

## **APPENDIX 1**

# **OMNI Regional 9(1)(h) Application and Licence Renewal Applications for OMNI's Over-the-Air Television Stations Combined Supplementary Brief**

### **I. INTRODUCTION/EXECUTIVE SUMMARY**

1. Rogers Media Inc. (Rogers) is filing a number of applications all of which are addressed in this combined Supplementary Brief. The first application is for a new broadcasting licence to operate a national multilingual and multicultural discretionary programming undertaking to be known as OMNI Regional (which will be a national service with three regional feeds). The second set of applications requests the renewal of the broadcasting licences for our five over-the-air (OTA) television stations operating under the OMNI brand in Toronto, Edmonton, Calgary and Vancouver (and OMNI's rebroadcast transmitters in London, Ottawa and Victoria).
2. It has become evident that our OMNI OTA television stations can no longer continue to provide historic levels of quality ethnic programming to Canadians in English and third-languages under the current business model and without an additional source of financial support. We believe that the best way to address the structural problems faced by our OMNI OTA stations is to launch a new national discretionary programming service with three regional feeds (OMNI Regional) that will enable us to continue to deliver local and national ethnic programming, including news and information programming, in a manner that is market sustainable. The three regional feeds of OMNI Regional will mirror the programming offered on the OTA OMNI stations in British Columbia, Alberta and Ontario and will help further OMNI's multilingual and multicultural mandate that can no longer be supported by an OTA business model.
3. OMNI Regional will help sustain our local OMNI stations by sharing program acquisition and production costs. This will enable our OMNI OTA stations to continue to provide local programming in the markets they serve while also providing national programming from a variety of genres including news and information programming to Canadians in every region of the country.
4. We are requesting that the new licensed programming service – OMNI Regional – be granted mandatory distribution as part of the basic service on all licensed and exempt (with more than 2,000 subscribers) broadcasting distribution undertakings (BDUs) operating in English- and French-language markets for a period of five

years pursuant to section 9(1)(h) of the *Broadcasting Act*. A BDU would be required to distribute the regional feed appropriate to its market on its basic service. By launching this new national ethnic service with three regional feeds (OMNI Pacific, OMNI Prairies and OMNI East), Rogers will be able to increase and enhance the acquisition and production of programming offered on our existing OMNI OTA stations and on the new national service.

5. OMNI Regional will operate as a national multilingual and multicultural television discretionary service that will be devoted to programming that is produced by and for Canada's growing ethnic communities. Its primary purpose will be to represent ethnic Canadian perspectives and build understanding and awareness among Canadians of all cultures and languages. In this respect, OMNI Regional will play an important role in connecting all Canadians from diverse backgrounds through the delivery of important local and national news and information programming from a Canadian perspective.
6. It will be an exceptional service that will contribute in significant and unique ways to achieving the policy objectives of the *Broadcasting Act*.
7. The fundamental rationale for licensing OMNI Regional and granting it 9(1)(h) status is to ensure the implementation of key objectives in the *Broadcasting Act*. These include the objective in subparagraph 3(1)(d)(iii) of the Act that the Canadian broadcasting system should:

. . . 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. (emphasis added)
8. With the growth of third-language and ethnic communities in Canada, there is a significant public interest in ensuring that the regulated broadcasting system provides Canadians from these communities with the ability to see themselves, their experiences and their aspirations reflected in mainstream media. It is also more important than ever to Canadian society that the cultural bridge between Canadians of differing cultural, linguistic and ethnic backgrounds is strengthened. OMNI Regional will help achieve these critical public policy imperatives by providing low cost access to this programming to all Canadians both over-the-air and as part of the basic service.
9. The Commission has granted 9(1)(h) status to a number of services that serve specific communities identified in the policy objectives of the *Broadcasting Act*:
  - APTN to serve Aboriginal Peoples;
  - AMI to serve Canadians who are blind or visually-impaired; and
  - TVA and TV5 to serve Official Language Minority Communities (OLMCs).

10. While the needs and interests of Aboriginal Peoples and of Canadians who are visually impaired or who live in a minority language community are each served and reflected through the Commission's decisions to grant mandatory basic carriage to AMI, APTN, TV5 and TVA, no third-language or ethnic service has been granted the same 9(1)(h) status to serve the multicultural and multiracial nature of Canadian society.
11. Approval of our OMNI Regional application will address this deficiency in the current regulatory framework. If granted, Rogers will be able to continue to offer ethnic Canadians with a range of multilingual and multicultural programming that is responsive to their needs and reflects their particular circumstances. Specifically with respect to the proposed OMNI Regional service, we will commit to enhancing the quality and quantity of ethnic programming offered to Canadians in a variety of ways, including:
  - A commitment to devote 80% of OMNI Regional's schedule to the exhibition of ethnic programming, while maintaining the requirement to devote 50% of the schedule to third-language programming;
  - A commitment to devote a minimum of 40% of OMNI Regional's annual revenues to the production of Canadian programming;
  - An incremental commitment to produce and exhibit daily newscasts in Italian, Mandarin, Cantonese and Punjabi languages;
  - A commitment to maintain our local daily current affairs shows in Mandarin, Cantonese and Punjabi languages;
  - The creation of national cultural affairs series produced in Alberta that is designed to showcase important cultural and social contributions from Canada's ethnocultural communities;
  - A commitment to re-establish in-house production in all of the markets served by OMNI's OTA stations;
  - The elimination of all U.S. "strip" programming that is not relevant to ethnic or third-language communities and a commitment to limit the amount of U.S. programming exhibited on OMNI Regional to a maximum of 10% of the schedule each month; and
  - The creation of three regional feeds that will be specifically tailored to ethnic Canadians living in B.C., the Prairies and Eastern Canada by including ethnic and third-language programming produced by local independent producers that reside in those regions.
12. As part of the OMNI regional application and the request for 9(1)(h) status, we will also commit to maintaining the quality and quantity of ethnic and third-language programming offered on our OMNI OTA stations. There will also be certain

enhancements made to the OMNI programming schedule. For example, each OMNI Regional feed will broadcast 10 hours per week of local programming sourced from Vancouver, Alberta (combined Calgary and Edmonton) and Toronto, which will be measured on an annual basis.

13. In the event that the Commission does not approve our OMNI Regional application and our related request for mandatory basic carriage, it is very unlikely that Rogers will be in a position to continue to operate the OMNI OTA stations in the same manner as we do today. As noted, advertising revenues derived from our OMNI OTA stations can no longer support the current commitments and regulatory obligations. The immediate impact will be to make a number of requests to change our conditions of licence, including
  - reducing the minimum number of languages/ethnic groups we serve from 20 to 15;
  - reducing Canadian content requirements from the current 55% to the new requirements for OTA stations, which is 50% in prime time only;
  - eliminating the 16% cap on the amount of programming OMNI can offer in one language; and
  - eliminating the current requirement for original described video.
14. The remainder of this Supplementary Brief is divided into three parts. The first part outlines the current market conditions in which OMNI is operating and provides evidence that the OMNI stations are no longer financially viable undertakings if they are offered solely on an OTA basis. The second part describes the new OMNI Regional service and the specific commitments we are making to ensure that as a national ethnic programming service it furthers the objectives of the *Broadcasting Act* and the Commission's *Ethnic Broadcasting Policy*<sup>1</sup> and satisfies the Commission's criteria for granting 9(1)(h) status.<sup>2</sup> The third part provides an overview of our licence renewal application and includes amendments to the conditions of licence governing our OMNI OTA stations in the event that the new OMNI Regional service is not granted mandatory basic carriage.

## II. THE CURRENT ENVIRONMENT FOR OMNI

15. Ethnic Canadians, including those who speak a third-language, currently have access to ethnic and third-language programming from OMNI's OTA stations, a range of third-language Canadian pay and specialty services, and a variety of non-Canadian satellite services, that are available in Canada through BDUs.

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<sup>1</sup> Public Notice CRTC 1999-117.

<sup>2</sup> Those criteria are outlined in Broadcasting Regulatory Policy CRTC 2010-629.

