



## Broadcasting Public Notice CRTC 2006-75

Ottawa, 15 June 2006

### Addition of HDNet to the lists of eligible satellite services for distribution on a digital basis

*The Commission **approves** a request to add HDNet, a non-Canadian English-language high definition (HD) service, 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 from the Canadian Cable Telecommunications Association (CCTA) to add HDNet, a high definition (HD) non-Canadian satellite service, to the lists of satellite services eligible for distribution on a digital basis (the digital lists). The CCTA described HDNet as follows:

**HDNet:** A programming service offering high definition (HD) programming 24 hours per day, seven days per week, using 1080i format. HDNet currently offers several original series, including music and news programs. HDNet acquires programming from several sources, including Paramount, Warner and Sony. Live HDNet sports productions include NHL games, major league soccer games, horse racing, auto racing, boxing, football and basketball games.

2. The Commission subsequently issued *Call for comments on a request by the CCTA for the addition of HD Net and Discovery HD Theater to the lists of satellite services eligible for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-61, 10 August 2004 (Public Notice 2004-61). The Commission noted that it assesses such requests against the background of its policy that precludes the addition to the lists of non-Canadian satellite services that can be considered either totally or partially competitive with Canadian specialty or pay television services. The Commission noted further that, in applying this policy, it takes into account the services of all specialty and pay television programming undertakings whose licence applications have been approved by the Commission, including all of the launched and unlaunched pay television and Category 1 and Category 2 specialty programming services. The deadline for comments established in Public Notice 2004-61 was subsequently extended three times.
3. By letter dated 31 October 2005, the CCTA withdrew its request for the addition of Discovery HD Theater to the digital lists. On 1 March 2006, Rogers Cable Communications Inc. (Rogers) advised that, with the wind-up of the CCTA announced on 10 February 2006, it would take over as the Canadian sponsor of HDNet.

## Positions of parties

4. Broadcasting distribution undertakings (BDUs), including Rogers, Cogeco Cable Inc. (Cogeco), ExpressVu<sup>1</sup> and Quebecor Media Inc. (QMI) supported the addition of HDNet.
5. Rogers and QMI stated that Canadian services provide little HD content. They also suggested that expanding the availability of HD programming would provide an incentive for Canadian consumers to adopt HD technology in their homes and subscribe to the HD channel offerings of BDUs.
6. Further, Rogers, ExpressVu and QMI noted that more non-Canadian HD services such as HDNet are needed to keep the Canadian distribution industry competitive, on a North American basis, by helping BDUs to retain their existing HD subscribers and to attract additional customers who might otherwise choose to access HD programming through U.S. satellite services. ExpressVu added that only a small percentage of HDNet's schedule consists of content that is duplicative of programming currently exhibited by Canadian licensees.
7. Two Canadian production companies, OMNI Film Productions Limited (OMNI) and HDSD Productions, filed comments in support of the request to add HDNet. OMNI submitted that adding services like HDNET to the digital lists would enable more Canadians to see the enormous benefits associated with HD television technology and that this, in turn, would enhance the penetration of HD sets and assist in the development of a market large enough to support Canadian HD services.
8. The Commission also received comments from more than 60 individuals in support of the addition of HDNet to the digital lists. Many of these individuals expressed disappointment with the limited amount of HD content currently available in Canada, and indicated that the addition of HDNet would improve this situation. Some individuals also commented that competition from non-Canadian services would prompt Canadian services to offer more HD programming.
9. The Director's Guild of Canada (DGC), the Canadian Film and Television Production Association (CFTPA) and Alliance of Canadian Cinema Television and Radio Artists (ACTRA) filed comments opposing the addition of HDNet. According to these parties, the need for services such as HDNet is not apparent, as those programming services that are currently licensed or authorized, including Canadian conventional and specialty services, as well as U.S. conventional television networks, are increasingly providing HD content. The DGC and the CFTPA also stated that HDNet's nature of service and the program genres that make up its schedule greatly overlap with those of numerous Canadian pay and specialty services, including Bravo!, CBC Newsworld, The Score and SportsNet.

