

APPENDIX C - AMENDMENTS TO PARTS I, II and II.1 of THE BROADCASTING ACT

Short Title

Short title

1 This Act may be cited as the *Broadcasting Act*.

PART I General

Interpretation

Definitions

2 (1) In this Act,

broadcasting means any transmission of programs, whether or not encrypted, by radio waves, digital technology or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place; (*radiodiffusion*)

broadcasting receiving apparatus means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting; (*récepteur*)

broadcasting undertaking includes a digital media undertaking, a distribution undertaking, a programming undertaking and a network; (*entreprise de radiodiffusion*)

Commission means the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*; (*Conseil*)

program piracy includes the reproduction, communication, broadcast, transmission, distribution, decryption or decoding of, or access to, copyrighted programs without the authorization of the copyright holder, or any activity that enables, induces or facilitates any such actions; (*piratage de programmes*)

Corporation means the Canadian Broadcasting Corporation continued by section 36; (*Société*)

digital media undertaking means an undertaking for the transmission of programs by digital communications that are either delivered and accessed over the public Internet or are delivered using point-to-point technology and received by way of mobile devices, and are intended for reception by the public by means of broadcasting receiving apparatus; (*entreprise de médias numériques*)

distribution undertaking means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking; (*entreprise de distribution*)

encrypted means treated electronically or otherwise for the purpose of preventing intelligible reception; (*encodage*)

licence means a licence to carry on a broadcasting undertaking issued by the Commission under this Act; (*licence*)

Minister means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act; (*ministre*)

network includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person; (*réseau*)

non-Canadian programming service means a non-Canadian owned and controlled service for the transmission of programs solely through a distribution undertaking in Canada for reception by the public by means of broadcasting receiving apparatus; (*services de programmation non canadiens*);

program means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; (*émission*)

programming undertaking means an Canadian owned and controlled undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus; (*entreprise de programmation*)

radio waves means electromagnetic waves of frequencies lower than 3 000 GHz that are propagated in space without artificial guide; (*ondes radioélectriques*)

service agreement means an agreement entered into between a digital media undertaking and the Commission or between a group of affiliated broadcasting undertakings and the Commission, which sets out the terms and conditions under which the undertaking(s) operate in Canada, (*contrat de service*)

~~*temporary network operation*~~ means a network operation with respect to a particular program or a series of programs that extends over a period not exceeding sixty days. (~~*exploitation temporaire d'un réseau*~~)

Meaning of ***other means of telecommunication***

(2) For the purposes of this Act, ***digital technology or other means of telecommunication*** means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system.

Interpretation

(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.

Broadcasting Policy for Canada

Declaration

3 (1) It is hereby declared as the broadcasting policy for Canada that

(a) the Canadian broadcasting system ~~shall~~ should be effectively owned and controlled by Canadians;

(b) the Canadian broadcasting system, ~~operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and~~ provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(c) English, ~~and~~ French and third language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, ~~the linguistic duality, and~~ multilingual and multiethnic diversity, multicultural and multiracial nature of Canadian society and the special place of ~~aboriginal~~ Indigenous Peoples within ~~the~~ Canadian society,

(iv) be readily adaptable to scientific and technological change;

(v) discourage, inhibit and prevent program piracy; and

(vi) maintain and encourage competition and reliance on market forces in order to promote efficiency and adaptability.

(e) ~~each element of the Canadian broadcasting undertakings system~~ shall contribute in an appropriate and equitable manner to the creation, production and presentation of Canadian programming;

(f) each broadcasting undertaking shall make the greatest practical maximum use, ~~and in no case less than predominant use,~~ of Canadian creative and other resources in the creation and presentation of programming, ~~unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;~~

(g) the programming originated by broadcasting undertakings should be of high standard;

(h) all persons who ~~are licensed to carry on~~ broadcasting undertakings have a responsibility for the programs they broadcast;

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

(ii) be drawn from local, regional, national and international sources,

(iii) include educational and community programs,

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, ~~and~~

(v) include a ~~significant~~ contribution from the Canadian independent production sector; and

(vi) include local, regional and national news and information programming produced in accordance with professional journalistic standards.

