



## Broadcasting Decision CRTC 2004-130

Ottawa, 31 March 2004

### **Star Choice Television Network Incorporated** Across Canada

*Application 2001-1313-4*  
*Public Hearing in the National Capital Region*  
*20 October 2003*

### **Star Choice – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the national direct-to-home satellite distribution undertaking operated by Star Choice Television Network Incorporated, from 1 April 2004 to 31 August 2010.*

### **The application**

1. At the 20 October 2003 public hearing in the National Capital Region, the Commission considered an application by Star Choice Television Network Incorporated (Star Choice) and an application by Bell ExpressVu Inc. (the general partner) and BCE Inc. and 4119649 Canada Inc. (the partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership (ExpressVu), for the renewal of the broadcasting licences for their respective national direct-to-home (DTH) satellite distribution undertakings.
2. The Commission's general analysis and findings with respect to the issues that are common to both these applications are set out in *Introductory statement to Broadcasting Decisions CRTC 2004-129 and 2004-130, which renew the licences of the ExpressVu and Star Choice direct-to-home satellite distribution undertakings*, Broadcasting Public Notice CRTC 2004-19, 31 March 2004 (Public Notice 2004-19). The present decision addresses the particulars of Star Choice's application. Appendix I to this decision contains the conditions of licence resulting from the Commission's findings set out in Public Notice 2004-19 as well as those resulting from the Commission's findings set out in this decision.

### **Interventions**

3. The Commission received one intervention in support of Star Choice's application and three interventions in opposition. As well, a number of interveners commented on various aspects of the application. The concerns of the opposing interveners and of those who commented on the application are discussed in Public Notice 2004-19 and in the relevant sections of this decision.

## Contributions to Canadian programming

### Background

4. Star Choice was authorized to operate a national DTH undertaking in *New, national direct-to-home satellite distribution undertaking – Approved*, Decision CRTC 96-529, 27 August 1996 (Decision 96-529). In that decision, the Commission imposed a condition of licence on Star Choice requiring that it contribute at least 5 percent of its annual gross revenues to independently-administered Canadian program funds. The Commission subsequently incorporated a similar requirement for all DTH licensees into section 44 the *Broadcasting Distribution Regulations* (the Regulations), with the stipulation that 80 percent of a licensee’s total contribution to Canadian programs must be paid to the Canadian Television Fund (CTF), and that the remaining 20 percent may be paid to one or more other independent production funds.
5. In *Licence amendment for Star Choice – relief from requirements for simultaneous and non-simultaneous program deletion*, Broadcasting Decision CRTC 2003-258, 16 July 2003 (Decision 2003-258), the Commission suspended the licensee’s program deletion requirements provided that it implemented the alternative measures described in the decision. One of these alternative measures is a requirement that the licensee contribute 0.4 percent of its annual gross revenues derived from broadcasting activities to a new, independently-administered fund to assist small market, independently-owned broadcasters (the small market fund). The Commission set out this requirement by condition of licence, as set out in Decision 2003-258. This 0.4 percent contribution may not be taken from that portion of the licensee’s contribution that must be directed to the CTF.

### The licensee’s request

6. In its licence renewal application, Star Choice requested that it be granted an exception to the requirements stipulated in section 44 of the Regulations. Star Choice proposed that its contribution obligations be consolidated into a single condition of licence and that it be permitted to continue to direct a portion of its required contribution to specific broadcasters, including the Aboriginal Peoples Television Network (APTN) and the Alliance des radios communautaires du Canada (ARC du Canada). Specifically, Star Choice requested that it be authorized to allocate the portions of its required contribution to Canadian programming in the following manner:
  - 80 percent to an independently-administered Canadian program production fund;
  - 12 percent to directly support Canadian broadcasters, such as APTN and ARC du Canada;
  - 8 percent of its contribution, or 0.4 percent of its annual gross revenues derived from broadcasting activities, to the small market fund.

7. In response to questioning by the Commission at the hearing, Star Choice stated that, during the current licence term, it had directed 80 percent of its Canadian programming contributions to the CTF. Star Choice also affirmed that it would maintain the same level of contributions to the CTF during the new licence term.

#### **The Commission's analysis and determination**

8. Section 44 of the Regulations requires a DTH licensee to contribute 5 percent of its annual gross revenues derived from broadcasting activities to Canadian programming, of which at least 80 percent must be contributed to the CTF, and the balance, pursuant to section 44(1)(b) of the Regulations, to other independent production funds. The Commission notes that section 44 of the Regulations does not provide for exceptions by condition of licence. The Commission, therefore, **denies** Star Choice's specific request that, during the new licence term, it be subject to a condition of licence specifying that its required contributions to Canadian programming be allocated in a manner other than that stipulated in section 44 of the Regulations.
9. However, in the Commission's view, there is merit in the substance of Star Choice's proposal to allocate a portion of its required contributions to individual broadcasters such as the APTN and ARC du Canada. Accordingly, in *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2004-21, also released today, the Commission is amending the criteria for establishing an independent production fund in order to enable Star Choice to maintain its support for certain licensed broadcasting undertakings in their production of Canadian programming, subject to approval of a proposal filed by Star Choice to this end.