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<sup>1</sup> Bell ExpressVu Inc., (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership.

10. The Canadian Association of Broadcasters (CAB) also opposed the addition of HDNet to the digital lists on the grounds that the service would be directly competitive with Canadian specialty and pay services, including TSN, SportsNet, The Score, Prime TV, MuchMusic and The Movie Network (TMN). Further, the CAB stated that the approval of non-Canadian services such as HDNet could discourage partnerships between non-Canadian broadcasters and Canadian programming services, and could delay or prevent the launch of Canadian HD pay and specialty services. The CAB also submitted that approval of non-Canadian services such as HDNet would raise capacity issues with respect to the ability of BDUs to carry a preponderance of Canadian services.
11. Global Television Network Inc. (Global)<sup>2</sup>, CTV Inc. (CTV) and CHUM Limited (CHUM) also opposed the addition of HDNet to the digital lists. They expressed the view that HDNet was distinctive, not by its program content, but by the technical format of the service. They added that, if the only unique quality of a non-Canadian service is its HD format (a technical distinction as opposed to a cultural or competitive distinction), then services like HDNet will naturally increase the competition faced by Canadian pay and specialty services as the numbers of HD consumers grow.
12. CTV submitted that the addition of a general interest service such as HDNet to the digital lists would be inconsistent with what it described as the Commission's general practice of authorizing well-defined, narrowcast non-Canadian services for linkage with Canadian specialty services. CTV stated that, if general interest services such as HDNet are approved, Canadian broadcasters should also be permitted to operate general interest HD specialty services.
13. As an alternative, CTV proposed that, if the Commission authorizes the distribution of HDNet, certain conditions be imposed with respect to the service's entry and continued inclusion on the digital lists in order to mitigate HDNet's competitive impact. Among other things, CTV proposed that BDUs distributing HDNet be required to black out programs for which HDNet does not hold Canadian rights, even in the absence of a request by the Canadian rights holder to do so, or notification from HDNet. CTV's proposed conditions also included a maximum limit of 15% on HDNet's weekly programming devoted to live-event sports coverage. According to CTV, HDNet is "already partially competitive with TSN." CTV expressed concern that the service might evolve from a general interest service into a more sports-based service in the future, thus becoming more competitive with TSN. Further, CTV proposed a requirement that all licensed Canadian HD services be combined with HDNet in one large HD package, unless a Canadian programming service consented to a different arrangement for its distribution.
14. The Canadian Broadcasting Corporation (CBC) and CTV stated that it would be premature for the Commission to consider the CCTA's proposal to add HDNet prior to its announcement of the framework for the migration of analog Canadian pay and

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<sup>2</sup> On 1 September 2005, after the filing of its comments, Global Television Network Inc. amalgamated with Global Communications Inc., CanWest Media Inc. and certain other CanWest subsidiaries to continue under the name CanWest MediaWorks Inc.

specialty services to digital distribution and the framework for the licensing and distribution of HD pay and specialty services.<sup>3</sup> CTV stated further that, if the Commission decides to add non-Canadian HD services to the digital lists before issuing the HD licensing and distribution framework, parties should be provided with an opportunity to make further submissions on the addition of these services once that framework was in place.

