

Joanne Benoit

From: Cynthia Rathwell
Sent: Thursday, May 19, 2005 5:00 PM
To: 'procedure@crtc.gc.ca'
Subject: Complaint by 6166954 Canada Inc. against Shaw & Star Choice

Please find attached responses to interrogatories. Attachments do not appear in the electronic document. The whole document, including attachments, is currently being faxed, but CRTC fax numbers is busy. Please note that the entire document has been successfully faxed to the complainant.

Thank you,

Cynthia Rathwell (Star Choice) & Michael Ferras (Shaw Communications)



Pridevision-Ex
Hrng- Response ...

information which, if disclosed, could reasonably be expected to prejudice the competitive position of Shaw and Star Choice.

With respect to item 4, above, Shaw and Star Choice claim confidentiality with respect to this email because it contains sensitive commercial information that could prejudice the competitive position of another BDU.

Q1 Please provide evidence in support of the assertion that PrideVision's previous owners chose or requested carriage other than on a packaged basis.

The following attachments to these interrogatory responses evidence the choice of PrideVision's previous owners to be carried on a stand-alone, not packaged, basis:

Attachment 1 - A letter dated March 28, 2001, from Jennifer Macdonald, on behalf of Shaw, to PrideVision (subsequent to a meeting of March 1). In this letter, Shaw reminds PrideVision that in the March 1 meeting, Shaw encouraged PrideVision to "consider reducing your wholesale fee in order to be packaged in a more affordable digital tier of service." (para. 2). This was in response to PrideVision's statement in the meeting that it was considering a premium priced stand-alone distribution option. The letter evidences not only that stand-alone carriage was being contemplated by PrideVision's previous owners, but that Shaw itself did not refuse to negotiate packaged distribution or compel the previous owners to accept stand-alone carriage.

Attachment 2 - This e-mail of August 28, 2001, from Rob Malcolmson of PrideVision to Jennifer MacDonald, sets out the key terms of PrideVision's affiliation agreement with ExpressVu. It demonstrates that the ExpressVu stand-alone carriage deal preceded any agreement with Shaw and Star Choice and became the basis for the terms ultimately agreed upon by PrideVision's previous owners with Shaw and Star Choice. No mention is made of inclusion in a package.

Attachment 3 - This attachment includes a letter, dated April 22, 2002, from the CRTC to PrideVision, asking PrideVision to confirm statements by Star Choice and Vidéotron, respectively, that PrideVision's stand-alone carriage was pursuant to a request by PrideVision.

In its written response of May 3, 2002 (which forms part of Attachment 3), the former principal of PrideVision, Mr. John Levy, confirms that:

PrideVision does have agreements in place with all the major cable and DTH BDU's [sic], with one notable exception being Videotron.

- para. 3

As well, Mr. Levy notes that PrideVision's agreements with all major cable and DTH BDUs "provide for either the stand-alone distribution or stand-alone distribution with the additional option for subscribers to add PrideVision onto any discretionary programming package at the option of a subscriber (para. 3).

Mr. Levy goes on, specifically, to state that:

We can confirm Star Choice's statement in its February 20, 2002 correspondence that the offering of PrideVision on a stand-alone basis on the Star Choice DTH system is the result of a business arrangement negotiated by the parties. We also note, as Star Choice did in its correspondence, Commissioner Langford's statement in Decision CRTC 2001-612 that if no agreement exists between a BDU and a programming service the Commission's mandated directions regarding carriage apply but that those directions can be changed by agreement.

In summary, PrideVision is satisfied with the carriage arrangements it has in place with those BDUs with whom it has affiliation agreements. PrideVision continues to be prepared to have its service distributed as an add-on to a package of programming services (in addition to the stand-alone arrangement) if that would be of assistance to BDU's (assuming an agreement reflecting such carriage terms is reached).

- para. 4

The letter from Mr. Levy demonstrates that:

- PrideVision itself had a business plan based upon stand-alone distribution,
- Stand-alone distribution was by agreement, and
- PrideVision was satisfied with the arrangements.

There is no indication that PrideVision's former owners were forced into the stand-alone arrangement with Shaw, Star Choice or any other BDU. To the contrary, the letter suggests that PrideVision's previous owners were amenable to negotiations to consider distribution of the service as an "add-on" to a package *if that would be of assistance to BDUs*. Notably, there is no suggestion that packaged carriage was being sought or contemplated as part of PrideVision's own business plan.

