



## Broadcasting Public Notice CRTC 2006-105

Ottawa, 21 August 2006

### **Addition of Military Channel to the lists of eligible satellite services for distribution on a digital basis, and deletion of Discovery Wings**

*The Commission finds that the non-Canadian, English-language service previously known as Discovery Wings, in addition to changing its name to Military Channel, has made fundamental changes to its format so that it is no longer the same service as was approved for distribution by the Commission. The Commission **approves** the addition of Military Channel to the lists of eligible satellite services for distribution in Canada, and amends those lists 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."*

#### **Background**

1. In *Call for comments on proposals by sponsors for the addition of non-Canadian satellite services to a digital list of eligible satellite services*, Public Notice CRTC 2001-33, 2 March 2001, the Commission requested comments on the addition of Discovery Wings, a non-Canadian service, to the lists of eligible satellite services for digital distribution (the digital lists). In that public notice, the service was described as:

A 24-hour programming service in the English language devoted exclusively to aviation and space enthusiasts [that] provides information on the past, present and future of air travel. It explores everything from airplanes, helicopters and gliders to rockets.
2. The Commission authorized the distribution of Discovery Wings and added the service to the digital lists in *Revised lists of eligible satellite services*, Public Notice CRTC 2001-82, 13 July 2001.
3. According to an announcement on the website, [discovery.com](http://discovery.com), Discovery Wings was renamed Military Channel on 10 January 2005. Discovery Communications, Inc. (Discovery), the owner and operator of Military Channel, described the service as one that focuses on all aspects of the armed forces, military strategies and personnel throughout the ages, including personal stories of servicemen and women and in-depth explorations of military technology, aviation and history.
4. Under the policy set out in *Revised Lists of Eligible Satellite Services*, Public Notice CRTC 1997-96, 22 July 1997, when a non-Canadian service changes its format so as to become competitive with a Canadian pay or specialty service, the Commission will consider removing it from the lists. This policy was reiterated in *Distribution of Spike TV by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2005-9,

27 January 2005 (Public Notice 2005-9). In Public Notice 2005-9, the Commission also stated that, where a service undergoes such fundamental changes as occurred in that case, so that it is no longer the same service as was approved for distribution by the Commission, the distribution of that service similarly requires the approval of the Commission.

5. On 20 May 2005, Commission staff sent a letter to the Canadian Cable Telecommunications Association (CCTA), the original sponsor of Discovery Wings, to obtain the CCTA's views as to whether the authorization to distribute Discovery Wings extended to Military Channel. The CCTA was asked to comment on, among other things, whether the transition from Discovery Wings to Military Channel simply involved a change of the service's name or whether the service's format had also changed in such a way as to make it totally or partially competitive with one or more authorized Canadian pay or specialty services, including Category 1 and Category 2 services. The CCTA was also asked, in the event that it regarded any format changes as fundamental, whether it intended to sponsor the addition of Military Channel to the digital lists.
6. On 31 May 2005, the CCTA provided its response, along with a letter from Discovery. The CCTA submitted that the transition from Discovery Wings to Military Channel was a change in name only. The CCTA stated further that the programming of Discovery Wings had a strong military focus, with additional non-military aviation and space programming. Based on a comparison of programming schedules dated before and after the change, the CCTA indicated that the same broad genre of programming continued to dominate Military Channel's schedule. In fact, according to the CCTA, most of the specific programs that were broadcast on Discovery Wings continued to be central to the programming schedule of Military Channel.
7. On this basis, the CCTA submitted that the Commission's authorization to distribute Discovery Wings extends to Military Channel. The CCTA requested that the Commission, consistent with the approach it has taken in the past when only the name of a service has changed, amend the digital lists to reflect the change in the name of the service from Discovery Wings to Military Channel.
8. In *Distribution of The Military Channel – Call for comments*, Broadcasting Public Notice CRTC 2005-91, 19 September 2005, the Commission called for comments on the CCTA's request, and in particular on whether the change from Discovery Wings to Military Channel represented only a name change or, rather, a change in the nature of service. The Commission also invited parties to comment as to whether or not Military Channel was competitive with one or more Canadian pay and specialty services, and, if so, what measures might be adopted in respect of the service.

