

## **APPENDIX B**

### **AMENDMENTS TO SECTIONS 7, 7.1, 12, 43 AND 44 OF THE TELECOMMUNICATIONS ACT**

#### **Replace section 7 of the Act with the following:**

7. It is hereby affirmed that telecommunications performs an essential role in enabling the economic and social welfare of Canada and that Canadian telecommunications policy has as its objectives:

- (a) to promote affordable access to advanced telecommunications services in all regions of Canada, including urban, rural and remote areas;
- (b) to enhance the efficiency of Canadian telecommunications markets and the productivity of the Canadian economy; and
- (c) to enhance the social well-being of Canadians and the inclusiveness of Canadian society by:
  - (i) facilitating access to telecommunications by persons with disabilities;
  - (ii) maintaining public safety and security;
  - (iii) contributing to the protection of personal privacy; and
  - (iv) limiting public nuisance through telecommunications.

#### **Add a new section 7.1 to the Act:**

7.1 All telecommunications policy measures and decisions of the Government of Canada, a minister of the Crown, the Commission and any other agency of the Government of Canada shall be made with a view to implementing the Canadian telecommunications policy objectives and shall comply with the following guidelines:

- (a) market forces shall be relied upon to the maximum extent feasible as the means of achieving the telecommunications policy objectives;
- (b) facilities-based competitive service providers shall be relied upon to the maximum extent feasible as the means of achieving the telecommunications policy objectives;
- (c) the principles of net neutrality shall be relied upon to the maximum extent feasible as the means of achieving the telecommunications policy objectives;
- (d) regulatory and other government measures shall be applied only where:

(i) market forces are unlikely to achieve a telecommunications policy objective within a reasonable time frame, and

(ii) the costs of such measures do not outweigh the benefits; and

(e) regulatory and other government measures shall be efficient and proportionate to their purpose and shall interfere with the operation of competitive market forces to the minimum extent necessary to meet the objectives.

**Replace subsection 12 of the Act with the following:**

12 (1) Where the Commission makes a decision, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 7, or a direction on policy issued pursuant to section 8, or the guidelines set forth in section 7.1.

(2) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing shall set out the details of any matter that, in the opinion of the Governor in Council, may be material to the reconsideration and hearing.

(3) Where a decision is referred back to the Commission under this section, the Commission shall reconsider the matter and, after a hearing as provided for by subsection (1), may

(a) rescind the decision or the part of it referred back to the Commission for reconsideration; or

(b) confirm, either with or without change, variation or alteration, the decision or the issue.

(4) Where, pursuant to paragraph (3)(b), the Commission confirms a decision or the issue, the Governor in Council may, within sixty days after the confirmation, on petition in writing of any person received within thirty days after that date or on the Governor in Council's own motion, by order, set aside the decision or the issue if the Governor in Council is satisfied as to any of the matters referred to in subsection (1).

(5) An order made under subsection (4) to set aside a decision or the issue, shall set out the reasons of the Governor in Council therefor.

## Amend sections 43 and 44 of the Act as follows:

### Definition

43 (1) In this section and section 44, Canadian carrier includes a distribution undertaking ~~has the same meaning as that term is defined~~ in subsection 2(1) of the Broadcasting Act.

(1.1) In this section, electrical utility undertaking means an undertaking engaged in the distribution or transport of electricity.

(1.2) In this section, a supporting structure includes:

(a) poles, strands or ducts owned by Canadian carriers;

(b) poles, strands or ducts owned by electrical utility undertakings, regardless of whether they are otherwise regulated at the provincial level of government; and .

(c) poles, strands or ducts, as well as any public property that is capable of being used as a support for telecommunications facilities, including but not limited to, street light standards, traffic lights, transit shelters or the exterior of buildings, that are owned by a municipality or other public authority.

### Entry on public property

(2) ~~Subject to subsections (3) and (4) and section 44, a Canadian carrier~~ ~~or distribution undertaking~~ may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission line telecommunications facilities 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 place.

(2.1) Subject to subsections (3) and (4) and section 44, a Canadian carrier may enter on any highway, transit corridor or other public place for the purpose of attaching its telecommunications facilities to any supporting structure, but shall not unduly interfere with the public use and enjoyment of the highway, transit corridor or other public place.

(2.2) Subject to subsections (3) and (4) and section 44, a Canadian carrier may use any supporting structures owned by a municipality or public authority for the purpose of constructing, maintaining or operating its telecommunications facilities, and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the municipality's or public authority's use of those supporting structures or the safety of the public.

### Consent of municipality

(3) ~~No Canadian carrier~~ ~~or distribution undertaking~~ shall construct a transmission line telecommunications facility on, over, under or along a highway or other public place, ~~or attach its telecommunications facilities to any supporting structures owned by a municipality or public authority~~, without the consent of the municipality or other public authority having jurisdiction over the highway ~~or~~, other public place or supporting structures.

### Application by carrier

(4) \_\_\_ Where a Canadian carrier ~~or distribution undertaking~~ cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct, maintain or operate a ~~transmission line~~ telecommunications facility or attach its telecommunications facilities to any supporting structure, the Canadian carrier ~~or distribution undertaking~~ may apply to the Commission for permission to construct it or attach it, as the case may be, and the Commission may, having due regard to the use and enjoyment of the highway ~~or~~ other public place or supporting structure by others, including the municipality or public authority, grant the permission subject to any conditions that the Commission determines, including, but not limited to, the terms of access and the applicable rate, if any, payable.

### Access by others

(5) \_\_\_ Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to ~~the~~ supporting structure of a ~~transmission line~~ Canadian carrier or an electrical utility undertaking constructed on a highway or other public place, or on an easement or real property whether owned by or licensed to the owner of the supporting structure, that person may apply to the Commission for a right of access to the supporting structure for the purpose of ~~providing such services~~ attaching its telecommunications facilities in order to provide its services, and the Commission may grant the permission subject to any conditions that the Commission determines including, but not limited to, the terms of access and the applicable rate, if any, payable to the owner of the supporting structure.

44 On application by a municipality or other public authority, the Commission may

- (a) order a Canadian carrier ~~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; or
- (b) prohibit the construction, maintenance or operation by a Canadian carrier ~~or distribution undertaking~~ of any such ~~transmission line~~ telecommunications facility except as directed by the Commission.