



Claude Doucet  
Secretary General  
Canadian Radio-television  
and Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Doucet:

**Re: Call for Comments on Low Motion Programming  
*Broadcasting Notice of Consultation CRTC 2020-324***

1. These are the reply comments of Stingray Group Inc. ("Stingray") regarding the Commission's call for comments on low motion programming. As discussed in our initial submission, Stingray supports including services that offer low motion programming within the exemption order for still service programming services.
2. In our initial submission we also recommended that:
  - A. still images and low motion content could be combined within a single service;
  - B. the exemption order should be explicit that content on a low motion or still image service could be promotional in nature (which is already the case, but is not made explicit in the order);
  - C. low motion programming could be accompanied by related background sounds and not just music and the other currently identified audio content; and
  - D. most importantly, that the Commission confirm that the existing linkage requirement for exempt non-discretionary services in section 19(5) of the *Broadcasting Distribution Regulations* applies to these services and, further, that the linkage be applied to *independent* services and not just unrelated services.

#### **Content of Low Motion Services**

3. All of the participants in this process agree that it would be appropriate to exempt low motion services and to amend the still image exemption order accordingly. Apart from Rogers, the other participants did not otherwise comment on the content of these services.

4. Regarding Rogers' comments, we disagree with the suggestion (found in paragraph 11 of Rogers' intervention) that the programming of still image/low-motion exempt services should consist "entirely of either still images OR low-motion programming". This would unnecessarily prevent low motion and still image services from combining the two formats.
5. Currently, since BDUs are already operating low motion services under the still image exemption order, it seems that the exemption order already permits the broadcast of the two types of programming on the same service. If Rogers' proposal were accepted, the exemption order would actually become more restrictive than it is now. A service that wished to offer both low motion and still image programming would need to apply to the Commission for a licence after reaching the subscriber threshold for exempt services. This would be counterproductive and increase the administrative burden for the Commission and operators.
6. We would re-phrase the beginning of section 4 of the Still Image Exemption Order as follows:
  4. The undertaking's programming is provided **exclusively** to distribution undertakings, and consists **entirely** of still images with or without alphanumeric and/or low-motion programming, and with or without an audio component, consisting of:

It is to be noted that we have suggested the removal of the word "exclusively". It is not clear what purpose this word serves in the existing exemption order. Presumably, the intention had been to prevent the broadcast of this type of content over-the-air. However, the word is not necessary for the exemption order to have this effect. Also, it could raise needless confusion if, for example, an otherwise exempt service were offered on the Internet or by way of a mobile app as well as being offered to distribution undertakings.
7. Upon reflection, Stingray also believes that it would be helpful, and avoid administrative burden in the future, if the exemption order were to permit the broadcast of commercial messages that were not necessarily related to the on-screen images. The fact is that low motion services that currently operate as licensed or exempt discretionary services are permitted to broadcast such advertising. This potential has not raised any difficulties in the industry that we are aware of.
8. Providing this sort of flexibility could enable more innovation in the format. In addition, it would mirror the type of content that is found on comparable services in an online environment. In an online environment video content is often preceded by pre roll advertising, which is designed so that it does not disrupt the flow of the content once it starts. A similar advertising format could be employed for still image and low motion content.

9. Stingray believes that allowing for greater flexibility to offer commercial messages would be beneficial for the development of these services. The alternative – if operators wished to add commercial messages to the service – would be for a service operator to operate under the discretionary services exemption order and, ultimately, under a CRTC licence if the subscriber threshold were passed. Once again, the requirement for a licence in these circumstances would be counterproductive and increase the administrative burden for the CRTC and service operators.
10. Lastly, regarding the content of these services, again upon reflection we just wished to note that the proposed definition for low motion content could contain an unintended ambiguity. The definition provides that the content consists of “extended coverage of an ordinary event or scene with no or limited video editing or camera movement.”. We agree, in principle, with this definition. Our only concern is that the reference to the lack of “camera movement” could be interpreted as preventing content in which the camera itself could be placed on *another* moving object.
11. For example, one of the more famous instances of Slow TV (discussed below) involved the placement of a camera on a moving train travelling for ten hours through Northern Norway. The camera itself was fixed, but the train moved. Similarly, footage captured from flying drones has been a feature on Stingray Naturescape for some time. The camera moves because it is attached to a moving object, but other camera techniques are not employed. Given these approaches to content, we would recommend removing the phrase “or camera movement” from the proposed definition of low motion programming. It should be sufficient that the content is limited to “extended coverage of an ordinary event or scene with no or limited video editing”. Alternatively, the Commission could clarify that situations in which the camera itself is placed on a moving object is not considered “camera movement”.

