



Broadcasting Decision CRTC 2009-22

Route reference:

Broadcasting Notice of Public Hearing CRTC 2008-13

Additional references:

2008-13-1, 2008-13-2, 2008-13-3 and 2008-13-4

Ottawa, 20 January 2009

Shaw Communications Inc. on behalf of Shaw Cablesystems Limited
Campbell River, British Columbia

Application 2008-1187-9, received 2 September 2008

Public Hearing in the National Capital Region

16 December 2008

Acquisition of assets

*The Commission **approves** an application by Shaw Communications Inc. on behalf of Shaw Cablesystems Limited to acquire the assets of the cable broadcasting distribution undertaking serving Campbell River currently held by Campbell River T.V. Association and for a broadcasting licence to continue the operation of the undertaking.*

The application

1. The Commission received an application from Shaw Communications Inc. on behalf of Shaw Cablesystems Limited (Shaw) to acquire the assets of the cable broadcasting distribution undertaking (BDU) serving Campbell River from Campbell River T.V. Association (CRTV). The applicant also requested a new licence to continue the operation of the undertaking under the same terms and conditions as those in effect under the current licence with one exception, that is, the addition of the following condition of licence:

The licensee is authorized to distribute, at its option, KSTW-TV (UPN) Tacoma and KVOZ-TV (IND) Bellingham, Washington, as part of the basic service.
2. Finally, Shaw requested that, should the Commission approve this application, the extension of service area, granted on 17 April 2008 and announced in Broadcasting Public Notice 2008-52, which added Campbell River to Shaw's Courtenay/Comox/Powell River undertaking, be rescinded.
3. Shaw is a wholly-owned subsidiary of Shaw Communications Inc. (SCI). SCI is a company with extensive holdings in both the programming and distribution industries.

4. The Commission received numerous interventions in support of and in opposition to this application as well as two comments. The interventions, including CRTV's intervention, and Shaw's replies to the interventions can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings".

Commission's analysis and determinations

5. After reviewing the application, the interventions and the applicant's replies to the interventions, the Commission has identified the following issues to be addressed in its determinations:
 - Legality of the transaction
 - Quality of service, programming offering, customer service and rates
 - Community channel
 - Other matters

Legality of the transaction

6. A number of interveners submitted that there had been irregularities in the procedures followed by CRTV's board of directors and members in approving the sale to Shaw. In response to these comments, Mr. John Kerr, the current CRTV president, filed a legal opinion supporting the actions taken by CRTV's board of directors to execute the transaction. In reply to the interventions, Shaw also filed legal opinions in support of the sale process. The Commission was further informed that the Registrar of British Columbia Registry Services has determined that there are no grounds, under its jurisdiction, to initiate an investigation of the filing of the resolutions approving the transaction.
7. The Commission has considered the interventions opposing the application and is of the view that there is no known legal impediment to the transaction.

Quality of service, programming offering, customer service and rates

8. A number of interventions in support of the application argued that CRTV's service is inferior and that CRTV is not in a position to upgrade its services due to capital investment constraints. Several supporting interventions stated that Shaw provides more services, due to its ability to bundle services, and more programming options. One intervener submitted that Shaw has the necessary resources to expand and improve communications technology, due to its large customer base, whereas CRTV would not be as able to keep up with changing technology without increasing its prices, due to its small market. In support of the application, several interveners expressed satisfaction with Shaw's quality of service in other locations, particularly in other parts of Vancouver Island.

9. In contrast, a number of interveners in opposition to the proposed transaction expressed their satisfaction with the quality of CRTV's cable service and were concerned that Shaw would not offer the same quality of service. Specifically, they cited lower cable fees, broader channel selection and increased local programming as examples of CRTV's quality of service. Further, some of the interveners argued that Shaw's rates are higher than CRTV's for fewer channels offered, up to 65% higher according to one intervener, and that "Shaw would offer less and inferior programming at a greater cost than what CRTV currently demands". One intervener submitted that Shaw's customer service is inferior to CRTV's, whose customer service representatives are on-location and reached more quickly according to that intervener.
10. Regarding specific channels being offered, one intervener submitted that KVOS-TV is no longer being offered on CRTV's cable system and asked the Commission "to order what is needed from Shaw to enable CRTV to reasonably resume delivering the KVOS signal". The same intervener also asked that the Commission "order that Shaw immediately make fully available to CRTV its full array of programs and services at previous or prevailing fair-market prices".
11. Multiple interveners also raised the issue of the provision of programming services from Shaw in the event that CRTV and Shaw would be in competition in Campbell River.
12. In its reply, Shaw stated that it would offer "a broader range, depth and quality of communications to the Campbell River community," by offering additional services not currently offered by CRTV, such as, additional digital channels, the Canadian Time Shifting package and additional U.S. network services. Shaw also stated that, following approval of its application, Campbell River would continue to have the choice of at least three BDUs, namely Shaw, Bell ExpressVu and Star Choice, and possibly Telus in the near future. With respect to the issue of customer service, Shaw argued that it will offer "24/7/365 customer service and technical support and free service calls" to its customers. Shaw did not address the issue of rates charged for broadcasting services, nor specifically of the distribution of KVOS-TV Bellingham.
13. With respect to quality of service and customer service, the Commission notes that it does not regulate the day-to-day operations of BDUs, such as billing, quality of service and customer relations. Moreover, following the introduction of competition in the cable broadcasting industry in the mid-1990s and the rate deregulation of the vast majority of BDUs, including CRTV, once an undertaking is rate-deregulated, the Commission relies on competition to ensure fair-market pricing.
14. Similarly, with respect to requests that the Commission ensure the offering of KVOS-TV Bellingham, Washington, the Commission notes that BDUs are not under any regulatory obligation to offer non-Canadian television signals. The Commission notes that the applicant requested the addition of a condition of licence in order to be authorized to distribute this signal, at its option.

