



## Broadcasting Public Notice CRTC 2007-43

Ottawa, 20 April 2007

### **Addition of NASA Television to the lists of eligible satellite services for distribution on a digital basis**

*The Commission approves a request to add NASA Television to the lists of eligible satellite services for distribution on a digital basis and amends the lists of eligible satellite services accordingly. The revised lists are available on the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Industries at a Glance".*

#### **Introduction**

1. The Commission received a request dated 3 August 2006 from Mountain Cablevision Limited (Mountain) for the addition of NASA Television (NASA TV), a non-Canadian satellite service, to the lists of eligible satellite services for distribution on a digital basis (the digital lists). Mountain Cablevision described the service as follows:

NASA Television is an English-language, free-to-air, public television service originating from the United States featuring documentaries, archival programming, and coverage of NASA missions and events.

2. In support of its request, Mountain provided, among other things, a sample daily program schedule for NASA TV, dated 1 August 2006.
3. The Commission subsequently issued *Call for comments on the proposed addition of NASA Television to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2006-126, 29 September 2006 (Public Notice 2006-126).

#### **Positions of parties**

4. The Commission received thirteen comments in response to Public Notice 2006-126. The following parties supported the request: (1) Campbell River TV, (2) the Canadian Cable Systems Alliance Inc. (CCSA), (3) Delta Cable Communications Ltd. and Coast Cable Communications Ltd., (4) Eastlink, (5) Norcom Telecommunications Ltd., (6) Quebecor Media Inc., (7) Rogers Cable Communications Inc., and (8) Shaw Communications Inc. (on behalf of Star Choice Television Network Incorporated and Shaw Cablesystems). The Commission also received supporting comments from educators and individuals.
5. In general, distributors (or their representatives) argued that the ability to offer attractive and diverse programming that appeals to a broad array of niche interests is critical in supporting the successful transition to a digital distribution platform. They submitted, among other things, that the addition of NASA TV to the digital lists would (1) expand

diversity and choice in services available to Canadians, (2) ensure that the Commission remains responsive to Canadians' interest in programming about NASA and Canada's direct role in space exploration, and (3) contribute to the reduction of signal piracy in Canada. In addition, they considered the programming of NASA TV to be entirely complementary to existing services, and that the service would not be totally or partially competitive with any Canadian pay or specialty service.

6. 2953285 Canada Inc. (Discovery), licensee of the analog specialty service The Discovery Channel and the Category 2 digital specialty service Discovery HD, opposed the request. Discovery objected to the addition of NASA TV on the grounds that the service would be partially competitive with both The Discovery Channel and Discovery HD.
7. Discovery considered that NASA TV overlaps with The Discovery Channel and Discovery HD with respect to its nature of service, genre of programming and program supply. Discovery submitted that programming available on NASA TV is also available on The Discovery Channel and Discovery HD. Discovery also noted that The Discovery Channel carries programming dedicated to the exploration of science and technology, nature and the environment and adventure, with 46% of its schedule dedicated to science and technology. Similarly, Discovery stated that Discovery HD offers a service devoted to science and technology, nature and the environment, adventure, animal behaviour, pet care, wildlife, travel and world cultures, with 48% of its schedule dedicated to science and technology. According to Discovery, the science and technology programming on these two licensed services regularly features space-related topics sourced directly from NASA TV programming. Discovery stated that a significant amount of that programming incorporates NASA TV footage and feed material, presenting it from a uniquely Canadian perspective.
8. As an example, Discovery indicated that The Discovery Channel's *Daily Planet*, a one-hour daily science magazine show, averaged two NASA-related science segments per episode, two NASA-related interviews per week and one field piece per week. More specifically, between 11 September 2006 and 12 October 2006, The Discovery Channel produced 19 science programming segments, eight interviews and one field segment, which Discovery described as "Canadian stories based on programming sourced from NASA TV." In addition, Discovery stated that The Discovery Channel offers coverage of important NASA and space-related special events (e.g., *Mars Live 1*, *Mars Live 2*, *Mars: Now and Beyond*, *Comet Special* and *Return to Flight*) and coverage such as live shuttle launches and Mars missions.
9. Discovery indicated that Discovery HD's current space-related feature programming includes programs such as *Alien Planet*, *Catching the Comet*, and *Inside the Space Station*, as well as the original Discovery production, *Solar Eclipse from Antarctica*. Discovery also referred to two programs that Discovery HD intends to air in the near future and two major space-related original series commissioned from independent Canadian producers in cooperation with NASA TV that it intends to air next year.

