



22 April 2014

John Traversy  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

**Re: *Applications for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty television services, Broadcasting Notice of Consultation 2014-26 (Ottawa, 29 January 2014) - FRPC's final written reply***

1. The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system and regulation that serves the public interest.
2. We were pleased to participate in the process initiated by Broadcasting Notice of Consultation 2014-26, to comment on the applications filed by Rogers Broadcasting Limited to renew the licences of its television programming undertakings. Our final written reply to the new evidence presented at the CRTC's 8-9 April 2014 public hearing is attached.
3. We look forward to the opportunity of reviewing other parties' replies, as well as Rogers' response.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

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## **Rogers' conventional TV applications: Where there's a will, there's a way**

*Applications for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty television services, Broadcasting Notices of Consultation 2014-26 and 2014-26-1 (Ottawa, 29 January 2014 and 10 April 2014)*

**Comments of the Forum for Research and Policy in Communications**

22 April 2014

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## I Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) appreciates this chance to respond to new evidence from the CRTC public hearing considering applications by Rogers Broadcasting Limited (RBL) for the renewal or re-issuance of a number of conventional and discretionary television programming licences.
- 2 The current law on licensing and licence renewals consists of the 1991 *Broadcasting Act*, the CRTC's policies and regulations, the terms and conditions of RBL's licences, as well as the decisions of Canada's courts. The *Broadcasting Act* "contains a set of political, social, economic and cultural objectives that reflect the linguistic duality and the multicultural and multiracial nature of Canadian society."<sup>1</sup> The frequencies used by broadcasters  

... are a public good whose allocation to a broadcaster presupposes a public review process, upon completion of which the CRTC issues an operating licence to the licence holder that will best be able to serve the people, taking into account the policies in effect, the public interest and government guidelines.<sup>2</sup>
- 3 The CRTC's function is "one of review and economic regulation, accompanied by a system of measures and, if necessary, sanctions for the achievement of the legislative and regulatory objectives."<sup>3</sup> It must perform this role taking "into account the public interest".<sup>4</sup> When renewing or revoking a station's licence, the CRTC bears a duty to verify the quality of its programming and broadcasts to determine whether the licensee has diluted, distorted, ignored or flouted the standards set by the Act, the CRTC's regulations and the licences.<sup>5</sup>
- 4 The purpose of a CRTC public hearing "is not to examine ... complaints one by one to determine whether the licensee has committed a penal offence",<sup>6</sup> but "to find out whether, in the public interest, and in compliance with Charter values and the implementation of broadcasting policy in Canada, it is appropriate to continue to provide a radio frequency to a licensee."<sup>7</sup> Renewing a licence has the effect of endorsing and promoting the licensee's behaviour.<sup>8</sup>

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<sup>1</sup> *Canada (Commissioner of Official Languages) v. CBC/Radio-Canada*, 2012 FC 650, at ¶157.

<sup>2</sup> *Ibid.*, at ¶175.

<sup>3</sup> *Genex Communications Inc. v. Canada (Attorney General)*, 2005 FCA 283, at ¶148.

<sup>4</sup> *Ibid.*, at ¶31.

<sup>5</sup> *Ibid.*, at ¶148.

<sup>6</sup> *Ibid.*, at ¶166.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

## II FRPC's comments on new evidence from the hearing

### A Should the CRTC renew the OMNI licences, when Rogers denies its own responsibility to account?

- 5 While the current OMNI station licences expire in August 2015, Rogers has applied for their renewal or re-issue now due to the CRTC's December 2013 concerns about Rogers' earlier decision to cancel a number of OMNI's ethnic programs.<sup>9</sup> The CRTC noted that almost a thousand people, organizations and associations opposed these changes.<sup>10</sup> While half as many parties - approximately 470 - have now intervened in support of Rogers' OMNI licences, almost all want the OMNI stations to continue the service Rogers originally promised; of the six associations and national ethnic organizations noted by the CRTC in its December decision, three have intervened and each is still concerned about the OMNI program cuts.<sup>11</sup>
- 6 The CRTC asked Rogers to comment on its management of OMNI stations in light of its 2009/10 decision to reduce its over-the-air television stations' spending on news and other Canadian programming and to increase their non-Canadian program spending, even while surpassing their forecast revenues.<sup>12</sup> RMI's President told the hearing that as he was not at Rogers in 2009, those decisions are irrelevant to this proceeding (¶517).<sup>13</sup>
- 7 All five OMNI television licences are governed by the 1999 *Ethnic broadcasting policy*, however,<sup>14</sup> which expects "licensees to report on the progress of their initiatives at their subsequent licence renewals", and "to indicate in their plans how they will subsequently evaluate their progress."<sup>15</sup> Rogers' past decisions to reduce ethnic programming and Canadian programming expenditures are relevant, therefore, especially to the CRTC's current determination as to whether the company has diluted, ignored or flouted the OMNI licences' terms and conditions, or the *Ethnic broadcasting policy* itself.
- 8 Based on the new information provided by interveners and Rogers at the CRTC's April 2014 hearing, FRPC respectfully submits that Rogers has, in fact, flouted both the terms of the OMNI licences and Canada's *Ethnic broadcasting policy*.

