



Broadcasting Decision CRTC 2018-118

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Reference: Part 1 applications posted on 17 October 2017

Ottawa, 10 April 2018

Unifor and its Locals 723M and 830M Chinese and Southeast Asian Legal Clinic and Urban Alliance on Race Relations

Across Canada

Public record for these applications: 2017-0975-0 and 2017-0977-6

Complaints against Rogers Media Inc. alleging non-compliance with OMNI Regional's third-language news requirement

*The Commission has examined the manner in which Rogers Media Inc. (Rogers) produces OMNI Regional's Cantonese and Mandarin newscasts and finds that the licensee is operating in compliance with its condition of licence. Accordingly, the Commission **denies** applications by the above-noted applicants seeking a mandatory order requiring Rogers to produce such programming in-house.*

Applications

1. Unifor and its Locals 723M and 830M (Unifor) filed an application requesting that the Commission inquire into the production by Rogers Media Inc. (Rogers) of Cantonese and Mandarin newscasts on its discretionary service OMNI Regional. The Chinese and Southeast Asian Legal Clinic and the Urban Alliance on Race Relations (CSALC/UARR) filed a similar application.
2. In particular, the applicants allege that Rogers' use of newscasts produced by Fairchild New Media Ltd. (Fairchild) is contrary to OMNI Regional's condition of licence 11 (see Appendix 1 to Broadcasting Decision 2017-152), which states:

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.
3. The applicants also raised concerns about the loss of editorial diversity and local news coverage for Chinese-speaking Canadians due to the fact that Fairchild is the only other major Canadian producer of newscasts in Cantonese and Mandarin.
4. The applicants requested that the Commission issue a mandatory order requiring that Rogers comply with condition of licence 11 and more particularly that it produce all of OMNI Regional's Cantonese and Mandarin newscasts in-house.

5. The Commission received interventions supporting these applications.

Answer by Rogers

6. Rogers submitted that it is in full compliance with the terms and conditions set out in the OMNI Regional licence and rejected the idea that having the newscasts produced independently by Fairchild rather than in-house is inconsistent with condition of licence 11. Rogers argued that the applicants are advancing a narrow interpretation of this requirement.
7. Rogers stated that its approach to Cantonese and Mandarin news programming took into consideration the conditions of licence established for OMNI Regional in Broadcasting Decision 2017-152, the length of the licence term, the prospect that the OMNI Regional licence would not be renewed after three years, the capacity of Rogers' existing infrastructure and the 1 September 2017 launch date. Rogers also noted that following the licensing of OMNI Regional, it had been approached by parties wishing to collaborate and that it ultimately opted to contract with Fairchild rather than invest in the new infrastructure that would be required to produce these newscasts in-house. However, Rogers emphasized that the contract with Fairchild is for new productions that are original and exclusive to Rogers, with strict limits on the amount of overlap between OMNI Regional newscasts and any other news programming produced by Fairchild for its own services Fairchild TV, Fairchild TV 2 and Talentvision.
8. Rogers filed, on a confidential basis, a copy of the news programming acquisition agreement between Rogers and Fairchild dated 3 August 2017. According to Rogers, the agreement shows that the newscasts produced for OMNI Regional are distinct from any news program offered on the programming services operated by Fairchild and that Rogers is maintaining editorial control and responsibility over the programming content broadcast by its service. In addition, Rogers noted that it continues to produce 30-minute current affairs programs in-house, five days per week, in both Cantonese and Mandarin for broadcast on OMNI Regional.

Reply

9. Unifor maintained that Rogers failed to establish factually that:
 - Rogers does not have the capacity within its existing infrastructure to produce the programming in question;
 - there are any limits on programming overlap between Fairchild-produced OMNI Regional newscasts and Fairchild news programming produced for its own purposes; and
 - Rogers maintains full editorial control over OMNI Regional's Fairchild-produced newscasts.

10. Unifor submitted that the wording of condition of licence 11 clearly and plainly means that Rogers is required to produce newscasts in-house. Further, Unifor argued that Rogers made repeated commitments in the proceeding that led to Broadcasting Decision 2017-152 to re-establish in-house production in all the markets served by OMNI's over-the-air stations if granted the OMNI Regional licence.

Commission's analysis

11. The issue raised in these applications ultimately revolves around the interpretation of condition of licence 11 and in particular the meaning that should be given to the term "produce." Does the term "produce" restrict Rogers to producing OMNI Regional's third-language newscasts in-house as argued by the applicants, or is the condition of licence broad enough to contemplate the types of partnerships entered into with Fairchild for the production of such programming?
12. The Commission is of the view that this condition of licence must be read in the regulatory context in which it was imposed, as well as the context of the other conditions of licence imposed on OMNI Regional.