10. In Discovery's view, if added to the digital lists, NASA TV would compete head on with any live space event coverage, as well as with any other NASA TV programming, footage or clips used in original documentary and news programming offered by The Discovery Channel and Discovery HD.
11. Discovery also submitted that, given the genre overlap and shared programming between NASA TV and its two services, it is reasonable to conclude that NASA TV would appeal to and compete directly for the same target audience, specifically, the two categories males 18-49 and males 25-54. Thus, the addition of NASA TV would result in greater audience fragmentation for the two above-noted Canadian services, affecting their ability to contribute to the Canadian broadcasting system.
12. Discovery argued generally that the inclusion of more non-Canadian services has several negative consequences for licensed Canadian programming services and the Canadian broadcasting system in general, including:
  - greater fragmentation of audiences available to licensed Canadian programming services;
  - additional demand on satellite capacity;
  - increased pressure on existing programming supply relationships with non-Canadian suppliers; and
  - discouragement of the formation of partnerships between licensed Canadian services and non-Canadian services.
13. In addition, Discovery stated the view that non-Canadian services make no contribution toward the creation and presentation of Canadian programming, a key objective of the *Broadcasting Act*.

### **Reply from the sponsor**

14. Mountain submitted that the assertion that NASA TV would significantly add to audience fragmentation is without basis. Mountain argued that NASA TV is a niche service that would not garner the broad audience that Discovery has, and that its impact would be negligible. Further, while NASA TV would be a discretionary digital service if approved, The Discovery Channel is an established analog service in a high penetration tier, with programming and content that is significantly broader and more popularized than the narrow mandate that constitutes NASA TV's daily fare.
15. As to satellite capacity, Mountain indicated that NASA TV "is available free to air off a US satellite and is accessible to all operators by direct pickup with no transport cost at all."

16. With respect to programming supply relationships and potential partnerships with Canadian services, Mountain noted that NASA TV's stated policy is that it will not enter into any exclusive or monopolistic relationship, and that its programs are available to anyone. Given this policy, no Canadian entity would be deprived of NASA TV's programming if NASA TV is added to the lists.
17. In its reply, Mountain included The Discovery Channel's programming schedule for 6 November 2006. Based on this schedule, Mountain stated that there is no substantial evidence of programming or genre overlap with NASA TV. Rather, Mountain argued that The Discovery Channel covers an incredible variety of topics in a typical day. Its schedule, dedicated to the exploration of science and technology, nature and the environment and adventure, is broad and sweeping, with the vast array of topics and material including such programs as *Canada's Worst Driver Season 2*, *The Battle for Rome*, *Sherlock Holmes* and *How Fortune Cookies are Made*.
18. In terms of Daily Planet's use of NASA TV footage, Mountain stated that the 28 program segments cited by Discovery that aired between 11 September and 12 October 2006 represented only 1%<sup>1</sup> of Discovery's total programming for that period. As further evidence of the broad nature of the programming, Mountain provided a description from Discovery's Web site, which states in part:

Daily Planet is a one hour long science magazine show that brings you the world like you have never seen it before.... From movies to microbiology, space to sports, food to hi-tech gizmos, Jay and Natasha [the hosts] make sense of the science of everyday life...and they make it fun too.... Daily Planet provides a fast-paced enlightening and entertaining look at what is happening on (and off) our planet.

