

20 July 2015

Filed electronically

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Secretary General
CRTC
1 Promenade du Portage
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: Application 2015-0576-0, being a Part 1 Application by Unifor 723M for an expedited public hearing into the cancellation of original local ethnic television newscasts cancelled by Rogers Broadcasting Limited, and a mandatory order requiring their reinstatement – Procedural Request – Reply to Rogers’ 30 June 2015 submission

- 1 This is Unifor 723M’s reply to interventions submitted to the CRTC concerning Application 2015-0560-4.
- 2 The *Canadian Radio-television and Telecommunications Rules of Practice and Procedure (Rules)* set out requirements for applicants who reply to interveners. Under section 27(2) of the *Rules* applicants’ replies must
 - (a) be restricted to the points raised in the answer or the document;
 - (b) admit or deny the facts alleged in the answer or the document;
 - (c) state the grounds of objection or opposition, if any, to points raised in the answer or the document;
 - (d) be accompanied by a list of the persons on whom the reply is served and the email address of each, if any; and
 - (e) be served on the respondents and the interveners to whom the applicant is replying and any other persons that the Commission directs.
- 3 For readers’ convenience, an outline of our response is set out on the next page.

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I Interveners

4 At the outset, Unifor 723M thanks the approximately 880 interveners who took the time to express their concerns about Rogers' decision to cancel OMNI's original local newscasts, as well as their support for our application. We appreciated hearing about their concerns, and their desire that the CRTC address the OMNI original local ethnic newscasts cancellations through a public hearing.

5 Unifor 723M also wishes to reply to Rogers' submission of 6 July 2015, which was also directed towards Application No. 2015-0560-4 of the Urban Alliance on Race Relations. In the remainder of the following reply, paragraph and footnote numbers refer to the paragraphs and footnotes in Rogers' 6 July 2015 submission.

6 We begin by addressing, as required by section 27(2)(b) of the *Rules*, the facts on which Rogers and Unifor 723M agree, and those that remain in dispute. Then, as required by section 27(2)(c), we address the central issue raised by our application and by Rogers' submission: should the CRTC exercise its discretion to hold a public hearing into Rogers's decision to cancel OMNI's original local newscasts?

7 Unifor 723M respectfully submits that the CRTC should exercise its discretion to hold a public hearing because

- a) Rogers has breached its commitments to the CRTC, the Canadian public and the communities it is licensed to serve
- b) the cancellation of OMNI's original local ethnic newscasts is a serious issue that affects millions of people in Canada's largest cities: Toronto, Edmonton, Calgary and Vancouver
- c) the harm imposed by the loss of original local ethnic newscasts on the communities served by the five OMNI stations is irreparable at any time, but especially during a federal election, and
- d) the balance of convenience, including the public interest, favours a public hearing.

8 We begin with the facts that are not in dispute.

II Facts not in dispute

A *Rogers has made material changes to OMNI*

9 Unifor 723M agrees with Rogers' statement at paragraph 23 that it has made "significant changes to both OMNI's programming and its operational structure".

- 10 We agree that removing OMNI's original local newscasts Rogers is a significant change.
- 11 We agree because of the evidence filed by Rogers for the CRTC's 2014 licence renewal proceeding that Rogers mentions at paragraphs 18, 23 and 41. Rogers submitted two financial projections for the OMNI stations for that proceeding, one based on the status quo and the other on a scenario in which the CRTC granted a number of requests to change the OMNI licences.
- 12 In each of the Rogers 2014 projections news accounted for more than half of OMNI's Canadian programming projected expenditures in the first year of its licence (*i.e.*, 2014/2015, the current broadcast year). Rogers said it would spend \$9.4 million or 67.4% of OMNI's total Canadian programming expenditures on news if none of OMNI's conditions of licence were changed. It said it would spend \$7.7 million or 55.3% of Canadian programming expenditures if all of its requests were granted.
- 13 Cutting 67.4% of the OMNI stations' Canadian programming expenditures is not just a 'significant' change – it is a fundamental one that goes to the heart of the OMNI stations' ability to fulfill their licensing commitments.
- 14 More precisely, based on a recent definition by the CRTC, cancelling OMNI's original local ethnic newscasts represents a material change to its circumstances. In a CRTC compliance and enforcement decision of July 2015 the CRTC said that it considered a "material change" to be "a cumulative change of greater than 10% in revenues received".¹
- 15 Under the financial projections submitted by Rogers at its 2014 licence renewal proceeding, Rogers forecast total revenues for OMNI of \$119.6 million, and total expenditures on news (without changes to OMNI's conditions of licence) of \$48.7 million. News therefore represented 25.2% of OMNI's projected revenues – above the CRTC's 10% threshold for material change.
- 16 The loss of OMNI's newscasts is significant for many other reasons, having to do with its mandate.

B News matters

- 17 Unifor 723M agrees with Rogers' statement at paragraph 51 that news is important:

Finally, Rogers wishes to make clear that we did not take the decision to cancel the language newscasts lightly. We know these programs played an important

¹ in *Amendments to the Unsolicited Telecommunications Fees Regulations*, Compliance and Enforcement Decision 2015-321 (Ottawa, 20 July 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-321.htm>, at para. 10.

role in the lives of some of our viewers and were an important source of employment for Unifor members. ...

- 18 Rogers' commitment to news may explain why the CRTC included news when it described the mandate of the OMNI stations last year, when it re-issued Rogers' licences for these services.² Broadcasting Decision CRTC 2014-399 granted , but denied some of its requests to change the terms and conditions of those licences:

... 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.³

[font changed]

- 19 Eliminating all original local newscasts fundamentally changes the OMNI stations' ability to meet their mandate.
- 20 The OMNI newscasts were also important to the expenditure commitments made by Rogers to the CRTC in 2014. As noted previously, the OMNI news programs made up 91% of the stations' expenditures on news and information over five years (see Table 1, below). How much of these budgeted expenditures will still be committed to the OMNI stations?

III **Facts in dispute**

- 21 Unifor 723M disagrees with a number of other statements in Rogers' 6 July 2015 submission.

A **Rogers' misstatements of fact**

- 22 Some of Rogers' misstatements are minor. It describes Unifor 723M's 2 July 2015 response to a procedural request from Rogers as an "intervention" in footnote 8. It refers to Rogers'

² Having asked Rogers to submit its licence renewal application forms earlier than usual, the CRTC also asked Rogers to agree to apply for the licences' revocation. The CRTC then issued the licences anew. See *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399 (Ottawa, 31 July 2014), at para 17. This procedure permitted the CRTC to add or amend the conditions of licence for OMNI, which s. 9(1)(c) of the *Act* would otherwise not permit.

To avoid confusion, throughout the remainder of this submission when Unifor 723M refers to the 'renewal' of the OMNI licences, it is in fact referring to the issuance of the OMNI licences pursuant to Broadcasting Decision CRTC 2014-399.

³ Broadcasting Decision CRTC 2014-399, at para. 119.

acquisition of CFMT-DT (then CFMT-TV) as being “from bankruptcy” although Decision CRTC 85-586 states that the station was not bankrupt at that time.⁴

23 Other misstatements are more important.

1 **‘Unifor 723M filed a complaint’ – no, Unifor 723M applied for a public hearing**

24 Rogers states incorrectly at paragraph 2 that Unifor 723M filed a complaint with the CRTC about the cancellation of the OMNI newscasts.

