



## Broadcasting Information Bulletin CRTC 2015-329

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Ottawa, 23 July 2015

### Simultaneous substitution errors

*In this information bulletin, the Commission sets out its procedure for dealing with simultaneous substitution errors, including how viewers can submit complaints.*

*Simultaneous substitution occurs when a distributor temporarily replaces the signal of one TV channel with that of another channel showing the same program at the same time. Usually, the signal of an American television station is replaced by a Canadian signal. Sometimes a distant Canadian signal is replaced with a more local signal. The measures set out in this document will serve to ensure that the programming Canadians watch is not disrupted when simultaneous substitution occurs.*

*To implement the removal of simultaneous substitution for the Super Bowl, the Commission intends to use its authority pursuant to section 9(1)(h) of the Broadcasting Act to impose conditions regarding the carriage of programming services.*

*Subsequent to the Let's Talk TV proceeding, broadcasting industry stakeholders formed a working group to evaluate measures that could be implemented to minimize consumer disruptions during the execution of simultaneous substitutions. In doing so, the stakeholders have taken responsibility for ensuring that Canadians enjoy a better viewing experience. The Commission looks forward to receiving the working group's report by August 2015, which will include measures that the working group has, and plans to implement to reduce simultaneous substitution execution errors. This report will be published on the Commission's website.*

### Introduction

1. The Commission has authorized simultaneous substitution for cable and direct-to-home broadcasting distribution undertakings (BDUs) as an exception to the prohibition on BDUs to not alter the content or format of a programming service or delete a programming service in a licensed area in the course of its distribution. Simultaneous substitution, if properly executed, should be seamless to subscribers; that is, it should not cause subscribers to miss any programming. If viewers miss programming as a result of simultaneous substitution errors then the ability of the Canadian broadcasting system to achieve the objectives set out in the *Broadcasting Act* (Act) is impaired.
2. In Broadcasting Regulatory Policy 2015-25, the Commission announced its intention to amend the simultaneous substitution regime to deal with recurring, substantial simultaneous substitution errors as follows:

- if the errors are made by a local television station, it will lose the privilege to request simultaneous substitution for a period of time or with respect to a type or types of programming; and
  - if the errors are made by a BDU, it will have to provide a compensatory rebate to its customers through a specific monetary amount.
3. In Broadcasting Regulatory Policy 2015-25, the Commission also announced its decision that distributors will no longer be allowed to perform simultaneous substitution for specialty services and for the Super Bowl as of the end of the 2016 NFL season.
4. As stated in Broadcasting Notice of Consultation 2014-190, the Commission's review of its policies related to television and BDUs was necessary in order to ensure that the policy objectives set out in the Act continue to be fulfilled. These policy objectives include:
- providing Canadians with a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and creativity. The system should be adaptable to changes in technology and the programming should be affordable.
  - serving the needs and interests of Canadians. For example, the programming provided should:
    - present information and analysis concerning Canada and other countries from a Canadian point of view;
    - be accessible to people with disabilities; and
    - reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples in society;
  - supporting Canadian creators so that they can provide Canadians with varied and compelling creative content that is drawn from local, regional, national and international sources and that is available on a range of platforms.
5. The Commission's jurisdiction to create the simultaneous substitution regime is unchanged. In implementing consequences for simultaneous substitution errors, the Commission is amending this regime in order to ensure that the policy objectives of the Act continue to be achieved. These amendments are not intended to be punitive. Instead their sole purpose is to provide a remedy to particular members of the broadcasting system in order to make sure that the system, as a whole, continues to

achieve the objectives of the Act, including 3(1)(d)(i), 3(1)(h) and 3(1)(t)(ii).<sup>1</sup> If programming is not provided to subscribers in a manner that allows them to view that programming without errors, then the ability of the Canadian broadcasting system to achieve the objectives of the Act is impaired.

6. Subsequent to the Let's Talk TV proceeding, broadcasting industry stakeholders formed a working group to evaluate measures that could be implemented to minimize consumer disruptions during the execution of simultaneous substitutions. In doing so, the stakeholders have taken responsibility for ensuring that Canadians enjoy a better viewing experience. The simultaneous substitution working group, including representatives from various Canadian television stations and BDUs and the Public Interest Advocacy Centre has been meeting every two weeks since January 2015. The Commission looks forward to receiving the working group's report by August 2015, which will include measures that the working group has, and plans to implement to reduce simultaneous substitution execution errors. This report will be published on the Commission's website.

