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Submitted Electronically

February 21, 2012

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1

Dear Mr. Traversy:

**Re: Broadcasting Notice of Consultation CRTC 2012-29
Application 2011-1584-0 by Shaw Television Limited Partnership
Category B service Global News Plus BC**

1. This is the intervention of CHEK Media Group ("CHEK") regarding the application by Shaw Television Limited Partnership ("Shaw Media") for a Category B licence to operate a regional, English-language specialty Category B service to be known as Global News Plus BC. CHEK operates the conventional television station CHEK TV, Victoria.
2. CHEK opposes this application. CHEK submits that this application should be denied in its entirety. In the alternative, CHEK submits that advertising on the proposed service should be restricted to national advertising only.
3. CHEK wishes to appear at the public hearing to be held to consider this application. Approval of the application would create direct and serious harm to CHEK TV. The application itself provides only minimal information and CHEK TV requires the opportunity to address any additional points that may be raised by Shaw, or the Commission, in connection with this and any other interventions that may be received.
4. CHEK opposes this application because the addition of a competitive local and regional news service into the Victoria/Vancouver extended market at this time would devastate CHEK TV and strike a serious blow against the diversity of local news programming for the communities we serve. As discussed in more detail below:
 - The proposed new service is targeted directly at the Victoria market. It represents direct and unfair competition for CHEK TV, which, under the new

ownership of a consortium of local investors and employees which bought the station from Canwest in September 2009, has only recently started to turn its operations around. The new service will stop this turnaround in its tracks and *overturn* the last two years of investment and effort made by CHEK TV to re-establish a viable local television station in Victoria and serving all of Vancouver Island. This result would be profoundly contrary to the public interest on many levels, including in terms of maintaining programming and editorial diversity in our markets.

- The television advertising market in BC remains soft. It has not yet recovered to revenue levels that were realized before the 2009 recession. Local advertising has been hit especially hard. There is no indication that the current broadcast year will result in any increase in advertising revenue over the previous year in our market.
- Similarly, there is no evidence that there is a larger advertising pie in the BC market that could support a new news service with a substantial quantity of local, regional and national inventory and an immediate province-wide reach. The vast majority of advertising dollars spent on the new station will be taken from Shaw Media's television competitors, including CHEK TV.
- CHEK estimates that over the next two calendar years, the proposed new service could draw as much as 30% of CHEK TV's advertising revenues. CHEK relies on a sole source of commercial revenue (unlike the proposed new service). This type of advertising loss would be extremely difficult, and maybe impossible, for CHEK to absorb.
- The Commission has in the past looked at the potential impact of the launch of new digital specialty services on conventional television broadcasters. In this instance, it is clear that the new service will be very harmful to existing local conventional broadcasters, especially CHEK TV and, no doubt, other independent broadcasters located outside the Vancouver metropolitan market. At the same time, the proposed service will not result in additional news or editorial diversity in our local market since this market is already served – ubiquitously – by Shaw Media's own conventional television station originating from Vancouver.
- Given the extensive economic damage that CHEK TV would incur, and the very limited increase in diversity represented by the new service, the new service should not be licensed.

The Return of Shaw Media/Canwest with a Vengeance

5. As the Commission is well aware, CHEK TV used to be owned by Canwest before Canwest's television properties were purchased by Shaw Media. In 2009, literally hours before CHEK TV was about to go dark, CHEK TV was re-launched as an independent television station under new ownership consisting of a consortium of local entrepreneurs and employees.

