



Broadcasting Decision CRTC 2016-91

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Reference: Part 1 application posted on 10 September 2015

Ottawa, 9 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

Across Canada

Application 2015-1034-7

Reallocation of tangible benefits and extension of deadline to complete analog to digital conversion

*The Commission **approves** a request by the applicant for authorization to reallocate a portion of the tangible benefits stemming from the change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries to cover the costs of the over-subscription to its local television satellite solution program.*

*Further, the Commission **approves** a request by the applicant for an extension until 31 August 2019 to complete the full slate of analog to digital conversions set out in the tangible benefits package stemming from the above-noted transaction.*

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 tangible benefits package stemming from the change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries to Shaw (the Canwest Global transaction) that was approved by the Commission in Broadcasting Decision 2010-782. Specifically, the applicant requested the following:
 - authorization to reallocate a portion of the tangible benefit relating to its digital media initiative¹ (i.e., the creation of digital media content to complement and reinforce other benefits initiatives in connection with programs of national interest (PNI) and news) in order to cover the costs of the over-subscription to its “local television satellite solution” (LTSS) program (i.e., to provide satellite-delivered local broadcasting services to

¹ In Broadcasting Decision 2010-782, this initiative is referred to as the “new media initiative”; in the present application, Shaw refers to it as the “New Media benefit.”

former over-the-air (OTA) households in markets where local broadcasters have not converted to digital transmission); and

- an extension to the deadline to complete the full slate of analog to digital conversions set out in the tangible benefits package.
2. Each of these requests is addressed separately below.
 3. The Commission received interventions in opposition to the application from two individuals, to which Shaw replied collectively. 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.

Regulatory framework regarding tangible benefits

4. As set out in Public Notice 1999-97, for transfers of ownership or control involving broadcasting undertakings, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of the transaction. To be accepted as a benefit, the proposed expenditure must be incremental to expenditures that would generally be considered ongoing normal expenses of the licensee. Moreover, the expenditures must be directed to projects and initiatives that would not be undertaken or realized in the absence of the transaction, and applicants must demonstrate that expenditures proposed as tangible benefits flow predominantly to third parties, such as independent producers. At the time of the Canwest Global transaction, the eligibility of tangible benefits initiatives was assessed under Public Notice 1999-97.
5. In Broadcasting Regulatory Policy 2014-459, the Commission set out its revised approach to tangible benefits and determining the value of the transaction. It stated that directing tangible benefits to the production of Canadian programming serves the public interest in two main ways. First, viewers or listeners benefit directly through an increase in the quantity and quality of Canadian programming. Second, creators benefit by receiving increased support for the creation, distribution and promotion of Canadian programming. Whereas certain allocations of benefits are required, others are left to the discretion of the purchaser. In that policy, the Commission provided a revised list of eligible discretionary initiatives to guide applicants in determining where to direct tangible benefits.

Background to present application

6. As set out in Broadcasting Decision 2010-782, the value of the tangible benefits package stemming from the Canwest Global transaction was \$180.1 million. Among other initiatives, this package included allocations to the following:

- \$23 million for the conversion of all 67 analog transmitters outside mandatory markets² to digital (the remaining 26 digital television (DTV) conversions that must be completed to fulfill this initiative are currently slated for completion in the 2015-2016 broadcast year);
 - \$15 million for the LTSS program, to provide, until 31 August 2019, a small satellite-delivered package of relevant local and regional signals, as well as a free receiver and installation, to up to 31,500 households that were expected to lose access to at least one local, OTA television station (to be fully expended by the 2015-2016 broadcast year); and
 - \$18 million for the digital media initiative (to be expended by the 2016-2017 broadcast year).
7. In December 2014, the Department of Industry (the Department) placed a moratorium on new applications for licensing in the television broadcasting bands. This moratorium was a result of the considerations and potential changes raised in its [consultation](#) on repurposing the 600 MHz frequency band, a proceeding with a repurposing initiative of that band that will repack OTA television broadcasting transmitters more tightly in lower frequencies (i.e., the “600 MHz repack initiative”). As a consequence, a new DTV allotment plan will be made available after the U.S. Broadcast Incentive Auction that is scheduled to begin on 29 March 2016.

Request regarding the reallocation of a portion of the tangible benefit relating to the digital media initiative

8. Shaw originally expected the LTSS program to achieve the target number of households and expenditures by 30 November 2011. As it did not meet those targets by that date, Shaw requested and was granted extensions to the program, with the latest extension running until 30 November 2014.³ In its view, the extensions were in the public interest as they responded to viewer needs and ensured the program’s successful conclusion. Shaw noted that the original targets were met in August 2014, but that it continued to receive requests for LTSS service from households that had lost access to local and/or regional signals.
9. Shaw requested authorization to reallocate \$66,513 from the \$18 million to be devoted to the digital media initiative to cover the costs of the oversubscription to the LTSS program. It stated that the digital media initiative is the most appropriate source of funds for the reallocation given that there are currently under-expenditures on this initiative, whereas spending is on track for the remaining tangible benefits initiatives, based on each initiative’s payment schedule. Shaw submitted that the overage of

²As set out in Broadcasting Regulatory Policy 2010-485, mandatory markets refers to all markets containing a provincial, territorial or national capital, all markets with populations over 300,000, and all markets with more than one local television station.

³ The initial program offering ran from 22 October 2010 to 30 November 2011, and was extended three times, to 30 November in [2012](#), [2013](#) and [2014](#).

funds for reallocation is reasonable, and that the digital media initiative is ancillary to PNI and morning news programs created out of benefits. It stated that the requested reallocation can therefore be affected with little, if any, impact on its digital media investments.