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

15. In addition to its own reply, the CCTA provided reply comments from HDNet. According to the CCTA and HDNet, HDNet is neither totally nor partially competitive with any Canadian service because of its 24-hour true HD format. HDNet stated that it operates a general interest service in which no one genre of programming predominates. HDNet added that its nature of service, target audience, programming and genre of programming do not overlap with Canadian pay and specialty services.
16. The CCTA and HDNet suggested that the addition of HDNet to the digital lists, rather than delay or prevent the launch of Canadian HD specialty services, would serve as a catalyst for the Canadian broadcasting industry to hasten its transition to HD, and encourage consumers to purchase HD sets and HD set-top boxes.
17. HDNet stated that it had signed an undertaking with respect to program rights, and that it has no plans to change the nature of its service. HDNet added that, if authorized for distribution in Canada, it would enter the Canadian market under terms established by the Commission, and would abide by those terms.
18. The CCTA submitted that adding non-Canadian HD services on an incremental basis would not affect the availability or cost of HD programming, or discourage partnerships between Canadian and non-Canadian services. In support of this view, the CCTA cited the recent partnership between Discovery U.S. and CTV to form the Category 2 service, Discovery HD Theatre.
19. In response to concerns related to a potential shortage of capacity, the CCTA cited a study filed by the CAB in response to *Call for comments on a proposed framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2004-58, 6 August 2004 (Public Notice 2004-58) and *Determinations with respect to the establishment of rules to govern the distribution of specialty services on the basic service of fully digital cable undertakings; and call for proposals for a framework to guide the migration of pay and specialty services from analog to a digital distribution environment*, Broadcasting Public Notice CRTC 2005-1, 7 January 2005, indicating that it is the business proposition associated with HD, and not a shortage of satellite capacity, that is the greatest impediment to HD conversion by programmers. Further, the CCTA argued that improvements in video compression and

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<sup>3</sup> The two policy frameworks referred to by the CBC and CTV are set out in *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006, and *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74 of today's date.

satellite modulation will vastly increase the carrying capacity of existing satellites, as well as of the two new satellites, Nimiq 3 and Anik F3, to accommodate the projected capacity demand associated with new digital and HD services.

20. The CCTA strongly disagreed with parties, such as the CBC, who suggested that it is premature to consider the addition of non-Canadian HD services. The CCTA submitted that such a delay would not be in the public interest. It also stated that to ask consumers to forego an existing service dedicated to true HD content until Canadian specialty services are ready to make a comparable investment in a 24-hour HD service would be unfair to viewers who have made the substantial investment in HD television sets and related equipment.

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

### **The Commission's approach**

21. The Commission's approach to its consideration of requests for the addition of non-Canadian English- and French-language services to the digital lists was initially set out 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 it would assess such requests in the context of its general policy which, among other things, precludes the addition of a new non-Canadian satellite service that can be considered either totally or partially competitive with Canadian specialty or pay television services, including all of the Category 1 and the launched and unlaunched Category 2 specialty and pay television services.
22. The Commission uses a case-by-case approach to determine whether or not a non-Canadian service proposed for addition to the lists would be competitive with an authorized Canadian service. Factors considered by the Commission in its assessment of the competitiveness of a non-Canadian service include the nature of the service, its language of operation, the genres of programming provided by the Canadian services with which it might compete, and its target audience. The Commission also considers relevant the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
23. The Commission assesses the factors noted above in order to determine the amount of overlap between the sponsored non-Canadian service and the relevant Canadian 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.
24. In *Distribution of Spike TV by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2005-9, 27 January 2005 (Public Notice 2005-9), the Commission dealt with a request by the CAB to remove Spike TV, a non-Canadian service directed to men. The Commission found that there was insufficient evidence to conclude that Spike TV was competitive with Canadian specialty services. In its analysis, the Commission

noted that Spike TV was a broadly based service that focused on programming for men and, as such, contained programming from a variety of genres. The Commission indicated that, while Spike TV would overlap to some extent with Canadian specialty services in some programming genres, a limited overlap would not be sufficient for it to conclude that the service is competitive, provided no one genre predominates.

25. In Public Notice 2004-61, the Commission invited those parties filing comments to take into account the proposed HD licensing and distribution framework set out in Public Notice 2004-58, and stated that its assessment of the CCTA's request might be made in light of any determinations resulting from that proceeding.
26. In *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74 of today's date (Public Notice 2006-74), the Commission stated that it will continue to apply its current tests in its consideration of requests to add any new non-Canadian HD service to the digital lists. With regard specifically to English- and French-language services, the Commission stated that competitive aspects of a non-Canadian HD service proposed for addition to the lists, including those related to the HD format, will be addressed at the time the request to add the service is considered.
27. As noted above, some parties argued that HDNet is at least partially competitive with certain Canadian pay and specialty services and, in particular, with CBC Newsworld, Bravo!, Showcase, TMN, Prime, YTV, MuchMusic, and with the sports services of TSN, The Score and SportsNet. The issue of HDNet's competitiveness with individual Canadian services is examined below.

