

BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW

APPENDIX 8

TO

**SUBMISSION OF CANADIAN NETWORK OPERATORS CONSORTIUM INC. TO
THE BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW
PANEL**

11 JANUARY 2019

Proposed Amendments to the *Telecommunications Act, S.C. 1993, c. 38,* as am.

PART I

GENERAL

Definitions [THE OTHER DEFINITIONS IN SECTION 2 OF THE ACT NOT LISTED BELOW HAVE NOT BEEN AMENDED]

Subsection 2(1)

access facilities means:

- (a) wireline telecommunications facilities that connect a telecommunications network to a person's premises; or
- (b) wireless telecommunications facilities, other than wireless local area network facilities, that connect a telecommunications network to a person's mobile wireless device.

current rate methodology means the methodologies, practices, procedures and any related regulations, rules or decisions adopted by the Commission for developing regulated rates, including the costs on which such rates are based if applicable, for mandated wholesale services or other tariffed services from time-to-time;

essential facilities has the meaning ascribed to it in section 23.1 and includes ancillary services;

exempt transmission apparatus means any apparatus whose functions are limited to one or more of the following:

- (a) the switching of telecommunications,
- (b) the input, capture, storage, organization, modification, retrieval, output or other processing of ~~intelligence information~~, or
- (c) control of the speed, code, protocol, content, format, routing or similar aspects of the transmission of ~~intelligence information~~;

information means signs, signals, writing, images, sounds or ~~intelligence~~-information of any nature;

~~**special Act** means an Act of Parliament respecting the operations of a particular Canadian carrier;~~

mandated wholesale service means a wholesale competition service or a wholesale public good service;

quality of service means, in relation to a wholesale competition service, the standards applicable to provisioning, including order processing, installation, repair and disconnection;

support structures includes anchors, antennas, conduit, manholes, poles, strands and towers;

telecommunications means the emission, transmission or reception of ~~intelligence~~-information by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

telecommunications service provider means a person who provides ~~basic~~-telecommunications services, including by exempt transmission apparatus;

transmission facility means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of ~~intelligence~~-information between network termination points, but does not include any exempt transmission apparatus;

wholesale lag means the amount of time between the launch of a retail telecommunications service and a corresponding upstream wholesale competition service;

wholesale competition service means a wholesale telecommunications service that includes one or more essential facilities;

wholesale public good service means a wholesale telecommunications service that is required to further the public interest, including:

- (a) public safety and security;
- (b) making emergency services available to the public;
- (c) facilitating access to telecommunications by persons with disabilities;
- (d) limiting public nuisance through telecommunications;
- (e) providing access to support structures; or
- (f) facilitating interconnection among telecommunications networks;

wholesale telecommunications service means a telecommunications service that is provided by a telecommunications service provider to another telecommunications service provider for use by the latter in providing telecommunications service to another person.

Application

Section 5 A trustee, trustee in bankruptcy, receiver, sequestrator, manager, administrator of the property of another or any other person who, under the authority of any court, or any legal instrument or act, operates any ~~transmission-telecommunications~~ facility of a ~~Canadian carrier~~ telecommunications service provider is subject to this Act.

Special Acts [THIS REPEAL IS PREMISED ON THE REPEAL OF THE THREE REMAINING SPECIAL ACTS]

Section 6 [REPEALED]

Objectives

Section 7 It is hereby affirmed that ~~telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that~~ the Canadian telecommunications policy has as its objectives to make available reliable and affordable telecommunications services of high quality to Canadians in both urban and rural areas in all regions of Canada.

- (a) [REPEALED]
- (b) [REPEALED]
- (c) [REPEALED]
- (d) [REPEALED]
- (e) [REPEALED]
- (f) [REPEALED]
- (g) [REPEALED]
- (h) [REPEALED]
- (i) [REPEALED]

Interpretation of Objective

Section 7.1 In interpreting the telecommunications policy objective, the Commission shall be guided by the following principles:

- (a) regulatory measures shall be adopted and applied with a view to fostering, to the maximum extent possible, competition in the provision of telecommunications services;

- (b) every wholesale competition service shall be made available:
- (i) as promptly as possible to avoid the prevention or lessening of competition due to wholesale lag;
 - (ii) at rates set at levels calculated by strict adherence to the current rate methodology;
 - (iii) at quality of service levels that are as equivalent as possible to the quality of service levels that the provider of the wholesale competition service provides to its own downstream retail services whose existence are dependent on the availability of the same essential facilities incorporated in the wholesale competition service.
- (c) access to telecommunications by persons with disabilities shall be facilitated:
- (d) public safety and security shall be maintained;
- (e) the protection of personal privacy shall be pursued; and
- (f) public nuisance through communications shall be limited.
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Directions

Section 8 [REPEALED]

Exemptions

Subsection 9(1) The Commission may, by order, exempt any class of ~~Canadian carrier~~ telecommunications service providers from the application of this Act, subject to any conditions contained in the order, where the Commission, after holding a public hearing in relation to the exemption, is satisfied that the exemption is consistent with the Canadian telecommunications policy objectives.

Publication of proposed order, etc.

Section 10 [REPEALED]

Effect of order, etc.

Section 11 [REPEALED]

Variation, rescission or referral

Subsection 12(1) Within ~~one year~~ nine months after a decision by the Commission under this Act or the Radiocommunications Act, the Governor in Council may, on petition in writing presented to the Governor in Council within ~~ninety~~ sixty days after the decision, or on the Governor in

Council's own motion, by order, vary or rescind the decision or refer it back to the Commission for reconsideration of all or a portion of it.

Copies to other parties

Subsection 12(3) On receipt of a petition, the Commission shall send a copy of it to each person who made any oral representation to the Commission in relation to the decision that is the subject of the petition.

Notice of petition

Subsection 12(4) [REPEALED AND REPLACED] Within fifteen days of receiving a petition, the Minister shall publish a notice in the *Canada Gazette* specifying:

- (a) that a petition has been received;
- (b) whether or not the petition requests a stay of the decision that is the subject of the petition; and
- (c) where the petition and any related submission may be inspected and copies of them obtained.

Process for petitions

Subsection 12(5) Every petition shall be subject to the following process:

- (a) interested persons may file submissions in response to a petition within thirty days of the date of the notice of the petition in the *Canada Gazette*; and
- (b) the person who originated the petition to the Governor in Council may file a reply to submissions filed in response to the petition within ten days after the deadline for filing submissions.

Stay

Subsection 12(6) The Governor in Council may stay the decision that is subject to the petition.

Process for Requests for Stays of a Decision

Subsection 12(7) A request for a stay of the decision that is subject to the petition shall be subject to the following process:

- (a) interested persons may file submissions in response to the request for a stay of the decision within ten days of the date of the notice of the petition in the *Canada Gazette*;

- (b) the person who originated the petition to the Governor in Council may file a reply to submissions filed in response to the request for a stay of the decision within five days after the deadline for filing submissions; and
- (c) the Governor in Council shall issue a determination on the request for a stay of the decision within thirty days after the deadline for the filing of reply.

Order for a reference back

Subsection 12(8) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing

- (a) shall set out the details of any matter that the Governor in Council considers to be material to the reconsideration; and
- (b) may specify a date before which the Commission shall complete its reconsideration.

Reconsideration

Subsection 12(9) The Commission shall, before any date specified under paragraph (58)(b), reconsider a decision referred back to it under subsection (1) and may confirm, vary or rescind the decision.

Variation or rescission by Governor in Council

Subsection 12(10) Where the Commission confirms or varies a decision under subsection (69) or does not complete its reconsideration of the decision before any date specified under paragraph (58)(b), the Governor in Council may, by order, vary or rescind the decision within ~~ninety~~forty-five days after the confirmation or variation of the decision or the specified date, as the case may be.

Reasons

Subsection 12(11) In an order made under subsection (1), ~~(7)(c)~~ or ~~(710)~~, the Governor in Council shall set out the reasons for making the order.

Provincial Consultation

Section 13 [REPEALED]

Report

Section 14 The Governor in Council may require the Commission to make a report on any matter within the Commission's jurisdiction under this Act ~~or any special Act.~~

PART II

ELIGIBILITY TO OPERATE

Technical standards

Subsection 15(1) The ~~Minister~~Commission may, where ~~the Minister~~it is satisfied that to do so will further the Canadian telecommunications policy objectives, ~~by order made after consultation with the Commission,~~ establish standards in respect of the technical aspects of telecommunications and ~~require the Commission to~~ give effect to them.

Incorporation by reference

Subsection 15(2) ~~An order~~A decision that incorporates a standard by reference may incorporate it as amended from time to time.

Publication of proposed orders

Subsection 15(3) [REPEALED]

Modification after publication

Subsection 15(4) [REPEALED]

~~Licence required~~ Registration requirement — classes of telecommunications service providers

Subsection 16.1(1) No telecommunications service provider that is of a class specified by the Commission shall provide ~~international~~ telecommunications services ~~except in accordance with an international telecommunications service licence~~ without first registering with the Commission.

~~Licence required~~ Registration requirement — classes of service

Subsection 16.1(2) No telecommunications service provider that is of a class specified by the Commission shall, without first registering with the Commission provide ~~international~~

telecommunications services that are within a class of telecommunications services specified the Commission.

Application Form and manner of registration

Section 16.2 ~~An application for the issuance, renewal or amendment of an international telecommunications service licence~~ Registration of telecommunications service providers must be made in the form and manner and with the information specified by the Commission, and be accompanied by the fee prescribed under subsection 68(1).

Issuance of licences

Section 16.3 [REPEALED]

Suspension and revocation of telecommunications service licences

Section 16.4 [REPEALED]

~~Licence Required-Registration – international submarine cables~~

Section 17 No person shall, without first registering with the Commission, construct or operate an international submarine cable or construct or operate any works or facilities for the purpose of operating an international submarine cable ~~except in accordance with an international submarine cable licence that has been issued to the person and that the person remains eligible under the regulations to hold.~~

Registration Requirement – class of service

Section 18 ~~An application for the issuance, renewal or amendment of an international submarine cable licence~~ Registration of an international submarine cable service must be made in the prescribed form and manner and be accompanied by the prescribed information and the prescribed fee ~~or a fee calculated in the prescribed manner~~ under subsection 68(1).

Issuance of licences, etc.

Section 19 [REPEALED]

Suspension and revocation of licences, etc.

Section 20 [REPEALED]

Supporting Affidavit

Section 21 [REPEALED]

Issuance of Certificates

Section 19 The Commission may, on an application by a telecommunications service provider, and after verification of its operations, issue a certificate confirming that the provider is registered with the Commission and is subject to the jurisdiction of this Act.

Regulations

Subsection ~~22(1)~~20(1) The Governor in Council may, in relation to Canadian carriers' eligibility under section 16 to operate as telecommunications common carriers, make regulations

(a) respecting information that is to be provided, the persons by whom and to whom it is to be provided, the manner in which and the time within which it is to be provided and the consequences of failing to provide it;

(b) respecting the circumstances and the manner in which a Canadian carrier, in order to maintain its eligibility, may control the acquisition and ownership of its voting shares, restrict, suspend or refuse to recognize ownership rights in respect of those shares and require holders of those shares to dispose of them;

(c) authorizing the board of directors of a Canadian carrier to pay a dividend or to make any other distribution with respect to voting shares that would otherwise be prohibited because the shares were held in contravention of section 16 or any regulations made under this subsection where, in the board's opinion, the contravention was inadvertent or of a technical nature or it would be otherwise inequitable not to pay the dividend or make the distribution;

(d) respecting the circumstances and the manner in which a Canadian carrier may restrict voting rights attached to shares, or suspend or void the exercise of those rights, in order to maintain its eligibility;

(e) respecting the circumstances and the manner in which a Canadian carrier may

(i) sell, redeem or purchase shares held contrary to section 16 or any regulations made under this subsection, and

(ii) deal with the proceeds of sale and reimburse any purchasers of the shares in good faith;

(f) respecting the powers of a Canadian carrier to require disclosure of the beneficial ownership of its shares, the right of the carrier and its directors, officers and employees, and its agents or mandataries, to rely on any required disclosure and the effects of their reliance;

(g) respecting the verification by the Commission of a Canadian carrier's eligibility, the measures the Commission may take to maintain the carrier's eligibility, including exercising the powers of the carrier's board of directors and countermanding its decisions, and the circumstances and manner in which the Commission may take those measures;

(h) respecting the circumstances and manner in which the Commission and its members, officers or employees, or its agents or mandataries, or a Canadian carrier and its directors, officers and employees, and its agents or mandataries, may be protected from liability for actions taken by them in order to maintain the carrier's eligibility;

(i) defining the words successor and Canadian for the purposes of section 16; and

(j) prescribing anything that is to be prescribed and generally for carrying out the purposes and provisions of section 16 and this subsection.

Idem

Subsection 22(2) [REPEALED]

Liability for fees

Subsection 22(3) [REPEALED]

Publication of proposed regulation

Subsection ~~22(4)~~20(2) Any regulations proposed to be made under this section shall be published in the *Canada Gazette* at least sixty days before their proposed effective date, and a reasonable opportunity shall be given to interested persons to make representations to the Minister with respect to the proposed regulations.

Idem

Subsection ~~22(5)~~20(3) Proposed regulations that are modified after publication need not be published again under subsection (4~~2~~).

PART III

RATES, FACILITIES AND SERVICES

Essential facility

Subsection 23.1(1) In this Act, essential facility means a facility that satisfies the following conditions:

- (a) the facility is required as an input by competitors to provide telecommunications services in a relevant downstream market;
- (b) the facility is controlled by a firm that possesses upstream market power such that withdrawing or denying mandated access to the facility would likely result in a substantial lessening or prevention of competition in the relevant downstream market; and
- (c) it is not practical or feasible for competitors to duplicate the functionality of the facility.

