



February 21, 2012

VIA ACCESS KEY

Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Attention: John Traversy, Secretary General

Dear Sirs/Mesdames:

**Re: Broadcasting Notice of Consultation CRTC 2012-29
Application 2011-1584-0 by Shaw Television G.P. Inc. and Shaw Media Global Inc.
Carrying on Business as Shaw Television Limited Partnership (Shaw)
Intervention by Jim Pattison Broadcast Group Limited Partnership (Pattison) and
Astral Media Radio G.P. (Astral) (“The Local Market Stations”)**

INTRODUCTION

1. We file this Intervention on behalf of the Jim Pattison Broadcast Group Limited Partnership (“Pattison”) and Astral Media Radio G.P. (“Astral”) (Pattison and Astral shall be referred to herein as the “Interveners”). The Interveners oppose Shaw’s application for a broadcasting licence to operate a regional, English-language specialty Category B service to be known as Global News Plus BC.
2. The Interveners submit that if the Commission determines the Application should be approved that a Condition of Licence restricting the service to national advertising only should be imposed and Local Market Stations should be permitted to “cover over” any regional advertising and sell local advertising as provided for in Global Vancouver’s (and other over-air Vancouver based stations’) conditions of licence. Shaw should be required to provide the Local Market Stations with the HD signal for the purpose of enabling the cover over of any regional commercials. The Commission should require Shaw to work with the Interveners to ensure a mechanism is in place which ensures Shaw’s proposed service does not sell or carry advertising which other Vancouver based stations are prevented from airing in the secondary television markets that the Interveners serve in British Columbia. It would be contrary to the public interest to allow Global News Plus BC to sell advertising that Global TV Vancouver and other Vancouver based over-air television stations carried in the Local Market Stations’ service area are not permitted to sell.

3. Pattison owns and operates the sole local television services licenced by the Commission to service Prince George and Kamloops, British Columbia. Astral is licenced by the Commission to provide local television service in Terrace and Dawson Creek, British Columbia. These stations (the "Local Market Stations") provide the only local television programming services in the communities in which they reside. The programming is dependent on local, regional and national advertising revenues. The Local Market Stations provide local service primarily in the news and information areas. The local programming is of significant importance to the communities served, providing local news service, keeping the community aware of local cultural, political and social events, and advising of local weather or emergency conditions. Each of the Local Market Stations has won numerous community service, provincial and national awards for the service it provides. The Interveners consider this service an essential service to their communities and to the Canadian Broadcast System.
4. The Local Market Stations submit it is imperative that the Commission impose a condition of licence on Shaw protecting the Local Market Stations from the loss of regional advertising revenue to this Vancouver based service which seeks carriage on BDUs serving communities serviced by the Local Market Stations.
5. The Commission recently renewed the over-air television licences for Global Vancouver and CTV Vancouver and both those stations willingly accepted long standing conditions of licence which recognized the vulnerability of the Local Market Stations in British Columbia. To now approve a Vancouver based specialty service (which also has no local production presence outside of Vancouver) to target regional advertisers which cannot be sold by over-air Vancouver based service will have the effect of reducing regional advertising which would be sold by the Local Market Stations.

COMMENTARY

Balance Between Vancouver Based and Secondary Market Stations in British Columbia

6. The very existence of the Local Market Stations is in significant part the result of Commission supported long-standing conditions of licence for Vancouver based television stations. The conditions of licence have enabled the secondary market stations to serve their local markets by having the right to replace Lower Mainland and regional advertising commercials of CHAN-TV and CIVT-TV (CTV) Vancouver with local commercials and regional accounts sold by the Local Market Stations. The Commission recognized the importance of encouraging this approach by making it an initial condition of CHAN-TV's licence that such agreements be put into place. The conditions of licence have never been removed and remain in effect today. This new Vancouver based service should have the same condition of licence imposed to ensure continued ability of the Local Market Stations to provide the local service they provide.

Economic Harm to the Interveners

7. The Commission has on file the annual financial returns of the Local Market Stations. The Commission is aware that advertising revenues of secondary market television stations have

been in decline in recent years. The removal or amendment of these conditions of licences would have significant further negative impact on local, regional and national advertising revenue.

Loss of Regional Advertising

8. Turning to national advertising, advertising representatives of the Interveners indicate that approximately 50% of all national advertising revenue obtained by the Local Market Stations is regional in nature. By “regional in nature” we mean advertising which takes advertising dollars out of a local community and applies them to a province-wide purchase of advertising. An example would be a McDonald’s franchisee that provides advertising revenue to the franchisor on a commitment that a certain percentage of that advertising money will be spent in the local market of the McDonald’s franchisee. The same principle applies with respect to Chrysler dealers in British Columbia and other significant regional advertisers. Other key examples include Lotto BC, ICBC and BC Hydro. This form of advertising has historically been the bread and butter of the Local Market Stations. Its availability to the Local Market Stations which are providing a local service in their communities is fundamental to their survival. Removal of the condition of licences would enable Vancouver stations to pursue advertising monies previously available only to Local Market Stations as a result of existing arrangements. The loss of any part of that revenue, which approximates 50% of the national advertising revenue of those stations, will cause material economic harm to the Interveners. The proposed Shaw service should not be permitted to sell this advertising as it will have a material detrimental impact on the Local Market Stations.
9. It is important to note that the Interveners are not suggesting that revenue lost may be available to the Shaw proposed service. In fact, the regional advertising will, in effect, likely be “given away” by the Shaw proposed service as it will attribute little value to the advertising revenue generated in the secondary markets. Vancouver stations typically sell the advertising with the rest of the province as a give away. The Interveners submit that the Commission prevents that result by imposing the conditions of licence and that has preserved the viability of the Local Market Stations.

