



Broadcasting Decision CRTC 2013-657

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Route reference: Part 1 application posted on 12 July 2013

Ottawa, 5 December 2013

Application 2013-0996-4

Complaint by the Communications, Energy and Paperworkers Union of Canada against Rogers Broadcasting Limited relating to the cancellation of programs on OMNI television stations

The Communications, Energy and Paperworkers Union of Canada filed a complaint against Rogers Broadcasting Limited (Rogers) relating to the cancellation of programs on OMNI television stations. The Commission finds that despite the programming changes, Rogers continues to abide by its conditions of licence.

Nevertheless, the Commission is concerned by the potential impact of the changes on the communities served by the stations and by the apparent lack of local programming on some of the OMNI television stations. The Commission has requested that Rogers submit licence renewal applications in order to allow the Commission 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.

The parties

1. The Communications, Energy and Paperworkers Union of Canada (CEP) is the largest union in several key sectors of Canada's economy, including forestry, energy, telecommunications and media. The union represents members across the country, including employees at the OMNI television stations. In August 2013, CEP merged with the Canadian Auto Workers union to form Unifor. For the purpose of this decision, this party will be referred to as the CEP.
2. Rogers Broadcasting Limited (Rogers) is a wholly-owned subsidiary of Rogers Media Inc. and operates radio and conventional television stations in British Columbia, Alberta, Manitoba, Ontario and Quebec, radio stations in Nova Scotia and New Brunswick as well as specialty services. Rogers owns and operates the following OMNI television stations: CHNM-DT Vancouver and its transmitter CHNM-DT Victoria, CFMT-DT Toronto and its transmitters CFMT-DT-1 London and CFMT-DT-2 Ottawa, CJMT-DT Toronto and its transmitters CJMT-DT-1 London and CJMT-DT-2 Ottawa, CJCO-DT Calgary and CJEO-DT Edmonton.

Background

3. On 30 May 2013, Rogers issued a press release announcing programming changes to its OMNI television stations. These changes included the cancellation of several programs.
4. The programs cancelled include a one-hour Polish-language program, an English-language South Asian newscast, a national one-hour Mandarin-language magazine program, a half-hour English-language cross-cultural weekly show and a half-hour Punjabi-language weekly magazine show. As well, the local Vancouver half-hour Cantonese and Mandarin newscasts will no longer be produced but will be contributing to the Toronto-produced half-hour newscasts in both Mandarin and Cantonese. Lastly, a daily Italian public affairs program ended production.

The complaint

5. On 26 June 2013, the CEP filed a complaint regarding the announced changes to OMNI programming and asked the Commission to hold a hearing to discuss Rogers' programming decisions and to issue a mandatory order to reinstate the cancelled programs. In its letter to the Commission, the CEP argued that the programming changes announced:
 - are contrary to commitments made by Rogers in its purchase of CFMT-DT Toronto in 1986 and its request for a second licence in Toronto in 2001, its Alberta licences in 2007 and its Vancouver licence in 2008;
 - reduce access to local television news and information and therefore contravene the Ethnic Broadcasting Policy and the local advertising policy; and
 - reduce employment opportunities for Canadians of various ethnic backgrounds, contrary to the *Broadcasting Act* (the Act).
6. The CEP also submitted that it is not clear whether Rogers consulted its community advisory boards for the various stations before making these changes and, in fact, if there is such a board for the Vancouver station.

Rogers' response

7. Rogers stated that the OMNI television stations continue to adhere to the obligations set out in Public Notice 1999-117 (the Ethnic Broadcasting Policy), the *Television Broadcasting Regulations, 1987* and in their respective conditions of licence.
8. Rogers also provided programming schedules for all the OMNI stations for the month of July 2013 to show how it meets its obligations related to ethnic programming, third-language programming and the requirement to target 20 ethnic groups and languages on each OMNI television station.

