

List of Recommendations



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Chapter 2 Policy Objectives and Regulation

Recommendation 2-1 The Canadian telecommunications policy objectives as currently set out in the *Telecommunications Act* should be clarified to:

- (a) set out the objectives of Canadian telecommunications policy, and
 - (b) provide guidelines for regulatory and government action to achieve these objectives.
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Recommendation 2-2 Section 7 of the *Telecommunications Act* should be removed and replaced with the following:

*“Canadian Telecommunications Policy and Government
and Regulatory Guidelines”*

“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 is based on the following 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.”
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Recommendation 2-3 The *Telecommunications Act* should be amended by adding the following immediately after proposed section 7:

“7.1 The following guidelines shall be applied in implementing the telecommunications policy objectives:

- (a) market forces shall be relied upon to the maximum extent feasible as the means of achieving the telecommunications policy objectives;
 - (b) 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
 - (c) 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.”
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Recommendation 2-4 The *Telecommunications Act* should be amended by adding the following immediately after proposed section 7.1:

“7.2 All policy documents, decisions, orders or other means of introducing or amending significant government or regulatory measures shall:

- (a) specify the telecommunications policy objective that is advanced by the policy or measure;
- (b) demonstrate compliance with the statutory guidelines for achievement of Canada’s telecommunications policy objectives.”

Recommendation 2-5 Amendments should be made to the *Radiocommunication Act*, the *Department of Industry Act* and other relevant federal legislation to ensure that all government departments and agencies that implement telecommunications policies, programs or regulatory measures act in a manner that promotes the achievement of Canadian telecommunications policy objectives and complies with the implementation guidelines as set out in the *Telecommunications Act*.

Recommendation 2-6 The Canadian Radio-television and Telecommunications Commission should be empowered to directly regulate all telecommunications service providers to the extent necessary to implement the Canadian telecommunications policy objectives.

Chapter 3 Economic Regulation

Recommendation 3-1 The regulatory framework for Canada’s telecommunications sector should rely on competition and market forces rather than on economic regulation, to the maximum extent feasible.

Recommendation 3-2 There should be a clear separation between economic and social regulation, with clear identification of the objectives of the regulation and the measures designed to achieve them efficiently, rather than using economic regulation to pursue social objectives.

Recommendation 3-3 The *Telecommunications Act* should be amended by removing the current legislative presumption that telecommunications services must be regulated unless the CRTC makes a decision to forbear, and replacing it with a presumption of deregulation whereby

- (a) economic regulation shall apply only if there is a finding that a service provider has significant market power, and
- (b) retail telecommunications services shall be offered without the need for tariff filings or similar *ex ante* measures in markets where there is no significant market power.

Recommendation 3-4 The approach to forbearance established in section 34 of the *Telecommunications Act* should be replaced. New provisions should state that, upon application by any party, telecommunications markets subject to economic regulation should be reviewed. Where the review concludes that there is no longer any significant market power in a market, restrictions on price increases should be discontinued.

Recommendation 3-5 There should be a transition period of 12 to 18 months, during which time services that are currently subject to economic regulation shall continue to be subject to such regulation until there has been an opportunity to examine whether there is significant market power in markets for these services.

Recommendation 3-6 Economic regulation of retail basic transmission services should be retained or instituted only if there is a finding that a service provider has significant market power in the market for such services.

Recommendation 3-7 Discretionary services should not be regulated to prevent price increases, but subject only to constraints on anti-competitive conduct.

Recommendation 3-8

- (a) Currently forborne retail services should continue to be unregulated. Any current conditions on forbearance should be reviewed and maintained only if significant market power is found.
- (b) New basic transmission services should be subject to a presumption of no economic regulation.
- (c) It should be open to any party to request a review of the existence of significant market power in any telecommunications market. If the review finds that a service provider has significant market power in the market, the next step should be to examine whether competition law, as adapted to telecommunications services, is sufficient to protect the interests of customers and prevent anti-competitive conduct. If it is not, then the service should be subject to economic regulation. If the review finds no significant market power, the service should be deregulated.

Recommendation 3-9 Provision should be made for reclassifying a retail service from a discretionary to a basic transmission service, and vice versa. The usual tests should be applied when a service is reclassified from discretionary to basic transmission in order to determine whether it shall be subject to economic regulation.

Recommendation 3-10 All forms of economic regulation should be applied symmetrically to all telecommunications service providers having significant market power in any telecommunications market.