### **Positions of parties**

9. The Commission received comments from Rogers Cable Communications Inc. (Rogers), Star Choice Television Network Inc. (Star Choice), Cogeco Cable Inc. (Cogeco) and two individuals. All of these parties supported the CCTA's request.

10. Rogers stated that the transition reflects a name change and a refocus and broadening of the service's branding. In its view, the scope of the programming had not fundamentally changed. Rogers also added that it was unaware of any complaints from subscribers related to this change, and that the removal of the service would harm subscribers who receive and enjoy the service. Further, Rogers considered that Military Channel was not competitive with any Canadian pay or specialty service.
11. Star Choice also supported the CCTA's request and stated that it has distributed Discovery Wings since 2003. In its view, the programming on the service has always had a very strong military theme.
12. Cogeco also submitted that Discovery Wings had simply changed its name to Military Channel and that there was no reason to treat this situation as being any different from other situations where the Commission has amended the name of a service on the lists. Cogeco considered this name change to be a "housekeeping matter" that did not involve any significant public policy or procedural issues.
13. The two individuals who submitted comments sought assurance that the service would remain available, and urged the Commission to authorize the name change and the continued distribution of the service.

#### **CCTA's reply**

14. In its reply, the CCTA noted the comments filed in support of its request. Given the lack of opposition, the CCTA submitted that it would be appropriate for the Commission to proceed expeditiously to amend the digital lists to reflect the name change from Discovery Wings to Military Channel.

#### **Commission's analysis and determinations**

##### **Are Discovery Wings and Military Channel the same service?**

15. Based on a comparison of the programming schedules provided by the CCTA, the Commission finds that there are a number of differences between the program offerings of Discovery Wings and Military Channel. More specifically, the Commission notes that more than half of the Discovery Wings programming schedule consisted of aviation-themed programming unrelated to military issues or topics. In contrast, Military Channel does not devote any of its schedule to programming having non-military aviation as its theme, and devotes over half of its schedule to programming that does have military aviation as its theme. Further, almost half of Military Channel's programming consists of military programming unrelated to aviation.
16. The Commission considers that the elimination of the non-military aviation programming component, the increase in the military aviation programming component and the introduction of a military non-aviation programming component, amount to a change in format to the service formerly known as Discovery Wings.

17. The Commission further finds this change to be fundamental, so that Military Channel is not the same service as was approved for distribution, but rather is a new and distinct service whose distribution requires the Commission's approval. Accordingly, the Commission considers it appropriate to assess this new service, Military Channel, and its addition to the digital lists, in the light of its existing approach to the addition of such services.

**Is Military Channel competitive with Canadian pay or specialty services?**

18. In assessing requests to add new English- and French-language services to the digital lists, it has been the Commission's practice to consider whether or not the new service would be partially or totally competitive with Canadian pay and specialty services, including Category 1 and Category 2 services.
19. In undertaking such an assessment, the Commission generally considers factors such as the nature of the service, the genre of programming it offers, its target audience and language, as well as the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service. The Commission compares these factors as they relate to relevant Canadian pay or specialty services and the sponsored non-Canadian service in order to determine the amount of overlap between the services, and thus the extent to which they might compete with each other.
20. As noted in *Call for comments on the proposed addition of Planète Thalassa to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2006-103, 18 August 2006 (Public Notice 2006-103), the Commission will rely primarily on the comments filed to identify the Canadian pay and specialty services with which non-Canadian services might compete, and which therefore should be included in its assessment of the competitiveness of the service. In Public Notice 2006-103, the Commission stated that parties wishing to argue that a non-Canadian service would be competitive with Canadian pay and specialty services should name the specific Canadian pay or specialty services, and provide details, such as a programming comparison, to support their views.
21. In the absence of such comments in this proceeding, the Commission's assessment indicates that the only licensed Canadian specialty service with which Military Channel might potentially compete is History Television. The programming offered by History Television consists primarily of historical documentaries, movies, mini-series and history programs, with an emphasis on dramatic and documentary programs relating to Canada's past, and with only a small amount of military programming. Thus, the Commission considers History Television's nature of service to be much broader than that of Military Channel, whose programming is all related to military themes.

