



Broadcasting Decision CRTC 2016-8

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References: Part 1 applications posted on 5 and 10 June 2015

Ottawa, 12 January 2016

**Urban Alliance on Race Relations
Unifor Local 723M**
Ontario, Alberta and British Columbia

Applications 2015-0560-4 and 2015-0576-0

Requests that Rogers Media Inc. reinstate local third-language newscasts on its OMNI stations

*The Commission finds that the cancellation by Rogers Media Inc. (Rogers) of local third-language newscasts on its OMNI stations does not constitute a breach of its conditions of licence. Accordingly, the Commission **denies** the applications by Urban Alliance on Race Relations and Unifor Local 723M seeking an expedited public hearing on the matter.*

Consistent with its practice, the Commission will review the OMNI stations' ongoing performance and requirements, including their obligations regarding the provision of local third-language programming, as part of the upcoming hearing that will form part of the licence renewal process scheduled to begin in 2016. This will permit the Commission to better assess whether the stations' current obligations are sufficient to meet the needs of third-language communities.

Moreover, at the time of the next group-based licence renewals, the Commission will have completed its policy review on local and community television programming (see Broadcasting Notice of Consultation 2015-421). This new policy may have an impact on the obligations and requirements of conventional television stations regarding the broadcast of local news programming.

A concurring opinion by Commissioner Raj Shoan is attached to this decision.

Introduction

1. In May 2015, Rogers Media Inc. (Rogers) cancelled all local third-language newscasts broadcast by its OMNI stations CFMT-DT and CJMT-DT Toronto, CJCO-DT Calgary, CJEO-DT Edmonton and CHNM-DT Vancouver. This included daily and weekly local OMNI newscasts produced and broadcast in Italian, Punjabi, Cantonese and Mandarin. Rogers replaced this programming with local current affairs programming.

2. Shortly after, the Commission received applications by the Urban Alliance on Race Relations (UARR) (2015-0560-4) and Unifor Local 723M (Unifor) (2015-0576-0) seeking the reinstatement of local third-language newscasts on the OMNI television stations.
3. The UARR submitted that Rogers was in breach of the *Broadcasting Act* (the Act) as upholding cultural diversity is one of the key objectives of the Act. It requested that the Commission convene a hearing to review its concerns about OMNI's management. It also asked the Commission to suspend consideration of all applications from Rogers until it restores OMNI news broadcasting without diminishing the quality of its programming or service delivery, reinstates news programming staff, adequately funds OMNI in-house productions and restores OMNI's dedicated sales/marketing division to its full capacity. Failing the above, the UARR requested that the Commission consider revoking the OMNI licences on the basis of Rogers' alleged failure to meet commitments made to the Commission and its viewers, Canada's ethnocultural communities.
4. For its part, Unifor asked that the Commission call Rogers to an expedited public hearing to inquire into the matter, permit parties to cross-examine Rogers at the hearing and require it to show cause why a mandatory order should not be issued under section 12(2) of the Act compelling it to resume the broadcast of local third-language newscasts on each of its OMNI stations until the current licences expire. Unifor also requested that its application be consolidated with the Part 1 application submitted by UARR and that all related applications be considered in a single expedited hearing. Unifor argued that the cancellation of these newscasts is contrary to the terms of the Act and the Ethnic Broadcasting Policy set out in Public Notice 1999-117.
5. Following the filing of its Part 1 application, Unifor submitted a procedural request on 11 June 2015 in which it asked the Commission to amend its current procedures by immediately issuing a notice of consultation to call Rogers to an expedited public hearing to enable the Commission to determine whether it should issue a mandatory order requiring the reinstatement of local third-language newscasts on the five OMNI stations. The Commission denied this procedural request by majority decision in a letter dated 20 July 2015. In doing so, the Commission noted that the substantive relief requested by Unifor was the same as that found in its Part 1 application (i.e. that the Commission hold an expedited public hearing following which a mandatory order would be imposed on Rogers) and that consequently the Commission would continue processing the file as a Part 1 application.
6. The Commission received numerous interventions regarding the applications, including comments by various cultural organizations, individuals and a member of Parliament on behalf of his constituents, as well as by the Public Interest Advocacy Centre (PIAC) and by the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP). The public record for these applications can be found on the Commission's website at www.crtc.gc.ca or by using the appropriate application number provided above.