Facility

Subsection 23.1(2) For the purpose of subsection 23.1(1):

- (a) facility includes a facility, function or service;
- (b) firm includes a group of firms exercising joint dominance;
- (c) a determination concerning whether a facility associated with a wholesale telecommunications service is required as an input by another firm to provide one or more downstream retail service involves a consideration of:
 - (i) the downstream market(s) for which the wholesale service is an input;
 - (ii) the technical aspects of the wholesale service;
 - (iii) the past, current, and anticipated demand for the wholesale service; and
 - (iv) trends in demand to assess whether there is sustained growth or decline.
- (d) a determination concerning the presence of upstream market power includes a consideration of:
 - (i) upstream market share;

- (ii) demand conditions, including the the availability of substitutes and customer switching costs;
 - (iii) supply conditions, including competitor capacity constraints and the likelihood of competitive entry; and
 - (iv) evidence of rivalrous behavior, including contracts, promotions and service improvements;
- (e) a determination considering the likelihood of substantial lessening or prevention of competition in one or more relevant downstream markets involves a consideration of:
- (i) downstream retail market share;
 - (ii) the number and character of firms and/or customers that might be affected in the absence of the wholesale service;
 - (iii) the availability of retail substitutes;
 - (iv) customer switching costs; and
 - (v) other retail indicators that may be specific to the wholesale service in question;
- (f) a determination concerning the duplicability of facility involves consideration of whether the facility can be duplicated by a reasonably efficient competitor, which, in turn, involves consideration of:
- (i) economic considerations, including capital costs and construction time frames;
 - (ii) legal or regulatory considerations, including government approvals and access to rights-of-way;
 - (iii) technical impediments, including network or technological issues;
 - (iv) other impediments faced by new or expanding competitors; and
 - (v) duplicability based on a scale corresponding to the geographic area used to define the relevant market for the wholesale service in question.
- (g) any other relevant principles of competition law and policy shall be taken into account.

Competition law and policy

Subsection 23.1(3) For the purpose of paragraph (2)(g), “competition law and policy” means the evolving jurisprudence and policy applied in Canada for the purpose of preventing or remedying

anti-competitive conduct that has the effect of preventing or lessening competition substantially in a relevant market.

Access facilities

Subsection 23.1(4) Despite anything else in section 23.1, and subject to subsection 23.2(6), all present and future access facilities are hereby designated as essential facilities.

Meaning of “competitor”

Subsection 23.1(5) For the purpose of section 23.1, “competitor” means a customer of a wholesale telecommunications service that also competes with the provider of that service in one or more corresponding downstream markets.

Meaning of “downstream market”

Subsection 23.1(6) For the purpose of section 23.1, “downstream market” means a market for retail telecommunications services that is supplied by an upstream market.

Meaning of “upstream market”

Subsection 23.1(7) For the purpose of section 23.1, “upstream market” means a market for wholesale telecommunications services.

Wholesale competition services

Subsection 23.2(1) A telecommunications service provider that launches a retail telecommunications service whose existence is dependent on the availability of one or more essential facilities, shall at the time of the launch, also file with the Commission a tariff, pursuant to section 25, all other technical information and commercially relevant information required to offer a corresponding wholesale competition service containing the same essential facilities.

Attributes

Subsection 23.2(2) A telecommunications service provider that files the tariff and information required in paragraph (1) shall ensure that the rates contained in the proposed tariff adhere strictly to the current rate methodology and that the wholesale competition service is explicitly designed to deliver a quality of service that is as equivalent as possible to the quality of service levels that the provider delivers on an ongoing basis to the retail service that was launched.

Commission consideration

Subsection 23.2(3) In considering whether to approve the tariffs and any other conditions related to a wholesale competitor service as proposed or otherwise, the Commission shall act as expeditiously as possible and shall adhere to the principles set out in subsections 7.1(a) and (b).

Exception

Subsection 23.2(4) The Commission may exempt certain classes of telecommunications service providers from the application of subsections (1) and (2) to certain classes of wholesale competitor services, where the Commission determines that doing so will not materially compromise the attainment of the policy objective or compliance with the principles set out in subsections 7.1(a) and (b) in a Canadian Province or Territory.

Review of wholesale competition services

Subsection 23.2(5) The Commission may, at any time, on its own motion or on the application of any person, conduct a market analysis necessary to confirm, vary or rescind the classification of a class of wholesale competition services or to impose such a classification on a new class of services, and must conduct such an analysis at least once every five years.

Review of essential facilities

Subsection 23.2(6) When conducting a review under subsection (5), the Commission may consider,

- (a) whether any class of access facilities or other facilities previously classified as essential facilities has ceased to constitute an essential facility, and if it makes such a determination, that class of access facilities or other facilities shall cease to be classified as such, or
- (b) whether a new class of essential facility should be defined, and if so, shall specify how the new class of essential facility is to be incorporated into a class of wholesale competitor service.

Review not linked to wholesale obligation

Subsection 23.2(7) Subject to subsection (4), no telecommunications service provider shall be relieved from the obligations set out in subsections (1), or (2) and the Commission shall not be relieved of performing its duties under subsection (3) as a result of any anticipated or ongoing review conducted under subsection (5).

Presumption of violation

Subsection 23.2(8) In any proceeding in which the failure of a telecommunications service provider to adhere to the requirements of subsections (1) or (2) is in issue, the Commission shall also consider whether, if the provider is found to have breached the provisions of either of those subsections, the Commission should, in addition to any other relief granted, also impose a penalty pursuant to section 72.003.

Wholesale public good services

Subsection 23.3(1) The Commission may require any class of telecommunications service provider to provide such class of wholesale public good service as the Commission determines to be consistent with adherence to the telecommunications policy objective and the principles set out in subsections 7.1(a), (c), (d), (e) or (f).

Exemption

Subsection 23.3(2) The Commission may exempt certain classes of telecommunications service providers from the application of subsections (1), where the Commission considers that doing so is in the public interest and will not compromise materially the attainment of the policy objective or compliance with the principles set out in subsections 7.1(a), (b), (c), (d), (e) or (f).

Review of wholesale public good services

Subsection 23.3(3) The Commission may, at any time, on its own motion or on the application of any person, conduct an analysis to determine whether it should confirm, vary or rescind the classification of any class of wholesale public good services or consider creating any new class of public good services, and must conduct such an analysis at least once every five years.

Prohibition

Subsection 23.3(4) In exercising its powers under subsection (3), Commission shall not vary or rescind the classification of any class of wholesale public good services nor refrain from creating any new class of wholesale public good services if doing so would compromise the attainment of the policy objective or compliance with the principles set out in subsections 7.1(a), (b), (c), (d), (e) or (f).

Functional or structural separation

Section 23.4 Where the Commission concludes that the measures set out in subsections 23.2(1), (2) and (3) are not sufficient to prevent the undue lessening or prevention of competition in the market for a class of retail services for which one or more corresponding wholesale competitor services exist, the Commission shall make an order directing any or all the persons against whom an order is sought to take any action, including the divestiture of assets or shares to the extent the Commission considers necessary to prevent the undue lessening or prevention of competition in the market for the class of retail services.

Conditions of service

Section 24 The offering and provision of any telecommunications service by a ~~Canadian carrier~~ telecommunications service provider are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission, including those relating to:

- (a) service terms and conditions in contracts with users of telecommunications services;
- (b) protection of the privacy of those users;
- (c) access to emergency services; and
- (d) access to telecommunications services by persons with disabilities.

Use of information

Section 24.1 [REPEALED AND REPLACED] No telecommunications service provider that provides a wholesale competition service shall use any information obtained from the customers of the service to compete with those customers in the provision of downstream retail services.

Telecommunications rates to be approved

Subsection 25 (1) No ~~Canadian carrier~~ telecommunications service provider shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

Filing of joint tariffs

Subsection 25(2) A joint tariff agreed on by two or more ~~Canadian carriers~~ telecommunications service providers may be filed by any of the providers with an attestation of the agreement of the other providers.

Form of tariffs

Subsection 25(3) A tariff shall be filed and published or otherwise made available for public inspection by a ~~Canadian carrier~~ telecommunications service provider in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

Special circumstances

Subsection 25(4) Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a ~~Canadian carrier~~ telecommunications service provider otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate

- (a) was charged because of an error or other circumstance that warrants the ratification;
 - (b) was imposed in conformity with the laws of a province before the operations of the ~~carrier~~ telecommunications service provider were regulated under any Act of Parliament; or
 - (c) was imposed by this Act on a telecommunications service provider that was not previously subject to the requirement of subsection (1) and 180 days since that telecommunications service provided became subject to that requirement.
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Effective date of tariff

Section 26 Within forty-five business days after a tariff is filed by a ~~Canadian carrier~~ telecommunications service provider, the Commission shall

- (a) approve the tariff, with or without amendments, or substitute or require the ~~carrier~~ telecommunications service provider to substitute another tariff for it;
 - (b) disallow the tariff; or
 - (c) make public written reasons why the Commission has not acted under paragraph (a) or (b) and specify the period of time within which the Commission intends to do so.
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Just and reasonable rates

Subsection 27 (1) Every rate charged by a ~~Canadian carrier~~ telecommunications service provider for a telecommunications service and all other terms and conditions for the service shall be just and reasonable.

Unjust discrimination

Subsection 27(2) No ~~Canadian carrier~~ telecommunications service provider shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

Subsection 27(2.1) For greater certainty, a breach of subsection 23.2(1) or (2) constitutes a breach of subsection 27(2).

Questions of fact

Subsection 27(3) The Commission may determine in any case, as a question of fact, whether a ~~Canadian carrier~~ telecommunications service provider has complied with this section, subsection 23.2(1) or (2), or section 23.4, 25 or 29, or with any decision made under, subsection 23.2(3) or 23.3(1), or section 24, 24.1 25, 29, 34 or 40.

Burden of proof

Subsection 27(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the ~~Canadian carrier~~ telecommunications service provider that discriminates, gives the preference or subjects the person to the disadvantage.

Method

Subsection 27(5) In determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a ~~carrier's~~ telecommunications service provider's return on its rate base or otherwise.

Exception

Subsection 27(6) Notwithstanding subsections (1) and (2), a ~~Canadian carrier~~ telecommunications service provider may provide telecommunications services at no charge or at a reduced rate

- (a) to the ~~carrier's~~ provider's directors, officers, employees or former employees; or
 - (b) with the approval of the Commission, to any charitable organization or disadvantaged person or other person.
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Paper Bill

Section 27.2 ~~Any person who provides telecommunications services~~ No telecommunications service provider shall ~~not~~ charge a subscriber for providing the subscriber with a paper bill.

Transmission of broadcasts

Subsection 28 (1) The Commission shall have regard to the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act* in determining whether any discrimination is unjust or any preference or disadvantage is undue or unreasonable in relation to any transmission of programs, as defined in subsection 2(1) of that Act, that is primarily direct to the public and made

- (a) by satellite; or
- (b) through the terrestrial distribution facilities of a ~~Canadian carrier~~ telecommunications service provider, whether alone or in conjunction with facilities owned by a broadcasting undertaking.

Satellite transmission of broadcasts

Subsection 28(2) Where a person who carries on a broadcasting undertaking does not agree with a ~~Canadian carrier~~ telecommunications service provider with respect to the allocation of satellite capacity for the transmission by the ~~carrier~~ telecommunications service provider of programs, as defined in subsection 2(1) of the *Broadcasting Act*, the Commission may allocate satellite capacity to particular broadcasting undertakings if it is satisfied that the allocation will further the implementation of the broadcasting policy for Canada set out in subsection 3(1) of that Act.

Idem

Subsection 28(3) Before the Commission exercises its power under subsection (2), it shall take into account the ~~carrier's role as a telecommunications common carrier~~ telecommunications service provider's common carriage and other obligations under this Act and any operational constraints identified by the ~~carrier~~ telecommunications service provider.

Approval of working agreements

Section 29 No ~~Canadian carrier~~ telecommunications service provider shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another ~~telecommunications common carrier~~ telecommunications service provider respecting

- (a) the interchange of telecommunications by means of their telecommunications facilities;
 - (b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or
 - (c) the apportionment of rates or revenues between the ~~carriers~~ providers.
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Recovery of charges

Section 30 In default of payment, a rate charged by a ~~Canadian carrier~~ telecommunications service provider in accordance with this Act for a telecommunications service constitutes a debt due to the ~~carrier~~ telecommunications service provider and may be recovered in a court of competent jurisdiction.

Limitations on liability

Section 31 [REPEALED AND REPLACED] The Commission may authorize or prescribe limitations of a telecommunications service provider's liability in respect of a telecommunications service.

General powers

Section 32 [PARAGRAPHS (a) AND (c) ARE NEW. PARAGRAPHS (b), (d), (e), (f), (g), (h) AND (i) REPLACE, RESPECTIVELY, PARAGRAPHS (a), (b), (c), (d), (e), (f) AND (g) OF THE CURRENT ACT] The Commission may, for the purposes of this Part,

- (a) designate which classes of telecommunications services are basic telecommunications services and change such designations from time-to-time;

- (b) approve the establishment of classes of telecommunications services and permit different rates to be charged for, and other differing terms and conditions to apply to different classes of service;
 - (c) approve the establishment of classes of telecommunications service providers and permit different classes of providers to provide the same classes of telecommunications services subject to the differing terms and conditions, including as to rates;
 - (d) determine standards in respect of the technical aspects of telecommunications applicable to telecommunications facilities operated by or connected to those of a ~~Canadian carrier~~ telecommunications service provider;
 - (e) amend any tariff filed under section 25 or any agreement or arrangement submitted for approval under section 29;
 - (f) suspend or disallow any portion of a tariff, agreement or arrangement that is in its opinion inconsistent with this Part;
 - (g) substitute or require the ~~Canadian carrier~~ telecommunications service provider to substitute other provisions for those disallowed;
 - (h) require the ~~Canadian carrier~~ telecommunications service provider to file another tariff, agreement or arrangement, or another portion of it, in substitution for a suspended or disallowed tariff, agreement, arrangement or portion; and
 - (i) in the absence of any applicable provision in this Part, determine any matter and make any order relating to the rates, tariffs or telecommunications services of ~~Canadian carriers~~ telecommunications service providers.
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Integral activities of affiliates

Section 33 [REPEALED]

Forbearance by Commission

Subsection 34(1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a ~~Canadian carrier~~ telecommunications service provider, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

Idem

Subsection 34(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a ~~Canadian carrier~~ telecommunications service provider is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

Effect of forbearance

Subsection 34(4) The Commission shall declare that sections 24, 25, 27, 29 and 31 do not apply to a ~~Canadian carrier~~ telecommunications service provider to the extent that those sections are inconsistent with a determination of the Commission under this section.

