September 30, 2010

Mr. Robert Morin
Secretary General
CRTC
1 Promenade du Portage
Ottawa, ON
K1A 0N2

Filed Electronically Via the CRTC Intervention/Comments Form

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010-623 – *Call for comments on contributions by broadcasting distribution undertakings to local expression*

Introduction

1. Shaw Communications Inc. (Shaw), on behalf of Shaw Cablesystems GP (Shaw Cable) and Shaw Direct, provides this response to Broadcasting Notice of Consultation CRTC 2010-623 (BNC 2010-623).

2. Shaw supports the Commission's decision in Broadcasting Regulatory Policy CRTC 2010-622 to preserve the ability of cable BDUs to fund and operate community channels. This will ensure the continued achievement of the broad objectives and overall approach of the successful 2002 community media policy.[1] In particular, we appreciate the Commission's recognition of the vital contributions of cable community channels in achieving the local and access programming objectives set out in the *Broadcasting Act* (the Act). The Commission's determinations in BRP 2010-622 to increase accountability, transparency and access programming requirements are largely consistent with the voluntary initiatives we proposed in that proceeding, and with the voluntary commitments made by Shaw in connection with our cable licence renewals (BNC 2010-497).

3. Although we agree with the Commission's overall framework, we disagree with the Commission's finding that "the current level of contributions to local expression is sufficient to allow the community sector to attain its objectives".[2] In fact, the decision to freeze community channel funding at current levels could inadvertently put at risk the achievement

[1] *Community Television Policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010 (BRP 2010-622); *Policy framework for community-based media,* Broadcasting Public Notice CRTC 2002-61, 10 October 2002.
[2] BRP 2010-622 at paragraph 39.

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of key local and community programming policy objectives. Specifically, the funding freeze could:

- impair the implementation of accessibility programming initiatives, such as closed captioning and audio description on community programming;
- delay the conversion of community channels to high definition (HD); and
- decrease the quality and diversity of local and access programming.

4. A framework that would maintain community channel contributions at current levels and then revert back to a percentage of revenues formula at some point in the future raises legitimate concerns about fairness, transparency and accountability. For example, capping contributions to local expression based on the dollar amounts contributed by BDUs in the 2009-2010 broadcast year would disproportionately impact BDUs that are not as advanced in their capital plans. It could also result in an uneven implementation across Canada of new and important public benefits such as accessibility initiatives on the community channel and on the conversion of community television stations to HD.

5. Beyond these policy implications, Shaw submits that a new and unnecessary administrative burden will be created through the application of a new regulatory funding mechanism for local expression contributions from terrestrial BDUs.

6. Shaw respectfully submits that the simplest and fairest solution in these circumstances would be to maintain the allowable contribution to local expression at 2%, tied to specific spending requirements related to accessibility related programming initiatives, and transitioning community channels to digital and HD. This would ensure that the substantial contributions of community channels to the broadcasting system and to the achievement of the objectives set out in the Act will continue. Further, it will allow for additional enhancements to community programming.

7. If, however, the Commission proceeds with its proposal to freeze spending until the current expenditure amount represents 1.5% of gross broadcasting revenues, Shaw respectfully requests that the Commission mitigate the impact of its decision on the ability of cable BDUs to introduce accessibility initiatives on the community programming and to upgrade plant and equipment to digital.

8. Specifically, Shaw submits that cable BDUs should be permitted to direct the difference between their 2010 community channel expenditures and 2% of their gross broadcasting revenues to support one or more of the following three policy objectives:

   - the development and implementation of accessibility programming on the community channel, including closed captioning and audio description;
   - the conversion of community television stations to HD; and
   - the creation and exhibition of Canadian programming through contributions to independent programming funds

9. These points are discussed in greater detail in the responses to the Commission's individual questions below.

Response to CRTC Questions

(i) What is the most effective and administratively simple mechanism by which to maintain total contributions to community programming by licensed BDUs at current levels?

10. Shaw submits that any mechanism that freezes contributions at 2010 levels, plus inflation, would be unfair in its application. Total contributions to community programming and investments in community channel equipment and upgrades vary widely among cable operators and even among individual undertakings within an ownership group. Establishing, administering and monitoring a yearly spending cap based on dollar amounts contributed in 2009-2010 – whether at the ownership level or the level of the individual undertaking – would not take into account the particular circumstances of individual cable community channels.

11. Such a mechanism would be inequitable, disproportionately impacting ownership groups and individual undertakings that are at the earlier stages of multi-year capital plans necessary to complete critical upgrades in equipment and operations. These systems will be prejudiced by the fact that they did not undertake or accelerate their capital spending prior to the imposition of the cap. For these systems, the retrospective effects of the spending cap will be particularly onerous.

12. Under the Commission's proposed approach to revert to a percentage of revenues formula once a certain revenue threshold is reached, systems or undertakings with faster revenue growth would revert to a percentage of revenues formula more quickly than other systems with slower revenue growth. This would result in a patchwork of expenditure levels and formulas across various systems and regions, and potentially even among individual undertakings within an ownership group. Such an approach cannot be described as evenly applied or "administratively simple".

(ii) Should the reversion to the percentage of revenues formula be applied on an undertaking or group basis? In the case of the latter, once an ownership group's aggregate contributions represent 1.5% of revenues, all undertakings within that group would revert to the 1.5% allowable contribution.

13. Just as there is no simple mechanism for maintaining contributions to local expression at current levels, there is no simple mechanism by which contributions could revert to a percentage of revenues formula, whether the formula is applied on an undertaking or group basis.

