

August 25, 2016

***Via GC Key***

Ms. Danielle May-Cuconato  
Secretary General  
Canadian Radio-television  
and Telecommunications Commission  
Ottawa, Ontario

Dear Ms. May-Cuconato:

**Re: Licence Application for OMNI Regional 9(1)(h) Service and Licence  
Renewal Applications for OMNI's Over-the-Air Television Stations  
(Application Nos. 2016-0009-9 and 2016-0377-0) – Broadcasting Notice of  
Consultation CRTC 2016-225**

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1. Rogers Media Inc. (Rogers) is filing this reply in response to the interventions we received regarding the above-referenced licence renewal applications for our OMNI over-the-air (OTA) television stations and the OMNI Regional application for a new discretionary service licence and a request for mandatory carriage pursuant to section 9(1)(h) of the *Broadcasting Act*.
2. Before we address the specific issues raised in the interventions filed in this proceeding, Rogers wishes to thank the more than 3,800 supporting interveners who took the time and made the effort to engage in this process and submit letters of support. In those letters, the interveners explained the contribution that our OMNI stations make in their lives today and the important role our multilingual and multicultural stations continue to play in their communities. A few examples of the supporting comments we received are set out below to highlight the important role that OMNI plays in Canadian society today:

OMNI with its high quality multiethnic and third-language programming is an important bridge between the main stream Canadian way of life and the ethnic communities especially those with high percentage of members not having English as their first language. Many of these community members, especially the relatively new immigrants, need programs in the languages they speak to get involved in the local cultural, political, civic and social matters.<sup>1</sup>

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<sup>1</sup> Henry Chau intervention, Vancouver Society in Support of Democratic Movement (Vancouver).

OMNI television promotes networking, expansion and integration among the members of the diverse ethnocultural groups that settle in Canada. By providing a variety of programmes in different languages, it facilitates civil engagement and highlights relevant events and updates.<sup>2</sup>

We commend the commitments that Rogers has made to producing high-quality ethnic and third-language programming on OMNI. This is especially important in Saskatchewan at a time when the provincial government has cut funding to heritage language schools.<sup>3</sup>

I believe that OMNI is uniquely placed to reflect a variety of communities not just to themselves but to other language and cultural groups. Diversity is becoming the new mainstream. OMNI Television is unique in its ability to be able to provide a forum for diversity that is open, inclusive and freely available to Canadians without making those cultural and linguistic groups into isolated silos that do not intersect with each other.<sup>4</sup>

3. Rogers appreciates the support we have received for both the licence renewal application and for our proposal to launch a new OMNI Regional discretionary service for distribution by broadcasting distribution undertakings (BDUs) as part of the basic service. We look forward to continuing to provide ethnic Canadians with a range of dynamic and engaging programming that will maximize the contribution we make to the Canadian broadcasting system.
4. We would also note that the vast majority of interveners have filed interventions that support or conditionally support our OMNI Regional application. This includes some parties, like Unifor National, who have in the past questioned our approach to operating OMNI's OTA stations. We believe all of this support is a reflection, not only of the longstanding commitment Rogers has made to providing programming that ethnic communities want to watch, but also of the enormous importance that a growing number of Canadians place on having ready access to a multilingual and multicultural programming service as part of their basic service in all regions of the country.
5. Instead of responding to each opposing intervention separately, Rogers has organized this reply according to the following issues that were raised in the submissions:
  - I. Our rationale for launching a new OMNI Regional discretionary service and granting it mandatory carriage under section 9(1)(h) of the *Broadcasting Act*;
  - II. The exceptional nature of OMNI Regional and the CRTC criteria for granting mandatory carriage (Broadcasting Regulatory Policy CRTC 2010-629);

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<sup>2</sup> Maria Carmen Romero intervention, President, Association of Hispanic Canadian Teachers (Toronto).

<sup>3</sup> Rhonda Rosenberg intervention, Executive Director, Multicultural Council of Saskatchewan (Regina).

<sup>4</sup> Diane Boehme intervention, Executive Producer "Blood and Water" TV Series (Vancouver).

- III. The evidence demonstrates that there is an extraordinary need among the intended audience for the OMNI Regional service;
  - IV. Our comprehensive multiplatform strategy is designed to encourage Canadians who speak a third language to engage with Canadian rather than foreign sources of media;
  - V. The rationale for considering the OMNI Regional 9(1)(h) application as part of OMNI's licence renewal hearing;
  - VI. The Choice Policy outlined in Broadcasting Regulatory Policy CRTC 2015-96 does not preclude the addition of 9(1)(h) services to the basic package;
  - VII. The negligible impact the new funding mechanism for local television stations announced in Broadcasting Regulatory Policy CRTC 2016-224 would have on OMNI's OTA stations; and
  - VIII. The negligible impact that granting OMNI Regional 9(1)(h) status would have on ethnic Category A services like Fairchild and ATN.
6. The failure to address any other issues or specific comments raised by interveners in this reply should not be interpreted as Rogers' acceptance or agreement with those comments.

**I. Our rationale for launching a new OMNI Regional discretionary service and granting it mandatory carriage under section 9(1)(h) of the *Broadcasting Act*;**

7. A small number of interveners questioned the proposal to launch a new OMNI discretionary service that would mirror the programming of OMNI's OTA stations and suggested that this would somehow be an inappropriate mechanism to provide Canadians with a multilingual and multicultural service.<sup>5</sup> These interveners even argued, incorrectly, that we had failed to consider other alternatives to our request for a licence to operate a new discretionary service with mandatory basic carriage and a wholesale fee.

*(a) Mandatory basic carriage for OMNI Regional is the only sustainable alternative*

8. Rogers proposal to launch a new multiplexed discretionary service that would combine the programming currently broadcast on our OTA stations with a range of new third-language newscasts, current affairs and cultural programs was born in our last licence renewal proceeding that resulted in Broadcasting Decision CTC 2014-399. In that proceeding, Rogers had requested a number of amendments to the conditions of licence for OMNI to enable our stations to achieve financial stability. Among the requests we made were proposals to reduce the broad service mandate imposed on each OMNI station and to reduce Canadian exhibition requirements.

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<sup>5</sup> See, for example, the combined intervention filed by Public Interest Advocacy Centre, Canadian Ethnocultural Council, National Pensioners Federation, Consumers Association of Canada and Council of Senior Citizens' Organizations (collectively PIAC), at para. 45 and the intervention filed by Bragg Communications Inc. at para. 3.