25 The distinction between applications and complaints is important to the CRTC’s approach to exercising its authority in this proceeding.

26 In Canadian broadcasting complaints between a few parties (*inter lis partes*) generally do not affect many people, tend not to have serious consequences for the implementation of Parliament’s broadcasting policy for Canada and usually do not have the potential to create irreparable harm. This is why it is reasonable that complaints be considered at licence renewals: requiring every complaint to be heard by a public hearing would place unimaginable strains on the CRTC’s resources. Applications, on the other hand, tend to involve the CRTC’s implementation of Parliament’s broadcasting policy, may affect many parties, and require the Commission to exercise its quasi-judicial authority .

27 The CRTC’s *Rules* reflect the conceptual differences between applications and complaints: applications are made available for comment by all interested parties (sections 23 and 26), while complaints are typically restricted to the party alleging a harm and the broadcaster alleged to have committed the harm (section 47).

28 The *Rules* provide that the CRTC may hold public hearings to consider the issues raised by applications (section 35(1)), while it may consider complaints about broadcasters when their licences are renewed (section 50).

CRTC Rules of Practice and Procedure	
Applications	Complaints
3. A matter may be brought before the Commission by an application or a complaint or on the Commission’s own initiative.	
5(1) The Commission may exercise any of its powers under these Rules at the request of a party or interested person or on its own initiative.	
22. An application must [be filed and served, and meet certain criteria]	45. A consumer complaint that is not related to an application must [meet certain criteria]
23. The Commission must post on its website all	46. The Commission may, if it considers it just and

⁴ *Multilingual Television (Toronto) Limited*, Decision CRTC 86-586 (Ottawa, 19 June 1986), <http://www.crtc.gc.ca/eng/archive/1986/DB86-586.HTM>, states that a company owned by Daniel and Paul Iannuzzi acquired ownership of CFMT-TV in September 1985, and met a required payment thanks to financial assistance from Ted Rogers, after which Rogers Broadcasting Limited applied to acquire indirect control of the Iannuzzis’ company.

CRTC Rules of Practice and Procedure	
Applications	Complaints
applications that comply with the requirements set out in section 22.	expedient to do so, require a complainant to file their complaint as an application or to intervene in any proceeding relating to the matter raised by the complaint.
	47. If the Commission decides to consider a complaint, it must send a copy of the complaint to the person against whom it is made.
25.(1) A respondent may file an answer with the Commission within 30 days after the day on which the Commission posts the application on its website.	48. The person against whom a complaint is made may file a response with the Commission within 20 days after the day on which they receive a copy of the complaint and they must serve the response on the complainant.
26.(1) Any interested person may intervene in a proceeding in writing within 30 days after the day on which the application is posted on the Commission's website	
27.(1) The applicant may file a reply to an answer or to the document of an intervener with the Commission within 10 days after the deadline for the filing of the answer or the deadline for intervening in the proceeding	
28.(1) The Commission may require a party (a) to provide information, particulars or documents that it considers necessary to enable the Commission to reach a full and satisfactory understanding of the subject matter of the proceedings	
35.(1) When a public hearing is held in respect of an application	
	50. The Commission may place a copy of a complaint against a licensee and the licensee's response on the licensee's file to be considered at the time of their licence renewal.

- 29 Stating that Unifor 723M's application is a complaint implies that the cancellation of news has simply created a disagreement between Unifor 723M and Rogers, which the CRTC could then adjudicate this complaint in roughly two years when it considers the renewal of the OMNI licences in early 2017 (paragraph 7).
- 30 Unifor 723M applied for an expedited public hearing to consider Rogers' cancellation of all original local ethnic newscasts, as it affects hundreds of thousands of people in four of Canada's largest cities, places the implementation of Canada's broadcasting policy into question, and has the potential to irreparably harm the democratic and constitutional rights of voters in Canada's ethnic communities who will – without CRTC action – be deprived of daily news reports on the federal general election that will be held this year. If the CRTC grants our application, it will then be in a position to decide whether to issue a mandatory

order requiring Rogers to reinstate the OMNI original local newscasts until the CRTC has the opportunity to hear an application to renew the OMNI licences.

31 Complaints differ significantly from applications in terms of public process and remedy, and that is why Unifor 723M filed an application for a public hearing, not a complaint.

2 **'Unifor 723M asked the CRTC to revoke the OMNI licences' – no, Unifor 723M applied for a public hearing**

32 Rogers states incorrectly at paragraph 5 that Unifor 723M asked the CRTC “to consider revoking OMNI’s broadcast licences” (paragraph 5).

33 Unifor 723M has expressly NOT asked the CRTC to consider revoking OMNI’s broadcast licences because, as we wrote at paragraph 64 of our 5 June 2015 application, revocation would “not result in the immediate reinstatement of original local newscasts.”

34 Unifor 723M instead applied to the CRTC for a public hearing into the OMNI newscast cancellations, and a mandatory order requiring Rogers to reinstate the OMNI original local newscasts until the CRTC has the opportunity to hear an application to renew the OMNI licences. We set out this request at paragraphs 2(a), 2(b), 52, 53, 65, 75 and 76, and in the title of part VII, of our 5 June 2015 application (“Remedy sought: an expedited public hearing under section 12(1) and a mandatory order under section 12(2) to reinstate daily original ethnic television newscasts”).

35 Rather than asking for revocation – the most severe of the remedies available to the CRTC which has been described as if it were a death sentence⁵ - Unifor 723M has been and is asking the CRTC to hold Rogers to account in the same way that it has held other broadcasters to account when they have made programming decisions that are contrary to the public interest: by hearing the submissions of Rogers and other parties, testing these submissions through questioning and observation, and by then determining the best course of action to ensure that the public interest is met.

⁵ See, for example, *Genex Communications Inc. v Canada (Attorney General)*, 2005 FCA 283 at ¶23, where the Federal Court of Appeal described an order permitting Genex to continue to operate CHOI-FM until the Court heard its appeal of the CRTC’s decision not to renew its licence as a “judicial respirator” – in other words, technology that prevented the death of the broadcasting undertaking, so to speak:

[23]As I mentioned at the hearing, the appellant has functioned throughout the appeal on a judicial respirator as a result of what amounts in practical terms to a court licence following from this Court's decision to grant leave to appeal: see order *Genex Communications Inc. v. Canada (Canadian Radio-Television and Telecommunications Commission)* (2004), 329 N.R. 53 (F.C.A.), in which the licence granted to the appellant is deemed to remain in force in order to enable it to exercise usefully its right of appeal to this Court and pending judgment therein on the merits. The rendering of the decision on the merits in this appeal brings the appeal to an end and is tantamount to disconnecting the respirator, irrespective of whether the decision is favourable or unfavourable to the appellant.

3 'Unifor 723M said Rogers concealed plans to cancel original local newscasts' – no, Unifor 723M said that Rogers' evidence gave the CRTC no reason to believe that it would drop OMNI's newscasts

36 Rogers states incorrectly at paragraph 3 that Unifor 723M has alleged that “Rogers concealed its plans to cancel OMNI’s third-language newscasts from the Commission at OMNI’s licence renewal hearing in April 2014.”