6. It is important to recall that CHEK TV was sold by Canwest because it was not considered to be a viable television undertaking going forward. CHEK TV had been losing money consistently within Canwest's national system in the years before Canwest's financial meltdown. However, CHEK TV's employees and a few local entrepreneurs saw that with a properly constructed locally-focused programming schedule – and much less reliance on expensive non-Canadian prime time programming – a local station could be viable.
7. CHEK TV's new ownership has turned the station around over the last two years. However, this turn-around has not been easy, and it has not been accomplished by CHEK TV on its own. As CHEK TV made clear in our recent submission on the review of the LPIF, LPIF funding has been absolutely critical to CHEK TV's survival as a station. CHEK TV is not alone. Local stations outside metropolitan markets across Canada – and local independently owned stations in particular – have suffered tighter or decreasing market share over the past number of years due to a number of systemic reasons (including television audience fragmentation and the siphoning of advertising to new media).
8. Even while CHEK TV was focused on turning our operations around, we made substantial investments in new digital technologies, including the construction of new digital transmitters as required by government policy and the CRTC. We also *increased*, substantially, the level of local programming provided to our community and throughout Vancouver Island. When Canwest owned CHEK TV in 2009, CHEK offered 14.5 hours of local programming. Now, we offer in excess of 30 hours of local programming. Most of this programming is news, information and public affairs programming. We also offer other types of local programming provided by independent producers on Vancouver Island. We believe that CHEK TV has become *precisely* what local television stations should be in their local markets: local, relevant and valued by our audience.
9. In 2009, Canwest thought that the writing was on the wall for local stations in smaller markets such as CHEK TV. They got out of local programming in those markets. Now that CHEK TV is off the mat, as it were, Canwest's television properties and management are back under new ownership. But, they are back with a major difference.
10. CHEK TV relies, and always relied, on a single source of revenue: advertising. The proposed new service will be supported by two streams of revenue. It will carry advertising of all kinds, and it will also be supported by subscription fees. The new service is, of course, owned by Shaw Media which is the single largest cable distributor in British Columbia (by far), and the operator of a DTH satellite service with a large BC subscriber base. The new service is guaranteed carriage on these BDU platforms and it is guaranteed subscriber revenue. In fact, the new service does not even need to charge its related BDUs a wholesale fee, technically speaking, since it operates within the same corporate group. The service can be supported by revenue allocated internally from Shaw's highly profitable BDU operations without even bothering to charge a wholesale fee, as such. Moreover, since Shaw will want to see the new service prosper – it is essentially guaranteed prime distribution on these BDU platforms. This will increase both its potential subscriber revenue and its potential advertising revenue (which is linked directly to the reach of a service).

11. In essence, this business strategy is the logical conclusion of vertical integration. The vertically integrated owner, Shaw, is leveraging its distribution platforms in a market it dominates to launch a new programming service with access to two revenue streams. The service is placed into direct competition with non-vertically integrated companies that have access to only a single revenue stream – advertising. Plus, the vertically integrated entity is on record as being adamantly opposed to any second revenue stream (i.e. value for signal or LPIF) for the competitor. It is as though the heavy-weight champ was suddenly put in the ring with a middleweight contender, and the heavy-weight champ is saying the middleweight is too big! This is not fair competition by any measure.
12. Not only that, as a local conventional television service, CHEK TV has substantial regulatory obligations including minimum levels of local programming and significant Canadian content obligations (55% overall and 50% during the evening broadcast period). As a Category B service, Shaw Media's proposed service has no minimum local programming obligations, as such, and has a much lower Canadian content obligation (starting at 15% and rising to only 35% in the third year of operation, as a maximum).
13. The re-entry of the Canwest television properties – now revitalized under Shaw Media's ownership – into the local Victoria market on these imbalanced competitive terms is most unfair. This type of competitive disparity, on its own and without regard to the actual state of the BC television advertising market (which we will discuss below), will threaten the continued operation of CHEK TV as a local independently owned television service in Victoria and serving all of Vancouver Island. It is hard to see how this kind of one-sided competition could do other than to unravel the last two-and-a-half years of investment and hard work by CHEK TV's investors and employees.
14. The proposed service represents, therefore, turning back the clock to 2009 *before* CHEK TV was saved from going dark. It is as though the entire plan to ensure the survival of local television in Victoria and Vancouver Island has been swept away.
15. CHEK TV does not believe that such a backward step can be in the public interest. It threatens the continuation of distinctive news content and an independent editorial voice in our market. It threatens to undermine the benefit that Victoria and Vancouver Island draw from CHEK TV's economic operations – including substantial employment opportunities in broadcasting on Vancouver Island. It threatens continuation of local ownership of important broadcasting properties such as CHEK TV.
16. It may be that some of these factors can be addressed in the future with a rebalancing of the benefits and obligations that flow within the broadcasting system and the operation of massive vertically integrated companies – including, for example, through an enhanced LPIF system for local independent broadcasters and a value for signal regime that is effective and compensatory to local independent broadcasters. Until then, the competitive imbalance represented by this application and the entry of a new local service into the Victoria and Vancouver market is simply too stark for this application to be approved.