9. Many of the requested amendments were denied by the Commission. In rejecting them, however, the Commission acknowledged that the OMNI stations “are experiencing financial difficulties” and that “approval of the requested regulatory relief could contribute to improving OMNI’s financial performance.”<sup>6</sup> Ultimately, the Commission determined that approving a number of the proposed amendments would be inconsistent with OMNI’s unique role in the Canadian broadcasting system:

The Commission has concerns over whether it would be appropriate to allow such extensive regulatory relief considering OMNI’s unique mandate as a conventional ethnic television network licensed to provide Canadian multi-ethnic and multilingual communities with news, information and entertainment programming that assists ethnic communities in fully participating in Canadian society, reflects their culture, and promotes cross-cultural understanding.<sup>7</sup>

10. Faced with the Commission’s decision denying the requested relief and the on-going financial difficulties experienced by our OMNI stations, Rogers went back to the drawing board to try to come up with a new licensing plan that would enable our OMNI stations to achieve some degree of financial stability while ensuring that OMNI’s unique mandate as an multi-ethnic and multilingual television service would be preserved and enhanced.
11. We looked at various alternatives to our current request for mandatory basic carriage at a modest monthly wholesale fee of 12 cents per subscriber.
12. One alternative that we considered was to seek national distribution of one of our OMNI stations without requesting a wholesale fee (i.e. employing a model similar to the one used by TVA in 1998). Unfortunately, a distribution model for OMNI’s stations that would require the stations to rely solely on advertising for their revenues would not be sufficient to ensure OMNI’s longer term financial viability. There are two primary reasons why this option was not pursued.
13. First, as the Commission is well-aware, advertising revenues are in a state of constant decline for television broadcasters generally, and for a multi-ethnic and multilingual service like OMNI, the decline is even steeper and is projected to continue. That decline is magnified for OMNI because the audience viewing numbers for OMNI’s programming cannot be measured by Numeris. As a result, our stations cannot benefit from the very currency that is used in the broadcasting industry to derive advertising revenue. We believe the revenue numbers that we have filed with the Commission demonstrate quite clearly that OMNI has been the most adversely impacted by the systemic decline in revenues experienced by all television stations operating in the OTA sector.

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<sup>6</sup> Broadcasting Decision CRTC 2014-399, at para 119.

<sup>7</sup> Ibid.

14. Second, our OMNI OTA stations already operate in most of Canada's largest markets and are being distributed as part of the basic service in those cities. In addition, OMNI has already received carriage in other cities and regions of Canada as a distant signal, including in communities served by Eastlink, a BDU who has opposed our application. Rogers does not receive any payment from Eastlink for consenting to the distribution of OMNI in its markets, and the carriage of OMNI in these communities has, at most, had a negligible impact on OMNI's advertising revenues. The fact that a larger BDU, like Eastlink, is distributing OMNI in its markets and is able to charge a fee to its subscribers to receive our ethnic television service, without compensating OMNI for this right, is something that would be rectified by granting OMNI Regional mandatory basic carriage.
15. In view of the above, it was clear to us that any proposal to nationally distribute an OMNI service without providing another source of revenue - such as subscription revenue - would not materially boost OMNI's income. Further, the fact that OMNI's programming is not properly captured by the audience ratings system used for mainstream media due to underrepresentation of ethnic and third-language audiences in the Numeris sampling means that OMNI would continue to be unable to properly monetize programming using an advertising-only business model.
16. Another alternative considered by Rogers was to launch OMNI Regional as a regular discretionary service and to operate it alongside the OTA stations, but to do so without mandatory basic carriage. Again, the fact that OMNI's OTA stations are already operating in most of Canada's major markets (i.e. those markets that have largest numbers of Canadians that speak a third language) would mean that the majority of Canadians would continue to receive OMNI as they do now, as part of the basic service. OMNI would not receive additional revenue from these core markets, which are where the overwhelming number of OMNI's target audience live. It would also create a two-tier system for OMNI. Those Canadians who reside in markets served by the OTA stations would receive it as part of their BDU's basic service, while those Canadians living outside those markets would have to pay an additional fee to subscribe to the discretionary service.
17. Rogers also considered a third option, which was to shut down the OMNI OTA stations and operate OMNI Regional on its own solely as a national discretionary service without mandatory basic carriage. This alternative was dismissed for three fundamental reasons. First, shutting down the OTA stations would disenfranchise a significant number of Canadians who rely on the over-the-air signal in communities like Vancouver, Edmonton, Calgary, Toronto, London and Ottawa to receive OMNI's programming. Second, given the broad scope of OMNI's mandate - which requires OMNI to serve 20 distinct ethnic groups in 20 different languages and adhere to a programming cap of 16% in any one language - it would be impossible for OMNI Regional to obtain a wholesale fee, as a discretionary service, that would be sufficient to allow it fulfill that mandate. Canadians who speak one of those 20 languages are not going to pay ten to fifteen dollars each month to receive a few hours of programming in their language. Third, OMNI would have to negotiate carriage arrangements with every BDU. It would have no guarantee of being

carried at all, and would certainly have no guarantee that it would be carried at a wholesale fee that would make OMNI Regional financially viable.

18. After considering these and other alternatives to mandatory basic carriage, Rogers settled on finding the lowest cost proposal possible. As noted, in creating the OMNI Regional model proposed in our application, we sought to minimize the financial impact on Canadian consumers and BDUs, while also ensuring we could sustain OMNI's unique mandate as an ethnic television service that would provide Canada's multilingual communities with a meaningful amount of news, information and entertainment programming and assist them in fully participating in Canadian society.
19. In light of the above, our request for 9(1)(h) status for OMNI Regional is hardly a "band-aid solution" as one intervener suggested.<sup>8</sup> It is a well-constructed detailed proposal that was developed over the past two years as a means to address OMNI's precipitous decline in advertising revenues while preserving its core multi-ethnic and multilingual mandate. It is part of a longer term strategy that will ensure that all Canadians who speak a third language will continue to be able to access an ethnic service that is predominantly Canadian and that offers news and information programming that reflects Canadian society, culture and political values at a cost that is reasonable and affordable.
20. Many interveners in this proceeding recognized the OMNI Regional 9(1)(h) proposal as an innovative solution to the financial challenges faced by OTA ethnic television. The Documentary Organization of Canada, for example, called our proposal a "creative solution" that is needed to address OMNI's financial challenges.<sup>9</sup> Ethnic Channels Group Limited similarly praised our application as a means to "address the failing business model for traditional over-the-air television services..."<sup>10</sup>
21. Rogers firmly believes that our proposal to operate OMNI Regional as a discretionary service with mandatory basic carriage is an innovative solution to preserve the OMNI service by addressing the financial difficulties OMNI experiences today operating solely as an OTA broadcaster.

*(b) Approving the OMNI Regional application is not contrary to the value for signal decision*

22. At least one intervener<sup>11</sup> has also tried to argue that Rogers' proposal for OMNI Regional would be inconsistent with the Supreme Court of Canada's value for signal

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<sup>8</sup> In its intervention, PIAC suggested that OMNI Regional was a band-aid solution, at para. 15.

<sup>9</sup> Documentary Organization of Canada intervention, at para. 64.

<sup>10</sup> Ethnic Channels Group Limited intervention, at page 2.

<sup>11</sup> Bragg Communications Inc. intervention, at para. 4.

decision in 2012<sup>12</sup> and would open the floodgates to other applications. Neither suggestion is true.