#### **Competitiveness of HDNet with individual Canadian services**

##### ***CBC Newsworld***

28. The Commission considers that CBC Newsworld's nature of service differs significantly from that of HDNet. By condition of licence, CBC Newsworld's news and information service is dedicated exclusively to programs drawn from the following categories: Category 1 - News, Category 2(a) - Analysis and interpretation, Category 3 - Reporting and actualities, Category 4 - Religion, Category 5(b) - Informal education / Recreation and leisure, Category 6(a) - Professional sports, Category 6(b) - Amateur sports, Category 12 - Interstitials and Category 13 - Public service announcements. Programming from the sports categories must not include any live programming. In addition, CBC Newsworld is required by condition of licence to devote not less than 90% of the broadcast week to the distribution of Canadian programs. A review of a CBC Newsworld regular programming schedule indicates that the service is composed primarily of hard news programming, much of it live newscasts, along with documentaries, business news, current events interview programs, political events coverage, and BBC World News programming.

29. By comparison, HDNet does not have any news, news commentary or business news programming. Based on a review of HDNet's programming schedule from March 2004, approximately 20% of HDNet's 24-hour schedule consists of documentary programming. The subject matter of the documentary programming on HDNet is consistent with that contained in a general interest service and varies significantly from the news and information-oriented documentary programming found on CBC Newsworld. For example, program schedules submitted in support of the request indicate that, unlike CBC Newsworld, HDNet aired several documentaries relating to American criminals, American sports figures, human interest stories related to the U.S.-Iraq war, and a profile of the U.S. space program. The Commission also notes that HDNet is not a program supplier for CBC Newsworld.
30. Based on the above, the Commission concludes that the overlap between HDNet and CBC Newsworld with respect to nature of service, including genres of programming and program supply, is not sufficient to conclude that HDNet would be competitive with CBC Newsworld.

***Bravo!***

31. The condition of licence prescribing Bravo!'s nature of service calls for the provision of a wide variety of programs, with a general focus on the performing arts. Bravo! offers a mix of dance, music, opera, documentary, cinema, visual arts and discussion programs from Canada and abroad. CHUM, the owner of Bravo!, submitted that HDNet is wholly or partially competitive with a number of existing analog and digital specialty services, including Bravo! CHUM, however, did not provide any supporting detail for its position with respect to Bravo! or any other individual service.
32. The Commission considers that there are significant differences between the programming of Bravo! and that of HDNet. HDNet's programming does not have a general focus on the performing arts. In fact, it devotes less than 11% of its schedule (approximately 18 hours per week of a 168 hour schedule) to music and dance programming, with dance composing approximately 30 minutes of that amount per week. HDNet devotes approximately 6% of its schedule to comedy, and approximately 10% to general entertainment/human interest programming. The Commission also notes that HDNet does not supply programming to Bravo!
33. Given that HDNet is such a broadly based service, there is a strong likelihood that it offers programming that would overlap to some extent with Bravo!'s programming. However, the Commission concludes that the overlap between Bravo! and HDNet would be minimal with respect to the nature of their respective services, including the genres of programming they offer. In the Commission's view, this minimal overlap is not sufficient for it to conclude that HDNet would be competitive with Bravo!

