



28 February 2014

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

Re: *Applications for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty television services, Broadcasting Notice of Consultation 2014-26 (Ottawa, 29 January 2014)*

1. The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system and regulation that serves the public interest.
2. We are pleased to participate in the process initiated by Broadcasting Notice of Consultation 2014-26, to comment on the applications filed by Rogers Broadcasting Limited to renew the licences of its television programming undertakings. Our intervention is attached: we do not support Rogers' application for five-year terms for the OMNI licences, and oppose its proposed conditions of licence, as approval of these requests effectively places Rogers' interests before the public interest.
3. FRPC respectfully submits that the public interest would be served by short, two-year terms for the OMNI licences, the imposition of the current conditions of licence in place for the OMNI, and the introduction of a condition of licence requiring each station to broadcast a minimum level of original local news and programming, each week, in a specified number of languages.
4. We look forward to the opportunity of reviewing other comments submitted in this proceeding, and respectfully request the opportunity to appear before the CRTC hearing panel during its 8 April 2014 public hearing, to respond to Rogers and other parties, and to address the hearing panel.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

A handwritten signature in blue ink that reads 'Monica Auer'.

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Executive Director

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**Rogers renewal applications:
does mutilating OMNI to 'save' it
serve the public interest?**

Applications for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty television services, Broadcasting Notice of Consultation 2014-26 (Ottawa, 29 January 2014)

Comments of the Forum for Research and Policy in Communications

28 February 2014

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Executive Summary

Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting.
- 2 The Forum supports a strong Canadian broadcasting system that serves the public interest, and is achieving Parliament's objectives.

Importance of this proceeding

- 3 FRPC's intervention addresses the term and conditions of the OMNI licences. The CRTC's decisions on these issues will determine the level and quality of free, local ethnic television service that is made available to multicultural communities in Toronto, Edmonton, Calgary and Vancouver going forward.

Applicable law

- 4 Rogers' television undertakings are subject to the *Broadcasting Act* and to the *Canadian Multiculturalism Act*.
- 5 The 1991 *Broadcasting Act* requires broadcasting to strengthen Canada's cultural, political, social and economic fabric, and to provide programming that reflects the multicultural nature of Canadian society. Unlike the extension of programming in both official languages, the CBC's programming, programming for indigenous peoples and accessible programming, the delivery of multicultural programming is not contingent on resource availability.
- 6 The 1988 *Canadian Multiculturalism Act* also makes it government policy to eliminate barriers to the full and equitable participation of multicultural communities in Canada, to enhance the use of third languages in Canada, and to advance multiculturalism 'in harmony' with Canada's commitment to official languages. As a federal institution the CRTC is subject to this legislation.
- 7 The OMNI stations are also governed by the CRTC's 1999 ethnic broadcasting policy. It requires the CRTC to decide the number of distinct groups that an ethnic station will serve, and requires that ethnic programs make up 60% or more of an ethnic station's broadcast month. We estimate that in 2012 the policy applied to 78 ethnic broadcasting services: 49 pay or specialty services, 24 radio stations and the five OMNI stations. (Canada's 6th conventional ethnic TV station launched in December 2013.)

- 8 The CRTC has said that it “may undertake” a public consultation on the ethnic broadcasting policy two years from now, in 2015-16. Rogers has said that the CRTC should review the policy before then.

Historical context of the OMNI stations

- 9 Rogers bought CFMT-DT Toronto in 1986, and CHNM-DT in 2008. It applied and received licences for CJMT-DT Toronto in 2002, and for CJCO-DT Calgary and CJEO-DT Edmonton in 2008.
- 10 In applying for permission to acquire, or for licences for, the OMNI stations, Rogers has consistently told the CRTC that its financial vigour would strengthen the OMNI stations and expand their programming.
- 11 As Rogers does not disclose the OMNI stations’ finances, Rogers’ claims cannot be verified. However, the actual revenues reported by Rogers for all of its conventional television stations in 2009/10 were 1% than Rogers forecast when it renewed the OMNI and CityTV stations in 2009 – meanwhile, Rogers’ stations spent 24% more than forecast on non-Canadian, and 12% and 15% less than forecast on news and Canadian programming.
- 12 In 2012 Rogers cancelled program production at the OMNI Alberta stations, as well as 13 ethnic programs. In 2013 it cancelled another 12 programs, including daily newscasts in English, Mandarin and Cantonese. From September 2012 to August 2013, CFMT-DT’s news programs were broadcast solely in English (0.01%), Italian (86.07%) and Portuguese (13.92%). In the same period 56% of the station’s programming consisted of repeat broadcasts, and programs broadcast in Dutch, Estonian, Greek, Hebrew and Latvian consisted entirely of repeats. In fact, the only programming for which at least half the hours were not repeat broadcasts was broadcast in Italian (44% repeat), Portuguese (39% repeat) and French (7% repeat).

Licence term

- 13 Rogers has asked the CRTC to renew (or issue) the OMNI licences to August 2019.
- 14 In 2012 in *Canada (Commissioner of Official Languages) v. CBC/Radio-Canada*, the Federal Court held that the CRTC should issue licences taking into account its policies, the public interest and government guidelines – indeed, the public interest must come first. It also held that the CRTC must give particular attention to criticisms of licensees such as Rogers, as this is part of the Commission’s mandate as the broadcast system’s regulator.

- 15 FRPC opposes Rogers' request for five-year licences.
- 16 Rogers has not met its commitments to the multicultural communities it was licensed to serve: having eliminated the OMNI advisory boards, it also chose to cancel news and other programs without consulting the communities affected. It has transformed its originating television stations in Edmonton and Calgary into rebroadcasting services, while continuing to extract local advertising revenues – placing its competitors at a serious disadvantage. Rogers' actions do not merit the reward of a five-year licence, and granting this term would bring the integrity of the CRTC's licensing system into disrepute.
- 17 The CRTC should instead issue the OMNI licences for two years – until August 2016 – and should advance its consultation on a new ethnic broadcasting policy by one year, to 2014-2015. Completing the ethnic broadcasting review by April 2015 would enable the CRTC to establish clear goals for conventional ethnic television stations, and to apply these goals when the CRTC hears Rogers' OMNI renewal applications in time for their August 2016 expiry.
- 18 The CRTC should also suspend the OMNI Alberta's sale of commercial advertising time for six months, as an incentive to reinstate local program production. Rogers could then either offer free airtime to advertisers to enable them to evaluate the best methods of marketing to multicultural communities, or could offer programming commercial-free, to attract more viewers. If Rogers fails to reinstate local program production as required by the Commission, the CRTC could after 6 months call the OMNI Alberta stations to a show-cause hearing.

Conditions of licence

- 19 In the 2012 *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, the Supreme Court of Canada held that the Commission must interpret the *Broadcasting Act's* policy objectives to elucidate, rather than frustrate Parliament's intent.
- 20 Rogers has asked the CRTC to apply conditions to the OMNI licences whose essential effect will be to mutilate the programming services so severely as to transform them into something other than ethnic services.
- 21 Rogers also pleads that its OMNI services should not be required to provide local programming, which it describes as the 'core' of the OMNI stations' contribution to the broadcasting system. The company's main argument is that ethnic programming costs money, and that being required to offer 15 hours of local programming each would reduce the OMNI stations' profitability by as much as \$2 million.

- 22 FRPC opposes Rogers' requests.
- 23 The absence of conditions of licence mandating minimum levels of original local news and other programming ensures that local programming will eventually disappear from the OMNI schedules altogether. The program logs of CFMT-DT, for example, show that between the 2000-2001 and 2012-2013 broadcast years local programming decreased by 54% (from 2,410 to 1,111 hours). News programming decreased 44%, from an average of 23.7 hours/week in 6 ethnic languages, to 13.2 hours/week in 2 ethnic languages.
- 24 Rogers has not demonstrated how a potential reduction of \$2 million in profitability is detrimental to its circumstances. This potential reduction represents 0.4% of the \$876 million it distributed in dividends to its shareholders in 2013. In fact, increasing local programming requirements to the point that Rogers' profitability might decrease by \$5 million, would result in a one-cent reduction of its per-share dividend – from \$1.74, to ~~\$1.74~~. \$1.73.
- 25 The circumstances of Rogers as OMNI licensee clearly permit the company to devote more resources to OMNI programming – and this is what would best serve the public interest.

Summary of recommendations

- 26 FRPC respectfully submits that the public interest in this proceeding would best be served by
1. advancing the CRTC's public consultation on ethnic broadcasting policy from 2015-2016, to 2014-2015
 2. granting two-year licences to the OMNI stations
 3. suspending the OMNI Alberta stations' ability to sell advertising time for 6 months
 4. denying Rogers' proposed conditions of licence, and
 5. requiring each OMNI station to broadcast more than 15 hours of original local news and information each week.

I The issues in this proceeding: terms and conditions

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting.
- 2 As the Forum supports a strong Canadian broadcasting system that serves the public interest, we welcome the opportunity provided by Broadcasting Notice of Consultation 2014-26 to make submissions concerning Rogers' applications to renew the licences of its conventional, ethnic and specialty television programming services, and to amend its conditions of licence.
- 3 In our view, the two issues facing the CRTC in this hearing are the term and conditions attached to the OMNI licences.
- 4 The CRTC's decisions about these issues will determine the level and quality of local television service made available to ethnic communities in Toronto, Edmonton, Calgary and Vancouver. More generally, though, the CRTC's response to Rogers's OMNI applications will enable Canadians to determine whether the CRTC places the public interest before or after private broadcasters' interests.

II Multiculturalism, ethnic broadcasting and the OMNI stations

- 5 The CRTC's decisions regarding the OMNI stations must not only implement Parliament's objectives for multicultural reflection in the *Broadcasting Act*, but the requirements of the 1988 *Canadian Multiculturalism Act*.

A 1988 Canadian Multiculturalism Act

- 6 Parliament recognizes and supports Canada's multicultural character. The *Charter of Rights and Freedoms*, for example, requires the rights and freedoms of people in Canada to be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."¹ Its 1988 *Canadian Multiculturalism Act* made it government policy to "foster the recognition and appreciation of the diverse cultures of Canadian society and promote the reflection and the evolving expressions of those cultures".
- 7 The *Canadian Multiculturalism Act* declares that the Canadian government's policy is to

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

- assist in eliminating barriers to the full and equitable participation of multicultural communities in Canadian society
- enhance the use of third languages in Canada
- promote the reflection and evolving expression of Canada's diverse cultures, and
- advance multiculturalism throughout Canada "in harmony" with the nation's commitment to its official languages.

