



May 16, 2012

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Mr. Traversy:

**Re: Broadcasting Notice of Consultation CRTC 2012-214: Item 2
Application by Shaw Satellite Services Inc. (“Shaw”) to renew the broadcasting
licence for its satellite relay distribution undertaking (“SRDU”) serving
communities throughout Canada
Application 2011-0953-8**

1. The Canadian Media Production Association (“the CMPA”)¹ appreciates this opportunity to provide the following comments regarding the above-noted application.
2. Specifically, the CMPA opposes Shaw’s request for deletion of its conditions of licence relating to the obligation to contribute financially to Canadian programming. The Commission recently confirmed both the importance of SRDUs’ on-going financial contributions to Canadian programming and maintenance of that obligation. Shaw has provided no new or compelling arguments to support a change to that recent Commission ruling.

Background

1. On 27 May 2011, the Commission issued Broadcasting Notice of Consultation CRTC 2011-350 in which it sought comment on a possible exemption order respecting SRDUs.² The proposed exemption order which the Commission set out as part of the notice included the obligation to contribute a minimum of 5% of the SRDU’s annual

¹ The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA’s 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

² <http://www.crtc.gc.ca/eng/archive/2011/2011-350.htm>.

gross revenues derived from broadcasting activities to the creation and presentation of Canadian programming. This obligation was already established in the SRDUs' conditions of licence ("the contribution obligation COLs").

2. Subsequently, on 15 June 2011, Shaw filed its current application to renew its SRDU licence. In doing so, Shaw acknowledged the process initiated by BNC 2011-350 and noted that it was filing its application without prejudice to any position it might take in that other proceeding.³ As part of its renewal application, Shaw requested that it be relieved of its contribution obligation COLs. Shaw set out its rationale for seeking such relief in its Supplementary Brief.⁴
3. On 11 July 2011, Shaw filed its comments in response to BNC 2011-350. Amongst other things, Shaw proposed that an SRDU exemption order should not maintain the existing obligation to contribute financially to Canadian programming. Its arguments in support of that position mirrored those it had presented in its renewal application.⁵
4. The CMPA also filed comments in response to BNC 2011-350. In our submission, we strongly supported the Commission's proposal to retain the financial contribution obligation should it exempt SRDUs, noting that the Commission had recognized and confirmed the importance of this contribution obligation in Broadcasting Public Notice CRTC 2008-100:

"... SRDUs currently contribute approximately \$900,000 annually to production funds. This amount, in the Commission's view, is material to the attainment of the objectives of the Act."⁶
5. In their respective comments in that proceeding, Free HD and Astral/Corus (jointly) also supported maintenance of the SRDU financial contribution obligation.
6. On 14 February 2012, the Commission issued Broadcasting Regulatory Policy CRTC 2012-94⁷ in which it determined it would continue to license SRDUs. Amongst other things, the Commission also confirmed the importance of the on-going financial contributions by SRDUs to Canadian programming. Specifically, the Commission stated:

³ Shaw Supplementary Brief, at par. 3.

⁴ Ibid., at par. 16.

⁵ Shaw submission in response to BNC 2011-350 at pars. 34 – 38.

⁶ *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, <http://www.crtc.gc.ca/eng/archive/2008/pb2008-100.htm>, at par. 175.

⁷ <http://crtc.gc.ca/eng/archive/2012/2012-94.htm>.

The Commission also concluded, in Broadcasting Public Notice 2008-100, that SRDUs' annual financial contribution to Canadian programming was material to the attainment of the objectives of the Act. *In the Commission's view, this conclusion is still valid.*⁸

7. Accordingly, the Commission's policy is clear: SRDUs are to contribute a minimum of 5% of their annual gross revenues derived from broadcasting activities to the creation and presentation of Canadian programming

The Present Shaw Application

8. As noted above, Shaw's arguments regarding the financial contribution obligation which it filed in response to BNC 2011-350 mirrored its arguments in its SRDU renewal application filed earlier. That renewal application is the same one under consideration now.
9. Given the Commission has already rejected Shaw's arguments regarding the financial contribution obligation and Shaw has provided no new arguments in support of its earlier position, the Commission should reject its arguments again and deny its request for relief from the applicable contribution obligation COLs.

Allocation of Contributions

10. In the comments it filed in response to BNC 2011-350, Rogers Media Inc. ("Rogers") pointed out⁹ that the current SRDU contribution obligation COLs differ from those applicable to other BDUs in that they do not require the licensees to direct a specified portion of their contributions to the Canada Media Fund or to any other independent production fund. Instead, SRDUs currently have full discretion as to where their 5% contributions may be directed.
11. Rogers expressed concern that leaving all contributions to the complete discretion of the SRDU operators would permit them to direct funding to their affiliated television programming services, creating an unfair competitive advantage in relation to other television licensees. Rogers submitted that, given the expanded role for SRDUs in the delivery of licensed pay and specialty services, they should now be subject to a contribution regime similar to that applicable to the DTH undertakings with which they are associated: specifically, they should be required to direct at least 4% of their gross revenues derived from broadcasting activities to the Canada Media Fund, with the

⁸ Ibid., at par. 24. Emphasis added.

⁹ See Rogers' submission in response to BNC 2011-350, at paras. 31 - 41.

remainder of their required contributions directed to one or more independent production funds.

12. Accordingly, Rogers recommended that, if the Commission maintained the SRDUs' contribution obligation and continued to license SRDUs, the current contribution obligation COLs should be amended to read:

The undertaking is required to contribute a minimum of 5% of its annual revenues derived from broadcasting activities to the creation and presentation of Canadian programming. At least 80% of this contribution must be made to the Canada Media Fund or its successor. The remainder of the total required contribution must be made to one or more independent production funds.

Contributions must be made on a monthly basis, within 45 days of each month's end.

13. The CMPA agrees with Rogers' earlier arguments and recommends that Shaw's contribution obligation COLs be amended as Rogers had proposed.

All of which is respectfully submitted.

Sincerely,

[original signed by]

Norm Bolen
President & CEO

cc cynthia.rathwell@shawdirect.ca

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