has the discretion to determine whether a grant application meets its funding criteria. In the Commission's view, intervening in the BAF's decision making would not be appropriate. The question of whether Shaw's project is eligible for funding and any effect that the disposition of Shaw's present application before the Commission might have on this eligibility are matters that the BAF is best suited to address.
9. The Commission further considers that PIAC has not substantiated its position that the BAF approval letter prejudices any party to the proceeding. Accordingly, striking the BAF approval letter from the public record is unnecessary.
10. Finally, the Commission finds that the information presently on the record of the proceeding is sufficient to dispose of Shaw's application. Consequently, requiring Shaw to file its BAF application for inclusion on the public record would not be appropriate.
11. In light of all of the above, the Commission denies PIAC's procedural request.

Provision of closed captioning on BC News 1

12. The Broadcasting Policy for Canada set out in section 3(1) of the *Broadcasting Act* (the Act) includes the following objectives:
 - 3(1)(d)(iv) the Canadian broadcasting system should be readily adaptable to scientific and technological change;
 - 3(1)(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.
13. Further, section 5(2)(c) of the Act provides that the Commission should regulate the broadcasting system in a flexible manner that is readily adaptable to scientific and technological change.
14. In recognition of the importance of full access to television programming by people who are deaf or hard of hearing, the Commission has established and evolved over time its policy framework for closed captioning. Today, English- and French-

² The BAF website indicates that proposals to be considered for funding include those relating to research into methods of reducing costs for accessible content; research into the development and introduction of new digital options and technologies for accessible content; and proposals designed to foster business advancement in accessibility to broadcasting content.

language broadcasters are required to close caption 100% of their programs aired over the broadcast day, including advertising and promos. Further, as set out in the Quality Standards, English-language broadcasters are required to achieve a 95% accuracy rate, averaged over the duration of the program, for live English-language programming, which includes news, information and public affairs programming, sports programming, and any other programming that is not pre-recorded.

Request

15. Shaw requested an exemption from the requirement to meet the Quality Standards, as they apply to BC News 1. Specifically, it requested amendments to the following condition of licence for BC News 1 (proposed amendments in bold):

The licensee shall adhere to the conditions set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, **except for condition 5, which is replaced by the following:**

The licensee shall:

- ensure that advertising, sponsorship messages and promos in the English and French languages are closed captioned by no later than the fourth year of the licence term;
 - **make best efforts to** adhere to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission, **while new methods of closed captioning are developed on the service;**
 - implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. “Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition;
 - **obtain regular feedback from captioning users on the quality of closed captions on the service; and**
 - **provide a report to the Commission one year after the approval date of this amendment advising of the progress on developing new methods of captioning for the service.**
16. Shaw stated that its goal is to devise a more efficient and cost-effective means of delivering quality closed captioning by implementing a pilot project that would

combine new captioning technology with existing methods of steno-captioning and teleprompter-based captioning. It submitted that the proposed licence amendment is required in order to launch its pilot project. Shaw did not specify an end date for the requested amendment.

17. Shaw indicated that it would be testing at least five different software options, and would engage focus groups of third-party captioning users from deaf and hard-of-hearing communities in British Columbia. The focus groups would be surveyed every six months about their experience using captions on BC News 1.
18. In Shaw's view, its application would allow the development and refinement of novel captioning methods, consistent with sections 3(1)(d)(iv) and 3(1)(p) of the Act. It also described BC News 1 as the ideal environment for developing new methods of closed-captioning for live programming. It noted that the service's schedule includes a significant amount of live news programming, which is currently captioned by steno-captioners in a manner consistent with the Quality Standards. Further, given that BC News 1, as a regional service, has a limited subscriber base, the proposed pilot project would affect fewer viewers than if it were a national service.
19. Shaw stated that should the Commission grant the above request, it would remain committed to ensuring that viewers continue receiving a quality captioning experience. It would continue to monitor accuracy by measuring two programs on BC News 1 per month, as required by the Quality Standards, and would implement measures to evaluate the progress of the new methods being tested.