Recommendation 3-11 A price cap framework should be used when economic regulation of retail services is necessary, and enforced on an *ex post* basis by means of an annual filing or in response to a complaint by a customer or a competitor.

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- Recommendation 3-12** There should be no prohibition on price differentiation and targeted pricing unless they are part of a practice that is determined to be anti-competitive conduct.
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- Recommendation 3-13** The current standards for price regulation as set out in section 27 of the *Telecommunications Act* are too general and allow for too much discretion. They should be replaced by more specific measures targeted at consumer protection and control of anti-competitive conduct.
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- Recommendation 3-14** Control of anti-competitive conduct in telecommunications service markets should be guided by competition law principles, suitably modified to take into account the specific features of the telecommunications service industry.
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- Recommendation 3-15** A working group should be established and comprised of members drawn from both the CRTC and the Competition Bureau as well as independent experts. The working group should draw upon competition law principles and knowledge of the telecommunications industry, as soon as reasonably feasible, to develop specific guidelines for the application of competition policy to the industry, including
- (a) specification of the types of practices that could constitute abuse of dominance, and
 - (b) guidelines for market definition and analysis of significant market power.
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- Recommendation 3-16** Telecommunications service providers should continue to file tariffs for services that are subject to economic regulation. These tariffs should be open to public inspection.
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- Recommendation 3-17** Tariffs for regulated services should be subject to a negative disallowance process, in that they would automatically come into effect seven days after they are filed, unless they are suspended or disallowed by the CRTC, in which case the CRTC should provide
- (a) the reasons for a suspension or a disallowance, and
 - (b) an indication of when a final decision on a suspension will be made.
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- Recommendation 3-18** A telecommunications service provider should be allowed to discontinue a regulated service only if authorized by the CRTC. A telecommunications service provider of a deregulated service should be able to discontinue service without authorization, provided that reasonable notice is given to customers.
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- Recommendation 3-19** The regulatory framework should continue to require owners of essential wholesale facilities to make them available to competitors at regulated wholesale rates. Regulatory requirements to provide non-essential wholesale services or facilities should be phased out in order to provide increased incentives for innovation, investment and more widespread construction of competing network facilities.
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- Recommendation 3-20** The *Telecommunications Act* should be amended
- (a) to provide for the creation of a category of essential facilities, including ancillary services, that should be subject to a regime of mandated supply at regulated rates, and
 - (b) to establish a process whereby this category of services can be kept up-to-date.
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- Recommendation 3-21** A working group of CRTC and Competition Bureau members should be established as soon as possible to develop recommendations to the CRTC on the definition of essential facilities and its application to today's telecommunications networks.
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- Recommendation 3-22** A regular review of the essential facilities category should be conducted at least every three to five years.
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- Recommendation 3-23** Existing mandatory wholesale arrangements, including mandatory resale of retail services, should remain in place during a transition period. The transition period should be three to five years for most non-essential services or facilities, with consideration given to a longer period for certain non-essential, co-location services because of their typically high, one-time costs. The transition arrangements should be developed by the working group of the CRTC and Competition Bureau.
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- Recommendation 3-24** Following the transition period for phasing out mandatory wholesale arrangements, only essential facilities and interconnection services should remain subject to mandatory access requirements and regulated pricing.
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- Recommendation 3-25**
- (a) Tariff regulation should not apply to new, non-essential wholesale services, and should be removed from existing non-essential wholesale service arrangements, including the resale of regulated retail services, following a three-to-five-year transition period.
 - (b) The *Telecommunications Act* should be amended to require the filing of tariffs for wholesale services only for essential facilities and ancillary services and for interconnections services. Tariffs should be filed for existing non-essential facilities during the transition period to phase them out.
 - (c) The Governor-in-Council should issue a policy direction to the CRTC stating that regulating the availability and pricing of new, non-essential facilities and ancillary services is inconsistent with policy objectives set out in section 7 of the *Telecommunications Act*, particularly paragraphs (f) and (g).*

* These objectives of s. 7 state:

- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
 - (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
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Recommendation 3-26 Section 29 of *the Telecommunications Act* should be amended to give the CRTC clear authority to mandate interconnection arrangements and interoperability between all public networks when the CRTC is satisfied that

- (a) there is a significant public interest in requiring the interconnection, and
- (b) market forces and commercial negotiations are unlikely to result in efficient interconnection and interoperability on reasonable terms and in a timely manner.

Recommendation 3-27 Primary responsibility for regulating interconnection, including resolution of interconnection disputes, should remain with the CRTC.

