

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).
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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]
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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.
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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.