Finally, Mr. Levy's letter to the Commission indicates PrideVision's view and intention that the packaging rule set out in the Distribution and Linkage rules had been superseded by agreements between PrideVision and the BDUs.

Q2 Please provide an update on Shaw and Star Choice's positions with respect to the continuation of adult programming on OUTtv.

There has been no change in our respective positions. [REDACTED]

[REDACTED] The distribution agreements between the Category 1 service formerly known as PrideVision and, respectively, Star Choice and Shaw remain in full force and effect. However, consistent with our earlier submissions on this matter, each of Star Choice and Shaw are prepared to distribute OUTtv in packages [REDACTED]

Q3 Please provide your respective positions on the significance, if any, of this alleged notice on whether the current or existing distribution agreement remains in full force at the present time.

Shaw and Star Choice do not believe that the alleged "notice" of new affiliation terms has any significance whatsoever. The existing agreements [REDACTED]

[REDACTED] The Agreements do not provide for a unilateral change of the terms of distribution by Network (PrideVision, now known as OUTtv), nor does it obligate AFFILIATE (Shaw) to respond to any "invitation to negotiate."

Q4

[REDACTED] **What is the "same retail price" as other Category 1 services? Does Shaw now offer other Category 1 services exclusively in "pick 5" or "pick 10" packages or in theme packages as well? Are there any restrictions on how subscribers may redesign the packages they elect to receive? If so, please elaborate. Would Shaw consider creating a smaller "theme package" [REDACTED]**

[REDACTED] 12 April 2005 [REDACTED]

Customers can currently choose digital services individually at a monthly subscription price of \$2.99 for 2 channels. This is the same price for all Category 1 and Category 2 services, other than for OUTtv due to its standalone carriage arrangement. As well, customers can currently choose any 5 digital services ("pick 5") for \$6.95 monthly, any 10 digital services ("pick 10") for \$10.95 monthly

or all Category 1 and 2 digital services ("value pack") for \$20.95 monthly. Under Shaw's proposal, [REDACTED]

Other than the all-inclusive "value pack", Shaw does not offer any pre-set packages, including theme packages, composed of Category 1 and 2 digital services.

The principle behind Shaw's packaging is to maximize customer choice and therefore Shaw does not offer theme packages. Star Choice, however, has an approach of offering theme packages as its marketing strategy.

Q5 With specific reference to the letter carriage agreement between Shaw Communications Inc. and Headline Media Group dated October 25, 2001, identify the sections that support Shaw's assertion that PrideVision agreed to be carried on a stand-alone basis and waived its rights to be carried as part of a package as required under section 12 of the *Distribution and Linkage Rules for Class 1 and Class 2 licensees*.

[REDACTED]

As indicated above, in a letter to the Commission dated May 3, 2002 PrideVision's previous owners made it clear that they agreed to stand-alone carriage (see Attachment 3, described above). Although Shaw requested that PrideVision consider a lower rate in order to be included in affordable packaging (see Attachment 1), PrideVision did not respond to this request.

[REDACTED] Mr. Levy's letter to the Commission of May 3, 2002 indicates that PrideVision's previous owners understood and accepted that they had "changed by agreement" the Commission's "mandated directions regarding carriage" that would otherwise apply (see Attachment 3, letter from John Levy to CRTC, page 2).

We trust that the foregoing responses provide the Commission with the information requested.

Yours truly,



Michael Ferras
Director, Regulatory Planning
Shaw Communications Inc.



Cynthia Rathwell
Vice-President, Regulatory Affairs
Star Choice Communications Inc.

cc. Bill Craig, 6166954 Canada Inc. (416) 979-1300

Attachment 1



March 28, 2001

Rob Malcolmson
Headline Sports Broadcasting
370 King Street West, Suite 304
Toronto, ON M5V 1J9

VIA FACSIMILE: (416) 977-8128

Re: PrideVision

Dear Rob,

Thank you for taking the time to come to Calgary to meet with us on March 1, 2001. We enjoyed learning more about your plans for the launch of PrideVision.

We have recently completed our meetings with most of the Category 1 services and now have a better idea of the packaging and pricing expectations of each service provider. In our conversation, you will recall that we asked whether you would consider reducing your wholesale fee in order to be packaged in a more affordable digital tier of services. We would like to have your comments on this proposal as soon as possible so that we can move forward with the negotiations for the carriage of your service.


