



Broadcasting Decision CRTC 2017-152 and Broadcasting Order CRTC 2017-153

PDF version

References: 2016-225, 2016-225-1, 2016-225-2, 2016-225-3 and 2016-225-5

Ottawa, 15 May 2017

Rogers Media Inc.

Across Canada

Application 2016-0377-0, received 7 March 2016

Public hearing in the National Capital Region

28 November 2016

OMNI Regional – National, multilingual multi-ethnic discretionary service

*The Commission **approves, in part**, an application by Rogers Media Inc. (Rogers Media) to operate a national, multilingual multi-ethnic discretionary service to be known as OMNI Regional for a licence term of three years, beginning 1 September 2017 and ending 31 August 2020.*

Since the application does not fully meet the Commission's expectations of a service that would receive mandatory distribution on the digital basic service, nor of a service that would fully address and reflect the needs and interests of Canada's diverse ethnic and third-language communities, the approval of this licence is an interim measure. To better address the need for such a service, in Broadcasting Notice of Consultation 2017-154, also published today, the Commission has issued a call for applications for a national, multilingual multi-ethnic television service offering third-language news and information programming that, if licensed, would receive mandatory distribution on the digital basic service.

*To serve the needs of Canada's ethnic and third-language communities in the interim, the Commission also **approves** Rogers Media's request for mandatory distribution of OMNI Regional on the digital basic service for the licence term.*

Application

1. Rogers Media Inc. (Rogers Media) filed an application for a broadcasting licence to operate a national, multilingual multi-ethnic discretionary service to be known as OMNI Regional. Rogers Media requested that the service receive mandatory distribution on the digital basic service and a mandated wholesale fee from licensed and exempt broadcasting distribution undertakings (BDUs) operating in English- and French-language markets for a period of five years, pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act).

2. In its application, Rogers Media committed to devote at least 40% of OMNI Regional's annual revenues to the production of Canadian programming, and spend 2.5% of its revenues on programs of national interest (PNI) consisting of Canadian original scripted ethnic and/or third-language dramas and documentaries. Rogers Media would also ensure that 100% of its PNI are sourced from independent producers. This information would be reported as part of the service's annual returns.
3. It also committed to devote 80% of OMNI Regional's schedule to the exhibition of ethnic programming and 50% to the exhibition of third-language programming. Further, it would devote 55% of the broadcast day and 50% of the evening broadcast period to the exhibition of Canadian programming, both measured over the broadcast year. Its programming would target 20 distinct ethnic groups in 20 different languages each month, with a programming cap of 16% in any given language measured over each month.
4. Further, Rogers Media committed to:
 - produce and exhibit 4 daily, national, 30-minute newscasts, 7 days per week, in the Italian, Mandarin, Cantonese (produced in Toronto with contributions from Vancouver and reporters in Montréal, Ottawa, Edmonton and Victoria) and Punjabi languages (produced in Vancouver with contributions from Toronto and reporters in Victoria, Edmonton, Ottawa and Montréal);
 - produce and exhibit 6 daily, local 30-minute current affairs shows 5 days per week in the Mandarin, Punjabi and Cantonese languages (produced in Toronto and Vancouver);
 - create a national cultural affairs series produced in Alberta designed to showcase important cultural and social contributions from Canada's ethno-cultural communities;
 - re-establish in-house production in all markets served by OMNI's television stations; and
 - eliminate all U.S. strip programming that is not relevant to ethnic or third-language communities and ensure that no more than 10% of the programming broadcast on OMNI Regional each month consists of U.S. programming.
5. To address the structural problems faced by its OMNI television stations, the applicant indicated that OMNI Regional would have four regional feeds specifically tailored to ethnic Canadians living in British Columbia, Alberta, Ontario and Quebec. Three of the feeds would mirror the programming offered on the OMNI stations in British Columbia, Alberta and Ontario. Rogers Media stated that the mirroring of programming would help further OMNI's multicultural mandate, which can no longer be met through its current business model. It also indicated that OMNI Regional

would share program acquisition and production costs with the OMNI television stations.