16. Over the last thirty years, Rogers has developed a strong infrastructure for free, ethnic television and invested substantial resources in the production of high-quality, Canadian ethnic and third-language programming. We are proud of the investments we have made in OMNI and the service we provide to Canadians.
17. Unfortunately, the current financial model under which OMNI operates is no longer sustainable. It relies solely on free OTA transmission in some of Canada's largest markets to support the production and broadcast of ethnic and third-language programming. As an OTA television network, OMNI's principal source of revenue is advertising. Viewing to OMNI's programming is not properly captured by the current ratings system used for mainstream media due to underrepresentation of ethnic and third-language audiences in the Numeris sampling. This makes it very difficult to monetize programming. When combined with OMNI's smaller audience base in comparison to English- and French-language stations, it is proving to be even more difficult to compete with these mainstream broadcasters for a shrinking advertising pool. OMNI's stations have been the most adversely impacted by the declining revenues experienced in the OTA sector given its weak positioning in each market where we operate.
18. As the Commission is aware, over the last six years the conventional television sector has been undergoing a fundamental structural change in its business model as media consumption habits shift and advertising dollars migrate to digital media platforms. The advertising revenues that a third-language OTA broadcaster, like OMNI, can achieve today are no longer sufficient to sustain its OTA stations. The historic model for OTA ethnic television, which relies solely on advertising, no longer works.
19. The Commission's latest statistical and financial report on conventional television<sup>3</sup> demonstrates that the declines experienced by private local television stations over the last few years are becoming increasingly worse. The revenues of all private OTA television stations declined from 2,144,290,861 in 2011 to 1,803,682,152 in 2014. That is a 16% decline in three years. In 2014, profits before interest and taxes (PBIT) for all private local television stations dropped industry-wide to minus \$138.7 million and the PBIT margin decreased to minus 7.7%.
20. As the smallest conventional television group, Rogers' stations have been disproportionately impacted by this decline with a collective PBIT margin of minus 37.2% in 2014.<sup>4</sup>
21. The financial picture for our OMNI OTA stations is even worse.
22. OMNI is operating in an extremely competitive market and faces a number of unique financial challenges that make the provision of high-quality, Canadian ethnic and third-language programming increasingly difficult to sustain under a model that is solely supported through advertising.

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<sup>3</sup> *Conventional Television – Statistical and Financial Summaries 2010-2014.*

<sup>4</sup> *Addendum: 2014 Financial Results for Canadian Conventional Television Stations.*

23. As Rogers outlined in 2013 and 2014 as part of our last licence renewal application and again this past July in response to complaints from Unifor and the Urban Alliance on Race Relations (UARR), OMNI's current business model is severely challenged by the following five main factors:
- Weakening revenues from U.S. strip programming;
  - Audience measurement challenges that make it difficult to monetize programming;
  - Increased competition from large English-language OTA broadcasters;
  - Competition from ethnic specialty services; and
  - Changing viewing habits.
24. First, until just a few years ago, Rogers had developed a successful business model for ethnic programming by using the revenues from U.S. syndicated "strip" programming (such as *Two and a Half Men* and the *Simpsons*) to support the cost of producing third-language and ethnic content. Unfortunately, this type of programming no longer generates the revenues it once did because it is widely available to viewers on a multitude of specialty services and over-the-top (OTT) services like shomi, CraveTV and Netflix. The fact that this type of programming has moved to these new platforms means that, in many cases, the programs are simply not available to OMNI anymore. In other cases, it has now become too costly to air English-language programming on OMNI as the station can no longer generate sufficient revenues to cover the costs of this programming. As a result, after a gradual reduction beginning in 2013 we removed all U.S. strip programming from OMNI's schedules as of December 2015.
25. Second, the audience measurement system that is in place in Canada makes it extremely challenging to monetize programming offered on OMNI stations. Viewing to OMNI stations cannot be properly captured by the current ratings system. Ethnic and third-language audiences are vastly underrepresented in the Numeris viewing samples. Advertisers are extremely reluctant to purchase ad time on programs that Numeris cannot measure. As a result, our ability to monetize programming aired on OMNI is very difficult.
26. Third, the introduction of Bell Media's CKVR-DT Barrie (part of CTV Two) brought a new and fierce competitor into the Toronto market for regional and national advertising for OMNI.1 and OMNI.2 Toronto. The approval granted to CTV Two to operate new transmitters, and to benefit from the simultaneous substitution opportunities it provided the station, has meant that CTV Two Barrie has become a more attractive option for advertisers in southern Ontario. The presence of CTV Two Barrie has pushed the OMNI Ontario stations down advertisers' buying list and, as a result, OMNI's advertising revenues in Toronto have fallen by more than 50%

since the CRTC's Decision.<sup>5</sup> As OMNI's Ontario stations had been cross-subsidizing the development of the newer OMNI stations in other markets, this additional competitor had a serious impact on the financial well-being of all OMNI television stations.

27. Fourth, Category A ethnic speciality services have distorted the local ethnic advertising market. These services have been authorized to solicit up to 6 minutes of local advertising each clock hour. Many have been aggressively soliciting local advertising revenues at highly discounted rates. They are able to do so because, as specialty services, they derive the majority of their revenue from subscription fees and therefore can afford to discount their advertising rates without jeopardizing their core business.
28. Finally, linear television is no longer the primary medium by which new Canadians integrate into Canadian society. As outlined in the attached study that we filed in 2014 as part of our licence renewal application, "New Canadians: A Review of Media Usage", foreign online programming is the primary source for new Canadians to access content in their mother tongue.<sup>6</sup> Accordingly, the increasing availability of ethnic and third-language content online has added another layer of competition for OMNI stations.
29. In an effort to address these challenges, Rogers has had to consider making significant changes both to OMNI's programming and to its operational structure.
30. In 2014 as part of OMNI's licence renewal application, we proposed a series of amendments to our conditions of licence which were designed to find opportunities to obtain new revenues to support our ethnic and third-language in-house production.<sup>7</sup> 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 *Ethnic Broadcasting Policy*.<sup>8</sup> As a result, OMNI has endured another year of declining revenues and a negative PBIT.
31. In May of this year in an effort to align costs with declining revenues and provide ethnic and third-language communities in Canada with programming that is relevant and reflective, Rogers announced changes to OMNI's programming that were designed to create a more sustainable business model for the OTA stations going forward. This involved removing all of U.S. strip programming and making changes to our in-house production. Specifically, we announced a format change that resulted in OMNI's newscasts in Punjabi, Mandarin, and Cantonese being replaced with new local current affairs programming. The six new, local, current affairs programs which have launched included: *OMNI Punjabi* produced in Vancouver,

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<sup>5</sup> Decision CRTC 2012-51- CKVR-DT Barrie – *New digital transmitters to serve the areas of Burlington, Fonthill, Fort Erie, Hamilton, Niagara Falls, St. Catharines, Oakville and Welland*

<sup>6</sup> Strategic Inc., "New Canadians: A Review of Media Usage," December 2013. Appendix 3 – OMNI Renewal Application. See attached Appendix 6A.

<sup>7</sup> Broadcasting Decision CRTC 2014-399, *Rogers Media Inc. – Group-based licence renewals*

<sup>8</sup> BD 2014-399, para. 119.

*South Asian Today* produced in Toronto, *OMNI Mandarin* produced in Vancouver, *OMNI Mandarin* produced in Toronto; *OMNI Cantonese* produced in Vancouver, and *OMNI Cantonese* produced in Toronto.

32. These changes were implemented only after lengthy consultations with OMNI staff and discussions with our regional Advisory Councils on the current state of OMNI's programming. Rogers concluded that OMNI's programming was in need of a refresh in that it was not highly visible and was viewed as tired and outdated, particularly by younger viewers who are a key demographic for advertisers. In addition, it was our view that local current affairs programming would offer a more viable cost structure than newscasts while still providing an opportunity to engage ethnic communities at a local level on issues of cultural, political and economic importance.
33. While these changes have helped OMNI's financial circumstances to improve to a small degree over the past six months, revenues continue to decline and the cost-cutting measures have not provided OMNI with enough financial stability to remain viable over the longer term. Even with the implementation of these programming changes and cost-cutting measures, OMNI is not a profitable under its current business model and regulatory framework.
34. In order to remain viable and relevant and fulfill its important mandate under the *Broadcasting Act*, the regulatory framework governing OMNI has to evolve. Rogers believes this application, which proposes the launch of a national multilingual and multicultural service with mandatory basic carriage pursuant to a 9(1)(h) order, is an innovative model that will enable OMNI to survive and will provide Canadians in every region of the country with access to this unique service that furthers key objectives of the *Broadcasting Act*.

