



Broadcasting Decision CRTC 2017-321

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Reference: Part 1 application posted on 29 June 2017

Ottawa, 31 August 2017

Shaw Cablesystems Limited and Shaw Cablesystems (VCI) Limited

Various locations in Ontario, Alberta and British Columbia

Star Choice Television Network Incorporated

Across Canada

Application 2017-0537-8

Various licensed and exempt broadcasting distribution undertakings – Licence amendments and exemption

*The Commission **approves** the application by Shaw Communications Inc., on behalf of Shaw Cablesystems Limited, Shaw Cablesystems (VCI) Limited and Star Choice Television Network Incorporated, to be relieved from the requirement to distribute the signals of OMNI television stations as part of the basic service of its licensed and exempt terrestrial broadcasting distribution undertakings (BDUs) in Ontario, Alberta and British Columbia, and of its direct-to-home satellite BDU Shaw Direct for the region of Southern Ontario. These BDUs will instead distribute the regional feeds of the OMNI Regional service, which will provide the same programming, as part of the basic service.*

Background

1. In Broadcasting Decision 2017-152, the Commission approved an application by Rogers Media Inc. (Rogers) to operate a national, multilingual multi-ethnic discretionary service to be known as OMNI Regional for a licence term beginning on 1 September 2017 and ending on 31 August 2020. Pursuant to Broadcasting Order 2017-153, OMNI Regional is to be distributed on the basic service of licensed and exempt broadcasting distribution undertakings (BDUs).
2. OMNI Regional will have four regional feeds specifically tailored to ethnic Canadians living in British Columbia, Alberta, Ontario and Quebec. Three of the feeds will mirror the programming offered by the OMNI television stations in British Columbia, Alberta and Ontario. The Quebec feed will be branded as “ICI Québec”, with much of the programming to be supplied by ICI (International Channel/Canal International), a multilingual ethnic television station in Montréal.
3. In markets where an OMNI television station is operating as a local or regional station, Rogers proposed that the distribution order for OMNI Regional be structured in such a way as to provide BDUs with the option to substitute OMNI Regional for

the OMNI television station as part of the basic service. In Broadcasting Decision 2017-152, the Commission stated that BDUs were free to request an exception should they wish to be relieved of the obligation to carry OMNI television stations as part of the basic service.

Application

4. Shaw Communications Inc. (Shaw), on behalf of Shaw Cablesystems Limited and Shaw Cablesystems (VCI) Limited (together, Shaw Cable), and on behalf of Star Choice Television Network Incorporated (Star Choice), filed an application to be relieved from the requirement under sections 16.1 and 17(1) of the *Broadcasting Distribution Regulations* (the Regulations) to distribute the OMNI television stations as part of the basic service of its licensed and exempt terrestrial BDUs in Ontario, Alberta and British Columbia, and on its direct-to-home satellite BDU known as Shaw Direct for the region of Southern Ontario. As an alternative, these BDUs would distribute the regional feeds of OMNI Regional as part of the basic service, as required by Broadcasting Order 2017-153. The requested relief would take effect upon the launch of OMNI Regional and expire when the mandatory distribution order was no longer in effect.

5. Accordingly, for the licensed terrestrial BDUs, Shaw requested the addition of the following condition of licence:

As an exception to subsections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where an OMNI television station is operating as a local or regional television station, the licensee is not required to distribute the OMNI television station as part of the basic service. This condition will come into effect upon the launch of a regional feed of OMNI Regional and will expire if a mandatory order for the distribution of OMNI Regional is no longer in effect.

6. For the exempt systems, Shaw requested the addition of the following condition under section 6 of the Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers:¹

In markets where an OMNI television station is operating as a local or regional television station, the undertaking is not required to distribute the OMNI television station as part of the basic service. This condition will come into effect upon the launch of a regional feed of OMNI Regional and will expire if a mandatory order for the distribution of OMNI Regional is no longer in effect.

¹ Shaw referenced Broadcasting Order 2015-544, set out in the appendix to Broadcasting Regulatory Policy 2015-543. However, as noted below, that exemption order has been replaced by a revised exemption order set out in the appendix to Broadcasting Regulatory Policy 2017-319.

