



Broadcasting Decision CRTC 2012-394

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Route reference: 2012-29

Ottawa, 20 July 2012

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 2011-1584-0, received 5 December 2011

Public hearing in the National Capital Region

21 March 2012

Global News Plus BC – Specialty Category B service

*The Commission **approves** an application for a broadcasting licence to operate a new specialty Category B service.*

The 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 for a broadcasting licence to operate Global News Plus BC, a regional, English-language specialty Category B service that would offer a mix of local and regional news, traffic, weather, business, sports and entertainment information devoted to serving residents of British Columbia, with a special focus on the Vancouver/Victoria Extended Market, as defined by the Broadcast Bureau of Measurement (BBM) Canada.
2. Shaw is controlled by J.R. Shaw.
3. The applicant indicated that the service would incorporate elements of video news programming, news-related graphics, and alpha-numeric text/tickers. It further indicated that the service would include national and international news elements relevant to residents of British Columbia.
4. Shaw proposed to draw programming from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time: 1, 2(a), 2(b), 3, 5(b), 6(a), 6(b), 8(a), 11(a), 12, 13 and 14.
5. The applicant requested that it be authorized to devote up to six minutes of the twelve minutes of advertising material permitted during each clock hour to the broadcast of local advertising.

6. Shaw also requested that the proposed service be included in the Commission's group-based licensing regime along with all of its conventional television stations and specialty services. In this regard, it proposed a licence expiration date of 31 August 2016, co-terminus with the licence expiration date for all of the Shaw Media stations and services included in the group-based licensing regime.
7. The Commission received interventions in support of this application, interventions offering general comments from the Canadian Media Production Association (CMPA), the Canadian Broadcasting Corporation (CBC) and an individual, as well as interventions in opposition from CHEK Media Group (CHEK), owner of CHEK-TV Victoria, and from Jim Pattison Broadcast Group Limited Partnership/Astral Media Radio G.P. (Pattison/Astral) (joint intervention). The public record for this application, including the applicant's reply to the CMPA, the CBC, CHEK and Pattison/Astral, can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

8. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - the applicant's request regarding local advertising;
 - the potential impact of the proposed service on the diversity of local news programming;
 - the inclusion of the proposed service in the Commission's group-based licensing regime; and
 - a requirement for the applicant to offer unaffiliated regional news services on its broadcasting distribution undertakings (BDUs).

Local advertising

Interventions

9. In its intervention, CHEK opposed Shaw's request for authorization to broadcast up to six minutes of local advertising in the Vancouver/Victoria Extended Market. It submitted that the proposed service's two revenues streams – advertising and subscription revenues – would result in direct and unfair competition with non-vertically integrated companies that only have access to advertising. CHEK further submitted that approval of the proposed service to serve the Vancouver/Victoria Extended Market would at this time devastate CHEK-TV. It argued that the vast majority of advertising dollars spent on the new station would be taken from Shaw Media's television competitors, including CHEK-TV, making it extremely difficult if not impossible for it to absorb the advertising loss.

10. CHEK submitted that the application should therefore be denied. It requested, however, that should the Commission decide to approve the application, Shaw should be limited to providing national advertising on the new service as this would, to a certain degree, offset the negative impact that the new service would have on local broadcasters, CHEK-TV included.
11. Pattison/Astral also opposed the applicant's request regarding the broadcast of local advertising. They submitted that the Commission must impose a condition of licence on Shaw to protect the Pattison and Astral "Local Market Stations" from the loss of regional advertising revenue to this Vancouver-based service. Specifically, they submitted that Global News Plus BC should have the same "cover over"¹ condition of licence as that imposed on CHAN-TV Vancouver and CIVT-TV Vancouver to ensure the continued ability of the Local Market Stations to provide local service.
12. The CBC also opposed the applicant's request regarding the broadcast of local advertising in the Vancouver/Victoria Extended Market, arguing that authorization to do so would risk reducing advertising opportunities for existing licensees serving that market. The CBC further stated that Shaw should have provided evidence of the potential impact on other broadcasters licensed to serve the Vancouver/Victoria Extended Market. It nevertheless indicated that it would conditionally support the application for the new specialty Category B service if the service is restricted to twelve minutes of national paid advertising per clock hour and if Shaw BDUs is required to distribute three unaffiliated Category B regional news services for every affiliated Category B regional news service carried, one of which must be independent.

Applicant's reply

13. In reply to the interventions from CHEK and Pattison/Astral, Shaw agreed not to solicit local advertising content from Vancouver Island and the British Columbia interior markets served by Pattison/Astral, and proposed the following condition of licence relating to the broadcast of local advertising on the proposed service:

Except as otherwise provided in subparagraphs (b) and (c), the licensee shall not broadcast more than twelve (12) minutes of advertising material during each clock hour, no more than six (6) minutes of which may consist of local advertising solicited from the Vancouver Census Metropolitan Area (CMA) and the neighbouring Abbotsford CMA, as defined by Statistics Canada.