### **III. OUR PROPOSAL FOR OMNI REGIONAL**

#### **(a) OMNI Regional - Our Commitments**

##### *(i) Introduction*

35. OMNI Regional will provide a national service with three regional feeds for its signal that will be made available to all BDUs operating in Canada. Under our proposal, all licensed and exempt BDUs (with more than 2,000 subscribers) operating in English- and French-language markets will be required to distribute one of the three regional feeds from OMNI's national service as part of the basic service. In addition, we will commit to continue operating our five OTA television stations in Toronto, Edmonton, Calgary and Vancouver (and OMNI's rebroadcast transmitters in London, Ottawa and Victoria). Rogers does not want to disenfranchise any of our current viewers, particularly those new Canadians and immigrants who might not have a sufficient income to subscribe to a BDU offering. Assuring that OMNI continues to have an OTA presence in these cities is a core aspect of our regulatory

model for delivering third-language and ethnic programming to those Canadians that want to receive it.

36. Under our proposal, all licensed and exempt BDUs with more than 2,000 subscribers would be required to distribute the OMNI Regional feed appropriate to its market as part of the basic service. In markets where an OMNI OTA station is operating as a local or regional station, a BDU could opt to substitute the regional feed of OMNI's national service instead of distributing the OMNI OTA signal as part of the basic service, as currently required under the *Broadcasting Distribution Regulations* and the *Exemption Order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*. This exception to the priority carriage rules could be embedded into the distribution order for OMNI Regional.
37. The regional feeds of the new OMNI service will mirror the OTA stations operating in B.C., Alberta and Ontario and, as a result, the substitution of a regional feed will ensure that Canadians will not be denied access to any of the programming that is produced in their community. They will also continue to receive quality national programming via third-language newscasts and current affairs shows and will benefit from receiving local programming that is produced in other markets but has a regional and national interest.

*(ii) Ethnic and Third-language Programming*

38. In order to ensure the exceptional nature of OMNI Regional, Rogers will commit to increase the amount of ethnic programming broadcast on the national service. Currently, OMNI's OTA stations are required to ensure that 60% of their monthly broadcast schedules are devoted to ethnic programming and 50% to third-language programming. OMNI Regional will increase its commitment to the exhibition of ethnic programming to 80% and will maintain the 50% requirement for third-language programming. The Strategic Inc. study we filed in 2014 indicated that many new Canadians wanted access to English-language ethnic programming to improve their English-language skills. Moreover, English is often the best language to reach certain communities, such as the South Asian community, that speak a variety of different indigenous dialects.

*(iii) Canadian Content*

39. Our commitment to the exhibition of Canadian programming and to OMNI's broad service mandate will be maintained for OMNI Regional. Those commitments will be the same as the current obligations adopted for OMNI's OTA stations.
40. Specifically, OMNI Regional will commit to Canadian exhibition requirements of 55% during the broadcast day and 50% in prime time, both of which will be measured over the broadcast year. This commitment is over and above the Canadian content obligations of Category A ethnic services and the content requirements that will come into effect for other conventional television stations as of September 1, 2017 as determined in *Let's Talk TV, The way forward - Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy

2015-86 (BRP 2015-86) which will eliminate Canadian exhibition requirements during the broadcast day. We believe this is a strong commitment to Canadian programming that balances the needs and interests of ethnic and third-language viewers in programming sourced from their country of origin.

*(iv) Broad Service Mandate*

41. With respect to OMNI Regional's broad service mandate, we will commit to offer programming to 20 distinct ethnic groups in 20 different languages each month and will adhere to a programming cap of 16% in any one language measured over each month. The support of a subscription fee will allow OMNI Regional to maintain this commitment since OMNI Regional will be less reliant on advertising revenues that are directly impacted by these programming limitations.

*(v) Canadian Programming Expenditures*

42. As for Canadian programming expenditures (CPE), OMNI Regional will devote 40% of its annual revenues to the production of Canadian programming.
43. In addition, as part of the CPE commitment, 2.5% of OMNI Regional's revenues will be spent on Programs of National Interest (PNI) – Canadian original independent productions that involve ethnic and/or third-language producers. Rogers will ensure that 100% of our PNI programming is sourced from independent producers. We believe this amount will allow us to provide OMNI's audiences with Canadian dramas and documentary programming, such as *Blood and Water*, while also ensuring that we are able to provide national third-language newscasts and local current affairs programming.

*(vi) Wholesale Fees and Advertising Revenues*

44. Rogers is proposing a reasonable wholesale fee for OMNI Regional of \$0.12 per subscriber per month for BDUs operating in English-language markets and \$0.10 per subscriber per month for French-language markets. OMNI will maintain its ability to seek local advertising revenues in order to help finance its programming commitments and keep its mandated wholesale rate as low as possible.
45. Rogers commissioned Fresh Intelligence to conduct a national survey to determine whether Canadians would support our proposal for BDUs to pay these modest wholesale fees. As outlined later in this Supplementary Brief and in Appendix 6B, the survey results demonstrate that Canadians strongly support a \$0.12 wholesale fee for OMNI Regional, with only 12% of Canadians indicating that they do not believe that a multicultural television channel is important.<sup>9</sup>
46. We would also note that if OMNI Regional was not operated as part of Rogers' television operations and was not able to benefit from the existing OMNI

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<sup>9</sup> Fresh Intelligence, Rogers OMNI TV Study – Consumer Support for Funding, December 15, 2015, attached as Appendix 6B.

infrastructure, the wholesale fee for launching a comparable service would have to be significantly higher than the \$0.12 we are proposing.

*(vii) Specific Canadian Programming Commitments*

47. OMNI Regional's programming will be comprised of:

- 4 daily, national, 30 minute newscasts 7 days per week, in each of Italian, Mandarin, Cantonese (produced in Toronto with contributions from Vancouver and reporters in Montreal, Ottawa, Edmonton and Victoria) and Punjabi languages (produced in Vancouver with contributions from Toronto and reporters in Victoria, Edmonton, Ottawa, Montreal);
- 6 daily, local 30 minute current affairs shows 5 days per week, in each of Mandarin, Punjabi and Cantonese language (produced in Toronto and Vancouver);
- The creation of a national cultural affairs series produced in Alberta that is designed to showcase important cultural and social contributions from Canada's ethnocultural communities;
- Original Canadian Scripted ethnic and/or third-language dramas and documentaries through a PNI commitment of 2.5%; and
- 10 hours of local independent production in Vancouver, Toronto and Alberta (Edmonton and Calgary combined) each week, measured on a monthly basis.

48. As noted above, the regional feeds will mirror OMNI's local OTA stations that will provide a mix of national and local in-house production, local independent production and PNI type programming like *Blood and Water*. Over the last fifteen years, OMNI has invested over \$53 million in licensing and development of Canadian ethnic independent drama and documentary production. Funding from OMNI's various tangible benefits commitments have fostered the grass roots development of this production sector, both in terms of program subjects and stories and technical quality of the production. We are also proud to note that a significant amount of this funding went to first-time Canadian independent producers.

49. These benefit monies have all been expended now and without a 9(1)(h) order, OMNI would be in no position to invest in this type of programming which will leave a large void in this sector. With a commitment to PNI we can continue to produce dramas like *Blood and Water*. We will also continue to provide access to local independent producers for local and regional programming of interest to their communities.

50. We have built an infrastructure that enables ethnic independent producers to create local programming relevant to the communities we serve. OMNI stations often

provide an entry point for these producers to participate in the Canadian broadcasting system. We support an environment that encourages individuals from various ethnic communities to interact on a daily basis. Our programming is designed to promote increased understanding between different cultures and linguistic groups in Canadian society and we believe our support for independent producers has achieved this.