Recommendation 3-28 The CRTC should retain power to regulate the prices as well as other terms and conditions of wholesale access or interconnection where

- (a) these have been mandated, or
- (b) there is a dispute involving commercial access or interconnection.

Providers of mandated wholesale access or interconnection services should be obliged to file relevant tariffs with the CRTC.

Recommendation 3-29 The CRTC should undertake a public review of its incremental costing methodology as soon as possible.

Recommendation 3-30 Resellers in the local telecommunications services market who choose to undertake all the obligations of a competitive local exchange carrier should have all the regulatory rights and obligations applicable to competitive local exchange carriers.

Chapter 4 Telecommunications Competition Tribunal

Recommendation 4-1 A new Telecommunications Competition Tribunal should be established operating as a type of “joint panel” of the CRTC and the Competition Bureau to address competition issues in the telecommunications sector.

Recommendation 4-2 The Telecommunications Competition Tribunal should be a transitional regulatory mechanism. Its mandate should terminate after five years, unless there continues to be significant market power in a substantial number of telecom markets.

Recommendation 4-3	<p>The Telecommunications Competition Tribunal should be comprised of three members as follows:</p> <ul style="list-style-type: none">(a) the Vice Chair, Telecommunications of the CRTC or another CRTC commissioner appointed by the CRTC,(b) the Commissioner of Competition or one of the Competition Bureau's senior staff appointed by the Commissioner, and(c) a third member to be appointed by the Governor-in-Council in accordance with the new recruitment and selection process for new CRTC telecommunications commissioners as recommended in Chapter 9.
Recommendation 4-4	<p>The Governor-in-Council's appointee to the Telecommunications Competition Tribunal should act as its chair.</p>
Recommendation 4-5	<p>Each member of the Telecommunications Competition Tribunal should have one vote, and decisions should be made by a majority of votes.</p>
Recommendation 4-6	<p>The Telecommunications Competition Tribunal should be constituted as an independent quasi-judicial regulatory authority empowered to make rulings on matters within its jurisdiction that have the same force and effect as CRTC decisions or orders.</p>
Recommendation 4-7	<p>The Telecommunications Competition Tribunal should have all <i>Telecommunications Act</i> powers available to the CRTC and all <i>Competition Act</i> powers available to the Competition Tribunal in civil cases.</p>
Recommendation 4-8	<p>The Telecommunications Competition Tribunal should be staffed, to the greatest extent possible, by employees of the CRTC and the Competition Bureau. The CRTC and the Commissioner of Competition should be directed to assign personnel with the appropriate expertise to work under the direction of the Telecommunications Competition Tribunal in support of its mandate, as required by the Telecommunications Competition Tribunal from time to time.</p>
Recommendation 4-9	<p>The Telecommunications Competition Tribunal should also be empowered to retain a small secretariat of managers and support staff to carry out its functions.</p>
Recommendation 4-10	<p>The Telecommunications Competition Tribunal should be granted clear authority and sufficient budget to retain outside expert consultants at market rates when required to provide specialized expertise or to meet heavy workload requirements.</p>
Recommendation 4-11	<p>Personnel assigned by the Commissioner of Competition or the CRTC to support the Telecommunications Competition Tribunal should have access to confidential information filed with it and should be permitted to share such information with other officials at the Competition Bureau or the CRTC to the extent necessary to perform their duties at the Telecommunications Competition Tribunal. Where information is filed in confidence with the Telecommunications Competition Tribunal and the claim for confidentiality is accepted by the Telecommunications Competition Tribunal, protection should be extended to any disclosure of the information to other officials of the Competition Bureau or the CRTC.</p>