(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;

(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

(m) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and ~~multiethnic~~ nature of Canada;

(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);

(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

(o.1) programming that reflects the multicultural and multiethnic nature of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

~~**(q)** without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be~~

~~provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;~~

~~(r) the programming provided by alternative television programming services should~~

~~(i) be innovative and be complementary to the programming provided for mass audiences,~~

~~(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,~~

~~(iii) reflect Canada's regions and multicultural nature,~~

~~(iv) as far as possible, be acquired rather than produced by those services, and~~

~~(v) be made available throughout Canada by the most cost-efficient means;~~

~~(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,~~

~~(i) contribute significantly to the creation and presentation of Canadian programming, and~~

~~(ii) be responsive to the evolving demands of the public; and~~

~~(qt) distribution undertakings~~

~~(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,~~

~~(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at commercially reasonable cost,~~

~~(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and~~

~~(iiiiv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.~~

(r) digital media undertakings should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost.

Further declaration

(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

Application

Binding on Her Majesty

4 (1) This Act is binding on Her Majesty in right of Canada or a province.

Application generally

(2) This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

(a) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(b) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; or

c) any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

For greater certainty

(3) For greater certainty, this Act applies in respect of broadcasting undertakings that derive revenues from Canada

(a) whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity; and

(b) whether or not they have physical assets located within Canada.

Idem

(4) For greater certainty, this Act does not apply to

(a) any telecommunications common carrier, as defined in the *Telecommunications Act*, when acting solely in that capacity.

(b) a digital media undertaking that is not engaged in commercial activities in Canada.

PART II

Objects and Powers of the Commission in Relation to Broadcasting Objects

5 (1) 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 broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

Regulatory policy

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

(a.1) relies on market forces to the maximum extent feasible as the means to achieve the broadcasting policy set out in subsection 3(1);

(a.2) is efficient and proportionate to the purpose of the regulation or supervision and interferes with the operation of competitive market forces to the minimum extent necessary to meet its objectives;

(a.3) strives to ensure that all broadcasting undertakings are regulated in an equitable manner regardless of the nature of technology used to deliver the resultant services to Canadians;

(a.4) ensures that all broadcasting undertakings are eligible to access funding mechanisms and other support measures for the creation and production of Canadian programming;

(a.5) supports the creation, production and exhibition of programming that achieves the broadcasting policy, including in particular those objectives relating to cultural diversity, set out in subsection 3(1);

(b) takes into account regional needs and concerns;

(c) is readily adaptable to scientific and technological change;

(d) facilitates the provision of broadcasting to Canadians;

(e) facilitates the provision of Canadian programs to Canadians;

(e.1) facilitates the protection of copyrighted programs where the rights are held by broadcasting undertakings. (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and

(g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

Conflict

(3) The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

Employment equity

(4) Where a broadcasting undertaking is subject to the *Employment Equity Act*, the powers granted to the Commission under this Act do not extend to the regulation or supervision of matters concerning employment equity in relation to that broadcasting undertaking.

Policy guidelines and statements

6 The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.

Policy directions

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 broadcasting policy set out in subsection 3(1); or

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

Exception

(2) No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence.

Directions binding

(3) An order made under subsection (1) is binding on the Commission beginning on the day on which the order comes into force and, subject to subsection (4), shall, if it so provides, apply with respect to any matter pending before the Commission on that day.

Exception

(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.

Publication and tabling

(5) A copy of each order made under subsection (1) 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.

Consultation

(6) The Minister shall consult with the Commission before the Governor in Council makes an order under subsection (1).

Procedure for issuance of policy directions

8 (1) Where the Governor in Council proposes to make an order under section 7, the Minister shall cause the proposed order to be

(a) published by notice in the *Canada Gazette*, which notice shall invite interested persons to make representations to the Minister with respect to the proposed order; and

(b) laid before each House of Parliament.

Referral to committee

(2) Where a proposed order is laid before a House of Parliament pursuant to subsection (1), it shall stand referred to such committee thereof as the House considers appropriate to deal with the subject-matter of the order.