51. The infrastructure that OMNI has established currently supports almost 50 local independent productions across all of our stations. OMNI's relationship with local audiences and community representatives is important to the ongoing relevance of our programming. We also strive to reflect the communities we serve through participation in grassroots community events, fundraisers and local initiatives and through our engagement with key stakeholders and representatives in ethnic communities. By fostering a close business relationship with producers in this sector, OMNI has a proven track record of supporting local ethnic and third-language independent production in each market.
52. In addition to the above-noted commitments to specific national newscasts, local current affairs and cultural shows, the OMNI OTA stations will commit to broadcast 10 hours per week of local programming created by independent producers in Vancouver, Alberta (Calgary and Edmonton combined) and Toronto. This represents an increase in local ethnic independent production particularly in Alberta where it has proven very difficult to source programming. The reinstatement of in-house production in these markets will provide the physical and human resources required to train new independent producers in providing broadcast quality programming. These independently-produced programs will also air on the regional feeds and may air on each regional feed if deemed to be of national relevance and interest. This commitment to local independent production demonstrates OMNI's ongoing support for the local ethnic independent production community. It is also evidence that OMNI's local OTA stations will continue to provide an outlet for local expression in the communities they serve.

*(viii) Non-Canadian Programming*

53. With respect to non-Canadian programming aired on OMNI Regional, Rogers is making two specific commitments as part of this application.
54. First, the non-Canadian third-language programming that will be offered on OMNI Regional will consist of the same programs broadcast on our OMNI OTA stations. OMNI Regional will not broadcast additional or different non-Canadian programming. It will not, therefore, increase the competition among Canadian programming services for the acquisition of non-Canadian program rights.
55. Second, neither the OMNI Regional schedule nor the OMNI OTA schedules will include any U.S. "strip" programming that is not relevant to an ethnic or third-language audience. The U.S. strip programming that has historically been used to support OMNI's OTA stations will not be broadcast on the national service. This means that programs like *Modern Family*, *Two and a Half Men* and *30 Rock*, which

have, in the past, been offered on OMNI's OTA stations, will not be included in the OMNI Regional schedule. We are also committing to limit the amount of programming sourced from the U.S. on OMNI Regional to 10% of the schedule measured monthly.

*(ix) Standard Conditions of Licence for Category A Services*

56. OMNI Regional will comply with the standard conditions of licence applicable to all Category A services, which are set out in Broadcasting Regulatory Policy CRTC 2011-443. However, rather than the commitment to original hours of described video programming, we are proposing to describe four hours of programming per week plus all of the original PNI programming OMNI Regional exhibits.

*(x) Multiplatform Strategy*

57. As noted above, one of the challenges that OMNI's OTA stations are facing today is the significant amount of foreign third-language content that is readily available online and the willingness of many ethnic Canadians to access that content over the Internet. The Strategic Inc. survey commissioned by Rogers in December 2013 supports this new reality. It concluded that

...tuning to television by new Canadians is below the Canadian average for any language groups and not surprisingly, among those new Canadians tuning to content on-line and streaming television programming is higher than the average for the country as whole according to BBM and the InCanada panel.<sup>10</sup>

58. OMNI Regional will strive to reach ethnic and third-language audiences that watch some or all of their third-language programming online. As such, we will develop a "Television Everywhere" model that will allow BDUs to host OMNI's programming on their own portal at no additional cost and we will develop an "app" that will be accessible for free to those who want to access OMNI programming online.

*(xi) Advisory Councils*

59. Finally, OMNI Regional will maintain the Advisory Councils in each of the markets where we operate an OTA station. As they do today with respect to our OMNI OTA stations, these Advisory Councils will have regular input on program strategies and community outreach to ensure that OMNI continues to meet the needs of the ethnic communities it serves.

*(xii) Summary of our Proposal*

60. The purpose of the 9(1)(h) application is to ensure that both OMNI Regional and OMNI OTA have sufficient funds to be viable and to continue to provide ethnic and

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<sup>10</sup> Strategic Inc., "New Canadians: A Review of Media Usage," December 2013. Appendix 3 – OMNI Renewal Application. See attached Appendix 6A.

third-language communities in Canada with high-quality programming that is relevant and reflective. If this application for mandatory carriage as part of the basic service is denied, OMNI's future viability is in question as we see no other long term solution other than our proposed national service and a new distribution model.

**(b) Satisfying the CRTC's criteria for granting mandatory basic carriage**

*(i) The CRTC's 9(1)(h) criteria*

61. In Broadcasting Regulatory Policy CRTC 2010-629 (BRP 2010-629), the Commission set out the criteria that it would consider in assessing applications for mandatory distribution on the digital basic service pursuant to an order issued under section 9(1)(h) of the *Broadcasting Act*. This application for mandatory distribution of OMNI Regional as part of the basic service satisfies each of the criteria outlined in that Regulatory Policy.

62. Specifically, OMNI Regional will make an exceptional contribution to achieving the objectives of the basic service outlined by the Commission in BRP 2010-629, as well as to several other policy objectives set out in subsection 3(1) of the *Broadcasting Act*. It will provide all Canadians that speak a third-language with access to television programming that will better enable them to participate in and contribute to the cultural, political, social and economic fabric of Canada. By providing programming in 20 different languages, OMNI Regional will also be varied and comprehensive and will provide a balance of information and entertainment programming at an affordable cost. OMNI Regional is also committed to drawing its programming from local, regional, national and international sources. In addition, as a multilingual and multicultural service, the programming offered on OMNI Regional will reflect and contribute to Canada's ethnocultural diversity.

*(ii) Provide evidence demonstrating the exceptional importance of its service to the achievement of the objectives of the Broadcasting Act.*

63. OMNI Regional's nature of service will be distinct from every other ethnic programming service operating in Canada. It will be the only multilingual and multicultural television service operating nationally in Canada, and in tandem with five OTA television stations that will continue to operate under the OMNI brand.

64. OMNI's OTA stations are currently required to ensure that 60% of their monthly broadcast schedules are devoted to ethnic programming and 50% to third-language programming. OMNI Regional will increase that commitment to ethnic programming to 80% and maintain the current third-language obligation at 50%. We will also commit to serving multiple ethnic and language groups, at both a national and local level, by ensuring that our national service upholds OMNI OTA's commitment to serve 20 distinct ethnic groups and offer programming in 20 different languages each month on each of its regional feeds. No other OTA, specialty or pay television

service offers programming in 20 different languages and serves 20 distinct ethnic groups.

65. In addition, the nature of the programming offered on OMNI Regional is very unique. OMNI Regional will be the only ethnic programming service operating in Canada that will provide daily newscasts in multiple languages. As noted above, the new service will broadcast four daily, national, 30 minute newscasts 7 days per week, in each of Italian, Mandarin, Cantonese (produced in Toronto with contributions from Vancouver and reporters in Montreal, Ottawa, Edmonton and Victoria) and Punjabi languages (produced in Vancouver with contributions from Toronto and reporters in Victoria, Edmonton, Ottawa, Montreal). OMNI Regional will also offer a weekly national cultural affairs series produced in Alberta that is designed to showcase important cultural and social contributions from Canada's ethnocultural communities. These programs will be subtitled separately in Italian, Mandarin, Cantonese or Punjabi.
66. OMNI Regional's Canadian content and CPE requirements will also exceed by a significant amount the commitments made by every other Canadian ethnic television programming service operating in Canada today:
- OMNI Regional will ensure that a minimum of 55% of its schedule during the broadcast day is devoted to Canadian content and that 50% of our primetime schedule will be Canadian. No other ethnic programming service operating in Canada, including the five Category A ethnic services - ATN, FairchildTV, Odyssey, Talentvision and Telelatino - have committed to a Canadian exhibition requirement that is even close to 50%.
  - OMNI Regional will be the only ethnic television service operating in Canada that commits to a CPE of 40% and PNI of 2.5%. Every other ethnic television service operating in Canada, including the five Category A ethnic services have committed to CPEs that are 29% or less, and none of the five Category A services have made any commitment to PNI.
- (iii) Provide evidence that the programming on its service makes an exceptional contribution to Canadian expression and reflects Canadian attitudes, opinions, ideas, values and artistic creativity. Specifically, the applicant must demonstrate that the contribution it intends to make to Canadian expression and reflection significantly exceeds that normally made by a Category A service, thus justifying its exceptional status under a 9(1)(h) order.*
67. None of the ethnic Category A services licensed by the Commission has made the same commitments as OMNI Regional to serving multiple third-language communities and to Canadian programming. OMNI Regional will make a contribution to Canadian expression and reflection that will significantly exceed the contribution normally made by every other ethnic Category A service. Specifically,
- OMNI Regional will offer programming in 20 different languages to 20 distinct ethnic groups. No other ethnic Category A service offers programming in

