



**unifor**  
theUnion | lesyndicat

**National Office**  
205 Placer Court  
Toronto, ON M2H 3H9

**Bureau national**  
205 Placer Court  
Toronto, Ontario M2H3H9

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**Jerry Dias**  
*National President*  
*Président National*

**Renaud Gagné**  
*Quebec Director*  
*Directeur Québécois*

**Peter Kennedy**  
*National Secretary-Treasurer*  
*Secrétaire-trésorier national*

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August 15, 2016

Ms. Danielle May-Cuconato  
Secretary General  
Canadian Radio-Television and Telecommunications Commission  
Ottawa, ON K1A 0N2

Dear Ms. Secretary General:

**Re: Unifor comments on Rogers Media's application to obtain a broadcasting licence to operate a new discretionary programming undertaking pursuant to 9(1)(h) of the Broadcasting Act (OMNI Regional) (Application #2016-0377-0)**

1. On behalf of Unifor, we are pleased to submit the attached intervention with respect to Rogers Media's application to operate a new discretionary programming undertaking, referred to herein as OMNI Regional.
2. Unifor has more than 310,000 members across Canada, working in 20 economic sectors and is one of Canada's largest unions in the media sector. Unifor represents more than 12,500 media workers, including at OMNI B.C. and OMNI 1 and 2 in Toronto.
3. Unifor asks the Commission to consider the following comments as part of its consultation on Rogers Media's application and looks forward to the CRTC's determination in this matter.
4. In conjunction with our submission to BNoC 2016-225, Unifor requests to appear before the Commission during the oral hearings set to commence on November 22, 2016 to speak on matters related to the English-language group based licence renewal applications as well as Rogers Media's OMNI Regional application.

Sincerely,

A handwritten signature in black ink, appearing to be 'H. Law'.

Howard Law  
Director, Media Sector  
[howard.law@unifor.org](mailto:howard.law@unifor.org)  
416-456-1875 (cell)  
416-497-4110

ADC/HL/ww:cope343

## **Executive Summary**

1. Unifor is Canada's largest union in the private sector, representing more than 310,000 workers across a diverse range of industries, including more than 12,500 members in the media sector.
2. Unifor supports Rogers Media's application for 9(1)(h) status(OMNI Regional) conditional of OMNI news programming commitments that are commensurate to more appropriate historical benchmarks, and that Rogers Media is held to a higher standard for delivering on promises of local presence and in-house production.
3. Specifically, Unifor recommends that:
  - a. OMNI Regional is required, as a condition of licence, to broadcast full-hour news programming or, at minimum, two 30-minute original third-language news programs each day;
  - b. The Commission request Rogers Media files a proper expense accounting for these expanded newscasts and include it in their financial projections in order to determine whether there is a need to increase the wholesale fee rate beyond Rogers Media's current proposal of a 12¢ monthly carriage fee for anglophone subscribers (10¢ for francophone subscribers);
  - c. The Commission requires Rogers Media to adopt all local presence expectations (as identified in BRP 2016-224) as conditions of licence for OMNI Regional;
  - d. The Commission state explicitly in its licence that OMNI must maintain full editorial control of its news packages that are aired, and that the Commission impose a 5% restriction on overlapping content (between OMNI Regional and City TV) as a condition of licence; and
  - e. The Commission must grant Rogers Media no further COL relief to non-news programming on OMNI stations, as a result of the successful 9(1)(h) application.
4. Should the Commission deny Rogers Media's 2016-0377-0 application, we urge the Commission to apply new local programming exhibition and expenditure requirements (as stated in BRP 2016-224) – that other OTA stations are obliged to follow – to a renewed COL for OMNI.
5. We would further encourage the Commission to consider the proposals made in Unifor's submission to the renewal of group licences (BNoC 2016-225) and apply them equally to OMNI.
6. In the event Rogers Media is denied its 9(1)(h) application and the Commission fails to establish the provisions of its local TV policy framework within OMNI's condition of licence, then such a scenario should trigger an emergency public consultation on the future of OTA ethnic and multilingual programming in Canada.
7. OMNI's existing licence should be carried over for an abbreviated one-year term wherein the Commission must announce a public consultation and review of its Ethnic Broadcasting Policy.

8. At the end of the one-year abbreviated term for the OMNI licence, we urge the Commission to announce an open licence process for all OMNI over-the-air television stations.