Implementation of proposal

(3) The Governor in Council may, after the expiration of forty sitting days of Parliament after a proposed order is laid before both Houses of Parliament in accordance with subsection (1), implement the proposal by making an order under section 7, either in the form proposed or revised in such manner as the Governor in Council deems advisable.

Consultation

(4) The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1).

Definition of *sitting day of Parliament*

(5) In this section, *sitting day of Parliament* means a day on which either House of Parliament sits.

General Powers

Licences, etc.

9 (1) Subject to this Part, the Commission may, in furtherance of its objects,

(a) establish classes of licences for all broadcasting undertakings, with the exception of digital media undertakings;

(b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee

(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and

(ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(l) and (m);

(c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;

(d) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (b);

(e) suspend or revoke any licence; and

~~**(f)** require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;~~

~~**(g)** require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and~~

(h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

(1.1) Subject to this Part, the Commission may, in furtherance of its objects,

(a) enter into service agreements with digital media undertakings or groups of affiliated broadcasting undertakings for such terms not exceeding five years and containing terms and conditions appropriate to the circumstances of the undertaking for the implementation of the broadcasting policy set out in subsection 3(1);

(b) amend any term or condition of a service agreement with the consent of the undertaking;

(c) renew service agreements for such terms not exceeding 5 years and subject to such terms and conditions as comply with paragraph (c); and

(d) suspend or terminate any service agreement.

Restrictions re conditions

(2) Notwithstanding subsections (1) and 28(3), no licence of a distribution undertaking may be made subject to a condition that requires the licensee to substitute replacement material for commercial messages carried in a broadcasting signal received by that licensee.

Exception

~~**(3)** Subsection (2) does not apply in respect of a condition of a licence renewed after October 4, 1987 where before that date the licensee was complying with such a condition.~~

Exemptions

(34) 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 broadcasting policy set out in subsection 3(1).

Regulations generally

10 (1) The Commission may, in furtherance of its objects, 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;

(b.1) prescribing the contribution that each type of broadcasting undertaking is required to make to the production, creation and exhibition of Canadian programming;

(c) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the 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~~ non-Canadian programming service or ~~other Canadian~~ Canadian programming services by distribution undertakings;

(h) for resolving by way of a third party, independent arbiter, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;

(h.1) requiring broadcasting undertakings to submit to the Commission evidence that they are authorized by the copyright holder to transmit programming;

(i) requiring ~~licensees~~ broadcasting undertakings 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~~ broadcasting undertakings 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.

Application

(2) A regulation made under this section may be made applicable to all broadcasting undertakings ~~persons holding licences~~ or to all persons holding licences of one or more classes or of all persons that have entered into a service agreement.

Publication of proposed regulation

(3) A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

Regulations respecting licenceregulatory fees

11 (1) The Commission may make regulations

(a) with the approval of the Treasury Board, establishing schedules of fees to be paid by ~~licensees~~ broadcasting undertakings of any class;

- (b) providing for the establishment of classes of broadcasting undertakings~~licensees~~ for the purposes of paragraph (a);
- (c) providing for the payment of any fees payable by a ~~licensee~~broadcasting undertaking, including the time and manner of payment;
- (d) respecting the interest payable by a broadcasting undertaking~~licensee~~ in respect of any overdue fee; and
- (e) respecting such other matters as it deems necessary for the purposes of this section.

Criteria

(2) Regulations made under paragraph (1)(a) may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to

- (a) the revenues of the broadcasting undertakings~~licensees~~;
- (b) the performance of the ~~licensees~~broadcasting undertakings in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and
- (c) the market served by the broadcasting undertaking~~licensees~~.

Exceptions

(3) No regulations made under subsection (1) shall apply to the Corporation or to licensees carrying on programming undertakings on behalf of Her Majesty in right of a province.

Debt due to Her Majesty

(4) Fees payable by a ~~licensee~~broadcasting undertaking under this section and any interest thereon constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

Publication of proposed regulations

(5) A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to ~~licensees and other~~all interested persons to make representations to the Commission with respect thereto.

Inquiries

12 (1) Where it appears to the Commission that

- (a) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, service agreement, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in

contravention of this Part or of any such regulation, licence, service agreement, decision or order,

(a.1) any person has done or is doing any act or thing in contravention of section 34.1, or

(b) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part,

the Commission may inquire into, hear and determine the matter.