9. Rogers submitted that its business model for the OMNI television stations has faced many challenges from:
- constant shifts in consumer viewing habits and advertiser spending choices;
 - decreased revenues derived from non-ethnic (U.S. syndicated) programming used to subsidize ethnic content;
 - increased competition for local advertising from ethnic specialty services;
 - the introduction of a large new competitor in the Toronto market; and
 - the universal availability of foreign ethnic and third-language content.
10. With respect to local advertising, Rogers noted that ethnic broadcasters are not required to broadcast local programming in a market in order to be allowed to solicit local advertising in that market. Rogers is therefore of the view that CEP's claim that Rogers' actions contravene the local advertising policy is unfounded.
11. Rogers added that it remains committed to investing in ethnic and third-language programs, and that it recently announced the launch of three original programs:
- the Canadian documentary series Bollywood Star;
 - the Canadian dramatic comedy Mohawk Girls (to be dubbed in Mandarin); and
 - the international dramatic series The Year of the Rat.
12. Rogers submitted that there is no need to hold a public hearing to discuss issues related to ethnic programming given that the OMNI television stations are fully compliant with their obligations and that the Commission announced its intention to review the Ethnic Broadcasting Policy in the 2015-2016 broadcast year.

Interventions

13. The Commission received almost 200 interventions from individuals, local union groups and ethnic groups, such as the Canadian Ethnic Media Association, the Council of Agencies Serving South Asians, the Canadian Polish Congress, the National Ethnic Press and Media Council of Canada and the Canadian Tamil Congress. All opposed the programming changes undertaken at the OMNI stations and supported the CEP's request to hold a public hearing. The National Congress of Italian-Canadians also filed a petition of over eight hundred signatories in support of CEP's application.
14. The Commission notes, however, that no producer or advertiser filed an intervention in support of CEP's application to outline the loss of one of their business platforms.

Commission's analysis and decision

15. After examining the public record for this complaint in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

- whether Rogers is in compliance with the OMNI television stations' conditions of licence and the commitments it made at licensing;
- whether Rogers is in compliance with the Ethnic Broadcasting Policy and the local advertising rules; and
- whether to call Rogers to a public hearing.

Compliance with the OMNI stations' conditions of licence and commitments

16. The conditions of licence for the OMNI television stations are set out in the appendices to Broadcasting Decision 2009-504 and 2009-504-2. The relevant conditions of licence dictate the percentage of ethnic programs that must be broadcast during certain time periods, the percentage of third-language programming required, the number of languages used and the number of distinct ethnic groups to target.

17. Specifically, Rogers must devote 60% of the broadcast day to ethnic programs and 50% of the program schedule to third-language programs on all of the OMNI television stations. In addition, CFMT-DT Toronto and CJMT-DT Toronto must devote 75% and 80% of prime time hours to ethnic programs, respectively.

18. The OMNI stations must also broadcast in at least 20 languages monthly and must target no less than 20 ethnic groups per month. The stations may not devote more than 16% of programming to programs in any one foreign language each month. In addition, CJMT-DT Toronto may not target any of the 20 ethnic groups served by CFMT-DT Toronto during the same broadcast year.

19. The Commission assessed the OMNI stations' July program schedules provided by Rogers as well as the program logs for June and July 2013 and considers that Rogers is in compliance with its conditions of licence. The program logs show that the level of ethnic programming has not changed significantly since the program cancellations occurred. In addition, the program schedules show that the stations are serving from 21 to 26 ethnic groups per month and broadcasting in as many languages, and that there is no overlap between the ethnic groups served by CJMT-DT and CFMT-DT.

20. In its reply, the CEP submitted that Rogers relies heavily on repeats to meet its conditions of licence. In this respect, the Commission was not able to assess how many of the programs are repeats from the information provided by Rogers. However, the conditions of licence do not limit the number of times a program can be repeated and the Commission does not distinguish between new and repeat programs when assessing compliance to the conditions of licence.

21. CEP argued that the OMNI programming changes are contrary to commitments made by Rogers over the years. The Commission reviewed past documents relating to the OMNI stations and found that Rogers made no specific commitments regarding the programming in question; that its commitments were general in nature and that Rogers appears to have continued to meet these commitments.
22. In its complaint, CEP submitted that Rogers is not fulfilling its commitment to broadcast a certain number of hours of local programming in Calgary and Edmonton. In Broadcasting Decision 2007-166, the Commission noted that Rogers proposed to broadcast 29 hours per week of local ethnic television programming. However, the Commission did not impose a condition of licence with respect to local programming when it issued licences for CJCO-DT Calgary and CJEO-DT Edmonton.
23. In light of the above, the Commission is satisfied that Rogers is abiding by its conditions of licence.

