



**Filed via Epass**

February 23<sup>rd</sup>, 2009

Robert A. Morin  
Secretary General  
**Canadian Radio-television and  
Telecommunications Commission**  
Les Terrasses de la Chaudière  
Central Building  
1 Promenade du Portage  
Gatineau, Quebec  
J8X 4B1

Dear Mr. Morin:

**Re: Rogers Broadcasting Limited – Applications to renew the  
broadcasting licences of Citytv and OMNI Television  
Applications 2009-0037-5 and 2009-0043-2**

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Rogers Broadcasting Limited (RBL) is pleased to provide its response to the Commission's questions set out in Broadcasting Notice of Consultation CRTC 2009-70 *Scope of Licence Renewal Hearings for Private Conventional Television Stations* (BNC CRTC 2009-70) on February 13<sup>th</sup>, 2009.

We have also provided our response to additional questions related to our applications. For ease of reference, we have included the question, followed by our response below.

### **Citytv**

RBL confirms that it is prepared to have its application filed on January 12<sup>th</sup>, 2009 remain on the public record with the exception of Appendix 4.1 (financial projections) and Appendix 4.2 (programming expenditures). Given the Commission's decision to only issue short-term one year licences, we wish to withdraw these appendices and replace them with revised projections that cover a one year period only. These revised projections are attached as "Revised Appendix 4.1" and "Revised Appendix 4.2" respectively and replace those filed on January 12<sup>th</sup>, 2009. RBL requests confidentiality on the current year (2008-

2009) projections contained in “Revised Appendix 4.1” and “Revised Appendix 4.2”. Abridged versions of these appendices are attached for the public file.

RBL urges the Commission to consider and approve our proposed regulatory changes to the Citytv licences for the reasons outlined in our application of January 12th, 2009. While we are prepared to discuss further changes or amendments to these licences during the corporate group renewal hearings scheduled for April 2010, we respectfully submit that the changes outlined in our application are required immediately and cannot wait another year without further negative implications to the financial health of the Citytv stations.

## **Local programming**

### **1. What are appropriate local programming obligations for the short term, given the current economic climate?**

RBL submits that the obligations proposed in its application of January 12th, 2009 remain appropriate for Citytv in both the short and long-term. As stated in our supplementary brief, the current economic climate has exacerbated the challenges faced by over-the-air broadcasters like Citytv but is not the root of its troubled financial health. Fundamental regulatory changes are required for the Citytv group of stations in order for them to become financially viable over the long-term. Our proposal is to focus Citytv’s Canadian programming on the fulfillment of its local mandate. This will involve the gathering and dissemination of local news, information and entertainment programming in each market as the priority for Canadian spending.

Specifically, over the next licence term, we propose to harmonize and balance our programming commitments across all markets by committing to broadcast a minimum of twenty (20) hours of local programming per week in each of the markets we serve. This programming will be locally relevant and locally produced either in-house or through partnerships with independent producers.

In addition, we propose that each Citytv station will devote half of its local programming commitment (i.e. 10 hours/week) to the provision of local news. We believe this is a strong commitment and reflects our intention to create and invest in an intensely local urban television station that has a strong presence in the community.

**2. Should local programming obligations be harmonized, with minimum levels based on market size rather than historical commitments?**

RBL does not believe obligations to local programming should be harmonized among all OTA broadcasters based on either market size or historical commitments. In our view, each broadcast group should be encouraged to pursue a different role in the system be it local, regional or national in focus. Local programming commitments should be evaluated based on the programming mandate of the OTA broadcast group and the financial health of the station group. As outlined in our application, we intend to harmonize Citytv's local programming commitments across all of our markets as we believe this will underscore the local mandate of these stations.

**Local Programming Improvement Fund**

**3. Given the severity of the current economic downturn, should the LPIF incrementality criteria, or the approach to determining the base levels for incrementality, be revised?**

RBL believes the criteria outlined by the Commission in Broadcasting Public Notice CRTC 2008-100 (BPN 2008-100) remains appropriate. As we stated in our application Citytv intends to finance its commitment to local programming largely without the support of the Commission's proposed Local Programming Improvement Fund (LPIF) given that this funding is not accessible to stations operating in large urban markets. As a result, with the exception of CHMI-TV in Winnipeg, none of the Citytv stations will be eligible to receive funding from the LPIF.