#### **Distribution of television stations owned and operated by private broadcasting groups**

10. Another measure set out in Decision 2003-258 as an alternative to Star Choice's program deletion obligations was a requirement that it distribute 13 small market, independently-owned television stations. Four of these television stations were to be distributed immediately and the remaining stations were to be distributed no later than the earliest of the date 60 days after the commercial deployment of the Anik F2 satellite, or 31 December 2003. In *Request for a licence amendment that would delay imposition of requirements for the distribution of small market television stations*, Broadcasting Decision CRTC 2003-596, 5 December 2003 (Decision 2003-596), the Commission extended the deadline to the earliest of the date 30 days following the commercial deployment of Anik F2 or 29 February 2004.
11. Appendix I to this decision includes the conditions of licence imposed on Star Choice with respect to the alternative measures it must fulfil in order to continue to be relieved of its program deletion obligations.

## **Distribution of specialty services**

12. Under the terms of section 38(2)(a) of the Regulations, and unless otherwise provided by a condition of licence, a DTH licensee must distribute, to the extent of available channels, each specialty service, except Category 2 services or single or limited point-of-view religious services.
13. The channel line-up provided by the licensee as part of the licence renewal process indicated that Star Choice was not distributing Talentvision, a national ethnic specialty service that provides predominantly Mandarin-language programming, and CablePulse24 (CP24), a regional English-language specialty service devoted to news and information with a focus on southern Ontario. Talentvision is owned by Fairchild Television Ltd. (Fairchild), while CP24 is owned by CHUM Limited (CHUM) and 3661458 Canada Inc., a wholly-owned subsidiary of CHUM, partners in Pulse 24, general partnership.
14. Fairchild did not submit an intervention or comment on Star Choice's licence renewal application. CHUM did file an intervention pointing out that Star Choice is not distributing CP24, contrary to the requirements of the Regulations.
15. When questioned by the Commission as to why it was not distributing Talentvision, Star Choice explained that Fairchild has indicated that it does not want to pay the uplink fees for the distribution of its service. Star Choice stated that it is continuing to negotiate with Fairchild in an effort to arrive at an affiliation agreement that would be equitable to both parties. At the same time, Star Choice noted that, in Decision 96-529, the Commission stated that the licensee was required to distribute "all licensed English- and French-language specialty and pay television services." In Star Choice's view, the fact that its original licensing decision did not specify that it must distribute ethnic specialty services means that it is not under any obligation to distribute Talentvision.
16. In response to CHUM's intervention, Star Choice contended that CP24 is a regional specialty service and is, therefore, not subject to mandatory distribution under section 38(2) of the Regulations. However, when questioned by the Commission on this issue at the hearing, Star Choice acknowledged that the requirements imposed on DTH undertakings by the Regulations with respect to the distribution of specialty services do not distinguish between regional services and national services.

## **The Commission's analysis and determination**

17. Under the DTH licensing framework established by the Commission in *Introductory statement – Licensing of new direct-to-home (DTH) satellite distribution undertakings, and new DTH pay-per-view (PPV) television programming undertakings*, Public Notice CRTC 1995-217, 20 December 1995 (Public Notice 1995-217), national DTH undertakings were obliged to make all English- and French-language Canadian pay television and specialty programming services available to subscribers, subject to the

availability of satellite capacity and other considerations. Since that time, the Commission has licensed a number of third-language pay and specialty services as well as digital specialty services. The requirements for national DTH licensees with respect to the distribution of specialty services are now set out in section 38(2)(a) of the Regulations which reads as follows:

38(2) Except as otherwise provided under a condition of its licence, a licensee shall distribute, to the extent of available channels,

(a) each specialty service, not including a Category 2 service or a single or limited point-of-view religious specialty service;

18. Since the issue of available channels was not raised by Star Choice with regard to Talentvision, under section 38(2)(a) of the Regulations, Star Choice is obliged to distribute that service unless otherwise provided under a condition of licence.
19. In that regard, however, the Commission recognizes that Fairchild may not want Talentvision to be distributed by Star Choice under terms and conditions that would require it to pay for uplink fees. The Commission also notes that no party submitted interventions requesting that Talentvision be carried on Star Choice's DTH undertaking. Under these circumstances, the Commission considers that it would not be appropriate to continue to require Star Choice to carry Talentvision. Accordingly, the Commission is adding a condition to Star Choice's licence stating that it is not required to distribute Talentvision, unless requested to do so by the licensee of this service. A **condition of licence** to this effect is set out in Appendix I to this decision.
20. With respect to the distribution of CP24, the issue of available channels was raised in the current circumstances prior to the launch of the Anik F2 satellite. The Commission notes that, in Decision 2003-596, it directed Star Choice to distribute several small market independent television stations by the earliest of the date 30 days following the commercial deployment of Anik F2 or 29 February 2004. Accordingly, the Commission will, by **condition of licence**, permit Star Choice to delay the distribution of CP24 until the Anik F2 satellite has been commercially deployed. A condition of licence to that effect is set out in Appendix I to this decision.