Regulatory framework

Ethnic Broadcasting Policy

7. Consistent with the objectives of the Act,¹ the Ethnic Broadcasting Policy set out in Public Notice 1999-117 requires ethnic stations to serve a range of ethnic groups in a variety of languages because the scarcity of broadcast frequencies may not permit the licensing of an over-the-air single-language station for each ethnic group in a given market. This approach allows for the provision of service to groups that would not otherwise be able to afford their own single-language service. Smaller ethnic groups benefit from a basic level of broadcasting in their own languages and from programming that assists in their full participation in Canadian society, reflects their culture and promotes cross-cultural understanding.
8. The Ethnic Broadcasting Policy sets out minimum levels which generally apply to ethnic television stations regarding the broadcast of Canadian content, ethnic programming, ethnic groups and languages to be served, and third-language programming.
9. Finally, ethnic broadcasters are expected at the time of licensing and renewal to provide plans as to how they will reflect local issues and concerns during the terms of their licences. They are also encouraged to establish advisory councils incorporating representatives of the ethnic communities in their service areas.

Group-based licence renewal decision for Rogers

10. At the last licence renewal for the OMNI stations (see Broadcasting Decision 2014-399), the Commission denied Rogers' requests for licence amendments that would have substantially reduced the stations' ethnic programming requirements, such as the minimum number of ethnic groups and languages the stations must serve and the limit on programming from any one foreign language. While acknowledging that the OMNI stations were experiencing financial difficulties, the Commission stated that it considered that Rogers has a unique mandate as a conventional ethnic television broadcaster licensed to provide Canadian multi-ethnic and multilingual communities with news, information and entertainment programming that assists

¹ Section 3(1)(d) of the Act states that the Canadian broadcasting system should, among other things: (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. Section 3(1)(i) of the Act further states that the programming provided by the Canadian broadcasting system should, among other things: (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes [and] (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

these communities in fully participating in Canadian society, reflects their culture and promotes cross-cultural understanding. The Commission also indicated that approving all of the requested amendments would have resulted in a service that would not have met the minimum levels of the Ethnic Broadcasting Policy.

11. In addition, the Commission imposed new requirements on the Edmonton and Calgary OMNI stations due to concerns that little or no local programming was being produced by these stations.²
12. As a result, all OMNI stations are subject to the following conditions of licence regarding ethnic programming, among others:
 - The licensee shall devote to the broadcast of ethnic programs:
 - (a) at least 60% of the total number of hours broadcast monthly between 6 a.m. and midnight;
 - (b) at least 50% of the total number of hours broadcast monthly between 6 p.m. and midnight; and
 - (c) at least 75% of the total number of hours broadcast annually between 8 p.m. and 10 p.m.
 - The licensee shall devote at least 50% of its programming each broadcast month to third-language programming.

Positions of parties

Rogers

13. In response to the applications, Rogers submitted that cancelling OMNI's local newscasts did not breach any legislation, regulation or Commission policy and that it was in full compliance with OMNI's conditions of licence imposed during its last licence renewal in Broadcasting Decision 2014-399. Rogers added that there was no basis for granting the remedies requested by the applicants, including the revocation of the OMNI licences.
14. Rogers also submitted that there was no compelling reason to hold an expedited oral hearing into the matter as processing the applications under Part 1 of the Commission's *Rules of Practice and Procedure* would serve the public interest by producing a complete written record, including the reasons for the programming changes and the views of interested parties, which would be placed on OMNI's public file and taken into consideration at its next licence renewal.

² In each broadcast week, the Edmonton OMNI station is required to broadcast at least 3.5 hours of Canadian local programming, while the Calgary OMNI station must broadcast at least 1.5 hours of such programming.

