



11 April 2025

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: OUTtv Network Inc., Part 1 Application 2025-0107-2 regarding Rogers' distribution of OUTtv (Vancouver, 5 March 2025)

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. FRPC's intervention in the above-noted application is attached.

The Forum looks forward to reviewing the applicant's reply, if any. Should the CRTC decide to hold an appearing public hearing in this matter – and one hopes it does not as this would, again, merely delay OUTtv's obtaining a decision about its application – the Forum respectfully asks to participate in that process.

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**Do or do not.
There is no try.**

Yoda
Resident of Dagobah,
PO Box 1701,
Degobah System, Dagobah subsector,
Sluis Sector, Outer Rim Territories galactic quadrant region

Intervention regarding Part 1 Application 2025-0107-2 (5 March 2025)

Forum for Research and Policy in Communications (FRPC)

11 April 2025

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I. Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake legal research and empirical analysis about communications, including broadcasting.
- 2 On 5 March 2025 OUTtv applied to the Commission
 - a. to order Rogers Communications Canada Inc. (and its applicable BDU affiliates)¹ (Rogers) under section 9(1)(h) of the *Broadcasting Act* to distribute OUTtv in its largest general interest package (known as ‘Premier’ in September 2023 and currently known as ‘Ultimate TV’)²
 - b. to consider OUTtv’s application on an expedited basis,³ and
 - c. to consider whether it would be appropriate to impose an administrative monetary penalty on Rogers under section 34.4 of the *Act*.⁴
- 3 Given the exceptional nature and importance of OUTtv and the available evidence FRPC supports OUTtv’s Application.

II. Law regarding distribution of programming services in Canada

- 4 Parliament delegated its authority over broadcasting to the CRTC in 1968. Since then Parliament has amended its *Broadcasting Act* twice, in 1991 and in 2023, each time confirming the CRTC’s authority to regulate broadcasting services whose compliance with its requirements are likely to “contribute in a material manner to the implementation of the broadcasting policy” set down by Parliament in section 3(1) of the *Act* (*Broadcasting Policy for Canada*).
- 5 Specifically, Parliament declared that the objectives of its *Broadcasting Policy* “can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.”⁵ It designated the Commission to “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing” the *Policy*.⁶ Today’s *Broadcasting Act* continues to emphasize that Canada’s broadcasting system “serve the needs and interests of all Canadians – including ... Canadians of diverse ... sexual orientations, gender identities and expressions – and reflect their circumstances and aspirations, including equal rights”⁷

¹ OUTtv, *Part 1 Application regarding Rogers’ distribution of OUTtv* (Vancouver 5 March 2025) [OUTtv Application], at footnote 1 and ¶26.

² *Ibid.*, ¶8.

³ *Ibid.*, ¶29.

⁴ *Ibid.*, ¶28.

⁵ S. 3(2).

⁶ S. 5(1).

⁷ S. 3(1)(d)(iii).

- 6 Until recently the CRTC's power to implement Parliaments *Broadcasting Policy* were somewhat limited: the CRTC in its early years often achieved its objectives via a 'raised eyebrow'.⁸ It rarely exercised its authority to revoke or deny renewal applications for BDUs, on the theory that such steps would harm communities that would lose service.⁹
- 7 Times – and the nature of the broadcasters it regulates – have changed. Today a few large broadcasters operate in all sectors of broadcasting and take in most of the system's revenues. The sanctions on which the CRTC previously relied – such as short-term licence renewals –now carry little weight for broadcasters that earn revenues from not one or two but dozens and dozens of licensed undertakings: in 2021 the ten largest broadcasters took in 91.42% of the broadcasting system's revenues, leaving 8.6% of revenues to all other broadcasters.¹⁰
- 8 In April 2023 Parliament therefore empowered the CRTC to issue orders related to the carriage of programming services to individual distribution undertakings.¹¹ It also granted the CRTC the power to enforce its requirements by allowing the Commission to impose fines to penalize regulatory non-compliance.¹²
- 9 In this case, OUTtv has provided the Commission with a clear summary of the regulatory requirements that apply to the distribution of its service, and the manner in which Rogers has failed to meet the requirements. The Forum supports OUTtv's requests because denying the application will create uncertainty about the CRTC's approach to broadcast regulation. Given the wildly fluctuating state of the world's economies, Canada's programming and distribution

