OVERVIEW OF LEGAL LANDSCAPE

Subject to certain activities (including the use of spectrum, and the provision of international services), telecommunication providers in Canada (‘carriers’) can generally operate without a licence or other form of authorisation. However, they must register with the Canadian Radio-television and Telecommunications Commission (the “CRTC”).

Additionally, carriers are subject to rules restricting foreign ownership and control, as outlined under the Establishment section. These restrictions are derived from telecommunication policy objectives to promote the ownership and control of Canadian carriers by Canadians.

The majority of legislative authority for modern telecommunication activity in Canada is with the Federal Government. A mix of federal acts, notably the Telecommunications Act and the Radiocommunication Act, govern telecommunication activities under federal jurisdiction. The CRTC acts as the main telecommunications regulator, while the Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) plays a regulatory role with respect to radio spectrum.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary federal legislation governing telecommunications in Canada is the Telecommunications Act, which came into force on October 25, 1993. The Act repealed and replaced telecommunication-related provisions formerly present in the Railway Act, while also repealing and replacing federal acts such as the National Telecommunications Power and Procedures Act, and the Telegraphs Act.

The Telecommunications Act outlines the regulatory scheme for telecommunication carriers falling under the jurisdiction of the federal government, and sets out the powers of the CRTC in administering the Act. The CRTC itself is established under the Canadian Radio-television and Telecommunications Commission Act.

Key features of the Telecommunications Act are:

- The objectives of the Canadian telecommunications policy include the promotion of economic efficiency, market competitiveness, public accessibility to high quality services, Canadian ownership and control, innovation, privacy protection, and the social requirements of users. In exercising its powers under the Act, the CRTC must act with a view of implementing these objectives.

- Although carriers have general authority to operate without licences (except with respect to certain activities, including the use of spectrum and the provision of international services), they are subject to basic regulatory requirements relating to rates, resale, roaming and interconnection between carriers. Additionally, the CRTC may impose conditions on carriers offering telecommunications services.

- The CRTC’s mandate includes the power to enquire and make determinations with respect to permitted or prohibited telecommunication activities. Moreover the CRTC may issue guidelines or make regulations for carrying out the purposes...
and provisions of the Act. Decisions of the CRTC may be appealed to the Federal Court of Appeal with leave of that court.

In addition to the Telecommunications Act, the following federal legislation (and subordinate legislation sitting beneath) may also impact the provision of communication services and the operation of communication networks:

- The **Radiocommunication Act** 1985, which sets out the regulatory framework for radio spectrum licences and management. The Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) is responsible for regulation under the Act. The Ministry’s policies on spectrum management can be found [here](http://www.ic.gc.ca/eic/site/icgc.nsf/eng/home).

- The **Broadcasting Act** 1991, which sets out the regulatory framework for broadcasting in Canada, including the transmission of programs received by the public. The CRTC is responsible for regulation under the Act.

- The **Competition Act** 1985

- The **Personal Information Protection and Electronic Documents Act** 2000, which governs the rules for collection, use and disclosure of personal information by telecommunication service providers within federal jurisdiction.

At the provincial level, legislation exists relating to local matters not specifically under federal jurisdiction. Examples include legislation addressing telephone rates and services as applied locally, and legislation enabling the creation of telephone companies by municipalities.

**REGULATORY BODIES OR AUTHORITIES**

**Canadian Radio-television and Telecommunications Commission**

Les Terrasses de la Chaudière Central Building
1 Promenade du Portage
Gatineau, Quebec J8X 4B1
http://www.crtc.gc.ca/

**Innovation, Science and Economic Development Canada**

C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5
https://www.ic.gc.ca/eic/site/icgc.nsf/eng/home

**Commission for Complaints for Telecommunication Services**

P.O. Box 56067 - Minto Place RO
Ottawa, ON
K1R 7Z1
https://www.ccts-cprst.ca/

- An independent consumer agency that resolves complaints from individuals and small business retail customers.

**TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS**

All carriers involved in the ownership or operation of transmission facilities used to provide telecommunication services are subject to regulation under the Telecommunications Act.

A transmission facility is defined as: “any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence (signs, signals, writing, images, sounds, or intelligence of any nature) between network termination points”.

Telecommunication services include those provided by means of a transmission facility, or any other facility or apparatus that is used or capable of being used for similar purposes.
Carriers that do not own or operate a facility may not be subject to regulation under the Act. For example, resellers that merely use facilities to provide services to the public are not subject to regulation under the Act. However, non-facilities-based providers must register with the CRTC and must meet certain regulatory obligations pursuant to various CRTC regulatory policies. Furthermore, providers of transit that neither originates nor terminates in Canada may not be subject to regulation under the Act.

Additionally, certain carriers are explicitly exempt from the Act. These include entities that own or operate telecommunication switches only, and entities that engage exclusively in the provision of data processing services.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Carriers that are subject to regulation under the Telecommunications Act generally do not require a licence to operate, however, certain activities require special licences from the CRTC. These activities include international telecommunication services, and the construction and operation of international submarine cables. Additionally, resellers must register with the CRTC, and broadcasting licences are issued by the CRTC under the Broadcasting Act.

Carriers that use radio to offer telecommunication services require separate licences from the Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) under the Radiocommunication Act. Radio-based activities include, but are not limited to, the use of microwave facilities, cellular telephone systems, and the operation of satellites and satellite earth stations.