### **About Unifor**

1. Unifor is Canada's largest union in the private sector, representing more than 310,000 workers across a diverse range of industries, including more than 12,500 members in the media sector.
2. Unifor represents workers at OMNI B.C. as well as OMNI 1 and 2 stations in Toronto.

### **Background**

3. On March 7, 2016, Rogers Media applied (application 2016-0377-0) for a broadcasting licence to operate a new multilingual and multicultural discretionary programming undertaking: OMNI Regional.
4. The original application indicated that this undertaking would involve the broadcasting of three separate regional feeds (identified as OMNI Pacific, OMNI Prairies and OMNI East). A subsequent addendum (filed June 7) amended the original application to include a fourth regional feed serving ethnic and multilingual viewers in the Province of Quebec, in partnership with an existing multilingual broadcaster, operating in Montreal as ICI.
5. Rogers Media has requested mandatory carriage of OMNI Regional, subject to a 9(1)(h) order under the Broadcasting Act and has recommended a 12¢ distribution fee per anglophone subscriber (and 10¢ per francophone subscriber), yielding more than \$15 million in revenue beginning in 2017 according to company estimates.
6. Under this application, Rogers Media has made a series of ethnic and multilingual programming commitments, including dedicated hours to airing local independent productions, current affairs shows as well as original dramas and documentaries. Rogers has also committed to reinstating four third-language daily, national, thirty-minute newscasts, airing seven-days-a-week in Italian, Mandarin, Cantonese and Punjabi – with content generated by on-the-ground reporting done in select cities as well as a commitment to re-establish in-house production in markets served by OMNI's OTA stations.
7. This application comes on the heels of consecutive periods of programming cuts at OMNI: the first was a decision to cancel 25 ethnic news and information programs, representing 31.5 hours of first-run programming between April 2012 and May 2013 (including more than 60 staff from the OMNI stations). The second was a decision to cut all remaining third-language OMNI newscasts from its programming schedule in May, 2015. At that time, Rogers Media claimed that the cuts were a response to an unsustainable cost structure and declining revenue. OMNI transitioned its third-language category 1 news programming to category 2a current affairs-style shows, with no original news reporting.
8. It was shortly after this latest round of programming cuts that Unifor (through its Local 723M) and the Urban Alliance on Race Relations (UARR) filed a joint request that the Commission hold

an immediate hearing to review the concerns raised by the elimination of news broadcasting, and to make the following remedial orders requiring Rogers:

- a. to restore programming and staff that support it;
  - b. to fund local news broadcasting on par with other systems/stations;
  - c. to restore the dedicated sales/marketing capacity eliminated by Rogers;
  - d. or in the alternative, to surrender the license in order to allow a sale to a more committed broadcaster to take effect.
9. In January, 2016 the Commission (BRP 2016-8) denied this request, citing (in part) that the decision to cancel newscasts and replace with current affairs programming did not constitute a breach of OMNI's conditions of licence.
10. However, in its ruling the Commission acknowledged concerns raised by intervenors over the declining quantity and quality of OMNI news programming. The Commission emphasized that it was not permitted to amend existing conditions within an active licence and that the most appropriate place to consider these programming matters would be during the period of licence renewal – which is now taking place against the backdrop of a new local and community television policy framework and new policy measures designed to support local news programming.

**Is OMNI ethnic and multilingual programming deserving of 9(1)(h) status?**

11. The primary question before the Commission and in regard to Rogers Media's application is whether OMNI Regional is deserving of special 9(1)(h) status.
12. The programming commitments outlined by Rogers Media in its application are conditional on OMNI Regional receiving mandatory carriage pursuant to the *Broadcasting Act*. As noted above, this status would yield additional revenues in excess of \$15 million per year for OMNI (based on Rogers Media's proposed carriage fees) ostensibly to fund these increased programming levels. In the absence of 9(1)(h) status, Rogers has proposed a further loosening of various regulatory obligations within its COL for OMNI.
13. There is no denying the value and distinctiveness of OMNI television to multilingual and multiracial communities in Canada. Prior to its programming cuts in 2015, OMNI was Canada's sole provider of free, over-the-air, third-language newscasts – delivering critical information on national as well as local affairs to viewers in their native tongue. According to the 2011 National Household Survey, 6.5 million residents in Canada identified a non-official language as their mother-tongue.<sup>1</sup>

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<sup>1</sup> <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/hltfst/lang/Pages/highlight.cfm?TabID=2&Lang=E&Asc=1&PRCode=01&OrderBy=999&View=1&tableID=401&queryID=1&Age=1>

14. Accessible, over-the-air third-language news programming makes an exceptional contribution to the goals of Canadian broadcasting (under Section 3 of the *Broadcasting Act*), through its promotion of Canada's multiculturalism and, by extension, our nation's identity and culture.

