

BROADCASTING AND TELECOMMUNICATIONS LEGISLATIVE REVIEW

APPENDIX 9

TO

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

11 JANUARY 2019

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

Part 1

General

Interpretation [DEFINITIONS NOT LISTED THAT ARE IN THE ACT ARE NOT BEING AMENDED OR REPEALED]

Subsection 2(1) In this Act,

...

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

...

decision means a determination of the Commission in any form;

...

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

...

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

Broadcasting Policy for Canada

Declaration

Subsection 3(1) [REPEALED AND REPLACED] It is hereby declared as the broadcasting policy for Canada that the Canadian broadcasting system shall:

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

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

Regulation of broadcasting

Subsection 3(2) [REPEALED AND REPLACED] Subject to this Act and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act,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

PART II

Objects and Powers of the Commission in Relation to Broadcasting

Objects

Subsection 5(1) [REPEALED]

Regulatory Policy

Subsection 5(2) [REPEALED]

Conflict

Subsection 5(3) [REPEALED]

Policy directions

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

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

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

General Powers

Licences, etc.

Paragraph 9(1)(b) [REPEALED]

Exemptions

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

Regulations generally

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

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

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

Application

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

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

Publication of proposed regulation

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

Idem

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

Review and update of rules

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

Publication of proposed regulations

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

Idem

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

Inquiries and determinations

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

Mandatory orders

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

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

Review of decisions

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

Stay of decisions

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

Interested persons

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

Enforcement of ~~mandator~~ orders in Federal Court

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

Procedure

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

Effect of revocation or amendment

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

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

Saving

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

Hearings Proceedings and reports

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

Judicial Powers respecting hearings proceedings

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

- (a) the attendance and examination of witnesses;
 - (b) the production and examination of any document, information or thing;
 - (c) the enforcement of its decisions;
 - (d) the entry on and inspection of property; and
 - (e) the doing of anything else necessary for the exercise of its powers and the performance of its duties.
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Questions of fact and law [SECTION 17 REPEALED AND REPLACED BY THREE NEW SUBSECTIONS]

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

Factual finding of court

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

Pending proceedings

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

Place of Hearing

Subsection 18(4) [REPEALED]

Notice of Hearing

Section 19 The Commission shall cause notice of

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

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

Quorum

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

Rules orders and regulations [REPEALED AND REPLACED]

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

Conditions governing issue, amendment and renewal

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

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

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

Exception

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

Reference to Minister

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

~~Publication and Tabling of Directive~~

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

Conditions governing suspension and revocation

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

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

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

Publication of decision

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

~~Publication and~~ Tabling

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

Variation, rescission or referral [REPEALED AND REPLACED]

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

Copy of petition to Commission

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

Copies to other parties

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

Notice of petition

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

- (1) that a petition has been received;

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

Process for petitions

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

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

Stay

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

Process for Requests for Stays of a Decision

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

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

Order for a reference back

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

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

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

Reconsideration

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

Variation or rescission by Governor in Council

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

Reasons

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

Filing of petitions

Subsection 29(1) [REPEALED]

Notice

Subsection 29(2) [REPEALED]

Register

Subsection 29(3) [REPEALED]

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

Appeal to the Federal Court of Appeal

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

Application for leave

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

Notice

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

Time limit for appeal

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

Findings of Fact

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

Argument by Commission

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

Alternate service

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

PART II.1

ADMINISTRATION

Partial or additional relief

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

Access to information

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

Designation subject to filing

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

Timing of designation

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

Telecommunications Act

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

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

Extension of time

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

Delegation of Powers

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

Counsel assigned by Minister of Justice

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

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

In camera proceedings

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

Award of Costs

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

Payment of costs

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

Rules, orders and regulations

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

Conditional decisions

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

Interim Decisions

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

***Ex parte* decisions**

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

Judicial notice

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

Business documents

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

Ministerial or Commission documents

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

Copies

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

Certificate

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

Saving

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

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

PART II.2

GENERAL ADMINISTRATIVE MONETARY PENALTIES SCHEME

Telecommunications Act general administrative monetary penalties scheme

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

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

PART II.3

PROMOTION OF COMPETITION

Definitions

Section 34.15 For the purpose of this part,

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

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

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

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

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

Undue preference or disadvantage

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

Question of fact

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

Burden of proof

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

Obligation during dispute

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

Meaning of “dispute”

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

Obligation – distribution of new programming service

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

Obligation – distribution without agreement

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

Inside Wire

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

Just and reasonable terms and conditions, including rates

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

Commission determinations

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

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

Inside wire not to be removed

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

Definition

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

Making programing available

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

Refusal

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

Failure to comply

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

Tied selling

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

Functional or structural separation

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

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

PART II.4

Civil Liability

Damages

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

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

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

Limitation

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

PART III

Canadian Broadcasting Corporation

Objects and powers

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