



## Broadcasting Decision CRTC 2006-112

Ottawa, 30 March 2006

### **Shaw Pay-Per-View Ltd.** Across Canada

*Application 2004-1398-0  
Broadcasting Public Notice CRTC 2005-55  
7 June 2005*

### **Shaw DTH-PPV – Licence amendments**

*The Commission **approves** the application by Shaw Pay-Per-View Ltd. for amendments to the licence for its general interest direct-to-home (DTH) pay-per-view programming undertaking. With these amendments, the service, originally authorized as a regional service for distribution by licensed DTH satellite broadcasting distribution undertakings in western Canada, becomes a national service offering both English- and French-language programming that may be distributed across Canada by such undertakings.*

### **The application**

1. The Commission received an application by Shaw Pay-Per-View Ltd. (Shaw) for amendments to the licence for its regional, direct-to-home (DTH) pay-per-view (PPV) programming undertaking. Under the terms of its current licence, Shaw's service may only be distributed in British Columbia, Alberta, Saskatchewan, Manitoba, Yukon, Northwest Territories and Nunavut. The licensee requested that its licence be amended in order to permit national distribution of its service by licensed DTH satellite broadcasting distribution undertakings (BDUs).
2. Shaw is a wholly-owned subsidiary of Shaw Communications Inc. (SCI). SCI is a company with extensive holdings in both the programming and distribution industries, including 100% indirect ownership of Star Choice Television Network Incorporated (Star Choice), licensee of a national DTH BDU.

3. Shaw indicated that the primary purpose of its application was to make its DTH PPV service available to the national audience of its DTH distribution arm, Star Choice, thereby enabling Star Choice to compete on an equitable basis with its primary DTH competitor, Bell ExpressVu<sup>1</sup>, which, Shaw noted, “is already served by a vertically-integrated DTH PPV service.”
4. Shaw stated that, if its request for national distribution were approved, it would make French-language PPV programming available as part of its service, and that it would adhere to the following conditions of licence:
  - The licensee shall maintain the channels in a ratio of French to English of 1:3, with a minimum of 5 French-language channels in addition to a French-language barker channel.
  - With respect to French-language programming, the licensee shall, through its agreements with the licensees of DTH distribution undertakings, ensure that, in each broadcast year, the following is made available by these licensees to their PPV subscribers:
    - a minimum of 20 Canadian feature films in the original French-language version, or dubbed in French, which have been exhibited in theatres in French-language markets, including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*;
    - a minimum of twelve French-language events targeting the French-language market;
    - yearly minimum percentages of Canadian programming as follows: 8% of feature film titles, and 20% of all program titles other than feature films.
  - With respect to French-language feature films, the licensee shall remit 100% of the gross revenues earned by the licensee from the exhibition of these films to distributors and providers, with a minimum of 60% to the program providers.

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<sup>1</sup> Star Choice’s national DTH BDU competitor is licensed to Bell ExpressVu Inc. (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership (Bell ExpressVu). Bell ExpressVu is also the licensee of national DTH and terrestrial PPV undertakings offering both English- and French-language programming. Bell ExpressVu’s parent, BCE Inc., holds additional indirect minority ownership interests in the national, French-language, terrestrial and DTH PPV services, both known as Canal Indigo, and in the regional (eastern Canada) English-language terrestrial and DTH PPV services, both known as Viewer’s Choice.

- During the period from the commencement of operations as a national service to 31 August of that broadcast year, the licensee's performance with respect to commitments regarding French-language Canadian content in feature films and events will be assessed on a pro rata basis.
5. Shaw's application for the amendment of its DTH PPV licence was announced in Broadcasting Public Notice CRTC 2005-55, 7 June 2005. In the same notice, the Commission announced receipt of a second application by Shaw, that being for the renewal and amendment of the licence for its terrestrial PPV programming undertaking serving western Canada. In its terrestrial PPV application, as in its DTH PPV application, Shaw requested a licence amendment that would permit national distribution of its service, and proposed conditions of licence pertaining to the provision of French-language programming to PPV subscribers. The terrestrial PPV application also included a request for an amendment to the licensee's Canadian programming expenditure requirements.
  6. The Commission set out its determinations regarding the renewal of Shaw's terrestrial PPV licence in *Terrestrial pay-per-view service – Licence renewal*, Broadcasting Decision CRTC 2006-23, 31 January 2006 (Decision 2006-23).

