



## Broadcasting Decision CRTC 2019-172 and Broadcasting Order CRTC 2019-173

PDF version

References: 2018-127, 2018-127-1, 2018-127-2 and 2018-127-3

Ottawa, 23 May 2019

### Various applicants

Across Canada

*The application numbers are set out in the decision.*

*Public record for these applications: 1011-NOC2018-0127*

*Public hearing in the National Capital Region*

*26 November 2018*

### Licensing of a national, multilingual multi-ethnic discretionary service

*The Commission **approves**, in part, an application by Rogers Media Inc. to operate a new national, multilingual multi-ethnic discretionary service to be known as OMNI Regional. The mandate of this service is to reflect multilingual multi-ethnic communities across Canada and provide news and information programming that meets their needs and interests.*

*OMNI Regional will benefit from mandatory distribution on the digital basic service at a wholesale rate of \$0.19 per subscriber per month. A licence term of three years, beginning 1 September 2020 and ending 31 August 2023, will align this licence with those of other services that benefit from mandatory distribution.*

*The Commission **denies** the remaining applications seeking a licence to operate a national, multilingual multi-ethnic discretionary service and to benefit from an order requiring its distribution on the digital basic service.*

### Introduction

1. In Broadcasting Decision 2017-152, the Commission recognized that there was an exceptional need for a national, multilingual multi-ethnic television service that could provide Canadians with affordable news and current events programming in multiple languages from a Canadian perspective. This type of programming assists Canadians in fully participating in Canadian society and better reflects its multicultural nature.
2. To address the immediate need for such a service, the Commission granted a licence to Rogers Media Inc. (Rogers) to operate a national discretionary service known as OMNI Regional and mandated its distribution as part of the digital basic service of all

broadcasting distribution undertakings (BDUs). However, the Commission was concerned that what was proposed by Rogers at that time did not fully meet the criteria for a service of this type since, among other things:

- the service would not likely ensure a sufficient reflection of Canada's third-language communities;
  - the application lacked exceptional commitments to original, first-run programming;
  - only a small portion of the program schedule was allocated to newscasts, and the balance of the programming would be the same as that offered by the OMNI television stations; and
  - Rogers did not include specific programming relevant to each region of the country.
3. The Commission weighed its concerns against the exceptional need for this type of service, in particular how such a service would help to contribute to meeting the broadcasting policy objectives set out in section 3(1)(d) of the *Broadcasting Act* (the Act), which states that the Canadian broadcasting system should:
- i. serve to safeguard, enrich and strengthen the cultural, 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.
4. Ultimately, the Commission approved the Rogers application and issued a distribution order for the carriage of the OMNI Regional service for a three-year period, with no expectation of renewal. In so doing, and to better address the needs of Canada's multilingual multi-ethnic communities, the Commission issued Broadcasting Notice of Consultation 2017-154 (the Call) seeking applications for a new national, multilingual multi-ethnic discretionary service offering third-language news and information programming that, if licensed, would receive mandatory distribution on the digital basic service.

5. The Commission received the following applications in response to the Call:

<b>Applicant</b>	<b>Application number</b>
2627147 Ontario Inc., operating as Multicultural Described Video Guide	2017-1033-5
Independent Community Television Montreal (ICTV-MTL)	2017-1041-8
Amber Broadcasting Inc.	2017-1042-6
Ethnic Channels Group Limited, on behalf of a corporation to be incorporated	2017-1043-4
M.T.E.C. Consultants Limited, operating as Corriere Canadese, on behalf of a corporation to be incorporated	2017-1045-0
Teletatino Network Inc. and Asian Television Network International Limited, on behalf of a corporation or limited partnership to be established	2017-1047-6
Bell Media Inc.	2017-1050-0
Rogers Media Inc.	2017-1051-7

6. As part of this proceeding, the Commission received and considered interventions and evidence submitted as part of the record of each application.

