



October 20, 2020

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa ON K1A 0N2

Filed electronically

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2020-324 – *Call for comments on low-motion programming* (BNC 2020-324) – Reply to Interventions

1. Shaw Communications Inc. (**Shaw**) appreciates the opportunity to provide this response to interventions filed in BNC 2020-324, in which the Commission is considering:
 - whether to amend the current exemption order relating to still image programming services undertakings¹ to include low-motion programming services, and if so, how “low-motion programming services” should be defined; and
 - whether low-motion programming services should benefit from regulatory protections that are similarly offered to independent discretionary services.
2. As stated in Shaw’s intervention, Shaw agrees with the Commission’s proposal to include low-motion programming services within the Still Image Exemption Order, as well as the Commission’s proposed definition for low-motion programming. Shaw also agrees with certain modifications and clarifications proposed by interveners, including:

¹ Public Notice CRTC 2000-10 – *Final revisions to certain exemption orders* (24 Jan 2000) [**Still Image Exemption Order**].

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- Rogers Communications Canada Inc.’s proposed amendment to s.4 of the Still Image Exemption Order to include the additions in bold:²

4. The undertaking’s programming is provided exclusively to distribution undertakings, and consists entirely of **either** still images with or without alphanumeric text **or low-motion programming**, and with or without an audio component consisting of

- Stingray Group Inc.’s (**Stingray**) proposed amendment to s.4(a) of the Still Image Exemption Order to include the additions in bold:³

background music **or background sounds that relate to what is presented by the still images or the low-motion programming.**

3. However, Shaw is strongly opposed to Stingray’s request that low-motion programming services benefit from regulatory protections provided to independent discretionary services, including the access rights contained in ss.19(3) and (5) of the *Broadcasting Distribution Regulations*.
4. It would be highly inconsistent for the Commission to exempt low-motion programming services in order to remove them from the protection of the 1:1 ratio pursuant to s.19(3) only to maintain the same level of regulatory protection pursuant to s.19(5). Stingray’s request to create an entirely new form of access on a “like for like basis”⁴ would result in a dangerous precedent that achieves the exact opposite of the Commission’s stated objectives in BNC 2020-324. Moreover, as conceded by Stingray⁵, it would require amendments to the *Broadcasting Distribution Regulations* that are both inappropriate and entirely out of scope of this proceeding.
5. The Stingray proposal would fail to “strike an appropriate balance between ensuring continued programming diversity and providing BDUs with some flexibility.”⁶ Given the Commission’s finding of the limited contribution made by low-motion programming services to the broadcasting system, increasing BDUs’ costs and limiting our flexibility in the carriage of independent and related low-motion programming services cannot be justified. Moreover, in today’s distribution environment, granting access rights to low-motion programming services would only further harm BDUs’ ability to compete with Canadian and non-Canadian OTT services, ultimately to the detriment of the strength of

² Rogers’ Intervention, para. 11. Shaw assumes that the “Purpose” section of the Still Image Order will also be amended to include “low motion programming” (addition in bold):

The purpose of these television undertakings is to provide distribution undertakings with programming consisting of still images, (including graphic images) **and/or low-motion programming** with or without an audio component, and with or without a fee being charged to any distribution undertaking receiving the service.

³ Stingray Intervention, para. 9.

⁴ Stingray Intervention, para. 17.

⁵ Stingray Intervention, para. 21.

⁶ BNC 2020-324, para. 8.

the broadcasting system as a whole. Rather than introducing new prescriptive and protectionist obligations on BDUs, Shaw urges the Commission to examine ways in which BDUs' regulatory requirements can be reduced and greater symmetry with OTT services can be achieved.

6. Finally, Shaw submits that requiring BDUs to carry independent low-motion programming services irrespective of consumer demand and in a system of finite capacity is inconsistent with the *Broadcasting Act's* objective that distribution undertakings provide "efficient delivery of programming at affordable rates" (s.3(1)(t)(ii)).
7. For all the foregoing reasons, Shaw respectfully requests that the Commission confirm that independent low-motion programming services will not benefit access rights set out in s.19 of the *Broadcasting Distribution Regulations* or from other regulatory protections offered to independent discretionary services.
8. Shaw appreciates the opportunity to submit these reply comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dean Shaikh". The signature is fluid and cursive, with the first name "Dean" and last name "Shaikh" clearly distinguishable.

Dean Shaikh
Vice President, Regulatory Affairs