37 What Unifor 723M actually said at paragraph 34 of its 5 June 2015 application was that

Rogers did not tell the CRTC in the April 2014 licence renewal hearing that it intended to cancel all local news on the OMNI stations. Rogers instead told the CRTC that it worked hard to provide local news to the communities that its stations are licensed to serve.

38 The inaccuracy of Rogers’ statement is relevant because its use of the word, ‘concealed’, diverts attention to Unifor 723M’s characterization of Rogers’ as a licensee.

39 What Unifor 723M has said, is that Rogers’ evidence to the CRTC at the April 2014 licence renewal hearing was that it would continue to offer local news, leaving the CRTC unable to know about, and therefore consider the cancellation of, OMNI’s original local ethnic newscasts.

40 In fact, when Rogers gave the CRTC a set of financial forecasts made on the assumption that the CRTC would not change OMNI’s conditions of licence, it allocated \$48.7 million to news programs (Table 1):

Table 1: Information filed by Rogers for its 2014 licence renewal application					
Year of licence	Expenditures on programs telecast Without changes to conditions of licence				
	News (Cat. 1)	Information (Miscellaneous) (Cat 2a, 3, 4, 5)	<i>Subtotal: News and Information</i>	Total, all Canadian programs	Total, all non-Canadian programs
Year 1	\$9,358,880	\$903,768	<i>\$10,262,648</i>	\$13,888,088	\$20,983,912
Year 2	\$9,546,057	\$921,844	<i>\$10,467,901</i>	\$14,165,849	\$20,983,591
Year 3	\$9,736,978	\$940,281	<i>\$10,677,259</i>	\$14,449,166	\$20,983,262
Year 4	\$9,931,718	\$959,086	<i>\$10,890,804</i>	\$14,738,150	\$20,982,928
Year 5	\$10,130,352	\$978,268	<i>\$11,108,620</i>	\$14,032,913	\$20,982,586
<i>Total, 5 years</i>	<i>\$48,783,905</i>	<i>\$4,703,247</i>	<i>\$53,407,232</i>	<i>\$71,274,166</i>	<i>\$104,916,279</i>
<i>As % of Canadian</i>	<i>68.4%</i>	<i>6.6%</i>	<i>74.9%</i>	<i>100%</i>	<i>147.2%</i>

Source: DM#2043890-2013-1766-0-APP-ABRIDGED – Rogers Media Inc. – Ethnic – Tables – OMNI – no changes in COLS.pdf, page 2 of 12, numbers in italics calculated using Rogers' information

41 When Rogers gave the CRTC financial forecasts showing the effects of granting the company’s amendment requests, it allocated \$39.96 million to news programs (Table 2):

Year of licence	Expenditures on programs telecast With changes to conditions of licence				
	News (Cat. 1)	Information (Miscellaneous) (Cat 2a, 3, 4, 5)	<i>Subtotal: News and Information</i>	Total, all Canadian programs	Total, all non-Canadian programs
Year 1	\$7,678,278	\$1,236,198	<i>\$8,914,478</i>	\$13,888,088	\$21,411,376
Year 2	\$7,831,843	\$1,260,922	<i>\$9,092,765</i>	\$14,165,849	\$21,839,604
Year 3	\$7,988,480	\$1,286,140	<i>\$9,274,620</i>	\$14,449,166	\$22,276,396
Year 4	\$8,148,250	\$1,311,863	<i>\$9,460,113</i>	\$14,738,150	\$22,721,924
Year 5	\$8,311,215	\$1,338,100	<i>\$9,649,315</i>	\$15,032,913	\$23,176,362
<i>Total, 5 years</i>	<i>\$39,958,066</i>	<i>\$6,433,223</i>	<i>\$46,391,289</i>	<i>\$72,274,166</i>	<i>\$111,425,662</i>
<i>As % of all Canadian</i>	<i>55.3%</i>	<i>8.9%</i>	<i>64.2%</i>	<i>100.0%</i>	<i>154.2%</i>

Source: DM#2043890-2013-1766-0-APP-ABRIDGED – Rogers Media Inc. – Ethnic – Tables – OMNI – with changes in COLS.pdf, page 2 of 12, numbers in italics calculated using Rogers' information

42 The CRTC should not hold an expedited public hearing because of allegations that a party 'concealed' information about some of its programming plans.

43 But the CRTC should hold an expedited public hearing when, after renewing broadcasting licences, the licensee resiles from or abandons key commitments on which the CRTC based its renewal decisions. The CRTC would be justified in calling Rogers to a public hearing because the newscasts it has dropped from the OMNI schedule represented the majority – 68.3% - of the stations' total Canadian programming expenditures, and almost all – 91% - of its news and information program expenditures. If these changes proceed, the OMNI stations will be fundamentally changed in character.

B Rogers' misleading statements

1 **Rogers says 'OMNI is meeting the spirit of its conditions of licence' – but ignores its mandate to provide news**

44 Paragraphs 38 to 42 address Rogers' argument that "OMNI is meeting its conditions of licence as well as the spirit of those conditions". At paragraph 38 Rogers says that Unifor 723M alleges that the cancellation of the OMNI original local ethnic newscasts "calls into question the ability of OMNI to meet the spirit of its broadcasting licences and the commitments it made during its renewal hearing."

45 Rogers then goes on to

- say it is meeting its conditions of licence for OMNI (paragraph 39)
- review its compliance with those conditions of licence (paragraph 40)

- argue that the CRTC's denial of Rogers' 2014 requests for licensing amendments required programming changes (paragraph 41)
- say that it did not commit to maintain OMNI's original local ethnic newscasts (paragraph 41), and
- affirm that it has "upheld its commitment to local ethnic audiences" (paragraph 42).

46 Rogers' statements are misleading because the CRTC had no reason to think that it needed to make news a condition of the OMNI licences, because in 2014 Rogers said news was 'fundamentally important':

7. News programming is of fundamental importance to our ethnic audiences, as evidenced by community concerns over our decision to cancel certain news programs as part of our recent cost-cutting measures. Indeed, our local and national newscasts and information programming and local, ethnic independent productions are the hallmarks of the OMNI services.
DM#2043876-2013-1766-0-APP- Rogers Media Inc.-Ethnic-Programming Strategy and Amendments to conditions of licence.pdf

47 Although the company asked for licensing amendments in 2014, Rogers did not at any time state that it would cancel the newscasts if the amendments were denied. It said only that it

Rogers is proud of what we have developed and fostered in terms of in-house news and information programming. We believe that strengthening this content is the best way to ensure the OMNI stations remain relevant and valuable to our viewers. However, in order to maintain this level and quality of in-house production, OMNI requires the regulatory flexibility to maximize revenue opportunities and grow audiences.
DM#2043876-2013-1766-0-APP- Rogers Media Inc.-Ethnic-Programming Strategy and Amendments to conditions of licence.pdf, paragraph 8.

48 The result was that when the CRTC renewed the OMNI licences, it clearly stated that the mandate of these stations includes the broadcast of news:

... 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.