6. As regards the Quebec feed, Rogers Media indicated that it had reached an oral agreement with the licensee (4517466 Canada Inc.) of ICI (International Channel/Canal International), a multilingual ethnic television station operating in Montréal. Under the agreement, the Quebec feed would be branded as “ICI Québec,” with ICI supplying much of the programming for this feed, including:
 - 3 hours of original local ethnic programming in French each week;
 - 1.5 hours of original French-language programming and 30 minutes of original English-language programming each week; and
 - 14 hours of original local independently produced programming each week.
7. The ICI Québec feed would also include the 4 daily, 30-minute, national newscasts produced by OMNI in Punjabi, Italian, Mandarin and Cantonese, during the 6 to 8 p.m. timeslot each broadcast day.
8. Rogers Media also proposed that, rather than meeting the same requirements as the other OMNI Regional feeds, the ICI Québec feed would satisfy the same ethnic and multilingual service mandate as the ICI television station by offering programming to 18 distinct ethnic groups in 15 different languages each month. In addition to the provisions noted in paragraph 6, the remaining commitments made for OMNI Regional would apply to the ICI Québec feed.
9. Rogers Media proposed a \$0.12/month wholesale rate for OMNI Regional. The licensee of ICI would receive a portion of the \$0.12 per subscriber per month wholesale fee derived from Quebec subscribers in return for its programming contributions.
10. In markets where an OMNI television station is operating as a local or regional station, Rogers Media proposed that a BDU have the option to substitute the regional feed of OMNI’s national service instead of distributing the OMNI television station as part of the basic service. Further, Rogers Media suggested that this exception to the priority carriage rules be embedded into the distribution order for OMNI Regional.

Positions of parties

11. The Commission received several interventions and comments in regard to this proceeding. The public record for this proceeding can be found on the Commission’s website at www.crtc.gc.ca or by using the application number provided above.
12. Many interveners, including members of the public and community organizations representing various ethnic communities, supported this application as a way for OMNI to reinstate daily, third-language newscasts, which were previously offered by these stations. Many stated that the programming provided by OMNI is not offered

elsewhere in Canada and is essential to serving diverse communities and fostering ethnic inclusion. The Forum for Research and Policy in Communications and the various Unifor branches supported the application, provided that conditions of licence be imposed to ensure the reinstatement of original, daily, local news and other original weekly local programs in each city served by an OMNI station.

13. Several BDUs that intervened in the proceeding (TELUS Communications Company, Shaw Communications Inc., Bell Media Inc., Saskatchewan Telecommunications and Bragg Communications Inc.) opposed the application. They argued that the application does not meet the criteria for mandatory distribution, does not take into consideration the Commission's new policy framework on local programming and runs counter to the need for greater consumer choice in the selection of programming services. They added that approval of the application would have a negative impact on consumers and BDUs.
14. Certain ethnic broadcasters such as Asian Television Network International Limited also opposed the application. Like the BDUs, it argued that the application does not meet the criteria for mandatory distribution. Fairchild Television Ltd. also questioned the appropriateness of considering an application for a new discretionary service with mandatory distribution in the course of a licence renewal proceeding. However, the ethnic broadcaster Ethnic Channels Group Limited supported the application, stating that OMNI Regional would make an important contribution to the broadcasting system and to ethnic broadcasting.
15. The Urban Alliance on Race Relations submitted that Rogers Media did not fully explore other alternatives to maintain the level of ethnic programming on the OMNI television stations.
16. Finally, PIAC et al.¹ argued that approval of the application would set a precedent for the creation of a discretionary, subscriber fee-based version of television stations, as well as grant national mandatory distribution to a service owned by a well-financed, vertically integrated entity. While PIAC et al. did not support the OMNI Regional application, it provided possible conditions of licence in the event that the Commission were to approve the proposed service. Specifically, it proposed that OMNI Regional be subject to requirements on the programming and operations of the service, as well as on consultations with ethno-cultural communities. PIAC et al. further argued that if the Commission were to determine that there is a need to license a multilingual multi-ethnic service with mandatory distribution, it should announce a call for applications to operate such a service. Finally, PIAC et al. proposed that the Commission impose news programming requirements on the OMNI television stations regardless of whether the Commission approves OMNI Regional's request for mandatory distribution.