Order to provide services, etc.

Section 35 [REPEALED]

Content of messages

Section 36 Except where the Commission approves otherwise, a ~~Canadian carrier~~ telecommunications service provider shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public.

Information requirements

Subsection 37(1) The Commission may require a ~~Canadian carrier~~ telecommunications service provider

- (a) to adopt any method of identifying the costs of providing telecommunications services and to adopt any accounting method or system of accounts for the purposes of the administration of this Act; or
- (~~b~~) to submit to the Commission, ~~in periodic reports or in such other form and manner as the Commission specifies, any information that the Commission considers necessary for the administration of this Act or any special Act~~ the *Radiocommunication Act*.

Exception

Subsection 37(2) Where the Commission believes that a person other than a Canadian carrier telecommunications service provider is in possession of information that the Commission considers necessary for the administration of this Act or the *Radiocommunication Act* ~~or any~~

~~special Act~~, the Commission may require that person to submit the information to the Commission in periodic reports or in such other form and manner as the Commission specifies, unless the information is a confidence of the executive council of a province.

Delegation of Powers

Subsection 37(4) The Commission may, in writing and on specified terms, delegate to any person, any of its powers under paragraph 37(1)(b) or subsection 37(2) and may modify the terms or revoke the delegation.

Access to information

Section 38 Subject to section 39, the Commission shall make available for public inspection any information submitted to the Commission in the course of proceedings before it with respect to any matter under this Act or the *Radiocommunications Act*.

Designation of information

Subsection 39(1) For the purposes of this section, a person who submits any ~~of the following~~ information to the Commission may designate ~~it~~ as confidential if they file it with the Commission with respect to any matter under this Act or the *Radiocommunication Act*.

- (a) information that is a trade secret;
- (b) financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
- (c) information the disclosure of which could reasonably be expected
 - (i) to result in material financial loss or gain to any person,
 - (ii) to prejudice the competitive position of any person, or
 - (iii) to affect contractual or other negotiations of any person.

Information inadmissible

Subsection 39(6) Designated information that is not disclosed or required to be disclosed under this section is not admissible in evidence in any judicial proceedings except proceedings for failure to submit information required to be submitted under this Act ~~or any special Act~~ or for forgery, perjury or false declaration in relation to the submission of the information.

Commissioner of Competition disclosure to Commission

Subsection 39.1(1) Despite anything in the *Competition Act*, The Commissioner of Competition may disclose or require disclosure of information, including confidential information, to the Commission if:

- (a) the Commissioner of Competition determines that the information is relevant to the administration of this Act or the *Radiocommunication Act*, including to any issues being considered in a proceeding before the Commission; or
- (b) at the Commission's request, if the Commission determines that the information is relevant to the administration of this Act or the *Radiocommunication Act*, including to any issues being considered in a proceeding before it.

Information not to be disclosed

Subsection 39.1(2) Where the Commissioner of Competition discloses information to the Commission pursuant to subsection (1), that the Commissioner of Competition has designated as confidential, and the designation is not withdrawn by the Commission of Competition, no person described in subsection (3) shall knowingly disclose the information, or knowingly allow it to be disclosed, to any other person in any manner that is calculated or likely to make it available for the use of any person who may benefit from the information or use the information to the detriment of any person to whose business or affairs the information relates.

Persons who shall not disclose information

Subsection 39.1(3) Subsection (2) applies to any person referred to in any of the following paragraphs who comes into possession of the designated information while holding the office or employment described in that paragraph, whether or not the person has ceased to hold that office or be so employed:

- (a) a member of, or person employed by, the Commission;
 - (b) in respect of information provided under subsection 37(3), the Minister, the Chief Statistician of Canada, an agent of or a person employed in the federal public administration.
-

Order for connection

Subsection 40(1) The Commission may order a Canadian carrier telecommunications service provider to connect any of the carrier's-provider's telecommunications facilities to any other telecommunications facilities.

Prohibition or regulation by Commission

Subsection 41(1) The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a ~~Canadian carrier~~ telecommunications service provider for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

Exception

Subsection 41(2) Despite subsection (1), the Commission may not prohibit or regulate the use by any person of the telecommunications facilities of a ~~Canadian carrier~~ telecommunications service provider for the provision of unsolicited telecommunications, if the telecommunication is

- (a) a commercial electronic message to which section 6 of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* applies; or
 - (b) a commercial electronic message referred to in subsection 6(5) of that Act, except to the extent that it is one referred to in subsection 6(8) of that Act.
-

Works ordered by Commission

Subsection 42(1) Subject to any contrary provision in any Act other than this Act or ~~any special Act~~ the Radiocommunication Act, the Commission may, by order, in the exercise of its powers under this Act or ~~any special Act~~ the Radiocommunication Act, require or permit any telecommunications facilities to be provided, constructed, installed, altered, moved, operated, used, repaired or maintained or any property to be acquired or any system or method to be adopted, by any person interested in or affected by the order, and at or within such time, subject to such conditions as to compensation or otherwise and under such supervision as the Commission determines to be just and expedient.

Entry on public property

Subsection 43(2) Subject to subsections (3) and (4) and section 44, a ~~Canadian carrier~~ telecommunications service provider or distribution undertaking may enter on and break up ~~any highway or other public place~~ property for the purpose of ~~constructing, installing, maintaining, repairing~~ or operating ~~its transmission lines~~ telecommunications facilities in relation to the provision of telecommunications services and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the ~~highway or other public property~~.

Consent of municipality

Subsection 43(3) No ~~Canadian carrier telecommunications service provider~~ or distribution undertaking shall construct a ~~transmission line telecommunications facility~~ on, over, under or along a ~~highway or other public place property~~ without the consent of the municipality or other public authority having jurisdiction over the ~~highway or other public place property~~.

Application by ~~carrier telecommunications service provider~~

Subsection 43(4) Where a ~~Canadian carrier telecommunications service provider~~ or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to ~~construct~~ install, maintain, repair or operate a ~~transmission line telecommunications facility~~, the ~~carrier telecommunications service provider~~ or distribution undertaking may apply to the Commission for permission to ~~construct~~ install, maintain, repair or operate it and the Commission may, having due regard to the use and enjoyment of the ~~highway or other public place property~~ by others, grant the permission subject to any terms and conditions, including rates, that the Commission determines.

Principles of access

Subsection 43(5) [REPEALED AND REPLACED] The Commission may establish principles of general application in relation to access to public property of municipal or other public authorities to be used by telecommunications service providers and distribution undertakings and the public authorities to negotiate agreements for such access for the purpose of installing, maintain, repairing or operating the telecommunications facility of the telecommunications service provider or distribution undertaking, and, where a dispute arises with respect to such agreement, the Commission may deal with the dispute under subsection (4).

Access to support structures and other property

Subsection 43(6) Where a telecommunications service provider or a distribution undertaking

- (a) cannot, on terms acceptable to it, gain access to support structures or other property, including building risers and telecommunications equipment rooms, whether such support structures or other property are primarily used for telecommunications, electrical power, broadcast distribution or other purposes, constructed on, over, along or under public or private property, and
- (b) requests such access for the purpose of installing, maintaining, repairing or operating telecommunications facilities related to the provision of telecommunications services,

the telecommunications service provider or distribution undertaking may apply to the Commission to resolve any issues in dispute with the person who owns or controls the support structures or other property, and the Commission may, after taking into account the views of the parties to the

dispute, by order, grant the telecommunications service provider or a distribution undertaking a right of access subject to any terms and conditions, including rates, that the Commission determines.

Consultation with provincial regulatory authorities

Subsection 43(7) In the event the support structures or other property referred to in subsection (6) are owned by a person, including an electrical utility, that is subject to regulation of its support structures or other relevant property by a provincial regulatory authority, the Commission shall, prior to making an order to resolve a dispute, consult with the provincial regulatory authority.

Clarification

Subsection 43(8) The availability of the Commission's powers set out in subsections (6) and (8) shall not influence consideration by the Commission regarding whether it should make any determination:

- (a) to order any class of telecommunications service provider to file a public good wholesale service tariff, setting out the terms and conditions, including rates, and to provide all other necessary technical and commercial information for access to the provider's support structures; or
- (b) to approve such a tariff, and other information with or without changes or order that access be provided to the provider's support structures on such other or additional general terms as the Commission deems to be just and reasonable.

Inside Wire

Subsection 43.1(1) A telecommunications service provider that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by a broadcasting undertaking or by a telecommunications service provider.

Just and reasonable terms and conditions, including rates

Subsection 43.1(2) The telecommunications service provider that owns an inside wire shall make the use of inside wire available on terms and conditions, including rates, that are just and reasonable.

Commission determinations

Subsection 43.1(3) For the purpose of determining terms and conditions, including rates, that are just and reasonable, the Commission may specify,

- (a) the non-rate terms and conditions;
- (b) the rates;
- (c) principles for how non-rate terms and conditions are to be established; and
- (d) the methodologies, formulas, processes and procedures for the calculation of rates.

Inside wire not to be removed

Subsection 43.1(4) The telecommunications service provider that owns an inside wire must not remove it from a building if a request for the use of the wire has been made and is pending under subsection (1), or while the wire is being used in accordance with that subsection.

Definition

Subsection 43.1(5) In this section, “inside wire” means the wire that is used by a telecommunications service for the provision of telecommunications services that is located inside a building or, in the case of an externally wired multiple-unit building, outside the building, and that extends from the demarcation point to one or more terminal devices inside a subscriber’s residence or other premises. It includes the outlets, splitters and faceplates that are attached or connected to the wire but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall of a subscriber’s residence or other premises.

Applications by municipalities and other authorities or persons

Section 44 On application by a municipality or other public authority, or another person that owns or controls support structures or other property on which a telecommunications service providers has situated or proposed to situate its telecommunications facilities, the Commission may

- (a) order a ~~Canadian carrier~~ telecommunications service provider or distribution undertaking, subject to any conditions that the Commission determines, to bury or alter the route of any ~~transmission line~~ telecommunications facility situated or proposed to be situated ~~within the jurisdiction of the municipality or public authority on the support structure or other property;~~ or
 - (b) prohibit the ~~construction~~ installation, repair, maintenance or operation on such support structure or other property by a ~~Canadian carrier~~ telecommunications service provider or distribution undertaking of any such ~~transmission line~~ telecommunications facility except as directed by the Commission.
-

Drainage and utilities

Section 45 On application by a municipality or other public authority, or by an owner of land, the Commission may authorize the construction of drainage works or the laying of utility pipes on, over, under or along a ~~transmission line~~ telecommunications facility of a ~~Canadian carrier~~ telecommunications service provider or any lands used for the purposes of a ~~transmission line~~ telecommunications facility, subject to any conditions that the Commission determines.

Expropriation by ~~carrier telecommunications service provider~~

Subsection 46(1) If, in the opinion of a ~~Canadian carrier telecommunications service provider~~, the taking or acquisition by the ~~carrier telecommunications service provider~~ of any land, an interest or, in the Province of Quebec, a right in any land without the consent of the owner is required for the purpose of providing telecommunications services to the public, the ~~carrier telecommunications service provider~~ may, with the approval of the Commission, so advise the appropriate Minister in relation to Part I of the Expropriation Act.

Interpretation

Subsection 46(3) For the purposes of the Expropriation Act, if the appropriate Minister advised under subsection (1) is of the opinion that the land or the interest or right in land is required for the purpose of providing telecommunications services to the public,

- (a) the land or the interest or right in land is deemed to be, in the opinion of that Minister, required for a public work or other public purpose;
- (b) a reference to the Crown in that Act is deemed to be a reference to the ~~Canadian carrier telecommunications service provider~~; and
- (c) the ~~carrier telecommunications service provider~~ is liable to pay any amounts required to be paid under subsection 10(9) and sections 25, 29 and 36 of that Act in respect of the land or the interest or right in land.

Liability to Crown for expenses

Subsection 46(4) The expenses incurred in carrying out any function of the Attorney General of Canada under the Expropriation Act in relation to any land or any interest or right in land referred to in subsection (3) constitute a debt due to Her Majesty in right of Canada by the ~~Canadian carrier telecommunications service provider~~ and are recoverable in a court of competent jurisdiction

Contribution to fund

Subsection 46.5(1) The Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to a class of basic telecommunications services.

Funding consultation

Subsection 46.5(4) The Commission shall consult annually with the Minister and, where applicable, provincial, territorial and local governments regarding how the funding of continuing access to any class of basic service using the fund can be coordinated and duplication can be

avoided among them in the next ensuing year, and shall ensure and direct that moneys from the fund are disbursed in that next ensuing year in a manner that is consistent with any coordinated results of that consultation.

PART IV

Administration

Commission subject to orders and standards

Section 47 The Commission shall exercise its powers and perform its duties under this Act ~~and any special Act~~ (a) with a view to implementing the Canadian telecommunications policy objectives and the principles set out in section 7.1 and ensuring that telecommunications service providers provide telecommunications services and charge rates in accordance with section 27.

[(b) REPEALED]

Inquiries and determinations

Subsection 48(1) The Commission may, on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II, ~~except in relation to international submarine cables, Part III or this Part or under any special Act~~ the *Radiocommunication Act* or any regulation, rule or decision made under any of the foregoing, and the Commission shall inquire into any matter on which it is required to report or take action under section 14 of this Act.

Quorum

Section 49 For the purposes of this Act ~~and the *Radiocommunication Act*~~, a quorum of the Commission consists of two members, but in uncontested matters a quorum consists of one member.

Extension of time

Subsection 50(1) The Commission may extend the period, whether fixed by regulation or otherwise, for doing anything required to be done in proceedings before it or under any of its decisions under this Act or the *Radiocommunication Act*.

Delegation of Powers

Subsection 50(2) The Commission may, in writing and on specified terms, delegate to any person, any of its powers under subsection 50(1) as they relate to the due dates by which anything must be filed with the Commission and may modify the terms or revoke the delegation.

Mandatory and Restraining Orders

Section 51 The Commission may order a person, at or within any time and subject to any conditions that it determines, to do anything the person is required to do under this Act or ~~any special Act~~ the *Radiocommunication Act*, and may forbid a person to do anything that the person is prohibited from doing under this Act or ~~any special Act~~ the *Radiocommunication Act*.