14. In reply to the intervention from Pattison/Astral, Shaw argued that cover-over applies narrowly to two over-the-air stations only, is unprecedented on the specialty platform,

¹ Independent stations that are affiliated with another station or station group receive programs from that station or station group and may, subject to an affiliation agreement, insert or "cover over" commercials contained in that network programming. The version broadcast by the independent station would then contain the new "covered over" commercials rather than those broadcast by the stations or station groups' own stations.

and is inappropriate when one takes into consideration the different signal distribution technologies involved with the operation of specialty services. It argued that cover over is also inappropriate given the existing support mechanisms already in place for each of the Pattison/Astral stations in question (e.g., the Small Market Local Programming Fund), and the limited competitive impact (if any) the proposed service would have in those markets.

Commission's decision

15. The Commission notes CHEK-TV's concerns regarding the impact that the proposed service may have on its advertising revenues. Given these concerns, along with the potential sales synergies that could exist between the proposed service and other Shaw stations operating in British Columbia, and CHEK's high level of dependence on local advertising, the Commission is of the view that it would not be appropriate for the Global News Plus BC service to compete with CHEK for advertising revenue in CHEK's local market.
16. Accordingly, the Commission considers that the imposition of a condition of licence similar to that proposed by Shaw above, which would preclude Global News Plus BC from soliciting and accepting local advertising revenues on Vancouver Island, including Victoria, would mitigate the impact that could result from approval of the application for the proposed service. A **condition of licence** in this regard is set out in the appendix to this decision.
17. In regard to the intervention by Pattison/Astral, in which they proposed that their stations cover over regional advertising, the Commission considers this option to be unnecessary and excessively burdensome, especially in light of the condition of licence limiting the broadcast on Global News Plus BC of local advertising from outside the Vancouver and Abbotsford CMAs.

Diversity of local news programming

18. CHEK submitted in its intervention that approval of the present application would strike a serious blow against the diversity of local news programming for the communities it serves, since Shaw already owns the over-the-air television station Global Vancouver.
19. In its reply, Shaw stated that it failed to see how the provision of a regional, all news, specialty Category B service to serve the residents of British Columbia could reduce the diversity of local news. It argued that the proposed service would increase diversity by bringing significantly more original regional news into the marketplace and by providing more choice for consumers. Shaw also noted that CHEK-TV is not a pure news station, and stated that although CHEK-TV may provide local programming, it broadcasts much non-news and non-local programming.
20. In the Commission's view, the proposed service would provide a new source of news information and programming for viewers in British Columbia that is likely to contribute to the diversity of programming in that province.

Inclusion of the proposed service in the Commission's group-based licensing regime

21. The CMPA opposed Shaw's proposal to include the proposed service in the Commission's group-based licensing regime. It noted that the group-based licensing regime only applies to specialty Category B services with over one million subscribers, and argued that it is unlikely that a start-up regional news service would meet this threshold. It further argued that it is inappropriate to allow news services to benefit from flexibility under the group-based licensing regime.
22. In its reply, Shaw stated that the position set out by the CMPA is counter-intuitive. It noted that the Commission clearly established the one million subscriber threshold so that smaller specialty Category B services would not be subject to a Canadian programming expenditure (CPE) requirement. The applicant submitted that the Commission should look favourably upon services volunteering to be included in the group-based licensing regime, thereby subjecting themselves to such requirements. According to Shaw, the alternative is a patchwork of services inside the group, with others operating outside the group under a different compliance regime. It also argued that such a patchwork approach would clearly limit the Commission's stated objective to assess the totality of a corporate group's performance over a given licence term.
23. Shaw further submitted that the CMPA, by arguing that the Commission's group-based licensing regime policy excludes news services, has improperly characterized that policy (in particular, the determination set out in paragraph 120 of Broadcasting Regulatory Policy 2010-167). Specifically, the CMPA, in its intervention, argued that it would be inappropriate to include news services in the Commission's group-based licensing regime "because the attendant CPE flexibility would result in designated groups being able to direct significant amounts of spending into profitable news programming, and could afford a competitive edge to large groups by providing them with further resources through flexible spending allocations." Shaw argued that this has no bearing on the present application since the Commission's above-noted determination deals exclusively with mainstream *national* news services (i.e., Category C services²), whereas the current application is for a regional, all-news, specialty Category B service devoted to serving residents of the Province of British Columbia, with a special focus on the Vancouver/Victoria Extended Market.
24. At the present time, the Commission does not consider that it would be appropriate to include Global News Plus BC as part of the Shaw Media group of services for the purposes of its group-based licensing regime. The group-based policy applies to "qualifying services," which, in the case of specialty Category B services, serve at least one million subscribers. As an unlaunched service, Global News Plus BC therefore does not qualify in this regard. It is also not clear what effect inclusion of this service might have on Shaw's group CPE and other spending requirements. The

² Category C services are services operating in particular genres that have been opened to competition (i.e., multiple services may all offer the same genre of programming). See Broadcasting Regulatory Policy 2009-562 and Broadcasting Notice of Consultation 2010-931.