Mandatory orders and Administrative Monetary Penalties

(2) The Commission may, by order, require any person to do, without delay or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do under this Part or any regulation, licence, service agreement, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part, to any such regulation, licence, service agreement, decision or order or to section 34.1.

(2.1) Every contravention of a regulation, licence, service agreement, decision or order made by the Commission under this Act, constitutes a violation and the person who commits the violation is liable

(a) in the case of an individual, to an administrative monetary penalty not exceeding \$25,000 and, for a subsequent contravention, a penalty not exceeding \$50,000; or

(b) in any other case, to an administrative monetary penalty not exceeding \$250,000 and, for a subsequent contravention, a penalty not exceeding \$500,000.

Referral to Commission

(3) Where an inquiry under subsection (1) is heard by a panel established under subsection 20(1) and the panel issues an order pursuant to subsection (2) or (2.1) of this section, any person who is affected by the order may, within thirty days after the making thereof, apply to the Commission to reconsider any decision, ~~or finding~~ or administrative monetary penalty made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may re-hear any matter before deciding it.

Enforcement of mandatory orders

13 (1) Any order made under subsection 12(2) or (2.1) may be made an order of the Federal Court or of any superior court of a province and is enforceable in the same manner as an order of the court.

Procedure

(2) To make an order under subsection 12(2) or (2.1) an order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the registrar of the court a certified copy of the order, and thereupon the order becomes an order of the court.

Effect of variation or rescission

(3) Where an order that has been made an order of a court is rescinded or varied by a subsequent order of the Commission, the order of the court shall be deemed to have been cancelled and the subsequent order may, in the same manner, be made an order of the court.

Research

14 (1) The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada.

Review of technical matters

(2) The Commission shall review and consider any technical matter relating to broadcasting referred to the Commission by the Minister and shall make recommendations to the Minister with respect thereto.

Hearings and reports

15 (1) The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act.

Consultation

(2) The Minister shall consult with the Commission with regard to any request proposed to be made by the Governor in Council under subsection (1).

Powers respecting hearings

16 The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record.

Authority re questions of fact or law

17 The Commission has authority to determine questions of fact or law in relation to any matter within its jurisdiction under this Act.

Hearings and Procedure

Where public hearing required

18 (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with

- (a) the issue of a licence or the decision to enter into of a service agreement, ~~other than a licence to carry on a temporary network operation~~;
- (b) the suspension or revocation of a licence or the termination of a service agreement;
- (c) the establishing of any performance objectives for the purposes of paragraph 11(2)(b); ~~and~~
- (d) the making of an order under subsection 12(2); and
- (e) the issue of an order imposing a administrative monetary penalty under subsection 12(2.1).

Idem

(2) The Commission shall hold a public hearing in connection with the amendment or renewal of a licence or service agreement unless it is satisfied that such a hearing is not required in the public interest.

Where public hearing in Commission's discretion

(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

Place of hearing

(4) A public hearing under this section may be held at such place in Canada as the Chairperson of the Commission may designate.

Notice of hearing

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
- (c) any public hearing to be held by it under section 18

to be published in the *Canada Gazette*, the Commission's website 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.

Panels of Commission

20 (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.

Powers

(2) A panel that is established under subsection (1) has and may exercise all the powers and may perform all the duties and functions of the Commission in relation to any matter before the panel.

Decision

(3) A decision of a majority of the members of a panel established under subsection (1) is a decision of the panel.

Consultation

(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2) and the regulations made by the Commission under sections 10 and 11.

Rules

21 The Commission may make rules

(a) respecting the procedure for making applications for licences and for entering into service agreements, or for the amendment, renewal, suspension, ~~or~~ revocation or termination thereof, and for making representations and complaints to the Commission; and

(b) respecting the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings.

Licences and Service Agreements

Conditions governing issue, amendment and renewal of licences and entering into, amendment and renewal of service agreements

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~~ Minister of Innovation, Science and Economic Development certifies to the Commission 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

(2) The requirement set out in paragraph (1)(b) does not apply in respect of radio apparatus, or any class thereof, prescribed under paragraph 6(1)(m) of the *Radiocommunication Act*.