Broadcasting Decision CRTC 2014-399, at paragraph 119 [bold font added]

49 Unifor 723M respectfully submits that it is misleading for Rogers to deny that it made commitments to local news on the OMNI stations. In reality, Rogers asked for regulatory

amendments, and did not say that it would cancel original local newscasts if these amendments were not granted.

2 **Rogers says it cancelled news because its requests for regulatory relief were denied – but is silent about its 2014 commitment to spend \$48.8 million on OMNI news programming over the next five years**

50 At paragraph 23 Rogers says that it asked the CRTC to approve changes to its licences to support third-language in-house production, and cites the CRTC decision renewing its licences:

23. Rogers submits that in an effort to address these challenges it has had to make significant changes to both OMNI's programming and its operational structure. In addition, we made several requests for licence changes in the context of our renewal hearing last year all of which were aimed at finding opportunities to drive the revenue needed to support our ethnic and third-language in-house production.⁴ While the Commission acknowledged that OMNI was indeed experiencing significant financial difficulties, it nonetheless declined to approve our requested changes in the context of the current *EBP*.⁵

⁴ Broadcasting Decision CRTC 2014-399, *Rogers Media Inc. – Group-based licence renewals* [sic – no reference to paragraph provided in footnote 4]

⁵ BD 2014-399, para. 119.

51 Broadcasting Decision CRTC 2014-399 refers to OMNI in-house production in two paragraphs, and of these only paragraph 140 refers to Rogers' proposals about in-house production. This paragraph describes Rogers' submissions against the imposition of new in-house program requirements, however, not its submissions for regulatory relief concerning in-house production:

140. Rogers submitted that **there was no reason to impose new requirements relating to** either the broadcast of local programming on its OMNI stations or **in-house production** since OMNI has demonstrated a commitment to both and continues to operate at a financial loss. It further argued that due to serious financial difficulties, the required 14/7 hours of local programming for metropolitan/non-metropolitan markets should not apply to the OMNI stations. According to Rogers, these financial difficulties stem from various competitive pressures, as well as losses in national and local advertising revenues affecting all conventional stations.

52 In fact, what Decision CRTC 2014-399 actually said is that that the CRTC thought Rogers had been vague:

123. Given that Rogers did not specify which ethnic groups would see reductions in or loss of access to programming, it is difficult to evaluate the impact that the requested amendments would have on viewers from the ethnic communities. Furthermore, Rogers did not identify these changes as priorities towards redressing OMNI's financial difficulties.

53 Rather, Rogers' evidence was that if its amendments were not granted, it would spend \$48.8 million on news programs (see Table 1, above), and if the amendments were granted, it would spend \$39.96 million on news programs (see Table 2, above).

54 When it had the opportunity at the CRTC renewal hearing on April 8, 2014 to explain that it would cancel news programming if its amendments were not cancelled, Rogers failed to do so:

722 THE CHAIRPERSON: Great. Thank you. What if OMNI gets none of the amendments asked for?

723 MR. PELLE: Well, OMNI is part of our heritage, we have been involved in it for so long. We will continue to look for other solutions and look at a number of different ways that we can do it. The regulatory relief will just help us, so that's why we brought -- which we didn't think were anything that were detrimental to the core of the service.

724 And when you look at i.e., amending to 50 percent from 8:00 to 10:00 or you look at the overlap, yes, just like I said at the beginning, we want to work together and have that -- and that's why the Advisory Committee, we are open to having any type of discussion. We believe this service is necessary, but we also believe that every part of the business has to make a contribution and it is not making a contribution at this point.

....

55 The CRTC should reject Rogers' misleading statement that its cancellation of OMNI's original local ethnic newscasts in 2015 was the foreseeable and predictable outcome of the CRTC's decision to deny some of its requests for licence amendments in 2014, because Rogers did not at any point tell the CRTC that Rogers would cancel news if its requests were denied.

3 Rogers says that US programming no longer supports ethnic news – but does not mention that it has cut that programming by 69% since 2014

56 Rogers says at paragraph 19 that the U.S. syndicated strip programming that historically supported third-language program production on the OMNI stations “no longer generates the revenues it once did because it is widely available on a multitude of specialty services and over-the-top (OTT) services like shomi and Netflix.”

57 Rogers' statement that US programming no longer supports OMNI's third-language programming is misleading because over two-thirds of this programming has been removed from the OMNI schedule. In May 2014 the OMNI stations broadcast 522.5 hours of US programming; in May 2015 they broadcast 161.4 hours – 361.1 fewer hours, or 69% less American programming (see Table 3).

<p>Table 3: Hours of programming broadcast by the OMNI stations, by origin (Origin code (2) – United States)</p>

	May 2014	May 2015
CFMT-DT Toronto	247.6	0.0 ⁶
CJMT-DT Toronto	0.0 ⁷	57.4
CJEO-DT Edmonton	216.5	29.9
CJCO-DT Calgary	216.5	29.4
CHMN-DT Vancouver	236.5	44.7
Subtotal, OMNI stations	522.5	161.4
Source: OMNI program logs for May 2014 and May 2015		

58 The CRTC should reject Rogers' misleading statement that US programming no longer supports OMNI's original local ethnic newscasts: the US programming cannot support OMNI because Rogers has removed two thirds of it from the OMNI schedule.

C *Facts that are open to challenge: OMNI's advertising sales force*

59 Rogers says at paragraph 44 that OMNI's financial challenges are not due to its sales efforts because it has a dedicated sales structure.

60 While Rogers' description is difficult to untangle, we think Rogers is now saying that 30 people are dedicated to selling OMNI airtime – 12 in Toronto, 15 in Western Canada, and 3 in Eastern Canada. Rogers submits that it

... wishes to put on the record of this proceeding that OMNI is well-served by a dedicated sales structure which includes complete coverage across Canada. We have twelve dedicated sales executives based in Toronto which includes two dedicated National Language Account Executives with over 31 years of combined experience selling OMNI language programming; two dedicated Retail Language Executives with European & Asian-focused selling experience with over 27 years of combined experience; and eight Conventional Retail Account Executives with language experience. In Western Canada, we have fifteen Account Executives focused on Asian/South Asian who are all accountable for driving sales to OMNI. Finally, in Eastern Canada, we have three national representatives who sell Conventional & Language inventory in collaboration with Local Language experts based in Toronto.

[underlining added]

61 In April 2014, however, Rogers told the CRTC hearing panel that 57 to 67 people were selling advertising time on OMNI, including 5 in Toronto, 2 in Vancouver, and 50 to 60 others across Canada:

⁶ The programming for CFMT-DT Toronto in May 2015 was coded as originating from Canada (349.4 hours) and from 'Other' (148.3 hours). 347.8 hours of programming had no origination code.

⁷ The programming for CJMT-DT Toronto in May 2014 was coded as originating from Canada (421.9 hours), the United Kingdom (14.4 hours) and 'Other' (67.2 hours). Another 353.5 hours of programming did not have a code for origin.

3201 MR. TOMIK: Yes, and I understand your point. Just to be clear, we have specific 100 percent dedicated reps for ethnic language.

3202 COMMISSIONER SHOAN: Okay.

3203 MR. TOMIK: We have two nationally --

3204 COMMISSIONER SHOAN: And that was one of my earlier questions.

3205 MR. TOMIK: We have two nationally here in Toronto, we have three that operate on a local basis, though, they have the ability to sell OMNI English as well as ethnic. It's about a 75 percent ratio for language against 25 for English, and we also have two full-time reps on OMNI in Vancouver.

