

February 2, 2004

Ms. Diane Rhéaume  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Re: **Public Notice CRTC 2003-67: Call for comments on proposals to add 2 non-Canadian satellite services to the list of services eligible for digital distribution**

Dear Ms. Rhéaume:

The Canadian Broadcasting Corporation (CBC) is pleased to provide the Commission with the following comments in response to the applications of Shaw Communications Inc. and Rogers Broadcasting Limited, published in PN 2003-67 of 18 December 2003, to add the services of Bloomberg Television and MSNBC to the list of satellite services eligible for digital distribution. CBC opposes the addition of both services.

### **Background**

On January 13, 2000, in Public Notice 2000-6, the Commission announced a licensing framework policy for the licensing of new digital pay and specialty services which included two categories for new digital services: category 1 and category 2 services. Applicants for category 2 services were told they would have to be prepared “to accept the risks of launching on a digital-only basis, without the types of regulatory support that will be provided to Category 1 services”. They would be licensed on a “more open-entry basis”, to applicants prepared to meet basic licensing criteria, without assured digital access.

The Commission made it clear from the beginning that it would not consider the viability of these services, their business or marketing plans, or the rates to be charged by them. The objective was to “ensure that highly experimental or innovative services will not be excluded due to a lack of perceived viability”. It was clearly understood by all parties to this process that Category 2 services would be left to succeed or fail, once they met CRTC’s fundamental licensing criteria.

In that same announcement the Commission stated it would consider the addition of foreign services to a list of foreign services eligible for digital distribution, after the

licensing process for Category 2 Canadian services was completed. But the Commission made it clear that “it will not be predisposed to authorize foreign services that are competitive, in whole or in part, with Canadian services.”

It was on the basis of this licensing framework that hundreds of new Canadian Category 2 services were licensed, on 14 December 2000, including Canadianized versions of two US news and information services -- Bloomberg Television Canada, licensed to Shaw subsidiary 869933 Alberta Inc., and MSNBC Canada, licensed jointly to Shaw, Rogers and MSNBC Cable.

The Bloomberg Television Canada service was never launched, while the MSNBC service was launched, but its owners have now determined that “the Canadian programming elements are disruptive to subscribers and have proven to be financially burdensome beyond expectation, with the result that MSNBC Canada service is not viable over the long term”.

The licensees now propose to abandon their category 2 licences and switch the status of the services from Canadianized services to the full US services of Bloomberg Television and MSNBC, which they now ask the Commission to approve for addition to the list of non-Canadian satellite services eligible for digital distribution in Canada.

### **CBC’s Objections**

CBC objects to these proposals for several reasons.

First, we consider that both services are in fact competitive with several licensed Canadian specialty programming services, particularly the business service of ROBTv and the headline news service of CTV Newsnet. This competitiveness is grounds alone for the Commission to reject these conversion applications, under the terms of the Commission’s policy set out in PN 2000-6 concerning the non-Canadian services it would be prepared to authorize for digital distribution in Canada.

Second, in determining that it was prepared to authorize BDU licensees to hold Category 2 specialty services licences, the Commission did so for several reasons. First, it considered that as licensees, BDU services would be prepared to assume Canadian programming obligations. In addition, it considered the fact that BDU undertakings who were also digital specialty licensees would be encouraged to launch and invest in digital tiers, and add a range of new Canadian digital programming services to those digital tiers, thus adding to the positive lift the Commission considered necessary for widespread consumer take-up of digital services. This was clearly a wise approach and one that both licensees fully embraced.

This does not, however, take away from the facts related to the two services that are the subject of the current applications. First, one of these services has never even been implemented and as a result there has been close to zero investment by the licensee in the promised Canadian service. Second, the other service has provided a minimal amount of Canadian “news” programming, which it now describes as “disruptive to subscribers” and “financially burdensome beyond expectation.”

Both licensees have made it clear that their contextualized Canadian services are not viable. But instead of accepting these as failed business opportunities, they now seek CRTC's authority to cancel the original licences, and the Canadian produced segments the services were to broadcast, in favour of replacing the Canadian services with the full foreign services.

Our larger fear is that if this approach proves successful with these applications, BDU distributor/licensees may use this precedent to abandon other Category 2 licences in favour of this low-cost approach to increasing the range of eligible foreign satellite services they seek to distribute.

For all of these reasons we ask the Commission to deny these two applications.

All of which is respectfully submitted,

Sincerely,

Lanny Morry  
Director, Regulatory Affairs

Cc: Via fax to:  
Shaw Communications Inc., Calgary  
Rogers Media, Toronto