¹ The Canadian Ethnocultural Council, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of B.C., the National Pensioners Federation and Public Interest Advocacy Centre

Rogers Media's reply

17. In its reply, Rogers Media stated that, given the losses it has sustained since 2010, it cannot provide third-language newscasts on its OMNI television stations without the approval of its application for a broadcasting licence to operate OMNI Regional with mandatory distribution on the digital basic service.
18. It also rejected the notion that OMNI Regional would create a precedent that other television stations could follow, arguing that its OMNI stations are unique in that they are the only multilingual television stations operating in Canada.
19. Rogers Media agreed to accept several additional conditions of licence to ensure that granting OMNI Regional mandatory distribution would result in exceptional benefits for Canada's ethnic and third-language communities. These include:
 - operating the OMNI television stations and OMNI Regional on a break-even basis (profits earned would be reinvested back into OMNI's programming);
 - accepting a 10% cap in the amount of U.S. programming that could be scheduled on the services and foregoing any simultaneous substitution opportunities that might be present with respect to this programming;
 - establishing advisory councils for each regional feed that will have representation from all provinces served by the feed (including provinces in Atlantic Canada);
 - OMNI staff making regular visits to each province to solicit pitches for independent production; and
 - creating an online portal to receive pitches from across Canada to produce programming for OMNI.
20. Further, Rogers Media indicated that the conditions of licence proposed by PIAC et al. would increase its obligations to a level that would exceed those imposed on all other services that currently benefit from mandatory distribution, and would significantly increase the cost of operating the new service, making it impossible to support OMNI Regional at its proposed wholesale rate of \$0.12.
21. In regard to comments relating to procedural fairness, Rogers Media stated that the Commission has never indicated that a separate proceeding or call for applications is necessary for the consideration of an application for mandatory distribution. Both APTN and CPAC were granted mandatory distribution as part of their licence renewal proceedings, without a competitive proceeding. Moreover, when the Commission granted mandatory distribution to TVA and The Weather Network / MétéoMédia, the applications did not trigger a call for competing applications.
22. Finally, Rogers argued that the BDUs that intervened did not provide any evidence that granting mandatory distribution to OMNI Regional would have a negative effect

on the price of basic cable. On the contrary, Rogers Media stated that granting mandatory distribution to OMNI Regional would not impose any burden on BDUs or their subscribers.

Commission's analysis

23. The Commission recognizes the exceptional need for a national, multilingual multi-ethnic programming service that can provide Canadians with news and current events programming in multiple languages from a Canadian perspective. In the Commission's view, OMNI Regional could in part fill this need, particularly through the broadcast of daily, national, third-language newscasts.

24. In considering Rogers Media's request for the mandatory distribution of OMNI Regional on the digital basic service, the Commission is guided by section 3(1)(d) of the Act, which states that the Canadian broadcasting system should:

- (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,
- (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view, and
- (iii) 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 [...].

25. The Commission also takes into consideration the importance of news programming to Canada's social and democratic life and in particular the objectives of the Act, according to which the programming provided by the Canadian broadcasting system should provide a balance of information, enlightenment and entertainment, should be drawn from local, regional, national and international sources, and should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern (section 3(1)(i)).

26. When evaluating applications for mandatory distribution on the digital basic service, the Commission takes into account specific criteria set out in Broadcasting Regulatory Policy 2010-629. In particular, the applicant must provide evidence:

- a) that the programming of its service makes an exceptional contribution to Canadian expression and reflects Canadian attitudes, opinions, ideas, values and artistic creativity;

- b) as to how the programming of its service contributes, in an exceptional manner, to the overall objectives for the digital basic service, as summarized above, and how it specifically contributes to one or more objectives of the Act;
 - c) that the service is making exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures;
 - d) demonstrating that there is extraordinary need among the intended audience for the proposed service;
 - e) that its business plan and implementation of its specific commitments are dependent on receipt of broad national distribution on the digital basic service;
 - f) of the likely impact of the proposed wholesale rate on the price of the basic package to consumers and of its widespread acceptability to Canadians;
 - g) to support the proposed timeframe during which its service should have exceptional status under an order pursuant to section 9(1)(h) of the Act.
27. After examining the application for OMNI Regional, the Commission finds that Rogers Media has provided evidence of the likely impact of the proposed wholesale rate on the price of the basic package to consumers and of its widespread acceptability to Canadians, namely that:
- the proposed wholesale rate of \$0.12/month would have a minimal impact on consumers, as the price of the basic service is capped at \$25/month; and
 - the surveys provided as part of the application and the number of interventions in support of the application suggest high interest for such a service on the basic service.
28. However, the Commission considers that the application does not fully meet the criteria for a service of the type proposed for the following reasons:
- it is unlikely that the service would ensure a sufficient reflection of Canada's third-language communities as Rogers Media's approach restricts its programming to the communities with which it already has an ongoing relationship through its OMNI television stations;
 - Rogers Media did not make exceptional commitments to original, first-run Canadian programming since the new daily, national, third-language newscasts are the only new programming proposed by Rogers Media;
 - the newscasts would only occupy a small portion of the programming schedule, and the balance of the programming would be the same as that offered by the OMNI television stations;

- Rogers Media did not propose specific amounts of programming relevant to each region of the country (the Prairies outside Alberta and Atlantic Canada, for example, are not properly reflected in the application); and
- the proposed service does not appear sustainable and would likely experience financial difficulties in the near future, even with mandatory distribution on the digital basic service.