## **Carriage of high definition television programming**

### **Positions of interveners**

21. The Canadian Association of Broadcasters (CAB) and CTV Inc. (CTV) alleged that Star Choice takes the high definition television (HDTV) programming it receives from several different Canadian and non-Canadian television stations and programming services and compiles this programming into omnibus HDTV channels.<sup>1</sup> According to these interveners, Star Choice carries as many as five omnibus channels. They also

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<sup>1</sup> Omnibus channels would consist of the compilations of the programming from several different stations.

claimed that Star Choice makes these omnibus HDTV channels available to cable broadcasting distribution undertakings (BDUs) across Canada that obtain distant signals from the satellite relay distribution undertaking (SRDU) operated by Star Choice's affiliate, Canadian Satellite Communications Inc. (Cancom).

22. The CAB and CTV argued that, in compiling omnibus HDTV channels, Star Choice is effectively operating a programming undertaking without a broadcasting licence. Both parties also expressed concern that this practice violates the exclusive programming rights held by Canadian broadcasters as well as the retransmission provisions of the *Copyright Act*. The CAB and CTV requested that the Commission direct Star Choice to cease distributing omnibus HDTV channels.

#### **The licensee's response**

23. Star Choice responded that it does not offer omnibus channels but distributes HDTV programming of a programming service only on a channel dedicated to that service. In response to questioning by the Commission at the hearing, Star Choice stated that it distributes six HDTV channels: one channel each for five U.S. networks and one channel for The Movie Network.

#### **The Commission's analysis and determination**

24. The Commission notes that Star Choice stated that it has been distributing the HDTV programming of programming services on separate channels rather than on omnibus channels, as suggested by the interveners. The distribution of HDTV programming using separate channels for each programming service would not require specific approval or authorization by the Commission. The Commission nevertheless reminds Star Choice that section 7 of the Regulations prohibits a licensee from altering or deleting a programming service in a licensed area in the course of its distribution except as required or authorized under a condition of its licence or the Regulations. Canadian programming undertakings and authorized foreign services providing HDTV programming are distinct services and, like standard definition television services, must be distributed in their entirety on dedicated channels, unless otherwise authorized by the Commission.

#### **Separation of functions**

25. Star Choice's DTH undertaking and the SRDU operated by its affiliate, Cancom, are both ultimately controlled by Shaw Communications Inc. (Shaw). Shaw also ultimately controls numerous cable BDUs across Canada. In previous decisions, the Commission imposed conditions of licence on both Star Choice's DTH undertaking and Cancom's SRDU intended to ensure the structural separation of these undertakings from each other and from Shaw's other broadcasting concerns. Most recently, in *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002 (Decision 2002-84), the Commission replaced three of Star Choice's previous conditions of licence pertaining to structural separation with two new conditions of licence. Under the new conditions of

licence, Star Choice must maintain independent sales, marketing and customer service functions and personnel. The conditions also require that it abide by confidentiality procedures intended to protect confidential information related to sales, marketing and customer service as well as to the negotiation of affiliation agreements with programmers. In Decision 2002-84, the Commission stated that its approval of the new licence conditions would take effect only upon its approval of revised confidentiality procedures. Shaw subsequently filed revised confidentiality procedures, which were approved by the Commission in a letter dated 20 September 2002.

26. In its licence renewal application, Star Choice stated that, in its view, it had complied with these conditions of licence during the current licence term. Star Choice also confirmed that it would continue to abide by these conditions of licence during its new licence term.

#### **The CAB's position**

27. The CAB questioned whether Star Choice was, in fact, operating in compliance with these conditions of licence. Specifically, the CAB claimed that:
  - Canadian programmers must negotiate with the same individual in order to obtain carriage on Star Choice's DTH undertaking and on Shaw's cable BDUs;
  - Canadian programmers are informed that any decisions with respect to Star Choice must be approved by Shaw's top two senior executives;
  - proposals by Star Choice are provided on Shaw's letterhead; and
  - Star Choice has unilaterally adjusted wholesale fees to correspond with the fees paid by Shaw's cable BDUs.

#### **The licensee's response**

28. In response, Star Choice asserted that it has "faithfully" abided by its conditions of licence. Star Choice stated that its DTH undertaking, Cancom's SRDU and Shaw's cable BDUs operate separate sales, marketing, customer service and affiliate relations functions and maintain separate personnel. While acknowledging that it has negotiated certain affiliation agreements jointly with Shaw, Star Choice stated that "joint negotiations are only carried on with the consent of the service provider involved and often at its request in order to expedite negotiations." According to Star Choice, the licensees of specialty services generally regard joint negotiations as the most efficient way to deal with common distribution issues.

29. At the hearing, Star Choice added that each of its sales and marketing groups maintain separate secure databases and are physically located in different buildings. Star Choice stated that affiliation agreements are negotiated and kept in confidence by the personnel involved, unless the licensee of the programming service itself has consented to joint negotiations. In addition, Star Choice stated that its managers have explained the confidentiality procedures required by its conditions of licence to staff. Individual staff must agree, in writing, to comply with these confidentiality procedures. In Star Choice's view, it has complied with its conditions of licence including the requirements with respect to the confidentiality procedures.

**The Commission's analysis and determination**

30. The Commission considers that it is appropriate to maintain, during the new licence term, the conditions of licence regarding the separation of certain functions that were imposed on Star Choice in Decision 2002-84, including the associated confidentiality procedures that were approved by the Commission in its letter dated 20 September 2002. In addition, the Commission considers that it is appropriate to include an explicit requirement that Star Choice maintain independent affiliate relations functions and personnel.
31. As regards confidentiality, the Commission approved the following definition of confidential information set out in the confidentiality procedures.