23. First, the Supreme Court of Canada's decision in 2012 did not apply to the distribution of licensed or exempt discretionary services by BDUs. Rather, it applied only to the proposal for a licensed OTA television station to charge a fee for granting a BDU the exclusive right to re-distribute its signal.
24. Unlike OTA television stations, OMNI Regional will be licensed as a discretionary service under subsection 9(1) of the *Broadcasting Act*. It will operate pursuant to conditions of licence established under paragraph 9(1)(b) of the Act and the *Specialty Services Regulations, 1986*, which have been promulgated in accordance with subsection 10(1) of the *Broadcasting Act*. Further, the OMNI Regional discretionary service will be provided to BDUs pursuant to contractual arrangements, rather than being received by BDUs over-the-air. As such, the Supreme Court of Canada's value for signal decision issued in 2012 would not apply to Rogers' request to operate the OMNI Regional discretionary service.
25. Second, the floodgates argument is being used in this case to disparage the OMNI Regional application without providing any logical explanation as to why the floodgates would open up. One could have argued, no doubt, that the CRTC's decision back in 1998 to require the distribution of the OTA television station operated by TVA Group Inc.<sup>13</sup> by all BDUs would open the floodgates to every other television station requesting mandatory basic carriage in minority language communities. But that did not happen. Similarly, the argument could have been made that the Commission's decision in 1999 to require BDUs to distribute APTN<sup>14</sup> would open the floodgates for all other discretionary services to be distributed as part of the basic service. Yet that did not happen either.
26. The reason the floodgates did not open in those two cases and will not open in the case of OMNI Regional either is twofold. First, we have proposed a unique programming service. The Commission has consistently recognized that OMNI has a unique mandate under the *Broadcasting Act*. No other television programming service – OTA or discretionary – operating in Canada today serves 20 distinct ethnic groups in 20 different languages and adheres to a programming cap of 16% in any one language. Further, no other OTA station in Canada operates as a multi-ethnic and multilingual service. There is, therefore, only one operator of an OTA television station that would be able to launch a discretionary service like OMNI Regional. Second, the Commission has the authority to examine every application for 9(1)(h) status on its own merits and on a case-by-case basis. There is nothing in the *Broadcasting Act* that would require the Commission to approve any other application by a discretionary service for distribution as part of the basic service of

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<sup>12</sup> *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489.

<sup>13</sup> Decision CRTC 98-488.

<sup>14</sup> Decision CRTC 99-42.

BDUs simply because it approved the OMNI Regional application in this proceeding.

*(c) The declining value of U.S. strip programming for OMNI is real*

27. Finally, one of the key issues faced by OMNI's television stations over the past 6 years has been the declining value of U.S. syndicated or "strip" programming. As the Commission is well aware, for many years the model that OMNI relied upon to help subsidize the production and broadcast of ethnic programming was advertising revenues derived from U.S. strip programming. In recent years, we have documented for the Commission the fact that the advertising revenues we earned from broadcasting U.S. strip programming (like the Simpsons, 30 Rock, etc.) on OMNI no longer covers the cost of acquiring that programming. By 2015, it became clear that the business model that OMNI relied upon almost since its inception was broken and no longer sustainable.
28. It is incorrect for some interveners to suggest in this proceeding that Rogers' decision to remove U.S. strip programming from our OMNI stations is designed to avoid competition with our City stations. The reason that U.S. strip programming has lost its value to OMNI and is no longer broadcast on our stations is because the programming is already available on a whole range of other services, including discretionary services like Comedy Network and Peachtree TV, and over-the-top (OTT) services like Netflix, CraveTV, shomi and YouTube. The fact that strip programming is distributed on these platforms means that it has lost its ability to generate revenues on a multi-ethnic and multilingual OTA station like OMNI. OMNI can no longer generate sufficient revenues to cover the costs of this programming when it is so accessible on other platforms. It also means that, in many cases, the programs are simply not available to OMNI anymore. That is the business reality and it is why OMNI was compelled to remove all U.S. strip programming from its schedule after December 2015.

**II. The exceptional nature of OMNI Regional and the CRTC's criteria for granting mandatory carriage**

29. The Commission set out in Broadcasting Regulatory Policy CRTC 2010-629 (BRP 2010-629) the specific criteria that an applicant must address in order to qualify for mandatory distribution on the basic service pursuant to an order issued under section 9(1)(h) of the *Broadcasting Act*. In our application, Rogers outlined the manner in which OMNI Regional would satisfy each of the criteria and would make an exceptional contribution to the policy objectives in subsection 3(1) of the *Broadcasting Act*.
30. Despite proposing a set of commitments for OMNI Regional that would far exceed those of any other ethnic broadcaster operating in Canada today, some interveners, including PIAC, Sasktel, Bragg, Telus, ATN and a few others, argued that those commitments were not sufficient to satisfy the criteria outlined in BRP 2010-629. Some of these interveners suggest the following: (a) that many of the commitments



Rogers is making for OMNI Regional merely “reflect OMNI’s current COL obligations or... the programming which OMNI aired just a few years ago;”<sup>15</sup> (b) that the commitment to first-run Canadian programming is not exceptional when compared to mainstream services like CBC News and RDI;<sup>16</sup> and (c) that there is “already a large volume of third-language programming available within the Canadian broadcasting system.”<sup>17</sup> Others, including Telus and PIAC have attempted to create new 9(1)(h) criteria – such as requiring not-for profit status<sup>18</sup> or being unaffiliated with a BDU – and have suggested that those additional criteria should be applied in this case. These arguments, as well as others, are discussed below.

*(a) OMNI Regional's Commitments are exceptional*

31. The criteria set out in BRP 2010-629 for granting mandatory basic carriage require an applicant to provide evidence demonstrating the exceptional importance of its service to the achievement of the objectives of the *Broadcasting Act* and that having mandatory carriage on the digital basic service will enable its service to contribute in meaningful ways to fulfilling the policy objectives of the Act.<sup>19</sup> In proposing a new multi-ethnic and multilingual discretionary service, branded OMNI Regional, Rogers has done just that.
32. OMNI Regional’s nature of service is unique. It is different from every other ethnic discretionary service operating in Canada. By offering programming in 20 different languages and serving 20 ethnic communities, OMNI Regional will reflect the multicultural and multiracial nature of Canadian society.<sup>20</sup> No other discretionary service in Canada is doing that today. That is an exceptional commitment for a discretionary service to make. Moreover, the fact that Canada’s ethnic communities are continuing to grow all across the country means that there is a critical need for the Commission to ensure that those Canadians who speak a third language are able to access, at an affordable price, a range of programming that addresses issues about Canadian society and that reflects the multi-ethnic nature of Canada.
33. Granting OMNI Regional 9(1)(h) status will undeniably enable our discretionary service to make an exceptional contribution to the objectives of the *Broadcasting Act*, in particular those relating to culture and Canadian values set out in paragraph 3(1)(d) of the Act. As importantly, in the current television environment, granting mandatory carriage on the basic service is the only way that OMNI Regional can contribute in meaningful ways to fulfilling those policy objectives. Today, a multi-ethnic and multilingual service that serves such a wide variety of different ethnic

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<sup>15</sup> PIAC intervention, at para. 27.

<sup>16</sup> ATN intervention, at para 28.

<sup>17</sup> Bragg Communications Inc. intervention, at para. 16.

<sup>18</sup> Telus intervention, at para. 24.

<sup>19</sup> BRP 2010-629, at para. 11.