CHMI-TV operates in the smallest of all of Citytv's markets and is the most financially unstable station in the group. Assistance from the LPIF will allow us to balance our local programming offering across all of our stations and increase and strengthen our local programming in Winnipeg. Funding from the LPIF will allow us to offer 20 hours of local programming a week compared to CHMI-TV's historical average of 15 hours per week. Should the Commission decide to change the criteria for accessing the LPIF, RBL reserves the right to take these changes into account and amend our proposal accordingly.

## Priority programming

### 4. **Should the Commission continue to require a minimum level of priority programming in the short term?**

As outlined in our application of January 12th, 2009, Citytv plans to recapture a local voice in the urban markets we serve by focusing our programming priorities on locally relevant, locally produced programming. The Citytv stations occupy a distinct and unique place in the OTA sector. Unlike the other major English-language OTA groups, that are more nationally focused, Citytv's core business is based on attracting local audiences and serving local communities in 5 urban markets.

Moreover, unlike large OTA broadcasters, the Citytv group of stations cannot amortize programming costs across a number of markets and windows. The local focus and limited reach of these stations means they cannot compete on the same level with national OTA broadcasters for access to national audiences and advertising revenues. This has a direct and material impact on the ability of these stations to support Canadian priority programming. The Citytv group of stations also has limited funds available for priority programming initiatives with a baseline spending envelope of \$4.1 million per year; the equivalent of one 13-part one hour Canadian drama series. In our view, investment in this type of programming does not represent an effective use of our limited financial resources and will detract from our ability to invest in local programming which we believe is more in-line with our mandate and programming focus.

Accordingly, we submit that even minimal priority programming requirements imposed on a small broadcast group with limited reach like Citytv is ineffective. For all of these reasons, Citytv does not believe it is within its programming mandate, or financial capacity, to commit to set levels of priority programming.

### 5. **If the Commission were prepared to consider the elimination of existing priority program obligations, should there be requirements for minimum amounts of original hours of specific types of programming, such as drama or documentaries?**

As stated earlier, the Citytv group of stations have a baseline spending envelope of \$4.1 million per year; the equivalent of one 13-part one hour Canadian drama series. RBL submits that, other than our tangible benefits funding, Citytv has no material role in the commissioning, production and acquisition of high priced drama, documentaries and other priority programming.

However, as explained in our application, Citytv intends to uphold the terms and conditions of our tangible benefits funding of which the majority is dedicated to on-screen initiatives in support of priority programming. We also note that 85% of this benefits package is reserved exclusively for the independent production sector. Accordingly, we submit that Citytv already has requirements to produce minimum amounts of priority programming such as drama and documentary programming for the next six years.

## **English-language Canadian programming expenditures**

- 6. Please comment on the effectiveness of a condition of licence requiring a specific ratio between Canadian and non-Canadian programming expenditures. The Commission at first blush finds a lot of merit in the idea of imposing a condition of licence on English-language broadcasters requiring a 1:1 ratio between Canadian and non-Canadian programming expenditures.**

RBL is not opposed to the concept of some correlation between Canadian and non-Canadian programming expenditures or a correlation on spending that involves other factors or variables.

However, with respect to the Commission's proposed 1:1 ratio between Canadian and non-Canadian programming expenditures, RBL submits that it is not financially viable and would seriously impact the already fragile financial situation of the Citytv stations. While many changes have occurred in the sector, revenues from U.S. programming continue to subsidize Canadian programming, including local programming on Citytv. Imposing a 1:1 spending ratio would severely distort the business model for financing Canadian programming and limit Citytv's ability to uphold its commitments and regain financial stability.

We urge the Commission to re-consider its preliminary view of a 1:1 spending ratio for Citytv and consider other alternatives during the April 2010 corporate group licence renewal hearing. However, should the Commission decide to pursue a 1:1 spending ratio, RBL submits that the appropriateness and effectiveness of such an approach must be evaluated taking into consideration the properties of our entire broadcast group including both OTA and discretionary services.

