



Broadcasting Decision CRTC 2003-602

Ottawa, 17 December 2003

Rogers Broadcasting Limited
Toronto, London and Ottawa, Ontario

Application 2002-0641-8
Public Hearing in the National Capital Region
26 May 2003

CJMT-TV (OMNI.2) Toronto – New transmitters in Ottawa and London

*The Commission **approves** an application by Rogers Broadcasting Limited to amend the licence for the television programming undertaking CJMT-TV, Toronto to add transmitters at Ottawa and London. CJMT-TV is generally known as OMNI.2.*

The application

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) to amend the licence for CJMT-TV, Toronto, which is generally known as OMNI.2, by adding transmitters at Ottawa and London. The applicant proposed that the Ottawa transmitter would operate on channel 14C with an effective radiated power of 435,000 watts and the London transmitter would operate on channel 20B with an effective radiated power of 18,800 watts.
2. In *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82, 8 April 2002 (Decision 2002-82), the Commission licensed CJMT-TV to provide an ethnic programming service for Toronto that would focus on the provision of programming for the Asian and African communities. These communities were not fully served by Roger's existing ethnic station CFMT-TV, which is now generally known as OMNI.1. Decision 2002-82 stipulated, however, that Rogers must submit an application for use of a television channel other than channel 52, which it had originally proposed to use. Rogers subsequently filed an application to use channel 44 for CJMT-TV in Toronto. The application was approved in *Proposed channel 44 in Toronto – OMNI.2*, Broadcasting Decision CRTC 2002-293, 13 September 2002.

Background

Decision CRTC 2002-82

3. Decision 2002-82 noted that, under Rogers proposal, approximately 28 hours of programming in eleven different languages that was generally targeted to Asian and African groups would be moved from CFMT-TV to the new station now known as CJMT-TV. The decision further noted that, during discussions at the hearing, Rogers

stated that, should its application be approved, it intended to apply for rebroadcasters for CJMT-TV in London and Ottawa so that viewers in those markets would not be deprived of the programming that had been moved from CFMT-TV. Rogers further noted that the cable systems in London and Ottawa (both also owned by Rogers) could add the signal of CJMT-TV as a distant Canadian signal as an interim measure until the new transmitters were established.

4. Decision 2002-82 further stated: “The Commission expects Rogers to take all steps necessary to maintain its service to Asian and African groups living in London and Ottawa.”

Broadcasting Decision CRTC 2002-292

5. In *Distribution of distant signal CFMT too (OMNI.2)*, Broadcasting Decision CRTC 2002-292, 13 September 2002 (Decision 2002-292), the Commission approved an application by Rogers for the cable systems serving the Ottawa and London areas to distribute CJMT-TV as a distant Canadian signal on the basic service for a period of six months.¹
6. Decision 2002-292 stated that the Commission considered that this temporary authority would allow the Commission sufficient time to consider and rule on applications for new transmitters of CJMT-TV in Ottawa and London, which would then qualify as a local or regional signal in those communities.

Broadcasting Notice of Public Hearing CRTC 2003-3

7. In *Broadcasting Notice of Public Hearing CRTC 2003-3*, 21 March 2003 (the Notice of Public Hearing), the Commission announced that it wished to discuss, at the public hearing, the impact that the extension of CJMT-TV’s signal would have on the Ottawa and London markets. The Commission stated:

Recognizing that an approval of this application would create an additional priority signal in the affected markets, the Commission will want to assess, in addition to the impact on other broadcasting services, the impact of cable channel realignment, especially in the National Capital Region where a balance of English- and French-language services is an important objective.

Interventions

8. The Commission received 41 interventions in support of the Rogers application. Included with the supporting interventions, which came from viewers, program producers and multicultural organizations, were 154 other letters of support. These interveners generally expressed support for the programming of CJMT-TV, and the support that it provides to independent producers, and considered that approving the applications would

¹ This authority was extended until 13 September 2003 in *Extension of the authorization to distribute OMNI.2*, Broadcasting Decision CRTC 2003-99, 20 March 2003 and, again, until 13 March 2004 in *Extension of the authorization to distribute OMNI.2*, Broadcasting Decision CRTC 2003-492, 2 October 2003.

expand the choice of multicultural programming available to viewers in the Ottawa and London markets, whether they received programming directly from over-the-air transmitters or from broadcasting distribution undertakings.

