



December 4, 2008

Mr. Robert Morin
Secretary General
CRTC
Gatineau, Québec
K1A 0N2
Filed via epass

Dear Mr. Morin:

Re: Broadcasting Decision CRTC 2008-299

1. In accordance with the direction set out in paragraph 28 of Broadcasting Decision CRTC 2008-299 ("Decision 2008-299"), Shaw Cablesystems Ltd. ("Shaw") is pleased to respond to the CRTC's direction that Shaw "reply to the Commission within 30 days of the date of this decision setting out the steps it will take to ensure that in the future its marketing of OUTtv does not result in the service being subjected to an undue preference".
2. Throughout the complaint process that culminated in Decision 2008-299, Shaw has earnestly sought to reach a negotiated solution with 6166954 Canada Inc. (616), the owners of OUTtv. In the course of this complaint process, as the record will indicate, Shaw had made a number of specific proposals to address concerns raised by 616 respecting the channel placement and marketing of OUTtv.
3. In light of the determinations and issues identified by the Commission in Decision 2008-299, Shaw undertakes to implement the following measures on a going forward basis:
 - (i) Move OUTtv from channel 370 on all remaining system to channel 100 where possible (as originally requested by 616), and move it to channels 90 to 133 for the balance of systems;
 - (ii) Revise our packaging such that OUTtv will be presented in one of two All In packages; customers will have the option to choose the All In package they want. Each would be offered at the same price;
 - (iii) Include OUTtv as part of one month free preview for new digital customers, subject to 616 waiving its fees during this preview;
 - (iv) Ensure that OUTtv is marketed on an equitable basis with other Category 1 services, as per Shaw's normal marketing practices. This will include revising the Shaw website and marketing brochures to reflect new marketing, packaging and channel changes, and informing Shaw's Customer Service Representatives (CSR's) of these changes.

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4. Each of these initiatives is outlined in greater detail below.

Channel Placement

5. Shaw currently distributes OUTtv on channel 100 in 19 systems. In other systems, OUTtv is distributed on channel 370 adjacent to adult services. Shaw has recognized the concern raised by OUTtv that being distributed on channel 370 may inadvertently suggest to some customers that OUTtv is an adult channel, or contains adult content. Accordingly, Shaw intends to move OUTtv off channel 370 on all remaining systems. OUTtv would be moved to channel 100 wherever possible. For the balance of systems, OUTtv would be distributed between channels 90 and 133. These channel changes will have the effect of moving OUTtv completely away from the adult channels, and within the channel range where the other Category 1 services are located, and placing OUTtv on channel 100 in a majority of Shaw cable systems. This will address the concern about OUTtv's channel position being adjacent to adult channels, and will ensure equitable treatment of OUTtv with other Category 1 digital services. We note that OUTtv had requested to be distributed on channel 100 during the dispute process.

6. Shaw intends to implement these channel moves on 4 February 2009, in order to comply with section 26 of the Broadcasting Distribution Regulations that requires a minimum of 60 days notice to be provided to Canadian programming services where a BDU intends to change the channel on which a Canadian programming service is located.

Packaging

7. In Decision 2008-299, the Commission identified the manner in which Star Choice offers two separate theme packages – one with OUTtv and one without OUTtv – as a more appropriate packaging model. Specifically, the Commission noted at paragraph 22 of that Decision that the marketing approach used by Star Choice makes it “clear to Star Choice subscribers that a package that includes OUTtv exists.”

8. Accordingly, consistent with both Decision 2008-299 and Shaw's own proposal made during the course of the complaint, Shaw intends to emulate the Star Choice marketing approach. Shaw will now present two All In theme paks, one with OUTtv and one without OUTtv, both of which would be offered at the same price. Each customer will have the option to choose the All In package they want to purchase.

9. These changes will be effective 4 February 2009, consistent with the date of the channel realignment described above respecting OUTtv.

Free Preview

10. Shaw will include OUTtv in our current one month free preview of Category 1 and 2 specialty services provided to all new digital customers. A new Shaw digital customer will now automatically receive all Category 1 and 2 specialty services,

including OUTtv, during the free preview period. This is subject to OUTtv agreeing to waive its fees during this preview, consistent with other services that agree to this business practice.

11. These changes will be fully implemented on 4 February 2009, consistent with the date of the channel realignment for OUTtv, assuming that OUTtv is in agreement that it will waive its fees during the free preview period.

Equitable Marketing

12. Finally, Shaw will make the necessary changes to our marketing materials and the Shaw.ca website to reflect the new channel changes, marketing and packaging of OUTtv. Shaw will also ensure that our CSRs are fully aware of these changes, and will be expected to be able explain them to our digital customers. Shaw will also ensure that OUTtv receives equitable treatment with other Category 1 services in the normal course of Shaw's marketing and promotional activities, for example respecting the use of marketing brochures and the local avails.

13. These changes will be fully implemented on 4 February 2009, consistent with the date of the channel realignment for OUTtv.

Conclusion

14. By implementing each of these measures, Shaw is committed to packaging and marketing OUTtv on an equitable basis, with terms comparable to those applied to every other Category 1 digital specialty service. As such, we believe that these measures will ensure that OUTtv will not be subject to a disadvantage on our cable systems.

15. We trust that this letter and our proposed channel placement, packaging and marketing initiatives with respect to OUTtv address the concerns outlined by the Commission in Decision 2008-299. We will be pleased to discuss any of these initiatives with you, or answer any questions you may have.

Yours truly,



Michael Ferras
Vice President, Regulatory Affairs
Shaw Communications Inc.

Cc: Mark Gromell, Senior Analyst, CRTC