### **Procedure for dealing with simultaneous substitution errors**

7. As stated in Broadcasting Regulatory Policy 2015-25, to ensure procedural fairness to all broadcasters and BDUs, the Commission's findings on such matters will be determined on a case-by-case basis and in the context of a process during which parties will have an opportunity to present any explanation for the errors, including whether the errors occurred despite the exercising of due diligence by a broadcasting undertaking.
8. Accordingly, this information bulletin sets out the procedure that the Commission intends to follow and the factors it intends to consider in implementing the regulatory measures set out in Broadcasting Regulatory Policy 2015-25. The implementation of a final mechanism that includes a compensatory rebate mechanism for errors associated with BDUs and an approach to errors that are the responsibility of BDUs will only come into effect after a determination is reached following a public process to amend the *Broadcasting Distribution Regulations* (the Distribution Regulations).
9. However, to begin dealing with simultaneous substitution errors in a timely manner, the Commission intends to respond to recurring substantial errors that are made by local television stations through orders issued pursuant to section 9(1)(h) of the Act.
10. The Commission will deal with simultaneous substitution errors in the manner set out below for errors that are the responsibility of local television stations until the Distribution Regulations are amended, and extend this process to BDUs once the amendments have been made.

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<sup>1</sup> Section 3(1)(d)(i) provides that the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. Section 3(1)(h) provides that all persons licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast. Section 3(1)(t)(ii) provides that distribution undertakings should provide efficient delivery of programming at affordable rates, including the most efficient technologies available at reasonable cost.

11. The measures to address simultaneous substitution errors are, to the extent possible, remedial in nature. The Commission will only apply them where it finds that the expected level of service paid for by subscribers is not met as a result of improperly executed simultaneous substitutions by either a local television broadcaster or a BDU.
12. The Commission will investigate evidence of improperly executed simultaneous substitutions when it receives complaints. Examples of a substantial simultaneous substitution error may, depending on the circumstances, include:
  - where a subscriber misses any specific important part of a sporting event, including any scoring plays or moments that could be described as a critical part, or any time in the last period/quarter or overtime in any sporting event; or
  - where a subscriber misses any important part of a program.
13. If a viewer believes that he or she has not received the appropriate level of service because of a simultaneous substitution error, the viewer should file a complaint with the Commission with the following information:
  - the date and time of the program;
  - the title or description of the program;
  - the channel number and name of the programming service;
  - the name of the BDU; and
  - how the apparent error affected their ability to watch the program.
14. Consistent with current practice, when a viewer complaint is received, the Commission will initiate a preliminary evaluation to determine whether an error has occurred and to gather information from the viewer and either or both the television station or the BDU depending on the nature of the apparent error. The BDU and the television station will also be given the opportunity, at that time, to provide an explanation for the error and a description of what measures they will take to ensure that it does not re-occur.
15. In instances where the Commission receives distinct complaints regarding, for example, several substantial substitution errors within a relatively short time frame or a series of substantial errors that indicate a persistent problem that can be attributed to a particular local television station or BDU, the Commission will generally find those errors to be recurring and may initiate a public process. If, based on the record of the preliminary evaluation, including the responses of the local television station or BDU, the Commission initiates a public process, it will issue a Notice of Consultation. This notice will set out a preliminary view as to the nature and scope of the regulatory measure required. As part of the public process, the local television station or BDU will have an opportunity to file an explanation for the apparent errors, including

evidence of due diligence. Other interested parties may also comment on the appropriateness of the regulatory measure in light of the apparent errors.

16. The Commission will, after having considered all the relevant information, determine the appropriate regulatory measure, if any, to ensure that local television stations and BDUs provide an appropriate level of service for their customers and viewers. In determining the appropriate measures to apply, such as a compensatory rebate to consumers from a BDU or a prohibition on a local television broadcaster from requesting signal substitution for a particular time period or type of program, the Commission will ensure that the measure is proportional. To ensure that the regulatory measure is proportional and remedial, if applicable, the Commission will take into account factors such as the impact the substitution errors had on customers and viewers, the broadcaster's past record in performing signal substitutions, the effect the measures would have on the company in question, and any other relevant factors.

### **Implementation of the Commission's removal of simultaneous substitution for the Super Bowl**

17. The Commission indicated that it would use its regulations to implement the policy decisions in Broadcasting Regulatory Policy 2015-25 in a general sense. The Commission provides more details in Broadcasting Notice of Consultation 2015-330, issued today, where it proposes revisions to the relevant regulations. However, to implement the removal of simultaneous substitution for the Super Bowl, the Commission intends to use its authority pursuant to section 9(1)(h) of the Act to impose conditions regarding the carriage of programming services.

Secretary General

### **Related documents**

- *Call for comments on the proposed Simultaneous Programming Service Deletion and Substitution Regulations*, Broadcasting Notice of Consultation CRTC 2015-330, 23 July 2015
- *Measures to address issues related to simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2015-25, 29 January 2015
- *Let's Talk TV*, Broadcasting Notice of Consultation CRTC 2014-190, 24 April 2014