Compliance with the Ethnic Broadcasting Policy and the local advertising rules

24. The Commission's Ethnic Broadcasting Policy is set out in Public Notice 1999-117. It sets out requirements and objectives related to the following:
 - the requirement that ethnic television stations devote at least 60% of each broadcast month to ethnic programming;
 - the requirement that the minimum number of ethnic groups that the ethnic television station must serve and the minimum number of languages in which it must provide programming be set by condition of licence;
 - the requirement that at least 50% of all programming broadcast by ethnic stations be third-language programming;
 - the expectation that ethnic broadcasters, at the time of licensing and renewal, provide plans on how they will reflect local issues and concerns during the terms of their licences; and
 - the encouragement that broadcasters establish advisory councils incorporating representatives of the ethnic communities in their service areas.
25. As stated above, the Commission is satisfied that Rogers is abiding by its conditions of licence with respect to the percentage of ethnic programs that must be broadcast during certain time periods, the percentage of third-language programming required, the number of languages used and the number of distinct ethnic groups to target.
26. As set out in the Ethnic Broadcasting Policy, a primary responsibility of over-the-air ethnic television stations should be to serve and reflect their local community. In this respect, the Commission finds that the answer provided by Rogers does not provide enough detail as to the level of local programming remaining on the stations and how the remaining ethnic programming continues to serve the needs and reflect local

issues of the communities served. The Commission notes that the remaining newscasts appear to be national in scope. Further, Rogers may not be meeting the Commission's expectation to reflect local issues given the absence of local programming in Calgary and Edmonton. The Commission is of the view that the provision of local programming is an important issue that should be discussed with Rogers during the OMNI stations' next licence renewal.

27. With respect to advisory councils, the Commission finds that Rogers does not provide enough information about whether it had consulted its stations' advisory councils prior to making its decision and whether there exists an advisory council for CHNM-DT Vancouver. The Commission considers that advisory councils are an important tool for involving affected communities in programming decisions and is concerned by the lack of a response by Rogers on this issue.
28. In its complaint, CEP submitted that Rogers is not following the local advertising policy. In this respect, ethnic broadcasters are not required to broadcast local programming in a market in order to be allowed to solicit local advertising in that market. Rogers may therefore solicit local advertising whether it broadcasts local programming or not.

Whether to call Rogers to a public hearing

29. Pursuant to section 12 of the Act, the Commission may inquire into, hear and determine a matter where it appears to the Commission that:

any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order.

30. In this case, despite the programming changes it has made, Rogers continues to comply with its conditions of licence. In light of the above, the Commission considers that it would be inappropriate to call Rogers to a public hearing pursuant to section 12 of the Act at this time.

Conclusion

31. In light of the fact that Rogers continues to comply with regulatory requirements and its conditions of licence, the Commission **dismisses** the complaint made by the CEP against Rogers.
32. Nevertheless, the Commission remains concerned by the extent of the programming changes and the impact of the changes on the communities served by the stations. In particular, the Commission is concerned by the apparent lack of local programming on some of the OMNI television stations and by the lack of information received regarding Rogers' consultations with the advisory councils.

33. In light of this, although the licences for the OMNI stations expire 31 August 2015, the Commission has requested that Rogers submit licence renewal applications for the OMNI television stations early. By doing so, the Commission will be able to consider all of Rogers' television services at the same time.¹ It will also allow the Commission to review OMNI's programming issues at an earlier date; consider appropriate measures related to local programming; and synchronize the expiry dates for all of Rogers television services.

Secretary General

Related documents

- *OMNI – Licence renewals – Correction*, Broadcasting Decision CRTC 2009-504-2, 5 December 2011
- *OMNI – Licence renewals*, Broadcasting Decision CRTC 2009-504, 19 August 2009
- *Ethnic broadcasting policy*, Public Notice CRTC 1999-117, 16 July 1999

¹ The licences for Rogers' Citytv stations and specialty services expire on 31 August 2014.