7. Finally, for Shaw Direct, Shaw requested the deletion, from condition of licence 3. c) set out in Broadcasting Decision 2016-75, of the duplicative OMNI television station in Southern Ontario, as follows (requested deletion in bold):

3. As an exception to subsection 46(2) and (4)-(7) of the Regulations:

- c) Beginning 1 December 2016, the licensee shall distribute to a subscriber whose residence or other premises are located in the following regions of Ontario or Quebec the following television stations as part of its basic service:

- Southern Ontario:

- CHWI-DT-60, CBET-DT, CBLT-DT, CBLFT-DT, CIII-DT-41, CFTO-DT, CITY-DT, CHEX-TV-2, CFPL-DT, CKCO-DT, CHCH-DT, CKVR-DT, CFMT-DT, ~~CJMT-DT~~ and CBOFT-DT

8. Shaw submitted that the requested relief for all of the above undertakings is necessary and appropriate as it would prevent the unnecessary duplication of programming on the basic service since the regional feeds of OMNI Regional will mirror the programming offered on the OMNI television stations. It further submitted that the requested relief would help to facilitate customer acceptance of both the new small basic service and the introduction of a new 9(1)(h) service, and would be consistent with the model proposed by Rogers and accepted by the Commission in Broadcasting Decision 2017-152.
 9. Shaw added that it is necessary to minimize the operational and financial impact on BDUs. In regard to its own BDUs, Shaw noted that Shaw Cable and Shaw Direct must continue to manage scarce capacity and billing system limitations to offer services that meet the expectations of both customers and the Regulations. In particular, Shaw submitted that it is also taking steps to add independent services and that, at this time, the addition of duplicative services would undermine each of these efforts.

Interventions

10. The Commission received an intervention in support of this application from Bragg Communications Inc., carrying on business as Eastlink. It also received an intervention commenting on Shaw's application from Rogers, to which Shaw replied. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
 11. Rogers requested that approval of Shaw's requests for its licensed and exempt terrestrial BDUs be conditional on Shaw distributing the appropriate OMNI Regional feed on the same channel on which it was distributing the OMNI television station on 15 May 2017, and that this requirement come into effect upon the launch of a regional feed of OMNI Regional that is appropriate to the BDU's service area. It further requested that the Commission require Shaw to reinstate the OMNI television station

on the same channel it previously occupied, or at minimum alongside other local channels, in the event that the mandatory order for OMNI Regional is not renewed.

12. In Rogers' view, moving OMNI Regional out of the vicinity of other local channels could create confusion and frustration among viewers who are accustomed to getting OMNI as part of their local lineup. It argued that absent a significant marketing effort and marketing costs to promote the new channel location, current third-language viewers are unlikely to find OMNI in a new dial position.
13. Rogers added that moving OMNI Regional out of the vicinity of other local channels could have a negative impact on advertising revenues and viewership, thereby undermining the revenue forecasts that were provided as part of its OMNI Regional application. It estimated that moving OMNI Regional to a channel outside of the local neighbourhood would result in a decline in viewership of 15% to 25%, causing the station to lose \$150,000 to \$200,000 in advertising revenues and as much as \$500,000 to \$900,000 in advertising revenues if all BDUs, excluding Rogers Cable, were to follow suit.
14. Rogers also raised an issue regarding the continued distribution of CFMT-DT Toronto (OMNI.1). It submitted that it would oppose any request from BDUs to be relieved of the obligation to distribute OMNI.1, since the ethnocultural communities served by OMNI.1 would not have access to that station's programming, particularly local programming, other than via over-the-air reception.

Applicant's reply

15. Shaw opposed Rogers' requests relating to channel placement since it would constitute an unprecedented and inappropriate level of Commission intervention. It noted that the Commission has historically treated channel placement as an issue that does not require Commission intervention but should properly be the subject of negotiation between the parties concerned.
16. Shaw argued that approving those requests would impose an additional and inappropriate burden by preventing channel realignment that may be necessary for competitive or technical reasons. It added that Rogers' requests would award OMNI Regional treatment that is preferential relative to all other services – including other services that have mandatory distribution – notwithstanding the fact that OMNI Regional did not fully meet the requirements of a 9(1)(h) service and was approved as such only as an “interim measure.”
17. In Shaw's view, Rogers' predictions of economic impact are greatly overstated, especially in a digital environment where channel placement is decreasing in importance. It noted that channel realignment of services by various BDUs takes place regularly without giving rise to the “devastating” consequences predicted by Rogers. It argued that accepting Rogers' proposal could lead to other services demanding permanent channel placement in a variety of circumstances based on the same flawed predictions of financial impact.

18. Finally, Shaw stated that it shares Rogers' desire to minimize the impact on viewers, and that it is already considering steps (including the use of the same channel placement, where technically feasible and appropriate) that can be taken to minimize the impact of replacing OMNI television stations with OMNI Regional. Shaw noted however, that, over the course of the mandatory distribution term, channel realignment may be necessary.
19. Shaw did not address Rogers' concerns regarding the distribution of CFMT-DT (OMNI.1).