#### **Linkage for Exempt Low Motion Services**

12. Stingray is deeply concerned by the suggestion made by both Shaw and Rogers that exempt low motion programming services should not be subject to the long-standing linkage rule for exempt *non-discretionary* services set out in section 19(5) of the *Broadcasting Distribution Regulations*. In particular, we strongly disagree with Rogers’ suggestion, that subsection 19(6) of the BDU Regulations be amended as follows (Rogers’ changes in bold):
  - (6) Subsection (5) does not apply to the distribution of the following services:
    - (a) an exempt discretionary service of a related exempt programming undertaking; and
    - (b) a low-motion programming service of a related or unrelated exempt programming service.**

13. The effect of Rogers' proposal would be to exclude this type of exempt service from any linkage requirement whatsoever. There is no legal or policy reason to exclude these services.
14. In Shaw's case, it has requested that the Commission "clarify" that related low motion services should not be subject to this linkage requirement. We do not understand on what basis this would be clarified. If existing low motion services have been operated by BDUs under the existing exemption order for still image services, then these services are already captured by section 19(5) of the *Broadcasting Distribution Regulations* and BDUs are already subject to a linkage requirement regarding these services. It is clear that this section applies to all exempt programming undertakings other than exempt discretionary services. There is no need for clarity on this point.
15. Rogers goes further and suggests that authorizing low motion services under the still image exemption order would have the "unintended consequence" of making these services subject to section 19(5). Again, since it seems that some BDUs already operate low motion services under the still image exemption order, these services are *already* subject to the linkage requirement under section 19(5). This is not unintended. The Commission has been explicit in developing its access policies and rules for BDU platforms that these policies and rules should include access for exempt programming services – to prevent preferential treatment for a BDU's own services.<sup>1</sup>
16. BDUs play a fundamental gatekeeping role in the Canadian broadcasting system. It is inconceivable that the extremely high level of ownership consolidation and vertical integration of BDUs and programming services would ever have been permitted in the Canadian broadcasting system unless the CRTC had put in place strong access rules to prevent preferential dealing and anti-competitive behavior by BDUs. This has included access rules for exempt programming services since at least the mid-1990s.
17. If anything, the need for a clear rule to ensure fair access to BDU platforms for independent exempt services is more evident now than when it was first established. Since the 1990s, the broadcasting system has become heavily concentrated and, as the Commission is well aware, Canada's largest BDUs now own or are affiliated with the bulk of Canada's television broadcasting services. In this environment there is a profound incentive for BDUs to prefer to distribute their own broadcasting services, including their own exempt services. The existing 1:1 linkage rule regarding discretionary programming services addresses this issue for traditional discretionary television services. The existing 1:1 linkage rule regarding exempt services addresses this same issue for exempt services.
18. While Rogers and Bell are dismissive of the value of low motion services in their submissions, the fact is that these services are present in the channel lineup of many BDUs and have played a role in providing valued programming to Canadians for many years. In fact, Shaw Cable was one of the first operators to provide low motion programming in Canada through its seasonal fireplace channel. The "arm", which put

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<sup>1</sup> See the discussion in *Broadcasting Decision CRTC 2010-590*, which is referred to in our initial submission.

logs on the fire throughout the day, even became something of a celebrity.<sup>2</sup> In a different vein, Rogers has explored the promotional opportunities of low motion services with its channel featuring rotisserie chicken.<sup>3</sup> In some ways, low motion content is the original Slow TV<sup>4</sup>, a programming format that has found viewers around the world through creative thinking and an innovative approach to content.

19. While some Canadian BDUs, such as Shaw in particular, led the way in developing low motion content for television, BDU-owned services remain relatively underdeveloped. They are still focused primarily on the fireplace or aquarium, which perhaps helps to explain the BDUs' overly-dismissive comments about the contribution of these services within the Canadian broadcasting system.
20. In comparison, Stingray's low motion service, Stingray Naturescape, is, we believe, highly creative and innovative. Our programming strategy includes various programming blocks with selective content such as:

***Nature Zen & Relaxation:*** Ocean waves, forests, waterfalls, windy mountains

***Escapism & Travel:*** Sunny getaways, inspiring sights and remote places, world wonders, fly-overs

***Home / outdoor type of Ambiance:*** Fireplace, campfire, romantic candlelight, meditation, inspiring time-lapses

21. It is not merely a question of "pointing a camera at something (e.g. a natural scene or ongoing event) and leaving it alone", or simple "background programming more akin to wallpaper", as Bell states. Rather, making good and successful low motion television requires an artistic eye, a high level of technical skill and sophisticated equipment (such as drones and high-end cameras (8K) using underwater and aerial equipment) as well as editorial judgement. These scenes must also be updated and refreshed continuously to avoid viewer fatigue. Viewers of our service experience a variety of artful and carefully curated scenes that can evoke a deep emotional response – as the best television often does.