Interventions

20. PIAC submitted that Shaw's request cannot be approved before the licensee provides sufficiently greater details regarding its closed captioning trial. It argued that the proposal lacks details in regard to a timeline and testing stages, specific products, and programs to be trialed, and requested that the Commission limit the testing period to a finite time interval. In PIAC's view, the applicant appears to be seeking regulatory relief before having developed a detailed proposal as to how the testing process would unfold.
21. The FRPC requested that the Commission set a time limit of two years for the relief Shaw is seeking. Further, it expressed the concern that Shaw "does not explicitly state whether it will share its new technology with others," and questioned the timing of the licensee's evaluations.
22. The CAD-ASC stated that it is discriminatory to experiment with technology in a live broadcast environment, and that Shaw would never attempt a similar action in relation to technology that delivers the audio portion of live programming. For its part, MAC expressed similar concerns. In its view, Shaw's proposal would compromise the current quality of live captioning, which would not be in compliance with the Act.

Reply

23. In reply to PIAC, Shaw stated that its plan is deliberately open-ended in order to preserve flexibility in the process, to allow for adjustments depending on the results achieved. The licensee noted that the setting of an internal timeline will depend on a number of factors, including whether the Commission approves its application.
24. In reply to the FRPC, Shaw stated its preference for no time limit, so as to provide it with the best opportunity to implement and refine a new workflow on the service. It further stated, however, that should the Commission find that a time limit is appropriate, it would agree to two years from the date of the decision approving its application. In addition, it would report to the Commission on the progress of this initiative after one year of development, and would not request confidentiality for this report, thereby making it available to both the industry and the public. Although Shaw would monitor the captioning accuracy of two programs per month on the service, as required by the Quality Standards, it would test new captioning methods on any BC News 1 program for which it considers such testing to be appropriate.
25. Shaw denied that viewers who rely on closed captioning would be treated as “experiment subjects.” It indicated that all captioning products to be used on-air would be tested offline before they go live. It further indicated that every product, service or system implemented by broadcasters requires an element of first-time use in a live broadcast environment, and noted that the development and refinement of products and systems, including those that enhance accessibility, occur live-to-air all the time.

Commission’s analysis

26. In Broadcasting Decision 2011-441, the Commission expressed the view that poorly captioned programming is equivalent to un-captioned programming – when captioning cannot be comprehended, the programming it accompanies becomes inaccessible. It established the Quality Standards to ensure that all programming, including live programming such as news, information and public affairs programming, is accessible to Canadians who are deaf or hard-of-hearing. In the present case, Shaw’s request for exemption from the requirement to adhere to the Quality Standards, and to be allowed to “make best efforts” to comply, raises several issues.
27. According to Shaw, BC News 1 is the ideal environment in which to develop new methods of live closed captioning since the service has a limited subscriber base. The Commission notes, however, that this service has approximately 900,000 subscribers and is available in almost half of British Columbia households. It further notes that, as set out in data from Statistics Canada, people with hearing loss, who may use closed captioning on a regular basis, made up 3.4% of the population of British Columbia in 2012, approximately 157,000 individuals.

28. Further, the impact that Shaw's live, on-air testing could have on closed captioning is not clear from the information provided in its application. It is therefore not possible to determine whether the accessibility of the programming would be affected in such a manner as to make it less accessible. Shaw did not provide in-depth details of what it would do if a specific method being tested does not improve, but instead degrades the captioning experience. While the development of new captioning methods that increase quality would be consistent with the broadcasting policy for Canada and the public interest, testing new, unproven technologies live-to-air in a manner that could adversely affect users of captioning would not. Further, whereas Shaw's proposal relates specifically to live programming, its application for a licence amendment is much broader, as it relates to an exemption from all of the Quality Standards. Approving the requested exemption would leave the Commission with no recourse for requiring Shaw to address and solve any problems.
29. Even though Shaw noted that it is unable to consistently achieve the Quality Standard in regard to live programming, the report by the English-language Broadcaster Group (of which Shaw is a member) on efforts to improve the quality of closed captioning stated that news programs, the type of program aired on BC News 1, generally achieve higher accuracy rates. While there is no clear indication in the application as to how Shaw's proposal would affect this accuracy rate, exempting Shaw from the existing Quality Standards may be viewed as recognition and acceptance of the fact that this rate may fall. This would not be consistent with the Commission's previous statements regarding the importance of closed captioning.
30. In addition, as stated in Broadcasting Regulatory Policy 2015-86, news services play a vital role in the broadcasting system. Certain regulatory supports must remain in place in order to ensure that Canadians have access to high-quality news and information and are exposed to a diversity of views on matters of public concern. In the Commission's view, exempting a news service from the Quality Standards would therefore not be appropriate.
31. Finally, the Quality Standards do not require broadcasters to use specific closed captioning technology. They are encouraged to work with the captioning community to find ways of improving closed captioning. Although any effort to develop new methods to increase the quality of closed captioning is laudable, the Commission considers that Shaw has not demonstrated that the amendment is required to devise such methods.