15. The Ethnic Broadcasting Policy (1999-117) itself contemplates the important "integrative" role of third-language news programming, as it states:

*(9) "In addition to emphasizing that large and small ethnic groups should benefit from a basic level of service, the Ethnic Policy also seeks to ensure a place for programming that assists in their full participation in Canadian society, reflects their culture, and promotes cross-cultural understanding. Thus, while it is clear that ethnic programming can and does accomplish a range of goals, such as language and culture preservation, a key component of the Ethnic Policy is the integrative role that ethnic programming plays in connecting newcomers to their new surroundings, socially, culturally, politically and economically. (emphasis added)*

16. In BRP 2013-372 the Commission sets out its criteria for determining whether a service shall be granted a mandatory carriage order pursuant to 9(1)(h). The criteria states that the programming service in question must:

- Make an exceptional contribution to Canadian expression and reflects Canadian attitudes, opinions, ideas, values and artistic creativity;
- Contribute in an exceptional manner to achieving the overall objectives for the digital basic service and 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 reflection and portrayal of persons with disabilities; or
  - linguistic duality, including improved service to official language minority communities (OLMCs); and
- Make exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures.

17. Rogers Media provides a series of programming commitments to support their 9(1)(h) application, including:

- 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.
18. In our view, testing whether OMNI Regional meets the Commission’s “exceptionality” requirement should put added emphasis on how it helps achieve the goals and objectives identified in the new local and community television policy framework (BRP 2016-224), which specific attention paid to news programming.
19. To assess the rigour of Rogers Media’s news programming proposals, it is important that the Commission reflect on these in relation to past third-language programming levels, prior to major cuts (dating back to approximately May 2013).
20. To assist in this review, we have provided an outline comparing news programming levels for OMNI newscasts across three relevant periods: During the 2011/12 broadcast year, the present day, and projected newscasts under the OMNI Regional proposal (see Table 1).

**Table 1: OMNI Original Third-Language Newscasts**

	<b>2011/2012 broadcast year (Week 51)</b>	<b>Present day</b>	<b>OMNI Regional - 9(1)(h) Proposed</b>
<b>OMNI third-language newscasts</b>	Punjabi Nat’l (1 hour) (M-F) Italian (1 hour) (M-F) Cantonese Nat’l (30 mins) (M-F) Cantonese Local (30 mins) (M-F) Mandarin Nat’l (30 mins) (M-F) Mandarin Local (30 mins) (M-F) Mandarin Weekend (1 hour) (Sat-Sun) South Asian (1 hour) (M-F) Portuguese (30 mins) (M-F)	None	Italian Nat’l (30 mins) (M-Sun) Mandarin Nat’l (30 mins) (M-Sun) Cantonese Nat’l (30 mins) (M-Sun) Punjabi Nat’l (30 mins) (M-Sun)
	Total category 1 original news programming time: 29.5 hours/week	Total category 1 original news programming time: 0	Total category 1 original news programming time: 14 hours/week

Source: OMNI television program grids

21. The Commission must take these historic programming figures into consideration as it judges the merit of Rogers Media’s proposals. In fact, the proposal represents a drastic reduction in original OMNI category 1 news programming as compared to the 2011-12 broadcast year (a drop of 15.5 hours per week). We view Rogers Media’s proposal for OMNI news as insufficiently ambitious, especially since the company’s own public relations research (filed with the

Commission) shows that news programming is of primary importance to viewers (82%)<sup>2</sup> and is of central importance to the Commission's new local and community television policy.

22. Further, the Commission must also take into account the significant job losses largely resulting from these programming cuts, including among OMNI news-gathering staff. A recent internal survey of Unifor local union leadership revealed that more than 80 jobs have been cut at OMNI operations in Toronto and Vancouver, representing a 76% reduction (that includes any news jobs created as a result of new category 2a current affairs programming). Quality and original journalism requires adequate staffing and news-gathering capacity. Company commitments to this end must go beyond their stated intent to re-establish in-house production in OTA markets.