<sup>9</sup> *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 (Ottawa, 5 December 2013) at ¶4.

<sup>10</sup> *Ibid.*, at ¶13.

<sup>11</sup> See Kiu Rezvanifar, President, Canadian Ethnic Media Association, *Intervention 323* (28 February 2014) at 2; David Poopalailai, National Spokesperson, Canadian Tamil Congress, *Intervention 346* (28 February 2014) at 2; and Maya Bhullar, Board Chair, Council of Agencies Serving South Asians, *Intervention 454* (28 February 2014) at 1.

<sup>12</sup> FRPC, *Rogers renewal applications: does mutilating OMNI to 'save' it serve the public interest?* (Ottawa, 28 February 2014), *Intervention 574*, at ¶11, ¶37 and Table 2.

<sup>13</sup> Parenthetical references that include ¶ marks refer to the CRTC's 8-9 April 2014 public hearing transcripts.

<sup>14</sup> Public Notice CRTC 1999-117 (Ottawa, 16 July 1999).

<sup>15</sup> *Ibid.*, at ¶41 and ¶39.

**B Should Rogers obtain regulatory relief, after failing to mitigate its income problem?**

- 9 RMI’s President told the CRTC hearing panel that he was struck that many of those “objecting to our licence amendments either failed to recognize or are choosing to ignore that OMNI is in a financial crisis ...” (¶97). He also admitted that Rogers does not know the actual financial impact of its proposal to reduce ethnic languages (¶594).
- 10 Similarly Rogers did not deny its own failure to improve OMNI revenues. Somewhat astonishingly, in fact, Rogers blamed its inability to sell advertising as effectively as smaller television stations on its being a large broadcaster (¶¶3183-3185, 3195). Rogers did not deny, moreover, that selling OMNI advertising “requires a special team who has the knowledge and expertise to identify and target appropriate clients to sell to the retail and national spots” (¶2967), that until 2008 OMNI had a dedicated sales force that understood its programs and could “zero in on advertisers who had specific interests in the ethnic market”, that OMNI was profitable in part because of its designated sales force (¶2964), that OMNI lost its dedicated sales force after 2008 (¶2964) or that Rogers markets the OMNI stations either poorly or not at all (¶¶2969-2970).
- 11 Rogers should have but did not explain why OMNI is in a ‘financial crisis’, since it also said that its current “one-call model” for selling national advertising (¶3224) in which “hundreds of feet on the street ... bring their little brother along ... is working quite well for us right now” (¶3225). Rogers admitted, however, that of “some 600 people” who are its sales representatives (¶3198), only seven (7, or 1.2%) sell OMNI exclusively (¶3205).
- 12 Rogers admitted, though, that the other “50 or 60 other salespeople who do sell OMNI” simply “include it in every buy” (¶3222). Since the total time dedicated to commercials on the OMNI stations almost doubled from 2009 to 2013 (from 7,885 hours to 15,593)<sup>16</sup> the reason that “OMNI ... suffered revenue losses well beyond the impacts to the other television station” (¶3121) could be that Rogers’ sales force simply gave away OMNI advertising inventory.
- 13 In light of OMNI’s alleged ‘financial crisis’, Rogers also should have but did not explain its failure since 2008 to have BBM solve the important problem of ethnic under-representation in its samples (¶3171). As Rogers’ Chief Digital Sales Officer would be aware, having once chaired BBM (¶3174), only voting members of BBM such as radio/television broadcasters like Rogers “receive a BBM-appointed Account Executive responsible for ... assisting members on any BBM-related issues.”<sup>17</sup> Rogers’ failure to act on ethnic audience sample sizes supports interveners’ concerns that OMNI’s finances are not “being adequately looked after by the senior executives at Rogers” (¶2968). More importantly it enables Rogers to claim, despite its protestations (¶667), that OMNI’s audiences are too small to support more hours of original local or national ethnic programming.