Commission's decision

32. The Commission acknowledges Shaw's interest in improving closed captioning, and the efforts it has made towards developing new methods to increase captioning quality. However, given the scope of the proposed amendments, the potential negative impact that they may have on those who depend on closed captioning, and the lack of compelling evidence that Shaw's ability to innovate requires the requested amendments, the Commission does not consider it appropriate to approve the

licensee's request to be exempted from the Quality Standards for BC News 1. Consequently, the Commission **denies** Shaw's request.

Inclusion of BC News 1 as part of Shaw's group licences

33. In the group-based licensing framework (see Broadcasting Regulatory Policy 2010-167), the Commission set out that a specialty Category B service would need to serve a minimum of one million subscribers to be included as part of a designated group. It also determined that it would be inappropriate to include mainstream sports and mainstream national news specialty services in the group-based approach for the following reasons:

- the flexibility afforded by the group-based approach would result in designated groups being able to direct significant amounts of spending into already profitable national news or sports programming;
- including such services could afford a competitive advantage to large groups by providing them with further resources through flexible spending allocations; and
- mainstream sports and national news specialty services do not require regulatory support as they have among the highest Canadian programming expenditure (CPE) and Canadian programming exhibition levels.

34. In Broadcasting Decision 2012-394, the Commission approved Shaw's application for a broadcasting licence to operate BC News 1.³ In that application, Shaw requested that the service be included in the Commission's group-based licensing approach, along with its other conventional and specialty services. The Commission determined that inclusion would not be appropriate given the threshold requirement for Category B services; BC News 1 only commenced operations in March 2013.

35. The Commission also expressed uncertainty as to the effect that including BC News 1 as part of Shaw's group licences would have on the CPE and other spending requirements of its group of services. However, it indicated that Shaw could resubmit its request to include BC News 1 as part of its group licences at the next licence renewal for the service.

Request

36. In the present application, Shaw requested the inclusion of BC News 1 as part of its group licences. It acknowledged the Commission's instruction to re-apply at the service's next licence renewal, but submitted that it is appropriate at the present time to consider such a request, given that the proceeding to renew its broadcasting licences (and those of other groups) has been delayed until 2017, and given the current reach of the service. In regard to the second point, Shaw noted that as of the

³ When that decision was issued, the service was tentatively named Global News Plus BC.

date of the filing of the application, the service had approximately 880,000 subscribers and was available in 45% of households in British Columbia via Shaw Cable, Shaw Direct and several independent broadcasting distribution undertakings (BDUs). It added that the one million subscriber threshold should not apply to this regional service as it currently enjoys a share of the British Columbia television market that is proportionately greater than that required of a national service in the Canadian market to qualify for the regime.

37. Shaw submitted that the inclusion of BC News 1 as part of its group licences would allow for the amortization of the service's programming expenses across its other services, thereby ensuring that BC News 1 remains a relevant source of news in the province. It proposed that, since services that are licensed under a group-based approach are subject to a CPE requirement, BC News 1's minimum CPE requirement be set at 60%.⁴

Interventions

38. The CMPA and the FRPC opposed including BC News 1 as part of Shaw's group licences at this time, arguing that it would be more appropriate to consider its request at the service's licence renewal. The CMPA added that the service does not currently meet the subscriber threshold for inclusion under the group-based approach. In regard to Shaw's proposed CPE for the service, the CMPA stated that Shaw could use its group spending flexibility to divert the equivalent of 60% of BC News 1's revenues away from its CPE for its other services, and that subsidizing news programming could result in less spending on Canadian drama, documentaries and lifestyle shows. Finally, it reiterated the Commission's previously stated position that news services do not require regulatory support as they have among the highest levels of CPE and exhibition of Canadian programming.

39. PIAC did not oppose the inclusion of BC News 1 as part of Shaw's group licences, but submitted that the inclusion of BC News 1 could produce the following negative consequences identified by the Commission in Broadcasting Regulatory Policy 2010-167:

- significant amounts of spending being directed into sports and news programming, which is already profitable;
- a competitive advantage being afforded to large groups by providing them with further resources through flexible spending allocations; and
- less money being spent on independent production and other forms of Canadian programming, in favour of mainstream sports and national news

⁴ A service's CPE requirement is based on the service's actual spending over the previous three years. Given that BC News 1 has only been in operation for two years, Shaw proposed to set the service's CPE requirement by averaging the CPE levels of comparable services (Business News Network, CablePlus 24, CTV News Network and CBC News Network), thus arriving at 60%.

programming, which already have the highest levels of CPE and exhibition of Canadian programming.