Unifor's position on Rogers Media's Application 2016-0377-0

23. Unifor encourages the Commission to grant Rogers Media's OMNI Regional service 9(1)(h) status.
24. As noted above, the exceptional nature of OMNI third-language programming services with respect to expressing Canada's multicultural identity, ethno-cultural diversity, and providing access to multi-lingual news and information makes it an essential part of the broadcasting system. OMNI is the sole provider of such service, over-the-air.
25. However, our support for OMNI Regional's 9(1)(h) status is conditional on Rogers Media providing news programming commitments that are commensurate to more appropriate historical benchmarks, and that Rogers Media is held to a higher standard for delivering on promises of local presence and in-house production.
26. Specifically, Unifor proposes that:
  - a. OMNI Regional is required, as a condition of licence, to broadcast full-hour news programming or, at minimum, two 30-minute original third-language news programs each day. Such a requirement is commensurate with OMNI third-language newscasts (e.g. Italian, Mandarin and Cantonese newscasts) aired as recently as 2011/12. Such a proposal would increase OMNI's weekly news programming total to 28 hours per week, which is nearly at par with levels broadcast just four years ago.<sup>3</sup>
  - b. The Commission request Rogers Media files a proper expense accounting for these expanded newscasts and include it in their financial projections in order to determine whether there is a need to increase the wholesale fee rate beyond Rogers Media's current proposal (12¢ for anglophone subscribers and 10¢ for francophone subscribers) and what the appropriate rate should be. Our own calculations suggest that these added newscast costs could be covered with an additional 3¢ levy (i.e. 15¢ for anglophone

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<sup>2</sup> (2015) Rogers OMNI TV study – Consumer Support for Funding, by fresh intelligence (filed as Document #8, Appendix 6B) (p15)

<sup>3</sup> With the notable exception of Portuguese newscasts which are not included in Rogers Media's programming plans under OMNI Regional.



subscribers and 13¢ for francophone subscribers), which would generate an additional \$4.1 million revenue per year.<sup>4</sup> A strong majority of TV viewers who speak a third-language appear willing to pay the modest increase, such as we propose, based on the “price sensitivity” data provided by Rogers.<sup>5</sup> Among TV viewers who do not watch OMNI, support for a 15¢ monthly fee is slightly less (50%) than for the 12¢ monthly fee (54%) that Rogers had proposed.<sup>6</sup>

- c. Rogers Media’s commitment to re-establish in-house production in all OTA station markets is made a condition of licence. Further, given the extraordinary nature of 9(1)(h) status, the vital importance of quality third-language news coverage and to ensure Rogers Media’s proposal to employ central-casting production models does not detract from the localness of its productions, we urge the Commission to adopt all local presence expectations (as identified in BRP 2016-224) as conditions of licence for OMNI Regional. As well, we urge the Commission to require that all OMNI regional news bureaus remain operational over the course of the licence term.
- d. The Commission state explicitly in its licence that OMNI must maintain full editorial control of its news packages that are aired, and to restrict the use of pre-packaged content that is developed for Rogers Media’s City TV stations and then simply re-broadcast over the OMNI signal. Such a separation in editorial content between City and OMNI has been both acknowledged by Rogers and enforced as a Condition of Licence, dating back to the Commission’s 2007-360 broadcasting decision (which approved the transfer of CHUM assets to Rogers Media). In that decision, the Commission noted (in paragraph 22) that “Rogers Media made a commitment to the maintenance of the independent management of its news departments and separate presentation structures for Citytv and OMNI.” In that decision (paragraph 26), the Commission also noted that “In markets containing both a Citytv and an OMNI ethnic television station, Rogers Media proposed to adhere to conditions of licence requiring that not more than 10% of programming on the two stations would be broadcast by both stations. The applicant also indicated that it would adhere to a condition of licence requiring that there be no overlap of third-language ethnic programming on the two stations in any given broadcast year.” We submit that the Commission should carry-over this 10% restriction on overlapping content as a condition of licence for OMNI Regional and in fact reduce it to 5%.
- e. The Commission convert OMNI’s existing OTA licence expectation to maintain bureaus in Ottawa and Victoria into conditions of licence.

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<sup>4</sup> For the purposes of this calculation, we assume overall programming cost for a 30 minute OMNI newscast to be \$1.9 million over the broadcast year (calculated based on OMNI financial reports filed with the Commission) as well as a 50% increase in production costs to extend the newscast an additional 30 minutes.