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- Recommendation 4-12** Upon request by the Commissioner of Competition in the course of an investigation under the *Competition Act* involving the telecommunications sector, the CRTC or the Telecommunications Competition Tribunal should be required to provide assistance to the Competition Bureau in the form of personnel (subject to resource constraints) and to provide any information in their possession that may assist in the investigation or market analysis.
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- Recommendation 4-13** The Telecommunications Fees Regulations should be amended to provide for recovery of the Telecommunications Competition Tribunal's annual operating expenses from the telecommunications industry.
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- Recommendation 4-14** The Telecommunications Competition Tribunal should have exclusive jurisdiction to determine the following matters:
- (a) applications for deregulation of services in telecommunications markets on the basis that significant market power does not exist,
 - (b) complaints of anti-competitive conduct in all telecommunications markets, other than the terminal equipment market,
 - (c) determinations on which services should be subject to mandated wholesale access services and establishment of the regulatory regime applicable to such services,
 - (d) applications for re-regulation of services in telecommunications markets where significant market power is alleged to exist, and
 - (e) reviews of mergers involving telecommunications service providers.
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- Recommendation 4-15** The Telecommunications Competition Tribunal should define telecommunications markets and assess whether significant market power exists in accordance with competition law principles.
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- Recommendation 4-16** The Telecommunications Competition Tribunal should be granted exclusive jurisdiction over civil allegations of anti-competitive conduct in the telecommunications sector. Mechanisms should be put in place for consultation among the Telecommunications Competition Tribunal, the CRTC and the Commissioner of Competition to determine which institution should exercise jurisdiction in borderline cases.
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- Recommendation 4-17** Mechanisms should be put in place to enable the CRTC and the Commissioner of Competition to refer telecommunications competition issues to the Telecommunications Competition Tribunal when they arise in the context of broader proceedings that are properly within their respective jurisdictions, and for the Telecommunications Competition Tribunal to refer issues of a technical, rate-setting or social nature to the CRTC for determination or implementation.
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Chapter 5 Technical Regulation

Recommendation 5-1 The wording of subsection 43.(5) of the *Telecommunications Act* should be expanded to ensure that the CRTC has a clear power to resolve disputes and order access to support structures constructed on, over, along or under public or private property of all descriptions. These access rights should be defined to include the right to install, maintain, repair and operate transmission facilities as defined in the Act. Subsection 43.(5) should be amended to ensure that it applies to support structures owned by electricity utilities, municipalities and other parties.

Recommendation 5-2 The CRTC should be empowered to resolve disputes over the terms and conditions of access between telecommunications service providers or broadcasting distribution undertakings and third-party owners of support structures, including, but not limited to, support structures owned by electricity utilities, municipalities or other parties. Under this new regime, parties should be required to attempt to reach agreement on access, failing which the CRTC should be empowered to resolve any disputes and order access on terms and conditions, including rates, that are binding on both parties.

Recommendation 5-3 The CRTC, prior to making an order to resolve a dispute involving access to support structures owned by an entity that is provincially regulated, should be required to consult with any provincial regulator that has ruled on the relevant terms and conditions of access.

Recommendation 5-4 The wording of subsections 43.(2) and (3) of the *Telecommunications Act* should be expanded to ensure that the CRTC has the power to resolve disputes and order access to public property of all description. These access rights should be defined to encompass the right to install, maintain, repair and operate all “transmission facilities” as defined in the Act. The CRTC’s power to order remedial action in subsection 43.(4) should include access for the purposes of maintaining, repairing or operating transmission facilities, as well as constructing or installing them. Subsection 43.(4) should also be clarified to empower the CRTC to establish and enforce principles of general application that can be used by parties to negotiate broad-based municipal access agreements, which can then be brought to the CRTC for review or dispute resolution if parties are unable to reach agreement.

Recommendation 5-5 The CRTC should be empowered to regulate and promote the sharing of antenna towers used for telecommunications purposes, resolve disputes regarding tower access, and enforce its regulations in an effective and timely manner.

Recommendation 5-6 The CRTC should be empowered to prohibit wireless carriers from entering into exclusive arrangements for locating telecommunications antennas on rooftops and, in those cases where building owners and wireless service providers are unable to agree on terms and conditions of access, should be empowered to resolve the dispute on such terms as it considers appropriate, with its rulings binding on the parties.

Recommendation 5-7 The CRTC should be empowered to establish guidelines for access to multi-unit buildings, including guidelines for the pricing and terms and conditions of access. Telecommunications service providers and building owners should be required to negotiate access arrangements in accordance with such guidelines.

Recommendation 5-8 The CRTC should be empowered to resolve disputes between telecommunications service providers and building owners respecting access to multi-unit buildings, including access to the building itself from the property boundary, as well as in-building wiring, related ducts, risers and equipment rooms, for purposes of providing telecommunications services to tenants and other users in the building. When the CRTC exercises this jurisdiction, its ruling respecting terms and conditions of access should be binding on the parties.