### **Showcase**

34. As the Commission stated in its most recent licence renewal decision for Showcase, the primary mandate of the service is to offer a second window for the exhibition of Canadian drama and to provide access for independent producers. The service offers programming primarily in the genres of drama and comedy. It is also required by condition of licence to ensure that 90% of the programming broadcast by its service is produced outside of the United States.
35. A review of the HDNet schedule indicates that approximately 20% of its programming is drama and approximately 6% of its programming is comedy. With one minor exception, HDNet's comedy and drama programs are produced in the United States and are mainly in their second run. Examples include *That's Life*, *Hogan's Heroes*, *Robbery: Homicide Division*, *Philly*, *Square Pegs* and *Thieves*.
36. The Commission's analysis indicates that, with respect to program genres, and programming in the drama category in particular, there is a greater overlap between HDNet and Showcase than between HDNet and other Canadian services. The Commission notes, however, that Showcase's nature of service condition of licence would ensure that the service remains differentiated from that offered by HDNet through requirements that Showcase offer a high level of Canadian drama and that the majority of its non-Canadian programming is produced in countries other than in the United States. As may be expected, given the restrictions on the amount of U.S. programming that Showcase may broadcast, HDNet does not serve as a program supplier to Showcase.
37. Given that no one genre of programming predominates on HDNet, and because there is little or no overlap in the specific programs that HDNet and Showcase offer, the Commission finds that the overall degree of overlap between the two services is not sufficient to make HDNet competitive with Showcase.

### **TMN**

38. TMN's nature of service condition of licence specifies that it operate as a regional, English-language general interest pay television programming undertaking in Ontario, Quebec and the Atlantic provinces (eastern Canada), with programming intended for all audiences. TMN offers first-run movies and original television programs, mostly acquired from HBO and Showtime, such as *Six Feet Under*, *Curb Your Enthusiasm*, *Dead Like Me* and *The Sopranos*. TMN is prohibited by condition of licence from offering any programming in category 5a (Formal education and pre-school) and category 5b (Informal education/Recreation and leisure), among others, and is required to devote no more than 5% of its programming schedule to sports.
39. A review of HDNet's programming schedule indicates that HDNet does not offer any theatrical films or major motion pictures. HDNet devotes approximately 14% of its schedule to categories of programming prohibited on TMN, and often offers more than twice as much sports programming (between 10% and 17%) than TMN is permitted to offer. HDNet devotes approximately 20% of its schedule to dramatic programs, and

approximately 6% to comedy, but does not acquire any programming from Showtime or HBO. HDNet offers several original series, which make up approximately 25% of its weekly programming schedule. Further, HDNet is not a program supplier for TMN, nor does it offer any programming also carried on TMN.

40. In the Commission's view, given the significant differences in nature of service, including the genres of programming offered, HDNet is not competitive with TMN.

#### **Prime TV**

41. Prime TV's nature of service condition of licence requires that it provide a national, English-language specialty television service consisting of programs of particular interest to adults over 50 years of age. Although it is permitted to draw its programming from a variety of categories, its drama, comedy and made-for-television movie programs must have been copyrighted at least ten years prior to the broadcast year in which they are aired. The feature films aired on Prime TV must have been copyrighted at least 25 years prior to the broadcast year in which they are aired. Prime is prohibited from offering live sports programming.
42. A review of HDNet's schedule indicates that, unlike Prime TV, HDNet does not specifically target viewers in the 50 plus age group, nor does it offer feature films. HDNet is further differentiated from Prime TV by virtue of the fact that HDNet offers sports programming (about 10% of its schedule increasing to approximately 17% during the hockey season). While HDNet airs some older programs, such as *Hogan's Heroes*, *Charlie's Angels*, *Square Pegs* and *The Fugitive*, program series such as these make up less than 12% of its schedule, and much of its programming consists of material copyrighted within 10 years of the broadcast year in which it is aired on HDNet. In addition, perhaps in part because of Prime TV's narrowcast nature of service, HDNet is not a program supplier to Prime TV.
43. The Commission considers that the overlap between HDNet and Prime TV with respect to nature of service, including target audience and genre of programming, is minimal, and finds HDNet to be a more widely targeted, more broadly based service than Prime TV. For these reasons, the Commission concludes that HDNet is not competitive with Prime TV.

#### **MuchMusic**

44. MuchMusic's nature of service condition of licence requires, among other things, that it devote a minimum of 65% of its broadcast week to music video programming and that its service consist only of music or music-related programming, with the exception of some analysis and interpretation (no more than 5% of its broadcast week).
45. By comparison, a review of HDNet's schedule indicates that it devotes less than 1% of its schedule to music video programming and about 10% of its schedule to music programming. The music programming consists primarily of pre-recorded live concerts performed by a variety of artists representing various musical styles (mainly country

music, but some classical, jazz and rock music as well). In addition, the Commission notes that two of the music series on HDNet are original programs (HDNet Concert Series and True Music). The Commission also notes that HDNet does not supply MuchMusic with any music programming.