19. Further, Mountain considered that the target audience of both The Discovery Channel and Discovery HD is broad and that the services appeal to a wide spectrum of viewers, whereas NASA TV programming appeals to a smaller target audience, because of its singular dedication to the space program and scientific programming focused on space exploration and NASA missions.
20. Based on its review of the schedule and program descriptions, Mountain considered that 99% either of The Discovery Channel or of Discovery HD has little or nothing to do with the narrower focus of NASA TV.
21. Mountain also stated in its reply that the addition of NASA TV would:
  - permit Canadians, on a full-time basis, to experience living with Canadian astronauts through the daily rigours on a complete space mission;

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<sup>1</sup> Mountain makes this calculation based on the assumption that each segment represented 10 minutes in a one-hour *Daily Planet* program.

- provide an opportunity for teachers and students to listen to and to record the exploits of heroes like Marc Garneau and Steve MacLean; and
- give Canadians access to world class lectures and lessons not available anywhere else.

### **Commission's analysis**

22. In *Call for proposals to amend the lists of eligible satellite services through the inclusion of additional non-Canadian services eligible for distribution on a digital basis only*, Public Notice CRTC 2000-173, 14 December 2000 (Public Notice 2000-173), the Commission stated that all proposals for the inclusion of a non-Canadian service on the lists would be assessed in the context of the Commission's policy that generally precludes the addition of new non-Canadian satellite services if the Commission determines them to be either totally or partially competitive with Canadian specialty or pay television services. Further, the Commission stated that, in applying this policy, it would take into account all specialty and pay television programming undertakings whose licence applications have been approved by the Commission, including all launched and unlaunched Category 1 and Category 2 specialty and pay services.
23. The Commission has used a case-by-case approach in assessing whether or not a non-Canadian service proposed for addition to the lists would be competitive with an authorized Canadian service. Factors considered in the Commission's assessment of competitiveness include the nature of the service, the genres of programming provided by the relevant Canadian and non-Canadian services and the target audience, taking into account the language of the service. The Commission also considers relevant the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
24. The Commission compares the factors noted above as they relate to the relevant Canadian services and the sponsored non-Canadian service in order to determine the amount of overlap between the services, and thus the extent to which the non-Canadian service might compete with the Canadian services. The more significant the overlap, the more likely it is that the non-Canadian service will be found to be competitive with the Canadian services.
25. The Commission stated in Public Notice 2006-126 that it would rely primarily on the comments filed in identifying the Canadian pay and specialty services with which NASA TV might compete, and which therefore should be included in its assessment of the competitiveness of the service. The public notice also stated that parties wishing to argue that NASA TV would be competitive should therefore name the specific Canadian pay or specialty services with which they consider NASA TV would compete, and provide details, such as a programming comparison, to support their views.

26. With respect to the comments provided by Discovery, the Commission notes that NASA TV describes itself as a free-to-air public television service, featuring documentaries, archival footage, and coverage of NASA missions and events. NASA TV makes available its still images, audio files and video for educational or informational purposes. By contrast, in its most recent licence renewal decision,<sup>2</sup> The Discovery Channel describes its service as “a national English-language specialty service dedicated to the exploration of science and technology, nature and the environment and adventure.” Discovery HD describes itself as “an undertaking devoted to science and technology, nature, and the environment, adventure, animal behaviour, pet care, wildlife, travel and world cultures.”
27. Based on the nature of service for these services, the Commission considers that NASA TV is more specifically targeted than The Discovery Channel or Discovery HD, and occupies a considerably narrower programming niche.
28. Discovery also stated that, given the genre overlap and shared programming, NASA TV would appeal to the same target audience as its two services, which comprises two audience segments: males aged 18-49 and males aged 25-54. In the Commission’s view, NASA TV’s target audience may be differentiated sufficiently from the Discovery Channel or Discovery HD. For example, NASA TV has a large educational component, with five hours per day of regularly scheduled educational programming specifically designed for classroom learning featuring programs designated for specific grade levels (i.e., kindergarten to post secondary). In the Commission’s view, NASA TV’s significant educational component and its dedicated emphasis on science and learning in the context of NASA-related programming and events is a clear indication that its target audience is not limited to the audience segments noted for The Discovery Channel or Discovery HD.
29. The Commission notes that Mountain provided a programming schedule for The Discovery Channel for 6 November 2006. Based on the programming day, it would appear that most of the potential for programming overlap between NASA TV and The Discovery Channel pertains to the program *Daily Planet*, which on the day in question represented approximately 12.5% of the broadcast day.<sup>3</sup>
30. *Daily Planet* is described on the record of this proceeding as a program that will “demystify the mysteries of science and bridge the gap between the lab and your living room. ....From movies to microbiology, space to sports, food to hi-tech gizmos, Jay and Natasha make sense of the science of everyday life.” The Commission notes that, with such a broad program description, *Daily Planet* has the potential to cover subject matter that goes well beyond space-related programming. Discovery indicated that the program contains two NASA-related science segments per episode, two NASA-related interviews per week and one space-related field piece per week. Assuming that Mountain is reasonably accurate in its assessment that each segment represents an average of approximately 10 minutes in a one-hour *Daily Planet* program, it would appear that