<sup>20</sup> This is a key policy objectives set out subparagraph 3(1)(d)(iii) of the *Broadcasting Act*.

communities and does so in multiple languages requires broad distribution and subscription revenues in order to fulfill that mandate.

34. Those interveners who have argued that OMNI Regional's commitments merely reflect the current conditions of licence applicable to OMNI's OTA stations have either not read our application closely or they have not examined OMNI's current conditions of licence. In our applications to operate OMNI Regional and to renew the licences of OMNI's OTA stations, we have made the following commitments, all of which exceed the current obligations established for our OTA stations:

- A commitment to 80% ethnic programming (the current requirement for OMNI's OTA stations is 60%);
- A commitment to broadcast 4 daily, national, 30 minute newscasts 7 days per week, in each of Italian, Mandarin, Cantonese and Punjabi languages (there are no specific requirements for OMNI's OTA stations to provide newscasts);
- A commitment to broadcast 6 daily, local 30 minute current affairs shows 5 days per week, in each of Mandarin, Punjabi and Cantonese language (there are no specific requirements for OMNI's OTA stations to provide current affairs shows);
- A commitment to produce and broadcast a weekly national cultural affairs series subtitled separately in the relevant third-language (there is no requirement for OMNI's OTA stations to air such a program);
- A commitment to broadcast 10 hours per week of local programming in Vancouver, Alberta and Toronto (the current local programming requirement for OMNI's stations apply only in Calgary and Edmonton and are 3.5 hours and 1.5 hours, respectively);
- A commitment to Canadian Programming Expenditures (CPE) of 40% and Programming of National Interest (PNI) of 2.5% (there is no CPE or PNI requirement for OMNI's OTA stations);
- A commitment to air 10 hours of local programming created by independent producers each week (there is no requirement for OMNI's OTA stations to air programs created by independent producers);
- A commitment to re-establish in-house production in all of the markets served by OMNI's OTA stations (there is no requirement for OMNI's OTA stations do in-house productions);
- A commitment to remove all U.S. "strip" programming that is not relevant to ethnic or third-language communities (there is no requirement for OMNI's OTA stations to eliminate U.S. strip programming);
- A commitment to limit the amount of U.S. programming exhibited on OMNI Regional to a maximum of 10% of the schedule each month (there is no requirement for OMNI's OTA stations to limit U.S. programming); and
- A commitment to offer 4 regional feeds that will be specifically tailored to ethnic Canadians living in B.C., the Prairies, Quebec and Eastern Canada (there is no requirement for OMNI's OTA stations to offer regional feeds).

35. As this list demonstrates, the commitments we have made as part of the OMNI Regional application greatly exceed those currently established for OMNI's OTA stations. The suggestion by some interveners that OMNI Regional's commitments merely reflect current obligations is clearly wrong.
36. Moreover, Rogers did not propose, as part of the OMNI Regional application, any diminution of the other requirements that have been imposed on OMNI's OTA stations. These include the following:
- A broad service mandate that requires OMNI to offer programming to 20 different ethnic and cultural groups in 20 different languages;
  - The requirement to devote 75% of the program schedule between 8 PM and 10 PM to ethnic programming annually;
  - The requirement to devote 50% of OMNI's schedule to third-language programming;
  - The limitations placed on the amount of programming that can be shared between City and OMNI;
  - The creation of regional advisory councils;
  - The limitations regarding the amount of programming we can offer in a given language; and
  - Requirements relating to closed captioning and described video.
37. Rogers would also point out that the commitments we made for the OMNI Regional service were not designed to merely revert OMNI back to the same state it was in 10 years ago. With mandatory basic carriage and a national platform, the aggressive commitments we have made will ensure that the nature and the quality of the programming that we will be able to offer on the new discretionary service (as well as the OTA stations) will be quite different than what we were able to provide previously.
38. That said, even if we were proposing to merely resurrect the OMNI service that was offered 10 years ago, there is no way that it could exist in today's television system without mandatory basic carriage and subscription revenues. As noted above and in our application, the financial difficulties faced by our OMNI television stations are real. The Commission acknowledged this in Broadcasting Decision CRTC 2014-399, when it renewed OMNI's OTA licences. The financial information that we have filed with the Commission on a confidential basis since then, including as part of this application, confirms that that our stations are continuing to suffer from the systemic shift in advertising revenues away from traditional OTA stations. As an ethnic broadcaster, the revenue losses we have incurred are significantly greater than the declines experienced by English- and French-language television stations.
- (b) OMNI Regional's commitment to first-run Canadian programming is exceptional*
39. Rogers was surprised to receive criticism from interveners like ATN and PIAC with respect to our proposals to air first-run Canadian programming on OMNI Regional. The commitment to a 40% CPE and a 2.5% PNI would require OMNI to exceed its

current Canadian programming expenditures. Further, the commitments we are making to offer national newscasts, a cultural series, local current affairs programs and local programming generally, as well as our commitment to independent producers, exceeds our current commitments and the obligations that OMNI has operated under historically. The OMNI Regional application clearly contains unprecedented commitments to first-run original programming that is more than we were able to do previously. So in that important sense, OMNI Regional's commitment is exceptional.

40. In Rogers' view, any assessment of whether the commitments we are proposing qualify as exceptional would require the Commission to also examine other discretionary services that would be comparable to OMNI Regional. We know that there is no other discretionary service that is operating in Canada today that offers programming in 20 languages and serves 20 ethnic communities. For that reason, there is no other service that can provide an exact comparison to OMNI Regional. In our application, however, we compared OMNI Regional to other ethnic Category A services that have been licensed by the Commission. Each of the five ethnic Category A services (ATN, FairchildTV, Talentvision, Odyssey and Telelatino) only serve, at most, a few ethnic groups and do so in no more than a few languages. Yet, none of them operate under conditions of licence that would be comparable to those proposed for OMNI Regional.
41. We addressed this in our application in response to the Commission's criterion requiring an applicant to demonstrate that the contribution it intends to make to Canadian expression and reflection significantly exceeds that normally made by a Category A service. We will not repeat everything we said in the application, but we will reiterate a few examples where OMNI Regional's commitments significantly exceed those made by any of the five ethnic Category A services. While OMNI Regional has committed to a CPE of 40% and PNI of 2.5%, none of the five ethnic Category A services have committed to CPEs that exceed 29%. Also, none of these ethnic Category A services have committed to a PNI expenditure. OMNI Regional will broadcast daily Canadian national newscasts in Italian, Mandarin, Cantonese and Punjabi. No ethnic Category A service is providing daily Canadian national newscasts in these languages.
42. In its intervention, ATN has attempted to compare OMNI Regional's commitment to first-run programming to the obligations imposed on CBC News Network and RDI, both of which serve large English- and French-language markets in Canada. These mainstream news services are also subsidized by the federal government and receive wholesale fees from BDUs that greatly exceed the fees proposed in our application. In our view, comparing OMNI Regional to CBC News Network and RDI is not fair or reasonable.
43. We also reject PIAC's comparison of OMNI Regional to APTN and AMI. While we acknowledge that both APTN and AMI have conditions of licence that require the services to contribute a greater percentage of their revenues to CPE (and in APTN's case PNI), both 9(1)(h) services also receive wholesale fees that far exceed the fee

proposed for OMNI Regional. APTN currently receives a wholesale fee of 31 cents per subscriber per month.<sup>21</sup> With almost 3 times more subscription revenues, OMNI Regional would certainly be able to commit to higher levels of first-run Canadian programming. Similarly, AMI-tv receives a wholesale fee of 20 cents per subscriber per month and AMI-tv Français receives a higher fee of 28 cents.<sup>22</sup> While both of these services have slightly higher CPE levels than OMNI Regional, it should be noted that they are only offering programming in one language and targeting one linguistic group. Again, the attempt to compare OMNI Regional to two services that have different mandates, different wholesale fees and different target audiences is not a legitimate exercise and we do not believe that such a comparison is reasonable.