⁸ Christopher Nardi, "[Canada's broadcasting regulator considering requests to 'investigate' CBC's use of branded content](#)", *National Post*, (9 December 2020):

... according to former CRTC vice-president and current Macdonald-Laurier Institute Fellow Peter Menzies, the commission may be limited in what it can do in this case.

"They can do a little bit of what we used to call 'regulation by raised eyebrow' though," he said, adding that he thinks that CBC should get out of the advertising business "entirely."

⁹ There were exceptions. In Public Announcement (26 February 1973) of Decision CRTC 73-71, the CRTC revoked licence of Wawa Cable Vision Limited because the licensee (after several renewals granted to allow it to improve service) was "unable to provide an adequate service to the area licensed to it". It denied a cable-television licence renewal application in 1981 (and after 3 consecutive short-term renewals) because of the deficient quality of service provided (Decision CRTC 81-188), and similarly denied the renewal of another cable licence in 1991 because, after 3 years, the service had not been implemented (Decision CRTC 91-883).

¹⁰ CRTC, *Open Data*, data-broadcasting-overview.xlsx, B-T35 (Percent of total broadcasting revenues, by ownership groups, 2015-2021"

¹¹ Ss. 9.1(1)(h) and 9.1(2):

9.1(1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting

...

(h) a requirement for a person carrying on a distribution undertaking to carry, on the terms and conditions that the Commission considers appropriate, programming services, specified by the Commission, that are provided by a broadcasting undertaking

...

(2) An order made under this section may be made applicable to all persons carrying on broadcasting undertakings, to all persons carrying on broadcasting undertakings of any class established by the Commission in the order or to a particular person carrying on a broadcasting undertaking.

¹² *Broadcasting Act*, Part II.2.

services need the certainty, predictability and transparency that only the CRTC can provide through its decision in this matter.