8 Specifically, Parliament says that the federal government must

(a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;

(b) recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future;

(c) promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to that participation;

(d) recognize the existence of communities whose members share a common origin and their historic contribution to Canadian society, and enhance their development;

(e) ensure that all individuals receive equal treatment and equal protection under the law, while respecting and valuing their diversity;

(f) encourage and assist the social, cultural, economic and political institutions of Canada to be both respectful and inclusive of Canada's multicultural character;

(g) promote the understanding and creativity that arise from the interaction between individuals and communities of different origins;

(h) foster the recognition and appreciation of the diverse cultures of Canadian society and promote the reflection and the evolving expressions of those cultures;

(i) preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada; and

(j) advance multiculturalism throughout Canada in harmony with the national commitment to the official languages of Canada.²

9 The *Canadian Multiculturalism Act* also says that

... all federal institutions shall

(a) ensure that Canadians of all origins have an equal opportunity to obtain employment and advancement in those institutions;

(b) promote policies, programs and practices that enhance the ability of individuals and communities of all origins to contribute to the continuing evolution of Canada;

(c) promote policies, programs and practices that enhance the understanding of and respect for the diversity of the members of Canadian society;

(d) collect statistical data in order to enable the development of policies, programs and practices that are sensitive and responsive to the multicultural reality of Canada;

(e) make use, as appropriate, of the language skills and cultural understanding of individuals of all origins; and

(f) generally, carry on their activities in a manner that is sensitive and responsive to the multicultural reality of Canada.³

B 1991 *Broadcasting Act*

10 Parliament now also recognizes Canada's multicultural character in its broadcasting policy for Canada. The 1968 *Broadcasting Act* did not address multiculturalism, but the 1991 *Broadcasting Act* states that Canada's broadcasting system should

serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

[and]

² S. 3(1).

³ S. 3(2).

through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society,⁴

11 In referring the 1991 broadcasting legislation to committee for second reading the Minister of Communications described the explicit recognition of cultural minorities and “the multicultural character of our society” as one of the “major improvements over the 1968 Act.”⁵

12 Moreover, while delivery of several other important elements of the 1991 legislation is contingent on the availability of resources, the reflection of Canadian society’s multicultural and multiracial nature is not.

C Ethnic broadcasting in Canada

13 The CRTC has developed and published two policies to further Parliament’s objective that the broadcasting system reflect Canada’s multicultural nature. Its 1985 ethnic broadcasting policy was established “to encourage the growth and development of ethnic programming in Canada” and to “help ensure that culturally and racially distinct groups receive broadcasting services.”⁶ Its 1999 ethnic broadcasting policy revised the earlier policy “to provide more flexibility to the broadcasting industry and to streamline regulatory requirements, while still ensuring that the core objectives of the policy continue to be met.”⁷

3. (1) It is hereby declared as the broadcasting policy for Canada that
 (k) a range of broadcasting services in English and in French shall be extended to all Canadians *as resources become available*;
 ...
 (m) (vii) the programming provided by the Corporation should ... be made available throughout Canada by the most appropriate and efficient means and *as resources become available for the purpose*, and
 ...
 (o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system *as resources become available for the purpose*;
 (p) programming accessible by disabled persons should be provided within the Canadian broadcasting system *as resources become available for the purpose*

⁴ Ss. 3(1)(d)(i) and (iii). The CRTC endorsed this provision without reservation when it was being considered by the House of Commons Standing Committee on Communications and Culture, in *CRTC comments on the recommendations of the Communications and Culture Standing Committee’s fifth and sixth reports*, (Ottawa, 18 November 1987) at Recommendation 24.

⁵ *House of Commons Debates*, (3 November 1989) 5534 at 5539 (Hon. Marcel Masse).

⁶ *A Broadcasting Policy Reflecting Canada’s Linguistic and Cultural Diversity*, Public Notice CRTC 1985-139 (Ottawa, 4 July 1985), “The Review Process”.

⁷ *Ethnic broadcasting policy*, Public Notice CRTC 1999-117 (Ottawa, 16 July 1999), “Summary”.

- 14 The CRTC’s 1999 ethnic broadcasting policy remains in force, and establishes that “[e]thnic stations play an important role in serving local communities.”⁸ Its primary goal “is to ensure access to ethnic programming to the extent practicable given resource limitations.”⁹ Ethnic television stations must broadcast the minimum level of Canadian content required from conventional private television stations, depending on the ethnic stations’ conditions of licence.
- 15 To ensure “that ethnic stations primarily serve ethnic communities”,¹⁰ the ethnic broadcasting policy requires ethnic telecommunications stations to ensure that ethnic programs make up 60% or more of the broadcast month.¹¹ Half or more of an ethnic station’s programming must be in languages that are not French, English or indigenous.¹² The CRTC decides the number of distinct groups to be served by an ethnic station based on a community’s demographics, available services and local support.¹³
- 16 The 1999 policy also requires ethnic stations “to provide, at time of licensing and renewal, plans on how they will reflect local issues and concerns”¹⁴ as well as mechanisms for evaluating their progress in achieving these plans.¹⁵ Ethnic broadcasters are supposed “to report on the progress of their initiatives” when their licences are renewed.¹⁶
- 17 Seventy-eight ethnic broadcasting services were operating in 2012: 49 pay or specialty television services,¹⁷ 24 radio stations¹⁸ and 5 conventional television stations. International Channel/Canal International, now Canada’s 6th conventional ethnic television station,¹⁹ went on air in Montréal on 11 December 2013.²⁰

An ethnic program is one, in any language, that is specifically directed to any culturally or racially distinct group other than one that is Aboriginal Canadian or from France or the British Isles.
 1999 ethnic broadcasting policy, ¶19

⁸ *Ibid.*
⁹ *Ibid.*, at ¶5.
¹⁰ *Ibid.*, at ¶17.
¹¹ *Ibid.*, at ¶16.
¹² *Ibid.*, at ¶26.
¹³ *Ibid.*, at ¶23.
¹⁴ *Ibid.*
¹⁵ *Ibid.*, at ¶41.
¹⁶ *Ibid.*, at ¶41.
¹⁷ CRTC, *Individual pay and television statistical and financial summaries, 2008-2013*.
¹⁸ CRTC, *Communications Monitoring Report 2013*, at
¹⁹ *Ethnic television station in Montréal*, Broadcasting Decision CRTC 2012-696 (Ottawa, 20 December 2012).

- 18 According to its most recent three-year plan, the CRTC will review and research the 1999 ethnic broadcasting policy this year, may seek facts from the public about ethnic broadcasting issues next year, and may hold a public consultation to review the policy in 2015-2016:²¹

2013-14	2014-15	2015-16
<p>Ethnic Broadcasting Policy</p> <p>The CRTC will undertake research and review its overall Ethnic Policy for television services in order to reflect and address the specific circumstances of these media. An updated policy will ensure that Canada's diverse and evolving ethnocultural communities are appropriately served by the Canadian broadcasting system, and will consider the long-term viability and sustainability of Canadian operators that provide programming to those communities. This evaluation will be conducted in conjunction with the Cultural Diversity Policy.</p>	<p>Ethnic Broadcasting Policy</p> <p>Following the internal research phase, the CRTC may undertake a public fact finding exercise to enhance its understanding of the issues related to ethnic policy.</p>	<p>Ethnic Broadcasting Policy</p> <p>The CRTC may undertake a public consultation to review its' ethnic policy.</p>

- 19 Rogers has said that it would support a decision from the Commission to review the ethnic broadcasting policy before 2015-16.²²

D The OMNI services

- 20 This section of our intervention provides the historical context for the OMNI stations, which are CFMT-DT Toronto,²³ CJMT-DT Toronto,²⁴ CJEO-DT Edmonton²⁵ and CJCO-DT Calgary²⁶ and CHNM-DT Vancouver.²⁷

²⁰ Steve Faguy, "ICI marks a new start for ethnic TV in Montréal: Station hopes to fill the void created by CJNT's demise" *Montréal Gazette* (11 December 2013)

<<http://www.montrealgazette.com/news/marks+start+ethnic+Montreal/9269853/story.html>>.

²¹ < <http://www.crtc.gc.ca/eng/backgrnd/plan2013.htm>>.

²² Susan Wheeler, Vice President, Regulatory, Media, *Re: Communications, Energy and Paperworkers Union of Canada's Application regarding changes to OMNI's program schedule Application Number: 2013-0996-4*, (Toronto, 12 August 2013), at ¶129: "... should the Commission wish to hold its review of the Ethnic Broadcasting Policy earlier than scheduled we would certainly support such a decision and would actively participate in the review."

²³ First licensed in Decision CRTC 78-780 (Ottawa, 27 December 1978).

²⁴ *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82 (Ottawa, 8 April 2002), as corrected by Broadcasting Decision CRTC 2002-82-1 (Ottawa, 120 April 2002).

²⁵ *Ethnic television stations in Calgary and Edmonton*, Broadcasting Decision CRTC 2007-166 (Ottawa, 8 June 2007)

²⁶ *Ibid.*

- 21 Until late 2013 the OMNI stations were Canada’s only conventional ethnic television services. Canada’s 6th conventional ethnic television station, licensed in late 2012²⁸ went on air in Montréal on 11 December 2013.²⁹
- 22 Rogers Broadcasting Limited (RBL) holds the licences for the OMNI stations. It purchased CFMT-DT Toronto in 1986,³⁰ and bought CHNM-DT Vancouver in 2008.³¹ RBL applied for CJMT-DT Toronto in 2002,³² and for CJCO-DT Calgary and CJEO-DT Edmonton in 2008.³³
- 23 When it asked for the CRTC’s permission to buy CFMT Toronto, Rogers told the CRTC that it would bring “financial stability to CFMT’s parent company ... and management and staff will be able to focus exclusively on strengthening the mandate of the station and upon its programming”.³⁴ The CRTC described Rogers’ commitment as being “of fundamental importance”.³⁵
- 24 When it sought the CRTC’s permission to buy CHNM Vancouver, it said that
- “loved ethnic television”,³⁶
 - it had “the experience, knowledge and resources to continue to build on the initial success of the station”³⁷

²⁷ CHNM-TV was licensed in *New multilingual ethnic television station to serve Vancouver*, Broadcasting Decision CRTC 2002-39 (Ottawa, 14 February 2002). RBL’s purchase of the station was approved in *Acquisition of assets - CHNM-TV and CHNM-DT Vancouver and their transmitters in Victoria*, Broadcasting Decision CRTC 2008-72 (Ottawa, 31 March 2008). Before buying CHNM-TV Rogers had applied for a local ethnic television licence twice previously (*Ibid.*, at ¶19).

²⁸ *Ethnic television station in Montréal*, Broadcasting Decision CRTC 2012-696 (Ottawa, 20 December 2012).

²⁹ Steve Faguy, “ICI marks a new start for ethnic TV in Montréal: Station hopes to fill the void created by CJNT’s demise” *Montréal Gazette* (11 December 2013) <<http://www.montrealgazette.com/news/marks+start+ethnic+Montreal/9269853/story.html>>.

³⁰ *Multilingual Television (Toronto) Limited*, Decision CRTC 86-586 (Ottawa, 19 June 1986).

³¹ *Ibid.*

³² *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82 (Ottawa, 8 April 2002), as corrected by Broadcasting Decision CRTC 2002-82-1 (Ottawa, 120 April 2002).

³³ Rogers Media, “Rogers OMNI Alberta to Launch September 15th” (2 September 2008).

³⁴ *Multilingual Television (Toronto) Limited*, Broadcasting Decision CRTC 86-586 (Ottawa, 19 June 1986), “The Test of Clear and Unequivocal Benefits”.

³⁵ *Ibid.*

³⁶ CRTC, Public Hearing Transcript, Vol 8. (Vancouver, 5 March 2008) at ¶11672 [Vancouver hearing].

³⁷ *Ibid.*, at ¶11687.