Recommendation 5-9 Industry Canada should develop a new spectrum policy to provide clear direction to the CRTC in exercising its new authority to manage and regulate Canada's radio spectrum. The new policy should take into account the work completed by Industry Canada as part of its ongoing spectrum policy framework review, and should ensure that the following areas are addressed:

- (a) availability of adequate spectrum to meet demand for deployment of fixed and mobile broadband networks across Canada,
 - (b) availability of licensed and licence-exempt spectrum for the U-CAN program recommended in this report,
 - (c) reliance on market-based approaches to spectrum management as much as possible,
 - (d) establishment of market-based exclusive spectrum rights (i.e. ability to buy, sell and lease spectrum holdings) and elimination of barriers to the development of secondary markets in spectrum,
 - (e) recovery and "refarming" of previously assigned spectrum that is unused or underutilized in order to accommodate new services,
 - (f) review of current licence fees to correct fee imbalances that may exist among service providers, separating where practical cost-recovery fees from those fees charged for the use of a limited public resource, and applying market-based pricing for non-auction licences,
 - (g) streamlining and standardization of licensing processes, and
 - (h) continued use of regulatory mechanisms such as spectrum caps (aggregation limits) where spectrum is scarce in order to provide an opportunity for new entrants to acquire spectrum and for Canadians to have an expanded choice of service providers.
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- Recommendation 5-10** The authority to regulate Canada’s radio spectrum and to license its use should be transferred from Industry Canada to the CRTC.
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- Recommendation 5-11** Industry Canada and the CRTC should form a joint working group to plan the transition and integration of spectrum regulation, management and related functions to the CRTC, and to develop a mechanism for ongoing coordination between the two organizations on spectrum policy development.
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- Recommendation 5-12** The regulation of telecommunications equipment and devices should be transferred from Industry Canada to the CRTC. The CRTC should continue to rely primarily on industry organizations to administer equipment certification programs, including authorized certification bodies.
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- Recommendation 5-13** Programs related to the regulation of telecommunications equipment and devices should be reviewed by Industry Canada prior to the transfer from Industry Canada to the CRTC to eliminate any unnecessary regulation.
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Chapter 6 Social Regulation

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- Recommendation 6-1** The *Telecommunications Act* should be amended to impose a clear obligation on incumbent telephone companies to provide basic telephone service in areas where they have available network infrastructure. Approval by the CRTC should be required for an incumbent telephone company to abandon such basic telephone service.
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- Recommendation 6-2** A new Telecommunications Consumer Agency should be established with authority to resolve complaints from individual and small business retail customers of any telecommunications service provider.
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- Recommendation 6-3** The proposed Telecommunications Consumer Agency should be a self-funding, independent, industry-established agency. The agency’s structure and functions should be determined by the CRTC.
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- Recommendation 6-4** All telecommunications service providers should be required to be members in good standing of the proposed Telecommunications Consumer Agency.
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- Recommendation 6-5** The *Telecommunications Act* should be amended to confirm the right of Canadian consumers to access publicly available Internet applications and content of their choice by means of all public telecommunications networks providing access to the Internet. This amendment should
- (a) authorize the CRTC to administer and enforce these consumer access rights,
 - (b) take into account any reasonable technical constraints and efficiency considerations related to providing such access, and
 - (c) be subject to legal constraints on such access, such as those established in criminal, copyright and broadcasting laws.
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Chapter 7 Information and Communications Technology Policy

Recommendation 7-1 Under the leadership of the Prime Minister, the federal government should develop a national ICT adoption strategy focused on using ICTs to increase the productivity of the Canadian economy, the social well-being of Canadians and the inclusiveness of Canadian society.

Recommendation 7-2 The Prime Minister should mandate the Minister of Industry to develop and implement a national ICT adoption strategy in collaboration with key federal, provincial, territorial and municipal government colleagues as well as high-level representatives from the private, public and not-for-profit sectors, with the following objectives:

- (a) strengthening ICT adoption by Canadian businesses, particularly small and medium-sized enterprises,
- (b) strengthening the links between ICT sector research and development and ICT adoption,
- (c) enhancing ICT adoption by governments,
- (d) promoting development of ICT adoption skills on a coordinated national basis,
- (e) improving security, confidence and trust in the online environment, and
- (f) achieving ubiquitous access to broadband networks and services.

Recommendation 7-3 The Prime Minister should mandate the Minister of Industry to establish a National ICT Adoption Centre within Industry Canada to

- (a) benchmark Canada's performance in the adoption and effective use of ICTs,
- (b) conduct policy research and analysis on issues related to ICT adoption in the private and public sectors, in order to inform discussions and support new initiatives related to ICT adoption,
- (c) coordinate policies, programs and other measures aimed at promoting the smart adoption of ICTs within the federal government with the provinces to avoid overlap and duplication of effort,
- (d) be a lead advocate for the effective use of ICTs, particularly among small and medium-sized enterprises, and
- (e) manage the deployment of the U-CAN program (see Recommendation 8-4).