III. Additional relevant facts

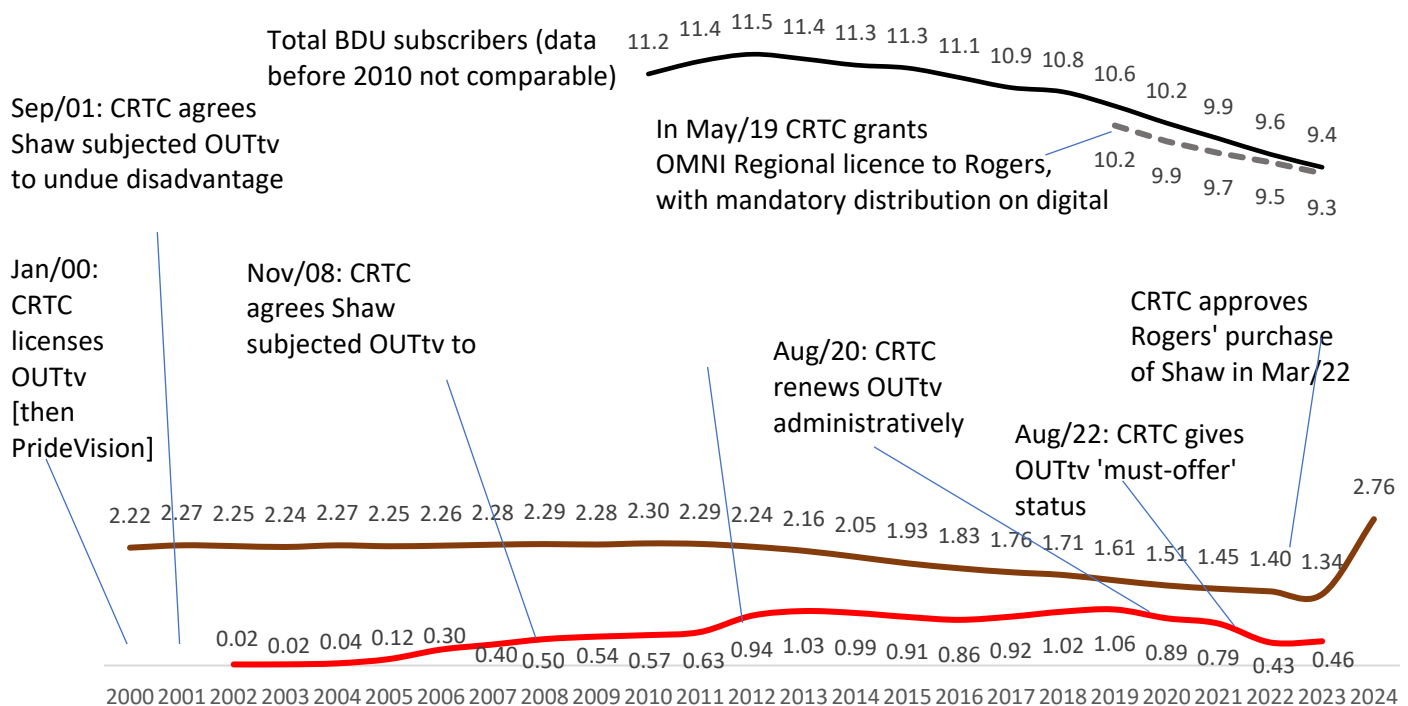
- 10 The OUTtv Application provides both redacted and unredacted evidence in support of its arguments and the Forum consequently has nothing to add on the points raised by the applicant. That said, FRPC notes that some evidence exists regarding the impact of must-carry and must-offer carriage requirements. We also address the issue of subscriber impact.

A. Impact of must-carry vs must-offer carriage requirements

- 11 In 2019 the CRTC licensed OMNI Regional (to Rogers) and ordered BDU licensees “to distribute the national, multilingual multi-ethnic discretionary service known as OMNI Regional as part of their digital basic service ...”¹³ Figure 1 compares the subscriber levels of OMNI Regional and OUTtv over time: in 2023 OMNI Regional was available to 98.9% of BDU subscribers; OUTtv was available to 4.9% of subscribers.

Figure 1 Comparison of subscription levels to a must-carry and a must-offer service

Subscribers to Rogers' BDU services, to OMNI and to OUTtv, in millions: 2000-2024



