



## Broadcasting Decision CRTC 2012-606

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Route reference: 2011-732

Ottawa, 31 October 2012

### **Star Choice Television Network Incorporated** Across Canada

*Application 2011-0954-6, received 15 June 2011*

### **Shaw Direct – Licence renewal**

*The Commission **renews** the broadcasting licence for the Shaw Direct direct-to-home broadcasting distribution undertaking from 1 November 2012 to 31 August 2019.*

#### **Introduction**

1. The Commission received an application by Star Choice Television Network Incorporated (Star Choice) to renew the broadcasting licence for the Shaw Direct direct-to-home broadcasting distribution undertaking (DTH BDU), which expires on 31 October 2012.<sup>1</sup>
2. The applicant proposed to add, amend and delete certain conditions of licence, as discussed throughout this decision.
3. The Commission received interventions in support and commenting on this application. The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), under "Public Proceedings."
4. After examining the application and the interventions in light of applicable regulations and policies, the Commission considers that the issues to be addressed are as follows:
  - distribution of additional local stations;
  - compensation relating to non-simultaneous deletion;
  - distribution of high definition (HD) signals;

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<sup>1</sup> The Commission renewed this licence administratively from 1 September 2010 to 31 August 2011 in Broadcasting Decision 2010-170, to 29 February 2012 in Broadcasting Decision 2011-420, to 31 August 2012 in Broadcasting Decision 2012-100, and to 31 October 2012 in Broadcasting Decision 2012-417.

- other changes to conditions of licence; and
- accessibility of services.

## **Distribution of additional local stations**

### **Background**

5. In Broadcasting Regulatory Policy 2011-295, the Commission determined that it would impose a condition of licence on Shaw Direct at its next licence renewal requiring it to distribute, in standard definition (SD) and on a full-time basis, all local programming improvement fund (LPIF)-conforming conventional television stations by 1 January 2013. In its application, Star Choice proposed a condition of licence reflecting the distribution requirement but proposed that the effective date of the condition be contingent on the date that the Anik G1 satellite becomes operational.

### **Interventions**

6. Several parties submitted that the distribution of additional conventional television stations should not be predicated on those stations being eligible for LPIF funds. Some were of the view that, at a minimum, both DTH BDUs (Shaw Direct and Bell TV) should be required to distribute the same additional stations.
7. Others proposed that signal distribution requirements be increased to include the services providing the proceedings of the Legislative Assemblies of Nunavut and the Northwest Territories and certain independent stations beyond their local markets.
8. Some submitted that Shaw Direct's condition of licence governing the distribution of additional stations should come into effect by no later than 1 January 2013.
9. In its reply, Star Choice added that, instead of referring to particular terms that would make a station eligible for mandatory distribution pursuant to the condition of licence, the condition of licence should refer to a list of stations that DTH BDUs must carry. The Commission would publish and amend this list from time to time, as necessary.

### **Commission's analysis and decisions**

10. In light of the Commission's determination set out in Broadcasting Regulatory Policy 2012-385 to phase out the LPIF, the Commission agrees that it is no longer appropriate to link criteria for carriage to eligibility for LPIF funds. The Commission will therefore replace references to the LPIF with the criteria that made the stations eligible for LPIF funds in 2011. The Commission notes the position of some interveners that these stations should be distributed as soon as possible. Star Choice indicated that the stations could be distributed 30 days after the Anik G1 satellite is in operation, which it forecast would occur in early 2013. The Commission therefore considers that the stations should be distributed effective the later of 1 January 2013 or 30 days after the commercial deployment of Anik G1 and not later than 30 June 2013. Should Star Choice be unable to distribute the stations by 30 June 2013, it must

advise the Commission and indicate alternative measures to be taken to comply with the requirement to distribute the additional stations. A **condition of licence** to this effect is set out in the appendix to this decision.

11. With respect to comments advocating that Shaw Direct carry the services providing the proceedings of the Legislative Assemblies of Nunavut and the Northwest Territories and certain independent stations beyond their local markets, the Commission determines that it would not be appropriate to add to distribution requirements at this time given the number of new programming services that Shaw Direct is required to distribute as a result of recent public proceedings.
12. With respect to Shaw's suggestion that a list of stations that DTH BDUs must carry be published and updated from time to time, the Commission notes that parties did not have an opportunity to comment because the proposal was made in Shaw's reply. The Commission considers, therefore, that it would not be appropriate to implement the proposal at this time.
13. A revised **condition of licence** incorporating these determinations is set out as condition of licence 3 in the appendix to this decision.