Regulatory context

13. In Broadcasting Decision 2017-152, the Commission approved Rogers' application to operate a national, multilingual multi-ethnic discretionary service known as OMNI Regional. As part of that process, the Commission also issued Broadcasting Notice of Consultation 2017-154, in which it called for applications for a national, multilingual multi-ethnic television service offering third-language news and information programming which, if licensed, would receive mandatory distribution.
14. To ensure that ethnic and third-language communities were served in the short term, the Commission granted mandatory distribution to OMNI Regional, despite the Commission's reservations at the time that the service did not fully meet the criteria for mandatory distribution. Both the licence and the mandatory order were granted for a short-term period of three years, with no expectation of renewal.
15. In Broadcasting Decision 2017-152, the Commission noted Rogers' commitment to re-establish in-house production in all markets. Nevertheless, that commitment was not imposed as a condition of licence. The Commission considers that this omission reflects the regulatory context in which the licence was granted. In particular, the Commission understood that the licensee would be operating the service with only short-term regulatory certainty. In its decision, the Commission also emphasized the public interest in meeting the pressing need of Canada's ethnic and third-language communities for news and current events programming as soon as possible. Expediency and efficiency in serving these communities were significant considerations when granting the OMNI Regional licence and the accompanying mandatory distribution order. Consequently, it is reasonable for Rogers to have sought out programming partnerships as a means to ensure that the needs of these communities were met as efficiently and quickly as possible.

16. Moreover, in Broadcasting Notice of Consultation 2017-154, the Commission required that those applicants wishing to operate a new national, multilingual multi-ethnic television service demonstrate how the proposed service would operate under a diverse governance structure that involves a committed group of broadcasters, producers and members of the community. The fact that Rogers has sought out similar partnerships, either with independent producers or other broadcasters, to fulfill its programming requirements is in keeping with the Commission's stated requirements in the call for applications.
17. As a result, the Commission considers that it is reasonable for Rogers to produce OMNI's third-language newscasts in partnership with third parties in light of the regulatory context in which the OMNI licence was granted.

Condition of licence 11

18. Condition of licence 11 states that the licensee shall "produce" the news programming in question. The Commission notes that this term is not qualified or otherwise narrowed. In particular, condition of licence 11 does not specify whether the programming is to be produced in-house or in partnership. This stands in contrast to other conditions of licence within the OMNI Regional licence, such as those relating to programs of national interest and original local programming for the Quebec feed. These conditions of licence make explicit reference to independent production. Accordingly, had the Commission intended to impose specific requirements regarding the method by which newscasts were to be produced, it would have also done so in condition of licence 11.
19. Further, the Commission made a similar determination in Broadcasting Decision 2012-243 with respect to television stations operated by V Interactions inc. In that decision, the Commission found that the wording used in the conditions of licence, namely that the "licensee shall produce and broadcast," does not restrict the use of an independent producer for the production of programming.
20. Therefore, when reading the wording of condition of licence 11 in conjunction with the other conditions of licence imposed on OMNI Regional, it is reasonable to interpret "produce" as including either in-house production or programming produced with the assistance of third parties.

Diversity in programming and editorial control

21. The Commission considers that news programming should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, consistent with section 3(1)(i)(iv) of the *Broadcasting Act* (the Act). In addition, section 3(1)(h) of the Act states that licensees are responsible for the programs they broadcast.
22. With respect to the concerns raised by the applicants over a loss of diversity in programming and editorial control, based on the record of this proceeding the Commission is satisfied that Rogers and Fairchild have structured their news

programming acquisition agreement in such a way that final editorial control over news programming broadcast on OMNI Regional remains with Rogers. The Commission is also satisfied that the agreement provides sufficient restrictions on the degree of overlap that can occur between the programming produced for OMNI Regional and the programming produced by Fairchild for its own services. These safeguards, along with the fact that Rogers continues to produce its weekly current affairs programming in-house, offer sufficient diversity in news programming.

Conclusion

23. In light of all the above, the Commission finds Rogers in compliance with condition of licence 11 for OMNI Regional. Accordingly, the Commission **denies** the applications by Unifor and CSALC/UARR seeking a mandatory order requiring that Rogers produce OMNI Regional's third-language news programming in-house.

Secretary General

Related documents

- *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
- *OMNI Regional – National, multilingual multi-ethnic discretionary service*, Broadcasting Decision CRTC 2017-152 and Broadcasting Order CRTC 2017-153, 15 May 2017
- *V Interactions inc. – Review of certain conditions of licence*, Broadcasting Decision CRTC 2012-243, 26 April 2012