Recommendation 7-4 The Minister of Industry should establish a high-level National ICT Advisory Council comprised of select federal, provincial and territorial ministers as well as leaders from the private sector, universities, research institutions, consumer groups and communities to provide ongoing advice on the development and implementation of the national ICT adoption strategy.

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- Recommendation 7-5** The federal government should introduce an ICT adoption tax credit targeted at small and medium-sized enterprises and having the following features:
- (a) it should apply to investments in ICT assets and to complementary expenses related to ICT adoption,
 - (b) it should define ICT assets broadly as including computers, communications equipment, software and computerized manufacturing equipment,
 - (c) complementary expenditures related to the effective adoption of ICTs such as costs related to ICT training, organization change and process re-engineering necessary for ICT adoption should be eligible for the tax credit,
 - (d) in order to increase its effectiveness and reduce the associated tax expenditures, the ICT adoption tax credit should apply only to incremental ICT adoption costs, and
 - (e) the credit should be fully refundable when no tax is payable.
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Chapter 8 Connectivity: Completing the Job

- Recommendation 8-1** As a key part of its national ICT strategy, the federal government should
- (a) ensure that Canada remains a global leader in the deployment of broadband networks, and
 - (b) immediately commence a program to ensure that affordable and reliable broadband services are available in all regions of Canada, including urban, rural and remote areas, by 2010 at the latest.
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- Recommendation 8-2** The federal government should continually monitor technological developments in the telecommunications sector, assess their economic and social implications, and adopt policies to ensure that Canada continues to be a leader in the deployment of advanced telecommunications services.
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- Recommendation 8-3** Federal government policy should recognize that market forces
- (a) will continue to expand the availability of broadband access across the country, but
 - (b) will not on their own achieve the policy objective of deploying ubiquitous broadband access by 2010, particularly in rural and remote areas.
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- Recommendation 8-4** A specific, targeted government subsidy program, the Ubiquitous Canadian Access Network/Ubiquité Canada or U-CAN program, should be established to ensure that broadband access is made available to Canadians in areas where commercial operators are not providing service and are unlikely to do so for economic reasons.
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- Recommendation 8-5** The U-CAN program should aim to complete the job begun by BRAND of providing ubiquitous broadband throughout all regions in Canada that the market is not likely to serve on its own by 2010.
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- Recommendation 8-6** The budget allocation for the U-CAN program should be based on the projected costs of providing broadband connectivity to the remaining unserved areas of Canada. The funds should be assigned based on the projected cost of achieving such connectivity in each region.
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- Recommendation 8-7** The U-CAN program should be flexibly designed and implemented to reflect the needs of stakeholders in regions to be served, including governments, communities and the private sector.
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- Recommendation 8-8** U-CAN broadband expansion initiatives should be implemented only after coordination with those involved in other broadband expansion programs of the private sector, federal government departments and agencies as well as other levels of government.
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- Recommendation 8-9** The U-CAN program administrators should develop broadband expansion initiatives in consultation with community members and organizations who can help define community access needs.
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- Recommendation 8-10** The U-CAN program should not promote the duplication of existing or planned network facilities with networks that are subsidized by municipal, provincial or federal government funds. However, investment and subsidies by public bodies such as municipalities should not be discouraged in areas where the market fails to provide broadband access.
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- Recommendation 8-11** When subsidies are provided to network operators to expand backhaul networks into previously unserved areas, such operators should be required as a condition of obtaining the subsidy, or by regulation
- (a) to provide transmission services to other local service providers who wish to serve the areas, and
 - (b) to provide these services at rates that are discounted to reflect the subsidies received.
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- Recommendation 8-12** Contracts entered into between the U-CAN program and providers of backhaul services should specify the technical, operational and financial requirements that must be met to ensure that the points of presence provided by backhaul operators are open to other service providers on a fair and reasonable basis. These specifications should include such matters as
- (a) physical access to buildings and other facilities,
 - (b) performance quality standards,
 - (c) high standards of security and scalability,
 - (d) collocation and modification of equipment, and
 - (e) rates for access and interconnection.
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- Recommendation 8-13** The U-CAN program should provide subsidies to broadband network providers by means of least-cost subsidy auctions.
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- Recommendation 8-14** Auctions should be run for large service areas at a time, in order to increase efficiencies of service provision. These service areas should be designated in consultation with provincial or territorial governments, after assessing current and planned coverage of existing broadband network operators.
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- Recommendation 8-15** In most cases, the U-CAN program should hold separate auctions for the backhaul network and local access facilities within each unserved area. Such auctions should generally be held at the same time.
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- Recommendation 8-16** The U-CAN program should enter into contracts for access and backhaul services with the service provider who
- (a) demonstrates it has the necessary technical and financial qualifications to successfully deploy and operate the broadband backhaul or access service for the duration of the contract, and
 - (b) submits the lowest bid for the subsidy it requires to implement and operate the project.
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- Recommendation 8-17** Sufficient amounts of appropriate spectrum should be made available on a licensed or unlicensed basis to service providers who are awarded subsidies under the U-CAN program.
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- Recommendation 8-18** Recipients of U-CAN broadband access subsidies who fail to provide service on time and in accordance with U-CAN contract specifications should forfeit the subsidy and any spectrum assigned to them, and should be subject to contractual penalties. The U-CAN program should then hold a new auction to serve the area and reassign the related spectrum.
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Recommendation 8-19 The U-CAN auction process should be technologically and competitively neutral. Private sector service providers as well as regional and community organizations should be permitted to participate in the auctions, provided that they can demonstrate technical capability and financially sustainable business plans.