- it would “foster the ability of local ethnocultural communities to tell their stories nationally through the provision of local, regional and national content from other diverse markets.”³⁸
- “job losses are not likely on the horizon and, on the contrary... to put Channel M online to meet some of the obligations for our renewal on City TV ... we are likely looking at a modest increase in employment,”³⁹ and
- that it was “particularly proud of the trust and confidence that Canada’s ethnic communities have shown in working with us to produce high quality, informative and entertaining programming.”⁴⁰

25 In approving Rogers’ purchase of CHMN-TV the CRTC specifically noted that Rogers agreed “to maintain Multivan’s commitment to local programming and local service and that it intends to make considerable investments to achieve self-sustainability.”⁴¹

26 In applying for the CJMT-DT Toronto licence, Rogers said that

- resources are needed to make “an outstanding multilingual television service.”⁴²
- it would “significant expand” its studio and editing facilities
- it would “double the number of news crews ... put in the field each day from eight to 16” and to “establish regional news bureaus in Markham, Scarborough, Mississauga/Brampton, Woodbridge and Hamilton.”⁴³
- its “development budgets would be rather significant because we ... would probably be paying fully for the development phase.”⁴⁴
- It would draw producers for CJMT-TV “from the community”, because “[t]hey understand the languages, the cultures, the traditions and the needs of the each of the communities that we serve”,⁴⁵ and that

³⁸ *Ibid.*

³⁹ *Ibid.*, at ¶12179.

⁴⁰ CRTC, Public Hearing Transcript, Vol 8. (Vancouver, 5 March 2008) at ¶11674.

⁴¹ Broadcasting Decision CRTC 2008-72 at ¶10.

⁴² Hamilton hearing, at ¶2404.

⁴³ *Ibid.*, at ¶2394.

⁴⁴ *Ibid.*, at ¶2504.

⁴⁵ *Ibid.*, at ¶2395.

- its commitments would “lay the groundwork for the development of a strong and vital independent ethnic production industry that produces a wide variety of programs of interest to Canadian audiences and with significant export potential.”⁴⁶

27 In approving CJMT-DT Toronto, the CRTC

... considered the results of Rogers' study of demand for additional third-language programming, and is convinced, given the large ethnic community in the Toronto area and its growing diversity, that additional television service devoted to a wider range of ethnic communities is warranted, and is consistent with the objectives of the Act. The Commission agrees with Rogers' position that new ethnic services will stimulate growth in the ethnic advertising market. It also finds that, since the focus of the new station will be on service to local communities, any negative impact on other services will be limited.⁴⁷

28 The CRTC added that it was

... further of the opinion that Rogers' financial commitments over and above normal programming expenses will have a significant and positive effect upon the provision of original Canadian ethnic programming. It notes in particular that the Rogers' funding initiative will contribute to a strengthened independent ethnic production industry, given the lack of funding currently available to producers of ethnic programming.⁴⁸

29 Regarding CJCO-DT Calgary and CJEO-DT Edmonton, Rogers said in 2007 that,

- the OMNI Alberta stations would have “an editorial staff of 20 people, of which seven would be in Calgary and 13 would be in Edmonton because we see Edmonton as being the core news-gathering centre”⁴⁹ with a news director and producers for three languages in that location.⁵⁰
- in Calgary it “would have reporters in South Asian [*sic*], associate producers in South Asian [*sic*], and a production coordinator also working in Calgary to

⁴⁶ *Ibid.*, at ¶2403.

⁴⁷ *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82 (Ottawa, 8 April 2002), at ¶24.

⁴⁸ *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82 (Ottawa, 8 April 2002), at ¶26.

⁴⁹ Calgary hearing, ¶11954.

⁵⁰ *Ibid.*, at ¶11956.

cover the local community”⁵¹ as well as “local reporters in Calgary in terms of our news”⁵²

- it was committing to offer 29 hours per week of original local ethnic television programming in Calgary and Edmonton⁵³
- It told the CRTC in 2008 that continuing and strengthening its local programming was important to its application⁵⁴ and that OMNI had the “local first programming philosophy” demanded of over-the-air television stations.⁵⁵
- When it announced the launch of the Calgary and Edmonton stations, it said that “locally produced newscasts that each day provide in-depth coverage for and about the emerging Cantonese, Mandarin and South Asian communities” was “central” to OMNI’s Alberta schedule.⁵⁶
- Rogers National Vice President of OMNI Television said that “Each OMNI will have a strong focus on local news with a balance of local, regional and national perspectives”⁵⁷

30 In approving the OMNI Alberta stations the CRTC said that

... Rogers' approach will ensure that more small and large ethnic groups are served in each market, thus meeting to the fullest extent possible the broad service requirement set out in the Ethnic Policy.⁵⁸

31 In 2009 RBL appeared before the CRTC to apply for the renewal of its OMNI and CityTv conventional television licences. It forecast total revenues for the following year of \$243.8 million, and expenditures of \$66.6 million and \$114.3 million on Canadian and non-Canadian programming, respectively (see Table 1). It also forecast that its conventional television stations’ news expenditures would amount to 16% of its revenues.

⁵¹ *Ibid.*, at ¶11954.

⁵² *Ibid.*, at ¶11947.

⁵³ Broadcasting Decision CRTC 2007-166 at ¶11.

⁵⁴ Vancouver hearing, at ¶11946.

⁵⁵ Vancouver hearing, ¶11953.

⁵⁶ Rogers, “Rogers OMNI Alberta to Launch September 15th” (2 September 2008).

⁵⁷ Rogers, “Rogers OMNI Alberta to Launch September 15th” (2 September 2008).

⁵⁸ Broadcasting Decision CRTC 2007-166 at ¶15.

Table 1: Rogers' 2009/10 revenue and expenditure forecasts for its CityTV and OMNI stations

Rogers forecasts for OMNI and City TV				
Rogers	Forecast 2009/10			
	CityTV	OMNI	Total	As % of revenues
Revenues	157.9	85.9	243.8	100.0%
Program expenditures	130.6	55.2	185.8	76.2%
News	29.4	9.7	39.1	16.0%
Canadian	49.1	17.5	66.6	27.3%
Non-Canadian	78.3	36.0	114.3	46.9%

Source: Rogers 2009 licence renewal applications

32 When it appeared before the CRTC to renew the OMNI licences, Rogers said that it

... is committed to local programming. We believe local programming is the core mandate of over-the-air broadcasters. This belief is reflected in our licence renewal applications for the Citytv and OMNI television stations. ...⁵⁹

33 Rogers said the OMNI stations needed, “above all, operational stability.”⁶⁰ At the same time, it was willing to accept a licence term that did not coincide with the CityTV stations’ term because there were few synergies between the OMNI and CityTV stations.⁶¹

34 In August 2009, and based on the evidence in the proceeding which included Rogers’ financial forecasts, the CRTC renewed the OMNI licences to August 2015.⁶² It granted Rogers’ request for a six-year licence term and to harmonize its Canadian and its ethnic programming requirements across all of the OMNI stations. It also approved Rogers’ request to harmonize CJMNT-TV’s ethnic programming

⁵⁹ *Public Hearing: Licence Renewals for Private Conventional Television Stations*, CRTC Transcript (Gatineau, 28 April 2009) at ¶1823.

⁶⁰ *Ibid*, at ¶1878.

⁶¹ *Ibid*..

2213 The Commission could consider -- could both give us a six-year licence renewal and consider us in terms of the group renewals if it wished but we believe that the purpose of the group renewals is to look at the issues that are the subject of this hearing and as we go forward and we believe that OMNIs should be treated differently.

2214 There are not many synergies between the OMNI group and City television. In many ways, neither the Commission nor ourselves want there to be. So the synergies are, you know, Leslie’s salary -- and you can argue about the efficiencies there -- and some selling even though the selling is a lot different in many ways.

2215 So we think it is a completely different animal. We think it would benefit the Commission and ourselves not to be distracted from the important elements that they are addressing in this hearing and, as they have suggested, they would address going forward.

⁶² *OMNI – Licence renewals*, Broadcasting Decision CRTC 2009-504 (Ottawa, 19 August 2009).

requirements with the other OMNI stations, and to eliminate restrictions on Rogers' broadcast of non-Canadian, non-ethnic programming on CFMT-TV and CJMT-TV.

- 35 Rogers now submits aggregated financial information for its conventional television stations. Its 2009 forecasts for OMNI and CityTV are compared with the results it reported for the 2008-2009 broadcast year in Table 2, below

Table 2: Rogers' 2009/10 forecast and actual revenue and expenditures for its CityTV and OMNI stations

Comparison of Rogers forecast and actual financial performance							
Rogers	Forecast 2009/10				Actual 2009/10 results reported by Rogers for Conventional TV		
	CityTV	OMNI	Total	% of revs	2009/10	% of revs	% change from forecast
Revenues	\$157.9	\$85.9	\$243.8	100.0%	\$247.0	100.0%	1.3%
Programming exp.	130.6	55.2	185.8	76.2%	202.6	82.0%	9.0%
News ⁶³	29.4	9.7	39.1	16.0%	34.4	13.9%	-12.0%
Canadian	49.1	17.5	66.6	27.3%	56.9	23.0%	-14.6%
Non-Canadian	78.3	36	114.3	46.9%	142.1	57.5%	24.3%

Source: Rogers' 2009 licence renewal applications, and its aggregated financial summary

- 36 The OMNI and CityTV stations' actual revenues in 2009/10 were 1% higher than Rogers forecast. Nevertheless, the stations spent 12% and 15% less on news and Canadian programming, and 24% more on non-Canadian programming, than forecast.
- 37 Moreover, Rogers told the CRTC that spending on news would make up 16% of its conventional television stations' revenues: it actually spent 13.9% of revenues on news. Where non-Canadian programming expenditures were forecast to comprise 47% of the stations' revenues, these expenditures actually amounted to 57% of revenues. As the OMNI stations' financials have not been disclosed in this proceeding, of course, the true picture of what the stations have or have not earned in revenues or spent on programming is unknown to the public.

⁶³ We included news expenditures in this table as conventional television stations' news expenditures are allocated primarily to local stations – ie, they are primarily local program productions.

- 38 In 2010 Rogers dissolved the OMNI Advisory Boards,⁶⁴ relying instead on Community Liaison Officers whom Rogers appointed before its 2009 renewal⁶⁵ as “ambassadors for OMNI”.⁶⁶ Rogers has not explained why it terminated the advisory boards – and meanwhile also says that the members of these Boards “remain invaluable” to OMNI.⁶⁷ It is unclear whether Rogers would have consulted its Advisory Boards about the 2012-2013 programming cuts, however – because the company views these as “business decisions” that it says “are generally outside [its ethnocultural advisors’] area of expertise.”⁶⁸
- 39 The CRTC denied Rogers’ application to reduce annual Canadian repeat programming on its OMNI (and CityTV) stations from 60% to 55%, consistent with a new CRTC regulatory framework entering into effect in September 2011.⁶⁹ It found that Rogers had not provided evidence establishing the financial necessity to make the changes, and that it would be unfair to implement some elements of the new framework for some, without doing the same for their competitors.⁷⁰
- 40 In 2012 Rogers cancelled program production at CJCO-DT Calgary and CJEO-DT Edmonton, and terminated 13 programs.
- 41 In 2013 Rogers cancelled 12 programs, including the *South Asian News*, *Mandarin News* and *Cantonese News*, daily newscasts in English, Mandarin and Cantonese, respectively. According to its program logs from September 2012 to August 2013, CFMT-TV carried news programs in English, Italian and Portuguese.