Questions of fact and law

Subsection 52(1) The Commission may, in exercising its powers and performing its duties under this Act or ~~any special Act~~ the *Radiocommunication Act*, determine any question of law or of fact, and its determination on a question of fact is binding and conclusive.

Counsel assigned by Minister of Justice

Section 53 Where an issue of particular importance affecting the public interest arises, or may arise, in the course of proceedings before the Commission under this Act or the *Radiocommunication Act*, the Minister of Justice may, at the request of the Commission or of the Minister's own motion, instruct counsel to intervene in the proceedings with respect to the issue.

In camera ~~hearings~~ proceedings

Section 54 A ~~hearing~~ proceeding or a portion of a ~~hearing~~ proceeding before the Commission under this Act or the *Radiocommunication Act* may, on the request of any party to the ~~hearing~~ proceeding, or on the Commission's own motion, be held in camera if that party establishes to the satisfaction of the Commission, or the Commission determines, that the circumstances of the case so require.

Judicial powers

Section 55 For the purpose of this Act and the *Radiocommunication Act*, the Commission has the powers of a superior court with respect to

- (a) the attendance and examination of witnesses;
- (b) the production and examination of any document, information or thing;

- (c) the enforcement of its decisions;
 - (d) the entry on and inspection of property; and
 - (e) the doing of anything else necessary for the exercise of its powers and the performance of its duties.
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Award of Costs

Subsection 56(1) The Commission may award interim or final costs of and incidental to proceedings before it under this Act or the *Radiocommunication Act* and may fix the amount of the costs or direct that the amount be taxed.

Delegation of powers

Subsection 56(3) The Commission may, in writing and on specified terms, delegate to any person, any of its powers under subsection 56(1) as they relate to the taxation of costs and may modify the terms or revoke the delegation.

Rules orders and regulations

Section 57 The Commission may make rules, ~~orders~~ decisions and regulations respecting any matter or thing within the jurisdiction of the Commission under this Act or ~~any special Act~~ or the *Radiocommunication Act*.

Guidelines

Section 58 The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act or ~~any special Act~~ the *Radiocommunication Act*, but the guidelines and statements are not binding on the Commission.

Advice

Subsection 59(1) Where a person proposes to provide a telecommunications service that would utilize telecommunications services obtained from a ~~Canadian carrier~~ telecommunications service provider, the Commission may, on application by the person or the ~~carrier~~ telecommunications service provider, advise the applicant whether and under what conditions the ~~carrier~~ telecommunications service provider is obliged or entitled to provide telecommunications services for the purpose of that utilization under the applicable decisions of the Commission and tariffs of the ~~carrier~~ telecommunications service provider, but the advice is not binding on the Commission.

Partial or additional relief

Section 60 The Commission may grant the whole or any portion of the relief applied for in any case under this Act or the *Radiocommunication Act*, and may grant any other relief in addition to or in substitution for the relief applied for as if the application had been for that other relief.

Conditional decisions

Subsection 61(1) The Commission may, in any decision, provide that the whole or any portion of the decision under this Act or the *Radiocommunication Act* shall come into force on, or remain in force until, a specified day, the occurrence of a specified event, the fulfilment of a specified condition, or the performance to the satisfaction of the Commission, or of a person named by it, of a requirement imposed on any interested person.

Interim Decisions

Subsection 61(2) The Commission may make an interim decision under this Act or the *Radiocommunication Act* and may make its final decision effective from the day on which the interim decision came into effect.

***Ex parte* decisions**

Subsection 61(3) The Commission may make an *ex parte* decision under this Act or the *Radiocommunication Act* where it considers that the circumstances of the case justify it.

Review of decisions

Subsection 62(1) The Commission may, on application or on its own motion, review and rescind or vary any decision made by it under this Act or the *Radiocommunication Act* or re-hear a matter before rendering a decision.

Stay of decisions

Subsection 62(2) The Commission may, on application or on its own motion, stay any decision made by it for any period of time or until the occurrence of an event, where a proceeding has been commenced under section 12, subsection 62(1) or subsection 64(1), or where the Commission otherwise considers that the granting of a stay would be just.

Enforcement in Federal Court

Subsection 63(1) A decision of the Commission under this Act or the *Radiocommunication Act* may be made an order of the Federal Court or of a superior court of a province and may be enforced in the same manner as an order of that court as if it had been an order of that court on the date of the decision.

Appeal to the Federal Court of Appeal

Subsection 64(1) An appeal from a decision of the Commission under this Act or the Radiocommunication Act on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

Alternate service

Subsection 64(7) Despite the *Federal Court Rules*, service of an application for leave to appeal and all other materials of any party in the leave application on interested parties in the proceeding leading to the decision appealed from may be effected by the same means as the service of any document that was or could have been served on the interested parties in the original proceeding.

Judicial notice

Section 65 A decision of the Commission or a tariff approved by the Commission ~~that is published in the *Canada Gazette* by or with leave of the Commission~~ shall be judicially noticed.

Business documents

Subsection 66(1) In proceedings under this Act or the Radiocommunication Act, a document purporting to have been issued by a ~~Canadian carrier telecommunications service provider~~ or by an agent or a mandatary of a ~~Canadian carrier telecommunications service provider~~ is admissible in evidence against the ~~carrier telecommunications service provider~~ without proof of the issuance of the document by the carrier telecommunications service provider or the authenticity of its contents.

Saving

Subsection 66(5) Subsections (2), (3) and (4) apply for all purposes of this Act and the *Radiocommunication Act*.

Regulations

Subsection 67(1) [PARAGRAPH (g) REPLACES PARAGRAPH (d) OF THE CURRENT ACT]
The Commission may make regulations

- (a) prescribing standards governing the height of transmission lines of ~~Canadian carriers telecommunications service providers~~, not inconsistent with standards prescribed under any other Act of Parliament;
- (b) establishing rules respecting its practice and procedure;

- ~~(b.1) prescribing classes of international telecommunications service licensees;~~
- ~~(b.2) requiring international telecommunications service licensees to publish their licenses or otherwise make them available for public inspection;~~
- (c) establishing the criteria for the awarding of costs;
- (d) to pursue a principle in subsection 7.1(c) or (d);
- (e) to meet a technical requirement established by or pursuant to this Act or the *Radiocommunication Act*, including, without limiting the generality of the foregoing,
 - (i) providing for interconnection of telecommunications networks and the interoperability of telecommunications services; and
 - (ii) providing for the portability of telephone numbers between the networks of telecommunications service providers;
- (f) providing for the recovery of the costs of implementing measures adopted under paragraphs (d) and (e) through payments made by telecommunications service providers; and
- (g) generally for carrying out the purposes and provisions of this Act ~~or any special Act.~~

Review and update of rules

Subsection 67(4) The Commission shall review its rules of practice and procedure established under paragraph (1)(b) at least once every five years, and in addition update them from time to time to reflect its current practices and procedures.

Regulations prescribing fees

Subsection 68 (1) The Commission may, with the approval of the Treasury Board, make regulations prescribing fees, and respecting their calculation and payment, for the purpose of recovering all or a portion of the costs that the Commission determines to be attributable to its responsibilities under this Act ~~or any special Act.~~

PART IV.1

TELECOMMUNICATIONS APPARATUS

Application

Section 69.1 This Part applies to telecommunications apparatus that can be

- (a) connected to telecommunications networks of ~~Canadian carriers~~ telecommunications service providers; and
 - (b) used by a telecommunications service subscriber at their premises.
-

Minister's Commission's powers

Subsection 69.3(1) Subject to any regulations made under section 69.4, the ~~Minister~~ Commission may, taking into account all matters that are relevant to further the Canadian telecommunications policy objectives,

- (a) register telecommunications apparatus and fix any conditions and the duration of the registration;
 - (a.1) establish requirements for the registration of telecommunications apparatus;
 - (a.2) establish the procedure governing applications for registration;
- (b) amend the conditions and change the duration of the registration;
- (c) make available to the public any information regarding the registered telecommunications apparatus;
- (d) establish technical specifications and markings in relation to telecommunications apparatus or any class of telecommunications apparatus and any requirements relating to those technical specifications and markings;
- (e) test telecommunications apparatus for compliance with technical specifications and markings required under this Part;
- (f) require an applicant for registration to disclose to the ~~Minister~~ Commission any information that the ~~Minister~~ Commission considers appropriate respecting the present and proposed use of the telecommunications apparatus in question;
 - (f.1) establish fees for registration, applications for registration and examinations or testing in relation to registration, and respecting interest payable on unpaid fees;
- (g) require the registrant to inform the ~~Minister~~ Commission of any material changes in information disclosed under paragraph (f);
 - (g.1) establish requirements to recognize and designate foreign and domestic persons that are competent to assess whether telecommunications apparatus complies with the applicable foreign or domestic technical specifications;

(h) [Repealed, 2014, c. 39, s. 197]

(i) do any other thing necessary for the effective administration of this Part.

Delegation of powers

Subsection 69.3(2) The ~~Minister-Commission~~ may, in writing and on specified terms, authorize any person to exercise any of the powers that are granted to the ~~Minister-Commission~~ under this Part, or by the regulations made under this Part, subject to any conditions that the ~~Minister-Commission~~ may fix, and the Commission may amend the terms or revoke the authorization.

Suspension or revocation of registration

Section 69.3(3) The ~~Minister-Commission~~ may suspend or revoke a registration

- (a) with the consent of the registrant;
 - (b) after giving written notice to the registrant and giving the registrant a reasonable opportunity to make representations to the ~~Minister-Commission~~ with respect to the notice, if the ~~Minister-Commission~~ is satisfied that
 - (i) the registrant has contravened this Part, the regulations made under this Part or the conditions of the registration,
 - (ii) the registration was obtained through misrepresentation, or
 - (iii) the apparatus does not comply with the applicable technical specifications or markings; or
 - (c) on giving written notice of suspension or revocation to the registrant, without having to give the registrant an opportunity to make representations to the ~~Minister-Commission~~ with respect to the notice, if the registrant has failed to comply with a request to pay fees or interest due.
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Regulations

Subsection 69.4(1) The ~~Governor-in-Council-Commission~~ may make regulations

- (a) respecting requirements for technical specifications and markings in relation to telecommunications apparatus or any class of telecommunications apparatus;
- (b) [Repealed, 2014, c. 39, s. 198]

(c) respecting the inspection, testing and approval of telecommunications apparatus in respect of a registration;

(d) prescribing the form of registration or markings, or any class of registration or markings;

(e) and (f) [Repealed, 2014, c. 39, s. 198]

(g) prescribing the eligibility and qualifications of persons who may be appointed as inspectors, and the duties of inspectors;

(h) **[REPEALED]**

(i) [Repealed, 2014, c. 39, s. 198]

(j) prescribing anything that by this Part is to be prescribed; and

(k) generally for carrying out the purposes and provisions of this Part.

Regulations

Subsection 69.5(1) The Governor in Council—may make regulations for giving effect to international agreements, conventions or treaties respecting telecommunications apparatus to which Canada is a party.

PART V

Investigation and Enforcement

Appointment by Commission

Subsection 70(1) The Commission may appoint any person to inquire into and report to the Commission on any matter

(a) pending before the Commission or within the Commission's jurisdiction under this Act or ~~any special Act~~ the *Radiocommunication Act*; or

(b) on which the Commission is required to report under section 14.

Appointment by Minister

Subsection 70(2) The Minister may, with the approval of the Governor in Council, appoint any person to inquire into and report to the Minister on any matter in respect of which this Act or ~~any~~

~~special Act~~ the *Radiocommunication Act* applies, and a copy of the report shall be sent to the Commission.

In camera ~~hearings~~ proceedings

Subsection 70(5) The rules in section 54 respecting in camera ~~hearings~~ proceedings apply in ~~hearings~~ proceedings held before a person appointed under this section.

Designation of inspectors

Subsection 71(1) The Commission may designate any qualified person as an inspector for the purpose of verifying compliance or preventing non-compliance with the provisions of this Act ~~or any special Act for which the Commission is responsible~~, with the provisions of Division 1.1 of Part 16.1 of the Canada Elections Act, and with the decisions of the Commission under this Act.

Designation of inspectors

Subsection 71(2) [REPEALED]

Powers of inspectors

Subsection 71(4) An inspector may, subject to subsection (5), for the purposes for which the inspector was designated an inspector,

- (a) enter, at any reasonable time, any place in which they believe on reasonable grounds there is any document, information or thing relevant to the purpose of verifying compliance or preventing non-compliance with this Act, ~~any special Act~~, or Division 1.1 of Part 16.1 of the Canada Elections Act, and examine the document, information or thing or remove it for examination or reproduction;
- (b) make use of, or cause to be made use of, any computer system at the place to examine any data contained in or available to the system;
- (c) reproduce any document, or cause it to be reproduced, from the data in the form of a print-out or other intelligible output and take the print-out or other output for examination or copying; and
- (d) use any copying equipment or means of communication in the place.

Authority to issue warrant

Subsection 71(6) On an ex parte application, a justice of the peace may issue a warrant authorizing an inspector who is named in the warrant to enter a dwelling-house, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath that

- (a) the dwelling-house is a place described in paragraph (4)(a);
- (b) entry to the dwelling-house is necessary for the purpose of verifying compliance or preventing non-compliance with this Act, ~~any special Act~~, or Division 1.1 of Part 16.1 of the Canada Elections Act; and
- (c) entry has been refused or there are reasonable grounds to believe that entry will be refused by, or that consent to entry cannot be obtained from, the occupant.

Information requirement

Subsection 71(9) An inspector who believes that a person is in possession of information that the inspector considers necessary for the purpose of verifying compliance or preventing non-compliance with this Act, ~~any special Act~~, or Division 1.1 of Part 16.1 of the Canada Elections Act may, by notice, require that person to submit the information to the inspector in the form and manner and within the reasonable time that is stipulated in the notice.

Civil Liability

Damages

Subsection 72(1) [REPEALED AND REPLACED] A person who has sustained loss or damage as a result of:

- (i) any act or omission that is contrary to this Act or the *Radiocommunication Act*;
- (ii) any act or omission that is contrary to a decision or regulation made under this Act or the *Radiocommunication Act*;
- (iii) any breach of a contract to provide telecommunications services; or
- (iv) a rate charged by a telecommunications service provider,

may submit a claim to the Commission or a court of competent jurisdiction to recover an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.