<sup>16</sup> FRPC, *Should Rogers give a day for democracy?*, Remarks (9 April 2014), at 13-14: “Comparison of FRPC Summary and Rogers Analysis of OMNI program logs in 2009/10 and 2012/13”.

<sup>17</sup> BBM, “Membership Information”, <https://www.bbm.ca/en/membership-info>.

- 14 In brief, Rogers' failure to mitigate inadequate revenue growth at the OMNI stations should not be rewarded by CRTC approval of Rogers' program reduction requests.
- C Should Rogers have more flexibility about languages and prime time, when it has not provided evidence justifying reductions in ethnic content?**
- 15 Instead of dropping its current 8 to 10 pm condition for ethnic content altogether, Rogers now asks that 75% of this content be ethnic, with the remaining 25% in English (¶3093). This would permit it to use some of the US programming originally purchased for CityTV, on OMNI (¶¶3151-3152). Instead of the current single-language cap of 18%, Rogers now asks that up to 30% of its programming come from a single language (¶3096). Finally, instead of reducing the number of languages it serves from 20 to 10, Rogers now asks to reduce the number to 15 (¶3094).
- 16 These new proposals will allow Rogers to reduce the amount of ethnic programs and number of languages provided by OMNI, which is already a reduction from the level of ethnic programs and languages provided in 2008 (¶2961).<sup>18</sup> Rogers did not deny that OMNI's audiences previously opposed such reductions on CHNM-DT (¶¶2902-2904). It did not deny that it failed to consult with the communities affected by its program cuts, including those who contribute regular program segments for the OMNI stations (¶¶2874 and 2900). Most important of all, given ethnic communities' concerns about OMNI program reductions last year, Rogers did not provide any evidence that OMNI audiences<sup>19</sup> support proposals to reduce the level of ethnic programming and the number of ethnic languages available to OMNI audiences.
- 17 The CRTC should deny Rogers' proposals to reduce ethnic programming in the absence of informed support for the proposals, and because Rogers has again failed to provide evidence justifying these reductions.<sup>20</sup>
- D Should Rogers' OMNI licences be reissued, when it has not provided the evidence required by the Ethnic broadcasting policy?**
- 18 The current *Ethnic broadcasting policy* establishes that the "primary responsibility of over-the-air ... television stations should be to serve and reflect their local community", and that the CRTC "will expect ethnic broadcasters, at the time of licensing and renewal, to provide plans on how they will reflect local issues and concerns during the terms of their licences."<sup>21</sup> Broadcasting Notice of Consultation 2014-26 included a specific reminder to this effect.<sup>22</sup>

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<sup>18</sup> See also note 9, Broadcasting Decision CRTC 2013-657.

<sup>19</sup> As opposed to interveners who may, or may not, have read or be aware of the details of the entire OMNI application.

<sup>20</sup> See e.g. Broadcasting Decision CRTC 2009-504 at ¶¶20-22.

<sup>21</sup> *Ethnic broadcasting policy*, *supra* note 13, at ¶¶39 and 40.

<sup>22</sup> Broadcasting Notice of Consultation 2014-26:

19 Rogers did not deny that the evidence of many appearing interveners (see eg ¶¶2882-2887) about the importance of local programming and local news, but told the hearing that it has no plans for local station programs at CJCO-DT and CJEO-DT along with its “news operation” in Toronto and “two newscasts” in Vancouver (¶852). It gave no new details about its plans for local ethnic programming, and explained that the only circumstances under which it would produce “a local newscast out of Alberta” would be “if we thought that we could actually ... make a margin on it” (¶860).

20 In brief, Rogers has ignored interveners’ concerns about the loss of local ethnic programs since 2009, and the absence of local ethnic programming in Edmonton and Alberta. To ensure Rogers’ compliance with the *Ethnic broadcasting policy*, the CRTC should therefore impose conditions of licence requiring each OMNI station to provide a minimum number of local original ethnic program hours.

**E Should Rogers’ request to reduce Canadian content on OMNI be granted, in the absence of any supporting evidence?**

21 Rogers did not provide any new financial or survey evidence to support its proposal to reduce ethnic television audiences’ access to Canadian content from 60% over the broadcast year, to 40%. Approval would mean that Rogers could reduce total Canadian content hours broadcast on the OMNI stations by one third, or 2,621 hours over two years:

22 In the absence of new evidence the CRTC should decline Rogers’ request, for the same reason set out in *Citytv and OMNI stations –*

	Hours	@ 60%	@ 40%	Difference	
				Hours	%
Regulated broadcast week					
Per week	126	75.6	50.4	-25.2	-33.3%
Per broadcast year	6552	3931.2	2620.8	-1310.4	-33.3%
Over two years	13104	7862.4	5241.6	-2620.8	-33.3%

*Licence amendments*, Broadcasting Decision CRTC 2010-745 (7 October 2010) - namely, Rogers’ continued failure to justify this change.