### **Commission's analysis**

7. The Commission has considered the applications submitted as part of this proceeding in light of the criteria for assessing applications for mandatory distribution on the digital basic service,<sup>1</sup> the policy objectives of the Act, as well as the additional criteria set out in the Call. These criteria set a high threshold for the granting of a mandatory distribution order for the carriage of a multilingual multi-ethnic service on BDUs across the country. In considering the issuance of such a distribution order, the Commission must be satisfied that the commitments made by the successful applicant contributed in an exceptional way to meeting the objectives of the Act, and, at the same time, that the successful applicant has the wherewithal to continuously fulfill these commitments.

8. When the Commission considers it in the public interest to mandate the distribution of a type of service to provide certain content, its practice has been to only license one service to provide that content. This ensures lower costs for consumers and avoids unnecessarily inhibiting consumer choice. In the Commission's view, there is no reason to deviate from this practice and license more than one service in this proceeding.

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<sup>1</sup> The criteria for assessing applications for mandatory distribution on the digital basic service are set out in Broadcasting Regulatory Policy 2010-629.

9. Having considered the criteria and evidence that was submitted as part of the record by all applicants and interveners, the Commission finds that of all the applications, Rogers' proposed service, along with its associated commitments, best meets the needs and interests of Canada's diverse population and the criteria established by the Commission, and is the most likely to ensure an exceptional contribution to the fulfillment of the objectives of the Act. The Commission considers that this is due to the exceptional commitments made by Rogers, described below, most notably toward the provision of third-language news and information programming presented from a Canadian perspective, the amount of programming broadcast that is original, first-run content and the distribution of third-language and ethnic programming from various regions across Canada. In particular, the Commission is of the view that these commitments will help ensure the continued reflection of Canada's multicultural society in the broadcasting system in a comprehensive and affordable fashion.
10. The Commission's conclusion was reached through a rigorous assessment of each application considered as part of this proceeding. The Commission has set out below some of the noteworthy aspects of OMNI Regional upon which the decision to grant mandatory distribution to this service was made. Where appropriate, the Commission has also expanded on how these aspects of the proposed OMNI Regional service will meaningfully respond to the exceptional needs of Canada's ethnic and third-language communities, as identified in the Call, and make an exceptional contribution to the fulfillment of the objectives of the Act.
11. With respect to the length of the licence term and of the mandatory distribution order, the Commission is of the view that granting a three-year licence term and mandatory distribution will allow the licence and distribution order's expiry date to coincide with that of the other services benefiting from mandatory distribution, currently set for 31 August 2023. As such, the Commission will be able to examine all of these services during the same licence renewal proceeding and evaluate their impact on the basic service offering.

### **Rogers' commitments**

12. OMNI Regional will continue to operate its four existing regional feeds and will have four regional advisory councils, one for each feed, namely OMNI BC, OMNI Prairies, OMNI East and Québec (branded as ICI Québec). The councils will include members representing previously underserved regions such as Manitoba, Saskatchewan and the Atlantic provinces. According to Rogers, each of these advisory councils will be comprised of community leaders and business professionals who will provide the service with regional insight and expertise. These members will also represent the specific ethnic and third-language communities residing in each of the provinces served by the feeds and will be granted a decision-making role with respect to the overall programming direction of the service. For instance, each council will be more involved in securing new local independent producers in areas where Rogers considers it is lacking in terms of languages or communities it has not reached through its programming.

13. By continuing to offer four feeds, Rogers will be able to tailor the programming provided by each feed to the needs of the ethnic and third-language communities in those regions. These measures will ensure that each of the language groups and ethnicities served are well represented and will allow OMNI Regional to better respond to the programming needs and particularities of its audiences throughout Canada, notably regarding the provision of locally relevant and reflective content in those regions. These measures will also ensure that Rogers will have the programming flexibility to respond and adapt to changing demographics on a monthly basis.

14. With respect to Canadian programming, Rogers will devote:

- at least 60% of OMNI Regional's previous year's gross revenues to the production of original, first-run Canadian programs;
- at least 5% of OMNI Regional's previous year's gross revenues to original, first-run programs of national interest (PNI);
- all of OMNI Regional's expenditures toward PNI to independent production companies; and
- at least 70% of the broadcast day and 70% of the evening broadcast period to the broadcast of Canadian programs.