44. OMNI Regional's commitment to first-run Canadian programming as well as to other initiatives would certainly have been increased if we had proposed a higher wholesale fee for the service. It is fairly easy for a discretionary service to make greater commitments when it has a guaranteed revenue stream derived from wholesale fees.
45. Our decision to set the proposed wholesale fee for OMNI Regional at 12 cents per subscriber per month was only taken after considering a variety of factors.<sup>23</sup> We decided upon that rate primarily for three reasons. First, as outlined in the application, over the past 5 years OMNI's financial difficulties have become more acute. The revenues generated by the OMNI stations have for the past three years not exceeded OMNI's operating expenses. With these considerable losses in mind, Rogers examined a number of price points for OMNI Regional that ranged from 9 cents to 18 cents per subscriber per month. The goal was to find a range for the wholesale fee that would, at a minimum, allow OMNI to break even and would also allow OMNI to offer newscasts and local programming on the new discretionary service.
46. That leads to the second consideration which was the nature of the commitments that Rogers believed was necessary for OMNI Regional to adequately serve its target audience and fulfill its programming mandate as outlined by the Commission in Broadcasting Decision CRTC 2014-399, while also demonstrating the exceptional importance of OMNI Regional to the achievement of the objectives of the *Broadcasting Act*. Again, we looked at a range of wholesale fees and settled on a fee in the 12 to 15 cent range that would allow OMNI Regional to fulfill the longstanding OMNI mandate.
47. Finally, Rogers also considered the impact that the proposed wholesale fee for OMNI Regional would have on Canadian subscribers and on BDUs that would be subject to a maximum retail rate for the basic service of \$25.00 per month. For this,

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<sup>21</sup> Broadcasting Regulatory Policy CRTC 2013-372, at para. 26.

<sup>22</sup> Broadcasting Regulatory Policy CRTC 2013-372, at para. 70.

<sup>23</sup> In its intervention (at para. 28), Bragg Communications Inc. suggests that the 12 cent wholesale rate proposed for OMNI Regional was solely based on the survey results.

we relied on the survey results obtained by Fresh Intelligence, which confirmed that an overwhelming majority of current OMNI viewers (more than 80%) and a strong majority of all Canadians (almost 60%) agreed that a rate of 12 cents per subscriber for OMNI Regional would be an appropriate amount.

48. Taking all of this into consideration, Rogers settled on proposing a 12 cent wholesale fee for OMNI Regional. In doing so, we acknowledge that setting a rate for a new discretionary service is not an exact science. However, it is simply incorrect for Bragg to suggest that the survey results were the sole or even primary reason for the proposed rate.

*(c) The volume of third-language programming in the Canadian broadcasting system*

49. Another argument made by Bragg in its intervention is that there is already a large volume of third-language programming available within the Canadian broadcasting system. While there are many Canadian and foreign services that provide programming targeting the same ethnic communities that OMNI Regional is proposing to serve, there is no single discretionary service that is able to offer programming to 20 distinct ethnic groups in 20 different languages each month and to do so at an affordable wholesale rate. Moreover, none of these services offer even close to the level of Canadian programming OMNI Regional has committed to provide.<sup>24</sup>
50. That is the critical point. Despite the fact that Canada is a multicultural country, there are no ethnic discretionary services that have been granted mandatory basic service. We believe one of the reasons for this is that the cost of the basic service would have to rise significantly if each individual discretionary service targeting one of the 20 ethnic groups served by OMNI were granted 9(1)(h) status. OMNI Regional provides a solution to this problem by proposing to offer an affordable service that will have a negligible impact on the retail price of the basic service.
51. It is also notable that the retail cost of subscribing to individual ethnic programming services in packages or on a standalone basis is considerably higher than the 12 cents per month proposed for OMNI Regional. For some ethnic Canadians the cost to subscribe to ATN or FairchildTV is prohibitive. By ensuring that these Canadians are able to access a modicum of Canadian programming in their own language, the Commission can ensure that almost all Canadians who subscribe to the basic service of a BDU can access programming in the language of their choice.

*(d) The criteria for granting mandatory basic carriage have not change since 2010*

52. Some interveners, including Telus and PIAC, have argued in their interventions that the Commission's criteria for granting 9(1)(h) status have been altered and now preclude discretionary services that operate on a for-profit basis or that are affiliated with a BDU from receiving mandatory basic carriage.

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<sup>24</sup> Canadian content levels for the 5 Category A ethnic services range from 16% to 30% throughout the broadcast day.

53. There is no merit to these arguments. Telus merely points to a factual statement made by the Commission in Broadcasting Regulatory Policy CRTC 2013-372 about the not-for-profit nature of some of the services that have been granted 9(1)(h) status and Telus suggests that this has now become a new criterion that an applicant must satisfy.<sup>25</sup> That is certainly not true. The Commission does not amend a policy like this without public consultation. Moreover, Telus itself admits in the same paragraph of its intervention that Pelmorex Communications Inc.'s two weather services, The Weather Network and MétéoMédia, have been granted mandatory basic carriage despite Pelmorex being a for-profit company.
54. Similarly, the suggestion by PIAC that the Commission should deny the OMNI Regional application because Rogers would be the first VI owner to be granted national distribution on basic<sup>26</sup> should also be rejected. In addition to being factually incorrect – mandatory basic carriage has been granted to CPAC (a service owned by numerous BDUs) and TVA (a service owned by Quebecor) – there is no public policy reason for the Commission deny ethnic Canadians access to an affordable multi-ethnic and multilingual service solely on the basis of ownership. OMNI Regional will offer a programming service that is designed to provide programming to an underserved, niche, non-mainstream audience. There is no public interest that would be served by denying our application for mandatory basic carriage on the basis that OMNI Regional would be affiliated with a BDU.

### **III. The evidence demonstrates that there is extraordinary need among the intended audience for the OMNI Regional service**

55. Another aspect of the OMNI Regional application that has been criticized by some interveners is the evidence we filed demonstrating that all Canadians, but particularly ethnic Canadians, strongly support our proposal for basic carriage. It has been suggested, for example, that the Fresh Intelligence survey results that show 41% of ethnic Canadians currently watch OMNI is evidence that the intended audience does not perceive an extraordinary need for the service.<sup>27</sup>
56. Rogers disagrees with that conclusion. The fact that 41% of Canadians who speak a third language watch OMNI is actually an impressive percentage. OMNI's OTA television stations are available to less than 60% of the population, and in many regions where OMNI is available, it is being offered only on a discretionary basis and not as part of the basic service. Yet, the survey results included responses from viewers that reside in these areas where OMNI is not available. When that is considered along with the fact that the survey results show that 75% of ethnic Canadians surveyed expressed the view that they would be somewhat or very likely to watch OMNI Regional,<sup>28</sup> it becomes quite clear that a large majority of the

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<sup>25</sup> Telus intervention, at para. 24.

