



Broadcasting Decision CRTC 2012-607

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Route reference: 2012-214

Ottawa, 31 October 2012

Shaw Satellite Services Inc.
Across Canada

Application 2011-0953-8, received 15 June 2011

Shaw satellite relay distribution undertaking – Licence renewal

*The Commission **renews** the broadcasting licence for the satellite relay distribution undertaking operated by Shaw Satellite Services Inc. from 1 November 2012 to 31 August 2019. The **conditions of licence** are set out in the appendix to this decision.*

The application

1. The Commission received an application by Shaw Satellite Services Inc. (Shaw) to renew the broadcasting licence for its satellite relay distribution undertaking (SRDU) serving communities throughout Canada. The licence expires 31 October 2012.¹
2. In addition, the licensee proposed amendments to conditions of licence relating to the distribution of Canadian and non-Canadian television services, the distribution of Canadian and non-Canadian radio services and undue preference. The licensee also requested the deletion of conditions of licence relating to the requirement to contribute to Canadian programming and the filing of reports.
3. Further, in Broadcasting Regulatory Policy 2012-94, the Commission announced that it would consider the following issues at the time of the renewal of SRDU licences:
 - the possibility of incorporating a reverse onus provision² in conditions of licence related to undue preference; and

¹ The licence for the undertaking was administratively renewed from 1 September 2010 to 31 August 2011, from 1 September 2011 to 29 February 2012, from 1 March to 31 August 2012 and from 1 September to 31 October 2012 in Broadcasting Decisions 2010-170, 2011-420, 2012-100 and 2012-417.

² The concept of reverse onus applies to undue preference or disadvantage complaints in such a way that once a complainant has demonstrated the existence of a preference or disadvantage, the respondent then shoulders the burden of demonstrating the preference or disadvantage is not undue.

- whether the Shaw SRDU should remain subject to a condition of licence that restricts the sharing of information with an affiliated broadcasting distribution undertaking (BDU).
4. The Commission notes that Shaw supported the imposition of a reverse onus provision on SRDUs and did not request the deletion of its current condition of licence restricting the sharing of information.
 5. The Commission received an intervention in support of the application, as well as a number of interventions commenting on the application, to which the applicant replied. The public record for this application is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Contribution to Canadian programming

Positions of parties

6. Shaw requested to be relieved from the requirement to contribute 5% of its annual revenues from broadcasting activities to the creation and presentation of Canadian programming, as well as from the requirement to file reports regarding such contributions. Shaw submitted that its SRDU's competitors, namely terrestrial relay distribution undertakings (TRDUs), have no such obligation. Shaw also indicated that financial contributions from SRDUs increase the cost for their customers, which are usually small BDUs located in remote areas. Finally, Shaw stated that if its request were approved, it would add the current recipients of its SRDU contribution, which are mainly northern Native broadcasters, to the list of recipients of the Star Choice Fund so that no recipient would stop receiving monies.
7. The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the Canadian Media Production Association (CMPA), the Independent Broadcast Group (IBG), TELUS Communications Company (TELUS) and the Writers Guild of Canada (WGC) opposed Shaw's proposal, arguing that SRDUs' financial contributions were essential to the system. ACTRA, the CMPA and the WGC suggested that the condition of licence requiring SRDUs to contribute 5% of their revenues to Canadian programming be amended to mirror the requirement for direct-to-home (DTH) satellite distribution undertakings, whereby 4% of revenues are allocated to the Canada Media Fund and 1% to one or more independent production funds. Currently, SRDUs are permitted to contribute to any production fund.
8. Rogers Broadcasting Limited (Rogers) argued that SRDUs could be relieved from direct financial contribution to Canadian programming if they were prevented from charging uplink fees to pay and specialty services that they already carry on satellite via their affiliated DTH undertakings.

Commission's analysis and decision

9. In Broadcasting Public Notice 2008-100, the Commission concluded that SRDUs' annual financial contribution to Canadian programming was material to the

attainment of the objectives of the *Broadcasting Act*. The Commission has since reiterated this finding in Broadcasting Regulatory Policy 2012-94.