<sup>5</sup> (2015) Rogers OMNI TV study – Consumer Support for Funding, by fresh intelligence (filed as Document #8, Appendix 6B) (p26)

<sup>6</sup> Ibid, (p27).

- f. Lastly, the Commission must grant Rogers Media no further COL relief to non-news programming on OMNI stations, as a result of the successful 9(1)(h) application.

*If Rogers Media's 9(1)(h) application is denied*

27. Should the Commission deny Rogers Media's 2016-0377-0 application then there are two fundamental questions that must be addressed: whether OMNI can remain viable in the face of structural revenue challenges and whether OMNI can deliver programming that is of high quality and relevant to the communities it serves.
28. If 9(1)(h) status is not granted, projected revenues for OMNI stations are expected to decline by a further 18.5% in broadcast year 2020-21, according to Rogers Media's filings. We have no reason to doubt these projections, as they fall within a similar range of the 5-year conventional television revenue losses projected in a recent study filed by Unifor with the Commission (between 2014 and 2020)<sup>7</sup>.
29. However, we do not endorse the proposals outlined by Rogers Media for further COL relief in the event a 9(1)(h) application is denied. Lowering the standard for ethnic and third-language programming (and access to such programming among ethnic communities) is not an adequate response to the issue at hand – it does not deliver the programming that is expected among Canada's multilingual communities.
30. Currently, the Commission's new local and community television policy framework does not directly apply to OMNI stations (however, the Commission has posited that new flexibility for the allocation of local expression dollars can be used by Rogers Media to finance programming at OMNI).<sup>8</sup> We believe that should Rogers Media's 9(1)(h) application fail, new local programming exhibition and expenditure requirements – that other OTA stations are obliged to follow – must also be applied to a renewed COL for OMNI. Such a move would ensure that OMNI programming, particularly on locally relevant news, is held to common standard as other OTA stations and to prevent further declines in programming content and quality.
31. New exhibition and expenditure requirements shall be supported through the redirection of BDU local expression contributions, as outlined in CRTC 2016-224 (and to which we maintain is at best a short-term solution to the revenue challenges facing local OTA television stations).
32. Further, we would ask the Commission to consider the proposals made in our submission to the renewal of group licences (BNoC 2016-225) and apply them equally to OMNI, including that the Commission:
  - a. Consider a longer-term timeframe in determining the appropriate historical expenditure and exhibition benchmark (i.e. back-dated to broadcast year 2011-2012) and that minimum exhibition requirements for each station's COL:

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<sup>7</sup> (2015) Nordicity; Miller, Peter. Canadian Television 2020: Technological and Regulatory Impacts.

<sup>8</sup> CRTC 2016-224 (91)

- i. Should be set at approximately 100% of weekly historical exhibition with reference to the last five years of local news programming, as measured in program segments; and
  - ii. Should not be set higher than “100%” of the corresponding minimums for weekly local programming unless those minimums are also raised.
- b. Consider a rising LPE threshold in the event that sufficient resources have not been redirected to local news programming to ensure that consistent programming dollars are directed to local stations;
- c. Make local presence a condition of licence, or consider imposing such requirements but suspend them indefinitely provided the licensees substantially obey them and can document this by providing the Commission and the public with regular reports demonstrating compliance.

33. The Commission should grant no further COL relief to OMNI for other non-news programming.

*If Rogers Media's 9(1)(h) application is denied, and the Commission deems it inappropriate to apply the provisions of CRTC 2016-224 to OMNI stations*

34. It is our view that in the event Rogers Media is denied its 9(1)(h) application and the Commission fails to establish the provisions of its local TV policy framework within OMNI's condition of licence, then such a scenario should trigger an emergency public consultation on the future of OTA ethnic and multilingual programming in Canada.

35. Under this scenario, we would urge the Commission to carry-over Rogers Media's OMNI licence for an abbreviated, one-year, term.

36. We wish to reiterate our position previously submitted to the Commission that the Commission's much delayed review of the outdated Ethnic Broadcasting Policy can be deferred no longer. Television regulation is ten years into the era of high degrees of corporate consolidation and vertically integrated ownership, and the Commission's framework document for ethnic television ought to be reconsidered in that context.

37. Finally, at the end of the one-year abbreviated term for the OMNI licence, we urge the Commission to announce an open licence process for all OMNI over-the-air television stations.

Submitted by:



Howard Law  
Unifor Media Director



Jonathan Ahee  
Unifor Media Council Chair



Angelo DiCaro  
Unifor Research Dep't

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