## **Interventions**

7. Shaw's DTH PPV application was the subject of interventions filed by Astral Media Inc. (Astral) and by Bell ExpressVu. These parties had also filed interventions to the application by Shaw for the renewal and amendment of its terrestrial PPV programming undertaking licence noted above.
8. Astral has ownership interests in the DTH and terrestrial PPV services known as Viewer's Choice and Canal Indigo. In Astral's view, approval of Shaw's request for authority to distribute its DTH PPV service across Canada would have a negative financial impact on Canal Indigo and Viewer's Choice.
9. Astral also submitted that the conditions of licence proposed by Shaw with respect to its provision of French-language programming would be inconsistent with the current conditions of licence and other requirements imposed on other general interest PPV services. Specifically, Astral contended that Shaw's commitment to the provision of a minimum Canadian content level of 20% for all program titles other than feature films was a "much lower" requirement than the minimum ratio of 12 Canadian French-language events for every 20 non-Canadian French-language events required of Canal Indigo and of Bell ExpressVu's terrestrial and DTH PPV undertakings, and that Shaw should thus be required to maintain a 12:20 ratio for Canadian to non-Canadian French-language events.

10. In its intervention, Bell ExpressVu did not object in principle to Shaw's application, but raised a concern with respect to the 5:1 rule set out in section 18(14) of the *Broadcasting Distribution Regulations* (the Regulations). Under this rule, each Class 1, Class 2 and DTH BDU licensee must distribute at least five unrelated Category 2 services for each related Category 2 service it distributes. For the purpose of this rule, a Category 2 service includes any PPV service, the distribution of which started on or after 1 February 2001. Bell ExpressVu's concern stemmed from the fact that Shaw's DTH PPV service launched prior to that date and is therefore not subject to the 5:1 rule. According to Bell ExpressVu, this gives Shaw's DTH PPV service a competitive advantage over other PPV services that are subject to the 5:1 rule.

#### **Licensee's replies**

11. In response to Astral's intervention and its concerns about the competitive impact that approval of Shaw's application might have on Canal Indigo and Viewer's Choice, Shaw noted that Astral was the only intervener seeking to limit additional competition in the provision of DTH PPV services. At the same time, Shaw noted Astral's acknowledgment that the Commission's introduction of competition in the PPV industry had been "based initially on the specific policy directions contained in the 1995 Direction issued by the Government with respect to DTH PPV services<sup>2</sup>." According to Shaw, denial of its present application, as called for by Astral, would be inequitable, given the licence that Bell ExpressVu holds for a national DTH PPV undertaking. Shaw added that denial would be contrary to the Direction, and would be "at odds with the existing and increasing scope of competition within the Canadian broadcasting system as a means of [bringing] choice and value to Canadians."
12. Shaw also responded to Astral's claim that the applicant's proposed condition of licence related to the provision of Canadian French-language event programming differs from the conditions that currently apply to Canal Indigo and to Bell ExpressVu's DTH and terrestrial PPV undertakings. Shaw noted that its commitment to ensure, in each year, that a minimum of 20% of all French-language program titles, other than feature films, are Canadian, was made in response to a Commission request during the deficiency process, and that the commitment was identical to the requirement imposed by condition of licence on Bell ExpressVu's national terrestrial PPV undertaking.
13. In response to Bell ExpressVu's intervention, Shaw submitted that the intervener's concern was not related to the present application, but rather to the applicability of the Regulations. Shaw maintained that there is no basis for applying the 5:1 rule to its service and that the present application is not the proper process to raise this issue.