- more than three ethnic languages. Talentvision offers programming in three languages (Mandarin, Vietnamese and Korean), while each of the other four Category A ethnic services provide content in two or fewer languages.
- OMNI Regional will broadcast daily Canadian national newscasts in Italian, Mandarin, Cantonese and Punjabi. No other ethnic Category A service is providing daily Canadian national newscasts in all of these languages.
  - OMNI Regional will have Canadian exhibition requirements of 55% during the broadcast day and 50% in primetime. No other ethnic Category A service matches that commitment. Odyssey, for example, has a Canadian exhibition requirement of 16% during the broadcast day and in primetime. Fairchild provides the most Canadian content of all the Category A ethnic services at 30% for the broadcast day, and at that level, its commitment is well-below that proposed for OMNI Regional.
  - OMNI Regional will commit to a CPE of 40%. No ethnic Category A service has committed to a CPE that exceeds 29% (Fairchild), and ATN only has a commitment of 15%.
  - OMNI Regional will commit to a PNI of 2.5%. None of the five Category A services have made any commitments to PNI.
  - In addition, as part of this application, the OMNI OTA stations will commit to broadcast 10 hours per week of local programming in Vancouver, Alberta (Calgary and Edmonton combined) and Toronto. None of the ethnic Category A services operating today has made any commitment to broadcasting programs created by local independent producers.
68. Finally, OMNI Regional will operate under the current Category A standard conditions of licence set out in Broadcasting Regulatory Policy CRTC 2011-443. This will ensure that the contribution OMNI Regional complies with the same standard conditions applicable to other ethnic television services.
69. It is Rogers' view that the commitments we are proposing as part of our 9(1)(h) application should be measured against the contributions that other ethnic Category A services make to Canadian expression and reflection, rather than against English- and French-language services that have been granted mandatory basic carriage. It would, we believe, be inappropriate and unreasonable to assess whether an ethnic, third-language service, like OMNI Regional, would make an exceptional contribution to achieving these objectives by comparing our proposal to English- and French-language 9(1)(h) services. Those services do not experience the same financial and programming challenges as ethnic services. Unlike OMNI Regional, they do not have to meet the various programming needs of a diverse range of smaller ethnic communities.
70. When all of our commitments for OMNI Regional are examined together, the contribution to Canadian expression and reflection that will be made by the new

national service will far exceed the contribution normally made by every other ethnic Category A service operating in Canada today.

*(iv) Provide evidence as to how the programming on its service contributes, in an exceptional manner, to the overall objectives for the digital basic service, and how it specifically contributes to one or more objectives of the Act, such as Canadian identity and cultural sovereignty; ethno-cultural diversity including the special place of Aboriginal peoples in Canadian society; service to and the reflection and portrayal of persons with disabilities; or linguistic duality, including improved service to official language minority communities*

71. The programming broadcast on OMNI Regional will contribute, in an exceptional manner, to the overall objectives for the digital basic service and to a number of the policy objectives of the *Broadcasting Act*.
72. As an ethnic programming service that will broadcast programming in 20 different languages and make significant commitments to Canadian exhibition, Canadian programming expenditures, local programming (including locally produced newscasts and current affairs shows) and independent production, OMNI will make a significant contribution to the ethnocultural objectives of the basic service outlined by the Commission in BNC 2010-629, as well as to other objectives set out in the Act. Specifically, OMNI Regional will contribute to the following objectives:
  - It will contribute to maintaining and enhancing the national identity and cultural sovereignty of Canada in accordance with paragraph 3(1)(b) of the Act. Canada is a multicultural, multiracial and multilingual country. One of our strengths as a nation is derived from our diversity, which includes our different cultures and ethnicities and our ability to forge a common set of values from those diverse backgrounds. Canada's ethnic landscape has changed considerably in recent years. In the 2011 Census, Statistics Canada reported that "one-fifth of Canada's population, or nearly 6,630,000 people, spoke a language other than English or French at home."<sup>11</sup> Granting OMNI Regional mandatory basic carriage on BDUs throughout Canada will enable the multilingual and multicultural ethnic service to contribute to furthering Canada's national identity and cultural sovereignty.
  - It will serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada in accordance with subparagraph 3(1)(d)(i) of the Act. OMNI Regional will provide new Canadians and existing Canadians that speak a third-language with access to television programming that will better enable them to participate in and contribute to the cultural, political, social and economic fabric of Canada.
  - It will contribute to the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas,

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<sup>11</sup> Statistics Canada, *2011 Census of Population: Linguistic Characteristics of Canadians*, <http://www.statcan.gc.ca/daily-quotidien/121024/dq121024a-eng.htm>

- 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 in accordance with subparagraph 3(1)(d)(ii) of the Act. OMNI Regional will achieve this by offering programming in multiple languages and by serving multiple ethnic communities, which will ensure that a variety of Canadian perspectives will be broadcast across Canada.
- Through its programming and the employment opportunities arising out of its operations, OMNI Regional will serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights and the multicultural and multiracial nature of Canadian society in accordance with subparagraph 3(1)(d)(iii) of the Act. As an ethnic television service that will offer programming in a variety of languages and that will make significant commitments to the production and exhibition of Canadian programming, OMNI Regional will be a leader in contributing to the achievement this policy objective.
  - OMNI Regional will make predominant use of Canadian creative and other resources in the creation and presentation of programming in accordance with paragraph 3(1)(f) of the Act. This commitment is being made notwithstanding that OMNI Regional will operate primarily in languages other than English and French. Not only will the new service contribute to this objective, but it will also help sustain OMNI's OTA stations so they can continue to offer programming that is free over the air to all Canadians regardless of whether they can afford a television service subscription.
  - The variety of the programming provided by OMNI Regional will be as varied and comprehensive as offering programming to 20 distinct ethnic groups and 20 distinct languages will allow. This will ensure that Canadians receive a balance of information, enlightenment and entertainment programming serving a variety of interests and tastes in accordance with subparagraph 3(1)(i)(i) of the Act.
  - The programming provided by OMNI Regional and our five OTA television stations will collectively be drawn from local, regional, national and international sources in accordance with subparagraph 3(1)(i)(ii) of the Act. Both the regional feeds and the OTA stations will together offer Canadians programming that ranges from the very local to international.
  - Again, the multiple linguistic and ethnocultural groups that will contribute to the programming provided by OMNI Regional will ensure that a reasonable opportunity will be provided for the public to be exposed to the expression of differing views on matters of public concern in accordance with subparagraph 3(1)(i)(iv) of the Act. No other programming service operating in Canada will be able to match the diversity of views expressed on our national service.

- Finally, as noted, OMNI Regional's programming will include a significant contribution from the Canadian independent production sector in accordance with subparagraph 3(1)(i)(v) of the Act. Our commitment to ensure that 10 hours of programming per week aired on OMNI's OTA stations is sourced from independent producers in Canada is a commitment that is unmatched among Canada's ethnic broadcasters. It also provides a dedicated outlet for local expression.