15. Concerning independent productions, Rogers will broadcast at least:

- 12 hours of independent productions each broadcast week, averaged on a monthly basis, on the OMNI feed sourced from British Columbia;
- 12 hours of independent productions each broadcast week, including a minimum of 2 hours produced in Manitoba and/or Saskatchewan, averaged on a monthly basis, on the OMNI feed sourced from the Prairies;
- 12 hours of independent productions each broadcast week, including a minimum of 2 hours produced in Atlantic Canada, averaged on a monthly basis, on the OMNI feed sourced from Eastern Canada; and
- 14 hours of local original independent productions each broadcast week, averaged on a monthly basis, on the Quebec feed.

16. Regarding the broadcast of ethnic and third-language programming, Rogers will devote:

- the entirety of the OMNI Regional schedule for the OMNI BC, OMNI Prairies and OMNI East feeds, and at least 90% of the ICI Québec feed, to ethnic programming;

- with respect to its OMNI BC, OMNI Prairies and OMNI East feeds, at least 80% of OMNI Regional's schedule to the exhibition of third-language programming and offer programming targeting at least 20 different ethnic groups in at least 20 different languages per month; and
- in relation to the ICI Québec feed, at least 60% of the service's schedule to the exhibition of third-language programming and offer programming targeting at least 18 different ethnic groups in at least 15 different languages per month.

17. As regards news programming, Rogers will:

- broadcast at least 6 hours of local original, first-run news each broadcast week sourced from Vancouver, Calgary/Edmonton and Toronto;
- broadcast at least 6 daily, original, first-run, national 30-minute newscasts, 7 days per broadcast week, in 6 different languages; and
- devote at least 40% of the previous year's gross revenues to the production of news programs.

18. Rogers also indicated that Fairchild and ICI Montréal will provide news and information programming with differing points of view.

19. In addition, Rogers committed to maintaining the operation of its five OMNI over-the-air stations for the period of OMNI Regional's licence and mandatory distribution order and indicated that it would accept a condition of licence to that effect.

20. These commitments are set out in the **conditions of licence** in Appendix 1 to this decision.

21. Further, Rogers committed to provide English-language subtitles for all third-language PNI that are commissioned by the licensee throughout the licence term. To promote linguistic duality, the Commission considers that it would be appropriate for Rogers to provide English-language subtitles for all third-language PNI on the English-language feeds and French-language subtitles for all third-language PNI on the ICI Québec feed. Rogers indicated that these subtitles will ensure that all of OMNI Regional's third-language PNI reach a broader audience and will encourage cross-cultural and inter-generational appeal.

22. Expectations to that effect are set out in Appendix 1.

23. The Commission finds that through the above commitments, OMNI Regional will provide an exceptional contribution to Canadian expression and reflect Canadian attitudes by ensuring that a significant portion of its programming is produced by independent producers, is diverse and meets the needs of various ethnic and third-language communities across Canada.

24. Moreover, the Commission finds that Rogers has demonstrated that OMNI Regional's programming will contribute in an exceptional manner to the overall objectives of the Act by meeting the needs of third-language communities by:
- providing programming in multiple languages, reflecting various opinions and values;
  - providing an outlet for independent production companies; and
  - enabling these communities, through the service's news and information programming, to be aware of issues affecting them.
25. Finally, given Rogers' commitments regarding the provision of newscasts, as well as its Canadian programming expenditure and PNI commitments that are tied to original, first-run programming, the Commission finds that Rogers' expenditure and exhibition requirements represent significant and exceptional contributions to the Canadian broadcasting system.

### **Wholesale rate for OMNI Regional**

26. To implement its proposed programming commitments and to ensure the long-term viability of its proposed service, Rogers requested an increase in the current wholesale rate per month per subscriber for OMNI Regional from \$0.12 to \$0.19 in the first two years of the new licence term, then rising to \$0.20 in years 3 and 4, and to \$0.21 in year 5. Rogers indicated that the proposed ramp up in the wholesale rate would serve to mitigate the effects of projected declines in subscribership to BDUs.
27. The Commission finds that a wholesale rate of \$0.19 for OMNI Regional for the duration of the three-year licence term is sufficient to allow Rogers to achieve its programming commitments and should allow it to remain in a sustainable financial position should BDU subscribership in the next licence term decline at a faster rate than that seen in recent years. Further, Rogers committed to operate OMNI Regional on a break-even basis and to reinvest any profits of OMNI Regional into its programming. As such, the Commission has imposed a **condition of licence** to that effect in Appendix 1.