Community channel

15. The Commission notes that it intends to review its Community Channel Policy (Broadcasting Public Notice 2002-61) and has scheduled a public hearing in November 2009 for that purpose. It expects to release a new policy in the spring of 2010.
16. In the present application, Shaw committed to maintain or exceed CRTV's existing community programming commitments as set out in Broadcasting Decision 2008-236, CRTV's last licence renewal. Specifically, CRTV committed to maintain and exceed the requirements that at least 60% of the programming distributed on the community channel in each broadcast week be local community television programming, and that 30 to 50% of the programming on the community channel in each broadcast week be community access television programming. CRTV noted examples whereby it had broadcast almost 90% local programming and 64% access programming in a given broadcast week. In their interventions, members of the community stressed the importance of maintaining a level of quality community programming that continues to be reflective of, and responsive to the needs of the residents of Campbell River.
17. The Commission expects Shaw to fulfil its commitment to maintain or exceed CRTV's community programming commitments, unless the review of the Community Channel Policy results in additional obligations that surpass Shaw's present commitment.

Licence Term

18. In Broadcasting Decision 2008-234, the Commission renewed the broadcasting licences of Shaw's existing 43 BDUs with a two-year licence term, from 1 September 2008 to 31 August 2010. The Commission considers it appropriate to issue the new licence for the BDU serving Campbell River with an expiry date of 31 August 2010, to align the expiry date of the new licence with the current expiry date of Shaw's other licences. This will also allow the Commission to consider the licence renewal of the Campbell River undertaking in the context of the revised Community Channel Policy.

Other matters

Addition of a condition of licence

19. With respect to the applicant's request for authorization to distribute KSTW-TV (UPN) Tacoma and KVOS-TV (IND) Bellingham, Washington, at its option, the Commission notes that none of the interventions opposed the request. Consequently, the Commission **approves** the addition of a **condition of licence** authorizing the distribution of the above signals. A **condition of licence** to this effect is set out in the appendix to this decision.

Suspension of non-simultaneous program deletion requirements

20. In Broadcasting Decision 2006-692, the Commission announced that the Canadian Cable Systems Alliance Inc. (CCSA), on behalf of CRTV and various other licensees, had reached an agreement between the licensee and broadcasters dealing with issues related to the protection of program rights in connection with the digital discretionary carriage of

distant Canadian television signals. In light of the agreement between the two parties, the Commission suspended the application of the above-mentioned provision for CRTV and other licensees with respect to the signals that are the subject of the CCSA's agreement with the Canadian Association of Broadcasters (CAB).

21. The Commission notes that Shaw stated that it would take the steps necessary to ensure that the Campbell River cable system is included in its agreement with the CAB and that, in the interim, the Campbell River cable system will continue to be subject to the requirements regarding non-simultaneous program deletion set out in the agreement between CRTV and the CAB.
22. The Commission reminds the licensee that in the event that an agreement expires or is terminated at any time, the requirement for non-simultaneous program deletion will no longer be suspended and the licensee will once again be required to perform program deletions as set out in section 43 of the *Broadcasting Distribution Regulations* (the Regulations). Should Shaw's agreement with the CAB be extended to include the Campbell River cable system, or should any alternative arrangements be made, pursuant to the Commission's determinations set out in Broadcasting Public Notice 2008-100 concerning changes to the distant signal policy, the Commission is to be advised forthwith.