*(v) Provide evidence that the service is making exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures. Specifically, the applicant must demonstrate that the commitments it intends to make to original, first-run Canadian programming through exhibition and expenditures justify its exceptional status under a 9(1)(h) order.*

73. OMNI Regional will make exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures. Its programming will be comprised of:
- 4 daily, national, 30 minute newscasts 7 days per week, in each of Italian, Mandarin, Cantonese (produced in Toronto with contributions from Vancouver and reporters in Montreal, Ottawa, Edmonton and Victoria) and Punjabi languages (produced in Vancouver with contributions from Toronto and reporters in Victoria, Edmonton, Ottawa, Montreal);
  - 6 daily, local 30 minute current affairs shows 5 days per week, in each of Mandarin, Punjabi and Cantonese language (produced in Toronto and Vancouver); and
  - A national cultural affairs series produced in Alberta that is designed to showcase important cultural and social contributions from Canada's ethnocultural communities;
74. In addition, OMNI's OTA television stations will commit to airing ten hours of programming created by independent producers each week. Some of this programming will be broadcast nationally on OMNI Regional when the programs address issues that are relevant to our national audience.
75. OMNI Regional will have Canadian exhibition requirements of 55% during the broadcast day and 50% in primetime. These exhibition requirements are significantly higher than any other ethnic television programming service operating in Canada today.
76. OMNI Regional will commit to a CPE of 40% and a PNI of 2.5%. No other ethnic television service in Canada has made CPE and PNI commitments that approach these levels.

*(vi) Provide evidence, such as surveys of the prospective audience, demonstrating that there is extraordinary need among the intended audience for the proposed service.*

77. There are three pieces of evidence that demonstrate the extraordinary need for OMNI Regional among ethnic third-language communities in Canada.
78. First, in anticipation of filing this application with the Commission, Rogers commissioned the Fresh Intelligence research group to measure the support OMNI Regional would have among Canadians, including Anglophones, Francophones and third-language/ethnic communities. The survey also examined the willingness of Canadians - including those who speak English, French or a third-language - to pay a reasonable fee to receive the OMNI Regional as part of the basic service.
79. The Fresh Intelligence survey demonstrates that a large majority of Canadians, particularly those who speak a third-language, are supportive of our proposal to offer OMNI Regional on basic at a monthly wholesale fee of \$0.12. The objective of the survey was to measure support among all Canadians for our proposal to offer a national OMNI service as part of the basic service. Significantly, only 1 in 10 Canadians surveyed did not believe a multicultural channel was important. Moreover, close to 60% of all Canadians and 3 out of 4 Canadians who speak a third language supported our proposal to offer OMNI Regional at a monthly wholesale fee of \$0.12. That is true for English-speaking Canadians (56% support the proposal), as well as French-speaking Canadians (54% support the proposal).<sup>12</sup> Those who speak a third-language are very supportive, with 85% indicating that they believe Canadians should collectively fund the new national OMNI Regional service.
80. Two-thirds of Canadians surveyed believe that traditional basic cable is the preferred distribution platform to access ethnic and third-language programming offered by OMNI. Significantly, 55% of those surveyed also believe that it remains important to offer OMNI's programming over-the-air.
81. Finally, among those Canadians who speak a third language and who participated in the survey, an overwhelming majority indicated that they would be interested in watching news (82%) and current affairs (77%) programming on the OMNI Regional service.
82. The second piece of evidence demonstrating extraordinary need is a study that was conducted by Strategic Inc. in December 2013 to examine the changing technological and media landscape and assess the manner in which it has altered the way foreign-born Canadians access media and how this has impacted the

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<sup>12</sup> As noted in the report provided by Fresh Intelligence, one of the primary factors that impacted those who were less supportive of the OMNI Regional proposal was a lack of awareness about OMNI's programming and the inability to access the existing OMNI television stations. This was especially true in the province of Quebec, where the OMNI stations are not generally available.

consumption of third-language programming in Canada. Rogers filed the Strategic Inc. study as part of OMNI's OTA television licence renewal applications in 2013.

83. Strategic Inc.'s study indicates that there is a high level of proficiency in English or French among new Canadians. This makes television and on-line services in those languages a convenient and overwhelming choice for programming among these viewers. Moreover, it supports our understanding of the significance of the Internet as a source of competition for news and information programming and its ability to provide Canadian audiences with foreign ethnic and third-language programming.
84. Specifically, the research study supports the following conclusions:
- Tuning to television by new Canadians is below the Canadian average;
  - New Canadians stream more programming than the Canadian average;
  - Foreign on-line programming is the primary source for content in a mother tongue;
  - New Canadians have a strong interest in third-language news and information programming on a local, national and international level; and
  - The Internet is the primary source of third-language news and information programming on a local, national and international level for new Canadians;
85. These trends underscore the serious competition OMNI faces from both licensed and unlicensed sources for ethnic audiences and advertising revenues. More importantly, these findings demonstrate that many new Canadians are sourcing news and information content from outside Canada and do not benefit from a Canadian perspective on local, regional, national or international news and events. With the rapid pace of change in consumer behaviour and programming interests, OMNI needs a new business model that is supported by a new regulatory framework that will enable it to achieve the revenues necessary to continue to satisfy the programming needs of its viewers and make significant contributions to the policy objectives of the *Broadcasting Act*. In the recent proceeding on local and community television,<sup>13</sup> the Commission sought to ensure “that Canadians in all markets are provided with a level and quality of local programming, including local news, that meets their needs and that this is carried out on the most appropriate platform.” The Commission emphasized that despite the challenges associated with producing news and information programming, the presence of these types of programs in the broadcasting system were essential to democracy:

News and analysis programming remains important today as an expression of journalistic independence and a reflection of our rights as Canadians to freedom of expression. Moreover, news and analysis produced and distributed through the broadcasting system are essential components of the Canadian democratic system and the trust Canadians place in it.<sup>14</sup>

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<sup>13</sup> Broadcasting Notice of Consultation CRTC 2015-421.

<sup>14</sup> Broadcasting Notice of Consultation CRTC 2015-421-3, at paragraph 11.

86. The third piece of evidence that demonstrates the extraordinary need for OMNI Regional among its intended audience can be found in submissions filed with the Commission in two recent proceedings involving OMNI's OTA television stations. The first proceeding was in respect of our most recent licence renewal application that was heard by the Commission in 2014. The second was a Part 1 Application filed by Unifor and UARR with the CRTC in June 2015 in response to programming changes made to the OMNI schedule.
87. In the 2014 licence renewal proceeding, the Commission received written and oral submissions from close to 500 individuals and organizations within the communities served by our OMNI stations. The overwhelming majority of these interveners expressed strong support for our renewal application. Many of those interveners made impassioned submissions about OMNI and the importance of the ethnic and third-language programming we broadcast on our OTA stations. While we acknowledge that some parties to that proceeding were opposed to the proposals that Rogers was making to amend OMNI's conditions of licence, even their submissions (both oral and written) left no doubt that they believe that OMNI makes a significant contribution to the Canadian broadcasting system as a whole and to the many ethnic communities that are reflected in the programming we broadcast on our stations.
88. Several parties that filed interventions in OMNI's licence renewal proceeding praised the contributions our stations make to the ethnic communities OMNI serves:
- OMNI TV, by definition and mandate, has its proverbial finger on the pulse of Canada's ethnic and cultural communities. It provides, to many, the only exposure they have to Canadian identity, social mores, politics and civic engagement – exposure which will have long-term positive effects on creating the kind of Canada in which we all want to live.<sup>15</sup>
- OMNI Television has always followed the development of the multicultural scene in Canada, becoming its mirror and platform. There is no newcomer in Canada and Toronto that did not receive first-hand information from OMNI.<sup>16</sup>
- OMNI provides original programming that cannot be fulfilled through other means. Its continued programming is essential to maintaining a sense of belonging for culturally diverse Canadian communities.<sup>17</sup>
89. Even Unifor, which has been a critic of some of our programming changes, recognized in its intervention the importance of ensuring the longer term viability of OMNI:

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<sup>15</sup> Canadian Race Relations Foundation, Intervention, February 28, 2014.

<sup>16</sup> Italian Chamber of Commerce of Ontario, Intervention, February 26, 2014.

<sup>17</sup> Confederation of Greater Toronto Chinese Business Association, Intervention, February 18, 2014.

59. Through this lens, there's no denying the fundamental importance of the ethnic programming service. Naturally, the financial sustainability of the service must be considered by the Commission with respect to who may hold the broadcasting license.

. . .