### **Conclusion**

28. Taken together, Rogers' commitments and the wholesale rate at which the service will be delivered to Canadian consumers strike a balance between a strong programming service that provides an exceptional contribution to the broadcasting system and the need to ensure that such programming remains affordable for its audience. Rogers' proposal therefore best addresses the Commission's concerns as expressed in the Call and ensures that the proposed service meets the criteria set out for mandatory distribution on the basic service as outlined in the Call.
29. 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 licence will take effect 1 September 2020 and expire 31 August 2023. The **conditions of licence** are set out in Appendix 1 to this decision.

30. The Commission also **approves** Rogers Media Inc.'s request for mandatory distribution of OMNI Regional on the digital basic service. The service will be distributed at a wholesale rate of \$0.19 per subscriber per month. The mandatory distribution order is set out in Appendix 2.
31. The Commission **denies** the remaining applications seeking a licence to operate a national, multilingual multi-ethnic discretionary service and to benefit from an order requiring its distribution on the digital basic service.

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
- *Criteria for assessing applications for mandatory distribution of its service 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 2019-172

### Terms, conditions of licence and expectations for the national, multilingual multi-ethnic discretionary service OMNI Regional

#### Terms

The licence will take effect 1 September 2020 and expire 31 August 2023.

#### 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 conditions 6 and 18(d), as well as 17, the latter of which is replaced by the following:

The licensee shall 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 multi-ethnic 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.
4. The licensee shall ensure that the Quebec feed includes:
  - 3 hours of original, local, ethnic programming in French each broadcast week; and
  - 1.5 hours of original, local, French-language programming and 30 minutes of local original English-language programming each broadcast week.
5. The licensee shall devote 100% of its program schedule to the exhibition of ethnic programming and at least 80% of the schedule to third-language programming for its feeds sourced from British Columbia, the Prairies and Eastern Canada.
6. The licensee shall devote at least 90% of its program schedule to the exhibition of ethnic programming and 60% of the schedule to third-language programming for its Quebec feed.

7. The licensee shall devote to the broadcast of Canadian programs:
  - at least 70% of the total programming broadcast between 6 a.m. and midnight; and
  - at least 70% of the total programming broadcast between 6 p.m. and midnight.
8. The licensee shall broadcast ethnic programs directed toward at least 20 distinct ethnic groups monthly on each of the feeds sourced from British Columbia, the Prairies and Eastern Canada.
9. The licensee shall broadcast ethnic programs in at least 20 different languages monthly on each of the feeds sourced from British Columbia, the Prairies and Eastern Canada.
10. On the Quebec feed, the licensee shall broadcast in each broadcast month:
  - ethnic programs in at least 15 different languages; and
  - programs to at least 18 distinct ethnic groups.
11. The licensee shall devote not more than 16% of its programming to programs in any one foreign language during each broadcast month.
12. The licensee shall produce and broadcast at least 6 daily, original, first-run, national, 30-minute news programs, 7 days per broadcast week, in at least six different third languages.
13. In each broadcast week, the licensee shall broadcast at least 6 hours of original, first-run local news sourced from Vancouver, Edmonton/Calgary and Toronto.
14. The licensee shall broadcast at least:
  - 12 hours of independent productions each broadcast week, averaged on a monthly basis, on the OMNI feed sourced from British Columbia;
  - 12 hours of independent productions each broadcast week, including at least 2 hours produced in Manitoba and/or Saskatchewan, averaged on a monthly basis, on the OMNI feed sourced from the Prairies;
  - 12 hours of independent productions each broadcast week, including at least 2 hours produced in Atlantic Canada, averaged on a monthly basis, on the OMNI feed sourced from Eastern Canada; and
  - 14 hours of local original independent productions each broadcast week, averaged on a monthly basis, on the Quebec feed.