15. To justify its programming decision regarding the elimination of OMNI's local third-language newscasts, Rogers pointed to the competitive and financial challenges that are negatively impacting OMNI's business model, including weakening revenues from U.S. strip programming, changing viewing habits and increased competition from large English-language conventional broadcasters and ethnic specialty services. According to Rogers, as a result of the Commission's denial of its requests to decrease its regulatory obligations at its last licence renewal, it had to make significant changes to both OMNI's programming and its operational structure in an effort to address the above-noted challenges. Specifically, it concluded that local current affairs programming would offer a more viable cost structure than newscasts while still providing an opportunity to engage ethnic communities at the local level.
16. The licensee submitted that both the previous OMNI local newscasts and the present local current affairs programs meet the requirements and expectations for ethnic broadcasters outlined in the Act and the Ethnic Broadcasting Policy since both types of local in-house productions provide ethnic programming and local reflection. Rogers also submitted that there is no expectation or requirement that local issues and concerns must be addressed through formal newscasts, as claimed by the UARR and Unifor.
17. Finally, with respect to the UARR's requests that it reinstate OMNI's news employees, fund OMNI newscasts at the same level as other broadcast news programs and restore OMNI-specific sales and marketing teams, Rogers responded that these remedies would be unprecedented and, in some cases, outside the scope of the Commission's authority.

Interveners

18. The majority of interveners voiced their displeasure regarding the cancellation of local third-language newscasts on the OMNI stations and expressed concerns about not having access to third-language news programming. Some also complained about the quality of the new current affairs programs introduced by Rogers as a replacement for the newscasts, while others suggested that the OMNI licences be revoked to permit another broadcaster to provide local third-language newscasts.
19. For its part, PIAC indicated that Rogers' decision to cancel this programming ran counter to its obligations and responsibilities under the Act and the Ethnic Broadcasting Policy. It added that the new current affairs programs did not engage issues local to each individual OMNI community. PIAC also expressed concerns about Rogers' compliance with its conditions of licence, in particular the local programming obligations found in the licences for CJCO-DT Calgary and CJEO-DT Edmonton.

20. The CPSC-SCFP argued that the cancellation of the local third-language newscasts deprived certain individuals of their fundamental right to information and was contrary to the Commission's Ethnic Broadcasting Policy. It also argued that Rogers obtained the renewal of its OMNI licences by promoting its newscasts as relevant local programming, despite its financial difficulties. As such, the CPSC-SCFP submitted that the Commission should require Rogers to reestablish these newscasts until its next licence renewal.
21. Finally, many interveners supported the new current affairs programming broadcast by Rogers. Producers of third-language programming, third-language newspapers, charities, schools, individuals and various third-language cultural organizations indicated that this new programming would ensure that third-language communities would continue to have a forum to discuss local issues and demonstrated OMNI's commitment to provide relevant local content to third-language and ethnic communities.

UARR

22. In its reply to Rogers, the UARR submitted that replacing local newscasts with current affairs programming did not meaningfully serve multilingual audiences. The UARR also submitted that Rogers' answer did not explain why it had adopted this new position regarding its programming or how this complied with the Ethnic Broadcasting Policy and its commitments to Canada's ethnic communities. Finally, the UARR stated that since Rogers had not explained why it believed that it was acceptable for ethnic communities to be denied access to third-language local newscasts, the Commission should call Rogers to a public hearing to inquire into the matter.

Unifor

23. In its reply to Rogers, Unifor stated that the elimination of all local third-language newscasts on the OMNI stations fundamentally affects the services' ability to meet their mandate, which includes the provision of news and information programming. Unifor argued that the Commission should hold an expedited hearing whenever a licensee abandons key commitments on which the Commission based its renewal decision. Unifor added that the Commission would be justified in calling Rogers to a public hearing because the newscasts 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, thus changing the nature of the OMNI stations.
24. Unifor also questioned Rogers' arguments regarding the reasons not to hold a public hearing, stating that they did not justify the denial of its application and that the Commission should exercise its discretion to grant its application.

25. Finally, Unifor argued that calling Rogers to a public hearing would impose a minor cost on the company and that the public interest required a public hearing in order for the Commission, OMNI's audiences and Canadians to understand important questions and issues related to the cancellation of these newscasts.

Commission's analysis

26. While the conditions of licence of the various OMNI stations specify that these services must broadcast a certain level of ethnic and third-language programming, as well as local programming in the case of the Edmonton and Calgary stations, the licences do not impose specific regulatory requirements regarding the type of local programming that must be broadcast (see Broadcasting Decision 2014-399).