79. OTA ethnic broadcasting is a vital service to communities. We believe RBL understands this. But we are left wondering how RBL plans to continue servicing Canada's multilingual communities, in future. Right now, the plan is to cut – and that is worrisome. At some point, the cuts have to end for the good of the service and for the good of communities. We have no clear indication of what the future holds for ethnic broadcasting, and that is alarming.<sup>18</sup>

90. The Commission approved OMNI's licence renewal applications in Broadcasting Decision CRTC 2014-399. In doing so, the Commission acknowledged "that the stations are experiencing financial difficulties."<sup>19</sup> However, the Commission did not approve many of the key amendments that Rogers had proposed to OMNI's conditions of licence as a means to make the stations financially viable. In making that determination, the Commission emphasized the important role OMNI plays in providing Canada's ethnic and multilingual communities with news, information and entertainment programming:

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.<sup>20</sup>

91. Approving the current application for OMNI Regional to be distributed as part of the basic service will allow Rogers to continue to fulfill OMNI's unique mandate on a long-term basis. It will also enable us to reinstate the third-language newscasts and end the programming cuts, and will ensure that Rogers is able to continue to provide this vital service to multilingual communities throughout Canada.
92. With respect to the Part 1 Application filed earlier this year by Unifor, the CRTC received more than 1,000 interventions commenting on that complaint. The majority of these interveners submitted standard form letters but it was clear that all of the interveners acknowledged the critical need to find a way to ensure that ethnic Canadians continue to have the ability to access a multicultural programming service that reflects their cultural and linguistic backgrounds.

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<sup>18</sup> Unifor, Part 1 Application, June 5, 2015.

<sup>19</sup> Broadcasting Decision CRTC 2014-399, at paragraph 119.

<sup>20</sup> Ibid, at paragraph 119.

93. Many interveners emphasized the importance of ensuring that OMNI continues to offer news and information programming as part of its services:

Local programming is one of the most important reasons to have services such as OMNI. Local news and current affairs programming is at the heart of integration for new immigrants and as immigration remains high there is a continuing reason to have such programming, in fact there is a need for more such programming. It facilitates the integration of new immigrants and allows them the best opportunity to be informed about life and civics of Canada.<sup>21</sup>

94. The Commission also acknowledged the need to maintain OMNI's ability to offer news and information programming when it dismissed the Unifor Part 1 Application:

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.

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.<sup>22</sup>

95. All of this evidence demonstrates that there is an extraordinary need among Canadians for a multilingual and multicultural ethnic service that provides quality news and information programming which can only be sustained under our proposed model. Moreover, there is no other broadcaster in Canada that can offer a multilingual and multicultural service like OMNI Regional to Canadians at the low rate that is being proposed by Rogers in this application.

*(vii) Provide evidence that its business plan and implementation of its specific commitments are dependent on receipt of broad national distribution on the digital basic service, given the availability of other technological means for distributing content, and that the service would not be able to fulfill its programming commitments without mandatory distribution on the basic service.*

96. Rogers has operated ethnic OTA television stations in Canada since 1986, first under the CFMT brand and more recently (since 2002) under the OMNI brand. The last 5 years has been crippling for OMNI from a financial perspective. The business model for ethnic OTA television stations that had worked for close to 25 years is no longer viable. OMNI's OTA television stations have not been profitable for some time and cannot continue to operate at a loss.

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<sup>21</sup> Urban Diversity Forum, Intervention, at paragraph 34.

<sup>22</sup> Broadcasting Decision CRTC 2016-8, at paragraphs 29 and 30.

97. In recent years, Rogers has provided the Commission with clear and uncontested evidence that the current business model under which OMNI operates as an OTA television network is no longer sustainable. As we explained in 2014 during our licence renewal hearing, the five main competitive and financial challenges that are negatively impacting OMNI’s business model are:

- Weakening revenues from U.S. strip programming;
- Lack of reliable audience measurement tools that inhibits our ability to monetize programming;
- Increased competition from large English-language OTA broadcasters;
- Competition from ethnic specialty services; and
- Changing viewing habits of Canadians, particularly those who speak a third language.

98. The Commission’s latest statistical and financial report on conventional television<sup>23</sup> demonstrates that the declines experienced by private local television stations over the last few years are becoming increasingly worse. The revenues of all private OTA television stations declined from 2,144,290,861 in 2011 to 1,803,682,152 in 2014. That is a 16% decline in three years. In 2014, profits before interest and taxes (PBIT) for private local television stations dropped industry-wide to minus \$138.7 million and the PBIT margin decreased from to minus 7.7%.

99. As the smallest conventional television group, Rogers’ stations have been disproportionately impacted by this decline with a PBIT margin of minus 37.2% in 2014.<sup>24</sup>

100. Since the 2010-2011 broadcast year, OMNI’s financial performance has deteriorated dramatically. In the 2011-2012 broadcast year, the OMNI stations experienced a decline in revenue of 14% compared to the previous year. In the 2012-2013 broadcast year, revenue fell a further 27%. Over the past two years, OMNI’s financial performance has deteriorated even further and more sharply, despite our efforts to adjust to the new economic realities. Since 2010-2011, OMNI has experienced a cumulative decline in revenue of 74%. That drastic and unsustainable decline is shown in the table below:

**OMNI Financials 2011-2015 (\$M)**

Broadcast Year	10/11	11/12	12/13	13/14	14/15
<b>REVENUE</b>					
National Advertising Revenue					
Local Advertising Revenue					

<sup>23</sup> *Conventional Television – Statistical and Financial Summaries 2010-2014.*

<sup>24</sup> *Addendum: 2014 Financial Results for Canadian Conventional Television Stations.*

Other
<b>TOTAL REVENUE</b>
<b>OPERATING EXPENSES</b>
CPE
CPE % of Revenue
<b>TOTAL OPERATING EXPENSES</b>
<b>EBITDA</b>

*(viii) Provide evidence of the likely impact of the proposed wholesale rate on the price of the basic package to consumers and of its widespread acceptability to Canadians.*

101. Our proposal for a \$0.12 per month wholesale fee for BDU's operating in English-language markets (and a \$0.10 fee in French-language markets) will have a minimal impact on Canadians. At \$0.12, OMNI Regional's wholesale fee would represent only 0.5% of the total maximum value (\$25.00) of the small basic service offered by BDUs in anglophone markets. In addition, our proposal to allow BDUs operating in markets already served by an OMNI OTA station to substitute the regional feed of OMNI's national service instead of distributing the local OTA OMNI signal as part of the basic service would enable those BDUs to decide whether to devote a basic service channel to additional OMNI services.
102. The decision to request mandatory basic carriage for OMNI Regional on all licensed and exempt BDUs with greater than 2,000 subscribers is consistent with previous Commission distribution orders. Similarly, the rationale underlying our proposal to offer OMNI Regional to BDUs operating in francophone markets at a lower wholesale rate (\$0.10) is consistent with other 9(1)(h) applications approved by the Commission in recent years. The fact that OMNI Regional will not, at least in its first few years of operation, provide a material amount of French-language programming justifies a lower wholesale rate for the service in those francophone communities.
103. OMNI Regional's proposed \$0.12 monthly wholesale fee for English-language markets compares favourably to other 9(1)(h) services that have been authorized for basic distribution by the Commission. The list of 9(1)(h) services that have a wholesale fee that exceeds \$0.12 includes:
  - APTN - \$0.31;
  - TV5/UNIS - \$0.24;
  - The Weather Network - \$0.23; and
  - AMI (English) - \$0.20.

104. As noted above, the Fresh Intelligence survey we commissioned demonstrates that very few Canadians oppose our proposal to offer a new national OMNI service as part of the basic service and at a wholesale rate of \$0.12 per subscriber per month. Further, among Canadians who speak a third-language, the support for OMNI is almost universal. In addition, two-thirds of Canadians indicate that they would prefer to receive OMNI programming as part of their basic cable package.

*(ix) Provide evidence to support the proposed timeframe during which its service should have exceptional status under an order pursuant to section 9(1)(h) of the Act. The Commission considers the balance between the impact on the price of the basic service for Canadian consumers and the ability of the service to provide its programming.*

105. OMNI Regional is seeking mandatory basic carriage at \$0.12 per month for the 5 year licence term. The OMNI Regional brand needs time to develop a national audience and, after five years, we are hopeful that OMNI Regional will be able to rely on national advertising and its negotiated wholesale fees to fund the undertaking.