Confidential information means (i) any information, verbal or written, related to the sales, marketing, customer service or CSG function of Star Choice, Cancom or Shaw, or to their affiliation agreements with programmers or to their product lines, that is not generally known outside of Star Choice, Cancom or Shaw, respectively, or whose confidentiality they would in the normal course seek to protect from competitors, whether or not such information is expressly identified as "Confidential", and (ii) includes information obtained from a customer or developed exclusively for the benefit of a customer, relating to the provision of service.

32. The Commission notes that, under the confidentiality procedures imposed on Star Choice by condition of licence, any information obtained by the licensee during the negotiation of an affiliation agreement is confidential and must not be shared with Cancom or Shaw, regardless of whether a broadcaster has consented to or requested such sharing of information. Consistent with Decision 2002-84, the Commission finds that any practice that would permit the sharing of confidential information, such as the joint negotiation of affiliation agreements, would be inconsistent with Star Choice's conditions of licence. In the Commission's view, the fact that the CAB has raised this issue in the context of Star Choice's licence renewal suggests that at least some broadcasters have concerns regarding joint negotiations.



33. The Commission notes that, in responding to the CAB's intervention, Star Choice did not specifically address the allegations regarding its correspondence and the setting of wholesale fees. At the same time, the CAB did not provide any particulars with respect to the parties or circumstances under which it alleged that Star Choice had engaged in these practices. In light of the lack of specific evidence on this issue, the Commission is unable to conclude that Star Choice breached its conditions of licence in this regard. The Commission finds, however, that the alleged practices of adjusting wholesale fees unilaterally to match those paid by other licensees operated by Shaw and providing Star Choice proposals on Shaw's letterhead would be inconsistent with Star Choice's confidentiality procedures. The Commission addressed similar circumstances in Decision 2002-84 and, in that decision, stated that it was not appropriate for Shaw's BDU to attempt to seek a volume discount based on the combined subscribers of its cable and DTH operations.
34. The Commission reminds Star Choice that, during the new licence term, it must, by condition of licence, operate in compliance with its confidentiality procedures including the definition of confidential information noted above.

### **Length of the licence term**

#### **The licensee's request**

35. Star Choice requested that its licence be renewed for a full term. According to Star Choice, a full-term licence renewal is critical to providing the necessary stability that will enable it to achieve profitability and to make long-term investments in satellite capacity.

#### **Positions of interveners**

36. Telesat Canada (Telesat) supported Star Choice's request for a full-term licence renewal. In Telesat's view, Star Choice needs the longest licence term possible in order to provide the licensee with an "environment of certainty" that would enable it to invest in its satellite capacity.
37. For its part, the Canadian Broadcasting Corporation (CBC) requested that Star Choice's licence be renewed for only three years. In the CBC's view, a three-year licence term would "allow enough time for the issue of satellite capacity to be clarified." The CBC also expressed concern that, under the current Regulations, Star Choice could remove the English-language specialty news service, Newsworld, and the French-language specialty news service, le Réseau de l'information (RDI), from the DTH undertaking's basic service and offer these services as part of a discretionary package.
38. Citing the concerns raised in its intervention alleging that Star Choice had failed to comply with certain regulatory obligations during its first licence term, the CAB recommended that the Commission grant Star Choice a licence term of less than seven years as a means of ensuring that the licensee operates in compliance during the new licence term. In addition to the concerns discussed earlier in this decision, the CAB

claimed that Star Choice had not made any commitments to develop the technology needed to deliver to its subscribers the described video programming provided by broadcasters. The CAB also alleged that Star Choice had failed to pass through to its subscribers the V-chip encoding of programming provided by programmers since 2001 in accordance with the CAB's *Voluntary code regarding violence in television programming*.

#### **The licensee's response**

39. In response to the CBC, Star Choice pointed out that it currently does carry Newsworld and RDI as part of its basic service even though it is not required to do so by the Regulations. Furthermore, Star Choice noted that, during its first licence term, it exceeded the requirement that it carry at least one each of the CBC English- and French-language television affiliates or member stations.
40. Star Choice's responses to the CAB's allegations that the DTH undertaking had not operated in compliance with some of its regulatory requirements are discussed in the relevant sections of this decision. At the hearing, Star Choice stated that it was exploring measures, such as implementing software uploads or upgrades to its set-top boxes, to overcome the technical limitations that currently prevent it from providing video description. Star Choice also disputed the CAB's claim that the licensee does not provide its subscribers with the V-chip encoding of programming supplied by programmers. Star Choice added that it provides its subscribers with ratings information on programming that contains violent content through its Electronic Programming Guide.

#### **The Commission's analysis and determination**

41. The Commission agrees with Star Choice and Telesat that a full-term licence renewal would provide Star Choice with greater regulatory certainty in making future investments, particularly long-term investments in satellite capacity.
42. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence held by Star Choice Television Network Incorporated for its national direct-to-home satellite distribution undertaking, from 1 April 2004 to 31 August 2010.<sup>2</sup> The licence will be subject to the **conditions** specified therein and to the **conditions** set out in Appendix I to this decision. The Commission notes that provisions of certain conditions of Star Choice's previous licence have been incorporated into the Regulations. These provisions have therefore not been included in the conditions set out in Appendix I.