**7. If a decision on a ratio is adopted, should it be imposed on a trial basis for the upcoming one-year licence term or on a long term basis following the upcoming April 2010 hearing?**

As stated above, RBL submits that any imposition of a spending ratio should take into consideration all of our licensed broadcast properties. Accordingly, we believe this is best considered in the context of the Commission's corporate group licence renewal hearings scheduled for April 2010. Furthermore, given that the majority of our foreign and Canadian programming costs are fixed and subject to multi-year contractual agreements, any imposition of a spending ratio must provide broadcasters with the requisite amount of time to make adjustments to these commercial arrangements prior to the implementation of such an approach. For these reasons, we do not believe a spending ratio can or should be imposed on a trial basis for the upcoming one-year licence term.

**Independent production**

**8. Are the current approaches to support the broadcast, by conventional television stations, of independently-produced programming effective? Should other approaches be considered in the short term?**

RBL submits that in order to rationalize the business model for conventional television that OTA broadcasters must be given maximum flexibility to finance programming, whether it is local or priority programming, in the most economically efficient way possible. In some cases, this will involve the licensing or commissioning of programming through independent producers, and in other cases doing so in-house or through an affiliated production arm.

RBL has a good relationship with the independent production sector and will continue to consider proposals for independently produced local programming where it makes economic sense to do so. However, in our view, the Commission's current approach that requires a set percentage of programming to be derived from independent producers is unnecessarily restrictive and is no longer supportable given the financial health of the OTA sector. RBL submits that should the Commission wish to discuss alternative approaches to its current support for independent production, that these approaches should be considered in the context of the corporate group licence renewal hearings scheduled for April 2010 so it can also take into account the contributions of the specialty sector.

Finally, we believe there are already sufficient safeguards in place to ensure the continued health of the independent production sector. As noted above, like other English-language OTA broadcasters, RBL has made significant commitments to independent production as part of its tangible benefits commitments. In addition, the independent production sector has exclusive access to Canadian programming funds such as the Canadian Television Fund and Rogers Telefund which provide critical support for the financing of high-quality Canadian programming. We believe such support is more than adequate to ensure independent producers can remain competitive in their program offering.

## **Terms of trade**

- 10. In the 2007 Conventional Television Policy, the Commission stated that terms of trade agreements between broadcasters and independent producers would provide stability and clarity to all concerned, and that it expected licensees to submit terms of trade agreements as part of their licence renewal applications.**

**What is the status of the terms of trade agreements, and when will these agreements be implemented?**

RBL has participated, in conjunction with other major broadcast groups, in a number of discussions and negotiations regarding terms of trade with the Canadian Film and Television Production Association (CFTPA) over the last 4 to 6 months. These discussions have been largely productive and have developed a consensus on a number of issues governing the contractual relationships between broadcasters and independent producers, including the development and financing of projects, licensing conditions, editorial control, and the need for separate rights for multiple broadcast platforms.

While significant progress has been made in identifying common areas of agreement, broadcasters and independent producers continue to have fundamentally different views on the purpose and nature of these terms of trade negotiations. Broadcasters are fully prepared to enter into terms of trade agreements that outline good commercial practices that should govern the broadcaster and independent producer relationship. However, we do not believe it is appropriate to set out fixed commercial and financial terms for the licensing and commissioning of independent production projects. In our view, such terms must remain open to commercial negotiations based on the unique circumstances of any given project.

At this stage, an agreement has not yet been completed with the CFTPA. As such, there is no agreement to be filed with the Commission. However, for reference purposes, we are filing a copy of the Independent Production Terms of Trade Principles prepared by the group of broadcasters. Given that negotiations are on-going, and that no agreement is yet in place, we would request that the Commission keep this document confidential.