Further, if you have additional rate proposals for your service, please forward them to my attention for our consideration.

Finally, we continue to plan for a September 1, 2001 launch of the Category 1 services. Should your intended launch date change, please advise us as soon as possible so that we may adjust our plans accordingly.

We look forward to our next discussion on the carriage of PrideVision, which we will schedule following the receipt of your rate proposal. In the meantime, should you have any additional questions or concerns, please do not hesitate to contact me directly at (403) 750-4582.

Sincerely,

SHAW COMMUNICATIONS INC.



Jennifer McDonald
Director, Planning

cc Michael D'Avella

Attachment 1



March 28, 2001

Rob Malcolmson
Headline Sports Broadcasting
370 King Street West, Suite 304
Toronto ON M5V 1J9

VIA FACSIMILE: (416) 977-8128

Re: PrideVision

Dear Rob,

Thank you for taking the time to come to Calgary to meet with us on March 1, 2001. We enjoyed learning more about your plans for the launch of PrideVision.

We have recently completed our meetings with most of the Category 1 services and now have a better idea of the packaging and pricing expectations of each service provider. In our conversation, you will recall that we asked whether you would consider reducing your wholesale fee in order to be packaged in a more affordable digital tier of services. We would like to have your comments on this proposal as soon as possible so that we can move forward with the negotiations for the carriage of your service.

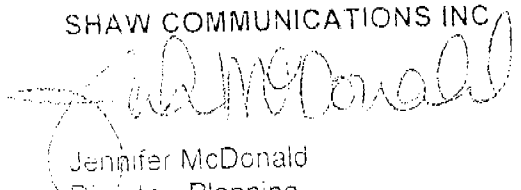
Further, if you have additional rate proposals for your service, please forward them to my attention for our consideration.

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We look forward to our next discussion on the carriage of PrideVision, which we will schedule following the receipt of your rate proposal. In the meantime, should you have any additional questions or concerns, please do not hesitate to contact me directly at (403) 750-4582.

Sincerely,

SHAW COMMUNICATIONS INC.



Jennifer McDonald
Director, Planning

cc Michael D'Avella

Attachment 2

McDonald, Jennifer (Cancom/Sussex)

From: Rob Malcolmson [rmalcolmson@headlinemediagroup.com]
Sent: Tuesday, August 28, 2001 9:37 AM
To: Jennifer McDonald (E-mail)

Jennifer here are the key terms of the expressvu deal. Retail rate capped at 7.95 per month when offered on a standalone basis. Pride gets 60 per cent. Retail rate of 5.95 when offered as a discretionary add on to a theme pak. Pride gets 75 per cent of this. Three month free preview. Pride has right to require up to 4 15 day free previews per year. Marketing on a joint basis to be discussed. Access fee payable by star choice to be discussed. When is Michael available to meet to get this done? Please provide some dates and times asap. Rob

Deanna,
Pls provide to Michael
the
8.

05-03 2002 17 04 FAX 613-694-7902 STAR CHOICE 43003



PRIDEVISION TV
OUTSIDE THE BOX

May 3, 2002

Delivered Via Facsimile

Mr. Claude Doucet
Director
Distribution and Competitive Policy
Canadian Radio-television
and Telecommunications Commission
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Hull, Quebec K1A 0N2

370 King Street West

Suite 308

PO Box 56

Toronto Ont

M5V 1J9

Dear Mr. Doucet:

Re: **Complaint by a Subscriber re: Packaging of PrideVision**

We are in receipt of your correspondence dated April 22, 2002 with respect to the current carriage arrangements for PrideVision Inc., a Category 1 digital programming service.

In your correspondence you refer to the Commission's Distribution and Linkage Requirements for both cable systems (Public Notice CRTC 2001-89) and direct-to-home (DTH) systems (Public Notice CRTC 2002-90), each of which provide that cable and DTH licencees are not permitted to distribute Category 1 specialty programming services on a stand-alone basis unless the Category 1 service is also distributed as part of a package. You have also enclosed correspondence from Star Choice and Videotron responding to subscriber inquiries with respect to the packaging of PrideVision.