Commission notes, however, that it would be open to Shaw to request that the service be included in the Commission's group-based licensing regime at its next licence renewal.

Requirement for the applicant to offer unaffiliated regional news services on its broadcasting distribution undertakings

25. In its intervention, the CBC submitted that since Shaw is a vertically-integrated entity, the proposed service could enjoy guaranteed access to households in the target markets. It further submitted that approval of this request would set a precedent allowing vertically-integrated broadcasters and BDUs, in a preferential fashion, to further exploit a dominant competitive position at the expense of independent television broadcasters, which would have a potentially negative impact on the Canadian broadcasting system. For this reason, the CBC proposed new access requirements whereby Shaw BDUs would be required to distribute three unaffiliated regional specialty Category B news services for every affiliated specialty Category B regional news service, one of which must be independent.
26. In its reply, Shaw submitted that the public broadcaster's recommendation to expand the Commission's current 3:1 distribution rule for Category B services in this process is entirely inappropriate. It argued that the CBC is trying to re-write established distribution policy in response to a narrow Category B licensing application, and is ignoring all of the carriage protections that the Commission has already put into place, most recently in its vertical integration decision set out in Broadcasting Regulatory Policy 2011-601.
27. In the Commission's view, new access requirements such as those proposed by the CBC are unnecessary, in light of the existing access rules for unaffiliated specialty services, and inappropriate, given that it would be procedurally unfair to impose any new requirements on those BDUs since they were not parties to the present proceeding.

Conclusion

28. The Commission is satisfied that the application complies with all applicable policies, terms and conditions, including those set out in Public Notice 2000-6, Broadcasting Public Notice 2008-100, and Broadcasting Regulatory Policies 2010-786 and 2010-786-1. Accordingly, the Commission **approves** the application by Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership for a broadcasting licence to operate the regional, English-language specialty Category B service Global News Plus BC. The Commission also **approves** the applicant's request for authority to broadcast up to six minutes per clock hour of local advertising, subject to the limitations set out in the relevant condition of licence. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

29. The Commission reminds the applicant that the distribution of this service is subject to the requirements set out in the *Broadcasting Distribution Regulations*.

Secretary General

Related documents

- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Call for comments on amendments to the Broadcasting Distribution Regulations*, Broadcasting Notice of Consultation CRTC 2010-931, 10 December 2010, as amended by Broadcasting Notice of Consultation CRTC 2010-931-1, 4 February 2011
- *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
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-786, 25 October 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news*, Broadcasting Regulatory Policy CRTC 2009-562, 4 September 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2012-394

Terms, conditions of licence, expectations and encouragements for the specialty Category B service Global News Plus BC

Terms

A licence will be issued once the applicant has satisfied the Commission with supporting documentation that the following requirements have been met:

- the applicant has entered into a distribution agreement with at least one licensed distributor; and
- the applicant has informed the Commission in writing that it is prepared to commence operations and has provided the Commission with a launch date for the service. The undertaking must be operational at the earliest possible date and in any event no later than 48 months from the date of this decision.

The licence will expire 31 August 2018.

Conditions of licence

1. 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 7d), which will not apply, and condition 7a), which is replaced by the following:

Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than twelve (12) minutes of advertising material during each clock hour, no more than six (6) minutes of which may consist of local advertising. Any local advertising shall be solicited or accepted only from the Vancouver Census Metropolitan Area (CMA) and the neighbouring Abbotsford CMA, as defined by Statistics Canada.

For the purposes of this condition of licence, “local advertising” is advertising that does not fall within the definitions of national and regional advertising, i.e., advertising to persons who provide goods or services in more than one market and/or province.

2. In regard to the nature of service:
 - (a) The licensee shall provide a regional, English-language specialty Category B service that will offer a mix of local and regional news, traffic, weather, business, sports and entertainment information devoted to serving residents of British Columbia, with a special focus on the Vancouver/Victoria Extended Market, as defined by the Broadcast Bureau of Measurement (BBM) Canada.

(b) The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:

- 1 News
- 2 (a) Analysis and interpretation
(b) Long-form documentary
- 3 Reporting and actualities
- 5 (b) Informal education/Recreation and leisure
- 6 (a) Professional sports
(b) Amateur sports
- 8 (a) Music and dance other than music video programs or clips
- 11 (a) General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

(c) The licensee shall not broadcast live coverage of sporting events.

3. The service approved hereby is designated as a Category B service.

For the purposes of the conditions of this licence, “broadcast day” means the period of up to 18 consecutive hours, beginning each day not earlier than six o’clock in the morning and ending not later than one o’clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.

Expectations

The standard expectations applicable to this licensee are 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, as amended from time to time.

Encouragements

The standard encouragements applicable to this licensee are 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, as amended from time to time.