Table 3: Hours of news broadcast by CFMT-DT in 2012/2013

Hours of news programs (category 010) broadcast by CFMT-DT Toronto From September 2012 to August 2013				
Title	ENG	ITA	POR	Grand Total
INSIEME		0.86		0.86
ITALIAN AFTERNOON		132.47		132.47

⁶⁴ Rogers Media Inc., *Television Licence Renewal Application, Section D – Conventional Ethnic Television Stations*, DM#2043857-2013-1765-2, at ¶113.

⁶⁵ *Ibid.*, at ¶112.

⁶⁶ Susan Wheeler, Vice-President, Regulatory, Media, *Re: Applications by Rogers Media Inc. (Rogers) for the licence renewal of various conventional programming undertakings (City stations) as well as Category A, B, and C specialty services*, (Toronto, 15 January) at 4.

⁶⁷ *Ibid.*, at 2.

⁶⁸ *Ibid.*, at 10.

⁶⁹ *Citytv and OMNI stations – Licence amendments*, Broadcasting Decision CRTC 2010-745 (Ottawa, 7 October 2010).

⁷⁰ *Ibid.*, at ¶14-15.

ITALIAN AFTERNOON CANADA		40.05		40.05
ITALIAN NEWS UPDATE		1.55		1.55
ITALIAN NEWS UPDATEINT03		0.02		0.02
ITALIAN NEWS UPDATEITN01		0.27		0.27
ITALIAN NEWS UPDATEITN02		0.28		0.28
ITALIAN NEWS UPDATEITN03		0.25		0.25
ITALIAN NEWS UPDATEITN04		0.25		0.25
ITALIAN NEWS UPDATEITN05		0.27		0.27
ITALIAN UPDATE		0.02		0.02
LUCIANA	0.05			0.05
OMNI NEWS ITALIAN UPDATE		0.02		0.02
OMNI NEWS: ITALIAN EDITION		228.20		228.20
OMNI NEWS:ITALIAN EDITION		187.05		187.05
OMNI NEWS:PORTUGUESE EDITION			94.94	94.94
PORT NEWS UPDATE-DO NOT DELETE			0.01	0.01
PORTUGUESE NEWS UPDATE			0.75	0.75
Grand Total	0.05	591.55	95.70	687.30
% of total	0.01%	86.07%	13.92%	100.00%
Average hours/week		11.38	1.84	13.22
Source: CFMT-DT program logs (category 10 programs)				

42 During the 2012-2013 broadcast year, 56% of the programming broadcast by CFMT-TV was a repeat of a live, recorded-live or first-play program (see Table 4).

Table 4: Original and repeat programming broadcast by CFMT-DT from September 2012 to August 2013, by type of program

CFMT-DT September 2012 to August 2013 Programming category by program composition							
Category		Live	Rec'd live	1st play	Repeat	Grand Total	% repeat
10.0	News	9.6		392.6	285.1	687.3	41.5%
02A	Analysis			209.0	327.7	536.7	61.1%
30.0	Reporting				7.0	7.0	100.0%
02B	Documentary			36.4	1,072.2	1,108.6	96.7%
40.0	Religion		0.5	32.9	3.0	36.3	8.2%
05B	Informal education			23.6	330.5	354.1	93.3%
07A	Drama			367.1	190.6	557.7	34.2%
07B	Comedy			51.1	827.8	878.8	94.2%
07C	Specials				10.9	10.9	100.0%
07D	Films			65.6	101.1	166.7	60.7%
07E	Animation			18.5	111.3	129.8	85.7%
07F	Improv			3.0		3.0	0.0%
110.0	General entertainment			3.0	124.4	127.4	97.6%

11A	Human interest		524.6	981.4	945.7	2,451.6	38.6%
11B	Reality TV			682.8	90.7	773.5	11.7%
120.0	Interstitials	0.0		30.5	6.7	37.2	18.0%
All programs		9.6	525.1	2,897.4	4,434.6	7,866.7	56.4%

43 In fact, none of the Dutch, Estonian, Greek, Hebrew and Latvian programs carried by CFMT-DT had any original content at all (Table 5). The only programs that were not predominantly repeats, were in Italian, Portuguese and French.

Table 5: Original and repeat programming broadcast by CFMT-DT from September 2012 to August 2013, by language of program

CFMT-DT September 2012 to August 2013 Programs, by language and repeat factor						
Language	Live	Rec'd live	1st play	Repeat	Total hours	% repeat
1. DUT				10.8	10.8	100.0%
2. EST				15.4	15.4	100.0%
3. GRE				75.5	75.5	100.0%
4. HEB				13.9	13.9	100.0%
5. LAV				52.6	52.6	100.0%
6. POL			38.0	227.9	265.9	85.7%
7. UKR			98.7	259.6	358.3	72.5%
8. SPA			55.1	135.3	190.4	71.1%
9. CZE			24.6	59.3	83.9	70.6%
10. HUN			24.4	58.6	83.0	70.6%
11. SCC			48.6	115.5	164.1	70.4%
12. ALB			25.5	59.5	85.1	70.0%
13. MAC			44.6	96.9	141.5	68.5%
14. MLT			25.1	54.0	79.1	68.3%
15. RUS			52.0	107.1	159.2	67.3%
16. SLO			24.9	43.4	68.3	63.6%
17. GER			22.0	37.8	59.8	63.2%
18. RUM			24.8	39.4	64.2	61.3%
19. TUR			27.6	41.8	69.4	60.3%
20. ARM			50.5	54.7	105.2	52.0%
21. ITA	9.5	0.5	496.9	399.4	906.4	44.1%
22. POR			381.9	247.9	629.8	39.4%
(blank)			1.0		1.0	0.0%
3rd languages	9.5	0.5	1,466.2	2,206.4	3,682.6	59.9%
FRE			6.5	0.5	7.0	7.1%
ENG	0.1	524.6	1,424.6	2,227.8	4,177.0	53.3%
Official languages	0.1	524.6	1,431.1	2,228.3	4,184.0	53.3%
Grand Total	9.6	525.1	2,897.4	4,434.6	7,866.7	56.4%

44 In December 2013 the CRTC called on Rogers to submit renewal applications for the OMNI stations one year early,⁷¹ after Rogers cancelled a number of third-language newscasts, magazines and weekly programs. The CRTC made the request to allow it

... to review the OMNI stations' programming issues at an earlier date, consider appropriate measures related to local programming and synchronize the expiry dates for all of Rogers television services.⁷²

45 The CRTC also said that in this proceeding it will examine the role of the OMNI stations

... in providing programming to the communities they serve, including the appropriate levels and scope of multilingual and multi-ethnic programming offered, the methods used to consult with the relevant communities with respect to this programming, as well as the local programming offered by these stations.⁷³

46 Rogers has filed financial information for all of its conventional television stations, which presumably consists of the OMNI and CityTV stations.

Table 6: Comparison of Rogers' forecast and actual revenues and expenditures

Comparison of Rogers forecast and actual financial performance										
Rogers	Forecast 2009/10				Actual results reported by Rogers for Conventional TV					
	CityTV	OMNI	Total	% of revs	2009/10		2010/11		2011/12	
Revenues	\$157.9	\$85.9	\$243.8	100.0%	\$247	100.0%	\$298.5	100.0%	\$290.7	100.0%
Programming exp.	130.6	55.2	185.8	76.2%	202.6	82.0%	218.6	73.2%	247.6	85.2%
News	29.4	9.7	39.1	16.0%	34.4	13.9%	30.12	10.1%	36.73	12.6%
Canadian	49.1	17.5	66.6	27.3%	56.9	23.0%	54.1	18.1%	77.2	26.6%
Non-Canadian	78.3	36	114.3	46.9%	142.1	57.5%	154.3	51.7%	170.4	58.6%

Source: Rogers' 2009 licence renewal applications, and its aggregated financial summary

E The licensee

⁷¹ Broadcasting Notice of Consultation 2014-26.

⁷² *Complaint by the Communications, Energy and Paperworkers Union of Canada against Rogers Broadcasting Limited relating to the cancellation of programs on OMNI television stations*, Broadcasting Decision CRTC 2013-657 (Ottawa, 5 December 2013) <<http://www.crtc.gc.ca/eng/archive/2013/2013-657.htm>>, introductory paragraph.

⁷³ Broadcasting Notice of Consultation 2014-26.

- 48 RBL holds the licences for all five OMNI stations. RBL appears to be a privately owned corporation that does not issue annual reports. As a result, its financial position is unknown. RBL is a wholly owned subsidiary of Rogers Media Inc. (RMI).
- 49 The renewal applications for the OMNI stations were not filed by RBL or one of its officers, however, but by the Vice President, Regulatory, of RMI.⁷⁴ Like RBL, RMI appears to be a privately owned corporation that does not issue annual reports. Its financial position is therefore also unknown. RMI is a wholly owned subsidiary of Rogers Communications Inc.⁷⁵ (RCI) which is ultimately owned by Rogers Control Trust.⁷⁶ (The trust's beneficiaries are members of the Rogers family.⁷⁷)
- 50 RCI is a publicly traded corporation that issues annual reports. It has interests in telecom, broadcasting, distribution, publishing and sports.⁷⁸
- 51 In 2013 RCI reported total revenues of \$12.7 billion, an adjusted operating profit of \$4.9 billion and a profit margin of 39%.⁷⁹ It said that its 'media segment' is operated by its "wholly owned subsidiary Rogers Media Inc. and its subsidiaries".⁸⁰ In 2013 RCI reported that its 'media segment' earned revenues of \$1.7 billion, with an adjusted operating profit of \$160 million.⁸¹ In our view, RCI is the appropriate entity to consider as the licensee of the OMNI services; as the owner of 100% of RMI (and in turn, RBL), RCI is accountable for the operations of the OMNI stations.
- 52 Throughout the remainder of our submission, we refer to the licensee of the OMNI as 'Rogers'.

III Submissions on Rogers' applications

- 53 The CRTC's jurisdiction with respect to licensing is set out at section 9 of the *Broadcasting Act*. Parliament has empowered the CRTC to issue licences for the OMNI stations for terms of up to seven years. The CRTC may also impose conditions

⁷⁴ Susan Wheeler, Vice-President, Regulatory, *Re: Rogers Media Inc. - Licence renewal applications for various conventional ethnic programming undertakings* (Toronto, 20 December 2013) at 6.

⁷⁵ CRTC Ownership Chart 27B <<http://www.crtc.gc.ca/ownership/eng/cht027b.pdf>>.

⁷⁶ CRTC Ownership Chart 27 <<http://www.crtc.gc.ca/ownership/eng/cht027.pdf>>, at 3.

⁷⁷ Rogers, *Annual Report 2013*, at 18:

With the December 2008 passing of Company founder and CEO Ted Rogers, his voting control of Rogers Communications passed to a trust of which members of the Rogers family are beneficiaries. This trust holds voting control of Rogers Communications for the benefit of successive generations of the Rogers family.

⁷⁸ CRTC Ownership Chart 27 <<http://www.crtc.gc.ca/ownership/eng/cht027.pdf>>, at 1.

⁷⁹ Rogers 2013 Annual Report, at "Financial Highlights 2013".

⁸⁰ *Ibid.*, at "Rogers Communications Inc. at a glance".

⁸¹ *Ibid.*

on the OMNI licences “related to the circumstances of the licensee”, which the CRTC considers appropriate to implement Parliament’s broadcasting policy:

9. (1) Subject to this Part, the Commission may, in furtherance of its objects,

(a) establish classes of licences;

(b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee

(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), ...