Telecommunications Service Providers in Canada must register on one of the CRTC’s registration lists as a Basic International Telecommunications (BITS) Licensee (to carry telecommunications traffic between Canada and another country), a Facilities-Based Provider (to own or operate a transmission facility used by that provider or another provider to offer telecommunications services to the public for compensation), or a Non-Facilities-Based Provider (to offer basic telecommunications services to the public including services provided by exempt transmission apparatus). An entity may register on more than one list provided it meets the obligations associated with each list.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

Generally speaking, telecommunication providers must be Canadian-owned and controlled entities incorporated, organised or continued under the laws of Canada or a province which owns or operates transmission facilities (other than submarine cables, satellite earth stations and satellites).

Under the Telecommunications Act, an entity is Canadian-owned and controlled if:

- In the case of a corporation, not less than 80% of the members of the board of directors are individual Canadians
- Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80% of the entity’s voting interests
- The entity is not otherwise controlled by persons that are not Canadians

‘Canadian’ is a defined term that includes corporations of which Canadian shareholders (either individuals or other entities fitting specified criteria) beneficially own and control not less than 66.66% of the issued and outstanding voting shares, and which are not otherwise controlled by non-Canadians. In effect, non-Canadians may own up to 33.33% of the voting shares of the parent of the carrier as well as 20% of the voting shares of the carrier itself.

Entities that hold less than 10% of the Canadian market for telecom services (based on revenue) however, are specifically exempt from Canadian ownership and control requirements under the Act.

Canada’s right to impose the above foreign ownership restrictions is consistent with Canada’s Schedule of Specific Commitments to the WTO Agreement on trade in basic telecommunication services.
EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecommunications Act provides that agreements and arrangements relating to the interworking of systems between carriers, and the apportionment of rates or revenues are subject to the approval of the CRTC. The CRTC has express authority to approve arrangements, withhold the approval of arrangements, and amend arrangement agreements.

Where interconnection cannot be achieved by the mutual consent of carriers, the CRTC has the authority to order a carrier to connect its telecommunication facilities to any other telecommunication facility, and to establish terms and conditions that it deems just and expedient. Where carriers cannot agree on a joint rate, the CRTC may fix the rate and provide for terms of apportionment among carriers. The CRTC has used these powers to promote the competitive supply of telecommunication services in Canada.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CRTC plays a prominent role in consumer protection in the telecommunications field. Key undertakings by the CRTC include the promotion and enforcement of:

- Unsolicited Telecommunication Rules, such as those associated with telemarketing and the national ‘do not call list’
- Canada’s anti-spam legislation (CASL)
- The Wireless Code, published by the CRTC here, which outlines the rights and responsibilities of consumers of wireless services, and applies to all wireless contracts

The Competition Act contains both civil and criminal provisions related to misleading advertising and provides an important tool for consumer protection in the telecommunications field. The Competition Bureau may investigate and bring actions directly against telecommunications providers under the Act. The Act also provides for a private right of action for losses or damage suffered by any person as a result of conduct contrary to certain provisions of the Act, including the criminal conspiracy, bid-rigging and criminal misleading advertising provisions. This is significant in Canada, where very few statutes provide a right to bring a private action. This private right of action has been used by large telecommunication providers to attack each other’s advertisements as being misleading, and may also be used by consumers, particularly in a class proceeding.

REGULATORY TAXES AND FEES

Under the Telecommunications Act, carriers are subject to fees every calendar year if two conditions are satisfied: the carrier was in operation on April 1 of the year, and the carrier had at least CAD 10 million in revenue from Canadian telecommunications services for its fiscal year ending in the preceding calendar year. Alternatively, if the carrier is one of a group of related telecommunication service providers, the conditions apply to the group on aggregate.

The carriers mentioned above are subject to three applicable fees: the ‘annual fee’, the ‘supplementary fee’, and the ‘annual adjustment’. Fee amounts are carrier-specific (based on the carrier’s revenue in relation to the industry as a whole) and are calculated as a proportion of the yearly cost of the regulatory scheme.

Fees for spectrum licences issued under the Radiocommunication Act are outlined in the Radiocommunication Regulations. Fees are based on the type of station licensed, the type of service used, and in certain cases the amount of radio frequency spectrum required or assigned, and the location of the operations.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

The CRTC has authority to inspect and investigate compliance or non-compliance of the regulatory scheme. Violations of the Telecommunications Act, by an act or omission contrary to a provision or a decision made pursuant to the Act, may trigger civil liability, administrative monetary penalties, or offences punishable on summary conviction. The applicable enforcement measure will depend on the nature of the activity. Prosecution of offences punishable on summary conviction may only be commenced with the consent of the CRTC.
The limitation periods for the enforcement of violations vary between two years from the day on which the act or omission occurred, to three years from the day on which the subject-matter of the proceedings became known to the CRTC.

The CRTC and the Minister of Innovation, Science and Economic Development may also suspend or revoke licences if they are satisfied that the licence holder has contravened the applicable acts, regulations, or terms of authorisation. Prior to suspension or revocation, the licence holder must first be given written notice and a reasonable opportunity to make representations to the relevant party.

KEY CONTACTS

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