



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

December 21, 2005

Sent via email

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

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2005-102: Application No. 2005-1195-8 by Rogers Cable Communications Inc. (Rogers) and Application No. 2005-0951-5 by Shaw Communications Inc. (Shaw) re the use of the local availabilities

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada’s private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services – is pleased to submit this intervention concerning the above-noted applications by Rogers and Shaw to amend their respective conditions of licence relating to the use of the local availabilities of non-Canadian programming services (the “local avails”).
2. The proposed amendments would allow Rogers and Shaw to promote their non-programming services, such as Internet and local telephony, within the 25% portion of the local avails currently used to promote discretionary programming services and packages, customer service information, channel realignments, cable FM service and additional cable outlets.
3. The CAB notes that approval of these applications would provide the applicants with the opportunity to advertise their Internet and telephony services on a number of popular, widely-viewed non-Canadian programming services, reducing their need to rely on the purchase of commercial time on Canadian programming services.

4. Notwithstanding this potential loss of advertising revenue by its members, the CAB does not oppose, in principle, providing a reasonable degree of flexibility to broadcasting distribution undertakings (BDUs) to promote their Internet and telephony services. The CAB believes, however, that such flexibility should not detract from the willingness and the ability of those BDUs to meet their ongoing obligations respecting the promotion of Canadian programming services within the local avails.
5. Accordingly, the CAB is prepared to offer **qualified support** for the Rogers and Shaw applications, provided that the following matters are satisfactorily addressed.

(i) Authorize only the BDU's own Internet and telephony services

6. The CAB submits that the language of the condition of licence authorizing the use of local avails should be crafted so as to authorize Rogers and Shaw to promote only their own Internet and telephony non-programming services, not non-programming services in general and not non-programming services provided by affiliated companies or by other BDUs.
7. This would ensure that the scope of any advertising of non-programming services in the local avails of non-Canadian programming services is limited to the specific Internet and telephony services provided over each licensee's BDU infrastructure, consistent with the intent of the applications.

(ii) Ensure reasonable opportunities for the continued promotion of discretionary programming services and packages

8. The CAB believes that the Commission should ensure that reasonable opportunities continue to be available for the promotion of discretionary programming services and packages within the 25% portion of the local avails. Specifically, the CAB suggests that an equal split in the time devoted to the promotion of a BDU's Internet and telephony services on the one hand, and its programming related services on the other hand, would represent an appropriate balance within the 25% portion of the local avails used for that purpose.
9. In practice, this would permit a BDU to insert up to five thirty-second advertisements for Internet and telephony service in the local avails in any given hour, assuming that ten non-Canadian services are used for this purpose. At the same time, equal time for the promotion of programming services and packages and other programming related services provided by the BDU would also be available within the 25% portion of the local avails.
10. The CAB further suggests that the Commission promote equitable scheduling of promotional messages for programming related and non-programming services in all time periods throughout the broadcast day. This is particularly important with respect to digital programming packages and would be of benefit to subscribers, BDUs and the Canadian programming services offered in those packages.

11. The principle of equitable scheduling is also important with respect to promotional messages in the 75% portion of the local avails, so that BDUs do not reserve preferred prime time slots solely for promotion of their own services. Accordingly, the CAB urges the Commission to affirm the principle of equitable scheduling throughout the broadcast day with respect to **all** promotional messages in the local avails.

(iii) Clarify policy permitting recovery of direct costs for the use of the local avails
12. In its 1999 TV Policy¹, the Commission stated that "...BDUs may not charge Canadian programming services an amount in excess of **their share of the direct costs** associated with the insertion of promotional material in the local availabilities of foreign satellite services" (emphasis added). This approach was confirmed most recently in the proceeding respecting the promotion of section 9(1)(h) services².
13. The CAB submits that granting flexibility for Rogers and Shaw to advertise their Internet and telephony services within the 25% portion of the local avails provides an appropriate opportunity for the Commission to clarify this policy, so that charges for the use of the local avails are in fact consistent with its intentions.
14. Copies of recent rate cards published by Rogers and Shaw for the provision of promotional spots in the local avails are attached as Appendices 1 and 2, respectively.
15. The CAB notes that the rates charged by Rogers and Shaw for the use of the local avails vary from market to market. If the rate cards were based solely on each user's share of the direct costs associated with the use of the local avails, a flatter rate structure from system to system would be expected. Instead, it appears that Rogers and Shaw base their rates on factors such as market size and viewership, raising questions as to whether these rates are consistent with the Commission's policy.
16. The CAB's understanding is that "direct costs" should include only those incremental costs incurred by the BDU in providing the local avails insertions; they should not include overhead and allocated common costs, for example. Moreover, the CAB submits that the direct costs should be spread evenly over all users of the local avails, both in the 75% portion used for programming services, the community channel and PSAs, and in the 25% portion that is the subject of these applications. In that way, all users of the local avails would be assigned only their fair share of the direct costs, as required by the Commission's policy.
17. Finally, the CAB notes that the Rogers rate card appears to be based on a minimum 26-week buy. The CAB submits that programming services should not be expected to

¹ Public Notice CRTC 1999-97 *Building on Success – A Policy Framework for Canadian Television*, paragraph 104.

² Broadcasting Public Notice CRTC 2005-89 *Tools to promote and improve the visibility of services whose national distribution is required pursuant to section 9(1)(b) of the Broadcasting Act*, paragraph 53.

make such a lengthy commitment to access the local avails, as this might deter some services from making use of this promotional opportunity. The CAB suggests that a minimum commitment of six weeks would be appropriate for accessing the local avails.