<sup>26</sup> PIAC intervention, at para. 21.

<sup>27</sup> Bragg intervention, at para. 25.

<sup>28</sup> Rogers Application, Fresh Intelligence Survey, at page 7.

intended audience for OMNI Regional believes that there is an extraordinary need for the service.

57. In addition to that, a mere 4% of the surveyed Canadians who speak a third language indicated that a multicultural channel like OMNI Regional would not be important. 82% of those surveyed believe that having the channel is important.<sup>29</sup>
58. The evidence of extraordinary need that Rogers filed as part of the OMNI Regional application included the Fresh Intelligence Survey as well as the Strategic Inc. Study that assessed the way foreign-born Canadians access media and how this has impacted their consumption of third-language programming in Canada. The fact that the number of hours that Canadians devote to watching OMNI today is lower than the time many spend watching mainstream stations like CTV and Global or even online sources of third language programming reflects the fact that OMNI serves 20 different ethnic groups in 20 different languages. A viewer that speaks Punjabi is going to watch OMNI when it is providing programming in Punjabi. He or she is not going to watch our Cantonese, Mandarin, Italian or Spanish-language programming. The multilingual nature of the service that OMNI provides limits the number of hours that a Canadian will typically spend watching it. That does not mean that these Canadians do not want or need the programming that OMNI Regional intends to offer.
59. The survey results provided by Fresh Intelligence are also very clear that Canadians who speak a third language are likely to watch news and information programming, which is precisely the kind of programming that OMNI Regional will be providing. One of the key findings of the Strategic Inc. study was that Canadians go online for news content offered in their native language and that much of this content is non-Canadian. OMNI Regional's news and current affairs programming will tap into this sector of the market and will provide Canadians with the ability to access Canadian news and information programming in their language of comfort that is not available from either Canadian or foreign services or online.
60. The other evidence of extraordinary need that has been filed in this proceeding is the incredible number of supporting interventions that Rogers received in respect of our OMNI Regional application. The support that we have received in this proceeding in terms of numbers is compelling. It far exceeds the letters that had previously been filed in support of many of the programming services that have been granted 9(1)(h) status since 1999. In most of the recent cases, where the Commission has granted mandatory basic carriage to services like APTN,<sup>30</sup> AMI,<sup>31</sup>

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<sup>29</sup> Ibid. That number rises to 96% if those respondents who were "neutral" to the concept are included.

<sup>30</sup> Aboriginal Peoples Television Network (APTN) – approx. 800 supporting interventions. Source: Broadcasting Notice of Consultation CRTC 2013-19.

<sup>31</sup> Accessible Media Inc. (AMI) – approx. 700 supporting interventions. Source: Broadcasting Notice of Consultation CRTC 2013-19.



Canal M<sup>32</sup> and TV5,<sup>33</sup> the demonstrated public support (through interventions) numbered in the hundreds, rather than the thousands.

61. Rogers is pointing this out not to disparage those other services, but rather to show how strong the support is for the OMNI Regional application among the intended audience for the national ethnic service.
62. There is an extraordinary need for the programming we have committed to broadcast on OMNI Regional and our OMNI OTA stations in ethnic Communities all across Canada. This is reflected in the supporting interventions we received for our 9(1)(h) application. A small sample of the more than 3,800 letters of support we received is set out below:

Mandating carriage of OMNI TV into digital basic service and reinstatement of daily newscasts will enable a greater outreach of much needed and highly valuable information by community agencies like CFSO, to further the agenda of all tiers of the government, to facilitate a safer and healthier population. It also breaks down the barriers of outreach by culturally specific community agencies, which are not normally covered by mainstream stations.<sup>34</sup>

Having a mandatory carriage on digital basic service for OMNI Television will really be of great benefit for the community initiative, as it will help the settlement process of newcomers into our community.<sup>35</sup>

I fully support this application as OMNI TV allows individuals to listen to the latest news in their own language, as well as be fully updated on any upcoming events that may be occurring. OMNI focuses on the multicultural aspect which is very important to Canada's identity of being a diverse and multicultural society. With new individuals coming to this country, being able to watch and listen to broadcasts in their own languages helps in being part of the whole community. OMNI TV allows individuals to feel connected to a new society, instead of feeling lost or confused.<sup>36</sup>

In light of OMNI Television's long and extensive involvement in multicultural broadcasting in Canada, they are well qualified to meet the needs and interests of an increasingly multicultural audience in Canada. With increased revenue and viewership resulting from mandatory carriage of OMNI television on digital basic service, this will allow OMNI

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<sup>32</sup> Canal M – approx. 400 supporting interventions. Source: Broadcasting Notice of Consultation CRTC 2013-19.

<sup>33</sup> TV5 Quebec – approx. 170 supporting interventions (+ 5176 signatures). Source: Broadcasting Notice of Consultation CRTC 2013-19.

<sup>34</sup> Anna Victoria Wong intervention, Executive Director, Chinese Family Service of Ontario (Scarborough).

<sup>35</sup> Janet Moser intervention, Co-Chair, Ignite Fredericton (Fredericton).

<sup>36</sup> Baljinder Singh Bains intervention, Director, Fraser River Community Crematorium Society (Abbotsford).

to continue to produce high-quality ethnic and third-language programming that reflects and celebrates our country's diversity.<sup>37</sup>

Nous appuyons fortement la demande d'OMNI et d'ICI... Nous reconnaissons l'importance de ces réseaux de télévision et leur impact positif dans la communauté. Afin que les communautés à travers le pays peuvent bénéficier de la distribution de ces réseaux, la Fondation appui la continuité d'OMNI et d'ICI.<sup>38</sup>

Since the beginning of their first broadcast, ICI has shown their ability to produce professional in content and quality television programs, fulfilling the needs of the ethnic communities of Montreal. This is due the professional staff they employ and the high end production facilities of their studios. Therefore it is imperative that they obtain mandatory carriage on digital basic service.<sup>39</sup>

We value OMNI TV for its ability to foster intercultural understanding... OMNI TV is a very important platform that can help us in our endeavor to promote respect and understanding among people of all cultures.<sup>40</sup>

We are very supportive of OMNI and the important niche it plays in supporting Canada's social cohesion through its programming... OMNI's ongoing efforts are a reflection of a commitment to a vision of a dynamic and diverse Canada that engages across differences. This approach to social engagement supports the development of an inclusive Canada.<sup>41</sup>

We strongly support OMNI's application to obtain mandatory carriage on digital basic service for OMNI Television as we believe our television programming should reflect the diverse needs of our country. OMNI has provided coverage of many of our local community stories and events that showcase that the fabric of our country is made stronger by its diversity. I am proud to be on the OMNI Advisory Council representing the needs of newcomers to our communities.<sup>42</sup>

#### **IV. OMNI Regional's multiplatform strategy**

63. Rogers is also surprised that some interveners questioned the multiplatform strategy we proposed for OMNI Regional.<sup>43</sup> We outlined in our application a comprehensive multiplatform strategy that is designed to encourage viewers who

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<sup>37</sup> Robert Yip intervention, Director, Chinese Canadian National Council - Ottawa Chapter.