27. In this respect, although the OMNI stations no longer broadcast local third-language newscasts, Rogers replaced this programming with third-language current affairs programming. Much of this new programming is comprised of discussions on local, regional and national topics that appear to be relevant to at least some members of the ethnic and third-language communities served by the stations. Moreover, while the Commission set out expectations in Broadcasting Decision 2014-399 that the Toronto and Vancouver stations maintain their production of local programming in some of their local news bureaus, it did not specify that this programming must be in the form of newscasts.

28. Since the programming in question consists of local ethnic third-language programming, the Commission considers that it meets the requirements of the current conditions of licence for the OMNI stations.

29. Given that the five OMNI stations are in compliance with their conditions of licence and that there is no evidence that would warrant an expedited public hearing or the imposition of a mandatory order at this time, the Commission considers that addressing the applications by the UARR and Unifor through an expedited public hearing would not be appropriate.

30. However, the Commission acknowledges the concerns raised by many interveners regarding the quality of programming on the OMNI stations and the importance to them of local news programming in third languages. Intervenors also argued that Rogers' actions were contrary to the Ethnic Broadcasting Policy.

31. As stated in the Ethnic Broadcasting Policy, the Commission considers that ethnic stations play an important role in serving local communities. Further, although neither the conditions of licence of the OMNI stations nor the Ethnic Broadcasting Policy requires the broadcasting of third-language newscasts, the policy does clearly state that licensees will be expected to provide plans at the time of licensing and renewal as to how they will reflect local issues and concerns over their licence terms. Accordingly, consistent with its usual practice, the Commission intends to review the OMNI stations' ongoing performance and requirements, including the obligations for the provision of local third-language programming, at the upcoming group-based

licence renewal hearing that will form part of the renewal process for the OMNI licences.

32. As regards the role of the Ethnic Broadcasting Policy and submissions that Rogers has breached that policy, the Commission notes that such policies are non-binding; in other words, they create no obligation in and of themselves. More specifically, section 6 of the Act provides that the Commission may issue policy statements or guidelines, but that these are not binding on the Commission. This is a codification of the common law and reflects the Supreme Court of Canada's decision in *Capital Cities Communications Inc. et al. v. CRTC et al.*³ That decision upheld the Commission's practice of issuing policy statements in light of the broad objectives entrusted to it under the Act,⁴ including the supervision of the broadcasting system to implement the broadcasting policy set out at section 3 of the Act. Accordingly, if the Commission were to treat the Ethnic Broadcasting Policy as binding or as having the force of law, it would be fettering its discretion and this would amount to an error of law.
33. Given that policies established by the Commission are non-binding, further regulatory action by the Commission is needed to impose their requirements on a licensee (for example, the imposition of a condition of licence). As such, a review of the Ethnic Broadcasting Policy to clarify the role of local third-language newscasts in reflecting local issues would neither result in binding changes to the OMNI stations' conditions of licence, nor provide interveners with an opportunity to advocate for binding changes to the requirements for the OMNI stations. Instead, such a general policy review would delay the ability of the interveners to address their immediate concerns regarding the programming of the OMNI stations by introducing an additional, time-consuming process without remedying these concerns.
34. The Commission also notes that it is currently unable to impose new conditions of licence on the OMNI stations or amend its existing conditions of licence as section 9(1)(c) of the Act only permits the Commission, on its own motion, to amend a licensee's conditions of licence where five years have expired since the issuance or renewal of the licence. In the case of the OMNI stations, their licences were renewed in 2014. As such, the Commission will only be able to consider amending the OMNI stations' conditions of licence at their upcoming renewal in the group-based licence renewal process.
35. Accordingly, the licence renewal hearing for the OMNI stations will provide interveners with the earliest opportunity to request and advocate for conditions of licence to address their specific concerns.

³ [1978] 2 S.C.R. 141.

⁴ The objects of the Commission are now encapsulated in section 5 of the Act.

36. Finally, at the time of the next group-based licence renewal process, the Commission will have completed its policy review on local and community television programming (see Broadcasting Notice of Consultation 2015-421). This new policy may have an impact on the obligations and requirements for conventional television stations regarding the broadcast of local news programming.