...

3222 MR. TOMIK: So it's very important to understand, we are still selling ethnic, we still have dedicated people out across the country who sell it. In addition to that, we have about 50 or 60 other salespeople who do sell OMNI and they do everything possible to include it in every buy.

3228 [Mr. Pelley] And I don't think you can lose sight of that. This is -- OMNI is the first, we are all facing it, hence the reason conventional advertising is down 5.6 percent. As I mentioned, some of the advertising that is down in some of the other traditional legacy businesses, this is an industry structural change that we are having in advertising and OMNI is the first, and all we are saying is -- so I really don't think it is, if we added 14 or 15 ethnic salespeople or so forth they would just go through the roof, that's not the challenge we are facing.

- 62 If both statements are true, does this mean that Rogers has reduced its sales staff for OMNI by roughly half?: from 57 to 67 last year, to 30 now. If either or both statements are false, the CRTC should determine the truth.
- 63 What, in any event, does Rogers really mean when it describes its sales force as 'dedicated'? Does this mean that these salespeople work solely on the sale of airtime on Rogers, for example? Or does it mean that they are committed to selling airtime, on several Rogers broadcasting services, so as to earn income?
- 64 Rogers' response (quoted at paragraph 57, above) does not clearly explain just how it sells airtime on the OMNI stations. To the best of Unifor 723M's knowledge, far fewer than 30 people are actually selling air time on the OMNI stations on a full-time basis -- and to our knowledge the number of people selling OMNI full-time at the retail and national levels has also decreased in this period.
- 65 The difference between a salesperson dedicated to selling time on OMNI, and to selling time on a number of different Rogers' services, is significant. Sales staff who work solely on the OMNI stations are able to develop the relationships and knowledge needed to increase sales over time, and are motivated to do so because their salary (based in part on commissions), grows as their OMNI sales grow. Sales staff who work on OMNI and other

Rogers services are necessarily less familiar with OMNI's client base (even if they speak third languages), have less direct knowledge of their clients' concerns, and – more to the point – earn more from selling air time at City or other higher-rated services, than from selling air time on OMNI.

IV When should the CRTC exercise its discretion to hold a public hearing?

66 Unifor 723M is in receipt of the Commission's decision of 20 July 2015 denying Unifor 723M's 11 June request for a change to the CRTC's procedures with respect to the current application. We note the Commission's statement that this decision does not reflect a predisposition on the part of the CRTC as to our 5 June 2015 Part 1 application – which asked the CRTC to call Rogers to a public hearing so that the CRTC may, if necessary, issue a mandatory order.

A *Rogers' reasons not to hold a public hearing: there are no regulatory issues, waiting 2 years causes no harm, and the current record meets the public interest*

67 Rogers offers several reasons why the CRTC should not hold an expedited public hearing into the cancellation of OMNI's original local newscasts. These reasons were very similar to those of its 23 June 2015 response to Unifor 723M's 11 June 2015 procedural request for an expedited public hearing.

68 First, Rogers says that a public hearing is not required because the cancellation “does not breach any legislation, regulation or Commission policy and is in full compliance with OMNI licence conditions which were imposed last July” (paragraph 6). In effect, Rogers is arguing that its programming changes are not serious enough to warrant the CRTC's intervention.

69 Rogers then adds that because it is in regulatory compliance, “there is absolutely no basis for granting the requested remedies” (paragraph 6). Even if the CRTC granted Unifor 723M's application, says Rogers, it could not issue a mandatory order because

...such an order would constitute an amendment to OMNI's licence [*sic*] which the Commission is prohibited from doing, on its own motion, under 9(1)9c) of the Act at this point in OMNI's licence term.

(paragraph 48)

70 Second, Rogers says that Unifor 723M's request for a public hearing should not be granted because “these records will be placed on OMNI's public licence file and be taken into consideration at its next licence renewal hearing which is expected in early 2017” (paragraph 7). In effect Rogers is saying that no significant harm will result from the CRTC's waiting to take action until Rogers' next renewal.

71 Third, Rogers says that the current paper proceeding “serves the public interest by producing a complete written record of Rogers’ reasons for making these programming changes and the views of interested parties” (paragraph 7).

72 Unifor 723M respectfully submits that Rogers’ arguments do not justify the denial of our application for a public hearing, and that the CRTC should exercise its discretion to grant our application.

B Unifor 723M’s response – discretion and the CRTC

73 Discretion is an essential feature of the administrative justice regime in Canada. Tribunals that lacked all ability to exercise their discretion would lose control over their schedules and would require massive budgets to cope with the many competing demands on their time.

74 Parliament has given the CRTC some discretion to decide when public hearings should be held. It does not have to hold a public hearing when it amends or renews licences.⁸ The CRTC may also choose to hold a public hearing “in connection with any ... representation made to the Commission ... if it is satisfied that it would be in the public interest to do so.”⁹

75 The CRTC must, however, hold a public hearing before it issues, suspends or revokes licences, before it sets performance objectives for licence fees, or before it makes a mandatory order.¹⁰

76 Unifor 723M respectfully submits that considering whether to begin a process that might result in a mandatory order ‘staying’ the OMNI programming changes until its next renewal, most closely resembles an application to the courts for an interlocutory injunction.

1 A possible test: serious issue, irreparable harm and balance of convenience

77 Interlocutory injunctions are orders issued by the courts to compel or prevent a party from doing certain things until the matter can be finally determined. Such orders are typically issued to preserve the *status quo* until a determination is made.

78 In this case, Unifor 723M is asking the CRTC to order Rogers to reinstate the local programming that was in place at the beginning of its current licence term, until the CRTC has the opportunity to consider an application by Rogers to renew the OMNI licences, amend the OMNI licences, or transfer the OMNI licences to another party.

79 The Commission will recall that the three-part test for an interlocutory injunction was established twenty years ago by the Supreme Court of Canada in *R.J.R. MacDonald Inc. v.*

⁸ S. 18(2) – the test is whether the CRTC believes that the public interest does or does not require a public hearing.

⁹ S. 18(3) (“Where public hearing in Commission’s discretion”).

¹⁰ S. 18(1).

Canada (Attorney General), [1994] 1 SCR 311. In the first part of the test, an applicant for interlocutory relief must demonstrate a serious issue to be determined. In the second part of the test, the applicant must demonstrate that irreparable harm will result if the relief is denied. The third part of the test requires the balance of inconvenience to the parties to be assessed, and involves consideration of the public interest.

80 Unifor 723M respectfully submits that similar factors should be considered in this matter, as follows.

2 **The fundamental changes made to OMNI's core mandate require the CRTC's approval**

81 While stating that it “understands the importance of OMNI’s news and information programming” (paragraph 28), Rogers also says that it is complying fully with the *Broadcasting Act*, the CRTC’s *Ethnic Broadcasting Policy*, the television regulations, and the terms and conditions of the five OMNI licences (paragraphs 6, 8, 38 to 40, and 42).