Exception

Subsection 72(3) [REPEALED]

Entry into undertaking

Subsection 72.006(3) If a person enters into an undertaking before a notice of violation is served on them, no notice of violation may be served on them in connection with any act or omission referred to in the undertaking.

Offences

Subsection 73(1) Every person who contravenes subsection 16(4), ~~or 16.1(1), or (2), 23.2(1), 23.2(2)~~ or section 17 ~~or 24.1~~, or a Commission decision under subsection 23.2(3), 23.3(1) or 23.4 is guilty of an offence punishable on summary conviction and liable

- (a) in the case of an individual, to a fine not exceeding fifty thousand dollars for a first offence, or one hundred thousand dollars for a subsequent offence; or
- (b) in the case of a corporation, to a fine not exceeding five hundred thousand dollars for a first offence, or one million dollars for a subsequent offence.

Idem

Subsection 73(3) Every person who

- (a) contravenes any other provision of this Act ~~or any special Act~~ or any regulation or decision made under this Act, or
- (b) fails to do anything required or does anything prohibited under a provision, regulation or decision referred to in paragraph (a)

is guilty of an offence punishable on summary conviction and liable, in the case of an individual, to a fine not exceeding five thousand dollars for a first offence or ten thousand dollars for a subsequent offence, and in the case of a corporation, to a fine not exceeding fifty thousand dollars for a first offence or one hundred thousand dollars for a subsequent offence.

Forfeiture of telecommunications apparatus

Subsection 74.1(1) In the case of a conviction for an offence arising out of a contravention of subsection 69.2(1) or (2), any telecommunications apparatus in relation to which or by means of which the offence was committed may be forfeited to Her Majesty in right of Canada by order of the ~~Minister~~ Commission for the disposition, subject to subsections (2) to (6), that the ~~Minister~~ Commission may direct.

Notice of forfeiture

Subsection 74.1(2) If apparatus is ordered to be forfeited under subsection (1), the ~~Minister~~ Commission shall cause a notice of the forfeiture to be published in the *Canada Gazette*.

Notice

Subsection 74.1(4) The court may find the application abandoned if the applicant does not, at least thirty days before the day fixed for the hearing of the application, serve a notice of the application and of the hearing on the ~~Minister~~ Commission and on all other persons claiming an interest or right in the apparatus that is the subject-matter of the application as owner, mortgagee, hypothecary creditor, lien holder, holder of a prior claim or holder of any like interest or right of whom the applicant has knowledge.

Notice of intervention

Subsection 74.1(5) Every person, other than the ~~Minister~~ Commission, who is served with a notice under subsection (4) must, in order to appear at the hearing of the application, file an appropriate notice of intervention in the record of the court and serve a copy of that notice on the ~~Minister~~ Commission and on the applicant at least ten days before the day fixed for the hearing or any shorter period that the court may allow.

PART VI

Transitional Provisions

Section 75 [REPEALED]

Deemed approvals

Subsection 76(1) An agreement or arrangement referred to in section 29 ~~or a limitation of liability referred to in section 31~~ that was,

- (a) entered into or imposed, respectively, by a Canadian carrier in conformity with provincial law while the carrier's operations were not being regulated under an Act of Parliament, or
- (b) that was entered into by a telecommunications service provider other than a Canadian carrier,

and that is in effect on the coming into force of this section, shall be deemed to have been approved pursuant to section 29 ~~or 31~~.

Deemed permission

Subsection 76(2) A transmission line that was constructed by,

- (a) a Canadian carrier on, over, under or along a public property while the carrier's operations were not being regulated under an Act of Parliament, or
- (b) a telecommunications service provider other than a Canadian carrier, or a distribution undertaking on, over, under or along a public property before this section came into force

shall be deemed to have been constructed with the consent referred to in subsection 43(3).

PART VII

Related Amendments, Repeals, Application of Certain Provisions and Coming into Force

Section 132 [REPEALED]

Section 133 [REPEALED]

BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW

APPENDIX 9

TO

**SUBMISSION OF CANADIAN NETWORK OPERATORS CONSORTIUM INC. TO
THE BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW
PANEL**

11 JANUARY 2019

Proposed Amendments to the *Broadcasting Act*, S.C. 1991, c. 11, as am.

Part 1

General

Interpretation [DEFINITIONS NOT LISTED THAT ARE IN THE ACT ARE NOT BEING AMENDED OR REPEALED]

Subsection 2(1) In this Act,

...

Canadian broadcasting policy means the broadcasting policy for Canada declared in subsection 3(1);

...

decision means a determination of the Commission in any form;

...

person includes any individual, partnership, body corporate, unincorporated organization, government, government agency and any other person or entity that acts in the name of or for the benefit of another, including a trustee, executor, administrator, liquidator of the succession, guardian, curator or tutor;

...

telecommunications service provider has the meaning ascribed to it in subsection 2(1) of the *Telecommunications Act*;

Broadcasting Policy for Canada

Declaration

Subsection 3(1) [REPEALED AND REPLACED] It is hereby declared as the broadcasting policy for Canada that the Canadian broadcasting system shall:

- (a) be effectively owned and controlled by Canadians;

- (b) safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;
- (c) educate, entertain and inform;
- (d) promote the creation, presentation, distribution and discoverability of Canadian programming;
- (e) promote and rely on competition to the greatest extent possible to pursue the Canadian broadcasting policy;
- (f) reflect aboriginal cultures, as well as the multicultural and multiracial nature of Canada;
- (g) make high quality, accessible and affordable programming available throughout Canada in both English and French languages, that is reflective of both the common and the different conditions and requirements applicable to broadcasts in the two languages;
- (h) make programming accessible to disabled persons;
- (i) be readily adaptable to scientific and technological change; and
- (j) ensure that the Corporation, as the national public broadcaster, performs a leading role in the achievement of the broadcasting objectives in this subsection.

Regulation of broadcasting

Subsection 3(2) [REPEALED AND REPLACED] Subject to this Act and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the Canadian broadcasting policy.

PART II

Objects and Powers of the Commission in Relation to Broadcasting

Objects

Subsection 5(1) [REPEALED]

Regulatory Policy

Subsection 5(2) [REPEALED]

Conflict

Subsection 5(3) [REPEALED]

Policy directions

Subsection 7(1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to

~~(a) any of the objectives of the Canadian broadcasting policy set out in subsection 3(1); or~~

~~(b) any of the objectives of the regulatory policy set out in subsection 5(2).~~

General Powers

Licences, etc.

Paragraph 9(1)(b) [REPEALED]

Exemptions

Subsection 9(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the Canadian broadcasting policy ~~set out in subsection 3(1)~~.

Regulations generally

Subsection 10(1) The Commission may, in furtherance of the pursuit of the Canadian broadcasting policy, make regulations

- (a) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;
- (b) prescribing what constitutes a Canadian program for the purposes of this Act;
- (c) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the Canadian broadcasting policy ~~set out in subsection 3(1)~~;
- (d) respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising;

- (e) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates;
- (f) prescribing the conditions for the operation of programming undertakings as part of a network and for the broadcasting of network programs, and respecting the broadcasting times to be reserved for network programs by any such undertakings;
- (g) respecting the carriage of any foreign or other programming services by distribution undertakings;
- (h) for resolving, by way of voluntary mediation or arbitration or ~~otherwise by Commission decision~~, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;
- (i) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify;
- (j) respecting the audit or examination of the records and books of account of licensees by the Commission or persons acting on behalf of the Commission; ~~and~~
- (k) respecting such other matters as it deems necessary for the furtherance of ~~its objects~~ the Canadian broadcasting policy;
- (l) establishing rules respecting its practice and procedure;
- (m) establishing the criteria for the awarding of costs; and
- (n) generally for carrying out the purposes and provisions of this Act.

Application

Subsection 10(2) [REPEALED AND REPLACED] Regulations made by the Commission,

- (a) if applicable to persons holding licences in that capacity, may be made applicable to all persons holding licences or to persons holding licences of one or more class; and
- (b) in all other circumstances, may be of general application or applicable in respect of a particular case or class of cases.

Publication of proposed regulation

Subsection 10(3) A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* at least sixty days before its effective date, and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

Idem

Subsection 10(4) Proposed regulations that are modified after publication need not be published again under subsection (3).

Review and update of rules

Subsection 10(5) The Commission shall review its rules of practice and procedure established under paragraph (10)(1)(1) at least once every five years, and in addition update them from time-to-time to reflect its current practices and procedures.

Publication of proposed regulations

Subsection 11(5) A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* at least sixty days before its effective date, and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

Idem

Subsection 11(6) Proposed regulations that are modified after publication need not be published again under subsection (5).

Inquiries and determinations

Subsection 12(1) [REPEALED AND REPLACED] The Commission may, on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Act or any decision made or licence issued pursuant thereto, and the Commission shall inquire into any matter on which it is required to report or conduct proceedings under section 15 of this Act.

Mandatory orders

Subsection 12(2) For greater certainty, the Commission may, by order, require any a person, at or within any time and subject to an conditions that it determines, to do, without delay or within or at any time and in any manner specified by the Commission, any act or thing that anything the person is or may be required to do under this Part Act, including or any regulation, rule, licence,

~~or decision or order~~ made or issued by the Commission under this ~~Part~~ Act and may, ~~by order,~~ forbid ~~the doing or continuing of any act or thing that is contrary to this Part,~~ a person to do anything that the person is prohibited from doing under this Act, including under ~~to any such regulation, rule, licence, or decision, or order or to~~ section 34.1.

Review of decisions

Subsection 12(3) [REPEALED AND REPLACED] The Commission may, on application or on its own motion, review and rescind or vary any decision made by it under this Act or re-hear a matter before rendering a decision.

Stay of decisions

Subsection 12(4) The Commission may, on application or on its own motion, stay any decision made by it for any period of time or until the occurrence of an event, where a proceeding has been commenced under subsection 12(2), subsection 28(3) or subsection 31(2), or where the Commission otherwise considers that the granting of a stay would be just.

Interested persons

Subsection 12(5) The decision of the Commission that a person is or is not an interested person is binding and conclusive.

Enforcement of ~~mandator orders~~ in Federal Court

Subsection 13(1) ~~Any order decision of the Commission made under subsection 12(2) this Act~~ may be made an order of the Federal Court or of ~~any a~~ superior court of a province and is ~~enforceable~~ may be enforced in the same manner as an order of ~~the~~ that court as if it had been an order of that court on the date of the decision.

Procedure

Subsection 13(2) ~~To make an order under subsection 12(2)~~ A decision of the Commission may be made an order of a court, in accordance with the usual practice and procedure of the court in such matters may be followed, if any, or, in lieu thereof, the Commission may file by the filing with the registrar of the court of a certified copy of the order decision certified by the secretary to the Commission, and thereupon the order becomes an order of the court.

Effect of revocation or amendment

Subsection 13(3) Where ~~an order~~ a decision of the Commission that has been made an order of a court is rescinded or varied by a subsequent ~~order decision~~ of the Commission, the order of the court ~~shall be deemed to have been cancelled~~ is vacated and the ~~subsequent order decision of the~~ subsequent decision of the

Commission as varied may, in the same manner, be made an order of the court in accordance with subsection (2).

Saving

Subsection 13(4) The Commission may enforce any of its decisions whether or not the decision has been made an order of a court.

Hearings Proceedings and reports

Subsection 15(1) The Commission shall, on request of the Governor in Council, ~~hold hearings~~ conduct proceedings, including if the Commission so determines, public hearings, or make reports on any matter within the jurisdiction of the Commission under this Act.

Judicial Powers respecting hearings proceedings

Section 16 [REPEALED AND REPLACED] For the purpose of this Act, the Commission has the powers of a superior court with respect to

- (a) the attendance and examination of witnesses;
 - (b) the production and examination of any document, information or thing;
 - (c) the enforcement of its decisions;
 - (d) the entry on and inspection of property; and
 - (e) the doing of anything else necessary for the exercise of its powers and the performance of its duties.
-

Questions of fact and law [SECTION 17 REPEALED AND REPLACED BY THREE NEW SUBSECTIONS]

Subsection 17(1) The Commission may, in exercising its powers and performing its duties under this Act, determine any question of law or of fact, and its determination on a question of fact is binding and conclusive.

Factual finding of court

Subsection 17(2) In determining a question of fact, the Commission is not bound by the finding or judgment of any court, but the finding or judgment of a court is admissible in proceedings of the Commission.

Pending proceedings

Subsection 17(3) The power of the Commission to hear and determine a question of fact is not affected by proceedings pending before any court in which the question is in issue.

Place of Hearing

Subsection 18(4) [REPEALED]

Notice of Hearing

Section 19 The Commission shall cause notice of

- (a) any application received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation,
- (b) ~~any decision made by it to issue, amend or renew a licence, and~~
- (b) any public hearing to be held by it under section 18

to be published in ~~the *Canada Gazette* and in~~ one or more newspapers of general circulation within any area affected or likely to be affected by the application, ~~decision~~ or matter to which the public hearing relates.

Quorum

Section 20 [REPEALED AND REPLACED] For the purposes of this Act, a quorum of the Commission consists of two members, but in uncontested matters a quorum consists of one member.

Rules orders and regulations [REPEALED AND REPLACED]

Section 21 The Commission may make rules, decisions and regulations respecting any matter or thing within the jurisdiction of the Commission under this Act.

Conditions governing issue, amendment and renewal

Subsection 22(1) No licence shall be issued, amended or renewed under this Part

- (a) if the issue, amendment or renewal of the licence is in contravention of a direction to the Commission issued by the Governor in Council under subsection 26(1); and

- (b) subject to subsection (2), unless the ~~Minister of Industry certifies to the Commission is satisfied~~ that the applicant for the issue, amendment or renewal of the licence
- (i) has satisfied the requirements of the *Radiocommunication Act* and the regulations made under that Act, and
 - (ii) has been or will be issued a broadcasting certificate with respect to the radio apparatus that the applicant would be entitled to operate under the licence.