The Historical Approach of the Commission to Ensure the Survival of Local Market Television in British Columbia

10. Historically, the situation of a Vancouver based station seeking to enter secondary markets in British Columbia has been dealt with either by the imposition of a condition of licence or the negotiation of a commercial arrangement between the major market licensee and the Local Market Stations. In the CHAN-TV situation, a commercial arrangement was negotiated and became a condition of licence of CHAN-TV. That approach, which we regard as a balanced and responsible, has ensured the protection of the Local Market Stations. The approach should apply equally here particularly as the proposed service already receives the benefit of subscription revenue. To permit solicitation of regional advertising where no local service is proved outside of Vancouver is inconsistent with the historic approach which has dealt with the unique market circumstances in British Columbia.

11. In the case of the CBC, the Commission will recall the significant dispute between the CBC and its local secondary market affiliates with respect to regional sales which occurred in the mid-1990s. The CBC and the secondary market affiliates were able to arrive at a commercial arrangement to solve that problem outside of regulatory intervention. This precedent was followed for CITV-TV Vancouver.
12. The arrangements with CHAN-TV, CIVT-TV and the CBC recognize that the secondary market stations serve an important role in their respective communities by providing programming that is relevant and reflective of the residents of such communities. However, these stations cannot continue to serve their communities at current levels if they cannot be assured primary access to the local, regional and national advertising markets. Accordingly, any decision by the Commission that affects the Interveners' access to regional advertising will jeopardize the financial viability of these secondary market stations.
13. As an example of local service, the Pattison station, CFJC-TV, operates from Kamloops and provides a broad range of local and regional programming to 170,000 viewers in its broadcast area. It also produces over 16 hours per week of local programming, bringing its viewers coverage of local news, weather, and other matters of community interest. Without the assurance of primary access to the local, regional and national advertising markets, CFJC-TV simply will be unable to serve the community at the same level. The same can also be said of the other Local Market Stations.

Commission's Obligations under the *Broadcasting Act*

14. Section 3(1) of the *Broadcasting Act* provides that it is a component of Canadian broadcasting policy that distribution undertakings "give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations". To the extent that the distribution of a Vancouver (or Victoria) Category 2 Specialty Service with no local news service enters the Interveners' local markets and captures regional advertising revenue while providing no local service negatively impacts upon the viability of local Canadian stations, contrary to the objective of the Act.
15. The Interveners submit that Shaw's application is ambiguous in that they describe their proposed service as a "**regional**, English-language, Category B specialty programming undertaking" (our emphasis) but state that it could benefit from national distribution, as per the following wording contained in their application: "(f)or clarity, while the content of the proposed service is best described as regional, we are applying for national distribution in the event that a broadcasting distribution undertaking (BDU) wishes to carry this service outside of the Province of British Columbia."
16. The Commission published its policy regarding advertising for "all Category B specialty services" in the Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2, Broadcast Regulatory Policy CRTC 2010-786-1, 18 July 2011 (the "Broadcast Regulatory Policy"). Indeed, in the Broadcast Regulatory Policy, the Commission states at section 7 d) that:

(d) The licensee **shall not** broadcast any paid advertising material **other than national paid advertising**. (our emphasis)

17. Shaw is therefore seeking an exception to the Broadcast Regulatory Policy by requesting the ability to broadcast 6 minutes of local advertising on its national category B specialty service. The Interveners submit that there are no grounds for accepting to bend the principle established in the Broadcast Regulatory Policy. In fact, in Decision CRTC 2000-438 for Cable Pulse 24 (hereinafter "Pulse 24") cited as a precedent in Shaw's application, the Commission approved Pulse 24's application to allow it, as a specialty service, to sell local advertising in the Toronto market, while "being made available via satellite to all broadcasting distribution undertakings across the country" on the basis of the presence of a unique set of circumstances. Such circumstances included the fact that the advertising market in the GTA was healthy. The Interveners respectfully submit that the state of the concerned market is not ideal and that the Local Market Stations are in a current state of vulnerability as explained hereinabove. Therefore, the Interveners ask that an exception not be granted.

CONCLUSION

18. The Interveners wish to appear at the hearing into matter in the event Shaw does not acknowledge and accept the proposed condition of licence in their reply comments to this intervention.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

**JIM PATTISON BROADCAST GROUP
LIMITED PARTNERSHIP**



Rick Arnish,
President

cc: Shaw Television Limited Partnership

Yours truly,

ASTRAL MEDIA RADIO G.P.



Don Shafer
Vice President & Regional Manager