82 But Rogers has fundamentally changed the nature of the free, over-the-air OMNI service by cancelling its daily original local ethnic newscasts. Just a year ago Rogers told the CRTC it was “committed” to this programming,¹¹ and that it would allocate two-thirds (67%, or \$48.8 million) of its Canadian programming on OMNI news programs – *even if its licensing amendments were denied*.

83 Unifor 723M says that when a conventional television licensee eliminates more than two-thirds of its Canadian programming expenditures and all of its newscasts, the changes are so fundamental that they require the CRTC’s prior approval to ensure that Parliament’s requirements under the *Broadcasting Act*, and in this case the *Canadian Multiculturalism Act*, continue to be met. We say that when the CRTC describes news as part of a television service’s mandate, and its licensee then eliminates news, that change requires the CRTC’s prior approval to ensure that the public interest is met. We say that a licensee’s material change¹² to its programming commitments – here, to a significant portion of the OMNI

¹¹ Rogers Media Inc., *Television Licence Renewal Application*, Section D – Conventional Ethnic Television Stations, DM#2043876-2013-1766-0-APP-Rogers Media Inc.-Ethnic-Programming Strategy and Amendments to Conditions of licence.pdf, at para. 108 [OMNI supplementary brief].

¹² In *R.P. v. R.C.*, [2011] 3 SCR 819, at para. 25, the Supreme Court defined a ‘material change’ in the context of family law as “one which, if known at the time, would likely have resulted in different terms to the existing order.” Unifor 723M respectfully submits that if the CRTC had known in April 2014 that Rogers would cancel OMNI’s original local ethnic newscasts in 2015, it would have resulted in licences with different terms.

We also note that in *Amendments to the Unsolicited Telecommunications Fees Regulations*, Compliance and Enforcement Decision 2015-321 (Ottawa, 20 July 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-321.htm>, the CRTC said that it considered a “material change” to be “a cumulative change of greater than 10% in revenues received” (paragraph 10).

Under the financial projections submitted by Rogers at its 2014 licence renewal proceeding, Rogers forecast total revenues for OMNI of \$119.6 million, and total expenditures on news (without changes to OMNI’s conditions of licence) of \$48.7 million. News represented 25.2% of OMNI’s projected revenues – above the 10% threshold for material change.

schedule, and to Rogers financial forecasts – requires consideration by the CRTC, and its approval.

84 Parliament gave the CRTC the authority to call licensees to public hearings precisely to enable the CRTC to ensure that their programming decisions contribute towards the implementation of the objectives of Parliament's policies and laws. Unifor 723M respectfully submits that when a licensee makes fundamental changes to its licences without CRTC approval, the CRTC bears a duty to, and should, call it to a public hearing to determine whether the changes are consistent with Canada's legislative requirements.

3 Cancelling OMNI's original local newscasts irreparably harms ethnic voters' constitutional rights

85 Rogers says that “the previous OMNI local newscasts and the present local current affairs programs ... provide local reflection”, and that neither the *Broadcasting Act* nor the *Ethnic Broadcasting Policy* expect local issues and concerns to “be addressed through formal newscasts” (paragraph 33). It argues that

... the six new current affairs programs OMNI has launched will keep viewers informed about their respective communities and issues of importance by providing local information on a daily basis from a range of topics including politics, business, healthcare, lifestyle and the environment.

86 What Rogers has not explained is why – if current affairs programs achieve the same objectives as newscasts as it argues – it told the CRTC last year that OMNI would broadcast both types of programs. Rogers said OMNI's five stations would broadcast \$48.8 million worth of “News (Cat. 1)” and \$4.7 million worth of “Information (Miscellaneous) (Cat. 2a, 3, 4, 5)” programs.

87 Newscasts and current affairs programs each permits broadcasters to reflect concerns of local communities – but news involves the collection and dissemination of facts in a neutral manner, while public affairs programming is based on opinion and commentary. Rogers highlighted this difference when its described the 20 hours per week of broadcast news then in the OMNI schedules, in terms of the gathering of news stories using news bureaus:

- (1/2 hour Mon-Fri) Cantonese-language newscast produced in Toronto with stories from local news bureaus in Vancouver, Ottawa and Victoria
- (1/2 hour Mon-Fri) Mandarin-language newscast produced in Toronto with stories from local news bureaus in Vancouver, Ottawa and Victoria
- (1/2 hour Mon-Fri) Italian-language newscast produced in Toronto with stories from local news bureaus in Vancouver and Ottawa
- (1/2 hour Mon-Fri) Punjabi-language newscast for Ontario and Alberta produced in Vancouver with stories from local news bureaus in Toronto, Ottawa and Victoria

- (1 hour Mon-Fri) Punjabi-language newscast for the Lower Mainland, produced in Vancouver with stories from local news bureaus in Toronto, Ottawa and Victoria.¹³
- (1/2 hour Mon-Fri) Cantonese-language newscast for the Lower Mainland, produced in Vancouver with stories from Toronto, Ottawa and Victoria
- (1/2 hour Mon-Fri) Mandarin-language newscast for the Lower Mainland produced in Vancouver with stories from Toronto, Ottawa and Victoria

88 Unifor 723M says that news – facts reported daily in a neutral manner – is especially important to Canadians' ability to exercise their democratic rights. Rogers has not addressed this point, except to say that its current affairs programs may interview the leaders of political parties, or feature the Chinese Canadian Entrepreneur Awards and “the community response to racist graffiti in Nanaimo” (paragraphs 36 to 37).

89 Canada's courts have addressed the issue of news in relation to elections on several occasions.

90 In 2004 a majority of the Supreme Court of Canada upheld electoral spending limits, in to ensure electoral fairness. It said that Parliament's egalitarian model of elections is “an essential component of our democratic society. This model is premised on the notion that individuals should have an equal opportunity to participate in the electoral process.”¹⁴ The Court went on to note that

[t]he right to meaningful participation includes a citizen's right to exercise his or her vote in an informed manner. For a voter to be well informed, the citizen must be able to weigh the relative strengths and weaknesses of each candidate and political party. The citizen must also be able to consider opposing aspects of issues associated with certain candidates and political parties where they exist. In short, the voter has a right to be “reasonably informed of all the possible choices”¹⁵

91 Unifor 723M respectfully submits that the ethnic communities in Vancouver, Calgary, Edmonton and Toronto deserve more information about the 2015 federal election than TV advertisements and talk show interviews. They deserve news reports.

92 In 2007, the Supreme Court of Canada again addressed the importance of informational equality, and pointed to the importance of the electronic mass media in reaching voters. A majority of the Court upheld a ban on the premature release of information about election results, pointing to the ban's objective – contributing materially to informational equality between voters:

I recognize, of course, that modern communications technology diminishes the delay's effectiveness and thereby its salutary effects. Section 329 cannot and

¹³ OMNI supplementary brief, *supra* note 11, para. 102, at page 31.

¹⁴ At para. 62.

