



Broadcasting Notice of Consultation CRTC 2015-330

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Ottawa, 23 July 2015

Call for comments on the proposed *Simultaneous Programming Service Deletion and Substitution Regulations*

The Commission calls for comments on proposed Simultaneous Programming Service Deletion and Substitution Regulations. These regulations, once finalized, will implement the Commission's policy determinations regarding simultaneous substitution in the context of the Let's Talk TV process.

As common carriers, distributors of broadcast programming such as cable systems or direct-to home satellite services, cannot, as a rule, alter or delete the signal of programming services. Their role is to provide Canadians with access to such services. An exception is simultaneous substitution.

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.

During the Let's Talk TV proceeding Canadians expressed ongoing frustration with the frequency in errors made during the simultaneous substitution process. The proposed regulations set out the following consequences for recurring, substantial errors made by broadcasters and by distributors:

- if the errors are made by a television broadcaster, it may 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 distributor, it may be required to provide compensation to its customers to redress the harm caused by the errors.*

The measures set out in the proposed regulations will serve to ensure that the programming Canadians watch is not disrupted when simultaneous substitution occurs, thereby increasing the quality of their viewing experience.

In Broadcasting Regulatory Policy 2015-25, the Commission announced that distributors will no longer be allowed to perform simultaneous substitution for the Super Bowl as of the end of the 2016 NFL season (i.e. for the January/February 2017 broadcast of the Super Bowl). The Commission will implement its determination regarding the Super Bowl by way of an order issued pursuant to section 9(1)(h) of the Broadcasting Act.

The deadline for the submission of comments on the proposed regulations is 11 September 2015.

Introduction

1. Broadcasting distribution undertakings cannot, as a rule, alter or delete the signal of programming services. One exception to this rule is simultaneous substitution, the terms and conditions of which are currently set out in the *Broadcasting Distribution Regulations*. Simultaneous substitution, if properly executed should be seamless to subscribers; this is, it should not cause subscribers to miss any programming. If viewers miss programming as a result of a simultaneous substitution error, the ability of the Canadian broadcasting system to achieve the objectives set out in the *Broadcasting Act* (the Act) is impaired.
2. In Broadcasting Regulatory Policy 2015-25, the Commission determined to maintain simultaneous substitution for the time being, given that it helps Canadian broadcasters to maintain their program rights, promotes local broadcasting and local creation and keeps advertising in the Canadian market. The Commission also noted submissions from broadcasters that complaints relate to only a very small fraction of the total number of simultaneous substitutions performed each year (i.e., fewer than 500 out of more than a half-billion hours of simulcast viewing annually, according to Bell).
3. However, the Commission noted the frustration of Canadians with simultaneous substitution, particularly the frequency of errors when they do occur, and set out measures to address these issues. In particular, the Commission sought to introduce consequences should broadcasters and distributors make substantial recurring errors in the deletion and substitution of programming and to not allow simultaneous substitution for the Super Bowl as of the end of the 2016 NFL season. The Commission also determined that simultaneous substitution will only be permitted for conventional television stations.
4. In Broadcasting Information Bulletin 2015-329, the Commission set out the procedure that it will use for dealing with substitution errors, including how viewers can submit complaints.
5. The Commission proposes to create the *Simultaneous Programming Service Deletion and Substitution Regulations* (the Regulations) in order to implement the policy determinations set out in Broadcasting Regulatory Policy 2015-25. The Regulations update and amend the provisions currently found in the *Broadcasting Distribution Regulations* and introduce provisions to reflect the Commission's other policy determinations.

6. In respect of consequences for errors made by a broadcaster, the Commission indicated that the broadcaster may lose the privilege to request simultaneous substitution for a period of time or with respect to a type or types of programming. Under this scenario, the Commission would issue a decision declaring that the deletion and substitution is not in the public interest (see section 4(3) of the Regulations).
7. In respect of consequences for errors made by a distributor, the Commission indicated that a distributor may be required to provide compensation to its customers to redress the harm caused. A provision to this effect is set out at section 5(2) of the Regulations.
8. Finally, the Commission will implement its determination regarding the Super Bowl by way of an order issued pursuant to section 9(1)(h) of the Act.

Call for comments

9. The proposed amendments to the Regulations are appended to this notice. The Commission invites comments on the wording of the proposed amendments. The Commission will accept interventions that it receives on or before **11 September 2015**.

Procedure

10. 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, replies, answers of respondents 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 its accompanying documents, which can be found on the Commission's website under "Statutes and Regulations." Broadcasting and Telecom Information Bulletin 2010-959 provides information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
11. 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.
12. 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.

13. 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.
14. 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

15. 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.
16. 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.
17. 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

18. 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, 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.
19. 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.
20. 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.
21. 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

22. 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 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.
23. Documents are also available from Commission offices, upon request, during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

Related documents

- *Simultaneous substitution errors*, Broadcasting Information Bulletin CRTC 2015-329, 23 July 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 2015-330

Simultaneous Programming Service Deletion and Substitution Regulations

Definitions

1. (1) The following definitions apply in these Regulations.