Exception

Subsection 22(2) The requirement set out in paragraph (1)(b) does not apply in respect of radio apparatus, or any class thereof, prescribed under paragraph ~~65.2~~(1)(m) of the *Radiocommunication Act*.

Reference to Minister

Subsection 23(2) If, notwithstanding the consultation provided for in subsection (1), the Commission attaches any condition to a licence referred to in subsection (1) that the Corporation is satisfied would unreasonably impede the Corporation ~~in providing the programming contemplated by paragraphs 3(1)(l) and (m) fulfilling the objective set out in paragraph 3(1)(j) of the Canadian broadcasting policy~~, the Corporation may, within thirty days after the decision of the Commission, refer the condition to the Minister for consideration.

~~Publication and Tabling of Directive~~

Subsection 23(5) A directive issued by the Minister under subsection (3) shall be ~~published forthwith in the *Canada Gazette* and shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the directive is issued.~~

Conditions governing suspension and revocation

Subsection 24(1) No licence shall be suspended or revoked under this Part unless the licensee applies for or consents to the suspension or revocation or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that

- (a) the licensee has contravened or failed to comply with any condition of the licence or with any order made under subsection 12(2) or any regulation made under this Part; or
- (b) the licence was, at any time within the two years immediately preceding the first date of publication ~~in the *Canada Gazette*~~ of the notice of the public hearing, held by a person to

whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the Governor in Council under this Act.

Publication of decision

Subsection 24(3) A copy of a decision of the Commission relating to the suspension or revocation of a licence, together with written reasons for the decision, shall, forthwith after the making of the decision, be forwarded ~~by prepaid registered mail~~ to all persons who were heard at or made any ~~oral~~ representations in connection with the hearing held under subsection (1), and a summary of the decision and of the reasons for the decision shall, at the same time, be published in ~~the Canada Gazette~~ and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision.

~~Publication and~~ Tabling

Subsection 26(3) A copy of ~~A~~an order made under subsection (1) or (2) shall be ~~published forthwith in the Canada Gazette and a copy thereof shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.~~

Variation, rescission or referral [REPEALED AND REPLACED]

Subsection 28(1) Within nine months after a decision by the Commission, the Governor in Council may, on petition in writing presented to the Governor in Council within sixty days after the decision, or on the Governor in Council's own motion, by order, vary or rescind the decision or refer it back to the Commission for reconsideration of all or a portion of it.

Copy of petition to Commission

Subsection 28(2) A person who presents a petition to the Governor in Council shall, at the same time, send a copy of the petition to the Commission.

Copies to other parties

Subsection 28(3) On receipt of a petition, the Commission shall send a copy of it to each person who made any representation to the Commission in relation to the decision that is the subject of the petition.

Notice of petition

Subsection 28(4) Within fifteen days of receiving a petition, the Minister shall publish a notice in the *Canada Gazette* specifying:

- (1) that a petition has been received;

- (2) whether or not the petition requests a stay of the decision that is the subject of the petition; and
- (3) where the petition and any related submission may be inspected and copies of them obtained.

Process for petitions

Subsection 28(5) Every petition shall be subject to the following process:

- (a) interested persons may file submissions in response to a petition within thirty days of the date of the notice of the petition in the *Canada Gazette*; and
- (b) the person who originated the petition to the Governor in Council may file a reply to submissions filed in response to the petition within ten days after the deadline for filing submissions.

Stay

Subsection 28(6) The Governor in Council may stay the decision that is subject to the petition.

Process for Requests for Stays of a Decision

Subsection 28(7) A request for a stay of the decision that is subject to the petition shall be subject to the following process:

- (a) interested persons may file submissions in response to the request for a stay of the decision within ten days of the date of the notice of the petition in the *Canada Gazette*;
- (b) the person who originated the petition to the Governor in Council may file a reply to submissions filed in response to the request for a stay of the decision within five days after the deadline for filing submissions; and
- (c) the Governor in Council shall issue a determination on the request for a stay of the decision within thirty days after the deadline for the filing of reply.

Order for a reference back

Subsection 28(8) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing

- (a) shall set out the details of any matter that the Governor in Council considers to be material to the reconsideration; and

(b) may specify a date before which the Commission shall complete its reconsideration.

Reconsideration

Subsection 28(9) The Commission shall, before any date specified under paragraph (8)(b), reconsider a decision referred back to it under subsection (1) and may confirm, vary or rescind the decision.

Variation or rescission by Governor in Council

Subsection 28(10) Where the Commission confirms or varies a decision under subsection (9) or does not complete its reconsideration of the decision before any date specified under paragraph (8)(b), the Governor in Council may, by order, vary or rescind the decision within forty-five days after the confirmation or variation of the decision or the specified date, as the case may be.

Reasons

Subsection 28(11) In an order made under subsection (1), (7)(c) or (10), the Governor in Council shall set out the reasons for making the order.

Filing of petitions

Subsection 29(1) [REPEALED]

Notice

Subsection 29(2) [REPEALED]

Register

Subsection 29(3) [REPEALED]

[SECTION 31 REPEALED AND REPLACED BY SUBSECTIONS 31(1) THROUGH 31(9) BELOW]

Appeal to the Federal Court of Appeal

Subsection 31(1) An appeal from a decision of the Commission under this Act on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

Application for leave

Subsection 31(2) Leave to appeal shall be applied for within thirty days after the date of the decision appealed from or within such further time as a judge of the Court grants in exceptional circumstances, and the costs of the application are in the discretion of the Court.

Notice

Subsection 31(3) Notice of an application for leave to appeal shall be served on the Commission and on each party to the proceedings appealed from.

Time limit for appeal

Subsection 31(4) An appeal shall be brought within sixty days after the day on which leave to appeal is granted.

Findings of Fact

Subsection 31(5) On an appeal, the Court may draw any inference that is not inconsistent with the findings of fact made by the Commission and that is necessary for determining a question of law or jurisdiction.

Argument by Commission

Subsection 31(6) The Commission is entitled to be heard on an application for leave to appeal and at any stage of an appeal, but costs may not be awarded against it or any of its members.

Alternate service

Subsection 31(7) Despite the *Federal Court Rules*, service of an application for leave to appeal and all other materials of any party in the leave application on interested parties in the proceeding leading to the decision appealed from may be effected by the same means as the service of any document that was or could have been served on the interested parties in the original proceeding.

PART II.1

ADMINISTRATION

Partial or additional relief

Section 34.4 The Commission may grant the whole or any portion of the relief applied for in any case under this Act, and may grant any other relief in addition to or in substitution for the relief applied for as if the application had been for that other relief.

Access to information

Section 34.5 Subject to section 34.6, the Commission shall make available for public inspection any information submitted to the Commission in the course of proceedings before it.

Designation subject to filing

Subsection 34.6(1) A person may designate information referred to in paragraphs 39(1)(a) to (c) of the *Telecommunications Act* as confidential if the person files it with the Commission with respect to any matter under this Act.

Timing of designation

Subsection 34.6(2) The person must make the designation at the time that the person files the document that contains the information.

Telecommunications Act

Subsection 34.6(3) The provisions of section 39 of the *Telecommunications Act*, except for the provisions of subsection (5.1) thereof, apply to any information designated confidential under this Act, and, for that purpose, any references to the *Telecommunications Act* in section 39 thereof shall be read as if they are references to the *Broadcasting Act* instead and any references to the *Radiocommunication Act* shall not be incorporated by reference herein.

Subsection 34.6(4): Any references to the *Telecommunications Act* in section 39.1 thereof shall be read as if they are references to the *Broadcasting Act* instead and any references to the *Radiocommunication Act* shall not be incorporated by reference herein.

Extension of time

Subsection 34.7(1) The Commission may extend the period, whether fixed by regulation or otherwise, for doing anything required to be done in proceedings before it or under any of its decisions under this Act.

Delegation of Powers

Subsection 34.7(2) The Commission may, in writing and on specified terms, delegate to any person, any of its powers under subsection 34.7(1) as they relate to the due dates by which anything must be filed with the Commission and may modify the terms or revoke the delegation.

Counsel assigned by Minister of Justice

Section 34.8 Where an issue of particular importance affecting the public interest arises, or may arise, in the course of proceedings before the Commission under this Act, the Minister of Justice

may, at the request of the Commission or of the Minister's own motion, instruct counsel to intervene in the proceedings with respect to the issue.

In camera proceedings

Section 34.9 A proceeding or a portion of a proceeding before the Commission under this Act may, on the request of any party to the proceeding, or on the Commission's own motion, be held *in camera* if that party establishes to the satisfaction of the Commission, or the Commission determines, that the circumstances of the case so require.

Award of Costs

Subsection 34.10(1) The Commission may award interim or final costs of and incidental to proceedings before it under this Act and may fix the amount of the costs or direct that the amount be taxed.

Payment of costs

Subsection 34.10(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

Rules, orders and regulations

Subsection 34.10(3) The Commission may, in writing and on specified terms, delegate to any person, any of its powers under subsection 34.10(1) as they relate to the taxation of costs and may modify the terms or revoke the delegation.

Conditional decisions

Subsection 34.11(1) The Commission may, in any decision, provide that the whole or any portion of the decision under this Act shall come into force on, or remain in force until, a specified day, the occurrence of a specified event, the fulfilment of a specified condition, or the performance to the satisfaction of the Commission, or of a person named by it, of a requirement imposed on any interested person.

Interim Decisions

Subsection 34.11(2) The Commission may make an interim decision under this Act and may make its final decision effective from the day on which the interim decision came into effect.

***Ex parte* decisions**

Subsection 34.11(3) The Commission may make an *ex parte* decision under this Act where it considers that the circumstances of the case justify it.

Judicial notice

Section 34.12 A decision of the Commission or a licence issued by the Commission shall be judicially noticed.

Business documents

Subsection 34.13(1) In proceedings under this Act, a document purporting to have been issued by a broadcasting undertaking or by an agent or a mandatary of a broadcasting undertaking is admissible in evidence against the undertaking without proof of the issuance of the document by the undertaking or the authenticity of its contents.

Ministerial or Commission documents

Subsection 34.13(2) A document appearing to be signed by the Minister, the Chairperson of the Commission or the secretary to the Commission is evidence of the official character of the person appearing to have signed it and, in the case of the Chairperson or secretary, of its issuance by the Commission, and if the document appears to be a copy of a decision or report, it is evidence of its contents.

Copies

Subsection 34.13(3) A copy of a document submitted to the Commission and appearing to be certified as a true copy by the secretary to the Commission is, without proof of the secretary's signature, evidence of the original, of its submission to the Commission, of the date of its submission and of the signature of any person appearing to have signed it.

Certificate

Subsection 34.13(4) A certificate appearing to be signed by the secretary to the Commission and bearing the Commission's seal is evidence of its contents without proof of the signature.

Saving

Subsection 34.13(5) Subsections (2), (3) and (4) apply for all purposes of this Act.

Subsection 34.13(6) The Commission may, on an application by a broadcasting undertaking, and after verification of its operations, issue a certificate confirming that the undertaking is either a licenced broadcasting undertaking or a broadcasting undertaking in respect of which an exemption has been granted, pursuant to subsection 9(4) from the requirement to obtain a licence, and, in either case, is subject to the jurisdiction of this Act.

PART II.2

GENERAL ADMINISTRATIVE MONETARY PENALTIES SCHEME

Telecommunications Act general administrative monetary penalties scheme

Section 34.14 The provisions of sections 72.001 through 72.0093 of the *Telecommunications Act*, are hereby incorporated into this Act with the following exceptions:

- (a) any references to the *Telecommunications Act* in any of those sections shall be read as if they are references to the *Broadcasting Act* instead;
- (b) any references to specific statutory provisions of the *Telecommunications Act* in any of those sections shall not be incorporated by reference herein; and
- (c) for the purpose of incorporation into this Act, the text “every contravention of a regulation or decision made by the Commission” is amended to read “every contravention of a regulation or decision made, or licence issued by the Commission”.

PART II.3

PROMOTION OF COMPETITION

Definitions

Section 34.15 For the purpose of this part,

affiliate has the meaning ascribed to it in subsection 2(1) of the Canada Business Corporations Act, *affiliated* has a corresponding meaning and *unaffiliated* has the opposite meaning of *affiliated*;

platform includes the Internet and point-to-point technology that permits broadcasting to be received by way of mobile devices;

production company means a person that is engaged in the production of audiovisual programs;

vertically integrated broadcasting undertaking means either ownership or control, by one entity of:

- (a) a programming undertaking and a distribution undertaking; or
- (b) a programming undertaking and a production company.

Undue preference or disadvantage

Subsection 34.16(1) No broadcasting undertaking shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

Question of fact

Subsection 34.16(2) The Commission may determine in any case, as a question of fact, whether a broadcasting undertaking has complied with this section.

Burden of proof

Subsection 34.16(3) In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the broadcasting undertaking that gives the preference or subjects the person to the disadvantage.

Obligation during dispute

Subsection 34.17(1) During any dispute between a distribution undertaking and a programming undertaking, the distribution undertaking shall continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute, and upon the dispute arising, the applicable rates, terms and conditions of distribution shall be deemed to have received interim approval from the Commission pursuant to subsection 34.11(2).

Meaning of “dispute”

Subsection 34.17(2) For the purposes of subsection (1), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

Obligation – distribution of new programming service

Subsection 34.18(1) Except as otherwise provided under a condition of its licence or order under subsection 9(4) of the Act, exempting it from the requirement to obtain a licence, a programming undertaking that is ready to launch a new programming service shall make that programming service available for distribution by all distribution undertakings, despite the absence of a commercial agreement.

Obligation – distribution without agreement

Subsection 34.18(2) A distribution undertaking that distributes a new programming service with respect to which it has no commercial agreement shall abide by the rates, terms and conditions established by the concerned programming undertaking until a commercial agreement is reached between the parties or the Commission renders a decision concerning any unresolved matter, and upon such distribution until the matter is resolved through agreement or a Commission decision, the applicable rates, terms and conditions of distribution shall be deemed to have received interim approval from the Commission pursuant to subsection 34.11(2).

Inside Wire

Subsection 34.19(1) A broadcasting undertaking that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by a broadcasting undertaking or by a telecommunications service provider.

Just and reasonable terms and conditions, including rates

Subsection 34.19(2) The broadcasting undertaking that owns an inside wire shall make the use of inside wire available on terms and conditions, including rates, that are just and reasonable.