¹⁵ *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827, 2004 SCC 33, at para. 71, citation omitted.

does not entirely prevent voters in Central or Western Canada who are determined to learn before casting their ballots what has transpired in the Atlantic provinces from obtaining that information by telephone or e-mail, for example. But it does, at the very least, curb widespread dissemination of this information and it contributes materially in this way to its objective — information equality between voters in different parts of the country.¹⁶

- 93 Permitting Rogers to deprive ethnic communities of news during a federal election year will promote informational inequality between voters, breaching their constitutional rights to be informed, and to elections that are fair.¹⁷ Other interveners in this proceeding agreed:

I am writing in opposition to the cancellation of OMNI news in Punjabi by Rogers. The news were a great tool to connect various communities with each other and create awareness about global events/issues. Every citizen has the right to know what is happening in their city/country to ensure the safety and security of their families. OMNI news opened this gateway for those who are not fluent in English allowing them to feel safe, really connect with people from different cultures and truly know the feeling of being a Canadian with equal opportunity.

I have high hopes that Punjabi news will return once again and connect Canadians with the diverse communities that complete our Country. Thank you for your time.

(Taq Thindal, Intervention 40)

- 94 Rogers' cancellation of the original local newscasts that it committed in 2014 to continue to provide will irreparably harm Canadian ethnic voters' constitutionally protected rights to a fair election.
- 95 Calling Rogers to a public hearing in response to the applications by UARR and Unifor 723M, on the other hand, enables the CRTC to decide whether to order it to reinstate the newscasts that it committed in 2014 to continue to provide, to avoid this harm. Addressing the public's concerns about the loss of the OMNI original local ethnic newscasts would also be in keeping with the CRTC's historic role in ensuring that Canada's broadcast media serve the public interest during elections.¹⁸ In 1988, for example, the Commission issued *A Policy with Respect to Election Campaign Broadcasting* in which it said that it

... agrees with the arguments put forward that news coverage should generally be left to the editorial judgement of the broadcast licensee.

¹⁶ *R. v. Bryan*, [2007] 1 SCR 527, 2007 SCC 12 (per Bastarache, J. for the majority), at para. 79.

¹⁷ *Sauvé v. Canada (Chief Electoral Officer)*, [1997] 3 FCR 628:

The public interest, which the federal government is charged with the duty of promoting and protecting, must also include the protection of democratic rights (including the fundamental right to vote in a free and democratic society) enshrined in the *Charter*.

¹⁸ One of the CRTC's first circulars, issued on 16 May 1968, addressed *Political Broadcasts*. In *A Policy with respect to Election Campaign Broadcasting*, Public Notice CRTC 1988-142 (Ottawa, 2 September 1988), <http://www.crtc.gc.ca/eng/archive/1988/PB88-142.HTM>, the Commission explained

However, Section 3 of the Broadcasting Act requires that the Canadian broadcasting system provide "... reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard ...". Licensees have an obligation under this section to ensure that their audiences are informed of the main issues and of the positions of all candidates and registered parties on those issues.

...

Licensees who program in more than one language should take into consideration that a political broadcast in one language cannot be construed as balancing a political broadcast in another language.¹⁹

96 Holding a hearing will not commit the CRTC to issue a mandatory order – but is consistent with its long-standing objective of ensuring access to balanced news about matters of public concern during elections. A hearing will enable the CRTC to consider whether the OMNI stations that do not broadcast any news are meeting their obligations to ensure their audiences are informed about the events related to the 2015 federal election. A hearing will then also enable the Commission to ensure, through a mandatory order if necessary, that ethnic communities receive an equitable level of original local ethnic news that includes reporting about the 2014 federal election.

4 Balance of convenience favours the public

97 The final part of the test for interlocutory relief requires the CRTC to balance of inconvenience to the parties to be assessed, and involves consideration of the public interest.

98 Rogers has not suggested that it would be inconvenienced by a public hearing. Unifor 723M respectfully submits that calling Rogers to a public hearing would impose a very minor cost on the company: as one of Canada's largest communications companies Rogers has the experienced staff and resources required to undertake such a proceeding, and participates in CRTC hearings every year.

99 As for other parties, Unifor 723M submits that a public hearing would be the most convenient way for them to hear the questions put to Rogers by a CRTC hearing panel, to present their own views and evidence, and to also address and respond to Rogers' answers. While we note that a public hearing imposes costs on the CRTC, Unifor 723M has proposed that the hearing be held at the CRTC's offices, where costs could be reduced. We also note that other parties' participation in a public hearing process would serve CRTC's

¹⁹ Public Notice CRTC 1988-142, (Ottawa, 2 September 1988), <http://www.crtc.gc.ca/eng/archive/1988/PB88-142.HTM>.

The Commission revised the policy with respect to debates in 1995, but not with respect to licensees' responsibilities for news: *Election-period broadcasting: Debates*, Public Notice CRTC 1995-44 (Ottawa, 15 March 1995), <http://www.crtc.gc.ca/eng/archive/1995/PB95-44.HTM>.

interest by ensuring a complete public record that addresses relevant issues (noted below at paragraph 96).

100 Rogers, on the other hand, says that a public hearing is not needed because the current written process “serves the public record by producing a complete written record of Rogers’ reasons for making these programming changes and the views of interested parties” (paragraph 7). It says that

... it has provided a full account of the rationale for the changes to OMNI’s programming and any public input related to these changes can be fully addressed under the current Part 1 process. We respectfully submit that an oral public hearing would not provide any additional information material to this matter at this time.

(paragraph 50)

101 Unifor 723M respectfully submits that the public interest extends beyond a review of Rogers’ *ex post facto* justifications for cancelling OMNI’s original local newscasts. The public interest requires a public hearing to enable the CRTC, OMNI’s audiences and Canadians to understand

- how Rogers’ decision to renege from the commitments it made last year to the CRTC, regarding the continuation of original local newscasts on the OMNI stations and the expenditure of \$48.8 million on these programs, maintains or increases programming diversity for those stations²⁰

²⁰ In Broadcasting Decision CRTC 2014-399, the CRTC discussed the programming diversity, and based its decision to deny Rogers’ requests for licensing amendments because they would reduce diversity:

136. In Broadcasting Decision 2009-504, the Commission also denied requests for amendments to these restrictions so as to ensure a maximum level of programming diversity in the broadcasting system. Given that Rogers is operating two conventional television stations in Calgary, Edmonton and Vancouver and three in Toronto (City, OMNI.1 and OMNI.2), **these restrictions** limit the broadcast of identical programs and **increase programming diversity on the stations operating in these markets.**

137. Based on the 18-hour broadcast day under which the OMNI stations operate, Rogers’ new proposal would permit the broadcast of up to 12.6 hours a week of identical non-ethnic (i.e., English-language) or third-language ethnic programming, or a combination of both. At the present time, none of the third-language ethnic programming can be broadcast on both an OMNI station and a City television station operating in the same market. **Approval of Rogers’ request** would provide some economy of costs for Rogers but **could result in less programming diversity** in a market where both stations are present. Considering that Rogers did not quantify the savings attached to the proposed amendment, it is difficult to evaluate, on balance, if the viewers would end up losing more than the benefit gained by Rogers with the approval of this change.

138. In light of the above, **and to better maintain programming diversity in each market** where both an OMNI station and a City television station operate, the Commission considers it appropriate to maintain the conditions of licence ...