(c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission’s own motion;

(d) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (b);

(e) suspend or revoke any licence;

(f) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;

...

54 While subsection 9(4) of the *Broadcasting Act* permits the CRTC to exempt the OMNI stations from licensing and regulatory requirements, it has not done so.

55 The renewal materials submitted by Rogers are in the form of responses to questions from the CRTC’s staff.⁸² To comply with the CRTC’s rules of practice and procedure, therefore, Rogers’ renewal materials must

(e) contain a clear and concise statement of the relevant facts, of the grounds of the application and of the nature of the decision sought;

(f) set out any amendments or additions to these Rules proposed by the applicant; and

⁸² Susan Wheeler, Vice-President, Regulatory, Media, Rogers Communications Inc., *Re: Rogers Media Inc. - Licence renewal applications for various conventional ethnic programming undertakings*, DM#2043866-2013-1765-2-APP-Rogers Media Inc.-Cover Letter-OMNI Television Licence Renewals Dec. 20 2013.pdf, (Toronto, 20 December 2013).

- (g) include any other information that might inform the Commission as to the nature, purpose and scope of the application, and be accompanied by any supporting documents.

⁸³

56 As mentioned previously, the ethnic broadcasting policy required Rogers “to provide, at time of licensing and renewal, plans on how [the OMNI stations] will reflect local issues and concerns”⁸⁴ as well as mechanisms for evaluating their progress in achieving these plans.⁸⁵ Rogers was also supposed “to report on the progress of their initiatives” when applying for the OMNI licences’ renewal.⁸⁶ Finally, as the CRTC decides the number of distinct groups to be served by an ethnic station based on a community’s demographics, available services and local support,⁸⁷ ethnic television broadcasters seeking to set the number of distinct groups to be served might be expected to provide this information in their licence renewals.

57 Unfortunately, Rogers provided very few facts about the OMNI services’ programming, has not set out any plans on how the OMNI stations will reflect local issues and concerns, and did not report on the progress of its stations’ initiatives.

A Term of licences

58 Rogers has asked the CRTC to renew the OMNI licences to August 2019. It argues that this timeframe is “reasonable ... to measure the effectiveness and success” of its programming proposals.⁸⁸ It says it will focus on “stabilizing OMNI’s revenues in order to sustain its current level of in-house production.”⁸⁹

1 The law regarding licensing and renewals

59 Broadcast “frequencies are a public good whose allocation to a broadcaster presupposes a public review process, upon completion of which the CRTC issues an operating licence to the licence holder that will best be able to serve the people, taking into account the policies in effect, the public interest and government

⁸³ *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277, s. 22(2).

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, at ¶41.

⁸⁶ *Ibid.*, at ¶41.

⁸⁷ *Ibid.*, at ¶23.

⁸⁸ Rogers Media Inc., *OMNI Television Licence Renewal*, Section D, Conventional Ethnic Television Stations – Amendments to Standard Conditions of licence, at ¶162.

⁸⁹ *Ibid.*

guidelines.”⁹⁰ Parliament has given the CRTC general licensing powers over broadcasting, “in furtherance of its objects”.⁹¹

- 60 The CRTC may issue or renew licences for terms of up to seven years.⁹² Its discretionary authority in licensing is not unfettered, but is limited by the provisions of the *Broadcasting Act* that grant the CRTC jurisdiction over licensees,⁹³ as well as the larger framework of related statutes.⁹⁴ The Commission exercises this jurisdiction properly when it “acts in good faith, in accordance with the law, does not take into account irrelevant factors and does not fail to consider relevant factors.”⁹⁵ It must “take into account the public interest.”⁹⁶ Indeed, in licensing proceedings, “the public interest’ must come first.”⁹⁷
- 61 Canadians are also entitled to expect the CRTC to integrate the purposes of Canada’s *Multiculturalism Act* in its activities, to make certain to consider the needs of multicultural communities in respect of its hearings, policies and decisions.⁹⁸
- 62 The process launched by Broadcasting Notice of Consultation 2014-26 is Rogers’ opportunity to “provide Canadians with an explanation of its programming choices and of its vision for the future in a setting where the interested parties will have the opportunity to be heard.”⁹⁹
- 63 During this proceeding Canadians are entitled to expect the CRTC to “give particular attention to ... criticisms” of Rogers, as “[t]his is part of its mandate as regulator of the broadcasting system.”¹⁰⁰ Indeed,

⁹⁰ *Canada (Commissioner of Official Languages) v. CBC/Radio-Canada*, 2012 FC 650 (CanLII) At ¶156 [per Martineau J.], at ¶175.

⁹¹ *Broadcasting Act*, s. 9(1).

⁹² *Broadcasting Act*, s. 9(1)(b).

⁹³ *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 SCR 489, at ¶127.

⁹⁴ *Ibid.*, at ¶2.

⁹⁵ *Genex Communications Inc. v. Canada (Attorney General)*, 2005 FCA 283 (CanLII), at ¶137.

⁹⁶ *Ibid.*, at ¶31.

⁹⁷ *Canada (Commissioner of Official Languages) v. CBC/Radio-Canada*, 2012 FC 650 (CanLII) At ¶156 [per Martineau J.], at ¶85.

⁹⁸ *Ibid.*, at ¶88.

⁹⁹ *Ibid.*, at ¶156 [per Martineau J.], at ¶85: “Ten years have passed since the Corporation’s licences were last renewed. It is therefore high time that the Corporation provide Canadians with an explanation of its programming choices and of its vision for the future in a setting where the interested parties will have the opportunity to be heard. ...”

¹⁰⁰ *Ibid.*, at ¶74.

... it is inevitable that, in the licence renewal context, the CRTC will be sensitive to the public's complaints and to the licensee's reaction to those complaints that allege an abuse of rights. **The CRTC would not be playing its role and would be abdicating its responsibilities if it were indifferent to the public interest or to allegations that a licensee is compromising the public interest by its deeds and actions or its excessive passivity or tolerance.** In this context of a licence renewal in the best interests of the public, it must be able to report abuses that the public complains of and to verify whether the licensee has complied with the Act, the Regulations, its conditions of licence or any specific undertakings it may have made.¹⁰¹

64 Rogers has asked the CRTC to renew each of the OMNI licences for 5 years, to August 2019.¹⁰² A decision not to renew the OMNI licences would be “an administrative and regulatory one in which the issue is the appropriateness from the standpoint of the public interest of renewing a licence.”¹⁰³ This explains why, “[a]t the conclusion of a renewal procedure, it is always possible that a licence will not be renewed.”¹⁰⁴

65 The CRTC bears a duty to verify Rogers’ claims about the OMNI stations. The duty extends beyond determination of whether OMNI has breached its conditions of licence, to whether Rogers is ‘flouting’ the Commission’s requirements:

[w]hen a licence is being suspended, revoked or renewed, the CRTC's duty of surveillance implies a verification of the quality of the programming and broadcasts to determine whether they meet the standards established by the Act, the Regulations, the Codes of Ethics and the conditions of licence. Needless to say, such verification requires verification of allegations or complaints that these standards are being diluted, distorted, ignored or flouted by a licensee. ...¹⁰⁵

66 Broadcasting Notice of Consultation 2014-26 does not require Rogers to show cause why the OMNI licences should not be revoked or suspended, and does not itself contain any information about the CRTC’s ‘verification’ of the quality of programming by the OMNI stations.

¹⁰¹ *Arthur v. Canada (Attorney General)*, 2001 FCA 223 (CanLII), at ¶127 [per Létourneau J.A.].

¹⁰² Susan Wheeler, Vice-President, Regulatory, *Re: Rogers Media Inc. - Licence renewal applications for various conventional ethnic programming undertakings* (Toronto, 20 December 2013) at ¶4.

¹⁰³ *Genex*, *supra* note 95 at ¶182.

¹⁰⁴ *Mathieu v. Canada (Attorney General)*, 2008 FCA 55 (CanLII), at ¶18.

¹⁰⁵ *Genex*, *supra* note 95, at ¶148.

- 67 Rogers has agreed, however, to the CRTC's request that it seek the revocation of the OMNI licences.¹⁰⁶ Rogers' agreement permits the CRTC to issue new licences for the OMNI station instead of renewing their existing licences. (Indeed, the CRTC staff's correspondence with Rogers may have left it with an expectation that the OMNI licences *will* be re-issued.¹⁰⁷)
- 68 The courts have held that decisions to grant or deny licence renewal applications are discretionary and lie "at the very heart of the CRTC's expertise."¹⁰⁸ The issuance of a licence, and its renewal, are privileges, rather than rights.¹⁰⁹ In other words, although Rogers is entitled to expect to be treated fairly by the CRTC as it considers whether to renew or to re-issue the OMNI licences, Rogers is not entitled to expect the automatic renewal or issuance of those licences.
- 69 If the CRTC issues or renews the OMNI licences, the maximum licence term possible for the stations under section 9(1)(b) of the *Broadcasting Act* is seven years. The CRTC has often issued shorter licence terms after hearing licensees' applications, particularly in cases where broadcasters have breached the CRTC's regulations or their conditions of licence – in other words, short-term renewals are a sanction permitted by the *Broadcasting Act*. As long as the CRTC considers relevant factors, and not irrelevant ones, the Commission may choose any administrative sanction authorized by Parliament¹¹⁰ to address Rogers' performance with respect to the OMNI stations.

2 ***CRTC should issue short-term licences for the OMNI stations***

- 70 FRPC supports the issuance of new licences for the OMNI stations, because this will enable the CRTC to impose conditions of licence which serve the public interest, of its own accord. (The CRTC cannot now impose such conditions because the OMNI

¹⁰⁶ Caroline Poirier, English & Third-language Programming, Senior Analyst, CRTC, *Request for the revocation of the current licences for the OMNI television stations*, e-mail (16 January 2014, 12:3 PM).

¹⁰⁷ *Genex*, *supra* note 95 at ¶193, and CRTC staff e-mail to Rogers of 16 January 2014 ("This confirmation will allow the Commission to proceed with the revocation of the current licences and issue new ones in the course of this proceeding", underlining added).

¹⁰⁸ *Genex*, *supra* note 95, at ¶154.

¹⁰⁹ *Ibid.*, at ¶43.

¹¹⁰ *Ibid.*, at ¶187:

If the administrative measure adopted is one that is authorized by the legislature, it is not the job of this Court to interfere in the correctness or appropriateness of the measure taken, still less to rule on the merits and appropriateness of selecting this rather than that measure and vice versa. At most, the Court may satisfy itself that the CRTC, in the exercise of its discretion, considered the relevant factors without adding to them any irrelevant factors. The actual exercise of weighing these factors, which generally pertains to the CRTC's field of expertise, is a matter for the CRTC.

licences were last renewed in August 2009, meaning that the earliest that the CRTC can impose conditions of its own accord is August 2014.)