“Canadian television station”

« station de télévision canadienne »

“Canadian television station” means a television programming undertaking that is licensed as a television station or that provides its Canadian programming service by way of a transmitting antenna and includes an educational authority responsible for an educational television programming service and the station “A” Atlantic.

“local television station”

« station de télévision locale »

“local television station”, in relation to a licensed area of a distribution undertaking, means

(a) a licensed television station that

(i) has a Grade A official contour or digital urban official contour that includes any part of the licensed area; or

(ii) if there is no Grade A official contour or digital urban official contour, has a transmitting antenna that is located within 15 km of the licensed area;

(b) an educational authority responsible for an educational television programming service; or

(c) the station “A” Atlantic.

Definitions — Broadcasting Distribution Regulations

(2) In these Regulations, the expressions “Canadian programming service”, “comparable”, “customer”, “DTH distribution undertaking”, “educational authority”, “educational television programming service”, “format”, “licence”, “licensed”, “licensed area”, “licensee”, “non-Canadian television station”, “official contour”, “operator”, “programming service”, “regional television station”, “relay distribution undertaking”, “subscriber”, “subscription television system” and “terrestrial distribution undertaking” have the same meanings as in section 1 of the *Broadcasting Distribution Regulations*.

Application

2. These Regulations apply to a person that is licensed to carry on a distribution undertaking, other than a person that is 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.

Terrestrial distribution undertaking

3. (1) The operator of a Canadian television station may ask a licensee that carries on a terrestrial distribution undertaking 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.

DTH distribution undertaking

(2) The operator of a Canadian television station may ask a licensee that carries on a DTH distribution undertaking

- (a) to delete the programming service of a non-Canadian television station and substitute for it the programming service of the Canadian television station; or
- (b) in respect of subscribers located within the Grade B official contour or noise-limited bounding official contour of the Canadian television station, to delete the programming service of another Canadian television station and substitute for it the programming service of the Canadian television station.

Obligation to carry out request

4. (1) Except as otherwise provided under these Regulations or in a condition of its licence, a licensee that receives a request referred to in section 3 must carry out the requested deletion and substitution if the following conditions are met:

- (a) the request is in writing and is received by the licensee at least four days before the day on which the programming service to be substituted is to be broadcast;
- (b) the programming service to be deleted and the programming service to be substituted are comparable and are to be broadcast simultaneously;
- (c) the programming service to be substituted has the same format as, or a higher format than, the programming service to be deleted; and

(d) if the licensee carries on a terrestrial distribution undertaking, the programming service to be substituted has a higher priority under section 17 of the *Broadcasting Distribution Regulations* than the programming service to be deleted.

Late request

(2) In the case of a request that is not received within the period referred to in paragraph (1)(a) but that meets the conditions set out in paragraphs (1)(b) to (d), the licensee may carry out the requested deletion and substitution, except as otherwise provided under these Regulations or in a condition of its licence.

Decision by Commission

(3) A licensee must not delete a programming service and substitute another programming service for it if the Commission issues a decision under subsection 18(3) of the *Broadcasting Act* declaring that the deletion and substitution are not in the public interest.

Deletion and substitution by operator

(4) The licensee and the operator of the local television station or the regional television station may agree to have the operator carry out the deletion and substitution.

More than one request

(5) If a licensee that carries on a terrestrial distribution undertaking receives a request for deletion and substitution from more than one operator of a Canadian television station, it must give preference to the programming service of the television station that has the highest priority under section 17 of the *Broadcasting Distribution Regulations*.

Discontinuation of substitution

(6) A licensee may discontinue a deletion and substitution if the deleted and substituted programming services are not, or are no longer, comparable and broadcast simultaneously.

Minimal disruption

5. (1) A licensee that deletes a programming service and substitutes another programming service for it must exercise due diligence to ensure that the deletion and substitution do not result in errors in the provision of the service and that they cause only minimal disruption of the service to its subscribers.

Rebate

(2) If a licensee deletes and substitutes a programming service in a manner that, through its own actions, results in recurring substantial errors, the licensee must provide compensation to its customers, unless it establishes that it exercised due diligence to avoid the errors.

Errors

(3) For the purposes of this section, an error occurs if the deletion and substitution of the programming service are not carried out simultaneously or the video or audio components of the programming service are affected as a result of the deletion and substitution.

CONSEQUENTIAL AMENDMENTS TO THE BROADCASTING DISTRIBUTION REGULATIONS

6. Paragraph 7 (a) of the *Broadcasting Distribution Regulations*¹ is replaced by the following:

(a) as required or authorized by a condition of its licence or under the *Simultaneous Programming Service Deletion and Substitution Regulations*.

7. Section 38 of the Regulations and the heading before it are repealed.

8. Section 39 of the Regulations is replaced by the following:

39. Except as otherwise provided under a condition of licence, this Part and sections 19, 23 to 26, 28 and 30 to 37 apply to terrestrial distribution undertakings that elect to distribute programming services on an analog basis.

9. Section 51 of the Regulations and the heading before it are repealed.

COMING INTO FORCE

10. These Regulations come into force on December 1, 2015.

¹ SOR/97-555