**F Should Rogers be allowed to reduce program diversity for ethnic audiences and broadcasting system, in the absence of any supporting evidence?**

23 Instead of the current prohibition on program sharing between City TV and OMNI, Rogers now asks that up to 10% of the OMNI and City TV stations be identical (¶13095). Rogers may also be planning on adding CHIN radio programming to the OMNI stations’ schedules, although it did not deny that program production and content suffer and are displaced when airtime is brokered, as is the practice on CHIN (¶¶2957-2958).

24 In the absence of clear evidence to justify the reduction of programming diversity on the OMNI stations, or to explain why broadcasting radio is an appropriate use of an OTA

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... As part of this proceeding, the Commission will examine the role of these stations in providing programming to the communities they serve, including the appropriate levels and scope of multilingual and multi-ethnic programming offered, the methods used to consult with the relevant communities with respect to this programming, as well as the local programming offered by these stations.

....



television licence, Rogers' requests should be denied.

**G Should Rogers' OMNI stations be 'out of service' for hearing- or sight-impaired ethnic Canadians?**

25 Although the 1991 *Broadcasting Act* establishes that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose",<sup>23</sup> the 1999 *Ethnic broadcasting policy* does not expressly refer to captioning or other accessibility technologies. The first OMNI station was licensed in 1978, however, and the CRTC's growing support for higher levels of accessible programming in the intervening 36 years has been welcomed by many.

26 Rogers did not deny FRPC's finding that accessible hours on OMNI decreased by almost half between 2009/10 and 2012/13, to a low of 263 hours, or that in some months the OMNI stations broadcast no third-language accessible programs at all.

27 Rogers explained, however, that the general lack of accessible ethnic programming was because it is "not reflective of the type of programming that OMNI offers on its service" (¶375). Rogers failed, however, to provide any evidence that accessibility is not desired for ethnic communities or ethnic television audiences, especially by older members of these communities and audiences.

28 Rogers' approach to accessible programming on the OMNI stations raises serious concerns about the degree to which those with accessibility challenges are being accommodated by the OMNI stations. In 2007 the Supreme Court explained the concept of "reasonable accommodation" as follows:

[t]o redress discriminatory exclusions, human rights law favours approaches that encourage, rather than fetter, independence and access. This means an approach that, to the extent structurally, economically and otherwise reasonably possible, seeks to minimize or eliminate the disadvantages created by disabilities.<sup>24</sup>

29 While the CRTC should examine the issue of accessibility in its review of the *Ethnic broadcasting policy*, each OMNI station in the interim should be required to broadcast at least four hours of accessible, original local news and information in third languages per week.

**H The CBC-Rogers NHL agreement: an ill wind blowing no good, or simply an unlicensed network undertaking?**

30 Rogers' \$5.2 billion purchase of NHL program rights for the next 12 years was discussed at length (albeit not in detail) at the hearing. While RCI had previously confirmed that it will

<sup>23</sup> S. 3(1)(p).

<sup>24</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 SCR 650 at ¶110 (per Abella J. for the majority).

operate NHL Centre Ice and NHL Game Centre Live and will own “all commercial inventories for the television broadcasts”,<sup>25</sup> Rogers explained to the hearing that “a newly-created company” will hold these rights (¶3541). It said that because it is not providing programming in its role as a licensed undertaking but is “providing that programming to CBC as a program supplier” (¶3352), no CPE requirements should be applied to its NHL arrangements with other broadcasters.