## **Compensation relating to non-simultaneous deletion**

### **Background**

14. Shaw Direct currently has a condition of licence relieving it from the provisions of the *Broadcasting Distribution Regulations* (the Regulations) related to having to perform non-simultaneous program deletion provided that it:
  - pays \$0.25 per subscriber per month for each subscriber that receives a second set of U.S. 4+1 signals,<sup>2</sup>
  - distributes a number of independently owned television stations; and
  - does not distribute to subscribers who received independently owned television stations the programming services of Canadian television stations located within the same time zone and that are affiliated with the same network as those stations.
15. In its licence renewal application, Star Choice proposed to delete this condition of licence. Star Choice was of the view that the distant signal provisions set out in sections 49 and 50 of the Regulations replaced the provisions of the condition of licence.

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<sup>2</sup> This refers to the signals of stations affiliated with the American commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network.

## Interventions

16. The Independent Broadcasters Group (IBG) submitted that the current condition of licence set out above should be maintained. The IBG was of the view that DTH BDUs should continue to compensate independent broadcasters for the right to distribute a second set of U.S. 4+1 signals in their service areas. They argued that, while major broadcasters would benefit from the new regime for distant signals, independent broadcasters likely would not.

## Commission's analysis and decisions

17. The provisions set out in sections 49 and 50 of the Regulations were intended to replace the provisions set out in the conditions of licence. While independent broadcasters may not benefit as much from the distant signal regime as other broadcasters, they will continue to benefit from the following:

- independent local television broadcasters that broadcast a minimum number of hours of local programming will be distributed by DTH BDUs; and
- 0.4% of the DTH BDU revenues will continue to be allocated to the Small Market Local Production Fund.

18. The Commission further notes that this condition of licence has not been imposed on new licences or during the renewal of the licences of terrestrial BDUs.

19. The Commission therefore **approves** Star Choice's proposal to delete the condition of licence related to compensation in lieu of having to perform non-simultaneous program deletion.

## Distribution of HD signals

### Background

20. As part of its application, Star Choice requested a condition of licence that would permit Shaw Direct to distribute only the SD version of the stations that must be distributed under section 46 of the Regulations. Shaw Direct would distribute HD versions of those stations at its discretion. Star Choice was of the view that this would be consistent with the Commission's determination that Shaw Direct only be required to distribute the additional conventional television stations set out in Broadcasting Regulatory Policy 2011-295 in SD format. Star Choice further submitted that the provisions in the general authorizations that require it to obtain permission from a broadcaster before down converting to SD a signal should not apply with respect to the distribution of mandatory over-the-air (OTA) signals.

## Interventions

21. Several parties submitted that DTH licensees, including Shaw Direct, should be required to distribute the additional OTA signals in the same format in which they are

broadcast. Bell TV opposed the condition of licence that Star Choice had requested, arguing that such a condition would render the approach to down converting broadcast signals set out in Broadcasting Regulatory Policy 2011-522 irrelevant.

22. Some broadcasters submitted that the Commission should establish a list that prioritizes the distribution by DTH BDUs of stations broadcasting in HD format.

#### **Commission analysis and decisions**

##### Distribution of services in standard definition format

23. Section 46 of the Regulations sets out the list of programming services that DTH BDUs must distribute as part of their basic service. Section 7 of the Regulations prohibits alteration or deletion of the content or format of a programming service or deletion of a programming service in the course of its distribution. However, section 7(a) allows for an exception by condition of licence.
24. In Broadcasting Regulatory Policy 2011-295, the Commission set out a minimum requirement that Shaw Direct distribute additional conventional television stations that meet specific criteria in SD format. This allowance, which was intended to apply only to the additional stations under the condition of licence, was made because of concerns with respect to the capacity of DTH services to distribute HD signals.
25. The Commission is of the view that Star Choice has not provided any evidence that it would be impossible or burdensome for it to distribute the signals that Shaw Direct is required to distribute under section 46 of the Regulations in the same format that they are provided over the air. Accordingly, the Commission **denies** Star Choice's proposal that would permit it to distribute services that must be carried under section 46 of the Regulations in SD format.

##### Down conversion of signals

26. Since the Commission has denied Star Choice's with respect to the distribution of services that must be carried under section 46 of the Regulations in SD format, it is not necessary to approve the proposal related to the down conversion of signals.

##### Priority list for distribution of HD signals

27. With respect to the establishment of a list prioritizing the distribution of HD signals by DTH services such as Shaw Direct, the Commission is of the view that the undue preference provision set out in the Regulations is sufficient to prevent DTH BDUs from gaining an undue advantage related to choices concerning the stations that they will make available in HD format.