Conclusion

37. In light of all of the above, the Commission **denies** the applications by Urban Alliance on Race Relations and Unifor Local 723M seeking an expedited public hearing on the matter.

Secretary General

Related documents

- *A review of the policy framework for local and community television programming*, Broadcasting Notice of Consultation CRTC 2015-421, 14 September 2015
- *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399, 31 July 2014
- *Ethnic broadcasting policy*, Public Notice CRTC 1999-117, 16 July 1999

Concurring opinion of Commissioner Raj Shoan

1. In my respectful opinion, by denying the applications but taking no meaningful action to address the legitimate concerns of the applicants and interveners, the Commission is abdicating its leadership role with respect to the creation of effective ethnic broadcasting policy in this country. In so doing, I would argue that the Commission has not discharged its burden to create a broadcasting system that, through its programming and the employment opportunities arising out of its operations, serves the needs and interests and reflects the circumstances and aspirations of the multicultural and multiracial nature of Canadian society.⁵
2. A denial of the applications is a legal necessity; as noted by both Rogers and my colleagues, the OMNI stations are in compliance with their conditions of licence and the Ethnic Broadcasting Policy.⁶ Given there is no legal requirement for the OMNI stations to produce newscasts for the benefit of its audience, there was nothing to prevent Rogers from removing them from OMNI's schedules. As objectionable as it may have seemed to the applicants, given, for example, that the decision was made during an election year, Rogers acted within the bounds of its licence authority.
3. Nevertheless, the Commission has declined to initiate a process through which it may best engage in a meaningful dialogue with ethnic broadcasters, viewers, producers and other stakeholders respecting the regulatory framework governing these undertakings. This continues, in my view, a pattern of regulatory behaviour on the part of the Commission that demonstrates a lack of understanding, if not indifference, to the challenges confronting the ethnic broadcasting sector.
4. It is well past time for a comprehensive review of the Commission's Ethnic Broadcasting Policy.

Background

5. There are several salient facts that inform this opinion that were not given adequate weight by the majority.
6. The majority decision narrowly frames this dispute between Rogers and the UARR/Unifor as commencing in May 2015; in fact, concerns respecting Rogers' management of the OMNI stations extend back to 2013. The narrative surrounding Rogers' programming choices on the OMNI stations is one that can be characterized by increasing dissatisfaction by both the viewing community and those employed by the OMNI stations.
7. In June 2013, for example, following a decision by Rogers to cut several OMNI programs, a complaint was filed with the Commission by the Communications,

⁵ Paragraph 3(1)(d)(iii), *Broadcasting Act*

⁶ *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999

Energy and Paperworkers Union of Canada (CEP), the precursor to Unifor. The following programs were cut:

- a. a one-hour Polish-language program;
- b. an English-language South Asian newscast;
- c. a national one-hour Mandarin-language magazine program;
- d. a half-hour English-language cross-cultural weekly show;
- e. the production of local Vancouver half-hour Cantonese and Mandarin newscasts; and
- f. a half-hour Punjabi-language weekly magazine show.

Lastly, a daily Italian public affairs program ended production.

8. In its complaint, CEP asked the Commission to hold a hearing to discuss Rogers' programming decisions and to issue a mandatory order to reinstate the cancelled programs. In reply, Rogers stated that the OMNI stations continued to adhere to the obligations set out in the Ethnic Broadcasting Policy, the *Television Broadcasting Regulations, 1987* and their respective conditions of licence. It further submitted that there was no need to hold a public hearing to discuss issues related to ethnic programming given that the OMNI stations were fully compliant with their obligations and that the Commission had announced an intention to review the Ethnic Broadcasting Policy.
9. The Commission received almost 200 interventions from individuals, local union groups and ethnic groups, as well as a petition of over 800 signatories, in support of CEP's application. All opposed the programming changes undertaken at the OMNI stations and supported CEP's request to hold a public hearing.
10. In *Complaint by the Communications, Energy and Paperworkers Union of Canada against Rogers Broadcasting Limited relating to the cancellation of programs on OMNI television stations*, Broadcasting Decision CRTC 2013-657, 5 December 2013 (Broadcasting Decision 2013-657), the Commission determined that Rogers was in compliance with both its conditions of licence and the Ethnic Broadcasting Policy and that it would be inappropriate to call Rogers to a public hearing in light of said compliance. As such, it dismissed CEP's complaint. The Commission expressed concern, however, about the extent of the programming changes made by Rogers and the impact of the changes on the communities served by the stations, and, accordingly, required Rogers to file licence renewal applications early in order to consider the issues.
11. Secondly, Rogers' support of OMNI newscasts was a central issue at its licence renewal hearing in 2014. In fact, Rogers went to great lengths to extol OMNI's commitment to news production on OMNI.