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<sup>2</sup> *The Shaw Fire Log: The mysterious hand has been stoking the fire since 1986* (Global News, December 23, 2013) <https://globalnews.ca/news/1047896/the-shaw-fire-log-the-mysterious-hand-has-been-stoking-the-fire-since-1986/>

<sup>3</sup> *Rogers' new ambient TV: Rotisserie chicken* (Globe and Mail, February 22, 2011)

<https://www.theglobeandmail.com/report-on-business/rogers-new-ambient-tv-rotisserie-chicken/article567637/>

<sup>4</sup> *Slow TV Is Here* (New Yorker, September 30, 2014) <https://www.newyorker.com/culture/cultural-comment/slow-tv>

22. Our content is made up of still images and dynamic videos including time-lapse videos (i.e. a landscape filmed from dawn till dusk and shown in acceleration) and fly-overs using drone technology. The following is an illustration of the scenic content that could be available on Stingray Naturescape during a day in low motion format (with programming segments typically lasting at least one hour):

*Pure Relaxation* - Relax to the slow descent of the sun over calm waters.

*Amherst Cove, Newfoundland* - Head to Newfoundland's Amherst Cove to admire the quiet and glacial beauty of icebergs drifting across the bay.

*Sainte-Mélanie, Quebec* - In the heart of the Saint-Mélanie woods, ablaze with autumn colour, you will find a barn-red and picturesque covered bridge.

*Banff, Canada* - Our truer-than-life fireplace, filmed in Banff, Canada, will fill your home with warmth and happiness.

*Lake Hawea, New Zealand* - Immerse yourself in the serenity of New Zealand's Lake Hawea as waves gently envelop the shore and roll away.

*Rustic Fireplace* - Warm up to the comforting glow of a wood-burning fireplace.

*Lake Wanaka, New Zealand* - Feast your eyes on the vivid hues and breathtaking view of Lake Wanaka in New Zealand.

*World Wonders* - Go on a four-season global adventure to discover some of the world's most awe-inspiring scenery.

*Fly Over Earth* - Go on a global journey to some of the most scenic destinations the world has to offer.

*Dordogne, France* - In the French region of Dordogne, take a moment to brighten your day by admiring a field of yellow wildflowers as far as the eye can see.

23. Exempt programming services, including low motion services, do indeed have a role to play in the broadcasting system, although we recognize that it is a *different* role to that played by more traditional discretionary television programming services. Just as it is appropriate, necessary even, for the Commission to ensure that BDUs do not unfairly advantage their own traditional discretionary television services (and exempt services), and disadvantage independent services, it is similarly necessary for the Commission to ensure that non-discretionary independent exempt programming services also have fair access to BDU distribution.
24. This is why we urge the Commission to amend the linkage rule in section 19(5) of the *Broadcasting Distribution Regulations* to ensure that when a BDU carries its own related exempt programming service (including a low motion service), only an *independent* low motion service would qualify for linkage. Otherwise, there is a real risk that BDUs would simply swap the low motion services operated by each other without any gain in creativity or innovation to the system.
25. Stingray Naturescape was first developed under the regulatory model for an independent discretionary television service. We believe that it has made a contribution to the broadcasting system as an innovative, creative and competitive independent service. It would be damaging if, by reclassifying the same service as an exempt service under the still image exemption order, it were then faced with greater disadvantages in terms of gaining access to BDU platforms.
26. To avoid this result, it is necessary to ensure that the linkage requirement for low motion services can be satisfied only by the distribution of an independent programming service – which is similar to the rule currently in place for discretionary television services under subsection 19(3) of the *BDU Regulations*.
27. It will be of no advantage to diversity in the broadcasting system – or to Canadian subscribers – if BDUs fulfil the linkage requirement for their own low motion services simply by distributing the low motion service of another BDU. If there were no linkage for independent services, then the value to the independent operator of the exemption order would be profoundly undermined. This would create the incentive for the operator to provide additional content and to operate as an exempt or licensed discretionary service, rather than an exempt low motion service.

#### **Conclusion**

28. Stingray supports the Commission's proposal to exempt low motion programming services, as contemplated in the Notice of Consultation. We have made a few suggestions regarding how low motion services could be incorporated into the still image exemption order to best reflect their operation and the Commission's intentions.
29. Stingray strongly opposes the suggestion made by other parties in this proceeding that the long-standing linkage rule that applies to exempt services should not apply to low motion services. There is no principled reason for excluding this category of exempt service from the linkage requirement and, in any case, it already applies to the low

motion services that BDUs have apparently offered under the existing still image exemption order.

30. In fact, as we have discussed above, the linkage rule needs to be strengthened to ensure that only an *independent* low motion service may be used for linkage purposes. This would ensure that innovative and creative services, such as Stingray Naturescape, continue to have an opportunity to grow and develop and, indeed, to make a contribution to the broadcasting system in a way that is appropriate for this type of service.

Yours truly,



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