



## Broadcasting Regulatory Policy CRTC 2011-99

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### **Addition of National Geographic Wild to the lists of eligible satellite services for distribution on a digital basis**

*The Commission **denies** a request to add National Geographic Wild to the lists of eligible satellite services for distribution on a digital basis.*

#### **Introduction**

1. The Commission received a request dated 16 April 2010 from Shaw Communications Inc. (Shaw) to add National Geographic Wild (NatGeo Wild), a non-Canadian English-language satellite service, to the lists of eligible satellite services for distribution on a digital basis (the digital lists).
2. Shaw described NatGeo Wild as a 24-hour English-language programming service dedicated to showing wildlife and nature programming, including a variety of documentaries, series, events and specials.
3. In Broadcasting Notice of Consultation 2010-663, the Commission called for comments on the proposed addition of NatGeo Wild to the digital lists. The Commission received comments from High Fidelity HDTV Inc. (High Fidelity) and CTV Inc. (CTV), both of which were in opposition. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

#### **Positions of parties**

4. CTV and High Fidelity submitted that NatGeo Wild would be at least partially competitive with their respective Category B specialty services Animal Planet and Oasis HD. Specifically, CTV and High Fidelity highlighted several documentary series on NatGeo Wild that are similar if not identical to series featured on their respective services. In particular, High Fidelity provided a list of eight programs aired by NatGeo Wild that were nearly identical to programs broadcast by Oasis HD, including documentary series exploring the interactions of people with a gang of monkeys in Jaipur, India and the interactions of wild animals on the Serengeti plains in Africa, as well as specific programs dealing with canine intelligence, bears, gorillas, grizzly bears, sharks and lions.

5. High Fidelity further argued that given the similarity of programming between its service and NatGeo Wild, NatGeo Wild would appeal to and compete directly with Oasis HD's target audience, resulting in greater audience fragmentation and ultimately affecting Oasis HD's ability to grow and to increase its contributions to the Canadian broadcasting system. High Fidelity further noted that it is required by condition of licence to air at least 35% Canadian content, while the proposed service could operate in Canada without making any such contribution to the Canadian broadcasting system. Finally, High Fidelity submitted that if Shaw really believed that the wildlife genre was broad enough to support new attractive nature and wildlife services, it should simply launch its own Category 2 specialty service under terms and conditions similar to those that apply to Oasis HD.
6. In reply, Shaw argued that despite the shared interest in wildlife and nature, NatGeo Wild is different than and not competitive with Animal Planet or Oasis HD. Specifically, Shaw submitted that what differentiates NatGeo Wild from the two Canadian services is its association with the National Geographic Society, a scientific organization that is unique in the way it uses scientists, experts and explorers to further its mission to inspire people to care about the planet.
7. Shaw also submitted that the Commission should avoid an overly broad application of its foreign content access policy. It argued that the policy is meant to ensure that Canadians have legitimate access to non-Canadian services where they do not compete with Canadian services, not to obviate audience fragmentation altogether or exclude unique services for which there is audience demand. Shaw submitted that unless the Commission allows broadcasting distribution undertakings to offer the fullest range of services in attractive packages, the Canadian broadcasting system will decline in the face of competition from unregulated and illegal sources.

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

8. The Commission set out its general approach to the addition of non-Canadian English- and French-language services to the digital lists in Public Notice 2000-173. Under this approach, the Commission assesses such requests in the context of its general policy, which, among other things, precludes the addition of a non-Canadian satellite service that can be considered either totally or partially competitive with Canadian specialty or pay television services.
9. The Commission uses a case-by-case approach to determine whether a non-Canadian service proposed for addition to the digital 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, the language of operation, the genres of programming provided and the target audience. The Commission also considers the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.

10. The Commission assesses the factors noted above 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. In general, 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.
11. Based on its analysis of the nature of the service, the language of operation, the genres of programming provided and the target audience, the Commission finds that NatGeo Wild offers programming that is similar to and would overlap substantially with that provided by Oasis HD and Animal Planet. Shaw did not, in this case, provide sufficient evidence to persuade the Commission that NatGeo Wild is unique or different from what is already available to Canadians through the above-noted services.
12. In light of the above, the Commission **denies** Shaw's request to add National Geographic Wild to the digital lists. As noted by High Fidelity, if Shaw considers that there is room in the Canadian market for another television programming service dedicated to this genre, it may apply to the Commission for a licence to operate a new Canadian Category 2 specialty service. The Commission would assess any such application based on its merits.

Secretary General

#### **Related documents**

- *Call for comments on the proposed addition of National Geographic Wild to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Notice of Consultation CRTC 2010-663, 7 September 2010
- *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