In response to your request for clarification, we can advise as follows. PrideVision does have agreements in place with all the major cable and DTH BDU's, with one notable exception being Videotron. These agreements provide either for the stand-alone distribution of PrideVision or stand-alone distribution with the additional option for subscribers to add PrideVision onto any discretionary programming package at the option of the subscriber. We can confirm Star Choice's statement in its February 20, 2002 correspondence that the offering of PrideVision on a stand-alone basis on the Star Choice DTH system is the result of a business arrangement negotiated by the parties. We also note, as Star Choice did in its correspondence, Commissioner Langford's statement in Decision CRTC 2001-612 that if no agreement exists between a BDU and a

tel: (416) 979-0900

fax: (416) 979-1300

www.pridevisiontv.com

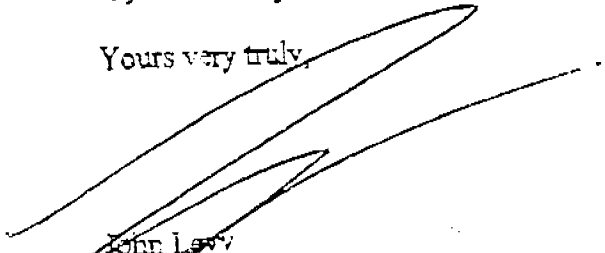
Page 2

programming service the Commission's mandated directions regarding carriage apply but that those directions can be changed by agreement.

In summary, PrideVision is satisfied with the carriage arrangements it has in place with those BDU's with whom it has affiliation agreements. PrideVision continues to be prepared to have its service distributed as an add-on to a package of programming services (in addition to the stand-alone arrangement) if that would be of assistance to BDU's (assuming an agreement reflecting such carriage terms is reached).

We hope that this is of assistance to the Commission. I look forward to responding to any further inquiries the Commission may have.

Yours very truly,



John Levy
President - PrideVision Inc.

JL/gi

cc: Edward G. Trepanier
Videotron Ltée

Cynthia Rathwell
Star Choice Communications Inc.

4-22- 2 8:15AM; 8199974504 =>

SENT BY: CRTC*BRCT;

Attachment 3



Conseil de la radiodiffusion et des télécommunications canadiennes

Canadian Radio-television and Telecommunications Commission

Les Terrasses de la Chaudière
1 Promenade du Parloir
Ottawa, Ontario
K1A 0N7

Adresse postale/Mailing Address
Ottawa, Ontario
K1A 0N7

2002

Montréal
100, Avenue
Sud-Ouest
Montréal, QC
H3C 2R7
Tél. 514 994-1111
1-877-848-1177
Fax 514 994-1177

FAX: (905) 522-9744

Winnipeg
115, Portage Ave
Suite 1400
Winnipeg, MB
R4S 1A3
Téléphone 204-984-1111
Téléfax 204-984-1177

Mr. John Levy
President
PrideVision Inc
1605 Main Street West
Hamilton, Ontario
L8S 1E6

Windsor
105, West de Marine
Suite 2200
Windsor, ON
N9A 1K1

Dear Mr. Levy

Calgary
100, 10th Avenue SW
Suite 1000
Calgary, AB
T2C 1K1
Téléphone 403-261-1111
Téléfax 403-261-1177

The Commission has been made aware that a number of cable distributors as well as direct-to-home (DTH) operators are presently distributing the service of PrideVision Inc. on a stand-alone basis only.

As you know, the Commission's Distribution and Linkage Requirements for both cable systems and DTH operators state that

"Where a licensee distributes any of the Category 1 specialty programming services, the licensee will not be permitted to distribute any of these services on a stand-alone basis unless the Category 1 service is also distributed as part of a package"

We are enclosing, for your information, a copy of a letter dated 20 February 2002 from Star Choice as well as a copy of a letter dated 12 April 2002 from Vidéotron Itée. Both distributors state that they are offering PrideVision Inc. on a stand-alone basis without necessarily offering the service as part of a package as required by

12

4-22- 2 8:16AM; 8199974504 =>

6132342997;

#3/3

SENT BY: CRTC*BRCT;

2

the Commission's Distribution and Linkage Requirements. They infer that they have an agreement with PrideVision Inc. Could you provide the Commission with your comments on this issue within 15 days of receipt of our letter

Yours sincerely



Claude Ducet
Director
Distribution and Competitive Policy

Encl

c c Edouard G. Trépanier
Vidéotron Inc

Cynthia Rathwell
Star Choice Communications Inc