- 31 While it is true that program suppliers are not generally licensed, Rogers’ role is not that of program producer or supplier. It was widely reported in November 2013 that “Rogers will assume all editorial control (all editorial decisions with respect to the content, on-air talent and the creative direction of HNIC” and that CBC will only retain the right to be consulted.<sup>26</sup> CBC’s ad inventory will also be controlled by Rogers (¶3060). In early February 2014, it was also reported that “Rogers will employ 13 networks to show NHL action on Saturdays, including the Rogers regional channels, City and CBC”:<sup>27</sup> Rogers then clarified at the hearing that it is “delivering more NHL hockey to more Canadians than ever before ....” (¶361, underlining added), and that “... CBC’s distribution allows us an important additional platform to efficiently monetize the NHL rights” (¶3056, underlining added).
- 32 The *Broadcasting Act* defines a network as
- any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person.<sup>28</sup>
- 33 Rogers’ editorial control over the NHL programming delivered by other licensed programming undertakings means that it is not a program producer or supplier, but rather a network operator - one to whom other broadcasters are delegating control over part of the program schedule of their undertakings.
- 34 Parliament recognized that broadcasters may from time to time seek to exploit other broadcasters’ undertakings, and that broadcasters may from time to time be compelled to delegate control to others, and clearly intended that these arrangements be captured by the *Broadcasting Act*. It did not intend that broadcasters should evade their responsibilities under the *Broadcasting Act* through contracts and corporate structures. The CRTC should therefore require Rogers to apply for a network licence. Rogers should

<sup>25</sup> Rogers Communications Inc., *Annual Report 2013*, at 48.

<sup>26</sup> Cassandra Szklarski, “Bettman calls blockbuster NHL deal with Rogers a ‘partnership to grow the game’” [www.citynews.ca](http://www.citynews.ca), CityNews Toronto (26 November 2013) <http://www.citynews.ca/2013/11/26/bettman-calls-blockbuster-nhl-deal-with-rogers-a-partnership-to-grow-the-game/>; see also “TSN shut out as Rogers signs 12-year, \$5.2B NHL deal, CBC job cuts loom after losing editorial control of HNIC”, *National Post* (26 November 2013) <http://sports.nationalpost.com/2013/11/26/nhl-rogers-reach-12-year-5-2-billion-broadcast-deal-that-would-see-cbc-keep-hockey-night-in-canada/>.

<sup>27</sup> James Madge, “Rogers unveils plans for 1,250 hours of NHL hockey”, *National Post* (4 February 2014) <http://sports.nationalpost.com/2014/02/04/rogers-unveils-plans-for-1250-hours-of-nhl-hockey/>, underlining added.

<sup>28</sup> S. 2(1).

then also be required by the CRTC to make the commitments to support Canadian programming required by the *Broadcasting Act*<sup>29</sup> in the same way that the CRTC previously the CTV Television Network to provide specific levels of Canadian programming.<sup>30</sup>

### III Conclusion and recommendations: CRTC must regulate in the public interest by enforcing the *Ethnic broadcasting policy*, evaluating Rogers' performance and remedying market deficiencies

35 The CRTC's decision about Rogers' ethnic television services, will determine the level and quality of local television service made available to ethnic communities in Toronto, Edmonton, Calgary and Vancouver. It will also determine the level and quality of Canadian programming made possible by Rogers' purchase of the NHL program rights. More generally, the decision issued by the Commission about this proceeding will enable Canadians to evaluate whether it places the public interest before or after the interest of broadcasters such as Rogers.

36 The evidence on the record of this proceeding, and the new evidence addressed above, establishes that Rogers has not accepted its responsibilities under the 1999 *Ethnic broadcasting policy*. It has not provided the evidence needed to justify the radical cuts it made to the OMNI stations' ethnic programs and to its accessible programs. It has not presented clear plans for OMNI's programming going forward. It has shrugged off its responsibilities to provide local ethnic audiences in Calgary and Edmonton with actual hours or original local programming, let alone local ethnic news and information.

37 To maintain confidence in the integrity of the CRTC's regulatory oversight the Commission's decision in this proceeding must set out its disapproval of Rogers' approach to its responsibilities as a broadcast licensee, as it has done in the case of others.<sup>31</sup>

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<sup>29</sup> S. 3(1)(s)(i) states that "private networks ... should, to an extent consistent with the financial and other resources available to them ... contribute significantly to the creation and presentation of Canadian programming ...."

<sup>30</sup> See e.g. *Television Network Licence Renewal*, Broadcasting Decision CRTC 94-33 (Ottawa, 9 February 1994)

<sup>31</sup> See e.g., *Newfoundland Broadcasting Company Limited*, Broadcasting Decision CRTC 89-269 (Ottawa, 17 May 1989):

Among the Commission's particular concerns at the hearing was the inadequacy of NTV's quantitative commitments for the production of original local programs on CJON-TV. A further concern was that the licensee's Canadian content commitment appeared to be lower than the minimum regulatory requirement and was apparently based on a broadcast day longer than that defined in the *Television Broadcasting Regulations, 1987* (the regulations). The Commission was also concerned by the absence of firm commitments by NTV for the production of local programs in any of the underrepresented categories, and by the licensee's plans to continue to schedule much of its locally-produced programming at times when, in the Commission's view, such programming could not be expected to attract large audiences.