Intervention and reply

10. One of the interveners opposed Shaw's reallocation request, but did not provide reasons for doing so. Shaw replied that reallocating funding from the digital media initiative to cover the extra costs for ensuring a smooth wind-down of the LTSS program is appropriate, given that those costs were to ensure that applicants who had lost local television due to local transmitter shutdowns were able to receive the LTSS service. It added that the proposed reallocation would not have a material impact on the public interest.

Commission's analysis and decision

11. In Broadcasting Decision 2010-782, the Commission approved Shaw's proposed LTSS program initiative, noting that it would provide households with the "necessary reception equipment, and associated installation, required to maintain free access to the programming of local and regional stations that were previously available over the air." The public interest of this program is further reinforced by the public's oversubscription to it. Through the above-noted extensions, households that might have lost OTA access to local and regional programming were able to maintain access.
12. Reallocating any amount underspent on the digital media initiative to the overspend on the LTSS program would be appropriate given that both initiatives were approved in Broadcasting Decision 2010-782 and were deemed to be in the public interest. Further, the amount that Shaw is requesting to reallocate represents less than 4% of the total amount originally allocated to the digital media initiative, and would not greatly affect the total spending on digital media projects.
13. In light of the above, the Commission **approves** Shaw's request for authorization to reallocate \$66,513, from the \$18 million to be devoted to the digital media initiative, to cover the costs of the oversubscription to the LTSS program.

Request for extension of deadline to complete analog to digital conversions

14. In Broadcasting Decision 2010-782, the Commission required Shaw to complete the transition to digital broadcasting outside mandatory markets within five years of the date of that decision. In the present application, Shaw requested an extension until 31 August 2019 to complete this transition. It noted that 26 conversions have not yet been completed, and submitted that the Department-imposed moratorium on the use of the 600 MHz frequency spectrum is making completion of these conversions difficult. For the 20 sites affected by the moratorium, although planning and implementation work is proceeding, Shaw stated that it cannot purchase channel-

specific equipment (for example, antennas and transmitters) until the moratorium is lifted, a new channel plan is adopted, and applications are processed. The applicant noted, however, that other non-channel-dependent work at those sites will continue to the extent possible.

15. In regard to six approved transmitter sites not affected by the moratorium, Shaw stated that two have equipment sourcing issues. For the other four sites, it argued that it makes little sense to proceed at this time given that the approved channels are UHF channels that are likely to be re-packed by the Department in a 2016 channel plan.
16. Further, Shaw noted that once the Department lifts the moratorium on television applications, the following consecutive steps must occur before the remaining conversions can be completed:
 - preparation of engineering briefs, as well as applications to the Department and to the Commission;
 - regulatory approval process;
 - procurement of equipment; and
 - installation and commissioning of transmitters and antennas.
17. Given the anticipated timelines, Shaw proposed 31 August 2019 as the end date for the requested extension, which is a date consistent with the end of Shaw's payments of tangible benefits relating to its acquisition of the national, English-language specialty Category A services Cave and Mystery.⁴ It submitted, however, that the proposed date does not take into consideration the impact that repurposing the 600 MHz frequency spectrum and developing a new channel plan might have on various factors relating to the conversion (for example, site priorities, the availability of equipment, service vendors, and regulatory processes).

Interventions and reply

18. One intervener stated that Shaw can simply request spectrum from the Department that is outside of the 600 MHz frequency band to be repacked. The other intervener stated that the Copeland Lake, Ontario area (which is served by Shaw's analog transmitter in Bancroft, Ontario) is desperate for television access ever since it lost its analog television signals, and does not have cable, cell phone or high speed Internet service.
19. Shaw replied that for any transmitter conversion project to proceed, approval by both the Department and the Commission is required. It noted that the moratorium was placed on the processing of any and all applications for transmitter conversions, regardless of the spectrum involved. Shaw added that it is not possible at the present

⁴ See, respectively, Broadcasting Decisions 2012-239 and 2012-238.

time for it to obtain the Department's approval for the conversion of transmitter sites in a manner that enables fulfilment of this tangible benefit based on the deadline established in Broadcasting Decision 2010-782.

Commission's analysis and decision

20. The Commission acknowledges that the moratorium imposed by the Department is beyond Shaw's control. Whether existing television transmitters will need to change channels and/or convert to digital will not be clear until the new DTV allotment plan becomes available. Further, the precise dates regarding the transition to a new DTV allotment plan resulting from the 600 MHz repack initiative are not yet known. Future decisions by the Department regarding the repurposing of the 600 MHz frequency band could also affect conversion timelines.
21. In the Commission's view, the tangible benefits would have been spent had it not been for the moratorium. It further considers Shaw's claim that it cannot proceed at the present time to be legitimate, and that this initiative will be fulfilled once Shaw is able to do so. The Commission therefore considers that Shaw's rationale for requesting an extension is valid, and that the end date of 31 August 2019 for the extension is reasonable. Accordingly, it **approves** Shaw's request.
22. Should the result of the 600 MHz repack initiative affect its ability to spend the entirety of its tangible benefit relating to the analog to digital conversions, Shaw should submit, in a timely manner, an alternate proposal to expend the required tangible benefits contributions in a manner consistent with the tangible benefits policy in place at the time of submission.

Secretary General

Related documents

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *The Cave – Acquisition of assets*, Broadcasting Decision CRTC 2012-239, 25 April 2012
- *Mystery – Acquisition of assets*, Broadcasting Decision CRTC 2012-238, 25 April 2012
- *Change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010
- *Issues related to the digital television transition*, Broadcasting Regulatory Policy CRTC 2010-485, 16 July 2010
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999