



Broadcasting Decision CRTC 2013-175

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Route reference: Part 1 application posted on 10 October 2012

Ottawa, 4 April 2013

Shaw Media Inc.
Across Canada

Application 2012-1243-0

Amendment to tangible benefits related to the transfer of control of Alliance Atlantis Broadcasting Inc.

*The Commission **approves in part** an application by Shaw Media Inc. (Shaw) to amend certain aspects of the tangible benefits package related to the transfer of control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies. Specifically, the Commission **approves** Shaw's proposals to:*

- *reallocate the \$14 million devoted to news and public affairs so that it would spend \$6 million on a current affairs show and \$8 million on the expansion of international news bureaus;*
- *reallocate the \$2.4 million currently earmarked for pilot projects to support for on-screen scripted drama production; and*
- *submit a written attestation from an officer of the corporation such as its vice-president of finance rather than audited statements with its benefits reports.*

*The Commission, however, **denies** Shaw's proposal to calculate spending on the expansion of international news bureaus in U.S. rather than Canadian dollars.*

The application

1. Shaw Media Inc. (Shaw) filed an application to amend certain aspects of the tangible benefits package related to the transfer of control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies.¹ The tangible benefits package is set out in Appendix 3

¹ The Commission approved the transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc. in Broadcasting Decision 2007-429. Subsequently, the Commission approved a change in effective control of Canwest Global's broadcasting subsidiaries to Shaw in Broadcasting Decision 2010-782.

to Broadcasting Decision 2007-429 and had a total value of \$151.25 million to be paid over seven years. Shaw recently completed year five of the payment schedule. In this application, Shaw requested changes to four aspects of the tangible benefits package, which are described below.

News and public affairs

2. Shaw must currently spend \$14 million on news and public affairs initiatives. These initiatives include \$4 million for a current affairs show and \$10 million for the expansion of international news bureaus. In its application, Shaw proposed to reallocate the \$14 million so that it would spend \$6 million on the current affairs show and \$8 million on the expansion of international news bureaus. Shaw submitted that the proposal was appropriate given currency fluctuations and the success of its current affairs show.

Pilot projects

3. Shaw is currently required to spend \$2.4 million on pilot projects in year 6 (2012-2013) of its benefits package. In its application, Shaw requested authority to reallocate these funds to on-screen scripted drama production given that this benefits payment is scheduled to occur near the end of the overall package.

Calculation using U.S. dollars

4. The value of the Canadian dollar against the U.S. dollar has increased since the benefits package was approved in 2007. While Shaw has exceeded its baseline requirement for the expansion of international news bureaus from 2008 to 2011 in U.S. dollars, it actually reported a shortfall in spending in Canadian dollars for that period. Accordingly, Shaw requested that the baseline used to calculate the incrementality² of this benefit be re-established at U.S. \$1,648,012 rather than the current \$1.92 million Canadian, retroactive to the start of the benefits package.

Audit requirement

5. Shaw must currently file detailed audit reports with its annual returns so that the Commission may verify that spending on its benefits package is incremental. Shaw submitted that the audit requirement is costly, time consuming and unnecessary. It further noted that the Commission has not required audited reports for other benefits packages with which Shaw is involved. Instead of audited reports, Shaw proposed to submit a written attestation from its vice-president of finance to assure the Commission its reports on benefits are correct.

Interventions

6. The Commission received interventions from the Canadian Media Production Association (CMPA) and Writers Guild of Canada (the Writers Guild) commenting on

² Spending on tangible benefits must be incremental to the normal expenditures made by the licensee in relation to its other regulatory requirements.

the application. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

7. Both interveners commented on Shaw's proposal to shift its commitment to support pilot projects to support for on-screen scripted drama production. The CMPA supported the proposal so long as all funds were allocated to *new* television series for broadcast. The CMPA considered that this would be consistent with the purpose of funding pilots. However, the Writers Guild opposed Shaw's proposal. It argued that pilot projects play a crucial role in the development of television series. The Writers Guild submitted that, if money for pilot projects were reallocated, it would remove an important instrument of risk management from the production of new television series.
8. The CMPA supported Shaw's proposal with respect to the audit requirement.

Shaw's reply

9. Shaw noted that no intervener opposed any of its requests except for the reallocation of \$2.4 million from pilot projects to scripted drama production. Shaw stated that, while it fully understands the value of pilot projects, it considers that the proposed reallocation would maximize the impact of benefits monies. Shaw also submitted that whether the monies are allocated to new or returning Canadian drama series is irrelevant since, in both instances, support would flow to domestic content that would not be produced in the absence of the benefits package.

Commission's analysis and decisions

Reallocation of funds for news and public affairs and for pilot projects

10. The Commission notes that the proposed reallocation of funds relating to news and public affairs and to pilot projects would not result in any reduction in the amount of benefits paid, a delay in benefits payments, or in the allocation of benefits to initiatives not approved when the Commission approved the transfer of control in Broadcasting Decision 2007-429.
11. The Commission generally expects that tangible benefits initiatives will predominantly benefit on-screen programming initiatives. The Commission considers that Shaw's proposed reallocation of funds from the production of pilots to on-screen scripted drama production is consistent with its tangible benefits policy and will serve to improve the programming available to Canadians.
12. Accordingly, the Commission **approves** Shaw's proposal to reallocate the \$14 million for news and public affairs so that it will spend \$6 million on a current affairs show and \$8 million on the expansion of international news bureaus. It also **approves** Shaw's proposal to reallocate the \$2.4 million currently earmarked for pilot projects for scripted drama in year 6 (2012-2013) to support for on-screen scripted drama production.

Calculation using U.S. dollars

13. The Commission acknowledges that the strengthening of the Canadian dollar has obliged Shaw to spend more in U.S. dollars on its international news bureaus to reach its current baseline of \$1.92 million Canadian. The Commission is concerned, however, that approving Shaw's proposal would reduce the absolute amount of benefits expenditures in Canadian dollars so that Shaw would not meet the requirement to spend 10% of the value of the transaction on tangible benefits. Further, given that the Commission has approved Shaw's proposal to reallocate \$2 million dollars from international news bureaus to public affairs programming, Shaw's proposal to re-establish its baseline spending in U.S. dollars would further reduce spending on international news bureaus. Finally, the Commission is unwilling to establish a precedent under which fulfilment of tangible benefits commitments would be calculated using non-Canadian currency.
14. Accordingly, the Commission **denies** Shaw's proposal to re-establish the baseline to calculate the incrementality of its benefits package relating to the establishment of international news bureaus in U.S. dollars.

Audit requirement

15. The audit requirement allows the Commission to verify that benefits payments are incremental. The Commission agrees that this goal can be reliably achieved in this case through the less costly and time-consuming solution of an attestation from an officer of the Corporation such as Shaw's vice-president of finance. Given that there is no audit requirement for the two other on-going Shaw benefits packages, Shaw's proposal is also consistent with other Commission decisions.
16. Accordingly, the Commission **approves** Shaw's proposal to submit a written attestation from an officer of the corporation such as its vice-president of finance with its benefits reports to assure the Commission that spending on tangible benefits is incremental.

Secretary General

Related documents

- *Change in the effective control of Canwest Global Communication Corp.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010
- *Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc.*, Broadcasting Decision CRTC 2007-429, 20 December 2007