- 71 That said, whether the CRTC issues new licences or renews the exist licences, FRPC strongly opposes the five-year licence term requested by Rogers. We note Rogers' claims it needs time to evaluate the success of its new approach to ethnic television. Waiting for Rogers to succeed is like waiting for Godot,¹¹¹ however: Rogers itself notes that while OMNI Alberta began "working with local community groups and producers" in 2008,¹¹² six years later it has not succeeded in putting a program together – rather, "there have been many failed attempts"¹¹³
- 72 Beyond the amazing amount of time Rogers seems to need to find, pay for and broadcast ethnic programming, several other reasons strongly mitigate against a five-year renewal for the OMNI licences.
- 73 First, Rogers has failed to meet its commitments to the Canadian multicultural communities whom these stations were licensed to serve. Instead, it made startling and significant programming reductions without consulting the affected communities – perhaps because it eliminated its community Advisory Boards in 2010. Many people complained to the CRTC, including a number of national organizations. Rogers' decisions to eliminate important programming without consultation should not be rewarded by a five-year renewal term. A shorter term would demonstrate importance of the integrity of the CRTC's licensing process – showing that licensees that radically reduce programming to the communities they are licensed to serve, are not rewarded for their actions.
- 74 Second, a five-year term for the OMNI stations also conflicts with CRTC's own plan – posted on the CRTC's website in May 2013 – to revise its ethnic broadcasting policy before April 2016. The *Broadcasting Act* would not permit the CRTC to change any conditions of the OMNI licences until five years after the licences' last renewal.¹¹⁴ If the OMNI licences are now renewed from August 2014 to August 2019, how would the OMNI stations actually be affected by a new policy?

¹¹¹ From Wikipedia: "Waiting for Godot (/ˈɡɒdɒʊ/ god-oh) is a play by Samuel Beckett, in which two characters, Vladimir and Estragon, wait endlessly and in vain for the arrival of someone named Godot." < http://en.wikipedia.org/wiki/Waiting_for_Godot >, citations omitted.

¹¹² Susan Wheeler, Vice-President, Regulatory, Media, *Re: Applications by Rogers Media Inc. (Rogers) for the licence renewal of various conventional programming undertakings (City stations) as well as Category A, B, and C specialty services*, (Toronto, 15 January) at 5.

¹¹³ *Ibid.*

¹¹⁴ S. 9(1)(c) provides that "... the Commission may, in furtherance of its objects, ... amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion".

- 75 Third, a five-year term ignores the fact that the CRTC is even now consulting with Canadians about the shape of television in Canada. Assuming the CRTC concludes its deliberations this year, a 2019 expiry for the OMNI licences will make it difficult for Rogers to conform with any new television policy beginning in 2015.
- 76 Rather than hastily licensing the OMNI stations now for half a decade, the CRTC should instead renew the OMNI licences for a short period. A two-year renewal will demonstrate the CRTC's commitment to enforcing programming requirements in the public – not the private – interest. A short term will also ensure that the OMNI stations will be governed by requirements of a new ethnic broadcasting policy, and/or a new television broadcasting policy.
- 77 The CRTC should also then advance its ethnic television consultation by one year, to provide the CRTC and the public with an informed basis from which to evaluate the degree to which Parliament's objectives for multicultural broadcasting are being implemented by the entire broadcasting system, including the OMNI stations. Completing the ethnic broadcasting review by April 2015 would enable the CRTC to establish clear goals for conventional ethnic television stations, and to apply these goals when the CRTC hears Rogers' OMNI renewal applications in time for their August 2016 expiry.

3 *CRTC should suspend the OMNI Alberta stations' sale of advertising*

- 78 As for the CJCO-DT Calgary and CJEO-DT Edmonton stations, Rogers' decision to eliminate program production at these stations has effectively transformed the stations into rebroadcasters that continue to accept local advertising. Rogers' actions with these stations mock the CRTC's local advertising policy. Worse, they place local television broadcasters that produce original local programming so as to solicit local advertising at an unfair disadvantage – and thereby jeopardize the integrity of the CRTC's licence enforcement process.
- 79 FRPC respectfully recommends that the CRTC re-issue the licences with requirements for original local programming, while suspending Rogers' ability to sell advertising time on the two stations for six months.¹¹⁵ Nothing would prevent Rogers from providing time to local merchants free of charge, to provide them with experience in marketing to local multicultural communities in Calgary and Edmonton – and local communities could benefit from an increase in the availability of information about local goods and services.

¹¹⁵ The CRTC has previously used its power to suspend, in the case of Standard Broadcasting, when in 1988 it suspended the commercial portion of the licence for three days. (Standard unexpectedly used the opportunity to market the days as commercial-free, thereby increasing its ratings.)

- 80 A temporary suspension of the CJO-DT and CJEO-DT licences' commercial sales would protect the integrity of the Commission's licensing process. It will demonstrate that the CRTC treats all broadcasters fairly with respect to the enforcement of local programming requirements. It will enable Rogers to operate the stations, will permit local merchants to gain experience with multicultural advertising, and will permit Rogers to demonstrate its willingness to serve Calgary and Edmonton's multicultural communities as originally planned.
- 81 If Rogers at the end of six months failed to meet its programming commitments at the end of six months, the CRTC would be entitled to call Rogers to a show-cause hearing. In the absence of serious commitments to meet its original programming promises, the Commission could then decide not to renew the licences, and to invite applicants to apply to provide these services.

B Conditions of licence

- 82 Rogers has asked the CRTC to remove any requirement for ethnic programming during evenings, to allow the stations to carry predominantly foreign programming, and to allow the OMNI stations to carry an unlimited amount of CityTV programming.

1 The law regarding conditions of licence

- 83 The *Broadcasting Act* empowers the CRTC to impose conditions on broadcasting licences "related to the circumstances of the licensee" which it finds appropriate to implement Parliament's broadcasting policy.¹¹⁶ It is an offence for broadcasters to contravene conditions of licence.¹¹⁷
- 84 The object of the CRTC is to regulate all aspects of Canada's broadcasting system "with a view to implementing the broadcasting policy set out in subsection 3(1)" of the *Broadcasting Act*,¹¹⁸ which the Supreme Court of Canada found in 2012 to have "a primarily cultural aim."¹¹⁹
- 85 The broadcasting policy "contains a set of political, social, economic and cultural objectives that reflect the linguistic duality and the multicultural and multiracial

¹¹⁶ *Broadcasting Act*, s. 9(1)(b)(i).

¹¹⁷ *Broadcasting Act*, s. 33.

¹¹⁸ *Broadcasting Act*, s. 5(1) ("Objects").

¹¹⁹ *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 SCR 489, at ¶132.

nature of Canadian society.”¹²⁰ In 2012 the Supreme Court of Canada found that the policy objectives in section 3(1) of the *Broadcasting Act* “focus on content, such as the cultural enrichment of Canada, the promotion of Canadian content, establishing a high standard for original programming, and ensuring that programming is diverse.”¹²¹ Where the *Copyright Act* is “a carefully balanced scheme that creates exclusive economic rights for different categories of copyright owners in works or other protected subject matter”,¹²² Canada’s broadcasting legislation “is primarily concerned with the programmed content delivered by means of radio waves or other means of telecommunication to the public.”¹²³

86 The Commission must interpret the *Broadcasting Act*’s policy objectives not to frustrate, but to elucidate, Parliament’s intent.¹²⁴ In 2012 the Supreme Court of Canada held that “Parliament must be presumed to have empowered the CRTC to work towards implementing these cultural objectives....”¹²⁵

87 In 2012, the Federal Court held that conditions of licence set by the CRTC must be consistent not only with the *Broadcasting Act*, but with the *Official Languages Act* as well – including “ensuring adherence to the values and spirit of the [Acts] in promoting the equal status of both official languages and supporting the development of [official language minority communities].”¹²⁶ The Court said:

Let me be clear: the government cannot interfere with the Corporation’s programming choices (subsections 4(1), 35(2), 46(5) and 52(2) of the [*Broadcasting Act*]). However, freedom of expression and journalistic independence do not constitute a general licence allowing the Corporation to avoid implementing the linguistic aspects of the broadcasting policy for Canada, This is especially true in the case of OLMCs, which are threatened by assimilation and count on public radio and public television to preserve their language and cultural identity.¹²⁷

88 Although the Court was at the time dealing with the Canadian Broadcasting Corporation, FRPC respectfully submits that the Court’s arguments also apply to

¹²⁰ *Canada (Commissioner of Official Languages) v. CBC/Radio-Canada*, 2012 FC 650 (CanLII) At ¶156 [per Martineau J.], at ¶157.

¹²¹ *Reference re Broadcasting Act*, 2012 SCC 4, [2012] 1 SCR 142, at ¶4.

¹²² *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 SCR 489, at ¶36.

¹²³ *Ibid.*, at ¶35, citation omitted.

¹²⁴ *Ibid.*, at ¶23.

¹²⁵ *Ibid.*, at ¶32.

¹²⁶ *Canada (Commissioner of Official Languages) v. CBC/Radio-Canada*, 2012 FC 650 (CanLII) At ¶156 [per Martineau J.].

¹²⁷ *Ibid.*, at ¶62.

multiculturalism: the *Canadian Multiculturalism Act* requires the advancement of multiculturalism throughout Canada, as a matter of government policy, “in harmony” with the nation’s commitment to its official languages. As a government institution the CRTC is also required to promote the reflection, and the full and equitable participation of multicultural communities in Canadian society,¹²⁸ and to preserve and enhance the use of third languages.¹²⁹

2 CRTC can apply new conditions of licence on its own accord

89 While the CRTC cannot unilaterally modify conditions of the OMNI broadcasting licences because these were renewed less than five years ago,¹³⁰ it will be able to modify the OMNI conditions because Rogers agreed¹³¹ to the CRTC’s request that the licences be revoked.¹³² Revocation of the licences means that the CRTC will be able to issue new licences, and apply new conditions of licence without Rogers’ express consent, “should the Commission decide to complete the renewal of the licences for the OMNI television stations following the conclusion of the present proceeding.”¹³³

3 The CRTC should deny conditions of licence that make the public interest subservient to private interests

90 FRPC respectfully submits that conditions of licence applied to the OMNI stations must serve the public interest. The conditions proposed by Rogers serve its interests in reducing costs and maximizing profits, but do not serve the public interest in promoting and enhancing multiculturalism in Canada.

91 Rogers is asking the CRTC to revise the OMNI conditions of licence. It says that it requires “more flexibility” to meet “enormous financial challenges that threaten the very viability of the services.”¹³⁴ It argues that “the environment in which ethnic, conventional television services are operating is fundamentally different from the

¹²⁸ *Canadian Multiculturalism Act*, ss. 3(1)(c) and 3(1)(h).

¹²⁹ *Canadian Multiculturalism Act*, s. 3(1)(i).

¹³⁰ S. 9(1)(c): ... the Commission may, in furtherance of its objects ... amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission’s own motion ...

¹³¹ Susan Wheeler, Vice-President, Regulatory, Media, Rogers Communications Inc., *RE: Request for the revocation of the current licences for the OMNI television stations*, e-mail (16 January 2014, 2:10 PM).

¹³² Caroline Poirier, English & Third-language Programming, Senior Analyst, CRTC, *Request for the revocation of the current licences for the OMNI television stations*, e-mail (16 January 2014, 12:3 PM).

¹³³ Broadcasting Notice of Consultation 2014-26, “Programming changes related to the OMNI multilingual ethnic television stations.”

¹³⁴ Susan Wheeler, Vice-President, Regulatory, *Re: Rogers Media Inc. - Licence renewal applications for various conventional ethnic programming undertakings* (Toronto, 20 December 2013) at 2.

environment of these other broadcasters.” Confusingly, Rogers goes on to say that “conventional, ethnic television stations are operating in a market that has the same competitive pressures but is characterized by much more dire financial circumstances.” Rogers also says that ethnic service audiences are much smaller than those of English-language or French-language television services.¹³⁵

92 The changes Rogers is proposing to its conditions of licence are summarized in Table 7, based on the useful comparative chart that Rogers filed with its application in response to a CRTC request.