14. While reverting to a percentage of revenues formula on a group basis would appear to be simpler than doing so on an undertaking basis, this approach would raise other concerns. Because the contribution requirement under the *Broadcasting Distribution Regulations* is calculated and reported at the level of the individual licensee and not at the level of the ownership group, reverting to a percentage of revenues formula on a group basis would mean a significant change to the way in which BDU contributions are assessed and remitted.

15. Regardless of whether the mechanism is applied on a group or undertaking basis, Shaw notes that the impact of the proposal (on both BDUs and communities) would be unevenly distributed. Where a BDU's gross revenues grow at the Commission's assumed rate of 8.5% annually, the community channel budget would be effectively frozen very quickly.

16. Should the Commission proceed to implement the new funding regime, companies should have the option of deciding whether the reversion to the percentage of revenues formula is applied on a per undertaking or group basis.

(iii) What is the most appropriate use for the resulting difference? Please provide details and a rationale in support of your proposal.

17. If the Commission decides to implement its proposal to impose a spending cap and eventually reduce the allowable contribution to 1.5%, Shaw submits that the resulting difference (i.e., the difference between the 2010 expenditure amount and 2% of gross broadcasting revenues, gradually amounting to 0.5% of gross broadcasting revenues) should be used in a way that mitigates the impact of the new policy on BDUs and on community residents.

18. The Commission has introduced new regulatory obligations for community channel operators in the form of increased access programming exhibition and expenditure requirements, new reporting requirements and new accessibility requirements. At the same time, however, the Commission has effectively limited the eligible contribution that cable BDUs can make to local expression, as part of their overall contribution to Canadian programming. This will make it more difficult for BDUs to fund these initiatives, and will require the diversion of investments from other parts of the network, creating overall harm to the system.

19. For example, if contributions are capped at 2010 levels, it will be difficult for Shaw TV and other community television operators to fund new features such as closed captioning, audio description, web integration, and HD equipment and studio upgrades, without diverting funding from other network investment initiatives. This will create a net harm to the system. The estimated costs associated with these community channel initiatives are significant and will not be able to be funded within Shaw TV's existing community channel budgets as a result of the new funding mechanism.

20. In light of these concerns, Shaw suggests that BDUs should be provided with a measure of flexibility in directing their contributions under the new framework. Specifically, Shaw submits that BDUs should be permitted to direct all or part of the "resulting difference" to support one or more of the following specific policy objectives:

    - the development and implementation of accessible programming on the community channel, including closed captioning and audio description
    - the conversion of community television stations to HD; and
    - the creation and exhibition of Canadian programming, through contributions to independent programming funds

(iv) What is an appropriate methodology for determining the contribution amounts of new entrants and systems that have undergone changes in structure and size?

21. The Commission in BNC 2010-623 acknowledges "the potential challenges that the Commission could face in establishing fair and transparent contribution levels for systems that have undergone changes in structure and size".[3]

22. If administrative simplicity is a key objective, Shaw submits that the simplest and most appropriate methodology for determining the contribution amounts of *all* BDUs would be to maintain the allowable contribution based on the existing formula of 2% of gross revenues derived from broadcasting activities.

(v) Are there additional factors that need to be taken into account in implementing a set contribution amount?

23. Any mechanism that would cap contributions at current levels would be, by definition, inflexible. Because each BDU has different equipment and technology upgrade requirements, the Commission could be faced with multiple applications for relief from the spending cap, each of which would have to be considered in the context of the unique circumstances of the system(s) and communities involved.

24. Furthermore, because cable capital spending requirements are significant most cable BDUs would have in place a long-term capital plan for their community channels based on a legitimate expectation of continued access to 2% of gross broadcasting revenues. The Commission's decision in this instance is therefore highly disruptive, and appears to have been made without any consideration of whether the planned uses for the future growth in funds are reasonable and necessary for individual community channels to meet policy objectives.

25. For these reasons, and for the other reasons noted earlier, the benefits of setting a fixed contribution amount, if any, are unlikely to outweigh the costs and challenges associated with establishing and administering such a regime.[4]

Conclusion

26. Shaw is tremendously proud of our accomplishments in community television, which has become a vital platform for the creation and distribution of local and access community programming in Canada. We remain highly committed to community television and we will continue to work with community members and organizations to encourage, facilitate and produce relevant and reflective community and access programming.

27. While we support the Commission's overall approach to community television as set out in BRP 2010-622, we are concerned that the proposed freeze on community channel spending

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3 BNC 2010-623 at paragraph 5.

4 If community channel contributions are capped at current levels as measured by dollars allocated, Shaw submits that the entire 5% contribution, including contributions to the CMF and other independent programming funds, should also be capped at existing dollar levels. There is no policy or other basis for dealing with the two elements of the contribution discretely.

could result in a significant and potentially indefinite delay in the introduction of important new policy initiatives such as accessible community programming and the conversion of community television stations to HD. These initiatives simply cannot be funded without creating a negative impact on the system as a result of diverting investments from other network investments to community channel budgets. We are also concerned that the proposed spending freeze will disproportionately impact systems that are at earlier stages of multi-year capital spending plans.

28. In light of these concerns, Shaw requests that the Commission either reconsider its proposal or provide some measure of flexibility in the allocation of BDU contributions that would permit the timely introduction of accessible and HD community programming.

29. Shaw appreciates the opportunity to provide these comments.

Yours truly,

Jean Brazeau

Jean Brazeau
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Shaw Communications Inc.

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