46. The Commission considers that the overlap between HDNet and MuchMusic is minimal given the widely targeted, broadly based service offered by HDNet, and that such overlap is not sufficient to permit the Commission to conclude that HDNet is competitive with MuchMusic.

***TSN, The Score and SportsNet***

47. Each of TSN, The Score and SportsNet offers programming 24 hours per day dedicated exclusively to coverage of a broad range of professional and amateur sports. While TSN is a national service, SportsNet has a more regional focus and provides four discrete regional feeds, each broadcasting at least 33% of unique programming. For its part, The Score is predominantly a sports results and sports information service.
48. As part of its wide variety of programming, HDNet offers HD-format NHL games, major league soccer games, horse racing, NASCAR auto racing, boxing, and NCAA football and basketball games. With respect to its major league soccer and NHL game broadcasts, HDNet stated that only a small portion of the specific games are duplicated in the schedules of any of the three Canadian sports specialty services noted above. The record indicates that few of the other types of sports programs on HDNet are also offered in Canada, even in a standard definition or analog format.
49. The Commission's review of HDNet's winter season schedule indicates that the service devotes about 16% of its 24-hour-per-day schedule (or approximately 27.5 hours per week) to live and pre-recorded sports events and less than 1% of its programming to amateur sports. In the spring, the portion of HDNet's schedule devoted to sports drops to less than 10%.<sup>4</sup>
50. With its comments, CTV provided a list taken from HDNet's website of the sports programming that HDNet planned to broadcast over a six-month period. The list identified 56 sports events scheduled for broadcast over the period, representing, on average, one sporting event every 3.2 days. On a yearly basis, this would amount to approximately 112 sports events. Based on this information, the Commission considers that sports coverage is a relatively minor component of HDNet's overall schedule when compared to the full schedule of sports programming offered by the three Canadian sports specialty services.

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<sup>4</sup> With the CCTA's reply comments, HDNet provided a schedule from 25 April 2005 to 1 May 2005.

51. In the Commission's view, the nature of service of each of the licensed Category 2 services that operate in the genre of sports programming (such as LEAFs-TV, Raptors NBA TV, Xtreme Sports, and Fox Sports World) also differ significantly from the nature of service of HDNet, and the services, themselves, are more narrowcast in their approach than is HDNet. Further, none of the parties who filed comments in this proceeding suggested that HDNet would be competitive with these Category 2 services.
52. Given the widely targeted, broadly based service offered by HDNet, the Commission considers that the overlap between HDNet and the Canadian sports specialty services (including Category 2 sports services) with respect to nature of service, including the amount of programming devoted to sports, is not sufficient for it to conclude that HDNet would be competitive with any of the Canadian sports specialty services.

#### **Technical format**

53. As noted above, in adopting its HD framework, the Commission determined that, in examining the competitiveness of any non-Canadian HD service proposed for addition to the digital lists, it would take into account any of the competitive aspects of the HD format. In this regard, the Commission notes that the HD format of HDNet has not been a significant factor in its analysis of the CCTA's request. Rather, the Commission has concluded, on the basis of other factors (e.g., program genre, program supply), that the overlap between HDNet and the relevant Canadian services is minimal and is insufficient to result in a finding that HDNet would be competitive with those services.

#### **Other Issues**

##### **Extending the process**

54. As noted above, CTV suggested that all parties be given another opportunity to comment on the CCTA's request in order that they might take into account the Commission's regulatory framework for the licensing and distribution of HD pay and specialty services once that framework was issued. In the circumstances, the Commission considers that re-opening the record of this proceeding is not warranted. The Commission notes in this regard that all parties had an opportunity to comment in this proceeding with the full knowledge of the Commission's proposed HD framework. Further, as announced today in Public Notice 2006-74, the framework ultimately adopted by the Commission does not differ from the proposed framework with respect to the addition of new non-Canadian HD services to the digital lists. It is the Commission's view that a further opportunity to comment would be unlikely to add anything substantive to the record of the proceeding, and would unnecessarily delay a decision with respect to this request.