New regulatory framework

23. In Broadcasting Public Notice 2008-100, the Commission set out its determinations regarding the review of regulatory frameworks for BDU and discretionary programming services. Unless otherwise specified, the majority of proposed amendments to the Regulations will be implemented 31 August 2011. The Commission notes that the implementation of certain elements proposed in this public notice will entail amendments to conditions of licence applicable to this undertaking, such as the requirements to be met in order to offer a second set of U.S. 4+1 signals.
24. Therefore, the Commission notes that when elements of the new regulatory framework set out in Broadcasting Public Notice 2008-100 take effect, the licensee will be required to file an amendment to its licence in order to amend, as required, any condition of licence appended to this decision that will be affected by the new regulatory policy.

Conclusion

25. In light of all of the above, the Commission **approves** the application by Shaw Communications Inc. on behalf of Shaw Cablesystems Limited to acquire the assets of the cable broadcasting distribution undertaking serving Campbell River from Campbell River T.V. Association.
26. Upon surrender of the current licence issued to Campbell River T.V. Association, the Commission will issue a new licence to Shaw Cablesystems Limited. The licence will expire 31 August 2010, the current expiry date of Shaw's other BDU licences, and will be subject to the **conditions** set out in the appendix to this decision.

27. With respect to the applicant's request to have the extension of service area granted to the applicant on 17 April 2008 rescinded, the Commission considers it appropriate to proceed as proposed given that the foregoing approval would create an overlap in Shaw's authorized service areas at Campbell River. Accordingly, the Commission hereby **rescinds** the extension of service area granted to Shaw on 17 April 2008, which added Campbell River to Shaw's Courtenay/Comox/Powell River undertaking.

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Class 1 cable broadcasting distribution undertaking in Campbell River – Licence renewal and amendment*, Broadcasting Decision CRTC 2008-236, 28 August 2008
- *Various cable broadcasting distribution undertakings in western Canada – Short-term licence renewals and licence amendments*, Broadcasting Decision CRTC 2008-234, 28 August 2008
- *Applications processed pursuant to streamlined procedures* – Information bulletin, Broadcasting Public Notice CRTC 2008-52, 12 June 2008
- *Suspension of the provision set out in the decisions listed in the appendix to the present decision relating to the requirements for non-simultaneous program deletion*, Broadcasting Decision CRTC 2006-692, 21 December 2006
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002

This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.

Appendix to Broadcasting Decision CRTC 2009-22

Conditions of licence

1. The licensee is authorized to distribute, at its option, CKVU-TV, CBUT and CHAN-TV Vancouver as part of the basic service.
2. The licensee is relieved from the requirement of section 17 of the *Broadcasting Distribution Regulations* that it distribute the regional station CBUT-1 and the local station CHAN-TV-4 Courtenay as part of the basic service.
3. The licensee is authorized to distribute, at its option, the programming services of KIRO-TV (CBS), KING-TV (NBC), KOMO-TV (ABC) Seattle, KCPQ (FOX) Tacoma and KCTS-TV (PBS) Seattle, Washington as part of the basic service.
4. The licensee is authorized to distribute, at its option, KSTW-TV (UPN) Tacoma and KVO5-TV (IND) Bellingham, Washington, as part of the basic service.
5. The licensee is authorized to distribute, at its option, the audio services of KLSY-FM Bellevue, KMPS-FM, KUOW-FM, KING-FM, KISW-FM, KUBE-FM, KJR-FM, KKWF-FM, KRWM-FM, KNDD-FM, KZOK-FM Seattle, KCMS-FM (religious) Edmonds, and KPLU-FM Tacoma on audio channels of the undertaking.
6. The licensee is authorized to distribute the following services on a digital discretionary basis:
 - any of the distant Canadian television signals set out in the *List of Part 3 eligible satellite services*; and
 - a second set of signals that provides the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and the non-commercial PBS network (hereafter referred to as the U.S. 4+1 signals).

The distribution on a discretionary basis on the licensee's digital service of a second set of U.S. 4+1 signals and distant Canadian signals is subject to the provision that, with respect to such signals, the licensee adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the *Broadcasting Distribution Regulations* (the Regulations). The Commission may suspend the application of this provision, with respect to the signals to be distributed, upon its approval of an executed agreement between the licensee and broadcasters. Such an agreement must deal with issues related to the protection of program rights arising in connection with the discretionary carriage of a second set of U.S. 4+1 signals and distant Canadian signals solely on the licensee's digital service.

The Commission reminds the licensee that the requirements set out in section 30 of the Regulations regarding simultaneous substitution apply also in the case of U.S. 4+1 signals and distant Canadian signals.

7. The licensee is authorized to originate a video games service as a special programming service, offered on a discretionary basis, subject to the conditions listed in *Licence amendments concerning the distribution of a video games service*, Decision CRTC 95-920, 21 December 1995.