40. PIAC added that the Commission, should it approve Shaw's request, should also consider implementing certain safeguards, such as restrictions on the amount of CPE that could be diverted to the service.

Reply

41. Shaw stated that the arguments raised by interveners are based on policy considerations that are no longer relevant. It considered its request to be forward looking and consistent with the policies established in the context of the Let's Talk TV proceeding.
42. Shaw reiterated that including BC News 1 as part of its group licences at this time would allow it to amortize its expenses across its other services, thereby helping ensure this service's success. The licensee submitted that substantial changes resulting from the Let's Talk TV proceeding, such as the collapse of Category A and B services into a single licensing category (i.e., discretionary services), make it unclear what the new criteria for eligibility under the group-based approach will be. It added that following the next series of licence renewals, all discretionary services with more than 200,000 subscribers will be subject to a CPE requirement. Since BC News 1 will eventually have a CPE requirement, Shaw considered that this service should be treated in the same way as its other services with CPE requirements, and be included as part of its group licences.
43. In regard to the CMPA's and PIAC's claim that a 60% CPE requirement would result in less spending on other types of programming, Shaw submitted that this overlooks the fact that the CPE requirement for BC News 1 would be incremental to its existing obligations, adding an amount equivalent to 60% of BC News 1's revenues to the total pool that it is required to invest in Canadian programming.
44. In regard to the CMPA's and PIAC's statement that BC News 1, as a news service, should be excluded from the group licences, Shaw replied that the group-based licensing policy specifies that only Category C national news and sports services should be excluded, not specialty Category A or B services. With respect to PIAC's argument that the Commission's rationale for excluding Category C services is also applicable to the exclusion of BC News 1 from group-based licensing, Shaw argued that the service is sufficiently different from Category C news services given that it is a small, unprofitable, regional start-up in the third year of its licence term. The licensee added that two specialty Category A news services – CablePlus 24 (CP24) and Business News Network (BNN) – are currently included in Bell Media Inc.'s (Bell) group licences, attesting to the fact that news is a genre eligible for inclusion under the group-based licensing policy.
45. In regard to concerns over the reduction in spending on other types of programming in favour of news programming, Shaw replied that the Commission's new regulatory

approach set out in Broadcasting Regulatory Policy 2015-86 focuses on the quality of Canadian programming by eliminating exhibition requirements in favour of spending requirements.

46. Finally, in regard to PIAC's proposed implementation of safeguards, Shaw argued that this would be inconsistent with previous Commission determinations, given that CP24 and BNN are not subject to any comparable limits on the allocation of CPE. The licensee further submitted that such safeguards would undermine the purpose of the group-based licensing regime.

Commission's analysis and decision

47. The Commission is of the view that it would be more appropriate to consider the inclusion of BC News 1 as part of Shaw's group licences during the upcoming group-based licence renewal proceeding. That renewal proceeding (which will be for Shaw's services as well as those of other groups) is to commence this year and will include an examination of the group-based licensing framework based on the policy determinations resulting from the Let's Talk TV proceeding. Shaw will have an opportunity to present its case at that time. The group-based licence renewal proceeding will also provide the Commission with the opportunity to determine whether the inclusion of CP24 and BNN as part of Bell's group licences is appropriate, and to adopt a consistent approach regarding the inclusion of news services as part of group licences. Moreover, the Commission is currently undertaking a review of the policy framework regarding local and community television programming (see Broadcasting Notice of Consultation 2015-421), which may have an impact on BC News 1.

48. In light of the above, the Commission **denies** the licensee's request in this regard.

Secretary General

Related documents

- *Notice of hearing – A review of the policy framework for local and community television programming*, Broadcasting Notice of Consultation CRTC 2015-421, 14 September 2015
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Broadcasting Accessibility Fund*, Broadcasting Regulatory Policy CRTC 2012-430, 7 August 2012
- *Global News Plus BC – Specialty Category B service*, Broadcasting Decision CRTC 2012-394, 20 July 2012
- *Quality standards for English-language closed captioning*, Broadcasting Regulatory Policy CRTC 2012-362, 5 July 2012

- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *A group-based approach to the licensing of private television stations*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010