12. Ms. Madeline Ziniak, then National Vice-President of OMNI Television, noted that:

During its proud history of broadcasting, OMNI has played a critical role in developing ethnic programming in Canada and serving ethnocultural audiences. OMNI has established new standards in journalistic integrity and excellence for Canadian ethnic media. We are an important partner to many different ethnocultural communities through the provision of local news programming and participation in events, festivals and also participating on diverse boards and committees across this country.

13. Mr. Renato Zane, then Senior Director of News and Current Affairs, OMNI added:

We know these programs play an important part in many of the communities we serve by informing viewers of important news and information about their local community and country. For some, OMNI is the vehicle through which new Canadians come to understand Canada's economic, social and cultural policies and practices.

14. Mr. Keith Pelley, then President, Rogers Media, stated in the reply phase of the hearing that: "...there was significant dialogue regarding our request to remove restrictions between 8:00 p.m. and 10:00 p.m. Our request was for flexibility. It was never our intention to remove ethnic newscasts in prime time and make the entire prime time schedule U.S."

15. Stakeholders appearing at the hearing remained concerned. Mr. Howard Law, Director, Media Sector, Unifor said as follows:

If the collateral damage are the news programs and the jobs, but particularly the news programs, they are not coming back and that's our concern. We are not familiar with seeing a phenomenon where regulatory relief translates into reduced programming and then the regulatory relief is reduced and the programming comes right back the way it was before.

16. Lastly, it is important to acknowledge the approximately 1,725 interventions filed in the course of these applications (comments, form letters and petitioners), including submissions from various cultural organizations, Members of Parliament and, most importantly, OMNI viewers themselves. The majority of interveners voiced displeasure regarding the cancellation of third-language newscasts on OMNI stations, particularly given the federal election that was held in October 2015. Unifor, one of the applicants, submitted that the cancellation of OMNI's original local newscasts irreparably harmed ethnic viewers during an election period.

Analysis

17. In its analysis, the majority decision highlighted the fact that there are no specific regulatory requirements associated with the type of local programming to be broadcast by the OMNI stations. Consequently, Rogers' decision to cancel its news programming and to replace it with current affairs programming was permissible

given that each genre of programming may constitute local programming (if produced properly). My colleagues were also of the view that the *Broadcasting Act* prevents the Commission from granting the relief sought by the applicants given that Rogers' licence term, as extended by *Administrative renewals*, Broadcasting Decision CRTC 2016-7, 12 January 2016, will only be for three years.

18. With respect to this aspect of the majority decision, I am in agreement. However distasteful certain interveners or applicants may have viewed Rogers' decision to cancel news programming in an election year, the reality is that Rogers breached no policy, regulation or condition of licence when choosing to do so. The baseline for OMNI's regulatory obligations as contained in its licences is derived from the Ethnic Broadcasting Policy, which contains no specific news programming requirement. Rogers may not be living up to the spirit of its licences, or the verbal commitments it made when the conditions were being renewed, but it remains in technical compliance with the letter of the licences.
19. The majority decision also made the following arguments:
 - a. there was no evidence that would warrant an expedited public hearing;
 - b. the appropriate forum for the review of OMNI's requirements would be at its next licence renewal, scheduled to begin in 2016 according to the majority decision;
 - c. the Commission's impending policy review on local and community television programming is an appropriate forum in which to discuss obligations applicable to ethnic broadcasters; and
 - d. reviewing the Ethnic Broadcasting Policy now would introduce an additional, time-consuming process without remedying the concerns raised in these applications.
20. I do not concur with these aspects of the majority decision. In my opinion, as discussed further below, the most appropriate course of action would have been to issue a notice of consultation announcing a review of the Ethnic Broadcasting Policy in conjunction with this decision in order to assess the current regulatory obligations of ethnic broadcasting licensees and determine what requirements, current or new, are relevant and/or necessary to meet the objectives of the *Broadcasting Act* in today's operating environment.
21. Firstly, with respect to the majority decision's allusion at paragraph 36 to the Commission's impending policy review on local and community television, a quick search of *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2015-421, 14 September 2015, appears, at first glance, to have only one perfunctory reference to the creation of ethnic programming. In discussing community television—not local programming—a general question is asked of community channels supported by broadcasting distribution undertakings. Ethnic programming is lumped together with Aboriginal groups and official language minority communities.