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<sup>2</sup> Direction to the CRTC (Direct-to-home (DTH) Pay-Per-View Television Programming Undertakings) Order, SOR/95-320, July 6 1995.

## Commission's analysis and determinations

14. In *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000, the Commission reaffirmed that its approach is to foster fair competition and an increased reliance on market forces. The Commission considers that granting Shaw the authority to offer its DTH PPV service across Canada will enable the licensee to be fully competitive with other PPV services that are licensed to operate on a national basis. Furthermore, in the Commission's view, authorizing the national distribution of Shaw's DTH PPV service may enable the licensee to generate more gross revenues and consequently increase its contributions to Canadian program production. Accordingly, the Commission **approves** the request by Shaw for amendments to the broadcasting licence for its DTH PPV programming undertaking in order to permit its distribution across Canada.
15. In the appendix to this decision, the Commission has imposed **conditions of licence** that reflect Shaw's commitments relating to French-language programming. The requirements set out in the conditions of licence include minimum levels of French-language programming, minimum percentages of Canadian French-language programming, minimum ratios of French-language to English-language channels, and a requirement that the licensee remit 60% of the gross revenues earned from the exhibition of French-language Canadian films to the programming providers. The Commission considers that these conditions are sufficient, and that it is not necessary to impose a 12:20 ratio for Canadian to non-Canadian French-language events on Shaw's DTH PPV service. The Commission also notes that the French-language programming requirements imposed on Shaw's DTH PPV service by these new conditions of licence are consistent with those that it recently imposed on Bell ExpressVu's DTH PPV programming undertaking in *Direct-to-home pay-per-view service – Licence renewal*, Broadcasting Decision CRTC 2006-22, 31 January 2006.
16. With respect to Bell ExpressVu's intervention, and as noted by the Commission in Decision 2006-23, the Regulations, including the 5:1 rule, were adopted following an extensive public process. The 5:1 rule was established to ensure that new, unrelated services would be treated fairly by distributors. Given that Shaw's DTH PPV service was distributed prior to 1 February 2001, the Commission is satisfied that it is appropriate that the service not be subject to the 5:1 rule. Furthermore, the Commission is not persuaded that it is necessary to review this provision of the Regulations.
17. A third intervention, namely that submitted by the Alberta Motion Picture Industry Association (AMPIA), had been filed to both the present application and to Shaw's other application pertaining to the renewal and amendment of its terrestrial PPV licence. As noted by Shaw in its reply to the AMPIA intervention, the concerns expressed by the

intervener related solely to Shaw's request, put forward as part of its terrestrial PPV application, for an amendment to its Canadian programming expenditure requirements. The AMPIA intervention and the Commission's determinations with respect to that particular amendment are dealt with in Decision 2006-23.

Secretary General

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Decision CRTC 2006-112

### National general interest direct-to-home (DTH) pay-per-view (PPV) television service known as Shaw DTH PPV

#### Conditions of licence pertaining to the provision of French-language programming

1. The licensee shall maintain the channels in a ratio of French to English of 1:3, with a minimum of 5 French-language channels in addition to a French-language barker channel.
2. With respect to French-language programming, the licensee shall, through its agreements with the licensees of DTH distribution undertakings, ensure that, in each broadcast year, the following is made available by these licensees to their PPV subscribers:
  - a) a minimum of 20 Canadian feature films in the original French-language version, or dubbed in French, which have been exhibited in theatres in French-language markets (including all new Canadian feature films suitable for PPV exhibition that meet the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*);
  - b) a minimum of 12 French-language events; and
  - c) the following minimum percentages of Canadian programs: 8% of feature film titles, and 20% of all program titles other than feature films.
3. The licensee shall remit 100% of the gross revenues earned by the licensee from the exhibition of French-language Canadian films to distributors and providers, with a minimum of 60% to the program providers.
4. During the period from the commencement of operations as a national service to 31 August of that broadcast year, the licensee's performance with respect to commitments regarding French-language Canadian content in feature films and events will be assessed on a pro rata basis.