



## Broadcasting Notice of Consultation CRTC 2016-37

PDF version

Ottawa, 3 February 2016

### Call for comments on a proposed distribution order prohibiting simultaneous substitution for the Super Bowl

*The Commission calls for comments on a proposed distribution order regarding simultaneous substitution for the Super Bowl. Simultaneous substitution occurs when a distributor temporarily replaces the signal of one television channel with that of another showing the same program at the same time. The proposed distribution order would implement a Commission policy decision resulting from the Let's Talk TV proceeding, by prohibiting simultaneous substitution for the Super Bowl starting with Super Bowl 51, scheduled to be played on 5 February 2017.*

*The proposed distribution order is appended to the present notice. The Commission will accept interventions that it receives on or before **4 March 2016**.*

#### Introduction

1. The role of broadcasting distribution undertakings (i.e., cable, Internet Protocol television (IPTV) or direct-to-home satellite services) (BDUs) is to provide Canadians with access to broadcasting programming services. Generally, they cannot alter or delete the signals of the programming services that they distribute.
2. An exception to this rule is simultaneous substitution, which occurs when a distributor temporarily replaces the signal of one television channel with that of a local or regional channel showing the same program at the same time. The terms and conditions for simultaneous substitution are currently set out in the *Simultaneous Programming Service Deletion and Substitution Regulations* (the Simultaneous Deletion and Substitution Regulations).<sup>1</sup>
3. In Broadcasting Regulatory Policy 2015-25, the Commission noted that simultaneous substitution promotes local broadcasting and local creation, and keeps advertising dollars in the Canadian market. As such, it stated that it would continue to allow the practice of simultaneous substitution for the time being. The Commission specified, however, that the simultaneous substitution regime is an exception to the general rule whereby BDUs cannot alter or delete the signal of a programming service.
4. In that same regulatory policy, the Commission went on to note that Canadians had expressed ongoing frustration with certain elements of the simultaneous substitution

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<sup>1</sup> The [Simultaneous Deletion and Substitution Regulations](#) came into force on 1 December 2015. They replaced and updated similar provisions in the *Broadcasting Distribution Regulations*.

process, relating to, among other things, the broadcast of special events such as the Super Bowl.

5. In fact, issues relating to simultaneous substitution for the Super Bowl have been a frequent source of complaints by Canadians. In particular, several participants in the Let's Talk TV proceeding complained that the U.S. advertising was being replaced by Canadian advertising, arguing that the U.S. advertising produced for the Super Bowl is an integral part of that special event. Based on the above, the Commission stated in Broadcasting Regulatory Policy 2015-25 that distributors would no longer be allowed to perform simultaneous substitution for the Super Bowl as of the end of the 2016 National Football League season (that is, starting with Super Bowl 51, scheduled to be played on 5 February 2017). The Commission also noted that this determination would provide broadcasters with a reasonable period to make adjustments.
6. In Broadcasting Information Bulletin 2015-329, the Commission set out its procedures for dealing with simultaneous substitution errors, including how viewers can submit complaints. Further, in Broadcasting Regulatory Policy 2015-513, the Commission announced that it had made the Simultaneous Deletion and Substitution Regulations, which implemented the Commission's determinations with respect to a compensation regime for simultaneous substitution errors.
7. In both Broadcasting Information Bulletin 2015-329 and Broadcasting Regulatory Policy 2015-513, the Commission set out its intention to implement the removal of simultaneous substitution for the Super Bowl by using its general authority pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act). This is a provision that addresses the carriage of programming services by BDUs, and allows the Commission to impose terms and conditions it deems appropriate regarding the carriage of programming services, in furtherance of the objectives of the Act (e.g., serving the needs and interests of Canadians).

### **Call for comments**

8. In the appendix to the present notice, the Commission has set out a proposed order that specifies the terms and conditions for the distribution of Canadian television services that broadcast the Super Bowl. The Commission invites comments on the proposed distribution order. The Commission will accept interventions that it receives on or before **4 March 2016**.

### **Procedure**

9. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found

on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

10. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
11. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line **\*\*\*End of document\*\*\*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
12. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
13. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

**by completing the**  
[\[Intervention/comment/answer form\]](#)

or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**  
819-994-0218

14. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
15. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their

submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.

16. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

### **Important notice**

17. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
18. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
19. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
20. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

### **Availability of documents**

21. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) by visiting the "Participate" section, selecting "Submit Ideas and Comments," and then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
22. Documents are also available from Commission offices, upon request, during normal business hours.

### **Location of Commission offices**

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Secretary General

#### **Related documents**

- *Regulations to implement policy determinations regarding simultaneous substitution in the Let's Talk TV proceeding*, Broadcasting Regulatory Policy CRTC 2015-513, 19 November 2015
- *Simultaneous substitution errors*, Broadcasting Information Bulletin CRTC 2015-329, 23 July 2015
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Measures to address issues related to simultaneous substitution*, Broadcasting Regulatory Policy CRTC 2015-25, 29 January 2015
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010

# Appendix to Broadcasting Notice of Consultation CRTC 2016-37

## Proposed distribution order

### Distribution of Canadian television stations that broadcast the Super Bowl

Pursuant to section 9(1)(h) of the *Broadcasting Act*, the Commission orders licensees of broadcasting distribution undertakings to distribute the programming services of Canadian television stations that broadcast the Super Bowl on the following terms and conditions:

1. This order applies to all licensed distribution undertakings, including terrestrial and direct-to-home distribution undertakings, other than a person licensed to carry on (a) a subscription television system; (b) a relay distribution undertaking; or (c) an undertaking that only rebroadcasts the radiocommunications of one or more other licensed undertakings.
2. For the purposes of this order, “Super Bowl” is defined as the championship game of the National Football League, played annually between the National Football Conference champion and the American Football Conference champion for possession of the Vince Lombardi Trophy.
3. Effective 1 January 2017:
  - a. A distribution undertaking subject to this order may only distribute the programming service of a Canadian television station that broadcasts the Super Bowl if that distribution undertaking does not carry out a request made by that Canadian television station pursuant to section 3 of the *Simultaneous Programming Service Deletion and Substitution Regulations* to delete the programming service of another Canadian television station or a non-Canadian television station and substitute for it the programming service of a local television station or regional television station during any period in which the Super Bowl is being broadcast on the requesting Canadian television station.
  - b. For clarity, distributions undertakings subject to this order must not carry out a requested deletion and substitution referred to in 3.a. above even if all of the conditions set out in section 4 of the *Simultaneous Programming Service Deletion and Substitution Regulations* would be met.