Commission's analysis and decision

20. The Commission considers that the present application is consistent with Broadcasting Decision 2017-152, in which it stated that BDUs could request an exception should they wish to be relieved of the obligation to carry OMNI television stations as part of the basic service where they were also required to distribute OMNI Regional. Further, no interveners raised any concerns regarding Shaw's proposal to cease distributing the OMNI television stations once OMNI Regional launches. The Commission is of the view that requiring BDUs to carry essentially duplicate programming services would constitute an inefficient use of their networks.
21. With respect to channel placement, the Commission has generally left this matter to negotiations between BDUs and programming services. Accordingly, assigning a specific channel to OMNI Regional would be contrary to the Commission's general policy in this regard.
22. Section 15.3 of the Regulations requires BDUs to give broadcasters appropriate written notice before effecting any channel realignment. Moreover, parties unable to reach an agreement on carriage terms may have recourse to the Commission's dispute resolution mechanisms, including undue preference provisions set out in the Regulations.
23. Based on the above, the Commission rejects Rogers' request to modify the condition of licence and the exemption order condition proposed by Shaw.
24. Finally, in regard to the concerns expressed by Rogers over the distribution of CFMT-DT (OMNI.1), Shaw does not operate terrestrial BDUs in Toronto and is not proposing to drop the OMNI.1 channel from Shaw Direct. Applications for similar conditions of licence where this issue is raised will be considered on a case-by-case basis, and Rogers will have the opportunity to intervene.

Conclusion

25. In light of all of the above, the Commission **approves** the application by Shaw Communications Inc., on behalf of Shaw Cablesystems Limited, Shaw Cablesystems (VCI) Limited, and Star Choice Television Network Incorporated, to be relieved from the requirement set out in sections 16.1 and 17(1) of the Regulations to distribute the signals of the OMNI television stations as part of the basic service of its licensed and

exempt terrestrial BDUs in Ontario, Alberta and British Columbia, and on its direct-to-home satellite BDU Shaw Direct for the region of Southern Ontario.

26. Accordingly, the Commission imposes the following **condition of licence** on Shaw's licensed terrestrial BDUs:

As an exception to subsections 16.1 and 17(1) of the *Broadcasting Distribution Regulations*, in markets where an OMNI television station is operating as a local or regional television station, the licensee is not required to distribute the OMNI television station as part of the basic service. This condition will come into effect upon the launch of a regional feed of OMNI Regional and will expire if the mandatory order for the distribution of OMNI Regional is no longer in effect.

27. Further, for its direct-to-home satellite BDU Shaw Direct, the Commission amends condition of licence 3.c) to delete the reference to CJMT-DT (OMNI.2) for Southern Ontario. That **condition of licence** as it relates to Southern Ontario shall now read as follows:

3. As an exception to subsection 46(2) and (4)-(7) of the Regulations:

c) Beginning 1 December 2016, the licensee shall distribute to a subscriber whose residence or other premises are located in the following regions of Ontario or Quebec the following television stations as part of its basic service:

Southern Ontario:

CHWI-DT-60 Windsor, CBET-DT Windsor, CBLT-DT Toronto, CBLFT-DT Toronto, CIII-DT-41 Toronto, CFTO-DT Toronto, CITY-DT Toronto, CHEX-TV-2 Oshawa, CFPL-DT London, CKCO-DT Kitchener, CHCH-DT Hamilton, CKVR-DT Barrie, CFMT-DT Toronto and CBOFT-DT Ottawa

28. Finally, in regard to Shaw's exempt BDUs, in Broadcasting Regulatory Policy 2017-319, also issued today, the Commission has announced a revised exemption order for terrestrial BDUs serving fewer than 20,000 subscribers (Broadcasting Order 2017-320). The revised exemption order, set out in the appendix to that regulatory policy, will also include the following condition, which will apply to all exempt BDUs:

As an exception to paragraph 6.a. above, to the extent that the undertaking distributes as part of its basic service CFHD-DT Montréal, CJMT-DT Toronto, CJMT-DT-1 London, CJMT-DT-2 Ottawa, CJCO-DT Calgary, CJEO-DT Edmonton, CHNM-DT Vancouver or CHNM-DT-1 Victoria, and to the extent that the undertaking is required to distribute the programming service of OMNI Regional pursuant to section 9(1)(h) of the *Broadcasting Act*, the undertaking is relieved of the obligation to distribute as part of its basic service those listed stations, as applicable.

Secretary General

Related documents

- *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2017-319 and Broadcasting Order CRTC 2017-320, 31 August 2017
- *OMNI Regional – National, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2017-152 and Broadcasting Order CRTC 2017-153, 15 May 2017
- *Shaw Direct – Licence amendments*, Broadcasting Decision CRTC 2016-75, 29 February 2016
- *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2015-543 and Broadcasting Order 2015-544, 9 December 2015

This decision is to be appended to each licence.