## Other changes to conditions of licence

### Non-Canadian audio services

#### Background

28. Star Choice proposed to amend its conditions of licence to permit the distribution of the following types of audio services:

- any non-Canadian audio programming service that is received over the air anywhere in Canada; and
- any international radio service that is operated or funded by a national government or its agent.

#### Interventions

29. IBG opposed the distribution of non-Canadian audio programming services. It submitted that such services make no contribution to the Canadian broadcasting system and compete with Canadian over-the-air and pay audio services. IBG was also of the view that there is no justification for the use of scarce satellite resources to distribute non-Canadian services.

30. In reply, Star Choice submitted that no party would suffer harm if its proposal were approved. It added that audio services consume very little satellite capacity and that it had no intention of flooding its undertaking with additional non-Canadian audio services.

#### Commission's analysis and decisions

31. Most audio services are already available without charge over the Internet. It is therefore unlikely that Shaw Direct would distribute a large number of audio services as a way to obtain a competitive advantage. The Commission further notes that no audio services intervened in opposition to this proposal.

32. Accordingly, the Commission **approves** Star Choice's proposal with respect to the distribution of non-Canadian audio services. This approval is reflected in condition of licence 1 in the appendix to this decision.

### Deadlines for requests for program substitutions and deletions

#### Background

33. Under section 51 of the Regulations, requests for simultaneous program substitution and deletion must be made at least at least four days before the date of broadcast.

34. Star Choice requested the following condition of licence relating to section 51:

The licensee is not obligated to make the program substitutions and deletions required by section 51 of the Regulations unless the licensee received the written request for substitution or deletion contemplated by section 51 of the Regulations at least four days before the beginning of the broadcast week in which the program is broadcast. The licensee is also required to make any changes to scheduled substitutions or deletions up to four days before the date on which the program is broadcast.

#### Interventions

35. Several parties objected to Star Choice's proposal. They were concerned that setting an earlier date for requests for simultaneous substitution and deletion would hinder the ability of Canadian broadcasters to use substitution opportunities against U.S. stations that revise their schedules frequently.

36. Star Choice replied that the purpose of its proposed condition of licence was not to prevent broadcasters from making substitution requests but rather to improve the effectiveness of its systems. Star Choice proposed the following condition of licence as an alternative:

The licensee may request that the written requests for substitution or deletion contemplated by section 51 of the Regulations be received by the licensee at least four days before the beginning of the broadcast week in which the programming service is to be broadcast. The licensee shall remain obligated to make the program substitutions and deletions required by section 51 of the Regulations if the licensee receives the written request for substitution or deletion contemplated by section 51 of the Regulations at least four days before the date on which the programming service program is to be broadcast.

#### Commission's analysis and decisions

37. Simultaneous substitution and deletion allow Canadian programming services to monetize the program rights that they purchase. The Commission considers that approving the condition of licence that Star Choice originally proposed would complicate the simultaneous substitution and deletion regime for broadcasters given that the notification time for Shaw Direct would be different than that for Bell TV. With respect to the alternative condition of licence that Star Choice has proposed, the Commission notes that there is nothing that prevents Star Choice from negotiating an earlier request date with broadcasters.

38. In light of the above, the Commission **denies** the proposed condition of licence regarding simultaneous program substitution and deletion.

### **Partial and omnibus channels**

39. Star Choice proposed a condition of licence that would permit it to distribute partial and omnibus channels. The licensee was of the view that some stations may want to avail themselves of such an arrangement until the Anik G1 satellite is in operation and Shaw Direct has the capacity to distribute those stations in their entirety. The Commission did not receive any interventions addressing this proposal.
40. The Commission notes that the proposed condition of licence is identical to that approved for Bell TV and **approves** the proposal. The condition is set out as condition of licence 4 in the appendix to this decision.

### **Conditions of licence now covered by the Regulations or amended because of changes to the Regulations**

41. The licensee also proposed to delete conditions of licence that contain provisions that are now entirely covered by the Regulations and to amend certain conditions of licence so that the proper sections of the Regulations are cited. The Commission **approves** those proposals and the conditions of licence are amended accordingly.

### **Implementation of the Commission's determinations regarding accessibility of services**

42. In Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated its intention to impose on BDUs a number of requirements and expectations pertaining to customer service, access to described video and accessibility of programming. Conditions of licence, requirements, expectations and an encouragement to improve accessibility are set out in the appendix to this decision.
43. The Commission notes that it may impose further conditions of licence respecting accessibility matters five years into the licence term, if deemed appropriate.

### **Conclusion**

44. In light of the above, the Commission **renews** the broadcasting licence for the Shaw Direct direct-to-home broadcasting distribution undertaking from 1 September 2012 to 31 August 2019. The terms and **conditions of licence** are set out in the appendix to this decision.