Table 7: OMNI stations' conditions of licence - current and proposed

Licensing commitments	Current	Proposed
1. Min hrs ethnic programming from 8pm-10pm	75% (CFMT-DT) 80% (CJMT-DT, CJCO-DT, CJEO-DT) 100% (CHNM-DT)	[no condition of licence]
3. # ethnic groups served	20	10
4. # distinct languages	20	10
5a Canadian content – 6am - midnight	60%	40%
5b Canadian content – 6pm - midnight	50%	40%
6. % to any one language	Up to 16%	[no condition of licence]
7. Overlapping programming on City and OMNI during any broadcast week (in same location)	Up to 10%	[no condition of licence]
8. Overlapping ethnic programming on City and OMNI during any broadcast week (in same location)	None	[no condition of licence]
9. OMNI English-language programming	Must be distinct from CityTV priority programming from 7 pm to 11pm	[no condition of licence because City stations need no longer offer priority programming]
14. Described video	At least 4 hours/month	At least 4 hours/month

Source: Rogers Media Inc., *OMNI Television Licence Renewal Applications* (Toronto, 20 December 2013), Appendix 1 – Chart of Proposed Conditions of licence.pdf

93 Accepting Rogers’ proposals will allow the OMNI stations to

- Reduce the number of communities it serves by half
- Reduce the number of third languages used from 18 to 8¹³⁶

¹³⁵ *Ibid.*, at ¶3.

¹³⁶ Distinct languages could include English or French, which are not third, but official languages in Canada.

- Broadcast non-Canadian and non-ethnic programming throughout the evening broadcast period, and to
- Simulcast or rebroadcast CityTV’s ethnic and non-ethnic programming

94 We note first, that Rogers has not explained how the conditions it is proposing either benefit the public, comply with the Commission’s ethnic broadcasting policy, or meet the requirements of Canada’s *Canadian Multiculturalism Act*. Unless Rogers explains how the changes it proposes actually serve the public interest and promote multiculturalism in Canada, the CRTC should deny the changes.

95 Second, the facts submitted by Rogers do not support its financial necessity argument. The figures Rogers submitted for 2011, 2012 and 2013, however, show that the revenues generated by its ‘lowest-revenue contributing groups and languages’ exceed their costs:

Table 8: Revenue and costs of OMNI’s 10 lowest revenue-contributing groups and languages, 2011-2013

OMNI’s 10 lowest revenue contributing groups and languages	2011	2012	2013
Revenue	\$240.00	\$ 274.00	\$ 460.00
Costs	\$211.20	\$ 241.12	\$ 404.80
Profit	\$28.80	\$ 32.88	\$ 55.20
Profit margin	12.0%	12.0%	12.0%

Susan Wheeler, Vice-President, Regulatory, Media, *Re: Applications by Rogers Media Inc. (Rogers) for the licence renewal of various conventional programming undertakings (City stations) as well as Category A, B, and C specialty services*, (Toronto, 15 January) at 9.

96 Third, Rogers has not explained why its audience-size argument should be taken seriously: while Rogers says that the CRTC should grant its proposed changes because multicultural audiences are small, these audiences were even smaller when Rogers first bought or applied for the five OMNI licences. At that time, however, Rogers was able to carry more programming, for more multicultural communities and in more third languages than it now proposes to do. In the absence of a rational argument explaining why growth in potential audiences requires Rogers to reduce its service to those audiences, the CRTC should deny Rogers proposed changes.

97 Finally, Rogers has failed to support its arguments with relevant facts. It is particularly telling that the report that purportedly supports Rogers’s arguments – Strategic Inc., *New Canadians: A Review of Media Usage* – is dated December 2013, even though Rogers began reducing service to multicultural communities as early as 2012. Rogers, in other words, is using information collected after the fact to support programming decisions it made for reasons that had nothing to do with service to Canada’s multicultural communities.

98 Even if the Strategic Inc. report is only considered for its relevance to Rogers' current requests regarding conditions of licence, its results – to the extent that they are representative of Canada's multicultural population – do not support Rogers' position. For example, Rogers pleads to have no condition of licence regarding local programming – while the Strategic Inc. report found that “New Canadians have a strong interest in third-language news and information programming on a local, national and international level”¹³⁷ In fact, 82% of those surveyed ‘normally watch’ local news on English TV – indicating a high demand for this content.¹³⁸

99 In the absence of relevant facts, , the CRTC should retain the current conditions of licence

4 *Require each OMNI station to broadcast more original local news and information each week*

100 The current OMNI do not have any conditions regarding local programming, or the broadcast of original local programming. This is why Rogers was able to drop 25 news and information programs from the OMNI schedule between 2012 and 2013 and remain in compliance with its conditions of licence.¹³⁹

101 Rogers says that the OMNI stations are producing and broadcasting local programming. It claims that this programming is “at the core” of the stations' contribution to the broadcasting system.¹⁴⁰ In fact, however, local programming on OMNI's main station, CFMT-DT Toronto, decreased by 54% between 2001 and 2013: from 2,410 hours in 2000-2001, to 1,111 hours in 2012-2013 (see Appendices 1 and 2).

¹³⁷ Strategic Inc., at 12.

¹³⁸ *Ibid.*, at 20.

¹³⁹ CEP, *Re: Application to CRTC to hear, inquire into and make an order concerning the cancellation of a number of ethnic television programs by Rogers Broadcasting Limited's OMNI television stations – Reply to response from Rogers*, (Ottawa, 22 August 2013) at 4, Table 3.

¹⁴⁰ Rogers Media Inc., *OMNI Television Licence Renewal*, Section D, Conventional Ethnic Television Stations – *Amendments to Standard Conditions of licence*, at ¶13

Even in the absence of a minimum local programming COL, each of our OMNI stations will continue to produce and broadcast local programming. We understand the important role that local programming plays in furthering the needs of the Canadian broadcasting system. Indeed, it is at the core of the unique value that the OMNI stations contribute to the system. We are committed to creating and exhibiting local programming, but we respectfully request that the Commission refrain from imposing a condition requiring our stations to offer a certain number of local programs per week. As we have outlined in detail in the document titled “Rogers Media Inc. - Ethnic - Programming Strategy and Amendments to Conditions of Licence,” the OMNI stations require maximum flexibility to deal with the difficult circumstances in which they currently operate.

- 102 Rogers nevertheless opposes the imposition of the ‘standard’ conditions of licence applied to English-language or French-language conventional television stations and asks that the CRTC “remove entirely any minimum local programming requirements for the OMNI stations.”¹⁴¹ It claims that requiring each station to broadcast 15 hours/week of local news would reduce OMNI profitability by \$2 million¹⁴² -- or \$40,000 per year, per station. We note that in 2009, however, while Rogers forecast that it would spend \$39.1 million on OMNI and CityTV news programming (usually ascribed as a local station production cost), it actually spent \$4.7 million less (\$39.1 million).
- 103 FRPC strongly opposes Rogers’ request.
- 104 First and foremost, removing any minimum local programming requirements permits Rogers to drop all news and information programs from the OMNI services, denying multicultural communities access to the very content they need to understand and participate in Canadian society – as other private broadcasters also decreased their local programming up to 2009 in the absence of conditions of licence to otherwise restrain them. The CRTC should instead require the OMNI stations to broadcast minimum levels of local news and information each week, as it now requires of other conventional television stations.
- 105 Second, the outrage expressed by Canada’s multicultural communities in response to the OMNI cuts in 2012 and 2013 expresses their desire for more, not fewer, hours of news and information, and in particular original hours of news and information.
- 106 This outrage stems from the fact that Rogers has significantly reduced the diversity and level of news on its stations. As shown by Table 3, in the 2012-2013 broadcast year OMNI-1 Toronto broadcast an average of 13.2 hours/week of Category 010 news programming, in Italian and Portuguese. A decade or so earlier, in the 2000-2001 broadcast year, the station was broadcasting an average of 23.7 hours/week of news – and in at least six ethnic languages (Table 9).

Table 9: Hours of news broadcast by CFMT-DT in 2000/2001

Hours of news programs (category 010) broadcast by CFMT-DT Toronto From September 2000 to August 2001									
Title	CAN	ENG	ITA	KOR	POL	POR	UKR	(blank)	Total

¹⁴¹ Rogers Media Inc., *OMNI Television Licence Renewal*, Section D, Conventional Ethnic Television Stations – *Amendments to Standard Conditions of licence*, at ¶11.

¹⁴² Susan Wheeler, Vice-President, Regulatory, Media, *Re: Applications by Rogers Media Inc. (Rogers) for the licence renewal of various conventional programming undertakings (City stations) as well as Category A, B, and C specialty services*, (Toronto, 15 January) at 11.

CHINESE NEWSLINE	2.33								2.33
CHINESE NEWSLINE.	556.27								556.27
CHINESE YEAR END NEWS SPECIAL	1.00								1.00
HONG KONG ELECTIONS SPECIAL	0.50								0.50
ITALIAN NEWS UPDATE			4.17						4.17
KONTAKT						49.23			49.23
NEWS UPDATE			0.02						0.02
NITELIFE.								0.19	0.19
ROZMAITOSCI					18.02				18.02
SOUTH ASIAN NEWSWEEK		33.75							33.75
STUDIO APERTO			0.50						0.50
STUDIO APERTO ELECTION SPECIAL			1.03						1.03
STUDIO APERTO.			261.21						261.21
SVITOHLIAD							31.52		31.52
TELEJORNAL						248.57			248.57
TELEJORNAL UPDATE			0.02			4.77			4.78
TV KOREA				10.45					10.45
Z UKOSA		0.30			10.25				10.54
Grand Total	560.10	34.05	266.95	10.45	28.27	253.33	80.75	0.19	1,234.09
% of total	45.4%	2.8%	21.6%	0.8%	2.3%	20.5%	6.5%	0.0%	100.0%
Average hours/week	10.77	0.65	5.13	0.20	0.54	4.87	1.55	0.00	23.73

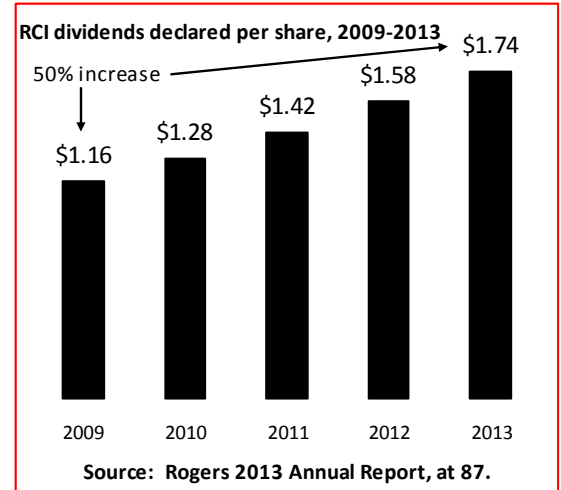
Source: CFMT-DT program logs for September 2000 to August 2001

Figure 1: RCI dividends per share, 2009-2013

107 If anything, Rogers should be required to broadcast at least 23 hours/week of original local news and information – not just 15 hours/week.