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<sup>2</sup> The Commission renewed Star Choice's licence administratively in *One-year administrative renewal*, Broadcasting Decision CRTC 2002-163, 2 July 2002, in *Administrative renewal*, Broadcasting Decision CRTC 2003-160, 20 May 2003, and in *Administrative renewal*, Broadcasting Decision CRTC 2004-83, 18 February 2004.

43. With regard to the concerns raised by the CBC, the Commission notes that, during Star Choice's first licence term, the licensee met and exceeded its obligations pertaining to the carriage of CBC television stations. The Commission's findings regarding the CBC's request that the DTH licensees be required to carry all of the CBC's English- and French-language television stations are discussed in Public Notice 2004-19. As set out in Public Notice 2004-19, effective 1 September 2004, both Star Choice and ExpressVu must, by condition of licence, ensure that the number of CBC English-language owned and operated television stations that they distribute never falls below the number of English-language conventional television stations distributed from any other individual broadcasting group, and that the number of CBC French-language owned and operated television stations that they distribute never falls below the number of French-language conventional television stations distributed from any other individual broadcasting group. Regardless of the number of private television stations distributed, the DTH licensees must distribute a minimum of five CBC owned and operated English-language television stations and a minimum of five CBC owned and operated French-language television stations, including at least one English-language and one French-language station from each time zone. **Conditions of licence** to this effect are set out in Appendix I to this decision.
44. The Commission is satisfied that the conditions of licence and expectations set out in this decision and in Public Notice 2004-19 respond to the concerns raised by the CAB.

### **Service to multiple unit dwellings**

45. Consistent with *Provision of service to MUDs*, Decision CRTC 2001-168, 8 March 2001, the licensee is authorized to distribute its service to subscribers in multiple unit dwellings (MUDs) using a variety of technologies, including terrestrial distribution techniques (land lines) that may cross property lines, public streets or highways. This authorization enables the licensee to locate reception equipment on one site and to connect subscribers in MUDs on other sites.
46. Further, consistent with *Star Choice Television Network Incorporated – Licence amendment*, Broadcasting Decision CRTC 2003-124, 25 April 2003, the licensee is authorized to engage in bulk billing in MUDs on the same basis as cable BDUs.

### **Employment equity**

47. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with Human Resources Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

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

## Appendix I to Broadcasting Decision CRTC 2004-130

### Conditions of licence

1. Unless otherwise authorized by the Commission, in addition to those services identified in section 39 of the *Broadcasting Distribution Regulations* (the Regulations), the licensee is authorized to distribute:
  - (a) the Electronic Program Guide, one English- and one French-language marketing channel for its own service and one English- and one French-language marketing service for its pay-per-view service.
  - (b) the following non-Canadian programming services:
    - WJLA-TV Washington, D.C./KMGH-TV Denver, Colorado (ABC)
    - WRAL-TV Raleigh, North Carolina/KCNC-TV Denver (CBS)
    - WNBC New York, New York/KUSA-TV Denver (NBC)
    - KDVR Denver (FOX)
    - KRMA-TV Denver (PBS)
    - KMBI-FM Spokane, Washington
    - KXLY-FM Spokane
    - KISC-FM Spokane
    - KDRK-FM Spokane
    - KEZE-FM Spokane
    - KZZU-FM Spokane
    - KPBX-FM Spokane
2. If a licensee receives, at least four days before the date on which the programming service is broadcast, a written request for substitution or deletion from the operator of a licensed Canadian television programming undertaking made in accordance with section 42 of the Regulations, the licensee shall delete a non-Canadian programming service and substitute a comparable and simultaneously broadcast programming service of the Canadian television programming undertaking whose signal is distributed by the licensee, provided that both the non-Canadian television programming service and the Canadian television programming service originate from the same up-link centre.
3. The application of sections 42(1)(b) and 43(1) of the Regulations is suspended until 12 August 2006, so long as the licensee:
  - (a) fulfils all of the measures set out in the Schedule that is appended to these conditions of licence.

(b) contributes the amount set out below to a new, independently administered fund to assist small market, independently owned broadcasters in meeting their commitments to local programming as set out in *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Broadcasting Public Notice CRTC 2003-38, 16 July 2003, when such a fund is established and, before such time, places the required contribution in trust in an interest-bearing account, to be conveyed with interest to such fund when it is established:

(i) in the broadcast years ending 31 August 2004 and 31 August 2005, an amount not less than 0.4 percent of its gross revenues derived from broadcasting activities in each year; and

(ii) in the period ending 12 August 2006, an amount not less than 0.4 percent of its gross revenues derived from broadcasting activities in the period beginning 1 September 2005 and ending 12 August 2006.