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<sup>2</sup> Licence renewal for *The Discovery Channel*, Decision CRTC 2001-733, 29 November 2001

<sup>3</sup> An examination of programming schedules available on The Discovery Channel’s Web site would indicate that the programming schedule for 6 November 2006 is generally representative of the service.

NASA-related programming on *Daily Planet* would amount to a very small proportion of The Discovery Channel's overall schedule.

31. Discovery indicated that its estimates of programming overlap do not account for any special-event coverage such as live shuttle launches or Mars missions. However, it did not provide any detailed information with respect to the extent to which it airs such coverage or how such coverage is used by The Discovery Channel or Discovery HD. Discovery also provided examples of program titles that it intends to air on The Discovery Channel and on Discovery HD in the near future, but did not provide sufficient details (e.g., program descriptions, program length, air dates, etc.) to permit the Commission to include these programs in its assessment of competitiveness. In any event, the Commission generally considers it appropriate to base its assessment on programming currently aired on the relevant Canadian service, and notes that to include information as to future programming may not accurately reflect the service as it is actually offered at the time of the proceeding. Consequently, the Commission did not factor in this evidence in its assessment of whether or not to approve the request to add NASA TV.
32. In light of the above, the Commission finds that the overlap between NASA TV and The Discovery Channel or Discovery HD is minimal and that NASA TV is sufficiently different in terms of target audience, service orientation, programming genres and programming to be considered neither partially nor totally competitive with either The Discovery Channel or Discovery HD.
33. In terms of Discovery's general concern with respect to the impact of the entrance of non-Canadian services on program supply, the Commission notes that, for a non-Canadian service to be added to the digital lists, the sponsor of the non-Canadian service must provide an undertaking from the non-Canadian service provider that it does not hold, will not obtain, nor will it exercise, preferential or exclusive programming rights in relation to the distribution of programming in Canada. The Commission notes that Mountain, the sponsor of NASA TV, filed such an undertaking from the non-Canadian service provider.
34. With respect to Discovery's concern that the addition of non-Canadian services discourages the formation of partnerships between licensed Canadian services and non-Canadian services, the Commission notes that NASA TV makes its signal and all of its programming available free of charge to any party requesting it.
35. In terms of Discovery's concern regarding scarce satellite capacity, the Commission notes that the addition of non-Canadian services to the lists, including NASA TV, does not necessarily result in the use of such capacity. As stated on the record of this proceeding, NASA TV is available free-to-air off a U.S. satellite and can be accessed directly by all operators.

## Conclusion

36. In light of all the above, the Commission **approves** the addition of NASA Television to the digital lists and amends the lists of eligible satellite services accordingly. The lists of eligible satellite services are available on the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Industries at a Glance" and may be obtained in hard copy on request.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*