



**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

December 13, 2007

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

*Via Epass*

Dear Mr. Morin:

**Re: Broadcasting Notice of Public Hearing CRTC 2007-16 (NPH 2007-16) re Shaw Communications Inc. (Shaw) on behalf of Shaw Cablesystems and Star Choice**

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB strongly supports the Commission's decision to call Shaw to a public hearing to determine whether a mandatory order should be issued requiring Shaw Cablesystems and Star Choice to implement simultaneous substitution for high definition (HD) television signals. In the CAB's view, such action is clearly warranted given Shaw's refusal to comply with the Commission's simultaneous substitution regulations with respect the CTV and CITY-TV HD signals in Toronto and the CTV HD signal in Vancouver.
3. Simultaneous substitution has been a central element of the regulatory framework for broadcasting distribution undertakings (BDUs) for over 30 years, designed to protect the program rights acquired by over-the-air (OTA) television broadcasters. In its 2003 policy determinations respecting the distribution of digital television signals<sup>1</sup>, the Commission

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<sup>1</sup> *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, November 11, 2003.

affirmed that this fundamental provision is equally valid in the context of HD television stations:

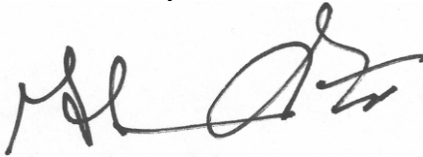
*Simultaneous substitution requirements protect the program rights acquired by Canadian broadcasters and help to underpin the continued financial health of the Canadian broadcasting system. The Commission remains of the view that, if a Canadian over-the-air digital signal is considered sufficiently valuable to be granted carriage by distributors, then it should also be granted the substitution rights that would accompany similar carriage under the current regulatory regime for analog signals. For this reason, the Commission will require that a primary digital signal carried by a distributor on a priority basis be afforded the same substitution rights as an analog signal with the same priority status.*

4. The owners of the CTV and CITY-TV stations in Toronto and the CTV station in Vancouver were willing to absorb the expense and risk associated with the establishment of HD transmitters in those markets. In return, they are clearly entitled to benefit from the implementation of simultaneous substitution by BDUs that are required to distribute their HD signals. If the Commission expects broadcasters to continue to deploy HD transmitters, it must be prepared to take whatever action is required to ensure that fundamental regulatory measures relating to the distribution of HD OTA signals, including simultaneous substitution, are respected by all BDUs.
5. Now, more than four years after the Commission's digital OTA policy determinations, Shaw continues to refuse to implement simultaneous substitution of HD signals. Shaw's position stands in stark contrast to the actions of other BDUs that were identified in the CAB's November 2006 complaint. Other BDUs have acknowledged their regulatory obligations respecting the substitution of HD signals, have taken appropriate measures to resolve any outstanding technical issues, have developed implementation plans to commence HD substitution prior to the end of 2007 and, in most cases to the best of the CAB's knowledge, are now carrying out HD substitution in accordance with the requirements of *Broadcasting Distribution Regulations*.
6. The facts pertaining to Shaw Cablesystems and Star Choice are a matter of public record. They are detailed in the CAB's November 2006 complaint and in subsequent correspondence by the Commission, the CAB and Shaw on behalf of Shaw Cablesystems and Star Choice. The CAB confirms that these facts remain valid, and that Shaw Cablesystems and Star Choice are not carrying out simultaneous substitution on behalf of the CTV and CITY-TV HD signals in Toronto and the CTV HD signal in Vancouver.
7. As noted in NPH 2007-16, the Commission has made a clear finding that "[c]onsistent with the policies established in Public Notice 2003-61, Shaw Cablesystems and Star Choice are required to perform substitution of HD signals over non-Canadian signals where the Canadian signals is of equal or superior quality."
8. Not only has Shaw failed to comply with this requirement, it failed to even provide an implementation plan to commence HD substitution by the end of 2007 as directed by the Commission in its August 1, 2007 letter. The only conclusion that can be drawn is that Shaw

has no intention of complying with its regulatory obligations respecting simultaneous substitution of HD signals.

9. Accordingly, the CAB submits that the Commission must proceed to issue a mandatory order directing Shaw Cablesystems and Star Choice to immediately implement HD substitution in compliance with the *Broadcasting Distribution Regulations*.
10. Failure by the Commission to take such action would effectively condone the actions of licensees who unilaterally decided which rules they will comply with and which they will ignore. This would make a mockery of the Commission's authority and call into question the integrity of the overall regulatory framework.
11. Shaw's actions are all the more disturbing given that in a separate proceeding they are calling for the outright elimination of almost all of the rules governing the distribution of programming services. While parties may be entitled to debate the merits of particular regulatory measures in the context of a Commission policy proceeding, there can be no debate about the principle that licensees must comply with the regulations to which they are subject at any given point in time.
12. The CAB now understands that Shaw has very recently written to the Commission indicating that it is prepared to implement HD substitution by December 31, 2007 and asking that the hearing announced in NPH 2007-16 be cancelled. The CAB believes that such a request is premature and that the Commission should not cancel the hearing at this time.
13. The CAB recommends that the Commission not take any decision with respect to the possible cancellation of the mandatory order hearing until and unless there is clear evidence that, commencing no later than January 1, 2008, Shaw is in full compliance with its regulatory obligations respecting HD substitution.
14. The CAB is prepared to appear at the public hearing to be held on January 15, 2008 in connection with this matter, if the Commission deems it helpful.

Yours sincerely,



Glenn O'Farrell  
President & CEO

c.c. Shaw Communications Inc. (Via email: [michael.ferras@srjb.ca](mailto:michael.ferras@srjb.ca))

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