##### **Consumption of bandwidth**

55. With respect to those parties who expressed concern that non-Canadian services should not be permitted to consume bandwidth ahead of Canadian HD services, and that the addition of non-Canadian services raises capacity issues with respect to the ability of BDUs to carry a preponderance of Canadian HD services, the Commission considers that

there are regulatory safeguards in place to ensure that BDUs give priority to Canadian services. For example, section 6(2) of the *Broadcasting Distribution Regulations* (the Regulations) requires that a majority of the video and audio channels received by a subscriber be devoted to the distribution of Canadian programming services.

56. In addition, as stated by the Commission in *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003 (Public Notice 2003-61), if a non-Canadian analog service was added to a distributor's channel line-up before 6 May 1996, either the upgraded version or the analog version of that service, at the distributor's option, will receive grandfathered carriage. The other version will be considered as being, in effect, a service whose distribution commenced after 6 May 1996, and the channel on which it is distributed will be considered an available channel for the purpose of the Regulations. The Commission notes that this rule is a further measure that will ensure that adequate capacity remains available for the carriage of Canadian HD services.

#### **Partnerships**

57. With respect to the numerous parties who stated that the addition of non-Canadian services such as HDNet to the digital lists could discourage partnerships between such services and Canadian programmers, the Commission stated in Public Notice 2004-96 that it continues to support and encourage alliances between Canadian and non-Canadian services as an efficient and appropriate way to achieve the objectives of the *Broadcasting Act*. However, the Commission has not required the formation of these partnerships, and has recognized that, in some circumstances, such partnerships are not feasible. Further, the Commission notes that its approach to the addition of English- and French-language non-Canadian services does not appear to have been an impediment to alliances that have resulted in the formation of a variety of Canadian specialty services, including many Category 2 services. As noted by the CCTA, one such alliance between a Canadian programmer and a non-Canadian programmer has resulted in the establishment of Discovery HD Theatre, a Category 2 service.

#### **Changes in format**

58. Given the broad variety of programming provided by a general interest service, a concern was raised that HDNet could change its programming emphasis in the future so as to become competitive with a licensed Canadian specialty or pay service. In this context, one party suggested that HDNet's sports programming should be limited to 15% of its overall schedule.
59. The Commission notes that its policy, as affirmed in *Revised Lists of Eligible Satellite Services*, Public Notice CRTC 1997-96, 22 July 1997, is to consider the removal of a non-Canadian service from the lists if the service undergoes a change in format so as to become competitive with a Canadian pay or specialty service. The Commission further

addressed this matter in Public Notice 2005-9, stating that, where a service undergoes such fundamental changes as occurred in the case of Spike TV, so that it is no longer the same service as was approved for distribution by the Commission, the distribution of that service requires the approval of the Commission.

60. In the Commission's view, the assurances to Canadian pay and specialty services under its existing policy make it unnecessary to place limitations on the amount of sports or any other genre of programming offered on HDNet as a condition of its authorization for distribution in Canada.
61. With respect to the suggestion that, if approved, HDNet be packaged only in an all-HD package, the Commission notes that it rejected such packaging restrictions in Public Notice 2006-74.
62. Further, with respect to the suggestion that, if HDNet is added to the digital lists, Canadian broadcasters should be permitted to operate general interest HD specialty services, the Commission notes that there is nothing to prevent a potential applicant from applying for a licence to operate a general interest HD specialty service. The Commission would consider any such application on its merits and in the light of its generally applicable policies and practices.

#### **Commission's determination**

63. In light of the above, the Commission **approves** the addition of HDNet 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." The Commission notes that the distribution of this service is subject to the standard conditions with respect to program rights that apply to all non-Canadian services on the digital lists, and to the distribution and linkage rules that apply to HD English-language non-Canadian services, as approved in Public Notice 2006-74

Secretary General

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