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Bell files appeal over CRTC move to bring U.S. Super Bowl ads to Canada

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Bell claims the CRTC acted in error by singling out Super Bowl ads for the ban while declaring simultaneous substitution, known as simsub, important to the broadcasting system. THE CANADIAN PRESS/Chris Young

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Bell Media wants to take Canada's broadcast regulator to court over its decision to ban

the simultaneous substitution of Canadian commercials over American ones during the Super Bowl.

In a motion filed with the Federal Court of Appeal Monday, Bell argued the Canadian Radio-television and Telecommunications Commission overstepped its jurisdiction, violated the tenets of the Broadcasting Act and unfairly discriminated against Bell by banning simultaneous substitution, or “simsub,” during the Super Bowl starting in 2017.

Bell also released the results of a Nanos Research survey finding only one in five Canadians thought the ability to watch American Super Bowl advertisements was more important than supporting Canadian broadcasters who paid for the rights to air the event.

“People see the CRTC’s Simultaneous Substitution decision as a negative for Canada and question why it was necessary,” said Bell Media spokesman Scott Henderson in an emailed statement. “If it makes policy decisions based on what Canadians value, it’s clear the CRTC fumbled this decision.”

Bell’s motion argues banning simsub during the Super Bowl goes against the principles of the Broadcasting Act that the CRTC is supposed to uphold. According to the act, the commission “should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations.”

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Lawson Hunter, a regulatory lawyer with Stikeman Elliott LLP and a former executive with Bell Media’s parent company BCE Inc., said the appeal is going to be challenging. There is precedent for Canadian courts awarding a high level of deference to the decisions of tribunals like the CRTC, he said.

However, Mr. Hunter also said he thinks Bell’s case has merit. Bell currently has the exclusive Canadian rights to the

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Super Bowl, which effectively means the CRTC decision singles the company out, he said.

“To adopt this policy, which obviously would have a serious impact on Bell’s revenues and also the opportunity for Canadian producers and advertisers to advertise during a very popular event, it just seems a bit unusual,” Mr. Hunter said. “It didn’t sound like it was that well thought out.”

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David Heger, a telecommunications analyst with Edward Jones, said he wasn’t surprised to see Bell fighting the decision. With more people turning to online video providers and away from cable, advertising revenue from massively popular live events like the Super Bowl is becoming more and more important to broadcasters, he said.

“BCE wants to retain as much of that revenue as possible in a tough environment,” he said. “It makes sense to try to fight for it as much as they can.”

Simulcasting of Canadian ads over U.S. ones during the Super Bowl has been a pet peeve for many viewers. Many companies spend millions to showcase new ads produced specifically to run during the U.S. broadcast of the Super Bowl to take advantage of the game’s massive audience.

“For a number of years, Canadians have complained to the CRTC that they want to see the American ads during the Super Bowl,” the CRTC said when it issued the ban on Jan 29.

With files from The Canadian Press

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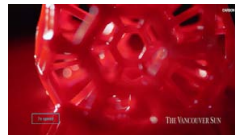
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