<sup>38</sup> Joey Saputo intervention, Président, Fondation Communautaire Canadienne-Italienne (Montréal).

<sup>39</sup> George Guzman intervention, Newsfirst Multimedia (Laval)

<sup>40</sup> Malik Muradov intervention, Executive Director, Intercultural Dialogue Institute Calgary

<sup>41</sup> Todd Odgers intervention, Principal, Center for Intercultural Education, NorQuest College (Edmonton)

<sup>42</sup> Neelam Sahota intervention, CEO, DIVERSEcity Community Resources Society (Surrey).

<sup>43</sup> PIAC intervention, at para. 18.

speak a third language to engage with Canadian rather than foreign sources of media.

64. We began developing our long-term strategy in 2013 when we commissioned Strategic Inc. to conduct a study of the online viewing habits of new Canadians who speak a third language. The objective of the study was not only to find out why many of these individuals are watching programming online, but also to find out what they are watching that was not available via Canadian programming services. The research study supported the following conclusions:
- Tuning to television by new Canadians is below the Canadian average;
  - New Canadians stream more programming than the Canadian average;
  - Foreign on-line programming is the primary source for content in a mother tongue;
  - New Canadians have a strong interest in third-language news and information programming on a local, national and international level; and
  - The Internet is the primary source of third-language news and information programming on a local, national and international level for new Canadians;
65. As part of the Fresh Intelligence Survey, we also discovered that 55% of Canadians who speak a third language continue to use their television as the primary device to watch programming. Moreover, more than half of those surveyed use the Internet today to watch television programming.
66. With those results in mind, Rogers made a commitment, as part of this application, to ensure that OMNI Regional would strive to reach ethnic and third-language audiences that watch some or all of their third-language programming online. The first step is to ensure that OMNI Regional provides the news and information programming that Canadians who speak a third language are looking for online. The next step will be to create a TV Everywhere model that will allow BDUs to host OMNI's programming on their own VOD and online portal at no additional cost. In addition, we will develop an "app" that will be accessible for free to those who want to access OMNI programming online. OMNI Regional will also be active on social media through platforms like Twitter, Facebook and YouTube.
67. This multiplatform strategy is something we are continuing to develop and expand. In this respect, we would note that Rogers appears to be much further advanced in developing a multiplatform strategy than other Canadian ethnic broadcasters. In response to PIAC's criticism, we surveyed ATN and Fairchild's online presence and found it wanting. To our knowledge, ATN does not offer any of its programming online and it has no presence on social media platforms. While Fairchild appears to have some online presence through Facebook, Weibo and YouTube, for example, it does not appear to offer any of its Fairchild TV or Talentvision programming online. Also, neither broadcaster seems to have developed an app or a TV Everywhere product for its viewers.

68. Based on our review of the online presence of other ethnic broadcasters in Canada, it is clear that OMNI Regional has a comprehensive multiplatform strategy designed to address the viewing habits of members of its intended audience.

**V. The rationale for considering the OMNI Regional 9(1)(h) application as part of a licensing hearing**

69. Some interveners oppose our OMNI Regional application, in part, because it is being considered in the same proceeding that is being used to consider the licence renewal application for OMNI's OTA television stations.<sup>44</sup> Some have even suggested that such an application should only be considered as part of a competitive process.<sup>45</sup>

70. There is nothing unfair or improper associated with considering both the OMNI Regional 9(1)(h) application and OMNI's OTA television applications in the same proceeding at the same time. This is evident for a number of reasons.

71. First, the two applications are inextricably linked. A Commission decision denying the application to operate OMNI Regional under a mandatory distribution order would have a direct impact on the OMNI OTA television application. The commitments that Rogers is able to make with respect to the operation of OMNI's OTA stations will change depending on the outcome of the OMNI Regional 9(1)(h) application. Since the licence for OMNI's OTA television stations was up for renewal now, it is entirely reasonable and proper for the Commission to consider both applications in the same proceeding.

72. Second, the Commission has proceeded in this manner in a number of previous cases. APTN was granted 9(1)(h) status in 1999 as part of a licensing proceeding, which ultimately included a decision to shut down transmitters operated by its predecessor Television Northern Canada Incorporated.<sup>46</sup> That APTN application was not subjected to a competitive process. Similarly, in the case of CPAC, its licence renewal application and request for mandatory basic carriage were considered in the same proceeding.<sup>47</sup> Again, there was no competitive process. There was also no competitive process when the CRTC granted TVA mandatory basic carriage in 1998<sup>48</sup> and when Pelmorex's two weather services were granted 9(1)(h) status in 2010.<sup>49</sup>

73. We would also note that the two proceedings that the Commission has used in the past to consider multiple 9(1)(h) applications at the same time, which were initiated

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<sup>44</sup> PIAC intervention, at para. 22.

<sup>45</sup> Shaw intervention, at para. 10.

<sup>46</sup> Decision CRTC 99-42.

<sup>47</sup> Broadcasting Decision CRTC 2002-377.

<sup>48</sup> Decision CRTC 98-488.

<sup>49</sup> Broadcasting Order CRTC 2009-340.

in 2007<sup>50</sup> and again in 2013,<sup>51</sup> were not “competitive” proceedings. Rather, the Commission merely decided to hear all of the applications it received at the same time.

74. As noted above, the Commission assesses each application for mandatory basic carriage on its own merits in accordance with the criteria outlined in BRP 2010-629. It is the nature of the application and the commitments made therein that determine whether a service would qualify for mandatory basic carriage. The process used by the Commission to make such a determination is not relevant to that decision.

#### **VI. The Choice Policy outlined in Broadcasting Regulatory Policy CRTC 2015-96 does not preclude the addition of 9(1)(h) services to the basic package**

75. Intervenors opposing the OMNI Regional application have also suggested that the addition of new discretionary services via mandatory distribution order would not be appropriate under the current regulatory framework that caps the retail price BDUs can charge for the basic service at \$25.00.<sup>52</sup>
76. The Commission was very clear in Broadcasting Regulatory Policy CRTC 2015-96 (the Choice Policy) that the basic service would continue to include programming services that have been granted mandatory basic carriage because they make a significant contribution to fulfilling the objectives of the *Broadcasting Act*.

Similarly, certain services are granted mandatory distribution on the basic service pursuant to section 9(1)(h) of the Act in light of their significant contribution to fulfilling the objectives of the Act. Such status is subject to periodic review. Accordingly, the Commission is of the view that these services should continue to benefit from such distribution in the entry-level service offering.<sup>53</sup>

77. At the same, Rogers is not oblivious to the concerns of BDUs and the limits placed on the retail price charged for the basic service. As noted above, Rogers was conscious of the new regulatory framework established under the Choice Policy and the concerns of BDUs when we proposed a rate for the OMNI Regional service. We explained our rationale for proposing a wholesale rate in the OMNI Regional application, and noted that by requesting a rate of 12 cents per month, this cost would represent only 0.5% of the total maximum value (\$25.00) of the small basic service. We also pointed out that our proposal would allow BDUs operating in markets already served by an OMNI OTA station to substitute the regional feed of OMNI’s national service for the local OMNI OTA signal that it would otherwise also be required to distribute as part of the basic service. This would enable those BDUs to decide whether to devote a basic service channel to an additional OMNI service.