22. The Commission also notes that History Television is required to place special emphasis on dramatic and documentary programs relating to Canada's past, and to provide minimum levels of 50% Canadian content in its programming during the day and 40% in the evening. In addition, none of the programs on Military Channel are currently broadcast by History Television.
23. In light of the facts above, the Commission considers that there is likely little overlap between Military Channel and History Television, and that Military Channel is neither totally nor partially competitive with History Television.
24. With respect to other Canadian services, the Commission notes that there is, at present, an authorized, but as yet unlaunched, Category 2 service named The Armed Forces Network. This service was authorized in *The Armed Forces Network – Category 2 specialty service*, Broadcasting Decision CRTC 2003-136, 1 May 2003 (Decision 2003-136). At the request of The Armed Forces Network, the Commission extended this authorization to 1 May 2008 by letter dated 13 April 2006.
25. Given that The Armed Forces Network has not launched, it has not been possible for the Commission to make a detailed comparison of the service's programming schedule and that of Military Channel. The Commission also notes that neither the owner of The Armed Forces Network nor any representative filed comments in this proceeding, and that none of the parties who filed comments raised any competitive concerns with respect to Military Channel. As a result, the Commission has been obliged to base its competitive assessment primarily on the proposed nature of service for The Armed Forces Network, which includes the description of the service and the proposed categories of programming.
26. In Decision 2003-136, the prospective service of The Armed Forces Network was described as one that would be:

... devoted to programming that focuses on the armed forces as a central theme. The programs shall feature topics such as world-wide conflicts, the manufacture of weapons, inside the army, navy and airforce, history of wars, the men and women behind war, world leaders, religious conflict, combating terrorism, underground movements, world peace, political warfare, hot beds of war and the future of war.
27. The Commission also specified in Decision 2003-136 that, by condition of licence, the programming broadcast by the service must be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*:  
(2)(a) Analysis and interpretation; (2)(b) Long-form documentary; (3) Reporting and actualities; (7)(a) Ongoing dramatic series; (7)(c) Specials, mini-series or made-for-TV feature films; (7)(d) Theatrical feature films aired on TV; (7)(g) Other drama;  
(11) General entertainment and human interest; (12) Interstitials; and, (13) Public service announcements.

28. Based solely on the nature of service, it is the Commission's view that Military Channel would likely be partially competitive with The Armed Forces Network. However, comparing the nature of service of The Armed Forces Network and Military Channel, and taking into account the actual programming offered by Military Channel, the Commission notes several differences between the two services. For example, while The Armed Forces Network is authorized to provide programming in some of the same categories as Military Channel, Military Channel's programming schedules did not contain feature films or drama programming and had a strong emphasis on documentary and informal education programming. The schedules provided by Military Channel also did not contain any programming in such topic areas as world leaders, underground movements, and religious conflict.
29. The Commission recognizes the imprecision inherent in assessing competitiveness based only on the nature of service of an unlaunched service, and notes that no party filed comments or information that would permit the Commission to conduct a more substantive assessment. The Commission also acknowledges the potential disruption that could result for subscribers (including former Discovery Wings subscribers currently receiving Military Channel) should Military Channel not be authorized for distribution. Accordingly, on balance, the Commission is not persuaded that it would be appropriate to deny the addition of Military Channel to the lists on this basis.
30. In light of the above, the Commission **approves** the addition of Military Channel 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>*