<b>OMNI 9(1)(h) financials</b>	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>
<b>REVENUE</b>					
Digital Subscriber Revenue	10.5	15.7	15.5	15.3	15.2
National Advertising Revenue	2.0	2.9	2.8	2.7	2.5
<b>TOTAL REVENUE</b>	<b>12.5</b>	<b>18.5</b>	<b>18.3</b>	<b>18.0</b>	<b>17.7</b>
<b>OPERATING EXPENSES</b>					
Programming and Production	7.4	10.9	11.2	11.5	11.8
Technical	1.5	1.9	2.0	2.0	2.1
Sales and Promotion	1.6	2.0	2.1	2.2	2.2
Administration & General	1.2	1.5	1.5	1.5	1.6
<b>TOTAL OPERATING EXPENSES</b>	<b>11.7</b>	<b>16.3</b>	<b>16.8</b>	<b>17.2</b>	<b>17.7</b>
<b>EBITDA</b>	<b>0.8</b>	<b>2.2</b>	<b>1.5</b>	<b>0.8</b>	<b>0.0</b>

### (c) Impact on other programming services

106. Finally, we would also like to address any concerns that our proposal for 9(1)(h) status might have on other programming services. The impact our request for mandatory basic carriage will have on other programming services operating in Canada, including ethnic services, will be minimal. The fact that OMNI's OTA stations are already available in almost every major centre in Canada (either as an OTA signal or as a distant signal) will mean that the launch of this new national service will have only a negligible impact on the revenues of other services.

107. Most of the Canadian ethnic programming services have been in operation for a long time and have established audiences. Moreover, we intend to maintain the existing programming cap of 16% for programming in a given language which will prevent OMNI from competing directly with single language ethnic specialty services. These ethnic specialty services are also protected by specific provisions in

the *Broadcasting Distribution Regulations* and in the Wholesale Code from being unduly impacted given their independent status and the specific rules relating to the carriage and packaging of third-language services.

108. In addition, our commitment not to offer U.S. strip programming (such as *30 Rock*, *Extra* and *Modern Family*) on OMNI Regional and to limit the amount of U.S. programming to 10% will ensure that the launch of our new service will not increase the competition among Canadian services for access to U.S. programming.

#### **IV. OMNI'S OTA LICENCE RENEWALS**

##### **(a) Introduction**

109. Rogers is also requesting the renewal of its five (5) multilingual ethnic conventional television stations and its rebroadcast transmitters operating under the OMNI brand. If the OMNI Regional licence and request for mandatory basic carriage is approved, Rogers is committing to continue to operate the OMNI OTA television stations in Toronto, Edmonton, Calgary and Vancouver (and rebroadcast transmitters in London, Ottawa and Victoria) under the same regulatory framework and conditions of licence that apply today. We strongly believe that despite declining advertising revenues, the OMNI OTA stations can continue to be viable under the current conditions of licence if the stations can pool resources and share costs with an OMNI Regional service that has been granted mandatory basic carriage on all BDUs with more than 2,000 subscribers at a wholesale rate of \$0.12 per month in anglophone markets and \$0.10 per month in francophone markets.

##### **(b) OMNI OTA Renewals with approval of OMNI Regional 9(1)(h) Application**

110. As such, if our OMNI Regional application is approved, Rogers is not proposing any substantive changes to the current conditions of licence for the OMNI stations. We are merely requesting the following two amendments, for the reasons noted:

- Amend the COL regarding Advisory Councils, as they have been established; and
- Remove COLs regarding tangible benefits for OMNI B.C., as they have been fully expended.

##### **(c) OMNI OTA Renewals with denial of OMNI Regional 9(1)(h) Application**

111. A denial of the OMNI Regional application discussed herein would fundamentally alter our licence renewal applications and the obligations we would be able to accept. If the OMNI Regional application is not approved we are proposing the following amendments to the OMNI OTA stations existing conditions of licence (COLs):

- Removal of the obligation to provide two hours of original described video programming per broadcast week;
- Reduction in OMNI's broad service mandate from 20 to 15 distinct ethnic groups and 15 distinct languages;
- Amendment to the COL regarding Canadian content obligations in accordance with *Let's Talk TV, The way forward - Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy 2015-86 (BRP 2015-86);
- Amendment to the local programming requirements for the OMNI Alberta stations to allow the 3.5 and 1.5 local programming hours per broadcast week to be measured annually to provide some programming flexibility; and
- Removal of the COL that requires the licensees to devote no more than 16% of programming to programs in any one foreign language during each broadcast month.

112. As described in greater detail below and in the attached Appendix 6C - Section D Ethnic Television Stations,<sup>25</sup> which contains our responses to the Commission's questions regarding the renewal of OMNI's OTA television stations, these amendments would be needed in order to focus OMNI's programming on groups that have the largest revenue opportunities.

113. The standard COLs for conventional television stations require that OMNI's television stations provide described video for a minimum of four hours per broadcast week, of which two hours must be broadcast in described video for the first time on the station. While Rogers believes that the provision of described video programming to Canadians is important, this standard COL is simply incompatible with the unique programming provided by the OMNI television stations as described in more detail in Appendix 6C. Accordingly, if the OMNI Regional application is denied, we are requesting that OMNI's television stations should not be required to broadcast two hours of original described video programming on each station per broadcast week.

114. We are also seeking a reduction in OMNI's broad service mandate from 20 to 15 distinct ethnic groups and to 15 distinct languages. While the *Ethnic Broadcasting Policy* states that ethnic television stations must serve a range of ethnic groups in a variety of languages, it does not prescribe a specific number that must be served on a monthly basis. Historically, the OMNI television stations have committed to serve a minimum of 20 distinct ethnic groups and 20 different languages each broadcast month. This commitment was based on the financial capacity of the station, the demographics of the community we serve, the services already available in each

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<sup>25</sup> Appendix 6C titled "Section D - Ethnic Television Stations" contains Rogers' responses to the questions asked by the Commission as part of the licence renewal process.

market, and the degree of support shown by local community organizations. If our OMNI Regional application is not approved, we will simply not have the resources to continue to serve 20 ethnic groups in 20 different languages each month.

115. The current COL that limits OMNI television stations to devote no more than 16% of their programming schedules to programs in any one foreign language during each broadcast month undermines OMNI's competitive position because it limits our ability to derive revenue from Canada's largest third-language groups. As noted above if our OMNI Regional application is denied, we are proposing to reduce our commitment so that our OTA stations would serve a minimum of 15 ethnic groups with programming in a minimum of 15 distinct languages. We believe maintaining this broad service mandate will impose a natural limit on the amount of programming that we are able to provide in any one third-language and will ensure that we will still provide content in at least 15 different languages; including some smaller language communities.
116. With Respect to the OMNI Alberta stations, we are proposing to amend the COLs relating to local programming to allow the requirement to exhibit 3.5 hours in Calgary and 1.5 hours in Edmonton each broadcast week to be measured annually. This small change will provide some programming flexibility for the two stations while ensuring that they exhibit the same amount of local programming in the Calgary and Edmonton markets throughout the broadcast year.

## V. CONCLUSION

117. For all of the foregoing reasons, Rogers respectfully requests that the Commission approve our application for OMNI Regional's national licence with three regional feeds and our request for mandatory distribution of one of the regional feeds as part of the basic service on all licensed and exempt BDUs (with more than 2,000 subscribers) operating in English and French-language markets. OMNI Regional will be an exceptional programming service that will make contributions to the objectives of the basic service and to the policy objectives of the *Broadcasting Act* that far exceed those of any other Category A ethnic programming service.
118. In addition, we are requesting approval of our licence renewal applications for our five OTA television stations in Toronto, Edmonton, Calgary and Vancouver (and OMNI's rebroadcast transmitters in London, Ottawa and Victoria).
119. We believe this is the last opportunity for OMNI to adjust its business model so that its operations can become sustainable. A decision approving the OMNI Regional application and our request for mandatory basic carriage is critical to OMNI's long-term viability and will ensure access to high-quality news and information programming for Canada's ethnic and third-language communities at a reasonable cost.