9. Interventions in opposition to the Rogers proposal to establish transmitters in London and Ottawa were received from Cable Public Affairs Channel Inc. (CPAC) and Paul McDermott. The concerns raised by CPAC are addressed in the discussion of the issues set out later in this decision.
10. Paul McDermott opposed Rogers' plan to use channel 20B to serve London. Mr. McDermott noted that WOIO Cleveland broadcasts on channel 19, WBWK Detroit broadcasts on channel 20 and that the use of channel 21 had been approved for digital television service in the London area. Mr. McDermott was therefore concerned that assigning channel 20 to a new local service would make it more difficult for residents in rural areas to receive clear over-the-air signals.
11. Rogers did not reply to Mr. McDermott's intervention. The Commission notes, however, that matters related to technical interference are within the jurisdiction of the Department of Industry (the Department). The Commission does not issue licences for new transmitters until the Department has advised it that an applicant's technical proposal is acceptable and that the Department will issue a broadcasting certificate for the undertaking.

The Commission's analysis and determinations

12. After considering the application in light of the Decisions 2002-82, 2002-292 and the Notice of Public Hearing, as well as the views expressed by interveners, the Commission has identified a number of issues that it considers are relevant to the application. These are explored below.

Impact on existing local television stations in London and Ottawa

13. At the hearing, the applicant estimated that the new rebroadcasting transmitters would generate an estimated \$10 million in new advertising revenues over the first seven years of operation. This revenue would come from advertisers interested in using CJMT-TV to reach a regional audience. Rogers considered that the effect of such growth on local stations would be negligible. Rogers further predicted that that CJMT-TV would eventually achieve an audience share of between 2% and 3% in Ottawa, but it did not consider that it would achieve these viewing levels for several years.
14. The Commission notes that CJMT-TV is an ethnic television programming service that attracts a niche audience. The Commission further notes that Rogers has made a commitment that it will not seek local advertising in Ottawa or London, and would accept a condition of licence to this effect. As well, the Commission notes that no interventions opposing the application were filed by local television stations serving Ottawa or London.

15. In light of the above, the Commission finds that approval of the Rogers application is unlikely to have a significant negative effect on local over-the-air television broadcasters serving the London and Ottawa markets.

Implications of approval on the channel line-up of broadcasting distribution undertakings

16. In the Notice of Public Hearing, the Commission indicated that it wished to assess the impact that approval would have on cable channel realignment, especially in the National Capital Region (NCR).

CPAC Intervention

17. CPAC opposed the Rogers application solely on the grounds of the effect that approval might have on the channel placement of CPAC's service on the cable systems in the NCR. CPAC was concerned that, if the Rogers application were approved, the CPAC service might be displaced from its current position, which is below the tiers of analog specialty services, and that it could end up on channel 65 or higher. CPAC argued that filling preferred channel positions of the basic cable service with non-local rebroadcasting transmitters was not necessarily in the public interest when other valuable services such as CPAC's might be displaced.
18. William C. Corbett, the Clerk of the House of Commons, also submitted a comment which stated that, while the House of Commons did not oppose the Rogers application, it shared CPAC's concern about the possible impact that approval of the proposed Ottawa transmitter could have on the channel placement of the CPAC service in the NCR. The intervener was concerned that a new channel position for CPAC might significantly affect the service's audience and, in turn, negatively affect public access to the broadcast of the House of Commons proceedings.

The Commission's analysis

19. Section 17(1) of the *Broadcasting Distribution Regulations* (the Regulations), which applies to Class 1 and Class 2 licensees of BDUs, sets out a list of services that must be distributed as part of a BDUs basic service. Section 17(2) of the Regulations provides that "A licensee of a cable distribution undertaking shall distribute the services in subsection (1) beginning with the basic band of its undertaking." Section 1 of the regulations defines the term "basic band" as "the 12 analog cable channels that are commonly identified by the numbers 2 to 13..."
20. The transmitters proposed by Rogers would qualify as "local television stations" in the Ottawa and London markets, and as such, would qualify for distribution under the priorities established in sections 17(1) and 17(2) of the Regulations. The Commission notes, however, that in its application, Rogers stated that it would accept carriage outside of the basic band, as long as CJMT-TV was carried below the first cable tier of discretionary services. The first tier of discretionary services begins at channel 29 in both Ottawa and London. Rogers considered that CJMT-TV was entitled to a channel placement that was near to that of other stations with local over-the-air transmitters.