22. I would argue that any attempt to review the Commission's Ethnic Broadcasting Policy within the larger context of a larger local programming/community television review ensures the discussion will receive short shrift. Such an approach ignores the very real challenges specific to the ethnic broadcasting sector in Canada. There are many different broadcasting sectors in this country—commercial, community, campus, ethnic, religious or otherwise—and each experiences challenges particular to the business models that underpin their operations. The Commission cannot create effective policy by ignoring the meaningful differences between licensees and the distinctive programming that they broadcast for their particular audiences.
23. Secondly, delaying a discussion about the suitability of OMNI's regulatory obligations until the upcoming hearing that will form part of the renewal process for the licences merely ensures that viewers of Canada's only over-the-air ethnic television network will have no avenue or venue to discuss the return of news programming to OMNI for a significant amount of time. The decision to commence the renewal process early strikes me as a solution without impact as it ensures only that the paperwork will begin early with no apparent opportunity for meaningful public input prior to the publishing of the renewal documents or the actual hearing itself. Worse, once they have patiently waited until the oral portion of the hearing to have the discussion, OMNI viewers/stakeholders face the very real prospect of hearing the same message contained in Broadcasting Decision 2013-657 and today's majority decision; namely, that Rogers has breached no law, regulation, policy or condition of licence by refusing to broadcast news programming. Given that individual licence renewal hearings are not appropriate venues for general policy framework creation, it is unlikely that a requirement to broadcast news programming would be forthcoming in OMNI's licence renewal process.
24. Thirdly, in my respectful view, the argument of the majority that there was no evidence to support an expedited hearing is worrisome. Unifor first submitted the request on June 11, 2015; it was denied by majority decision. I strongly believe that over-the-air broadcasting services have a special obligation to the communities they serve due to their use of public airwaves and that this obligation is especially acute during an election period. An informed electorate is crucial to a properly functioning democracy. As Unifor noted in its application, news is a special type of content because it is the prerequisite to the exercise of democratic rights.
25. Throughout this process, numerous interveners and petitioners spoke out against Rogers' decision to cut newscasts on OMNI on the eve of a federal election. For these viewers, OMNI was a primary source of news during an important political period in this country. Unifor went so far as to raise constitutional implications⁷ and cited several important Supreme Court of Canada precedents regarding freedom of expression and the special role of media in a democratic society.

⁷ Section 27 of the Canadian Charter of Rights and Freedoms states: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