18. Accordingly, the CAB requests that the Commission clarify its policy relating to charges for the use of the local avails by confirming that:
- charges for the use of local avails should be based only on each user's share the direct costs associated with inserting promotional material, as discussed above, and should not include any mark-up, overhead or other charge over and above those direct costs; and
 - programming services should have the right to access the local avails with a minimum purchase of no more than six complete broadcast weeks.

Yours sincerely,



David Keeble
Senior Vice-President
Policy and Regulatory Affairs

c.c. Rogers Cable Communications Inc. (Email: cable.regulatory@rci.rogers.com)
Shaw Communications Inc. (Email: michael.ferras@sjrb.ca)

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RATE CARD
U.S. Specialty Channels

TLC A&E TNN CNN CNBC CNN Headline News Golf Speed BET WTBS

26 WEEKS **52 WEEKS**

GTA Weekly Costs	\$1,650	\$1,500
OTTAWA Weekly Costs	\$225	\$200
SOUTHWESTERN ONTARIO Weekly Costs	\$225	\$200
NEW BRUNSWICK Weekly Costs	\$225	\$200
NEWFOUNDLAND Weekly Costs	\$225	\$200

U.S. Specialty
TLC
A&E
TNN
CNN
CNBC
HNN
GOLF
SPEED
BET
TBS

*1 Pkg = 120 rotations a week
 (ie. 10 channels equals to 120 rotations per week)

GET THE SPOT COVERAGE YOU WANT...



...for less than you think.



TLC A&E Spike TV CNN CNBC CNNHeadline News WTBS Speed The Golf Channel

Complete Package - 9 Networks, 63 airings per week

Seven thirty second airings per week on each of the following networks: TLC, A&E, Spike TV, CNN, CNBC, CNNHeadline News, WTBS, The Golf Channel and Speed.

Double CNN Package – 5 Networks, 42 airings per week

Seven thirty second airings per week on A&E, Spike TV, CNNHeadline News and CNBC, plus fourteen thirty second airings per week on CNN

Arts & News Package – 4 Networks, 42 airings per week

Seven thirty second airings per week on CNBC and A&E, plus fourteen thirty second airings per week on CNN and fourteen thirty second airings per week on CNN Headline News

Castlegar Complete Package - 5 Networks, 35 airings per week

Seven thirty second airings per week on each of the following networks: TLC, A&E, Spike TV, Golf, Speed

Chilliwack Complete Package – 6 Networks, 42 airings per week

Seven thirty second airings per week on each of the following networks: A&E, CNN, Spike TV, TLC, WTBS, CNBC

**Weekly
Package Rates**
Card #10
Effective August 30,
2004
All rates net before
GST

	<i>Complete Package</i>	<i>Double CNN</i>	<i>Arts & News</i>
Vancouver	\$ 407.00	\$ 255.00	\$ 252.00
Vancouver Island (Victoria, Nanaimo, Duncan)	\$ 137.00	\$ 85.00	\$ 85.00
Chilliwack	\$ 10.00	not avail.	not avail.
Kamloops	\$ 15.00	\$ 10.00	\$ 10.00
Prince George	\$ 15.00	\$ 10.00	\$ 10.00
Okanagan (Kelowna, Penticton, Vernon)	\$ 50.00	\$ 32.00	\$ 32.00
Castlegar	\$ 5.00	not avail.	not avail.
Edmonton	\$ 180.00	\$ 111.00	\$ 111.00
Calgary	\$ 210.00	\$ 129.00	\$ 128.00
Saskatoon	\$ 38.00	\$ 24.00	\$ 24.00
Winnipeg	\$ 147.00	\$ 91.00	\$ 91.00
Thunder Bay	\$ 24.00	\$ 15.00	\$ 15.00
Sault Ste. Marie	\$ 18.00	\$ 12.00	\$ 12.00
ALL MARKETS	\$ 1,256.00	\$ 774.00	\$ 770.00

Per CRTC Decision 95-501, available to licensed Canadian programming services for the promotion of their respective services.

- All rates based on run-of-schedule on the broadcast week of Monday to Sunday. Rates are subject to change. Shaw will endeavor to publish new rate cards as soon as possible. All contracts will be invoiced at the applicable rate at time of airing.
- All rates based on thirty second airtime. Sixty second rates at double the thirty second packages.
- Agency commissions are not applicable. Rates are net of agency commission.
- Betacam SP, Digital Betacam or DVC Pro formats acceptable. Actual length required: 30 or 60 seconds. Tapes must include 30 seconds of colour bars and audio tone to match tape content. Two channel stereo audio preferred.
- Minimum deadline for confirmation of booking and receipt of creative is 2 weeks prior to start date
- Minimum purchase: One complete broadcast week. Maximum purchase: 52 consecutive weeks pending availability.
- Detailed scheduling instructions including air dates must accompany creative. Bookings will not be scheduled until both complete scheduling instructions and creative are received.
- All bookings subject to Shaw's terms and conditions on Order Confirmation.

Please address all booking requests and creative specifically to:

Shaw Cablesystems – Spot Insertion Traffic Suite - Suite 100, 630 - 3rd Avenue S.W. Calgary, AB T2P 4L4

Fax (403) 303-4868

Phone: 403-781-5062 or 403-750-4547

e-mail: spot.insertion@sjrb.ca