21. The Commission acknowledges the concerns expressed by CPAC and the Clerk of the House of Commons about possible disruption of the channel placement of the CPAC service should the Rogers application be approved. The Commission notes, however, that on the Rogers cable systems in both Ottawa and London, there are currently channels below the first discretionary tier that are currently occupied by either exempt or non-Canadian programming services on which CJMT-TV could be distributed. Further, the Commission notes that CJMT-TV is now carried in Ottawa and London, as a distant signal, at a channel position that is below the first tier of discretionary services. It would, therefore, be possible for cable systems to carry CJMT-TV below the first discretionary tier without changing the channel position of licensed Canadian services. In light of the above, the Commission does not consider that concerns about changes in the channel line-up constitute an impediment to approval of the Rogers application.

Effect of approval on the establishment of additional stations

22. In *Denial of proposal to add transmitters of CITS-TV at London and Ottawa*, Decision CRTC 2001-698, 16 November 2001 (Decision 2001-698), the Commission denied an application by Crossroads Television System (CTS) to establish a rebroadcasting transmitter for CITS-TV in Ottawa. In denying the application, the Commission expressed concern that the licensing of an additional over-the-air transmitter could be potentially detrimental to the emergence of new local over-the-air French-language services for the Ottawa region. In light of the concerns expressed in Decision 2001-698, the Commission asked Rogers for its views on whether the approval of a new transmitter for CJMT-TV in Ottawa could be detrimental to the emergence of new local over-the-air French-language services in the Ottawa area.
23. Rogers indicated that, if its application were approved, there would still be three other drop-in channels² available in Ottawa, one of which could be used for another station, such as a French-language station.
24. The Commission agrees with Rogers, and considers that approval of the Rogers application would not prevent the licensing of a new local over-the-air French-language service to serve the National Capital Region, if a suitable application was presented in the future.

Programming initiatives for Ottawa and London

25. In Decision 2002-82, the decision that licensed CJMT-TV in Toronto, the Commission noted Rogers' proposal to spend \$50 million over a seven-year licence term on a variety of initiatives related to programming. The expenditures included:

² A drop-in channel is any television channel that is not included in the official database of the Canadian Television Allotments and Assignments, published and maintained by the Department of Industry.

- \$35 million for an Ontario independent producers initiative
 - \$7 million for production of a cross-cultural dramatic programming series
 - \$3 million for pilot development grants for underserved groups
 - \$2 million for community grants
 - \$2 million to fund the production of public service announcements
 - \$1 million for a national mechanism to support positive portrayal
26. All of the commitments, except for the \$2 million in community grants, were imposed as conditions of licence.
27. In the event that the current application were approved, Rogers stated that it would redirect, to Ottawa and London, 10% of the funding for the Ontario independent producers initiative, the pilot development grants, the public service announcements fund and the grants to community groups. Rogers indicated that this would ensure that independent producers in Ottawa and London had access to at least \$4.2 million in funding.
28. As well, Rogers made a commitment to produce at least six major multicultural programming specials each year in Ottawa and London. It also noted that the proposed transmitters would restore, to members of the Pan Asian ethnic groups in Ottawa and London that are not BDU subscribers, programming that was previously available on CFMT-TV but has been moved to CJMT-TV.
29. Rogers has also established a news bureau in Ottawa for CFMT-TV and CJMT-TV. Rogers indicated that the news bureau will employ four permanent full-time employees, as well as various free-lancers. Rogers indicated that it is exploring the possibility of establishing a London bureau, that it often records programming in London and that the Ottawa bureau is sensitive to the interests of London viewers.
30. In light of the above, and the views expressed in the many interventions supporting the application, the Commission is satisfied that the programming of CJMT-TV will be relevant to viewers in the ethnic communities in London and Ottawa.

Conclusion

31. The Commission **approves** the application by Rogers to amend the licence for the television programming undertaking CJMT-TV Toronto to add transmitters in Ottawa and London. The new transmitter in Ottawa will operate on channel 14C with an effective radiated power of 435,000 watts, and the new transmitter in London will operate on channel 20B with an effective radiated power of 18,800 watts.
32. The Commission reminds the licensee that, pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.

33. The transmitters must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 17 December 2005. In order to ensure that such a request is processed in a timely manner, it should be submitted in writing at least 60 days before this date.
34. The Commission also has no objections to Rogers' proposal to redirect 10% of the funding detailed in paragraph 25 above, for the Ontario independent producers initiative, the pilot development grants, the public service announcement fund and the grants to community groups, to Ottawa and London.
35. In accordance with commitments made by the licensee, it is a **condition of licence** that Rogers not broadcast local advertising in London and Ottawa on CJMT-TV. Further, Rogers is expected to ensure that its Advisory Board includes at least one member each from Ottawa and London. The Commission encourages Rogers to take the necessary steps to ensure that the programming featured on CJMT-TV reflects the needs and interests of the London as well as the Ottawa ethnic communities.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>