### **Employment equity**

45. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

## Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-417, 1 August 2012
- *Review of the Local Programming Improvement Fund*, Broadcasting Regulatory Policy CRTC 2012-385, 18 July 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-100, 16 February 2012
- *General authorizations for broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2011-522, 24 August 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2011-420, 13 July 2011
- *Direct-to-home satellite distribution policy – Distribution of local conventional television stations and simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2011-295, 4 May 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2010-170, 22 March 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

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

## Appendix to Broadcasting Decision CRTC 2012-606

### Conditions of licence, requirements, expectations and encouragement for the Shaw Direct direct-to-home distribution undertaking

#### Conditions of licence

1. In addition to those services identified in section 48 of the *Broadcasting Distribution Regulations*, the licensee is authorized to distribute:
  - a) the Electronic Program Guide, one English- and one French-language marketing channel for its own service and one English- and one French-language marketing channel for its pay-per-view service;
  - b) any non-Canadian audio programming service that it received over-the-air anywhere in Canada; and
  - c) any international radio service that is operated or funded by a national government or its agent.
2. The licensee shall act in accordance with sections 1, 30 and 33 of the *Broadcasting Distribution Regulations* (the Regulations) when it distributes community programming on its barker channel. "Community programming" shall have the same meaning as that set out in section 1 of the Regulations.
3.
  - a) Effective by the later of 1 January 2013 or 30 days after the commercial deployment of Anik G1 and not later than 30 June 2013, the licensee shall distribute local television stations that meet the following criteria as part of the basic package in the appropriate local markets:
    - English- and French-language conventional stations serving markets in which the population with a knowledge of the official language of the station is less than one million (non-metropolitan areas);
    - in instances where local programming levels have been harmonized, English- and French-language stations that broadcast a minimum of seven and five hours, respectively, per broadcast week of local programming including news; and
    - in instances where local programming levels have not been harmonized, conventional stations in non-metropolitan markets that are meeting their current obligations relating to local programming.
  - b) Should the licensee be unable to distribute the stations identified in paragraph a) by 30 June 2013, the licensee shall advise the Commission and indicate alternative measures to be taken to comply with the requirement to distribute the additional stations.

4. The licensee is relieved from the requirements of section 7 of the *Broadcasting Distribution Regulation* solely for the purpose of distributing, on a part-time basis, via partial and/or omnibus channels, the local and regional news, weather, sports and other unique local or regional programming exhibited by those licensed over-the-air, i.e., conventional television stations not distributed by the licensee in their entirety. Distribution of programming on a part-time basis is subject to the following requirements:
  - a) Distribution of part-time programming may only take place on a partial channel with the prior written consent of the television station originating the programming. In addition, the further prior written consent of the television station is necessary in order to distribute this part-time programming on an omnibus channel, or at a time that is not simultaneous broadcast on the television station.
  - b) Prior notification must be given to the Commission before the programming of a television station to be distributed on a part-time basis is added to the licensee's channel line-up.
  - c) The licensee shall provide equitable distribution of participating television stations distributed in the manner described above.
5. The licensee is relieved of the requirement of section 47(2)(a) of the *Broadcasting Distribution Regulations* to distribute the specialty service known as Talentvision, unless requested to do so by the licensee of the service.
6. The licensee shall provide one or more simple means of accessing described programming, whether in an open or embedded format, that requires little or no visual acuity.

## **Requirements**

The licensee is required to promote information on all of its disability-specific services and products, in the accessible manner(s) of its choice.

The licensee is required to incorporate an easy-to-find home page link to the special needs/disability sections of its website, if its website includes such sections.

The licensee is required to make the information on its website accessible to the point of providing reasonable accommodation for persons with disabilities (examples of what the Commission considers to be reasonable accommodations are listed in paragraph 66 of *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009).

Where customer service functions on its website are not accessible, the licensee is required to ensure that persons with disabilities will not incur a charge or otherwise be disadvantaged if they use an alternate avenue of customer service.

The licensee is required to make accessible any customer service functions that are available solely over its website.

The licensee is required to make its general call centers accessible to the point of providing reasonable accommodation to persons with disabilities by:

- a) training customer service representatives in handling enquiries from persons with disabilities and familiarizing them with the service provider's products and services for persons with disabilities; and
- b) making its Interactive Voice Response systems accessible.

### **Expectations**

The Commission expects the licensee to ensure that subscribers are able to identify programming with described video in the electronic program guide.

The Commission expects the licensee to make information available in alternative formats to subscribers regarding, among other things, the programming and services offered and the channel line-up.

### **Encouragements**

The Commission encourages the licensee to ensure that its set-top boxes are accessible to subscribers with vision and fine motor skill disabilities.