29. In light of these deficiencies, in Broadcasting Notice of Consultation 2017-154 (the Call), also published today, the Commission issued a call for applications from parties wishing to operate a national, multilingual multi-ethnic television service offering third-language news and information programming that, if licensed, would receive mandatory distribution on the digital basic service.
30. Since any new service licensed in that proceeding may take two to three years or more to commence operations, there remains a pressing need for a service to meet the needs of Canada's ethnic and third-language communities. Therefore, rather than wait until the conclusion of the proceeding resulting from the Call, the Commission is of the view that the most effective way to ensure that these communities are to some extent immediately served is by granting Rogers Media a broadcasting licence to operate OMNI Regional for a short-term period of three years, with no expectation of renewal, with mandatory distribution on the digital basic service.
31. To ensure that OMNI Regional serves the needs of these communities throughout its licence term, the Commission will impose specific programming requirements on the service, such as:
- the broadcast of ethnic programs directed toward at least 20 distinct ethnic groups monthly;
 - the broadcast of ethnic programs in at least 20 different languages monthly;
 - for the Quebec feed, the broadcast of ethnic programs in 15 different languages and of programs to 18 distinct ethnic groups monthly;
 - the production and broadcast of daily, national, 30-minute newscasts, 7 days per week, in each of the Italian, Mandarin, Cantonese and Punjabi languages; and
 - the production and broadcast of 6 daily, local, 30-minute current affairs shows, each broadcast week, in each of the Mandarin, Cantonese and Punjabi languages.

These commitments are set out in the **conditions of licence** in Appendix 1.

32. Finally, the Commission denies Rogers Media's request that a BDU have the option to substitute the regional feed of OMNI's national service instead of distributing the OMNI television station as part of the basic service, given that BDUs are free to request an exception to their conditions of licence should they wish to be relieved of

the obligation to carry OMNI stations as part of the basic service where this is required.

Conclusion

33. In light of all of the above, the Commission **approves, in part**, the application by Rogers Media Inc. for a broadcasting licence to operate a national, multilingual multi-ethnic discretionary service to be known as OMNI Regional. The terms and **conditions of licence** are set out in Appendix 1 to this decision.
34. The Commission also **approves** Rogers Media Inc.'s request for mandatory distribution of OMNI Regional on the digital basic service. The mandatory order is set out in Appendix 2.

Secretary General

Related documents

- *Rogers Media Inc. – Licence renewals for English-language television stations, services and network*, Broadcasting Decision CRTC 2017-151, 15 May 2017
- *Call for applications for a national, multilingual multi-ethnic television service offering news and information programming*, Broadcasting Notice of Consultation CRTC 2017-154, 15 May 2017
- *Criteria for assessing applications for mandatory distribution on the digital basic service*, Broadcasting Regulatory Policy CRTC 2010-629, 27 August 2010

This decision is to be appended to the licence.

Appendix 1 to Broadcasting Decision CRTC 2017-152

Terms and conditions of licence for the national, multilingual multi-ethnic discretionary service to be known as OMNI Regional

Terms

The licence will take effect 1 September 2017 and expire 31 August 2020.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence, expectations and encouragements for discretionary services set out in Appendix 2 to the *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of condition of licence 6, as well as 17, which is replaced by the following:
 17. The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).
2. The licensee shall operate a national, multilingual multicultural television discretionary service that will be devoted to programming that is produced by and for Canada's ethnic communities.
3. The licensee shall provide four feeds, three of which will reflect the programming offered on the OMNI television stations in British Columbia, Alberta and Ontario. The fourth feed shall be distributed throughout the province of Quebec and will be branded as ICI Québec.
4. The licensee shall ensure that the Quebec feed includes:
 - 3 hours of original, local, ethnic programming in French each week;
 - 1.5 hours of original, French-language programming and 30 minutes of original, English-language programming each week; and
 - 14 hours of original, local independently produced programming each week.
5. The licensee shall devote 80% of its program schedule to the exhibition of ethnic programming and 50% of the schedule to third-language programming.
6. The licensee shall devote to the broadcast of Canadian programs:

- at least 55% of the total programming broadcast between 6 a.m. and midnight; and
 - at least 50% of the total programming broadcast between 6 p.m. and midnight.
7. The licensee shall broadcast ethnic programs directed toward at least 20 distinct ethnic groups monthly.
 8. The licensee shall broadcast ethnic programs in at least 20 different languages monthly.
 9. For the Quebec feed, the licensee shall broadcast in each broadcast month:
 - ethnic programs in 15 different languages; and
 - programs to 18 distinct ethnic groups.
 10. The licensee shall devote no more than 16% of its programming to programs in any one foreign language in each broadcast month.
 11. The licensee shall produce and broadcast daily, national, 30-minute newscasts, 7 days per week, in each of the Italian, Mandarin, Cantonese and Punjabi languages.
 12. The licensee shall produce and broadcast 6 daily, local, 30-minute current affairs shows, each broadcast week, in each of the Mandarin, Cantonese and Punjabi languages.
 13. The licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming at least 40% of:
 - (a) in the first and second broadcast year of the licence term, the current year's gross revenues of the undertaking;
 - (b) in the third year of the licence term, the previous year's gross revenues of the undertaking.
 14. The licensee shall in each broadcast year devote to the acquisition of or investment in ethnic and/or third-language programs of national interest, as defined in paragraphs 71 to 73 of *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, at least 2.5% of:
 - (a) in the first and second broadcast year of the licence term, the current year's gross revenues of the undertaking;
 - (b) in the third year of the licence term, the previous year's gross revenues of the undertaking.

15. All of the expenditures in condition 14 must be made to an independent production company.
16. In each broadcast year of the licence term, excluding the final year,
 - (a) the licensee may expend an amount on Canadian programming and/or on programs of national interest that is up to 5% less than the minimum required expenditure for that year calculated in accordance with conditions 13 and 14 respectively; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
 - (b) where the licensee expends an amount for that year on Canadian programming or programs of national interest that is greater than the minimum required expenditure as set out in conditions 13 and 14, the licensee may deduct that amount from the minimum required expenditure for the following year of the licence term.
 - (c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming and programs of national interest, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions 13 and 14.
17. The licensee shall devote no more than 10% of the broadcast month to the broadcast of U.S. programming.
18. The licensee shall establish advisory councils for each regional feed, with representation from all provinces served by the feed. In addition, the licensee shall submit a report once a year to the Commission by no later than 30 November following the end of each broadcast year on the activities and accomplishments of these advisory councils.

Definitions

“Independent production company” means a Canadian company (i.e., a company carrying on business in Canada, with a Canadian business address, owned and controlled by Canadians) whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity.

Appendix 2 to Broadcasting Decision CRTC 2017-152

Broadcasting Mandatory Order CRTC 2017-153

Distribution of the national, multilingual multi-ethnic discretionary service known as OMNI Regional by licensed broadcasting distribution undertakings

Pursuant to section 9(1)(h) of the *Broadcasting Act*, the Commission orders licensees of broadcasting distribution undertakings to distribute the national, multilingual multi-ethnic discretionary service known as OMNI Regional as part of their digital basic service, on the following terms and conditions:

- (a) This order applies to licensed distribution undertakings, including terrestrial and DTH distribution undertakings. These licensees are collectively referred to in this order as distribution licensees.
- (b) This order will come into effect and be binding on the later of 1 September 2017 or 60 days following prior notice by the licensee of OMNI Regional demonstrating to the Commission's satisfaction that OMNI Regional is prepared to commence operations and offer four distinct regional feeds to distribution undertakings.
- (c) Distribution licensees are deemed in compliance with the order if the distribution licensee distributes the feed most relevant to its market.
- (d) Notwithstanding the foregoing, distribution licensees shall not be required to distribute the discretionary service pursuant to this order unless the licensee or a third party:
 - i. ensures the transmission of the service to each broadcasting distribution undertaking's head end located within the area for which it is licensed or to a satellite uplink centre located within that area; and
 - ii. bears the costs of the transmission.
- (e) Each distribution licensee distributing the discretionary service shall remit to the licensee a wholesale rate of \$0.12 per subscriber per month where the service is carried as part of the basic service.
- (f) This order shall remain in effect until 31 August 2020.

For the purposes of this order, "basic service," "discretionary service," "DTH distribution undertaking," "licensed" and "terrestrial distribution undertaking" shall have the same meanings as set out in the *Broadcasting Distribution Regulations*, as amended from time to time.