...

The Commission's analysis of the programming broadcast during the week of 4 to 10 December revealed that the audio portion of "Jigs Breakfast" was a simulcast of a morning radio program broadcast each weekday on CHOZ-FM; thus, in the Commission's view, this program could not be considered to be an original local television program produced by CJON-TV. Moreover, the video portion was a continuation of "Newfoundland Scenes", broadcast on CJON-TV at 5:00

Simply granting a short-term renewal would be inadequate, as Rogers is already only seeking a two-year licence term (whether renewed or re-issued).

- 38 FRPC strongly opposes Rogers' amendment requests, whose main effect would be to reduce the OMNI stations' adherence to the *Ethnic broadcasting policy*, for the following reasons. First, Rogers has still failed to address the serious concerns raised by hundreds of interveners last year about the OMNI program cuts. Respectfully, approving Rogers' amendments will signal other licensees that they may also ignore complaints made about their performance.
- 39 Second, Rogers has failed to explain why it is prepared to spend billions to acquire original and popular sports content for its conventional and non-conventional television services - while its only approach to its OMNI stations is to eliminate their original and popular content and reduce their programming expenditures. Respectfully, approving Rogers' amendments will signal other licensees that they are free to sacrifice programming mandated by the Commission for corporate financial gain.
- 40 Third, Rogers' disregard for the principles of Canada's *Ethnic broadcasting policy* and for the commitments it made in competitive licensing processes for the Edmonton and Calgary ethnic television services raise troubling concerns about the reliance to be placed on any commitment made by Rogers in this proceeding. Respectfully, approving Rogers' amendments will signal other licensees that actual performance matters less than lip service, as promises and commitments have no legal weight and can therefore be ignored by licensees.
- 41 Finally, Rogers' argument that it should be allowed to experiment with the OMNI model to try new business approaches, ignores the fact that the CRTC does not have a licence class for experimental television stations.<sup>32</sup> No assurances exist, moreover, that any additional programming changes made for 'experimental' reasons will not simply become permanent, and that this experimentation will meet the *Ethnic broadcasting policy's* requirements.
- 42 FRPC therefore recommends that the CRTC's renewal decision state whether Rogers' past performance has met the terms of the *Ethnic broadcasting policy* and its licences, and place Rogers on notice that further acts that ignore or dilute these requirements place the OMNI licences in jeopardy.

a.m., and consisting primarily of footage of rural Newfoundland filmed by the licensee and repeated as often as four times per month, according to NTV.

The meager resources allocated by the licensee to "Jigs Breakfast", and its place within the NTV schedule, give further substance to the Commission's concern regarding the strength of NTV's commitment to produce quality programming of relevance and interest to its viewers or to broadcast such programs at times convenient for more than only a handful of viewers.

....

<sup>32</sup> *New Broadcasting Act - Amendments to Classes of Licence* Public Notice CRTC 1991-63 (Ottawa, 19 June 1991).

- 43 FRPC also recommends that the Commission re-issue the OMNI station licences, but to RMI, given RBL's effective absence in this proceeding. Issuing the OMNI licences to RMI will permit the Commission to base their conditions on RMI's circumstances: in 2013 RMI earned \$161 million in adjusted operating profits, with an adjusted operating profit margin of 9.4%.<sup>33</sup> The licences should be issued for two years, along with the conditions of licence now in place - except that conditions referring to local programming should refer instead to original local programming, and that a condition should be attached requiring each OMNI station to broadcast 14.5 hours/week of original local programming to the communities it was licensed to serve.
- 44 Finally, the CRTC's renewal decision should provide Canadians with sufficient information about a future review of the *Ethnic broadcasting policy* that they may begin to prepare for this proceeding.
- 45 In brief, Rogers' decision to ignore or deny its responsibility for OMNI's financial position, to make radical program changes without consulting its audiences, and to seek changes in its licences that effectively eviscerate the *Ethnic broadcasting policy* in over-the-air television mean that the CRTC must not grant its request to change the OMNI licences, and that the Commission must use its power to set conditions of licence based on the circumstances of the OMNI stations' licensee to assure Canada's ethnic communities that they will be provided with a high, stable and predictable level of original third-language programming.

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<sup>33</sup> Rogers' *Annual Report 2013* at 48.