10. With respect to the applicant's submission that TRDUs are not subject to a contribution requirement, the Commission notes that TRDUs are exempt undertakings and are usually much smaller than SRDUs. In Broadcasting Regulatory Policy 2012-94, the Commission contemplated the possibility of exempting SRDUs, but decided that it would be inappropriate to do so in light of the lack of effective competition in the signal transport sector.
11. Regarding Shaw's proposal to add the current recipients of its SRDU contribution to the list of recipients of the Star Choice Fund, the Commission notes that while it is true that this would result in no recipient's losing access to a fund, it would also likely result in a decrease in the amount received by all recipients.
12. As regards the proposal that SRDUs should be required to direct a portion of their financial contribution to the Canada Media Fund, the Commission considers that the suggestion has merit. However, the Commission notes that such an amendment would significantly decrease the amount received by current recipients. Given that an important proportion of SRDUs' revenues derive from small, remote BDUs, the Commission considers it appropriate to provide SRDUs with the flexibility to support broadcasters serving these areas.
13. Finally, with respect to Rogers' proposal that SRDUs be relieved from financial contributions if they charge no uplink fees to pay and specialty services, the Commission notes that this proposal is inconsistent with its recent determination in Broadcasting Regulatory Policy 2012-94 that the transport of Canadian pay and specialty services is not an activity that should be incorporated into SRDU licences.
14. In light of all of the above, the Commission finds that it would be appropriate to maintain the current requirements relating to contributions to the creation and presentation of Canadian programming and the filing of reports.

Reverse onus provision

Positions of parties

15. The Commission notes that Shaw supported the imposition of a reverse onus provision on SRDUs.
16. Bragg Communications Inc., carrying on business as Eastlink (Eastlink), the IBG, the Ministère de la Culture, des Communications et de la Condition féminine, MTS Inc. (MTS), Rogers and TELUS also supported the imposition of a reverse onus provision on SRDUs.

Commission's analysis and decision

17. In Broadcasting Regulatory Policy 2011-601 relating to vertical integration, the Commission established that reverse onus provisions should be made applicable to all programming undertakings and BDUs with respect to undue preference complaints. The Commission concluded that it is the party conferring a preference or a disadvantage that will have the necessary information required for the Commission to determine the facts of the case in order to issue a ruling.
18. In Broadcasting Regulatory Policy 2012-94, the Commission expressed the view that that the above rationale may also be valid with respect to SRDUs. The Commission hereby confirms the view expressed in Broadcasting Regulatory Policy 2012-94.
19. Accordingly, the Commission has set out a **condition of licence** establishing a reverse onus provision in the appendix to this decision.

Information sharing

Positions of parties

20. The Commission notes that Shaw did not request the deletion of its current condition of licence restricting the sharing of information
21. Eastlink and MTS supported the imposition of an information-sharing restriction. TELUS and the IBG also supported such a requirement, but argued that it should be strengthened by imposing non-disclosure agreements that would prevent SRDUs from sharing information with affiliated programming undertakings.

Commission's analysis and decision

22. The Commission notes that Shaw is already subject to a condition preventing information sharing and did not request its deletion as part of its renewal for its SRDU licence. Pursuant to this condition, the licensee must ensure that any confidential information obtained from a customer or potential customer of the licensee's SRDU or pertaining to product or service offerings of the SRDU remains confidential.
23. As stated in Broadcasting Regulatory Policy 2012-94, given that both operating SRDUs are part of vertically integrated entities (i.e. entities that own or control both programming and distribution undertakings), the Commission considers that an SRDU's sharing competitively sensitive information about a client BDU with an affiliated BDU may constitute an unfair competitive advantage.
24. The Commission is satisfied that the condition imposed on Shaw's SRDU would prevent it from sharing information with any undertakings, including affiliated programming undertakings. Accordingly, in the appendix to this decision, the Commission has maintained that the **condition of licence** to this effect.