### **Disclosure of aggregate financial data**

- 12. Pursuant to Disclosure of aggregate financial data for large broadcasting distribution undertakings and over-the-air television and radio ownership groups – Regulatory policy, Broadcasting Public Notice CRTC [2008-97](#), 21 October 2008, Canwest Media Inc., CTVglobemedia Inc., Quebecor Media Inc., and Rogers Communications Inc., where they have not already done so, are hereby directed to submit the annual returns of their conventional television undertakings in aggregate form in accordance with the terms set out in that public notice, for inclusion on the public file of this proceeding.**

RBL has already filed annual returns for the Citytv and OMNI Television group of stations in aggregate pursuant to Broadcasting Public Notice CRTC 2008-97.

### **Program Schedules**

- 13. Commission staff notes that RBL indicates in its supplementary briefs for both Citytv and OMNI applications that it filed a program schedule in Appendix 5A, however, it appears that the Commission did not receive them. Please resubmit Appendix 5A for both Citytv and OMNI stations.**

Please find attached Appendix 5A for both the Citytv and OMNI stations.

## OMNI Television

In BNC CRTC 2009-70 the Commission stated that it would consider longer licence terms for certain licensees based on the particular circumstances and positions set out by those licensees. Accordingly, RBL respectfully requests the Commission consider granting a longer licence term for the OMNI Television group of stations at its April 2009 hearing. We believe this is appropriate and reasonable for the following reasons:

- The OMNI Television stations are regulated under the *Ethnic Broadcasting Policy* and as such many of the issues identified in BNC CRTC 2009-70 are not applicable to these stations;
- RBL has requested very few changes to the OMNI Television licences and our proposals are entirely consistent with the Commission's *Ethnic Broadcasting Policy*;
- RBL has provided the Commission with a firm proposal to roll-out digital OTA transmitters in each of the markets served by the OMNI Television group of stations by the mandated deadline of August 31<sup>st</sup>, 2011; and
- Granting a longer licence term for the OMNI Television group of stations will allow more time for our newly acquired and licensed stations to operate as part of a multi-station group prior to the Commission considering new or additional terms and conditions for these licences. In our view, this will allow for a better understanding of the operational and financial realities of these stations.

In our application of January 12<sup>th</sup>, 2009 we requested a seven year licence term for the OMNI Television group of stations. We now wish to amend our original proposal and request a licence term for the OMNI Television stations that would expire at the end of the term for our tangible benefits commitments in relation to the OMNI Alberta and OMNI British Columbia television stations i.e. 2015. We believe this would allow the Commission to better assess the financial health of the stations and consider appropriate contributions to ethnic and third-language programming and the independent production sector post the expiration of our tangible benefits funding.

Furthermore, RBL no longer wishes to eliminate OMNI Television's current scheduling restrictions related to the peak prime time period between 8:00 pm and 10:00 pm. Given this request represents a material departure from the Commission's current licensing framework for ethnic television stations we are prepared to have it considered at the end of our proposed 6 year licence term for the OMNI Television group of stations. Accordingly, over the next licence term RBL is prepared to accept a standard condition of licence for each of the OMNI stations that requires the exhibition of no less than 75% ethnic content during the peak prime period of 8 p.m. to 10 p.m.

We submit that the remaining proposals set out in our January 12th, 2009 application remain appropriate and do not represent a significant departure from the current terms and conditions of our licences. As noted in our application, we believe our proposal to harmonize the regulatory obligations and conditions of licence of each OMNI station will ensure a balanced level of high-quality service in all of the markets we serve and will simplify the administration of these licences from both a licensee and CRTC perspective.

In order to assist the Commission in its evaluation of our application and our request for a longer licence term, our responses to the Commission's deficiency questions posed earlier in the application process are provided below. We also wish to confirm that we have not made any changes to the financial projections and estimated programming expenditures filed in our January 12<sup>th</sup>, 2009 application and are prepared to have them included on the public file subject to our specific requests for confidentiality.