4. The licensee shall act in accordance with sections 1, 27 and 28 of the Regulations when it distributes community programming on its barker channel. "Community programming" shall have the same meaning as that set out in section 1 of the Regulations.
5. The licensee may, at its option, insert certain promotional material as a substitute for the "local availabilities" (i.e. non-Canadian advertising material) of non-Canadian satellite services. At least 75 percent of these local availabilities must be made available for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements. A maximum of 25 percent of the commercial availabilities may be made available for the promotion of discretionary programming services and packages, customer service information and channel realignments.
6. Effective 1 September 2004, the licensee shall distribute a minimum of five (5) Canadian Broadcasting Corporation (CBC) English-language conventional television stations, owned and operated by the CBC, including at least one from each time zone. Further, the licensee shall not, at any time, distribute a number of English-language conventional television stations owned and operated by the CBC that is less than the number of English-language conventional television stations owned or operated by any other individual broadcasting group, including the groups listed in Appendix B to the schedule attached to these conditions, that are distributed by the undertaking.

7. Effective 1 September 2004, the licensee shall distribute a minimum of five (5) French-language Société Radio-Canada conventional television stations, owned and operated by the CBC, including at least one from each time zone. Further, the licensee shall not, at any time, distribute a number of French-language conventional television stations owned and operated by the CBC that is less than the number of French-language conventional television stations owned or operated by any other individual broadcasting group, including the groups listed in Appendix B to the schedule attached to these conditions, that are distributed by the undertaking.
8. The licensee is relieved of the requirement of section 38(2)(a) of the Regulations to distribute the specialty service known as Talentvision, unless requested to do so by the licensee of this service.
9. The licensee is relieved of the requirement of section 38(2)(a) of the Regulations to distribute the specialty service known as CablePulse24 until 30 days after the commercial deployment of Anik F2.
10. The licensee shall maintain sales, marketing, customer service and affiliate relations functions and personnel that are separate and independent from those of Shaw Communications Inc. and Canadian Satellite Communications Inc.
11. The licensee shall require all sales, marketing and customer service staff, as well as all staff involved with the negotiation and/or administration of affiliation agreements with programming services, to comply with the written procedures set out in Appendix II to this decision, as amended from time to time. These procedures are designed to ensure that any confidential information obtained from a customer or potential customer of the licensee's DTH undertaking, or pertaining either to product or service offerings of the DTH undertaking or to its affiliation agreements with programmers, will remain confidential.

## **Schedule to Appendix I of Broadcasting Decision CRTC 2004-130**

### **Definitions**

“Broadcast year” means the period beginning on September 1 in a calendar year and ending on August 31 of the following calendar year.

“CAB” means the Canadian Association of Broadcasters.

“Larger broadcast groups” means those television groups listed in Appendix B to this Schedule.

“Second set of U.S. commercial network television signals” means the signals of each of the CBS, NBC, ABC and Fox networks originating from a U.S. city in a different time zone than that of the first set of U.S. commercial network signals.

“Small market, independently owned television stations” means those television stations listed in Appendix A to this Schedule.

“Subscriber” means a subscriber of the licensee.

### **Distribution of small market, independently owned television stations**

1. (a) Subject to sections 6 and 8, the licensee shall distribute the programming services of television stations CKSA-TV Lloydminster and CITL-TV Lloydminster, both owned by Mid West Television Ltd., and CFTK-TV Terrace and CJDC-TV Dawson Creek, both owned by Standard Radio Inc. Each service shall be distributed to those subscribers who reside within the Grade B contour of that television station.  
  
(b) Subject to sections 6 and 8, the licensee shall, beginning on the first to occur of (i) 30 days after the commercial deployment of Anik F2 or (ii) 29 February 2004, distribute the programming services of two (2) television stations for each of the ownership groups listed in Appendix A, except that, in the case of an ownership group for which Appendix A lists a single television station, the licensee shall distribute the programming of that station. Each station required to be distributed pursuant to this agreement shall be distributed to those subscribers who reside within the Grade B contour of that station.

### **Distribution of television stations owned by larger broadcast groups**

2. Subject to section 6, the licensee shall provide equitable distribution for the television stations of the broadcast groups listed in Appendix B (the larger broadcast groups).

### **Input from broadcast ownership groups**

3. The licensee shall give reasonable commercial consideration to input from affected broadcast ownership groups respecting the programming services to be distributed pursuant to sections 1(b) and 2.

### **Distribution of a second set of U.S. commercial network television signals**

4. The licensee shall not distribute to any subscriber more than two sets of U.S. commercial network television signals.

### **Simultaneous substitution over Canadian television programs**

5. (a) Where the licensee receives, at least seven days before the date on which the programming service is broadcast, a written request for substitution from the operator of a licensed Canadian television programming undertaking distributed pursuant to section 1 of this Schedule, the licensee shall delete, in respect of subscribers located within the Grade B contour of the television programming undertaking distributed pursuant to section 1 of this Schedule, a Canadian television programming service and substitute the comparable and simultaneously broadcast programming service of the Canadian television programming undertaking whose signal is also distributed by the licensee pursuant to section 1 of this Schedule and which is of the same network and originated from the same time zone as the service to be deleted.  
  
(b) The licensee may delete and substitute in accordance with (a) notwithstanding that the licensee has received a written request from the operator of a licensed Canadian television programming undertaking distributed pursuant to section 1 of this Schedule less than seven days before the date on which the programming service is broadcast.  
  