26. Furthermore, in Rogers' 2014 licence renewal, many individual interveners spoke to the importance of OMNI newscasts to third language communities. Many of the same interveners also noted that they consumed news programming primarily within the traditional broadcasting system and not on online platforms. In response to these interventions, Mr. Pelley noted in the reply phase of the hearing that Rogers had no intention of removing ethnic newscasts during the prime time period.
27. In my view, given the importance of news programming during an election period, the issue was of sufficient importance to warrant an expedited hearing to inquire of Rogers as to why it had selected an election year as suitable timing for the removal of newscasts on the OMNI stations. In light of Rogers' verbal commitments at its 2014 licence renewal hearing alongside the formal conditions of licence and, until May 2015, the significant focus of Canadian programming expenditures on news programming on OMNI stations, OMNI viewers and employees deserved some public accountability from Rogers given the harm at issue ahead of the federal election.
28. Lastly, it is not sufficient to state, as my colleagues have done in their majority decision, that reviewing the Ethnic Broadcasting Policy now would be too time-consuming and would not address the concerns raised in these applications. This statement entirely misses the point of the applications and the ongoing disputes between Rogers and applicants, interveners and stakeholders over the past two years.
29. The Commission's Ethnic Broadcasting Policy dates back to 1999. In that policy, while noting that "ethnic stations play an important role in serving local communities," the Commission recognized their success in:
 - a. enhancing the diversity of the Canadian broadcasting system, particularly linguistic diversity;
 - b. promoting cross-cultural understanding; and
 - c. promoting the full participation of all people in Canadian society.
30. The Ethnic Broadcasting Policy is one of the Commission's oldest applicable policies from the 1990s that has yet to be reviewed in a meaningful way. This oversight is particularly surprising given the myriad of regulatory and industry changes that have occurred in the last 20 years, including the rise of the Internet as a distribution medium, the growth in pay/specialty channels, the impending unbundling of cable packages as well as the fragmentation of revenue sources and audiences. Factoring in Canada's changing demographics, it is somewhat bewildering that no Commission has sought to review this important policy in recent years.
31. A more equitable approach in this matter would be to review the Ethnic Broadcasting Policy now in order to set new obligations, if necessary, for the future—obligations which then could reasonably be placed on Rogers at OMNI's next licence renewal. Given that it has been almost two decades since the last review, there would no

shortage of issues to discuss with viewers, licensees and other stakeholders. An Ethnic Broadcasting Policy review would provide Rogers and other ethnic broadcasters with an opportunity to discuss changes to their regulatory framework as an industry.

32. Moreover, in my view, the history of complaints associated with the OMNI stations is reflective less of any failings on Rogers' part and more with the urgent need to reassess and re-evaluate what constitutes reasonable obligations for ethnic broadcasting undertakings to meet the objectives of the *Broadcasting Act* in the twenty-first century. UARR and Unifor have raised legitimate concerns respecting the operations of these undertakings and whether they are continuing to meet the needs of Canadian citizens. Likewise, Rogers is correct when it states that it has breached no law, regulation, policy or condition of licence. In the middle sits the Commission—and it has stubbornly refused to review the Ethnic Broadcasting Policy for the better part of two decades. It is time for the Commission to reclaim its leadership role in this sphere and ensure it is creating a broadcasting framework that meets the needs of all Canadians.

Conclusion

33. I am of the view that, while denial of the applications is legally necessary, the Commission could have, and should have, taken this opportunity to launch a comprehensive review of its Ethnic Broadcasting Policy.
34. Upon my arrival at the Commission in July 2013, I was heartened to see that a comprehensive review of the Ethnic Broadcasting Policy was contained in the Commission's Three-Year Plan. Shortly thereafter, however, resources were re-allocated to the Let's Talk TV proceeding and the review was removed from our agenda. There has been no indication that it will be re-added; instead, it appears the Commission is exploring a considerably reduced review focused primarily on radio undertakings.
35. By neglecting to conduct a comprehensive review, the Commission is missing an opportunity, in my opinion, to explore the micro issue of the decline of news programming within the larger context of the ethnic broadcasting sector. The decline in funding of and for news programming is an issue that has been observed across the broadcasting industry on over-the-air services. Is the removal of newscasts on ethnic undertakings the canary in the coal mine? Is it a precursor to the removal of newscasts on other services? Is the "cross-subsidy" of ethnic television programming by American television programming no longer a viable business model?
36. In my view, it is past time for the Commission to re-examine the regulatory framework for the ethnic broadcasting sector in this country. There have been large scale reviews of broadcasting licensing frameworks, local programming and community television in the past decade; no such treatment has been accorded to the Ethnic Broadcasting Policy. By neglecting to conduct a comprehensive review, the

Commission is doing a disservice to viewers, employees and operators of ethnic broadcasting services.

37. There are a multitude of important industry issues that can be examined in a comprehensive review. In addition, if the requirements attached to an ethnic broadcasting licence were to be modernized through such a review, it could spur the introduction of entirely new players to the industry or invite existing players to return their licences in order to allow other players to meet the needs of third-language communities. In short, a policy review is an opportunity to reinvigorate and rejuvenate an industry—and, in the case of the Canadian ethnic broadcasting sector, it is surely time for one.