Other matters

25. Shaw also proposed amendments to its conditions of licence relating to the distribution of Canadian and non-Canadian television and radio services. Specifically, Shaw requested to be authorized to distribute any Canadian or non-Canadian conventional programming undertaking as opposed to specific U.S. services. Shaw argued that such amendments would not result in any substantive change.
26. TELUS opposed this request, stating that Shaw had provided no rationale for the change.
27. The Commission notes that the amendment would only modify the list of U.S. services that the SRDU can distribute to BDUs, but would not have any repercussion on the services that BDUs are authorized to distribute to subscribers. Further, Shaw would still be required to ensure that a majority of the services it distributes are Canadian. Accordingly, the Commission considers that it would be appropriate to amend the requirements as requested.

Conclusion

28. In light of all of the above, the Commission **renews** the broadcasting licence for the satellite relay distribution undertaking operated by Shaw Satellite Services Inc. from 1 November 2012 to 31 August 2019. The **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-417, 1 August 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-100, 16 February 2012
- *Licensing and other issues relating to satellite relay distribution undertakings*, Broadcasting Regulatory Policy CRTC 2012-94, 14 February 2012
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2011-420, 13 July 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2010-170, 22 March 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

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

Appendix to Broadcasting Decision CRTC 2012-607

Conditions of licence

1. The licensee shall maintain independent sales, marketing and customer service functions and staff for its satellite relay distribution undertaking.
2. The licensee shall require all sales, marketing and customer service functions and staff to comply with written procedures established by the licensee designed to ensure that any confidential information obtained from a customer or potential customer of the licensee's satellite relay distribution undertaking or pertaining to product or service offerings of the satellite relay distribution undertaking remain confidential. The licensee will file a copy of such procedures and any subsequent amendments with the Commission for prior approval.
3. The licensee shall adhere, as amended from time to time, to the provisions of section 4 of the *Broadcasting Distribution Regulations*, as amended from time to time, in respect of any transfers of ownership or control.
4. Subject to the requirement that it ensure that a majority of the television signals it distributes are Canadian programming services, the licensee is authorized to distribute via satellite to its affiliates the following television services:
 - a) TVO and TFO Toronto, the Ontario Legislative Assembly Proceedings, CPAC (IND) Ottawa, Télé-Québec (STQ) Montréal and the Quebec National Assembly Proceedings;
 - b) Atlantic Satellite Network (ASN) Halifax;
 - c) the signal of any Canadian or non-Canadian conventional television programming undertaking;
 - d) Native-produced television programs, on a part-time basis, on satellite channels used for the distribution of Canadian television services.

For the purpose of this condition, non-Canadian services of the same network affiliation will be counted as a single service.

5. Subject to the requirement that it ensure that a majority of the radio signals it distributes are Canadian programming services, the licensee is authorized to distribute via satellite to its affiliates the signal any Canadian or non-Canadian conventional radio programming undertaking.
6. The licensee must provide its service to all of the following undertakings whose operators are willing to enter into affiliation agreements with it:

- a. terrestrial broadcasting distribution undertakings (BDUs) that are licensed by the Commission or operating in accordance with an exemption from licensing granted by the Commission; and
 - b. licensed direct-to-home (DTH) BDUs (for retransmission to DTH subscribers only).
7. The licensee shall not delete, curtail or alter the programming services which it distributes to broadcasting distribution undertakings in any manner from the form in which they are transmitted for public reception by the originating broadcasters, except such alterations as are incidental to the transmission of the services using digital video compression technology and except as may be authorized or required by the Commission in writing.
8. The licensee is required to contribute a minimum of 5% of its annual gross revenues derived from broadcasting activities to the creation and presentation of Canadian programming.
9. The licensee is required to file a report for the Commission's approval, within three months of the date of this decision, identifying the recipient(s) of its contributions to the creation and presentation of Canadian programming, as well as the projected annual amounts that the licensee intends to allocate to each and the timing of such contributions, if the contribution is to a recipient other than a production fund. Contributions directed to a production fund are required to be made on a monthly basis, within 45 days of each month's end. As a matter of policy applicable to any licensed satellite relay distribution undertaking, the Commission has decided that funds allocated to subsidize the provision of decoder equipment to broadcasting distribution undertakings are not eligible contributions.
10. The licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
11. In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.
12. If there is a dispute between the licensee and a distribution undertaking, whether operating by licence or by exemption order, concerning the terms under which programming services are or may be provided, then the licensee shall submit to a dispute resolution process if the Commission so requires.