MAY 23, 2012

BY E-MAIL: satelliteconsultation@ic.gc.ca.

Director General
Engineering, Planning and Standards Branch
Industry Canada
19th Floor
300 Slater Street
Ottawa, Ontario K1A 0C8

Dear Sir:

Re: Notice No. SMSE-003-12 — Consultation on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS) in Canada, Canada Gazette, Part I, March 24, 2012, Gazette Notice SMSE-003-12. (the “Consultation”)

Introduction

1. The following comments are submitted by Shaw Communications Inc. (“Shaw”), on behalf of Shaw Direct and Shaw Broadcast Services (“SBS”), in response to the Consultation. Shaw has a strong interest in this Consultation given that it is one of Canada’s largest satellite users and controls the licences of both a DTH broadcasting distribution undertaking (Shaw Direct) and a satellite relay distribution undertaking or “SRDU” (Shaw Broadcast Services). A fair and reliable satellite licensing framework is of critical importance to the viability and sustainability of our DTH, SRDU and other satellite businesses, and hence Shaw’s willingness to invest in satellite-based businesses. More broadly, the licensing framework is important to the realization of national broadcasting and telecommunications policy objectives that are fulfilled by Shaw Direct and SBS.

2. As a licensed DTH distribution undertaking, Shaw Direct, along with its sole authorized competitor that currently offers service, creates a dynamically competitive market in the provision of DTH services in Canada, consistent with the Government Directions on DTH. Through its service offering, Shaw Direct fulfills the vital public policy goal of extending broadcasting services to all Canadians, offering them high quality, all-digital service, including HD and on-demand content options, regardless of whether they live in urban Canada or in rural and remote areas.

3. Shaw Direct is now contributing to the realization of the Government’s objective of rural broadband connectivity through its exclusive arrangement to bundle Xplorenet with the Shaw Direct DTH service. The pairing of the Shaw brand and services with those of Xplorenet aims at increasing market awareness and uptake of satellite-delivered broadband service as well as the attractiveness of Shaw Direct’s DTH service.
Shaw Direct has made long-term investments in its satellite business in excess of $1.5B, securing the use of all available Ku-band transponders on Telesat’s Anik F1R satellite located at 107.3°W and on Telesat’s Anik F2 satellite located at 111.1°W. More recently, we entered into an agreement with Telesat to build and locate a new satellite (Anik G1) at 107.3°W, to accommodate Shaw Direct’s need for additional spectrum. The $300M investment in Anik G1 will allow Shaw Direct to remain competitive by carrying up to 100 new HD services, permit the addition of all LPIF-eligible local broadcast stations as required by the CRTC for the benefit of local viewers and local broadcasters, expand the efficient use of our satellite neighbourhood, and create Canadian jobs and economic activity in the satellite industry.

SBS uses Shaw Direct’s satellite capacity to provide competitive SRDU services to more than 2,000 small Canadian cable systems and their customers (many of whom live in small and remote communities). This service enables individuals living far from the Canada-US border and large urban centres to receive a breadth of over-the-air programming services consistent with that available to urban Canadians. Local cable systems may also receive and supply to their customers a wide range of specialty services using Shaw’s satellite infrastructure. SBS also provides a competitive signal uplink service that allows the originators of Canadian specialty and pay television services to efficiently deliver their services to any and all cable systems across Canada. As a result, satellite broadcasting distribution companies have bolstered the competitiveness of the broadcasting distribution market across Canada.

Interest of Customers is Paramount

While Industry Canada appears to consider satellite operators to be the most interested parties in this Consultation, the interests of satellite users – particularly DTH services and customers – cannot be overlooked. The conditions imposed on the operators of satellites in Canadian orbital slots (“Canadian Satellites”) affect the competitiveness of the businesses that use such satellites, the realization of important public policy goals set out for such users, and the services received by millions of households across Canada that receive DTH or SRDU services.

Indeed, as a result of the removal of foreign ownership restrictions on the operation of Canadian Satellites, operators include not only the current Canadian-owned and controlled operators – Telesat and Ciel – but also foreign-owned operators. These operators may or may not use Canadian satellites to serve Canadians. As such, the licensing framework for FSS and BSS must not only take into consideration the impact of the framework on the competitiveness of Canadian satellite customers but also the impacts on particular Canadian Satellite customers’ ability to contribute, as required pursuant to their licences, to important national policy objectives.
Licensing Process

FCFS

8. Shaw agrees that auctions are not appropriate for the assignment of satellite spectrum in Canadian orbital positions.

9. While Shaw does not object to the introduction of a first-come, first served (“FCFS”) process to assign satellite spectrum, any FCFS regime must have effective safeguards to prevent frivolous or vexatious applications aimed at undermining a satellite broadcast distributor’s access to space segment and frequencies within or adjacent to its existing satellite neighbourhood.

10. Continuity of service using existing and new frequencies in or adjacent to existing satellite neighbourhoods is critically important for Canadian DTH services and their millions of Canadian household end-users. The inability to maintain existing allocations and acquire adjacent space segment, and to use viable frequencies within such slots, could undermine completely the competitiveness of a DTH business, frustrate its ability to meet consumer demand and create tremendous disruption for consumer end-users of DTH broadcast distribution services.

11. Accordingly, Shaw supports a FCFS licensing model but urges Industry Canada to introduce this new model along with a right of first refusal for DTH incumbents to licence the space segment, in any frequency, in their historical satellite slots.

Preservation of Canadian Orbital Slots

12. Shaw is generally supportive of Industry Canada’s proposal to no longer make proactive filings to the ITU and to instead rely on satellite operators applying for a licence to identify “what spectrum at which orbital positions” is desired by them. In general, sophisticated operators are well aware of the filings that are required in the interest of existing Canadian satellite users and potential customers.