(c) The licensee shall not delete the programming service under (a) if the Commission notifies the licensee that the deletion is not in the public interest because the programming service to be deleted contains subsidiary signals designed to inform or entertain and the simultaneously broadcast programming service does not contain similar signals.  
  
(d) The licensee may discontinue a substitution made under (a) if the programming services in respect of which the substitution is made are not, or are no longer, comparable and broadcast simultaneously.



### **Satellite capacity and transmission**

6. The licensee shall utilize up to a maximum of two (2) additional transponders in order to meet the distribution requirements set out in sections 1 and 2. The licensee shall be responsible for all transmission costs including backhaul costs associated with the distribution of television signals referred to in sections 1 and 2. Where the licensee is able to meet all distribution requirements set out in sections 1 and 2, and where there remains excess bandwidth within the limits of the two (2) additional transponders, the licensee shall use such additional capacity solely for the carriage of Canadian local or regional television stations.

### **Compensation for the carriage of a second set of U.S. network television signals**

7. a) The licensee shall pay to the CAB \$0.25 per month for each subscriber who purchases a second set of U.S. network television signals.  
  
b) The licensee shall provide to a third party independent auditor who has been chosen by both the licensee and the CAB, and who has undertaken, in an agreement approved by the licensee prior to execution, to keep all information received pursuant to this section strictly confidential, on a semi-annual basis during the broadcast year starting 1 September 2002 and ending 31 August of the following year and of all subsequent broadcast years, all necessary relevant information as to the number of subscribers receiving a second set of U.S. network television signals in order to verify and facilitate the payment by the licensee to the CAB of the monies due pursuant to this section.

### **Change of control of small market, independently-owned television stations**

8. The distribution requirements set out in section 1 shall continue to apply independent of changes in the ownership of voting equity by the ownership groups listed in Appendix A or in section 1(a), except where a change in voting equity results in a change in control of voting equity in accordance with Commission regulations, and also involves a change in the network affiliation and/or a material change in the programming of any subject station. In the case of a change in control that also involves a change in network affiliation and/or a material change in programming with respect to a station listed in Appendix A or in section 1(a), the licensee's distribution requirements shall cease with respect to that station upon notification of such a change from the CAB or an authorized representative of that station. Furthermore, any change in control of voting equity of any station listed in Appendix A or in section 1(a) shall not trigger any additional distribution of programming services of television stations operated by the larger broadcast ownership groups pursuant to section 2.

**Appendix A to the Schedule to Appendix I of Broadcasting  
Decision CRTC 2004-130**

**Small market, independently owned television stations by ownership  
group**

<b>Ownership group</b>	<b>Station</b>
Jim Pattison Industries Ltd.	CHAT-TV Medicine Hat CFJC-TV Kamloops CKPG-TV Prince George
Norcom Telecommunications Limited	CJBN-TV Kenora
Radio Nord Communications inc.	CFGS-TV Gatineau CHOT-TV Gatineau CKRN-TV Rouyn-Noranda CFEM-TV Rouyn-Noranda CFVS-TV Val d'Or
Télé Inter-Rives ltée	CIMT-TV Rivière-du-Loup CFTF-TV Rivière-du-Loup CKRT-TV Rivière-du-Loup CHAU-TV Carleton
Thunder Bay Electronics Limited	CKPR-TV Thunder Bay CHFD-TV Thunder Bay

**Appendix B to the Schedule to Appendix I to Broadcasting  
Decision CRTC 2004-130**

**Ownership Groups**

Bell Globemedia Inc. (CTV)  
 CanWest Media Inc. (Global)  
 CHUM Limited  
 Cogeco Radio-Télévision inc. (TQS)  
 Quebecor Media Inc. (TVA)  
 Craig Media Inc.  
 Corus Entertainment Inc.  
 Rogers Media Inc.

## Appendix II to Broadcasting Decision CRTC 2004-130

### Confidentiality Procedures

#### 1.0 Preamble

1.1 Shaw Communications Inc. and its subsidiaries are engaged in a number of distinct businesses which operate under licences granted to the companies by the Canadian Radio-television and Telecommunications Commission (CRTC) under the *Broadcasting Act*. In particular, various subsidiaries of Shaw Communications Inc. (whether direct or indirect) operate cable distribution undertakings, Canadian Satellite Communications Inc. (Cancom) operates a satellite relay distribution undertaking (SRDU), and Star Choice Television Network Incorporated (Star Choice) operates a direct-to-home (DTH) distribution undertaking.

1.2 Each of these licensed businesses has its own sales, marketing and customer service staff, and in the case of Shaw cable distribution undertakings and Star Choice, separate program affiliate relations staff. In addition, customer service groups (CSGs) operate within Shaw cable distribution undertakings, pursuant to paragraph 33 of Public Notice CRTC 2000-81, 9 June 2000. These staff have access to Confidential Information pertaining to their respective businesses.

1.3 To protect the confidentiality of certain information, the following Confidentiality Procedures are established. The purpose of these Confidentiality Procedures is to ensure the separation of the functions noted in 1.2, above, in accordance with *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002.

#### 2.0 Definitions

2.1 *Shaw* means Shaw Cablesystems GP, the partners thereof, or any other subsidiaries (direct or indirect) or affiliates of Shaw Communications Inc. holding cable distribution licences.