108 Third, the ‘reduced profitability’ of \$2 million is insignificant to the licensee, and to its shareholders.

109 In 2013 Rogers paid \$876 million in dividends to its shareholders.¹⁴³ If the CRTC had required OMNI to provide 15 hours/week of local news and information in 2013 so that the OMNI stations’ profitability decreased by \$2 million (as Rogers claims would now be the case) the total dividends available for distribution might have decreased from \$876 million to \$874 million – or by 0.4%.



¹⁴³ Rogers, *Annual Report, 2013*, at 83.

- 110 Yet since the OMNI licences were last renewed Rogers has increased its dividends by 50%, or 58¢ per share,¹⁴⁴ Rogers' circumstances enable it to bear a 0.4% reduction in total share dividends without difficulty. Indeed, we note that if the total dividends distributed by Rogers decreased by \$5 million (allowing either higher quality local programming, or more hours of local programming on OMNI), the per-share impact would be one penny (ie, \$1.73, instead of \$1.74).
- 111 Finally, it is important to note that accepting Rogers' arguments may have the unfortunate effect of encouraging all broadcasters to create corporate shells for their broadcasting assets – so as to argue that the CRTC must reduce or eliminate any requirements that reduce the standalone-shells' profitability. The CRTC should not be distracted by the shell game of corporate structures because the reality is simply this: if Rogers did not need its broadcast programming undertakings, it would not retain them.
- 112 For these reasons FRPC respectfully submits that conditions of licence must be added to the OMNI licences to require the stations to provide a minimum number of ***original*** hours of news and information, for a specified number of ethnic languages, each week.
- 113 A discussion of the amount of original local news and information should consider that Rogers currently repeats local newscasts one or more times during the same week. Original content can therefore, and should be used to replace this programming.
- 114 While the CRTC has proposed a requirement for Rogers to match the 15 hours/week of local programming now required from conventional English-language and French-language television broadcasters, FRPC respectfully submits that this level of programming may be inadequate to meet the needs of the multicultural communities whom Rogers has been licensed to serve. For that reason, we suggest that Rogers be required to provide at least, and preferably more than, 15 hours/week of original news, with original news scheduled daily (ie, weekdays and weekends).

IV Summary of recommendations

- 115 FRPC has appreciated this opportunity to make submissions regarding the licensing of Rogers' OMNI stations.
- 116 Our recommendations are summarized below.

¹⁴⁴ *Ibid.*, at 65.

1 Advance the CRTC's public consultation on its ethnic broadcasting policy by one year

- 117 The CRTC's current 3-year plan announces that the Commission may hold a public consultation on Canada's ethnic broadcasting policy in 2015/16.
- 118 The upheaval triggered by Rogers actions in the conventional ethnic television sector, and the fact that its cancellation of numerous news and information programs did not its licences, demonstrate that the ethnic broadcasting policy has serious problems.
- 119 While a review of the ethnic broadcasting policy in 2015/16 would be important, the public interest is better served by reviewing the efficacy of the ethnic broadcasting policy in meeting Parliament's requirements with respect to multiculturalism in the *Broadcasting Act*, as well as the *Canadian Multiculturalism Act* more quickly – to ensure that broadcasters understand their responsibilities going forward.
- 120 The CRTC should advance the timetable for its ethnic broadcasting policy review to 2014/15 to serve the public interest, and the interests of multicultural communities across Canada.

2 Grant two-year licences to the OMNI stations

- 121 Granting five-year licences for the OMNI stations would be contrary to the public interest, even perverse, given the wide-ranging and extensive cuts Rogers has made to the stations' programming, without consulting with, and despite opposition from, the communities affected.
- 122 Longer-term renewals should be reserved for licensees that fully comply with the *Broadcasting Act*, related legislation, the CRTC's policies, its regulations, and their licences. Licensees that exceed these requirements should receive the longest term possible, to provide them with the stability to continue to implement Parliament's broadcasting policy for Canada – and thereby serve the public interest.
- 123 Licensees like Rogers, that reduce critical programming to maximize profits, should receive significantly shorter licence terms, to encourage improved performance going forward.
- 124 The OMNI licences should be renewed for two years.

3 Suspend the OMNI Alberta stations' ability to sell advertising time for 6 months

- 125 Allowing Rogers to operate the OMNI Alberta stations without requiring that the stations produce and broadcast original local programming makes a mockery of the

CRTC's licensing system, its local advertising policy and those broadcasters who choose to take their licensing commitments seriously.

- 126 A tempting approach to Rogers' flagrant disregard for the commitments it made to the CRTC and the public when it applied for the CJCO-DT and CJEO-DT licences would be to not issue the licences – to leave them revoked, as it were.
- 127 In that case, other applicants may decide to apply for the privilege of holding one or both of these licences – and the Commission could invite the public's views on those applications.
- 128 If the CRTC decides to issue Rogers ethnic television licences for Calgary and Edmonton, however, a shorter-than-normal licence term would be an inadequate remedy for Rogers' decision to close down production in those locations, and to place its competitors at a disadvantage by continuing to carry local advertising.
- 129 FRPC respectfully recommends that the CRTC issue the two licences to Rogers, but that the commercial component of the licences should be suspended for six months. Rogers may then choose to offer advertising time free of charge to local merchants, to attract their custom – or it may decide not to carry advertising at all, to attract audiences.
- 130 Regardless, the CRTC should then only consider terminating the commercial suspension if Rogers has reinstated local program production for the ethnic stations in Calgary and Edmonton, and is meeting its other conditions of licence.
- 4 Deny Rogers' proposed conditions of licence**
- 131 If the CRTC grants Rogers the condition of licence that it has proposed, along with its plea not be held to its stated belief in the core value of local news through a condition of licence, the OMNI services that emerge from this proceeding will be a mutilated version of the services that were originally promised to Canada's multicultural communities and to the CRTC.
- 132 Granting Rogers' requests does not meet the requirements of the *Broadcasting Act*, and breaks the commitments made by Parliament to multicultural communities in the *Canadian Multiculturalism Act*.
- 133 FRPC firmly opposes Rogers' proposals regarding the condition of licence for the OMNI services, as they are contrary to the public interest.

5 *Require each OMNI station to broadcast more than 15 hours of original local news and information each week*

- 134 The absence of any conditions of licence for original local news from the OMNI licences, and the absence from the ethnic broadcasting policy of any requirement for original local news or information programming, enabled Rogers to mutilate its programming schedules across Canada.
- 135 The public interest is not served by elimination of news and information programming from any conventional television station's schedule, even when the station's competitors provide such content.
- 136 Similarly, the public interest is not served by the elimination of original news and information programming from conventional television stations whose audiences cannot obtain news from, for and about Canada's multicultural communities from any other conventional television stations in their communities.
- 137 The public interest is best met by requiring the OMNI stations, through conditions of licence, to provide a minimum threshold level of original hours of news and information, for a specified number of ethnic languages, each week.

Appendix 1: Titles and duration of programs produced by CFMT-DT from September 2000 to August 2001

Title	CAN	ENG	GRE	GUJ	HIN	ITA	JPN	KOR	MAA	MLT	POL	POR	SPA	UKR	URD	(blank)	Total
3 VIEWS	36.57																36.57
BOLLYWOOD BLVD		38.41															38.41
CAN.ETHNIC JOURNALIST AWARDS00		0.49															0.49
CANADA VOTES:MULTICULT.DEBATE		1.00															1.00
CDN APPEAL:EARTHQUAKE RELIEF	0.25	0.70		0.02	0.10	0.05		0.02	0.25						0.07		1.45
CFMT SPECIAL:THE M REPORT		2.00															2.00
CFMT SPECIAL:YEAR OF THE SNAKE	1.07																1.07
CHINESE BUSINESS HOUR	95.27																95.27
CHINESE HOLIDAY SPECIAL	5.00																5.00
CHINESE NEWSLINE	2.33																2.33
CHINESE NEWSLINE.	556.27																556.27
CHINESE YEAR END NEWS SPECIAL	1.00																1.00
COMMENTARY																0.06	0.06
CUCINA INTERNAZIONALE						0.49											0.49
EDO KAI TORA			84.42														84.42
FILLER						0.13											0.13
GRANDE GIUBILEO						1.99											1.99
GREEK HOLIDAY SPECIAL			2.00														2.00
HALF THE WORLD	2.45																2.45
HONG KONG ELECTIONS SPECIAL	0.50																0.50
HORA H												101.09					101.09
INDIA: THE LIVING ARTS SPECIAL		1.48															1.48
ISHTYLE TV		39.26															39.26
ITALIAN HOLIDAY CONCERT						1.00											1.00
ITALIAN NEWS UPDATE						4.17											4.17
LA EMBAJADORA													1.00				1.00

Title	CAN	ENG	GRE	GUJ	HIN	ITA	JPN	KOR	MAA	MLT	POL	POR	SPA	UKR	URD	(blank)	Total
LAMIRE												74.90					74.90
LATIN VIBES													0.99				0.99
LEHEN MALTI										0.49							0.49
MANDARIN WIDE ANGLE LENS						1.00			100.49								101.49
MRS.LUI'S COOKING	0.11																0.11
NA LUZIE											10.83						10.83
NEWS UPDATE						0.02											0.02
NITELIFE																0.46	0.46
NITELIFE.																77.72	77.72
NOI OGGI						64.35											64.35
OLYMPIC COUNTDOWN (CHINESE)	0.50																0.50
PADRE PIO SPECIAL						0.93											0.93
PIONEERS YEAR 2000												3.97					3.97
POLISH DAY SPECIAL											1.00						1.00
POLISH HOLIDAY SPECIAL											2.97						2.97
PORTO 2001:PORTUGAL DAY CELEBR												1.50					1.50
PORTUGUESE HOLIDAY SPECIAL												4.00					4.00
PRESIDENT SAMPAIO'S VISIT												0.50					0.50
ROZMAITOSCI											56.75						56.75
S.ASN NEWSWEEK:EARTHQUAKE RELI		0.99															0.99
SIGN OFF																0.03	0.03
SIGN ON/O CANADA																0.03	0.03
SOLOMUSICA						46.90											46.90
SOUTH ASIAN NEWSWEEK		100.16															100.16
STUDIO APERTO						0.50											0.50
STUDIO APERTO ELECTION SPECIAL						1.03											1.03
STUDIO APERTO.						261.21											261.21
SVITOHLIAD														100.22			100.22
TELEJORNAL												248.57					248.57

Title	CAN	ENG	GRE	GUJ	HIN	ITA	JPN	KOR	MAA	MLT	POL	POR	SPA	UKR	URD	(blank)	Total
TELEJORNAL UPDATE						0.02						4.77					4.78
TERRA NOSTRA SPECIAL												1.48					1.48
THE VEGGIE TABLE		6.92															6.92
THE VEGGIE TABLE.		124.96															124.96
TV KOREA								41.07									41.07
WAI WAI WIDE							42.55										42.55
Z UKOSA		0.30									43.41						43.70
Total, local station	701.32	316.68	86.42	0.02	0.10	383.80	42.55	41.08	100.74	0.49	114.96	440.78	1.99	100.22	0.07	78.31	2409.51

Title	ENG	EST	GER	ITA	LAV	POL	POR	SCC	SPA	UKR	Total
World Cuisine			0.50								0.50
WORLD CUISINE-GERMAN			25.38								25.38
Grand Total	77.24	11.89	25.88	695.03	25.83	85.55	175.56	0.50	1.94	11.96	1111.38

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