13. That being said, there may remain instances in which proactive filings may be required by Industry Canada to ensure that the orbital slots that are currently allocated to Canada remain allocated to Canada. As such, Industry Canada should retain residual discretion to make a proactive filing where it considers that it is in the public interest of Canadians to do so.

14. Shaw is also of the view that Industry Canada should continue making submissions in connection with and using the rules relating to approval of orbital slots in the ITU Radio Regulations to ensure the fairest possible application in the context of Canadian interests. This remains important given that some administrations are prepared to bend those rules in favour of their domestic satellite operators. Important users of Canadian satellite capacity like Shaw look to Industry Canada to be their champion at the ITU and to promote international regulation that is fair and transparent to all space-faring administrations.
Fee Structure

15. Shaw strongly supports the significant reductions in the licence fees proposed by Industry Canada in the Consultation paper.

16. Canadian customers of the operators of the Canadian Satellites bear the burden of the licence fees. This may occur as a direct pass-through to customers as a condition of an agreement, or indirectly in the level of the rates charged by the operators for satellite services or facilities.

17. Accordingly, a reduced regulatory burden not only will enhance the appeal of investing in Canadian satellites and, thus, the competitiveness of the Canadian satellite business; it will also enhance the competitiveness of a wide range of Canadian services that rely on Canadian Satellites, from DTH to rural broadband to vehicular tracking.

Public Benefit Condition of Licence

18. Shaw is strongly opposed to any public benefit condition of licence for Canadian Satellites.

19. Whether the public benefit requires the satellite operator to expend funds on research and development, to provide free or subsidized state use, or to provide any other benefits, the cost of such benefits is borne directly or indirectly by the Canadian customers of the operators. This reduces the competitiveness of the Canadian customers. It is not just “the international competitiveness of Canada’s licensing regime” that is at stake, but the competitiveness of the businesses of users.

20. Valuable public benefits (economic and intangible) of the licensing of Canadian Satellites are, in any event, already provided by broadcast users of Canadian satellites, such as Shaw Direct and SBS. Examples of the public benefits provided by DTH and SRDU companies include the facts that they:

   (a) provide advanced digital communications services to millions of Canadian households, including those who live in non-urban, rural and remote areas,

   (b) have brought to all Canadians the benefits of competition (price, quality, choice and innovation) in broadcast distribution services, and have served to protect against illegal competition from black market satellite providers,

   (c) have added at least 1 million new subscribers to Canadian BDU services, thus helping to create a strong market for Canadian specialty and pay programming services (especially nascent digital services) and a strong competitive incentive for terrestrial BDUs to digitize,

   (d) employ thousands of Canadians (including, in Shaw’s case, those engaged at three national call centres in Canada) who together provide top-level customer service and continual product and service innovation and improvement, all while ensuring our services remain competitively priced,
fulfill important Canadian broadcasting policy objectives in its distribution of over-the-air and non-conventional signals to small terrestrial BDUs, thus contributing to competition in small markets throughout Canada, and

make a range of required contributions in support of Canadian programming services and Canadian programming pursuant to their Canadian Radio-television and Telecommunications Commission licences.

**Canadian Coverage and “Canada First” Availability**

21. Shaw supports the continuation of the requirement that Canadian Satellites must provide coverage of all regions of Canada, including the North.

22. Shaw disagrees with any suggestion that satellite operators might be permitted to satisfy a Canadian coverage requirement across multiple satellites comprising their fleet. Canadian customers of the operators of Canadian Satellites typically rely on one or a limited number of satellites. Any *de facto* requirement for DTH and SRDU undertakings to piece together satellite capacity in order serve their Canada-wide base of consumers would undermine their ability to provide viable and reliable service to millions of Canadian homes. Equipment and service costs directly related to provisioning end-users would foreseeably multiply based on the different requirements of each satellite. Moreover, there would be greater potential for technical problems and significantly higher backhaul and uplink costs to upload broadcasting signals onto various satellites. These outcomes of cross-fleet service would undermine the competitiveness of DTH services.

23. Not only should Canada-wide coverage be required, operators of Canadian Satellites should also be required to make new satellite capacity available to Canadian customers for at least six months before such capacity is offered to non-Canadian customers.

24. Current requirements that “licensed operators… make reasonable efforts to fulfill all commitments to make the new satellite capacity available to Canadian clients in all parts of the country prior to launch” need to be strengthened. Although there may be many slots and frequencies that appear to be available for DTH service at a given time, once a national DTH system is established using a particular satellite neighbourhood, it is incredibly difficult to make economical use of frequencies beyond that neighbourhood.

25. Given the national public policy mandates of broadcasting undertakings such as DTH and SRDU services, safeguards such as a six-month availability window are critical if the ongoing viability of these services is to be supported. For DTH and SRDU, the key public policy objective that they fulfill (extension of service to remote areas) could be hampered if current Canadian coverage requirements are weakened and “Canada first” policies are not strengthened.
Conclusion

26. Shaw appreciates the opportunity to provide these comments on the licensing framework for fixed and broadcasting satellite services in Canada. The issues under consideration by the Department are critically important to the competitiveness of Shaw Direct and SBS, as well as to their continued contribution to the fulfillment of public policy objectives for broadcasting.

27. We look forward to reviewing the comments of other parties and providing any reply that we may have to such comments on or before June 30, 2012. In the meantime, we would be pleased to respond promptly to any questions that the Department may have concerning the positions we have expressed in this submission.

Yours truly,

Jean Brazeau
Senior Vice President, Regulatory Affairs
Shaw Communications Inc.

cc. Hon. Christian Paradis, Minister of Industry
Hon. James Moore, Minister of Canadian Heritage
Mr. Leonard Katz, Acting Chairman and Vice-Chairman, Telecommunications, CRTC