The BC Advertising Market is Still Troubled

17. The current state of the BC television advertising market is a major concern for CHEK TV. The television advertising market, based on our experience, has not recovered from the 2009 recession and is still materially smaller than before the recession. Local and regional advertising, which is critical to CHEK TV as a stand-alone local broadcaster, is still especially challenging.
18. The CRTC has not yet released financial data for the 2010/2011 broadcast year. However, comparing data from the 2010 broadcast year to the pre-recession year of 2008 is instructive. The BC and Territories results for 2010 reveal the following:

BC and the Territories – Television Advertising Revenue

Revenue Source	2008 (\$)	2010 (\$)	Difference (%)
All Advertising (including infomercials)	283,821,427	262,320,938	- 7.6%
Local Advertising	67,846,908	54,320,580	-19.9%
National Advertising	213,359,146	206,310,637	-3.3%

At the end of the 2010 broadcast year, the entire advertising market was 7.6% below the 2008 level. Local advertising was down 20%. National advertising was also still down approximately 3.3%. What is even more concerning is that local advertising sales were actually down by 8% in 2010 compared to 2009. In other words, the supposed 2010 recovery didn't even touch local television advertising sales in the province.¹

19. It appears that BC and the Territories have even lagged behind the national average (which, for its part, had also not recovered in 2010):

National – Television Advertising Revenue

Revenue Source	2008 (\$)	2010 (\$)	Difference (%)
All Advertising (including infomercials)	1,881,508,850	1,826,477,007	-2.9%
Local Advertising	387,213,336	350,115,067	-9.6%
National Advertising	1,472,424,467	1,459,898,805	-0.9%

20. In other words, the BC advertising market as of the end of the 2010 broadcast year was still considerably "under water" in comparison to pre-recession levels. Moreover, it was further behind in terms of its recovery than the national market considered as a whole. The local television advertising market was especially weak. It is important to keep in mind that it was the onset of the recession, to a large extent, that resulted in Canwest deciding to divest of CHEK TV in the first place. The Commission's data illustrates that the circumstances that first lead Canwest to leave the Victoria and Vancouver Island market have not yet been overcome.
21. In CHEK TV's experience, the 2011 broadcast year, recently completed, has resulted in only modest growth in local advertising revenue (compared to 2010) and more

¹ CRTC, Conventional Television Statistical and Financial Summaries, 2006 – 2010
<http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/tv2010/tv2010.pdf> .

substantial growth in regional and national advertising revenue. However, that revenue growth has still come nowhere near to compensating CHEK TV for the loss of revenue which arose from the 2009 recession and from the “disaffiliation” (as it were) of CHEK TV from the Canwest group of stations. We have overcome this loss of revenue by refocusing the programming on our station, and placing a much greater emphasis on news programming – which is precisely the type of programming that will be offered by the proposed new service. We continue to expand all advertising sales opportunities but given the local nature of our programming, our opportunities are limited.

22. Moreover, it is not certain that the improvements in the 2011 broadcast year will continue in the current year. Even Shaw Media recognizes that the recovery in the television advertising market for the current year is soft – and cannot be relied on to continue. In fact, in its recently released financial reports for the quarter ended November 30, 2011, Shaw reported that revenues for Shaw Media “were down 3% and operating income before amortization decreased 8%, reflecting the softening of the advertising market as a result of the economic uncertainty.”² BCE Inc. similarly noted in its recently released financial results for the quarter ended December 31, 2011 that the advertising results for that quarter were 4% down compared to the same quarter in 2010 “on softer advertising markets” (primarily at the national level, according to BCE).³
23. It is not safe to assume, therefore, that the television advertising market has recovered from the 2009 recession, or that it any increase in 2011 over 2010 can be sustained going forward. The situation in BC is still more difficult than the national situation, based on the 2010 broadcast year results and CHEK TV’s own experience. Accordingly, adding a new source of local, regional and national advertising, targeted at the BC market and specifically focused on Victoria will cause disruption for existing television broadcasters.

