



Canadian Association of Broadcasters  
Association canadienne des radiodiffuseurs

May 16, 2008

*Via Epass*

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

Dear Mr. Morin:

**Re: Broadcasting Public Notice CRTC 2008-33:  
Call for comments on the proposed addition of Big Ten Network to the lists of  
eligible satellite services for distribution on a digital basis; and  
Broadcasting Public Notice CRTC 2008-34:  
Call for comments on the proposed addition of The Sportsman Channel to the lists of  
eligible satellite services for distribution on a digital basis**

1. The Canadian Association of Broadcasters (“CAB”) - the national voice of Canada’s private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services - is pleased to submit these comments in response to the above-noted Public Notices (“the Notices”).
2. The CAB opposes the applications by Shaw Communications Inc. (“Shaw”) to add Big Ten Network and The Sportsman Channel to the lists of eligible satellite services (“the lists”) for distribution on a digital basis.

### **Questionable Timing for these Applications**

3. The CAB notes that the CRTC has just completed the first phase of its comprehensive and lengthy review of the regulatory frameworks for discretionary programming services and for broadcasting distribution undertakings (BDUs)<sup>1</sup> and a decision is pending regarding the fundamental policy principles which will guide the Commission’s approach to the major

<sup>1</sup> Notice of Public Hearing CRTC 2007-10.

issues considered in that proceeding. One of those major issues concerns the test the Commission should apply when assessing applications to add new non-Canadian services to the lists. The vast majority of interested parties that addressed this issue argued for, at a minimum, maintenance of the current test; many argued the Commission's test should be even more stringent in order to ensure Canadian services are not further undermined by the presence of foreign programming services that bear no Canadian content obligations and make no contribution to the creation and presentation of Canadian programming.

4. The CAB also notes that, in the course of the recent frameworks proceeding, the DTH BDUs (including Shaw's Star Choice) claimed they could not carry additional Canadian services because of capacity constraints. We cannot help but question the veracity of these claims in light of this application to add more US services for carriage. If the claim is indeed valid, however, we submit that limited channel capacity should be allocated first to Canadian services before the addition of further foreign services is contemplated.
5. In light of the just-completed proceeding and, in particular, the arguments noted above, the CAB questions the timing of the Notices. In our opinion, it would make sense for the Commission to impose a moratorium on applications to add new foreign services to the lists until it has determined its approach to such applications going forward.<sup>2</sup>

### **The Sportsman Channel**

6. Nevertheless, assuming the Commission will apply its current approach in these circumstances, the CAB submits that the application for The Sportsman Channel clearly fails that test and, on that basis, should be denied.
7. The CAB submits that The Sportsman Channel is directly competitive with the Canadian service, Wild TV, and at least partly competitive with the Canadian service, World Fishing Network. The nature of The Sportsman Channel, its schedule, its target audience, its genre and language of programming and its program supply all evidence the direct and significant competition that it represents to these Canadian services.
8. Given the substantial direct overlap in hunting, fishing and shooting and related lifestyle programs between The Sportsman Channel and Wild TV<sup>3</sup>, and the large amount of fishing or fishing-related programming on The Sportsman Channel when considered against the line-up of the dedicated Canadian fishing programming service, World Fishing Network<sup>4</sup>, it is clear The Sportsman Channel will not add meaningful choice or incremental diversity to the Canadian broadcasting system. The loss of access to programming rights or increases in rights fees faced by Wild TV and World Fishing Network, however, will negatively impact the amount of their investment in Canadian programming.

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<sup>2</sup> Some parties have suggested that the Commission should establish an even longer moratorium on the entry of foreign services given the challenges Canadian services already face as the broadcasting system transitions to fully digital distribution.

<sup>3</sup> See the intervention from Wild TV.

<sup>4</sup> See the intervention from World Fishing Network.

9. The CAB submits that the best and most appropriate means for BDUs to respond to the demands of their customers for hunting, fishing, shooting and related lifestyle programming is to carry the Canadian services that provide that very programming, namely Wild TV and World Fishing Network.
10. All of which is respectfully submitted.

Sincerely,

**Original signed by:**

Jay Thomson  
Vice-President, Regulatory and Policy

c.c. Shaw Communications Inc. ([Cynthia.rathwell@starchoice.com](mailto:Cynthia.rathwell@starchoice.com))

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