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<sup>50</sup> Broadcasting Notice of Public Hearing CRTC 2007-1.

<sup>51</sup> BNC 2013-19.

<sup>52</sup> Cogeco intervention, at para. 24

<sup>53</sup> At para. 17.

Both of these aspects of our 9(1)(h) application were made to moderate the impact that our application would have on BDUs and their subscribers.

## **VII. The new funding mechanism for local television stations announced in Broadcasting Regulatory Policy CRTC 2016-224**

78. The new funding mechanism for local television stations announced in Broadcasting Regulatory Policy CRTC 2016-224 (BRP 2016-224) was also highlighted by a number of interveners in this proceeding. Some suggested that this new source of funding should be used to improve OMNI's financial situation rather than granting OMNI regional mandatory carriage at a regulated wholesale rate.<sup>54</sup>
79. Unfortunately, the new mechanism for funding local television stations outlined in BRP 2016-224 would not provide our OMNI OTA stations with a significant or material infusion of new revenues. There are a number of reasons for this.
80. First, the new framework confirmed that Rogers Cable and other BDUs would be required to reduce the contribution they make to local expression by 25%. So rather than all of Rogers Cable's licensed and exempt BDUs contributing 2% of their broadcasting revenues to local expression each year, under the new framework they are only permitted to contribute 1.5%. Second, out of the funds Rogers Cable devotes to local expression today, only two-thirds is attributed to its licensed systems. This is important because only licensed systems are eligible to take advantage of the new authority. Third, the vast majority of the funds contributed to local expression will still be used to operate Rogers Cable's community channels throughout its cable footprint.
81. We are continuing to model various scenarios but based on our efforts to date it is likely that most of the Rogers Cable contributions will continue to be devoted to the operation of Rogers community channels and that any money that could be devoted to the OMNI stations would not be sufficient to cover the cost of producing even a single ½ hour daily newscast in one language let alone address OMNI's current financial difficulties or the long-term financial viability of the stations.

## **VIII The negligible impact that granting OMNI Regional 9(1)(h) status would have on ethnic Category A services like Fairchild and ATN.**

82. A final issue that Rogers will address in this reply is the suggestion by ATN that a decision granting OMNI Regional mandatory basic carriage would have a detrimental financial impact on ATN's South Asian TV service (SATV). ATN suggests that if OMNI Regional offers more programming in Punjabi, that this will reduce SATV's subscriber and advertising revenues.<sup>55</sup> We would note that none of the other ethnic Category A services operated by Fairchild, Telelatino or Odyssey made a similar claim in this proceeding. In fact, neither Telelatino nor Odyssey

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<sup>54</sup> See for example, Telus intervention, at para. 11.

<sup>55</sup> ATN intervention, at para. 23

even filed an intervention commenting on our application. While Fairchild did file an intervention commenting on our 9(1)(h) application, it did not suggest that approving it would harm either of its two ethnic Category A services.

83. With respect to the “detrimental financial impact” approval of the OMNI Regional application could have on SATV, Rogers continues to believe that it would be negligible. Given that OMNI’s OTA stations are already available in many major centres in Canada and that OMNI Regional will operate under the same standard conditions as the OTA stations, the launch of this new national service will have almost no impact on the revenues of a service like SATV. As noted in the application and throughout this reply, OMNI Regional will be required to serve 20 distinct ethnic groups in 20 different languages and adhere to a programming cap of 16% in any one language. On its own, that will mitigate any impact the new service could have on SATV or any of the other ethnic Category A services, each of which serves a small number of ethnic groups in three or fewer languages.
84. SATV also has the benefit of being in operation for close to 20 years and derives its revenues from subscription fees, national advertising and local advertising. Given these sources of revenue and its longstanding reputation in Canada, it is difficult to accept ATN’s argument that granting OMNI Regional 9(1)(h) status would have any material impact on its services.
85. It should perhaps also be pointed out that ATN and the other three owners of the ethnic Category A services have, in recent years, been sponsoring a number of applications to add foreign services to the CRTC’s *List of non-Canadian programming services and stations authorized for distribution* (the List).<sup>56</sup> While Rogers has not completed a detailed review of recent Commission decisions approving the addition of foreign third language services to the List, we are aware that over the past five years ATN has sponsored at least three foreign Hindi-language services for inclusion on the List.<sup>57</sup> Apparently, ATN was not concerned that adding several entirely new foreign services to the List operating in Hindi would have a detrimental financial impact on any of its services.
86. The other ethnic Category A licensees - Fairchild, Telelatino and Odyssey - have each sponsored similar applications to add foreign services to the List.<sup>58</sup> This is the case despite the fact that those foreign services operate using one or more of the principal languages of the ethnic Category A service that sponsored them.

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<sup>56</sup> Revised list of non-Canadian programming services and stations authorized for distribution:  
<http://www.crtc.gc.ca/eng/publications/satlist.htm>

<sup>57</sup> Broadcasting Decision CRTC 2014-239, Broadcasting Regulatory Policy CRTC 2011-454, Broadcasting Decision CRTC 2011-603.

<sup>58</sup> For Fairchild: see Broadcasting Decision CRTC 2013-56, Broadcasting Decision CRTC 2013-3. For Telelatino: see Broadcasting Decision CRTC 2015-466. For Odyssey: see Broadcasting Decision CRTC 2014-614, Broadcasting Decision CRTC 2013-243, Broadcasting Decision CRTC 2013-192.

87. It defies logic for ATN to suggest that granting OMNI Regional mandatory basic carriage would have a detrimental financial impact on its SATV service when it and other ethnic Category A services are constantly applying to add new foreign third language services to the List.

## **IX. Conclusion**

88. For all of the reasons outlined in this reply and in our application, Rogers believes that approving our application to launch a new OMNI Regional discretionary service with mandatory basic carriage is the best way to ensure that OMNI will continue to achieve its mandate as a multi-ethnic and multilingual service. It is only by being granted a licence to operate a new discretionary service, which will be distributed on basic and receive both advertising and subscription revenues, that OMNI will be able to continue to satisfy the needs of Canada's growing ethnic communities.

89. Our proposal was developed as a means to address OMNI's precipitous decline in advertising revenues while preserving its core multi-ethnic and multilingual mandate. This application is part of a long-term strategy that will ensure that all Canadians who speak a third language will continue to be able to access a predominantly Canadian ethnic service that is affordable and that offers news, information and entertainment programming that reflects Canadian society, culture and political values.

90. Rogers appreciates this opportunity to reply to the issues raised in the interventions filed in response to our applications. We would be please to respond to any further questions the Commission might have concerning our applications.

Yours truly,

*[Filed electronically]*

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