Recommendation 8-20 There should be effective tracking and periodic evaluation of the U-CAN program, and improved tracking and evaluation of other ongoing federal government broadband and connectivity programs.

Chapter 9 Policy-making and Regulatory Institutions

Recommendation 9-1 The government should ensure that the *Department of Industry Act* grants the Minister and the department a clear mandate and sufficient powers to effectively lead national telecommunications as well as information and communications technology policy development.

Recommendation 9-2 Industry Canada should make a multi-year commitment to fund ongoing policy research to support improved policy making and regulation in the telecommunications and information and communications technology sectors. Research grants should be awarded by a qualified, independent panel, and the research results should be made publicly available in a timely manner.

Recommendation 9-3 Telecommunications data collection and reporting should be improved in the following manner:

- (a) The CRTC should continue, for at least five more years, to publish annual reports on the status of competition in Canadian telecommunications markets and on the deployment and accessibility of advanced telecommunications infrastructure.
- (b) The CRTC, Industry Canada and Statistics Canada should form a working group to determine requirements for additional data to support improved regulation, research and policy making, and to determine which institution should collect the information.
- (c) The CRTC should conduct a public consultation to determine if additional data should be collected from telecommunications service providers and how best to make industry data available in a timely manner.

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- Recommendation 9-4** The Minister of Industry should be mandated by legislation to undertake a comprehensive review of telecommunications policy and regulation every five years.
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- Recommendation 9-5** The policy direction power should be transferred into a more effective policy-making instrument by
- (a) requiring the government to issue a public notice containing a proposed direction and the reasons for it and giving the public a reasonable opportunity to comment on it,
 - (b) repealing the current requirement to refer a proposed policy direction to parliamentary committees for review, and
 - (c) repealing the Cabinet power to review individual CRTC telecommunications decisions.
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- Recommendation 9-6** The *Canadian Radio-television and Telecommunications Commission Act* should be amended to reduce the number of CRTC commissioners from 13 to 5. The five commissioners should deal with both telecommunications and broadcasting matters. Any additional commissioners who might be appointed for broadcasting regulation purposes should not deal with telecommunications matters.
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- Recommendation 9-7** The government should adopt an open, professional recruitment process for CRTC commissioners who are responsible for telecommunications regulation.
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- Recommendation 9-8** The *Canadian Radio-television and Telecommunications Commission Act* should be amended to include a requirement to advise incumbent commissioners, no later than six months prior to the end of their appointed term, on whether or not they will be reappointed and, if so, the length of their new term.
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- Recommendation 9-9** There should be increased flexibility to set compensation levels for commissioners and a small number of expert staff positions at market levels, including the potential for performance-based incentives, to permit the CRTC to attract and retain highly qualified individuals to meet the professional requirements of the proposed new regulatory framework.
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- Recommendation 9-10** The CRTC should be granted clear authority and sufficient budget to retain outside expert consultants at market rates when they are required to provide specialized expertise or to meet heavy workload requirements.
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- Recommendation 9-11** The CRTC should establish and adhere to published performance service standards for the various forms of regulatory proceedings it runs. These standards should be developed in consultation with the telecommunications industry and the public.
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- Recommendation 9-12** When the CRTC proposes to introduce or to change a regulatory approach or rule, it should routinely publish a notice seeking comments on specific proposals or options being considered. The notice should set out the background and the supporting rationale for the proposed approach or options.
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- Recommendation 9-13** The *Telecommunications Act* should be amended to grant the CRTC power to levy administrative monetary penalties at levels similar to those under the *Competition Act*. The CRTC should also be granted specific power to make related non-monetary orders designed to enhance the deterrent effect of the penalty.
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- Recommendation 9-14** The *Telecommunications Act* should be amended to remove the need to obtain the consent of either the Minister or the CRTC to initiate a prosecution under the Act.