Commission determinations

Subsection 34.19(3) For the purpose of determining terms and conditions, including rates, that are just and reasonable, the Commission may specify,

- (a) the non-rate terms and conditions;
- (b) the rates;
- (c) principles for how non-rate terms and conditions are to be established; and
- (d) the methodologies, formulas, processes and procedures for the calculation of rates.

Inside wire not to be removed

Subsection 34.19(4) The broadcasting undertaking that owns an inside wire must not remove it from a building if a request for the use of the wire has been made and is pending under subsection (1), or while the wire is being used in accordance with that subsection.

Definition

Subsection 34.19(5) In this section, “inside wire” means the wire that is used by a distribution undertaking for the distribution of programming services that is located inside a building or, in the case of an externally wired multiple-unit building, outside the building, and that extends from the demarcation point to one or more terminal devices inside a subscriber’s residence or other premises. It includes the outlets, splitters and faceplates that are attached or connected to the wire but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall of a subscriber’s residence or other premises, an amplifier, a channel converter, a decoder or a remote-control unit.

Making programing available

Subsection 34.20(1) No vertically integrated broadcasting undertaking shall refuse to make available to an unaffiliated distribution undertaking, for distribution by the distribution undertaking, on terms and conditions, including rates, that are just and reasonable programming that the vertically integrated broadcasting undertaking owns or controls;

Refusal

Subsection 34.20(2) For the purpose of 34.20(1), a refusal by a vertically integrated broadcasting undertaking to make available programming on any platform on which the vertically integrated broadcasting undertaking makes it available to its subscribers is unjust and unreasonable;

Failure to comply

Subsection 34.20(3) A failure by a vertically integrated broadcasting undertaking to comply with the requirements of this section shall also constitute a breach, by the vertically integrated broadcasting undertaking, of subsection 34.16(1).

Tied selling

Section 34.21 Except as otherwise provided under a condition of its licence or order under subsection 9(4) of the Act, exempting it from the requirement to obtain a licence, a programming undertaking shall not offer a programming service for distribution as part of a package with other programming services unless it also makes its programming service available on a stand-alone basis.

Functional or structural separation

Section 34.22 Where the Commission concludes that the measures set out in the Act are not sufficient to prevent the undue lessening or prevention of competition in a market for broadcasting services, the Commission shall make an order directing any or all the persons against whom an

order is sought to take any action, including the divestiture of assets or shares to the extent the Commission considers necessary to prevent the undue lessening or prevention of competition in the market.

PART II.4

Civil Liability

Damages

Subsection 34.23(1) A person who has sustained loss or damage as a result of:

- (i) any act or omission that is contrary to this Act;
- (ii) any act or omission that is contrary to a decision or regulation made under this Act;
- (iii) any breach of a contract to provide broadcasting services; or
- (iv) a rate charged by a broadcasting undertaking,

may submit a claim to the Commission or a court of competent jurisdiction to recover an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.

Limitation

Subsection 34.23(2) An action may not be brought in respect of any loss or damage referred to in subsection (1) more than two years after the day on which the act or omission occurred.

PART III

Canadian Broadcasting Corporation

Objects and powers

Subsection 46(1) The Corporation is established for the purpose of ~~providing the programming contemplated by paragraphs 3(1)(l) and (m)~~ fulfilling the objective set out in paragraph 3(1)(j) of the Canadian broadcasting policy, in accordance with the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, and for that purpose the Corporation may ... **[BALANCE OF SUBECTION REMAINS UNCHANGED]**

BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW

APPENDIX 10

TO

**SUBMISSION OF CANADIAN NETWORK OPERATORS CONSORTIUM INC. TO
THE BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW
PANEL**

11 JANUARY 2019

Proposed Amendments to the *Radiocommunication Act, R.S.C. 1985, c. R-2,* as am.

Definitions [THE OTHER DEFINITIONS IN SECTION 2 OF THE ACT NOT LISTED BELOW HAVE NOT BEEN AMENDED]

Section 2

“**broadcasting certificate**” means a certificate issued by the ~~Minister~~ Commission under subparagraph 5(1)(a)(ii);

“**Commission**” means the Canadian Radio-television and Telecommunications Commission;

“**decision**” includes a determination made by the Commission in any form;

“**radio authorization**” means a licence, certificate or authorization issued by the ~~Minister~~ Commission under paragraph 5(1)(a);

“**radiocommunication service**” means a service provided by means of radiocommunication and includes any related equipment, whether by sale, lease or otherwise;

“**radio licence**” means a licence issued by the ~~Minister~~ Commission under subparagraph 5(1)(a)(i);

“**radio operator certificate**” means a certificate issued by the ~~Minister~~ Commission under subparagraph 5(1)(a)(iii);

“**spectrum licence**” means a licence issued by the ~~Minister~~ Commission under subparagraph 5(1)(a)(i.1);

“**technical acceptance certificate**” means a certificate issued by the ~~Minister~~ Commission under subparagraph 5(1)(a)(iv).

Powers, duties and functions of ~~Minister~~ Commission

Subsection 3(4) ~~Subject to the exceptions set out in subsection 3(5). Any~~ any power, duty or function of the ~~Minister~~ Commission under this Act or the regulations may be exercised or performed by any person authorized by the ~~Minister~~ Commission to do so and, if so exercised or performed, shall be deemed to have been exercised or performed by the ~~Minister~~ Commission.

Shall not be delegated

Subsection 3(5) The Commission shall not delegate the powers, duties or functions under:

- (a) subparagraph 5(1)(a)(i), (i.1), (ii) or (v), paragraph 5(1)(c), (e) or (k), subsection 5(1.2), (1.4), (2), or 13(1), or section 5.1, 6 or 15.12; or

(b) amendments made, pursuant to paragraph 5(1)(b), to the terms and conditions of any licence, certificate or authorization issued under subparagraph 5(1)(a)(i), (i.1), (ii) or (v).

Minister's Commission's Powers

Subsection 5(1) Subject to any regulations made under section 5.2 or 6, the ~~Minister-Commission~~ may, taking into account all matters that the ~~Minister-Commission~~ considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada,

...

(a)(v) any other authorization relating to radiocommunication that the ~~Minister-Commission~~ considers appropriate,

...

(h) require holders of, and applicants for, radio authorizations to disclose to the ~~Minister-Commission~~ such information as the ~~Minister-Commission~~ considers appropriate respecting the present and proposed use of the radio apparatus in question and the cost of installing or maintaining it;

(i) require holders of radio authorizations to inform the ~~Minister-Commission~~ of any material changes in information disclosed pursuant to paragraph (h);

...

(k) take such action as may be necessary to secure, by international regulation or otherwise, the rights of Her Majesty in right of Canada in telecommunication matters, and consult the ~~Minister~~ with respect to any matter that the ~~Commission~~ deems appropriate;

(l) make determinations as to the existence of harmful interference and issue orders to persons in possession or control of radio apparatus, interference-causing equipment or radio-sensitive equipment that the ~~Minister-Commission~~ determines to be responsible for the harmful interference to cease or modify operation of the apparatus or equipment until such time as it can be operated without causing or being affected by harmful interference;

...

Canadian telecommunications policy

Subsection 5(1.1) In exercising the powers conferred by subsection (1), the ~~Minister-Commission~~ ~~may shall~~ have regard to the objectives of the Canadian telecommunications policy set out in section 7 of the *Telecommunications Act*.

Bidding system for radio authorizations

Subsection 5(1.2)(1.2.1) In exercising the power under paragraph 5(1)(a) to issue radio authorizations, the ~~Minister-Commission~~ may use a system of competitive bidding to select the persons to whom radio authorizations will be issued.

Separate classes of bidders for radio authorizations

Subsection 5(1.2.2) In exercising the power under paragraph 5(1)(a) to issue radio authorizations, if the Commission adopts a system of competitive bidding under subsection (1.2.1) to select the persons to whom radio authorizations will be issued, the Commission shall consider whether any applicants or class of applicants determined by the Commission should be permitted or required to bid as a separate class for one or more of the radio authorizations in order to promote competition in the provision of radiocommunication services.

Payments pursuant to bids

Subsection 5(1.3) Where the ~~Minister-Commission~~ accepts a bid for a radio authorization under a system of competitive bidding, any moneys payable to Her Majesty pursuant to the bid are in lieu of any fees fixed under this or any other Act for the radio authorization.

Procedures for bidding system

Subsection 5(1.4) The ~~Minister-Commission~~ may establish procedures, standards and conditions, including, without limiting the generality of the foregoing, bidding mechanisms, minimum bids, bidders' qualifications, acceptance of bids, application fees for bidders, deposit requirements, withdrawal penalties and payment schedules, applicable in respect of a system of competitive bidding used under subsection (1.2.1) in selecting the person to whom a radio authorization will be issued.

Suspension or revocation of radio authorization

Subsection 5(2) The ~~Minister-Commission~~ may suspend or revoke a radio authorization

- (a) with the consent of the holder thereof;
 - (b) after giving written notice to the holder and giving the holder a reasonable opportunity to make representations to the ~~Minister-Commission~~ with respect thereto, where the ~~Minister-Commission~~ is satisfied that
 - (i) the holder has contravened this Act, the regulations or the terms or conditions of the radio authorization, or
 - (ii) the radio authorization was obtained through misrepresentation; or
 - (c) on giving written notice of suspension or revocation to the holder, without having to give the holder an opportunity to make representations to the ~~Minister-Commission~~ with respect thereto, where the holder has failed to comply with a request to pay fees or interest due under paragraph 65.2(1)(l).
-

Information sharing — Canada

Subsection 5.1(1) Information that has been collected or obtained by the ~~Minister~~Commission in the administration of this Act may be disclosed by the ~~Minister~~Commission to a federal department, a provincial or municipal government in Canada, or an agency of that federal, provincial or municipal government, to the extent that the disclosure is necessary for the administration of this Act.

Information sharing — Government of foreign state and international organization

Subsection 5.1(2) The information may also be disclosed by the ~~Minister~~Commission, with approval of the Minister, under an agreement, a memorandum of understanding or an arrangement in writing between the Government of Canada and the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of that government or organization, if the ~~Minister~~Commission believes that the information may be relevant to an investigation or proceeding in respect of a contravention under this Act or of the laws of that foreign state that address conduct that is substantially similar to conduct that would be in contravention of this Act.

Regulations [ALTHOUGH THIS SUBSECTION IS NEW, CHANGES HAVE BEEN IDENTIFIED BELOW RELATIVE TO THE MANNER THAT SUBSECTION 6(1) READ PRIOR TO THE AMENDMENTS, SINCE THIS SUBSECTION IS DERIVED FROM SUBSECTION 6(1). THIS WILL FACILITATE A COMPARISON.]

Subsection 5.2(1) The ~~Governor in Council~~Commission may make regulations

- (a) respecting technical requirements and technical standards in relation to
 - (i) radio apparatus,
 - (ii) interference-causing equipment, and
 - (iii) radio-sensitive equipment,or any class thereof;
- (b) **[NOT USED - FOR COMPARISON PURPOSES ONLY];**
- (c) prescribing the qualifications of persons to whom radio authorizations, or any class thereof, may be issued, including examinations to be administered;
- (d) prescribing the procedure governing the making of applications for radio authorizations, or any class thereof, including form and manner, and prescribing the processing and disposition of those applications and the issuing of radio authorizations by the ~~Minister~~Commission;
- (e) prescribing the terms and conditions of radio authorizations, including, in the case of a radio licence, terms and conditions as to the services that may be provided by the holder thereof;

- (f) prescribing conditions and restrictions applicable in respect of any prescribed radio service;
- (g) prescribing radio apparatus, interference-causing equipment and radio-sensitive equipment, or classes thereof, in respect of which a technical acceptance certificate is required;
- (h) respecting the inspection, testing and approval of radio apparatus, interference-causing equipment and radio-sensitive equipment in relation to technical acceptance certificates;
- (i) prohibiting or regulating, in relation to
 - (i) interference to radiocommunication, or
 - (ii) adverse effects of electromagnetic energy from any emission, radiation or induction,

the manufacture, importation, installation, distribution, lease, offering for sale, sale or use of radio apparatus, interference-causing equipment and radio-sensitive equipment;
- (j) prescribing the eligibility and qualifications of persons who may be appointed as inspectors, and the duties of inspectors;
- (k) **[NOT USED - FOR COMPARISON PURPOSES ONLY];**
- (l) **[REPEALED AND REPLACED]** with the approval of the Treasury Board, prescribing fees and respecting their calculation and payment, and respecting interest payable on unpaid fees so prescribed, for the purpose of recovering all or a portion of the costs that the Commission determines to be attributable to its responsibilities under this Act, and for greater certainty, such fees may, without limitation, include fees for radio authorizations, applications therefor and examinations or testing in relation thereto;
- (m) prescribing radio apparatus, or any class thereof, that is exempt, either absolutely or subject to prescribed qualifications, from the application of subsection 4(1);
- (n) prohibiting or regulating the further telecommunication, other than by persons operating broadcasting undertakings, of radiocommunications;
- (o) for requiring, in a manner set out in the regulations, the reception or transmission of radiocommunication by any radio apparatus, or the exchange of radiocommunication by any radio apparatus with another radio apparatus;
- (p) prescribing the manner in which radiocommunication is carried on in relation to any class of radio apparatus or radio service;
- (q) prescribing the procedure to be followed with respect to the making of determinations under paragraph 5(1)(l), and prescribing the factors, including signal quality

requirements, that the ~~Minister~~ Commission shall take into account when making those determinations;

- (r) **[NOT USED - FOR COMPARISON PURPOSES ONLY];**
- (s) prescribing anything that by this Act is to be prescribed and has not been reserved to the Governor in Council to be prescribed; and
- (t) generally for carrying out the purposes and provisions of this Act.

Debt due to Her Majesty

Subsection 5.2(2) Fees required to be paid under this section constitute a debt due to Her Majesty in right of Canada and may be recovered in a court of competent jurisdiction.

Pre-publication of regulations

Subsection 5.2(3) Any regulations proposed to be made under this section shall be published in the Canada Gazette at least sixty days before their proposed effective date, and a reasonable opportunity shall be given to interested persons to make representation with respect to the proposed regulations.