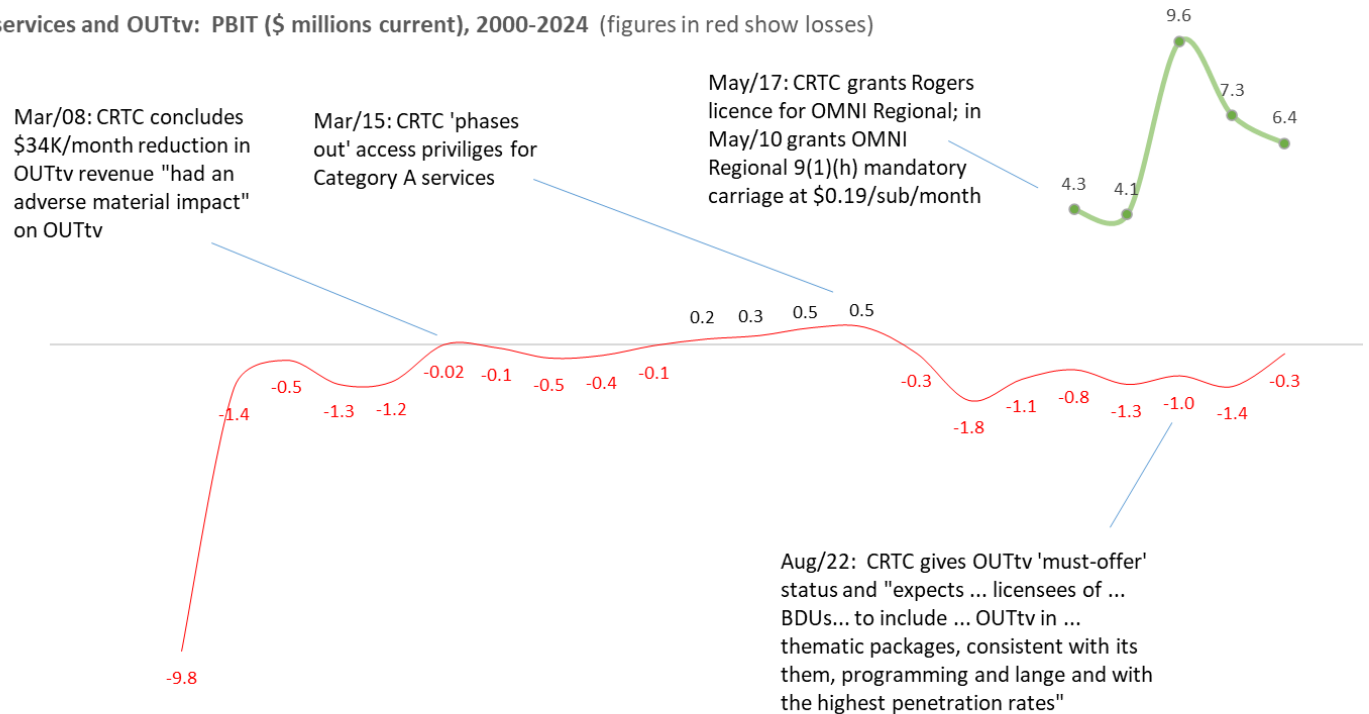
Sources: CRTC, statistical summaries for individual discretionary programming services; Rogers, aggregated financial summaries; CRTC, broadcasting or communications monitoring reports (all for various years as CRTC generally publishes such information in

¹³ [Licensing of a national, multilingual multi-ethnic discretionary service, Broadcasting Decision CRTC 2019-172 and Broadcasting Order CRTC 2019-173](#) (Ottawa, 23 May 2019), Appendix 2 to Broadcasting Decision CRTC 2019-172 - [Broadcasting Mandatory Order CRTC 2019-173](#).

- 12 The difference between 'must-offer' and 'must-carry' is also evident from a review of the profits (before income tax) of OUTtv and OMNI Regional: Figure 2. OMNI Regional has been profitable for Rogers since it began; OUTtv has been profitable in four of its 22 years of operation.

Figure 2 Comparison of profits before interest and taxes resulting from must-carry and must-offer status

Rogers' BDU services and OUTtv: PBIT (\$ millions current), 2000-2024 (figures in red show losses)



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
OUTtv	-9.8	-1.4	-0.5	-1.3	-1.2	-0.02	-0.1	-0.5	-0.4	-0.1	0.2	0.3	0.5	0.5	-0.3	-1.8	-1.1	-0.8	-1.3	-1.0	-1.4	-0.3			
OMNI Regional																				4.3	4.1	9.6	7.3	6.4	

Sources: CRTC,statistical summaries for individual discretionary programming services (various years); Rogers, aggregated financial summaries (various years); CRTC, broadcasting or communications monitoring reports (various years)

- 13 The CRTC may have expected that 'normal' commercial communication practices¹⁴ and negotiation would eventually yield the results the Commission sought when it first licensed OUTtv¹⁵ and more recently in 2022 when it described "the outstanding contributions that

¹⁴ In *Complaint by St. Andrews Community Channel Inc. alleging undue preference against Rogers Communications Canada Inc. regarding the distribution of CHCO-TV*, [Broadcasting Decision CRTC 2020-222](#) (Ottawa, 13 July 2020), for example, the CRTC stated at ¶156 that

... the Commission encourages all parties involved in a commercial relationship to efficiently communicate information that is likely to have an impact on one another, even in the absence of a requirement to notify of upcoming changes.