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- Recommendation 9-15** The *Telecommunications Act* should be amended to authorize the CRTC to refer possible offences under that Act or any other telecommunications legislation to the Attorney General of Canada for investigation and possible prosecution.
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- Recommendation 9-16** The *Telecommunications Act* should be amended to increase the fines for offences under the Act to levels similar to those in the *Competition Act*.
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- Recommendation 9-17** The government should review the *Telecommunications Act* to link potential fines for offences more directly to the gravity of the offence committed and to add a due diligence defence in appropriate cases.
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- Recommendation 9-18** The *Telecommunications Act* should be amended to provide that, in any civil court proceeding, a CRTC decision regarding the liability of a telecommunications service provider for a breach of the Act or regulatory measures established under the Act should be *prima facie* evidence of such liability.
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- Recommendation 9-19** The *Telecommunications Act* should be amended to ensure that it does not place limitations on the right to sue for damages in the courts for a breach of the Act or a breach of contract.
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- Recommendation 9-20** The *Telecommunications Act* should be amended to repeal the requirement to obtain leave to appeal a decision of the CRTC to the Federal Court of Appeal on any question of law or of jurisdiction.
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- Recommendation 9-21** The *Telecommunications Act* should be amended to ensure that the CRTC has the power to mandate alternative dispute resolution both by the CRTC itself and on an outsourced basis in appropriate cases.
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- Recommendation 9-22** The CRTC should replace the obligation to file detailed studies and other documentation to justify applications for tariff approvals with a regime under which applicants certify compliance with a list of relevant regulatory requirements.
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- Recommendation 9-23** The CRTC should establish a single code of the regulatory rules that apply to telecommunications markets by consolidating and updating rules now contained in various decisions, orders, rules, regulations, public notices, circulars and other documents. This consolidated approach to rule making should be applied prospectively in the case of new CRTC rules. In the case of the CRTC's existing rules, the consolidation should be completed within three years.
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- Recommendation 9-24** The *Telecommunications Act* should be amended to provide that anyone operating telecommunications facilities is entitled to obtain a certificate of registration as evidence of its authority to operate as a telecommunications service provider in Canada.
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- Recommendation 9-25** The requirement to obtain a licence under the *Telecommunications Act* to provide basic international telecommunications services should be repealed and replaced with a simple registration regime.
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- Recommendation 9-26** The requirement to obtain a licence under the *Telecommunications Act* to construct or operate an international submarine cable should be repealed and replaced with a simple registration regime.
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- Recommendation 9-27** The CRTC should review, update and consolidate its *Telecommunications Rules of Procedure*. The updated Rules should include changes required as a result of implementing the recommendations of this report.
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- Recommendation 9-28** The CRTC should review its *Rules of Procedure* at least every five years, and update them continuously.
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- Recommendation 9-29** The CRTC should enact a rule or regulation establishing the criteria for the awarding of costs in proceedings before it. The criteria should be based on the principles that costs shall be awarded to successful complainants in clear cases of inappropriate behaviour and against them in clear cases of frivolous complaints.
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Recommendation 9-30 The government should review the issue of public interest group participation in telecommunications regulatory proceedings. Funding for such participation should come from a multi-year commitment by government to subsidize such participation, rather than costs awards imposed by the CRTC on individual telecommunications service providers.

Recommendation 9-31 The *Telecommunications Fees Regulations*, 1995 should be amended so all telecommunications service providers are required to pay a *pro rata* share of the annual costs of CRTC and TCT telecommunications activities. Shares should be calculated using the same approach and exemptions as are used under the existing subsidy regime for local residential service in high-cost areas.