### ***Removal of Restrictions on Broadcasting to Certain Groups/Languages***

- 14. On page 14 of the supplementary brief, RBL indicates that it anticipates little impact on competing ethnic specialty services should the below-mentioned restrictions on broadcasting to specific ethnic groups and languages in certain markets be eliminated.**
- a) OMNI.2: Maximum 19% of its total hours per broadcast year to any one language**
  - b) OMNI BC: Maximum of 20 hours per week between 6am and midnight in either of the Chinese and South Asian languages**
  - c) OMNI Alberta: Maximum of 18% of programming that can be offered in each of Cantonese and Mandarin**

**Please provide an estimate of the annual incremental revenues each station (OMNI.2, OMNI Alberta, OMNI BC) would receive should the Commission remove the current restrictions.**

RBL does not anticipate deriving any significant incremental revenues from the removal of these restrictions. Our request to remove these restrictions is based solely on our belief that the OMNI stations should have maximum programming flexibility to respond to the demands and tastes of our audiences. We believe this will allow us to better fulfill our mandate by offering a larger variety and diversity of ethnic programming. Given that the OMNI stations will continue to be subject to broad service requirements, the Commission can be assured that any additional Chinese or South Asian programming would not be disproportionate.

Moreover, we believe the purpose and rationale for these restrictions are no longer valid given the financial stability and maturity of the ethnic specialty sector; particularly services operating in South Asian and Chinese languages. Analog ethnic specialty services have access to two revenue streams and enjoy healthy and stable profit margins that either exceed or are on par with the sector. These services also have guaranteed carriage and distribution by all large cable and satellite distributors which ensures they are widely available to Canadians. They have also been afforded regulatory flexibility to provide local programming and access significant local advertising revenues. For these reasons we believe our request to remove these restrictions will have a negligible impact on ethnic specialty services.

### ***OMNI's Commitments to Independent Production***

OMNI Television's mandate is focused on local news and information. Each of our stations provide local ethnic programming that serves the needs and demands of a broad diversity of local communities in each of our markets. That mandate is fulfilled with both station-produced and independently-produced ethnic programming. Our station productions consist primarily of local newscasts, produced in various languages, while our independent productions consist primarily of community magazine programs.

In Toronto and Vancouver, our OMNI stations work with a number of independent producers on these types of local ethnic programs. In Toronto, OMNI.1 and OMNI.2 work with 26 independent producers who produce 27 different programs. In Vancouver, we work with 9 independent producers to produce 10 programs. Moreover, although OMNI Alberta was only launched in September 2008, we have already begun discussing new programs with local independent producers in both Calgary and Edmonton.

Our tangible benefits funding has provided us with an entirely new degree of involvement in Canadian independent production. Starting with OMNI.2, and more recently with OMNI Alberta and Channel m, we have been able to establish initiatives for the independent production of programs on a much larger scale. Prior to the OMNI.2 benefits there were no sources of funding for the production of Canadian, third-language documentaries or dramas. The OMNI initiatives have changed that. They have not only broadened the involvement of independent producers, providing many with their first opportunity in the Canadian production industry, but have also broadened the range and diversity of subject-matter for Canadian documentaries and dramas. A detailed report on our tangible benefits initiatives and spending is filed with the Commission annually.

Over the course of the next licence term, each of our OMNI stations will continue to work with independent producers, outside our tangible benefits funding, on the production of community magazine programs. We expect to further this involvement within the context of what is now a group of five ethnic television stations.

### ***OMNI Production Funds***

At this point, each of the OMNI funds still contains resources for the development and production of Canadian documentaries. While the OMNI.2 tangible benefits funding will be fully expended by 2010-2011 and will not be continued, the OMNI Alberta and Channel m, will continue for the duration of our proposed licence term. All future independent production initiatives in the area of documentaries and dramas will be limited to proposals and projects related to those benefits packages.

Our proposed schedule for the OMNI stations demonstrates the degree of our involvement with independent producers. As noted above, OMNI now provides airtime for 35 independent producers and with the OMNI Alberta stations we expect that number to grow further.

### ***Exhibition Requirements for Independent Production***

OMNI BC is subject to an expectation that it will provide 10 hours of independently-produced third-language programming each week; an expectation that it has consistently exceeded. For these reasons, we do not believe it is necessary to establish exhibition requirements for each of our OMNI stations. As described above, the very foundation of our ethnic television model is based on the participation of independent producers.

If you have any further questions, please do not hesitate to contact me directly.

Sincerely,

Susan Wheeler  
Vice-President, Regulatory Affairs

c.c: Caroline Poirier, CRTC  
Nanao Kachi, CRTC