Idem

Proposed regulations that are modified after publication need not be published again under subsection (3).

Powers of Governor in Council

Regulations

Subsection 6(1) The Governor in Council may make regulations:

- (a) **[REPEALED]**
- (b) prescribing the eligibility of persons to whom radio authorizations, or any class thereof, may be issued, including eligibility criteria based on
 - (i) in the case of an individual, citizenship or permanent residence, or
 - (ii) in the case of a corporation, residence, ownership or control of the corporation, and the citizenship or permanent residence status of the directors and officers of the corporation;
- (c) **[REPEALED]**
- (d) **[REPEALED]**
- (e) **[REPEALED]**
- (f) **[REPEALED]**
- (g) **[REPEALED]**

- (h) [REPEALED]
 - (i) [REPEALED]
 - (j) [REPEALED]
 - (k) for giving effect to international agreements, conventions or treaties respecting radiocommunication to which Canada is a party;
 - (l) [REPEALED]
 - (m) [REPEALED]
 - (n) [REPEALED]
 - (o) [REPEALED]
 - (p) [REPEALED]
 - (q) [REPEALED]
 - (r) prescribing maximum fines or maximum terms of imprisonment, or both, not exceeding those set out in subsection 10(1), for contravening or failing to comply with a regulation; and
 - (s) prescribing anything that by this Act is to be prescribed and has not been reserved to the Commission to be prescribed.
 - (t) [REPEALED]
-

Application to extend period of detention

Subsection 8.2(1) If proceedings have not been instituted, the ~~Minister~~Commission may, before the expiry of 60 days after the day on which the thing is seized and after giving notice to the owner of the seized thing or to the person in whose possession it was at the time of seizure, apply to any superior court of competent jurisdiction for an order extending the time during which the seized thing may be detained.

Offences

Subsection 10(1) Every person who:

...

- (c) contravenes or fails to comply with an order issued by the ~~Minister~~Commission under paragraph 5(1)(l);

...

Injunctions

Subsection 10(4) Where a court of competent jurisdiction is satisfied, on application by the ~~Minister~~ Commission, that an offence under paragraph (1)(a) is being or is likely to be committed, the court may grant an injunction, subject to such conditions as the court considers appropriate, ordering any person to cease or refrain from any activity related to that offence.

Limitation

Section 10(6) A prosecution for an offence under this Act may be commenced within, but not after, ~~three~~ two years after the day on which the subject-matter of the offence arose.

Forfeiture of radio apparatus

Subsection 13(1) In the case of a conviction for an offence under paragraph 10(1)(a), any radio apparatus in relation to which or by means of which the offence was committed may be forfeited to Her Majesty in right of Canada by order of the ~~Minister~~ Commission for such disposition, subject to subsections (2) to (6), as the ~~Minister~~ Commission may direct.

Notice of forfeiture

Subsection 13(2) Where a radio apparatus is ordered to be forfeited under subsection (1), the ~~Minister~~ Commission shall cause a notice of the forfeiture to be published in the *Canada Gazette*.

Notice

Subsection 13(4) An applicant for an order under subsection (6) shall, at least thirty days before the day fixed for the hearing of the application, serve a notice of the application and of the hearing on the ~~Minister~~ Commission and on all other persons claiming an interest in the apparatus that is the subject-matter of the application as owner, mortgagee, lien holder or holder of any like interest of whom the applicant has knowledge.

Notice of intervention

Subsection 13(5) Every person, other than the ~~Minister~~ Commission, who is served with a notice under subsection (4) and who intends to appear at the hearing of the application to which the notice relates shall, at least ten days before the day fixed for the hearing, file an appropriate notice of intervention in the record of the court and serve a copy thereof on the ~~Minister~~ Commission and on the applicant.

Procedures

Subsection 15.11(3) Despite subsection 15.14(1), the Commission may impose a penalty in a decision in the course of a proceeding before it under this Act in which it finds that there has been a contravention of a provision, a regulation or a decision referred to in section 15.1.

Power of ~~Minister~~ Commission — violation

Section 15.12 The ~~Minister~~ Commission may

- (a) designate any person, or any person who is a member of a class of persons, as being authorized to issue notices of violation or to accept undertakings; and
- (b) establish, in respect of each violation, a short-form description to be used in notices of violation.

Entry into an undertaking

Subsection 15.13(1) A person may enter into an undertaking ~~after a notice of violation is served on them at any time.~~

Undertaking before notice of violation

Subsection 15.13(3) If a person enters into an undertaking before a notice of violation is served on them, the proceeding that is commenced by the notice of violation is ended in respect of that person in connection with any act or omission referred to in the undertaking no notice of violation may be served on them in connection with any act or omission referred to in the undertaking.

Undertaking after notice of violation

Subsection 15.13(4) If a person enters into an undertaking after a notice of violation is served on them, the proceeding that is commenced by the notice of violation is ended in respect of that person in connection with any act or omission referred to in the undertaking.

Failure to respect an undertaking

Subsection 15.13(5) Failure to respect an undertaking constitutes a violation.

Contents of notice

Subsection 15.14(2)

...

- (b) a statement as to the right of the person, within 30 days after the day on which the notice is served, or within any longer period that the ~~Minister~~ Commission specifies, to pay the penalty or to make representations with respect to the violation and the penalty, and the manner for doing so; and

...

Representations to ~~Minister~~ Commission

Subsection 15.15(2) If a person who is served with a notice of violation makes representations in accordance with the notice, the ~~Minister~~ Commission shall decide, on a balance of probabilities, after considering any other representations that the ~~Minister~~ Commission considers appropriate, whether the person committed the violation and may, if the ~~Minister~~ Commission so decides, impose the penalty set out in the notice, a lesser penalty or no penalty.

Copy of decision and notice of rights

Subsection 15.15(4) The ~~Minister~~ Commission shall cause a copy of any decision made under subsection (2) to be issued and served on the person together with a notice of the person's right to appeal under section 15.2.

Debts due to Her Majesty

Section 15.21(1) The following amounts are debts due to Her Majesty in right of Canada that may be recovered in the Federal Court:

...

(c) if representations are made, either the amount of the penalty that is imposed by the ~~Minister~~ Commission or on appeal, as the case may be, beginning on the day specified by the ~~Minister~~ Commission or the court or, if no day is specified, beginning on the day on which the decision is made; and

...

Certificate of default

Subsection 15.22(1) The ~~Minister~~ Commission may issue a certificate for the unpaid amount of any debt referred to in subsection 15.21(1).

Time limit or prescription

Subsection 15.23(1) A proceeding in respect of a violation may not be commenced later than three years after the day on which the subject-matter of the proceedings becomes known to the ~~Minister~~ Commission.

Certificate of ~~Minister~~ secretary to Commission

Subsection 15.23(2) A document appearing to have been issued by the ~~Minister~~ secretary to the Commission, certifying the day on which the subject-matter of any proceedings became known to ~~him or her~~ the Commission, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

Publication

Section 15.24 [REPEALED AND REPLACED] The Commission may make public

- (a) the name of a person who enters into an undertaking, the nature of the undertaking including the acts or omissions, the provisions or the decisions at issue, the conditions included in the undertaking and, if applicable, the amount of the penalty; and
 - (b) the name of a person who committed the violation, the nature of the violation including the acts or omissions and provisions or decisions at issue and the amount of the penalty.
-

Protection from personal liability

Subsection 17(1) No action or other proceeding for damages lies or may be instituted against the Commission, a Minister or servant or agent of the Crown for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, in good faith under this Act or any order or regulation issued or made under this Act.

Subsection 18(5) An action under subsection (1) may be commenced within, but not after, ~~three~~ two years after the conduct giving rise to the action was engaged in.

Subsection 19(4) An action under subsection (1) may be commenced within, but not after, ~~three~~ two years after the conduct giving rise to the action was engaged in.

BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW

APPENDIX 11

TO

**SUBMISSION OF CANADIAN NETWORK OPERATORS CONSORTIUM INC. TO
THE BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW
PANEL**

11 JANUARY 2019

Proposed Amendments to the *Canadian Radio-Television and Telecommunications Commission Act*, R.S.C. 1985, c. C-22, as am.

Establishment and Constitution of Commission

Notice regarding reappointment

Subsection 3(4) The Governor in Council shall advise a member, at least six months prior to the end of the member's term, as to whether the member will be re-appointed, and if so, for what term.

Selection process for members

Subsection 3(5) The members shall be selected from among one or more candidates through an open professional recruitment process that seeks to identify well-qualified candidates having diverse backgrounds and expertise relevant to the objects, powers, duties and functions of the Commission.

Staff

Appointment

Subsection 8(1) The officers and employees necessary for the proper conduct of the Commission's business shall be appointed in accordance with the *Public Service Employment Act*.

Temporary, technical and special assistants

Subsection 8(2) The Commission may employ such temporary, technical and special assistants, including legal counsel, as may be required to meet the special conditions that arise in carrying out this Act.

Remuneration and expenses

Subsection 8(3) Any temporary, technical and special assistants employed by the Commission shall be paid such remuneration, and are entitled to be paid such travel and living expenses incurred in the performance of their duties under this Act, as is determined by the Chairperson of the Commission, but they shall be paid no more than the market rates for persons with their level of expertise and experience.

Parliamentary appropriation

Subsection 8(4) The remuneration and expenses of the temporary, technical and special assistants employed by the Commission shall be paid out of money appropriated by Parliament to defray the cost of administering the Act.

Objects, Powers, Duties and Functions

Telecommunications

Subsection 12(2) The ~~full-time~~ members of the Commission and the Chairperson shall exercise the powers and perform the duties vested in the Commission and the Chairperson, respectively, by the *Telecommunications Act* ~~or any special Act, as defined in subsection 2(1) of that Act,~~ or the *Radiocommunication Act*, or by *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act.*

Identification of Deciding Commissioners

Section 14 The names of the deciding Commissioners shall be included in all determinations made by the Commission in any form.

BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW

APPENDIX 12

TO

**SUBMISSION OF CANADIAN NETWORK OPERATORS CONSORTIUM INC. TO
THE BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW
PANEL**

11 JANUARY 2019

**Revised Order Issuing a Direction to the CRTC on Implementing the Canadian
Telecommunications Policy Objectives**

Registration

SOR/~~2006-355-2019-XXX~~

TELECOMMUNICATIONS ACT

Order Issuing a Revised Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives

P.C. ~~2006-1534-2019-YYYY~~ ~~December 14, 2006~~ [MONTH] [DAY], 2019

Whereas, pursuant to subsection 10(1) of the *Telecommunications Act*¹, the Minister of Industry had a copy of the proposed *Revised Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* published in the *Canada Gazette, Part I*, on ~~June 17, 2006~~ [MONTH] [DAY], 2019, substantially in the annexed form, and a reasonable opportunity was thereby given to interested persons to make representations to the Minister with respect to the proposed Order;

Whereas, pursuant to subsection 10(1) of that Act, the Minister laid the proposed Order before each House of Parliament and forty sitting days of Parliament have elapsed since the proposed Order was tabled in both Houses;

Whereas, pursuant to subsection 10(2) of that Act, the Minister consulted the Canadian Radio-television and Telecommunications Commission with respect to the proposed Order before it was published and laid and consulted the Commission again with respect to the proposed Order in its definitive form;

And whereas, pursuant to section 13 of that Act, the Minister, before making his recommendation to the Governor in Council for the purposes of this Order, notified the minister designated by the government of each province of his intention to make the recommendation and provided an opportunity for each of them to consult with the Minister;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 8 of the Telecommunications Act, hereby makes the annexed Revised *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*.

¹ S.C. 1993, c. 38.

Revised Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives

Direction

1 In exercising its powers and performing its duties under the *Telecommunications Act*, the Canadian Radio-television and Telecommunications Commission (the “Commission”) shall implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

- (a) the Commission should
 - (i) rely on ~~market forces~~ competition among telecommunications service providers to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
 - (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose, ~~that interfere with the operation of competitive market forces to the minimum extent necessary to meet~~ while promoting competition among telecommunications service providers to the maximum extent feasible as the means of achieving the policy objectives;
- (b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that
 - (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with this Order,
 - (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,
 - (iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner, ~~and~~
 - (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or ~~resellers~~ other telecommunications service providers,
 - (v) ensure that Canadian carriers that are dominant in their retail markets are subject to mandatory wholesale obligations to file tariffs and provide all required technical and commercial information for wholesale services that incorporate essential facilities whenever they launch new retail services that also incorporate those essential facilities,
 - (vi) do not allow Canadian carriers that are subject to mandatory wholesale obligations to use information obtained in the performance of those obligations to compete with their telecommunications service provider customers in the provision of retail services,

- (vii) ensure that Canadian carrier mandatory wholesale obligations require wholesale services to be delivered at a quality of service with regard to functions such as order processing, installation, repair and disconnection as equivalent as possible to the quality of service that Canadian carriers provide for those functions to their own corresponding retail operations, and
- (viii) ensure that Canadian carriers that have mandatory wholesale obligations perform, at all times, their duty to adhere to Commission approved costing methodologies, processes and procedures.
- (c) the Commission, to enable it to act in a more efficient, informed and timely manner, should adopt the following practices, namely,
 - (i) to use only tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible consistent with promoting competition among telecommunications service providers to the maximum extent feasible,
 - (ii) ~~with a view to increasing incentives for innovation and investment in and construction of competing telecommunications network facilities, to complete a review of its regulatory framework regarding mandated access to wholesale services, to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and to determine the appropriate pricing of mandated services, which review should take into account the principles of technological and competitive neutrality, the potential for incumbents to exercise market power in the wholesale and retail markets for the service in the absence of mandated access to wholesale services, and the impediments faced by new and existing carriers seeking to develop competing network facilities~~ to conduct a review of wireline wholesale services in 2019,
 - (iii) to publish and maintain performance standards for its various processes, and
 - (iv) to continue to explore and implement new approaches for streamlining its processes and improving the timeliness of decisions that it renders.

~~2 Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, is hereby repealed.~~

Effect of Order

23 This Order is binding on the Commission beginning on the day on which it comes into force and applies in respect of matters pending before the Commission on that day.

Coming into Force

34 This Order comes into force on the day on which it is registered.