Suspension or revocation of broadcasting certificate

(3) No licence is of any force or effect during any period when the broadcasting certificate issued under the *Radiocommunication Act* with respect to the radio apparatus that the holder of the licence is entitled to operate under that Act is suspended or revoked.

Issue, etc., contravening this section

(4) Any licence issued, amended or renewed in contravention of this section is of no force or effect.

Consultation between Commission and Corporation

23 (1) The Commission shall, at the request of the Corporation, consult with the Corporation with regard to any conditions that the Commission proposes to attach to any licence issued or to be issued to the Corporation.

Reference to Minister

(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), the Corporation may, within thirty days after the decision of the Commission, refer the condition to the Minister for consideration.

Ministerial directive

(3) Subject to subsection (4), the Minister may, within ninety days after a condition is referred to the Minister under subsection (2), issue to the Commission a written directive with respect to the condition and the Commission shall comply with any such directive issued by the Minister.

Consultation

(4) The Minister shall consult with the Commission and with the Corporation before issuing a directive under subsection (3).

Publication and tabling of directive

(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 or termination

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 (2.1) or any regulation made under this Part; or

(b) the licence was, at any time within the two years immediately preceding the 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.

(1.1) No service agreement shall be terminated under this Part unless the broadcasting undertaking applies for or consents to the termination or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that

(a) the broadcasting undertaking has contravened or failed to comply with any term or condition of the service agreement or with any order made under subsection 12(2) or (2.1) or any regulation made under this Part; or

(b) the service agreement was, at any time within the two years immediately preceding the date of publication in the *Canada Gazette* of the notice of the public hearing, entered into by a person who was ineligible to enter into such an agreement by virtue of a direction to the Commission issued by the Governor in Council under this Act.

Licences of Corporation

(2) No licence issued to the Corporation that is referred to in the schedule may be suspended or revoked under this Part except on application of or with the consent of the Corporation.

Publication of decision

(3) A copy of a decision of the Commission relating to the suspension or revocation of a licence or the termination of a service agreement, 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*, on the Commission's website and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision.

Report of alleged contravention or non-compliance by Corporation

25 (1) Where the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened or failed to comply with any condition of a licence referred to in the schedule, any order made under subsection 12(2) or

any regulation made under this Part, the Commission shall forward to the Minister a report setting out the circumstances of the alleged contravention or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith.

Report to be tabled

(2) The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is received by the Minister.

General Powers of the Governor in Council

Directions

26 (1) The Governor in Council may, by order, issue directions to the Commission

(a) respecting the categories of digital media undertakings that are not eligible to enter into service agreements~~maximum number of channels or frequencies for the use of which licences may be issued within a geographical area designated in the order;~~

(b) respecting the reservation of channels or frequencies for the use of the Corporation or for any special purpose designated in the order;

(c) respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted; and

(d) prescribing the circumstances in which the Commission may issue licences to applicants that are agents of a province and are otherwise ineligible to hold a licence, and the conditions on which those licences may be issued.

Idem

(2) Where the Governor in Council deems the broadcast of any program to be of urgent importance to Canadians generally or to persons resident in any area of Canada, the Governor in Council may, by order, direct the Commission to issue a notice to licensees throughout Canada or throughout any area of Canada, of any class specified in the order, requiring the licensees to broadcast the program in accordance with the order, and licensees to whom any such notice is addressed shall comply with the notice.

Publication and tabling

(3) 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.

Consultation

(4) The Minister shall consult with the Commission with regard to any order proposed to be made by the Governor in Council under subsection (1).

Directions re ~~Free Trade Agreement~~ Canada-United States-Mexico Agreement

27 (1) The Governor in Council may, either on the recommendation of the Minister made at the request of the Commission or on the Governor in Council's own motion, issue directions of general application respecting the manner in which the Commission shall apply or interpret Article 32.6 of the Canada-United States-Mexico Agreement~~paragraph 3 of Article 2006 of the Agreement~~.

