

**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.

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## 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.

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

### Section 6 [REPEALED]

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## 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]**

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## **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.

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## **Publication of proposed order, etc.**

### **Section 10 [REPEALED]**

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## **Effect of order, etc.**

### **Section 11 [REPEALED]**

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## **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.

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### **Provincial Consultation**

### **Section 13 [REPEALED]**

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## 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.~~

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## 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]

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~~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]**

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### **~~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.~~

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### **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).

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### **Issuance of licences, etc.**

**Section 19 [REPEALED]**

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### **Suspension and revocation of licences, etc.**

**Section 20 [REPEALED]**

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## Supporting Affidavit

### Section 21 [REPEALED]

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#### 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.

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#### 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.

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#### **Idem**

**Subsection 22(2) [REPEALED]**

#### **Liability for fees**

**Subsection 22(3) [REPEALED]**

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#### **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~~).

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## **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.

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## **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).

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## **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.

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## **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.

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## 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.

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## 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.

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## 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.

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## 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.

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## 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.
- 

## **Integral activities of affiliates**

### **Section 33 [REPEALED]**

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## **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.

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## Order to provide services, etc.

## Section 35 [REPEALED]

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## 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.

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## 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.

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### **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*.

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### **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.

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## **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.
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## **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.

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## 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.

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## 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.

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## 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.
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## 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.

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## **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

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### **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.

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## 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]**

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#### 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.

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#### 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.

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#### 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.

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## 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*.

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## 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.

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## 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.

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## 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.

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## 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.
- 

### **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.

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### **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*.

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### **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.

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### **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## 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.

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## 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.

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## 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*.

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## 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) though 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.

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### **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.~~

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## **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.
- 

### **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.

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### **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.

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## **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.

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### **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.

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## 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]

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## 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.

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## 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.

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## 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.

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# PART VI

## Transitional Provisions

### Section 75 [REPEALED]

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#### 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).

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## **PART VII**

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

**Section 132 [REPEALED]**

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**Section 133 [REPEALED]**