¹⁵ The CRTC concluded in [Broadcasting Decision CRTC 2000-456](#) (Ottawa, 14 December 2000) that PrideVision will contribute to increased diversity in the Canadian broadcasting system by providing programming that is of specific interest to the gay and lesbian community, which is currently an under-served and under-represented audience. A channel devoted to this audience will be unique to the broadcasting system in Canada, among the first of such services world-wide. It will have the potential to be a "bridging" service, creating understanding and thereby reducing stereotyping.

OUTtv makes to the broadcasting system”.¹⁶ Yet, along with Figures 1 and 2, the CRTC’s data describing its alternative dispute resolution matters in broadcasting suggest that – at least insofar as ADR parties are identified¹⁷ -- good communication and negotiation are not always successful.

- 14 For example, if good communication and negotiation were routinely practised by all parties (large and small alike) one might not expect Rogers to be involved in nearly half (19 or 44%) of the 43 processes in which parties’ names were listed, including 6 disputes with Bell, 3 with TELUS and 1 with Québecor: Table 1.

Table 1 Parties involved in CRTC-guided alternative dispute resolution processes, 2015-2024

ADR processes undertaken by the CRTC, 2015-2024													
Large BDUs	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total	%	Yrs
Rogers			1		3			2		3	9		4
Bell & Rogers						1	3	1		1	6		4
Rogers & Telus			2		1						3		2
Rogers & Québecor			1								1		1
Subtotal, Rogers			4		4	1	3	3		4	19	44%	6
Bell	1		2			4	3		1		11		5
Bell & Québecor			1		3	2	2	1	1		10		6
Subtotal, Bell	1		3		3	6	5	1	2		21	49%	7
Québecor					1				1		2		2
TELUS						1					1		1
Known parties	1		7	0	8	8	8	4	3	4	43		
Rogers as % of known parties	0%		57%		50%	13%	38%	75%	0%	100%	44%		
Parties’ names redacted	9	35	32	18	44	20	33	7	8	5	211		10
Total	10	35	39	18	52	28	41	11	11	9	254		

CRTC release packages for A-2024-00011 and A-2024-00103

- 15 Perhaps Rogers is not party to any of the 211 ADR processes whose information about parties was redacted by the CRTC; in that case, Rogers would only be present in 9% of the CRTC’s ADR process. Absent that information, however, the Forum must rely on the evidence the CRTC has disclosed to date which show that Rogers has been a party in at least 19 ADR processes in 6 different years.

B. Impact of OUTtv’s application on subscribers

- 16 As Parliament requires that distribution undertakings such as Rogers “provide efficient delivery of programming at affordable rates”¹⁸ the Commission must bear in mind the impact of OUTtv’s Application on subscribers. In 2022, for instance, the CRTC denied large BDUs’ request to increase the rate they are authorized to charge subscribers for basic BDU service (\$25), in part because the increase might result in “vulnerable factions [sic] of the population” being unable to

¹⁶ *OUTtv – Licence renewal, and granting of must-offer status in English-language markets*, [Broadcasting Decision CRTC 2022-223](#) (Ottawa, 18 August 2022), at ¶145.

¹⁷ The CRTC redacted the names of parties involved in a number of its ADR processes from the information provided in its release package.

¹⁸ S. 3(1)(t)(ii).

access services that fulfill the objectives of Parliament’s *Broadcasting Policy for Canada*.¹⁹ It added that these “Canadians would lose access to services that not only reflect Canadian attitudes, opinions, ideas, values and creativity ...”²⁰

- 17 Yet the CRTC’s denial of OUTtv’s Application will also, arguably, permit Rogers (and potentially other BDUs in its wake) to remove Canadians’ access to a service that reflects them – because OUTtv remains unique among programming services by serving and reflecting LGBTQ2 communities. The CRTC explained this in 2022:

OUTtv plays an important role in the Canadian broadcasting system as it is the only service in Canada that targets LGBTQ2 communities with all of its programming. OUTtv responds to the needs and interests of these communities and contributes to raising greater awareness and understanding by all Canadians. In addition, OUTtv Network invests significantly in original first-run productions, thereby ensuring the reflection of LGBTQ2 communities in television programming while contributing to the diversity of programming available to Canadians. The licensee also uses independent producers who identify with LGBTQ2 communities. The Commission considers that the service contributes directly to fulfilling objectives of the Act by providing a unique contribution that targets and reflects the LGBTQ2 communities.²¹

- 18 It is also true that today Canadians face difficult financial times now and for the next several years. Consequently, some may argue that requiring Rogers to ensure that OUTtv is available to all or most of its subscribers will harm subscribers. As the CRTC noted in 2023, however, BDUs have strong operating margins despite decreases in subscriptions to their BDU services,²² and “[a]part from programming costs, the infrastructure costs for BDU services are largely fixed costs amortized over several years and over multiple services including telecom services.”²³ Nor is the CRTC required (as it currently is in telecom) to ensure that any increase in BDUs’ underlying costs be reflected in the rates they charge.²⁴

- 19 Moreover, while Canadians face difficult financial times people in Canada’s LGBTQ2 communities – thanks in part to carriage decisions such as those of Rogers – face these same challenges while being denied the sense of community that is provided by OUTtv and to which they are entitled by virtue of Parliament’s amendments to its *Broadcasting Policy for Canada*. The CRTC touch on this issue, in fact, when it granted Shaw’s application to sell its BDU assets to Rogers, directing “Rogers to foster diversity in its content”.²⁵ Parliament’s recognition of and desire for diverse programming serves to explain why any minimal additional costs to subscribers (which result in ensuring the availability of OUTtv available to as many people as possible) are justified. (And, given the CRTC’s recognition of OUTtv’s “outstanding

¹⁹ Proposed increase to the maximum retail price of the basic service, [Broadcasting Decision CRTC 2023-308](#) (Ottawa, 5 September 2023) ¶126.

²⁰ *Ibid.*, at ¶128.

²¹ Broadcasting Decision CRTC 2022-223, *supra* note 16, at ¶144.

²² Broadcasting Decision CRTC 2023-308, *supra* note 19, at ¶144.

²³ *Ibid.*, at 45.

²⁴ *Ibid.*, at ¶156.

²⁵ Broadcasting Decision CRTC 2022-76, at ¶125.

contributions” in 2022 [see paragraph 13, above] it cannot now be incumbent upon OUTtv to re-justify the value of its service.)

IV. Conclusion and recommendations

- 20 The CRTC’s subscriber, profitability and ADR data (Figures 1 and 2 and Table 1) provide objective evidentiary support for FRPC’s conclusion that the Commission’s objectives will not be met until the CRTC ensures that Rogers actually makes OUTtv readily available to all BDU subscribers. As with Rogers own programming content, its BDU services must “foster diversity”:²⁶ denying BDU subscribers ready access to OUTtv is unreasonable and reduces their access to diverse programming.
- 21 FRPC submits that the CRTC should grant the OUTtv Application because to date, the half-steps, unenforceable expectations and encouragements that it has tried have all left OUTtv on an ever-sharpening knife’s edge of financial failure – and because these measures have ill-served Canada’s LBGTQ2 communities. Implementing Parliament’s *Broadcasting Policy for Canada* requires the CRTC to do what it was established to do: to serve the public interest by ensuring that all BDU subscribers have access to programming that reflects them. Simply trying is not good enough: the CRTC must do more, as Parliament’s *Broadcasting Policy* envisages.
- 22 The Forum therefore agrees with OUTtv that the Commission should
- a. Expedite its consideration of the OUTtv Application by issuing a determination before 30 April 2025,
 - b. Order Rogers to package and distribute OUTtv in the package to which it had agreed or, in the alternative in Rogers’ largest general-interest package and
 - c. Remind Rogers (and other broadcasters) that non-compliance with the CRTC’s orders leaves the company in peril of AMPs.

* * * End of document * * *

²⁶ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022), at ¶125.