Effect of directions

(2) A direction issued under subsection (1) is binding on the Commission from the time it comes into force and, unless otherwise provided therein, applies in respect of matters pending before the Commission at that time.

Request of Commission

(3) The Commission may, in order to request the issuance of a direction under subsection (1), suspend the determination of any matter of which it is seized.

Definition of Agreement

(4) In this section, **Agreement** has the same meaning as in the ~~Canada-United States Free Trade Agreement~~ Canada-United States-Mexico Agreement Implementation Act.

Setting aside or referring decisions back to Commission

28 (1) Where the Commission makes a decision to issue, amend or renew a licence or to enter into, amend or renew a service agreement, 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 3(1) or regulatory policy set out in subsection 5(2).

Order on reference back

(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.

Powers on reference back

(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 issue, amendment or renewal of the licence~~ or the service agreement and any amendment or renewal thereof;

(b) rescind the issue of the licence and issue a licence on the same or different conditions to another person; ~~or~~

(c) confirm, either with or without change, variation or alteration, the decision, ~~or the issue, amendment or renewal of the licence~~ or the service agreement and any amendment or renewal thereof.

Setting aside after confirmation

(4) Where, pursuant to paragraph (3)(c), the Commission confirms a decision, ~~or the issue, amendment or renewal of a licence~~ or the service agreement and any amendment or renewal thereof, 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, amendment or renewal~~ or the service agreement and any amendment or renewal thereof, if the Governor in Council is satisfied as to any of the matters referred to in subsection (1).

Reasons

(5) An order made under subsection (4) to set aside a decision, ~~or the issue, amendment or renewal of a licence~~ or the service agreement and any amendment or renewal thereof shall set out the reasons of the Governor in Council therefor.

Filing of petitions

29 (1) Every person who petitions the Governor in Council under subsection 28(1) or (4) shall at the same time send a copy of the petition to the Commission.

Notice

(2) On receipt of a petition under subsection (1), the Commission shall forward a copy of the petition by prepaid registered mail to all persons who were heard at or made any oral representation in connection with the hearing held in the matter to which the petition relates.

Register

(3) The Commission shall establish and maintain a public register in which shall be kept a copy of each petition received by the Commission under subsection 28(1) or (4).

Amendment of schedule

30 The Governor in Council may, on the recommendation of the Minister made on the request of the Commission and with the consent of the Corporation, amend the schedule.

Decisions and Orders

Decisions and orders final

31 (1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.

Appeal to Federal Court of Appeal

(2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

Entry of appeal

(3) No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.

Document deemed decision or order

(4) Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a licence or the entering into, amendment, renewal or termination of a service agreement, be deemed for the purposes of this section to be a decision or order of the Commission.

Offences

Broadcasting without or contrary to licence or service agreement

32 (1) Every person who, not being exempt from the requirement to hold a licence or enter into a service agreement, carries on a broadcasting undertaking without a licence or service agreement therefor is guilty of an offence punishable on summary conviction and is liable

(a) in the case of an individual, to a fine not exceeding twenty thousand dollars for each day that the offence continues; or

(b) in the case of a corporation, to a fine not exceeding two hundred thousand dollars for each day that the offence continues.

Contravention of regulation or order

(2) Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

(a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

Contravention of conditions of licence or terms and conditions of a service agreement

33 Every person who contravenes or fails to comply with any condition of a licence issued to the person or with any term or condition set out in a service agreement is guilty of an offence punishable on summary conviction.

Limitation

34 Proceedings for an offence under subsection 32(2) or section 33, may be instituted within, but not after, two years after the time when the subject-matter of the proceedings arose.

PART II.1 Offence — Paper Bill

Prohibition

34.1 No person who carries on a broadcasting undertaking shall charge a subscriber for providing the subscriber with a paper bill.

Offence

34.2 Every person who contravenes section 34.1 is guilty of an offence punishable on summary conviction and is liable

(a) in the case of an individual, to a fine not exceeding \$25,000 for a first offence and not exceeding \$50,000 for each subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding \$250,000 for a first offence and not exceeding \$500,000 for each subsequent offence.

Limitation

34.3 No proceedings for an offence under section 34.2 are to be instituted more than two years after the time when the subject-matter of the proceedings arose.