Impact on CHEK’s Advertising Revenue

24. We have conducted our own analysis of the potential impact on CHEK TV of the addition of Shaw’s proposed service. In conducting this analysis it is important to keep the following factors in mind:
 - Shaw has enormous competitive advantages in the sale of all types of advertising in our market to national, regional and local advertisers. It has multiple broadcast properties throughout BC, including its own community channel and local avails in US satellite services (which are used to acquire “sponsorship advertisers”) that it can sell on a cross-platform basis.
 - The addition of a second broadcasting outlet in BC is going to permit Shaw to lower their overall cost per point to advertisers and increase the competitiveness of their offering. In the past, Canwest had used CHEK TV to cost average advertising sales between CHEK TV Victoria and CHAN TV Vancouver in British

² First Quarterly Report, MD&A, January 12, 2012 at pages 12-13.

http://www.shaw.ca/uploadedFiles/Corporate/Investors/Financial_Reports/1stQtr2012.pdf

³ Q4 2011 Results and 2012 Analyst Guidance Call at page 12.

<http://www.bce.ca/data/documents/reports/en/2011/q4/2011q4-pres-en.pdf>

Columbia. By selling one station at a higher rate and another at a lower rate, they lowered their cost per point. This option had gone away after their departure from the Victoria market. The new service would enable the same sales tactics to be used to the detriment of all the smaller stations in BC, and particularly for CHEK TV which is in a core market to be targeted by the new service.

- The new service proposes to offer national, regional and local advertising in precisely the same way that a conventional television service would provide such advertising. The impact, therefore, of adding the new specialty service will be directly comparable to the impact of adding an additional conventional OTA service in our market. At this point it would seem incredible if such a service were to be added in our market, especially given the fact that Canwest has only recently decided that the market wasn't sufficiently strong even to support its existing "affiliated" station (with all of the economies of scale that implies).
 - Shaw has indicated that the service will be targeted at the Vancouver/Victoria extended market, in particular. In other words, the Victoria market (in which Shaw currently does not have a television outlet) is squarely in Shaw's sights. It can be expected that Shaw will aggressively promote its new service to advertisers in our market – and to regional and national advertisers that want to reach viewers in our market.
25. CHEK TV estimates, therefore, that over a three year period, Shaw's new service is likely to draw advertising revenue from CHEK TV to a level of between 20% and 30% of our total advertising sales. As we noted above, the impact of the new station will be similar to the addition of a new conventional television station in our market. In some ways it may even be worse because the new station will not have the same infrastructure and digital transmission costs that a real conventional OTA service would have.
26. This is a quite realistic, and very worrying, projection. As discussed above, the television advertising market in BC continues to be weak. It has not experienced anything near the level of growth that would support the addition of a new television service in our market. It has not even recovered to pre-recession levels. This means that advertising on the new service must, necessarily, cannibalize the revenues of existing television stations. It should be kept in mind that this kind of cannibalization will be taking place at the same time as conventional local television stations are facing new advertising competitors from new media – and from increased penetration of on-demand television programming offered on mobile platforms and on Shaw's own on-demand platforms.
27. **The impact on advertising and directly related revenues would be somewhere between \$1.1 Million and \$1.6 Million in lost revenue. For a large vertically integrated operation, these amounts would be immaterial; however for CHEK the impact would be devastating.**
28. A 20% to 30% impact on CHEK TV's advertising revenues would be highly damaging to the station. It would set back our recovery, to say the least. More likely, it would

imperil our continued operation as a locally-focused independent station. We would be, in other words, back to the situation the station faced in 2009 when Canwest first decided to leave the Victoria market.

CRTC Should Evaluate the Potential Impact of Category B services on Local Broadcasters

29. CHEK TV recognizes that the Category B application process has been streamlined in recent years. This streamlining reflects the fact that Category B services are licensed by the Commission to operate in competitive formats with each other. Accordingly, the Commission has not usually considered it to be necessary to require Category B services to provide complete financial projections or to analyze the impact that the service would have on other programming services. By definition, the only programming services with which a Category B service would normally be expected to compete would be other Category B services.
30. However, in circumstances where a Category B service will compete with services other than a Category B service, the Commission should evaluate the impact of the Category B service on those other services. Otherwise, the situation will arise where Canadian programming services with the least material obligations and greatest flexibility (i.e. Category B services) end up damaging Canadian programming services with much greater obligations and much less flexibility. These other stations would include, of course, independent OTA television stations that do not operate within the flexible "group" licensing framework such as CHEK TV. Not only would such a situation run contrary to establishing a sustainable competitive framework among different categories of television services, it will also result in an overall decline in the achievement of broadcasting policy objectives. The much more lightly regulated Category B services that make less contribution to policy objectives, will damage services that make a much greater direct contribution.
31. The Commission has in the past stated explicitly that it will evaluate the impact of proposed new Category B services on local conventional television stations. In *Broadcasting Decision CRTC 2004-321*, in which the Commission denied an application for a Category B service, the Commission stated the following:

In Introductory statement - Licensing of new digital pay and specialty services, Public Notice CRTC 2000-171, 14 December 2000, the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an existing pay, specialty or Category 1 service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question. The Commission also takes into account the potential impact on conventional television services. [emphasis added]
32. It is not sufficient, as Shaw Media has done, simply to argue that because regional news specialty services may have been licensed in the past in other markets, the licensing of a news service focused on the Vancouver/Victoria extended market should raise no issues for the Commission. This argument completely ignores the detrimental impact that this proposed service will have on other services in the market. This approach makes no

sense from the perspective of public policy, or the Commission's objective of maintaining a vibrant local television broadcasting sector (which has been an urgent policy objective for the past several years).

33. In addition, the circumstances in which the Commission may have approved regional specialty news services in the past are considerably different than the situation facing the industry now. For example, CP 24 was first licensed in 1996, at a time when conventional OTA services were still a dominant force in the broadcasting industry, there were far fewer specialty and pay television services overall, and audience fragmentation had reached nowhere near present levels. Similarly, when CITY News was licensed in 2008, it was certainly not apparent that the television advertising market was about to fall off a steep cliff (which it did in 2009). Also, licensing CITY News for the GTA market arguably created more competitive balance between the CTV owned conventional stations and CP24 on the one hand, and the Rogers Media owned CITY stations on the other. There is no question of any such "balance" in the current instance since.
34. These prior instances in which the Commission has approved regional or local specialty news services in other markets do not, therefore, establish a precedent for the current application. It is imperative for the Commission to consider the impact on other services in the market including the impact on conventional television stations such as CHEK TV. As we have detailed in this intervention the impact will be most damaging. The service should be denied on that basis.

There is no Benefit to Diversity in the Market

35. As a final point, the proposed service will not actually result in the introduction of any greater diversity into the market. In fact, approval of the application would result in an overall reduction of diversity with the decline in CHEK TV's well-being and an inevitable reduction in the local service we provide to Victoria and Vancouver Island.
36. Shaw Media's Global News cast is already fully accessible in Victoria and throughout Vancouver Island. Shaw Media's Vancouver station, which of course broadcasts BC news programming, is receivable on an over-the-air basis in Victoria and is naturally distributed on all of Shaw's cable systems in BC (and likely well beyond BC). The station is also currently available on Shaw Satellite on a national basis.
37. The proposed service does not, therefore, represent the introduction of a new editorial voice or increased diversity into the market. It represents, rather, a re-packaging and re-iteration of existing news programming already available in the market in order to capture additional advertising, and tap into subscription revenues.
38. For that matter, it is not apparent that Shaw Media intends to actually offer local programming originating from Victoria or Vancouver Island. It appears, instead, that Shaw Media will merely employ "local news-gatherers", as described in its Supplementary Brief. Even national news services employ "local news-gatherers" in individual markets that are large enough. However, this falls far short of maintaining a local studio providing original, locally-produced programming that serves the local interests of a particular community.

39. No doubt Shaw Media will argue that the proposed service will result in the creation of additional news programming for the market place. However, the important point to consider is that this news source is already available in the market (albeit not on a constant basis). The service represents the entrenchment of a dominant media voice, not the creation of additional media diversity in the market.

Conclusion

40. CHEK TV appreciates this opportunity to comment on the Shaw Media application. There is no doubt that the approval of this application would be materially damaging to CHEK TV and set back our effort to maintain a local service dedicated to Victoria and Vancouver Island. The proposed new service would result in a uncompetitive playing field that would be pitched steeply in Shaw Media's favour and on which a smaller, local independent OTA service will be hard pressed to maintain a footing. The proposed new service does not represent the introduction of greater programming or editorial diversity into the target markets and we expect that it will substantially harm diversity.
41. The application should be denied. Alternatively, if the application is approved by the Commission, the applicant should be limited to providing national advertising in order to offset, somewhat, the negative impact on local broadcasters such as CHEK TV.
42. We have provided a copy of this intervention to the applicant.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Pollard', with a large, stylized initial 'J'.

John Pollard

c.c. charlotte.bell@sjrb.ca