[bold font added]

- how eliminating original local newscasts from the OMNI schedules 'advances' the CRTC's objectives for its *Ethnic Broadcasting Policy*, improves programming service and is fair to audiences who have until now relied on OMNI's newscasts²¹
- the degree to which evidence in Rogers' undisclosed "market research", its "strategic review" and its "strategic analyses" was decisive in leading Rogers to decide to drop the original local newscasts to which it had committed the previous year (paragraphs 25, 26, 27 and 28)
- what impact the absence of news on five of Canada's six over-the-air ethnic conventional television stations will have on the ethnic communities these stations were licensed to serve
- what impact the absence of news from five of Canada's six over-the-air ethnic conventional television stations during the 2015 federal election will have on the voting rights of ethnic communities in Vancouver, Edmonton, Calgary and Toronto
- the details of and results from Rogers' consultation with its regional Advisory Councils (paragraph 26), and
- whether Rogers believes it is necessary for broadcast licensees to fully disclose their plans to the federal regulatory body responsible for implementing Parliament's objectives for Canada's broadcasting system when they seek licences, and whether they should be required to apply for licence amendments before changing their services to a fundamental degree, or making material changes to their programming and operations.

V Other matters: cross-examination and consolidated applications

- 102 Unifor 723M notes that we have not withdrawn our request for the right to cross-examine Rogers' representatives if a public hearing were held, and that Rogers did not oppose this request. If a public hearing is held, therefore, Unifor 723M wishes to have the opportunity to examine Rogers' witnesses directly.
- 103 We also note that Rogers did not object to the consolidation of the UARR and Unifor 723M's applications, which we recommended in our application, and continue to support.

²¹ In Broadcasting Decision CRTC 2014-399, the Commission denied Rogers' requests for licensing amendments in part because in its view "... approval of the requested amendments would not advance the objectives of the *Ethnic Broadcasting Policy*" (para. 123).

VI Conclusion

104 Unifor 723M thanks the Commission for this opportunity to respond to Rogers' submissions about Unifor 723M's Part 1 application for an expedited public hearing into the cancellation of all original local newscasts on the five OMNI over-the-air television stations.

105 Rogers' actions and its 6 July 2015 submission show that it has decided to redefine the *Ethnic Broadcasting Policy*, as well as its responsibilities as a licensee. Unifor 723M opposes this redefinition, as do almost a thousand other people and organizations, who took the time in early July to ask the CRTC to protect their interests.

A Rogers' unauthorized programming changes defy the *Ethnic Broadcasting Policy*

106 Rogers writes, for example, that the *Policy* says that access ethnic programming should only be provided "to the extent practicable given resource limitations" (paragraph 32). This statement is misleading (again), because what the *Policy* actually said was that broadcast frequencies are limited, and smaller ethnic groups lack the resources to sustain individual programming services of their own:

...

The review clearly demonstrated that there is a wide demand for ethnic programming. However, limitations on the number of radio and television frequencies available make it impossible to license separate over-the-air stations for each ethnic group. In addition, **smaller groups do not have the financial resources to sustain their own services. Therefore, ethnic stations will continue to be required to serve a broad range of ethnic groups within their service area (broad service requirement). However, when setting the number of groups that each station must serve, the Commission will consider the quality of service to each group and the existing level of ethnic programming from all sources in the market.** As such, in some cases individual ethnic stations may be permitted to serve fewer groups in some communities.

...

5. The Commission considers that **the primary goal of the policy is to ensure access to ethnic programming to the extent practicable given resource limitations.** The policy will continue to provide a framework for broadcasting that fosters opportunities for greater understanding among people with different cultural backgrounds.

....

19. **Ethnic stations are required to serve a range of ethnic groups in a variety of languages. This is because the scarcity of broadcast frequencies may not permit the licensing of an over-the-air single-language service for each ethnic group in a given market.** This approach also allows for the provision of service to groups that would not otherwise be able to afford their own single-language service.

[bold font added]

- 107 The *Policy* and the CRTC's decision to grant the OMNI licences to Rogers do not say that service to ethnic communities in Vancouver, Edmonton, Calgary and Toronto (where Rogers also holds licences for English-language conventional television stations) should be limited and reduced to strengthen Rogers' profits – they say that Rogers must meet a core mandate if it wishes to retain the privilege of holding five ethnic over-the-air television licences.
- 108 A public hearing will encourage regulatory compliance, by reminding licensees that they are required to keep to their core mandate, not to move away from it, a few programming cancellations at a time, every few months. We note that members of OMNI's audiences have not been and are not deceived by its gradual shift away from high-quality, third-language local reflection:

We had recognized OMNI (Rogers Media) as a Multilingual Station with high quality and locality for a long time. Through several laying off in past several years, Rogers has been cancelling many community programs in many languages on OMNI even they had had some good and big sponsors, and large audience got disappointed every time.

This time, all live newscasts were cancelled and the audience got disappointed again. Where is Canada multicultural policy? If Rogers doesn't support the policy, why do they keep "multilingual" channels?

(Masako Likic, Intervention 7)

B *Rogers' unauthorized programming changes challenge the CRTC's authority*

- 109 The CRTC should also call Rogers to a public hearing to ensure not just that Rogers respects and at least maintains the OMNI stations' mandate, but also that it respects the Commission's authority and role in supervising broadcasters.
- 110 Effective and efficient regulation by administrative bodies like the Commission relies on truthful and accurate evidence from its licensee.²² If Rogers' claim that it made no commitments to OMNI's original local newscasts succeeds – despite forecasting the expenditure of at least \$48.8 million on news programs over the next five years – the integrity of the CRTC's regulation of the broadcasting system will be threatened. Other broadcasters will follow suit.

²²

Abraham v. Ontario (Superintendent Financial Services), 2014 ONFST 13, at para. 77:

... The proper functioning of the regulatory system under the MBLAA [*Mortgage Brokerages, Lenders and Administrators Act*] depends on the co-operation and truthfulness of licensees and license applicants. If they make false statements and provide false information, the public interest is at risk.

Shibley (Re), 2009 CanLII 91223 (ON RC), at para. 38:

... Explicitly the information requested by the application form must be provided. Implicitly it should be complete and truthful. To mislead by misinformation or partial disclosure bears upon integrity which is crucial to the well-being of racing. Integrity is the foundation of public confidence in horse racing.

- 111 An expedited public hearing will enable the CRTC to issue a mandatory order that will maintain OMNI's core mandate until Rogers applies to renew or change that mandate. Nothing would prevent Rogers from applying for such a change even now.
- 112 A mandatory order that maintains OMNI's core mandate will prevent ethnic communities' constitutional rights to news about the federal election from being irreparably harmed. Maintaining OMNI's core mandate will protect the integrity of the CRTC's administration of its responsibilities. Maintaining OMNI's core mandate will ensure that Parliament's objectives for the *Broadcasting Act* continue to be met until Rogers applies to change this mandate, to renew the OMNI licences or to make other proposals for the licences.
- 113 Unifor 723M therefore respectfully requests that the CRTC grant our applications for an expedited public hearing, and the right to cross-examine Rogers' witnesses.
- 114 The CRTC has already indicated that it will process our 5 June 2014 application expeditiously. As the writ for a federal election is imminent, we respectfully request that the CRTC issue its decision about our request for an expedited public hearing within the next fifteen working days, so that all parties may consider their legal options in a timely manner to avoid the irreparable harm that loss of OMNI's original local newscasts poses to the rights of people in Canada's ethnic communities.

Sincerely yours,



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