15. On or before November 30 of each year, the licensee shall file with the Commission a report on its expenditures for and exhibition of Canadian programs in a manner and form prescribed by the Commission.
16. The licensee shall in each broadcast year devote to the acquisition of or investment in original, first-run Canadian programs at least 60% of the undertaking's previous year's gross revenues derived from broadcasting activities.
17. The licensee shall in each broadcast year devote to the acquisition of or investment in original, first-run 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 5% of the undertaking's previous year's gross revenues derived from broadcasting activities.
18. All of the expenditures in condition 17 must be made to independent production companies.
19. In each broadcast year of the licence term, excluding the final year,
  - a. The licensee may expend an amount on Canadian programs 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 16 and 17 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 programs or programs of national interest that is greater than the minimum required expenditure as set out in conditions 16 and 17, 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 programs and programs of national interest, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions 16 and 17.
20. The licensee shall devote no more than 10% of the broadcast month to the broadcast of U.S. programming.
21. The licensee shall maintain advisory councils for each regional feed, coordinate their activities and ensure that each advisory council:
  - i. is comprised of members from all provinces served by the regional feed;

- ii. is comprised of members of the ethnic communities served by the regional feed; and
  - iii. meets on a regular basis to provide direction on programming and community outreach strategies, including the languages served by the relevant regional feed, to ensure that the programming aired remains relevant to those communities.
22. The licensee's programming schedule for each regional feed shall be approved by the advisory council established for that regional feed.
  23. The licensee shall satisfy its obligations relating to local independent productions by way of recourse to local independent producers that have been approved by the advisory council established for the relevant regional feed.
  24. The licensee shall expend a total of \$60,000 over the three-year licence term on scholarship initiatives that support ethnic and third-language post-secondary students majoring in journalism. The licensee shall delegate the management and distribution of these scholarship initiatives to its advisory councils.
  25. The licensee shall submit a report once a year to the Commission by no later than 30 November on the activities of and direction received from the advisory councils during the previous broadcast year. The licensee shall ensure that this report is reviewed and approved by each advisory council prior to its filing with the Commission.
  26. The licensee shall in each broadcast year invest at least 40% of the undertaking's previous year's gross revenues derived from broadcasting activities in news programs.
  27. Rogers Media Inc., licensee of the OMNI over-the-air stations, shall maintain the operation of the five OMNI over-the-air stations for the period of OMNI Regional's licence and mandatory distribution order.
  28. The licensee may solicit local advertising only in markets where OMNI over-the-air stations operate.
  29. The licensee shall operate OMNI Regional on a break-even basis whereby all profits of OMNI Regional are reinvested in its programming. The Commission expects that the revenues and expenses of OMNI Regional are allocated in a manner that accurately reflects its overall operations.

## **Definitions**

For the purposes of the conditions of this licence:

“Broadcast month” and “broadcast year” have the meanings set out in the *Television Broadcasting Regulations, 1987*.

“Broadcast week” has the meaning set out in the *Broadcasting Distribution Regulations*.

“Canadian program” has the meaning set out in the *Discretionary Distribution Regulations*.

“Independent productions” refer to programming produced by an independent production company.

“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 programming 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.

“Local news” has the same meaning as that ascribed to it in *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016

An “original, first-run program” is defined as the original exhibition of a program that has not been distributed by another broadcasting undertaking licensed by the Commission.

“Profits” are defined as net income (loss) after income taxes, as reported in the annual return.

## **Expectations**

The Commission expects the licensee to provide English subtitles for all third-language programs of national interest for the OMNI BC, OMNI Prairies and OMNI East feeds that are commissioned by the licensee over the three-year licence term.

The Commission expects the licensee to provide French subtitles for all third-language programs of national interest for the ICI Québec feed that are commissioned by the licensee over the three-year licence term.

## Appendix 2 to Broadcasting Decision CRTC 2019-172

### Broadcasting Mandatory Order CRTC 2019-173

#### **Distribution of the national, multilingual multi-ethnic discretionary service 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 1 September 2020.
- (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 for OMNI Regional 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 or to another location agreed upon by the broadcasting distribution undertaking and the service; and
  - ii. bears the costs of the transmission to the connection point.
- (e) Each distribution licensee distributing the discretionary service shall remit to the licensee a wholesale rate of \$0.19 per subscriber per month.
- (f) This order shall remain in effect until 31 August 2023.

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*.