2.2 *Star Choice* means Star Choice Television Network Inc.

2.3 *Cancom* means Canadian Satellite Communications Inc.

2.4 *Division* means (i) any one of Shaw, Star Choice or Cancom, as defined above, or (ii) any combination thereof.

2.5 *Confidential Information* (i) means any information, verbal or written, related to the sales, marketing, customer service or CSG functions of Star Choice, Cancom or Shaw, or to their affiliation agreements with programmers or to their product lines, that is not generally known outside of Star Choice, Cancom or Shaw, respectively, or whose confidentiality they would in the normal course seek to protect from competitors, whether or not such information is expressly identified as "Confidential", and (ii) includes information obtained from a customer or developed exclusively for the benefit of a customer, relating to the provision of service.

### 3.0 Confidentiality Procedures

3.1 Star Choice and Cancom staff (including officers, managers and supervisory personnel) shall not engage in any communication of Confidential Information to or from any other Division, or Shaw Communications Inc., except in accordance with these Confidentiality Procedures.

3.2 Star Choice and Cancom managers with responsibility for the employees described in 3.1 above shall review these Confidentiality Procedures with each employee at the beginning of his/her employment and on an annual basis thereafter, as well as the information specified in the acknowledgment form *Agreement to Protect Confidential Information*. The acknowledgment form will be signed by the employee as well as the employee's immediate supervisor indicating that the *Agreement* and these Confidentiality Procedures have been reviewed and understood, and such signed acknowledgment form will be retained by each of Star Choice and Cancom. Provided that if each of Star Choice and Cancom has made reasonable efforts to obtain an employee's signature but cannot, an acknowledgment form signed by the employee's supervisor confirming the review shall be sufficient.

3.3 No sales, marketing or customer service staff of Cancom or Star Choice will promote or give any information to potential or actual customers concerning other licensed businesses, unless expressly requested by the customer.

3.4 Cancom and Star Choice may, from time to time, be provided with support or advisory services by officers and employees of other Divisions or of Shaw Communications Inc. Cancom and Star Choice may provide such officers and employees with Confidential Information only on a need-to-know basis consistent with their corporate responsibilities and with the support or advisory services to be provided, and on condition that (i) such information is not provided to the staff of any Division other than the one with which the information originated, and (ii) the officers or employees to whom the Confidential Information is provided agree to be bound by the Confidentiality Procedures and the *Agreement to Protect Confidential Information*.

3.5 Any questions concerning the application of these Confidentiality Procedures should be directed by an employee to his or her supervisor and, if necessary, may be referred by the supervisor to the General Counsel and Corporate Secretary or to the Senior Vice-President, Corporate and Regulatory Affairs of Shaw Communications Inc.

#### 4.0 Storage of Information

4.1 Separate databases will be maintained for Confidential Information pertaining to each of the Shaw, Cancom and Star Choice businesses, including Confidential Information provided to officers and employees pursuant to section 3.4, above.

4.2 All physical media on which any Confidential Information resides, in the possession of any of the employees specified in 3.1 or in 3.4 above, shall be kept in locked offices and/or in locked desks, cabinets or other storage areas at night and on all non-business days as well as during other prolonged periods when an employee is absent from his/her work station.

#### 5.0 Confidential Information and Former Employees

5.1 With respect to the employees specified in 3.1 and in 3.4, above, upon termination of employment or retirement, or upon leaving a position of employment in which the employee was provided access to Confidential Information, the employee's immediate supervisor will review with the employee his or her *Agreement to Protect Confidential Information* hereof and will ensure that the employee understands its contents.

#### **Agreement to Protect Confidential Information**

*Confidential Information* (i) means any information, verbal or written, related to the sales, marketing, customer service or CSG functions of Star Choice, Cancom or Shaw, or to their affiliation agreements with programmers or their product lines, that is not generally known outside of Star Choice, Cancom or Shaw, respectively, or whose confidentiality they would in the normal course seek to protect from competitors, whether or not such information is expressly identified as "Confidential" and (ii) includes information obtained from a customer or developed exclusively for the benefit of a customer, relating to the provision of service.

*Confidentiality Procedures* means the procedures approved by the CRTC pursuant to *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002, and to the licences of Cancom and Star Choice.

The Employee acknowledges that he/she has or may have access to Confidential Information, the disclosure of which would contravene the Confidentiality Procedures.

The Employee acknowledges that the Confidentiality Procedures are required pursuant to the licences of Cancom and Star Choice and that the businesses of Shaw, Cancom and Star Choice cannot be properly protected from adverse consequences of the actions of the Employee other than by the restrictions set forth in the *Confidentiality Procedures* and in this *Agreement to Protect Confidential Information*.

To this end, in part consideration of their employment, the Employee agrees not to disclose any Confidential Information to anyone at any time, during the Employee's employment, other than in accordance with the Confidentiality Procedures. The employee also agrees not to disclose any Confidential Information to anyone after the Employee's employment.

I confirm that I have reviewed the Confidentiality Procedures and this Agreement to Protect Confidential Information with the Employee.

I confirm that I have read and understood the Confidentiality Procedures and this Agreement to Protect Confidential Information.

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(Supervisor)

Date:

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(Employee)

Date: