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## **Telecommunications Act (TCA)**

of 30 April 1997 (Status as of 1 January 2021)

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*The Federal Assembly of the Swiss Confederation,  
based on Article 92 of the Constitution<sup>1,2</sup>  
and having regard to the Federal Council Dispatch of 10 June 1996<sup>3</sup>,  
decrees:*

### **Chapter 1 General Provisions**

#### **Art. 1 Aim**

<sup>1</sup> The aim of this Act is to ensure that a range of cost-effective, high quality, and nationally and internationally competitive telecommunications services is available to private individuals and the business community.

<sup>2</sup> It shall in particular:

- a. ensure that a reliable universal service is provided, at affordable prices, for all sections of the population in all parts of the country;
- b. ensure that telecommunications traffic is free from interference and respects personal and incorporeal property rights;
- c. allow effective competition in the provision of telecommunications services;
- d.<sup>4</sup> protect users of telecommunications services from unfair mass advertising and from abuse associated with value-added services;
- e.<sup>5</sup> protect children and minors from the risks that arise from using telecommunications services.

AS 1997 2187

<sup>1</sup> SR 101

<sup>2</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BB1 2017 6559).

<sup>3</sup> BB1 1996 III 1405

<sup>4</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BB1 2003 7951).

<sup>5</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BB1 2017 6559).

**Art. 2<sup>6</sup>** Subject

This Act shall regulate the transmission of information by means of telecommunications techniques, including the transmission of radio and television programme services, provided the Federal Act of 24 March 2006<sup>7</sup> on Radio and Television (RTVA) does not prescribe otherwise.

**Art. 3** Definitions

In this Act:

- a. *information* means signs, signals, characters, images, sounds and any other form of representation addressed to human or other living beings or to machines;
- b. *telecommunications service* means transmission of information for third parties by means of telecommunications techniques;
- c. *transmission by means of telecommunications techniques* means sending or receiving of information, by lines or radio, by means of electrical, magnetic or optical signals or other electromagnetic signals;
- c<sup>bis</sup>.<sup>8</sup> *public telephony service* means a telecommunications service for the transmission of speech in real time by means of one or more addressing resources provided for this purpose in a national or international numbering plan;
- c<sup>ter</sup>.<sup>9</sup> *value-added service* means a service provided by means of a telecommunications service and charged to the customers by their telecommunications service provider in addition to telecommunications services;
- d. *telecommunications installations* means apparatus, lines or equipment intended for the transmission of information by means of telecommunications techniques or used for that purpose;
- d<sup>bis</sup>. and d<sup>ter</sup>.<sup>10</sup> ...
- e.<sup>11</sup> *interconnection* means establishment of access by the connection of the installations and services of two telecommunications service providers, enabling them to operate together logically and in accordance with telecommunications techniques and allowing access to the services of third parties;

<sup>6</sup> Amended by Annex No II 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS **2007** 737; BBl **2003** 1569).

<sup>7</sup> SR **784.40**

<sup>8</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>9</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>10</sup> Inserted by No I of the FA of 24 March 2006 (AS **2007** 921; BBl **2003** 7951). Repealed by No I of the FA of 22 March 2019, with effect from 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>11</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS **2007** 921; BBl **2003** 7951).

- e<sup>bis</sup>.<sup>12</sup> *leased lines* means provision of transparent transmission capacities via point-to-point connections;
- e<sup>ter</sup>.<sup>13</sup> *cable ducts* means underground pipes in which lines for transmission of information by telecommunications techniques are conveyed, including the access shafts;
- f.<sup>14</sup> *addressing resource* means a sequence of digits, letters, signs or other information that enable the persons taking part in a telecommunications operation, as well as the computer processes, machines, apparatus or telecommunications installations involved, to be identified;
- g.<sup>15</sup> *directory data* means information that identifies or designates a customer in relation to an individually assigned addressing element and which is used in order to publish a directory or is required for the provision of a telecommunications service;
- h.<sup>16</sup> *radio and television programme service* means sequence of programmes as defined in Article 2 RTVA<sup>17</sup>.

## Chapter 2 Telecommunications Services

### Section 1 Common Provisions

#### Art. 3a<sup>18</sup> Evaluation report

<sup>1</sup> The Federal Council shall submit a report to the Federal Assembly every three years on:

- a. the development of investments made throughout Switzerland;
- b. the development of the universal provision of services;
- c. the quality and the prices of the telecommunications services on offer;
- d. the development of network competition;
- e. the costs and granting of access to the local loop, irrespective of the technology underlying these connections.

<sup>12</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>13</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>14</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>15</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>16</sup> Inserted by Annex No II 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS 2007 737; BBl 2003 1569).

<sup>17</sup> SR 784.40

<sup>18</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>2</sup> If required, the Federal Council shall submit proposals to the Federal Assembly for promoting effective competition.

**Art. 4<sup>19</sup>** Registration of telecommunications service providers

<sup>1</sup> The Federal Office of Communications (OFCOM) shall register telecommunications service providers that use any of the following resources intended for providing telecommunications services:

- a. radio frequencies whose use requires a licence;
- b. addressing resources that are managed at national level.

<sup>2</sup> Registered providers may allow other telecommunications service providers to use resources under paragraph 1 only if these other providers have registered beforehand.

<sup>3</sup> OFCOM shall maintain and publish a list of registered providers and the telecommunications services that they offer.

<sup>4</sup> The Federal Council shall regulate the details of registration.

**Art. 5<sup>20</sup>** Telecommunications service providers organised under foreign law

The competent authority may, subject to any international obligations to the contrary, prohibit telecommunications service providers organised under foreign law from using radio frequencies or addressing resources under Article 4 paragraph 1 unless reciprocal rights are granted.

**Art. 6<sup>21</sup>** Telecommunications service providers with registered office or permanent settlement in Switzerland

Telecommunications service providers with a registered office or permanent settlement in Switzerland must:

- a. comply with the employment regulations and guarantee the conditions of employment customary in the industry;
- b. offer an appropriate number of vocational education and training places for apprentices.

<sup>19</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>20</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>21</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

**Art. 6a<sup>22</sup>** Blocking access to telecommunications services

Providers of telecommunications services must block the access to telephone and internet services for persons who have established a customer relationship that is not based on a subscription where these persons on establishing the customer relationship:

- a. have used the identity of a person who does not exist or who has not previously consented to establishing the customer relationship; or
- b. has failed to provide a document that meets the requirements imposed by the Federal Council under Article 23 paragraph 1 of the Federal Act of 18 March 2016<sup>23</sup> on the Surveillance of Postal and Telecommunications Traffic.

**Art. 7–10<sup>24</sup>****Art. 11<sup>25</sup>** Granting of access by dominant providers

<sup>1</sup> Providers of telecommunications services that have a dominant position in the market must provide access to other providers in a transparent and non-discriminatory manner at cost-oriented prices in the following forms to their facilities and services:<sup>26</sup>

- a.<sup>27</sup> fully unbundled access to the local loop in order to use the entire frequency spectrum of the twisted pair metallic line;
- b. and c.<sup>28</sup> ...
- d. interconnection;
- e. leased lines;
- f. access to cable ducts, provided these have sufficient capacity.

<sup>2</sup> They shall disclose the conditions and prices for their individual access services separately.

<sup>3</sup> The Federal Council regulates the details.

<sup>22</sup> Inserted by Annex No II 3 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

<sup>23</sup> SR **780.1**

<sup>24</sup> Repealed by No I of the FA of 24 March 2006, with effect from 1 Apr. 2007 (AS **2007** 921; BBl **2003** 7951).

<sup>25</sup> Amended by Art. 106 para. 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS **2007** 737; BBl **2003** 1569).

<sup>26</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>27</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>28</sup> Repealed by No I of the FA of 22 March 2019, with effect from 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>4</sup> Providers of telecommunications services shall provide OFCOM<sup>29</sup> with a copy of their access agreement. Unless there is some overriding public or private interest not to do so, OFCOM shall allow agreements to be consulted.

<sup>5</sup> There is no obligation to guarantee access in relation to the broadcasting of radio and television programme services.

**Art. 11a<sup>30</sup>** Disputes regarding access

<sup>1</sup> If providers of telecommunications services do not agree within three months on the access conditions, the Federal Communications Commission (ComCom) shall decide at the request of one party and based on the proposal made by OFCOM.<sup>31</sup> It shall take particular account of the conditions which promote effective competition, as well as the effects of its decision on competing companies. It may accord interim legal protection.

<sup>2</sup> If the question of dominance in the market must be assessed, OFCOM shall consult the Competition Commission. The latter may publish its position.

<sup>3</sup> ComCom<sup>32</sup> shall decide within seven months of receipt of the request.

<sup>4</sup> It shall regulate the type and form of accounting and financial information which dominant providers of telecommunications services must submit in the procedure in accordance with para. 1.

**Art. 11b<sup>33</sup>** Disputes arising from agreements and decisions regarding access

Disputes arising from agreements and decisions regarding access shall be judged by the civil courts.

**Art. 12<sup>34</sup>** Bundling of services

<sup>1</sup> Dominant providers of telecommunications services may bundle their services, provided they also offer the services included in the bundle individually.

<sup>2</sup> Services need not be offered individually if they can only be offered in the bundle for technical, economic, quality or security reasons.

<sup>3</sup> If a provider of telecommunications services bundles its own services with services of a third party undertaking which this provider controls or is controlled by, paragraphs 1 and 2 apply.

<sup>29</sup> Term in accordance with No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559). This change has been made throughout the text.

<sup>30</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>31</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>32</sup> Term in accordance with No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559). This change has been made throughout the text.

<sup>33</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>34</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

**Art. 12a<sup>35</sup>** Obligations of transparency and to provide information

<sup>1</sup> The telecommunications service providers must guarantee that their prices are transparent to their customers.

<sup>2</sup> They shall inform the public concerning the quality of the telecommunications services that they provide.

<sup>3</sup> The Federal Council shall specify the information that the providers must publish.

<sup>4</sup> OFCOM may inform the public about the various telecommunications services offered by the providers.

**Art. 12a<sup>bis 36</sup>** International roaming

<sup>1</sup> The Federal Council may issue regulations on international roaming in order to avoid unreasonably high end customer tariffs, and may take measures to encourage competition. It may in particular:

- a. issue regulations on billing procedures;
- b. require mobile telephony providers to allow their customers to use the roaming services of third-party providers when abroad;
- c. fix price limits based on international agreements;
- d. require mobile telephony providers to offer bundled services including roaming services as well as options that allow the use of roaming services at fixed prices or reduced standard prices.

<sup>2</sup> OFCOM shall conduct market monitoring procedures and analyse technical and price-related developments. In doing so, it shall rely in particular on the information obtained from providers under Article 59 paragraph 1 and shall work with the Price Supervisor.

**Art. 12b<sup>37</sup>** Value-added services

To prevent abuses, the Federal Council shall regulate value-added services by taking the following measures in particular:

- a. fixing price limits;
- b. issuing regulations on the recognisability of value-added services;
- c. fixing the amounts above which a charge may only be made with the express consent of the users;

<sup>35</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBI 2003 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>36</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>37</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBI 2003 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

- d. subject to compliance with international obligations, requiring that providers of value-added services have their registered office or a permanent settlement in Switzerland.

**Art. 12<sup>bis</sup> 38** Reasons for blocking a connection

If a customer disputes an invoice from their telecommunications service provider for services other than telecommunications services, the provider is not permitted for this reason to block access to telecommunications services nor to terminate the contract before the dispute is settled.

**Art. 12<sup>c</sup> 39** Dispute resolution

<sup>1</sup> OFCOM shall establish a dispute resolution service or shall entrust this to third parties. In the event of disputes between customers and providers of telecommunications services or value-added services, either party may invoke the service.

<sup>2</sup> The party invoking the dispute resolution service shall pay a handling fee. The provider of telecommunications services or value-added services shall bear the costs of the procedure minus the handling fee.

<sup>3</sup> The parties are not bound by the dispute resolution decision.

<sup>4</sup> The Federal Council regulates the details.

**Art. 12<sup>d</sup> 40** Public directories

<sup>1</sup> Customers of telecommunications services shall have the option of having their details recorded in the public directories. They may within the limits set under paragraph 2 decide which directory data pertaining to them may be published.

<sup>2</sup> The Federal Council may specify which data a directory entry must include as a minimum. It may regulate the details of publication and the use of the data.

**Art. 12<sup>e</sup> 41** Open internet

<sup>1</sup> The providers of internet access shall transmit information without making any technical or commercial distinction between senders, recipients, content, services, service classes, protocols, applications, programmes or terminals.

<sup>2</sup> They may transmit information by different methods if this is required in order to:

- a. comply with a statutory requirement or court decision;

<sup>38</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>39</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>40</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>41</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).



- b. guarantee the integrity or security of the network, the services provided on this network or the terminals connected to it;
- c. comply with an express request from the customer; or
- d. overcome temporary and exceptional network congestion; in doing so, equivalent forms of data traffic shall be treated equally.

<sup>3</sup> In addition to internet access, they may offer other services via the same connection which must be optimised for specific content, applications or services in order to meet the quality requirements of customers. These other services must not be usable or offered as a substitute for internet access services, and they must not degrade the quality of internet access services.

<sup>4</sup> If they handle information in a different technical or economic manner during transmission, they must inform their customers and the public of this.

**Art. 13<sup>42</sup>** Provision of information by OFCOM

<sup>1</sup> Unless there is an overriding public or private interest in not doing so, OFCOM shall on request provide the name and address of the provider of telecommunications services or value-added services, and information on the services provided by it and any administrative or criminal prosecutions and penalties.

<sup>2</sup> It may publish this information and make it accessible online if there is a public interest.

<sup>3</sup> Only in the case of overriding public or private interest may it provide information on ongoing administrative or criminal prosecutions, publish that information or make it accessible online.

**Art. 13<sup>a43</sup>** Processing of data

<sup>1</sup> ComCom and OFCOM may process personal data, including data concerning administrative or criminal prosecutions and penalties and personality profiles, provided that this is indispensable for the fulfilment of the tasks imposed on them by the telecommunications legislation. They may use an information system for this purpose.

<sup>2</sup> They shall take the technical and organisational measures necessary for data protection and security during processing, and in particular during transmission.

<sup>3</sup> The Federal Council may issue complementary provisions, namely concerning the organisation and operation of the information system, the categories of the data to be processed, access and processing authorisations, the term of conservation as well as the archiving and destruction of data.

<sup>42</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>43</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

**Art. 13<sup>b44</sup>** Administrative assistance

<sup>1</sup> ComCom and OFCOM shall provide to other Swiss authorities data which these authorities need in order to fulfil their legal duties. This data also includes sensitive data and personality profiles obtained in administrative or administrative criminal procedures. The data shall be made accessible individually, in lists or on electronic media.

<sup>2</sup> Subject to international agreements to the contrary, ComCom and OFCOM may only transfer data to foreign surveillance authorities in the telecommunications sector, including sensitive personal data and personality profiles obtained in administrative or administrative criminal procedures, if these authorities:

- a. use such data exclusively to conduct surveillance of telecommunications service providers or for purposes of market surveillance;
- b. are bound by official or professional secrecy; and
- c. forward this data to competent authorities and bodies which are entrusted with surveillance tasks in the public interest only with the prior consent of ComCom or OFCOM or on the basis of a general authorisation in a treaty.

<sup>3</sup> ComCom and OFCOM shall not forward data to foreign prosecuting authorities if legal assistance is excluded in criminal matters. ComCom or OFCOM shall decide in agreement with the Federal Office of Justice.

<sup>4</sup> Swiss authorities shall forward to ComCom and OFCOM without charge such data as may be important for the enforcement of telecommunications legislation, including sensitive personal data and personality profiles. The data shall be made accessible individually, in lists or on electronic media.

**Section 2 Universal Service Licence<sup>45</sup>****Art. 14<sup>46</sup>** The licence

<sup>1</sup> ComCom shall ensure that the universal service is guaranteed for all sections of the population in all parts of the country. To this end, it shall periodically grant one or more universal service licences.

<sup>2</sup> The licence shall be tied to the condition that all or specific services of the universal service (Art. 16) are provided to all sectors of the population within the area covered by the licence.

<sup>3</sup> An invitation to tender shall be issued for the granting of the licence. The procedure shall be conducted in accordance with the principles of objectivity, non-

<sup>44</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>45</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>46</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

discrimination and transparency. The Federal Council regulates the details. The law on public procurement does not apply.<sup>47</sup>

<sup>4</sup> If it is clear in advance that the invitation to tender cannot proceed under conditions of competition, or if it does not produce any suitable candidates, ComCom may appoint one or more providers of telecommunications services to guarantee the universal service.

<sup>5</sup> Licences are generally limited to the same term.

#### **Art. 15** Conditions for granting the licence

Any person wishing to obtain a universal service licence must:

- a. have the necessary technical capacities;
- b.<sup>48</sup> furnish convincing proof that the service can be offered, particularly with regard to finance, and the service operated for the entire duration of the licence, and state what financial compensation, in accordance with Article 19, will be required;
- c. undertake to comply with the applicable legislation, in particular this Act and its implementing provisions, and the licence conditions;
- d.<sup>49</sup> undertake to comply with employment legislation and to guarantee the working conditions that are customary in the sector.

#### **Art. 16** Scope of the universal service<sup>50</sup>

<sup>1</sup> The universal service licensee shall provide one or more of the following services to meet demand in the area covered by the licence, in accordance with the state of the art:<sup>51</sup>

- a.<sup>52</sup> a public telephone service, i.e. transmission of speech in real time by means of telecommunications techniques, including transmission of data employing transfer rates compatible with the channels for transmitting speech, as well as the connection and additional services;
- b. access to emergency call services;
- c. public pay telephones in sufficient numbers;

<sup>47</sup> Fourth sentence inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>48</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>49</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>50</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>51</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>52</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

d.<sup>53</sup> access to the Swiss directories of subscribers to the public telephone service; the Federal Council may require a universal service licensee to maintain a directory of all customers of services of the universal service (general directory);

e.<sup>54</sup> ...<sup>55</sup>

<sup>1bis</sup> Services of the universal service must be ensured in such a way that persons with disabilities are offered comparable terms and conditions with respect to quality, quantity and prices as those without disabilities. In this respect the universal service licensee must ensure in particular that:

- a. public call boxes meet the requirements of the sensory impaired and those with reduced mobility;
- b. a relay service is provided for the hearing impaired;
- c. a directory enquiry and operator service is provided for the visually impaired.<sup>56</sup>

<sup>2</sup> The Federal Council shall fix the detailed rules for implementation. It may lay down special provisions for connections outside built-up areas. It may delegate its powers in this regard to the Federal Department of the Environment, Transport, Energy and Communications (DETEC).<sup>57</sup>

<sup>3</sup> The Federal Council shall periodically adapt the content of the universal service in accordance with the state of the art and social and economic requirements.

#### **Art. 17**            Quality and price

<sup>1</sup> Services of the universal service must be of a certain quality throughout the country. The Federal Council shall decide the quality criteria.

<sup>2</sup> The Federal Council shall endeavour to ensure that charges do not depend on distance. It shall periodically fix upper limits for the prices of the services of the universal service. These upper limits shall apply uniformly over the whole area and shall be determined by the development of the market.

<sup>53</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>54</sup> Repealed by Annex No 5 of the FA on Equality for Disabled Persons of 13 Dec. 2002, with effect from 1 Jan. 2004 (AS 2003 4487; BBl 2001 1715).

<sup>55</sup> The list is no longer up-to-date. See now: para. 3 and Art. 15 of the O of 9 March 2007 on Telecommunications Services (SR 784.101.1).

<sup>56</sup> Inserted by Annex No 5 of the FA on Equality for Disabled Persons of 13 Dec. 2002, in force since 1 Jan. 2004 (AS 2003 4487; BBl 2001 1715).

<sup>57</sup> Third sentence amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

**Art. 18**<sup>58</sup>**Art. 19**<sup>59</sup> Financial compensation

<sup>1</sup> If it is clear before the granting of the licence that, even with efficient management, it will not be possible to cover the costs of provision of the universal service in a given area, the licensee shall be entitled to financial compensation.

<sup>2</sup> Any licensee in receipt of financial compensation must present all the information required for cost evaluation and cost control, in particular the accounting and finance information, to OFCOM each year.

<sup>3</sup> The Federal Council regulates the details.

**Art. 19a**<sup>60</sup> Transfer and amendment of the licence

<sup>1</sup> The licence may only be wholly or partly transferred to a third party with ComCom's approval.

<sup>2</sup> Article 24e applies to the amendment of the licence.

**Art. 19b**<sup>61</sup> Publication by OFCOM

Unless there is some overriding public or private interest not to do so, OFCOM shall publish the name and address of the licensee, the subject of the licence and the rights and obligations deriving from the licence.

**Section 3**  
**Obligations deriving from the Provision of Specific Services**<sup>62</sup>**Art. 20**<sup>63</sup> Emergency call service

<sup>1</sup> The telephone service providers must offer a service that enables users to contact the appropriate emergency call centre in the event of danger to life and limb, health or property (emergency call service).

<sup>2</sup> They must guarantee routing and location identification for emergency calls. The Federal Council may, after weighing-up the interests of public and the providers and

<sup>58</sup> Repealed by No I of the FA of 24 March 2006, with effect from 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>59</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>60</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>61</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>62</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>63</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

taking account of technical developments and international harmonisation, specify exceptions and permit the use of the positioning functions of terminals even without the express consent of the user.

<sup>3</sup> The Federal Council may extend the obligation provide the emergency service to other telecommunications services that are publicly accessible and widely used.

**Art. 21<sup>64</sup>** Collecting and providing directory data

<sup>1</sup> The telephone service providers shall collect and update the directory data of their customers. In doing so, the following applies:

- a. The telephone service providers are not required to check the accuracy of the data.
- b. They must ensure that the data corresponds to the information provided by the customers.
- c. They may refuse to include information in the directory data that is obviously incorrect or that serves an unlawful purpose; they may remove such information from the directory data.

<sup>2</sup> They shall allow other providers of telecommunications services or of services which are based on directory data to access the minimum content of the directory data pertaining to their customers; they shall make the data electronically accessible to them.

<sup>3</sup> They shall grant access to the data in a transparent and non-discriminatory manner at prices based on the costs of providing the directory data. In doing so, they shall take account of international technical standards. In the event of any dispute, Articles 11a and 11b apply by analogy.

<sup>4</sup> The providers of services based on the directory data must safeguard the integrity of the data. They may only modify the data with the consent of the telephone service provider responsible for collecting the data. They must modify or delete the data according to the changes sent by the telephone service providers. The Federal Council may issue regulations on the processing of directory data.

<sup>5</sup> The telephone service providers may delegate the fulfilment of their obligations to third parties.

<sup>6</sup> The Federal Council may extend the application of the provisions of this Article to other telecommunications services that are publicly accessible and widely used.

<sup>64</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

**Art. 21a<sup>65</sup>** Interoperability

<sup>1</sup> Telephone service providers must ensure that all users can communicate with each other (interoperability).<sup>66</sup>

<sup>2</sup> The Federal Council may extend the obligation under paragraph 1 to other telecommunications services that are publicly accessible and widely used.<sup>67</sup> It may prescribe interfaces for access to the service in accordance with international standards. OFCOM shall issue the required technical and administrative regulations.

<sup>3</sup> Providers required to guarantee interoperability must also offer interconnection even if they are not dominant in the market. Articles 11a paragraphs 1 and 3 and 11b apply by analogy to disputes regarding the conditions for interconnection.<sup>68</sup> The Federal Council may impose further obligations on providers who are obliged to provide interoperability.

**Art. 21b<sup>69</sup>****Chapter 3 Radiocommunications****Art. 22<sup>70</sup>** Use of the radiocommunications frequency spectrum

<sup>1</sup> The radiocommunications frequency spectrum may be freely used subject to compliance with the regulations on use.

<sup>2</sup> The Federal Council may provide that the use of certain frequencies is only permitted:

- a. with a licence from OFCOM or, in the cases under Article 22a, ComCom;
- b. after giving notice to OFCOM;
- c. with a proficiency certificate.

<sup>3</sup> It shall impose restrictions under paragraph 2 solely:

- a. to avoid radio interference;
- b. to guarantee the technical quality of telecommunications services and other radio applications;

<sup>65</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 April 2007 (AS 2007 921; BBI 2003 7951).

<sup>66</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>67</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>68</sup> Second sentence amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>69</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBI 2003 7951). Repealed by No I of the FA of 22 March 2019, with effect from 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>70</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

- c. to guarantee efficient use of the radiocommunications frequency spectrum;  
or
- d. in cases in which other legislation or international treaties provide that the frequency spectrum may only be used with the approval of the responsible authority.

<sup>4</sup> In the case of frequency bands the allocation of which is the responsibility of the armed forces or civil defence in accordance with the national frequency allocation plan, the Federal Council shall not impose any restrictions in accordance with paragraph 2.

<sup>5</sup> It shall specify the regulations on use and the requirements for granting proficiency certificates.

**Art. 22a**<sup>71</sup> Radio communications licences for the provision of telecommunications services

<sup>1</sup> ComCom shall issue the licences for using the radiocommunications frequency spectrum required to provide telecommunications services.

<sup>2</sup> If it is anticipated that there will be a shortage of frequencies, it shall normally conduct a public tendering process.

<sup>3</sup> It may delegate to OFCOM the power to grant radio communications licences for which no shortage of frequencies under paragraph 2 exists or is anticipated in specific cases or in general for entire frequency bands.

<sup>4</sup> The Federal Council shall regulate the principles for granting radio communications licences that are wholly or partly intended for the broadcasting of radio and television programme services.

**Art. 23** Conditions for granting the licence

<sup>1</sup> Any person wishing to obtain a radiocommunications licence must:

- a.<sup>72</sup> have the necessary technical capacities and, insofar as required for using the relevant frequencies (Art. 22 para. 2 let. c), hold the relevant proficiency certificate;
- b.<sup>73</sup> undertake to comply with the applicable legislation, in particular this Act, the RTVA<sup>74</sup>, their implementing provisions, and the licence conditions.

<sup>2</sup> Subject to any international obligations to the contrary, the licensing authority may refuse to grant a licence to undertakings incorporated under foreign law unless reciprocal rights are granted.

<sup>71</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>72</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>73</sup> Amended by Annex No II 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS 2007 737; BBl 2003 1569).

<sup>74</sup> SR 784.40



<sup>3</sup> A licence shall be granted only if, having regard to the national frequency allocation plan, enough frequencies are available.

<sup>4</sup> The granting of a radiocommunications licence must not eliminate or constitute a serious obstacle to effective competition unless an exception can be justified on grounds of economic efficiency. Where the issue of the elimination or serious restriction of effective competition must be assessed, the licensing authority shall consult the Competition Commission.<sup>75</sup>

**Art. 24<sup>76</sup>** Procedure for granting the licence

<sup>1</sup> The Federal Council shall regulate the procedure for granting radio communications licences. It shall be conducted in accordance with the principles of objectivity, non-discrimination and transparency. All information provided by applicants shall be treated as confidential.

<sup>2</sup> The public law on public procurement does not apply.

<sup>3</sup> For the first-instance procedure concerning the public tendering process and for the appeals procedure, in particular with regard to evaluation of the submissions and in order to guarantee commercial secrecy, the Federal Council may deviate from the following provisions of the Federal Act of 20 December 1968<sup>77</sup> on Administrative Procedure (APA):

- a. determination of the circumstances (Art. 12 APA);
- b. co-operation of the parties (Art. 13 APA);
- c. inspection of documents (Art. 26-28 APA);
- d. right to a hearing (Art. 30 and 31 APA);
- e. notification and justification of decisions (Art. 34 and 35 APA).

<sup>4</sup> In the procedure concerning the public tendering process, interim decisions are not in themselves contestable by means of appeal.

**Art. 24a<sup>78</sup>**

**Art. 24b<sup>79</sup>** Special licensing regulations

If no licensing regulations exist for specific circumstances requiring a licence, the licensing authority shall define these on a case-by-case basis.

<sup>75</sup> Second sentence amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>76</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>77</sup> SR 172.021

<sup>78</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Repealed by No I of the FA of 22 March 2019, with effect from 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>79</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

**Art. 24c**<sup>80</sup> Term of the licence

The licence is granted for a specific period of time. The licensing authority shall determine the term according to the type and importance of the licence.

**Art. 24d**<sup>81</sup> Transfer of licences and cooperation between licensees

<sup>1</sup> Licences are wholly or partly transferable.

<sup>2</sup> Transfers are only permitted with prior consent of the licensing authority. Consent may only be refused if:

- a. the licence requirements under Article 23 are not complied with; or
- b. the efficient use of frequencies free from interference is not guaranteed.

<sup>3</sup> The licensing authority may permit exceptions from the requirement of consent for individual frequency bands if it is anticipated that the efficient use of frequencies free from interference will be guaranteed and if effective competition is neither eliminated nor seriously restricted. Advance notice must be given to the licensing authority of transfers that do not require consent.

<sup>4</sup> If the licence has been granted by ComCom, paragraph 2 applies by analogy to the economic transfer of the licence. An economic transfer occurs when a company has taken over control of the licensee in accordance with the law on cartels.

<sup>5</sup> Where holders of licences granted by ComCom make joint use of components of radio communications networks, they must give advance notice of this to ComCom. The joint use of frequencies requires consent under paragraph 2.

**Art. 24e**<sup>82</sup> Amendment and revocation of the licence

<sup>1</sup> The licensing authority may amend or revoke the licence due to changes in actual or legal conditions if the amendment or revocation is necessary to guarantee important public interests.

<sup>2</sup> The licensee shall be appropriately compensated if the transferred rights are revoked or substantially reduced.

**Art. 24f**<sup>83</sup> Provision of information by OFCOM

<sup>1</sup> Provided there are no overriding public or private interests, OFCOM shall provide the name and address of the licensee, and information on the subject of the licence,

<sup>80</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>81</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>82</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>83</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

the rights and obligations attached to the licence, the frequency assignments and the transmitter locations.<sup>84</sup>

<sup>2</sup> It may publish this information and make it accessible online if there is a public interest.

#### **Art. 25** Management of frequencies

<sup>1</sup> OFCOM shall manage the frequency spectrum and the Swiss utilisation rights and orbital positions of satellites in accordance with the relevant international agreements. It shall take appropriate measures to ensure that these resources are used efficiently and without interference and to provide equitable access to them on the basis of the national frequency allocation plan.

<sup>1bis</sup> It shall issue the national frequency allocation plan. In doing so, it shall take appropriate account of the frequency requirements for armed forces and civil protection operations; it shall work with the responsible armed forces office.<sup>85</sup>

<sup>2</sup> The national frequency allocation plan is subject to approval by the Federal Council.<sup>86</sup>

<sup>3</sup> In the event of a mobilisation of troops, the Federal Council may allocate the armed forces additional free or already licensed frequencies for the duration of operations.<sup>87</sup>

#### **Art. 26** Technical monitoring

<sup>1</sup> OFCOM shall monitor the frequency spectrum for planning and surveillance purposes.

<sup>2</sup> It shall carry out these checks alone or in co-operation with other authorities. The Federal Council shall fix the detailed rules for such co-operation.

<sup>3</sup> OFCOM may intercept or record radiocommunications traffic if this is necessary to ensure that telecommunications and broadcasting are free from interference and if other measures have proved ineffective or entail unreasonable expenditure.

<sup>4</sup> Any data that is recorded may be used only to determine the cause of the interference or identify the person or persons responsible for it.

<sup>5</sup> If there is reason to suspect that an offence has been committed that is punishable under this Act, any recordings that may constitute evidence shall be passed to the competent authority. Any other recording must be destroyed immediately.

<sup>84</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>85</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>86</sup> Amended by Annex No II 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS 2007 737; BBl 2003 1569).

<sup>87</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

**Art. 27<sup>88</sup>** Processing of data and administrative assistance

Articles 13*a* and 13*b* concerning processing of data and administrative assistance shall apply.

## Chapter 4 Addressing Resources

**Art. 28<sup>89</sup>** Management of addressing resources

<sup>1</sup> OFCOM shall manage the addressing resources that must be managed at national level. It shall ensure that sufficient addressing resources are available; in doing so it shall take account of technical developments and international harmonisation.

<sup>2</sup> The Federal Council shall specify which addressing resources OFCOM must manage.

<sup>3</sup> It may prescribe a mandatory alternative dispute resolution procedure between the holders of addressing resources and third parties. It shall regulate the procedure, its consequences and its effects on the procedure under civil law, particularly the suspension of the period of limitation and the burden of proof. The right of holders of addressing resources and third parties to bring civil actions is reserved.

<sup>4</sup> No one has the right to a specific addressing resource. The Federal Council may permit exceptions.

<sup>5</sup> Providers of telecommunications services shall ensure number portability.

<sup>6</sup> The Federal Council shall issue regulations on the management of addressing resources, and in particular on:

- a. their allocation, use, blocking, transfer and withdrawal;
- b. the issuing of numbering plans;
- c. the delegation of management to third parties, the termination of the delegated activity and the supervision of the same;
- d. sub-allocation;
- e. number portability.

**Art. 28<sup>a90</sup>** Delegation of the management of addressing resources to third parties

<sup>1</sup> OFCOM may in special cases delegate the management of certain addressing resources to third parties.

<sup>88</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>89</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>90</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>2</sup> It shall select the third parties based on a tender or invitation procedure. If there is good cause, it shall appoint them directly.

<sup>3</sup> If the tender or invitation procedure does not result in any suitable applications or if the delegated parties can no longer fulfil their obligations, OFCOM may require third parties to carry out the task. These third parties may charge prices for their activities that cover the relevant costs and allow an appropriate profit to be made.

<sup>4</sup> Article 24 applies by analogy to the selection process.

**Art. 28<sup>b</sup>**<sup>91</sup> Internet domains

This Act applies to the following internet domains:

- a. the country-specific domain «.ch» and, insofar as the management of the domain is the responsibility of the Confederation, all other internet domains that designate Switzerland alphanumerically, including transpositions in other alphabets or graphical systems;
- b. generic domains, if Swiss public corporations are responsible for their management;
- c. generic domains, if persons resident or with registered office in Switzerland are responsible for their management;
- d. generic domains which, because of their name, are of particular political, cultural, geographical or religious significance for Switzerland.

**Art. 28<sup>c</sup>**<sup>92</sup> Management of internet domains: Responsibility

<sup>1</sup> OFCOM shall manage internet domains if the Confederation is responsible for their management.

<sup>2</sup> It may provide commercial services to third parties provided this is necessary for managing domain names and the requirements of Article 41a paragraphs 2 and 3 of the Financial Budget Act of 7 October 2005<sup>93</sup> are met.

**Art. 28<sup>d</sup>**<sup>94</sup> Management of internet domains: Principles

The management of internet domains and their subordinate domain names is governed by the following principles:

- a. The security and availability of the infrastructure and the services required for the domain name system to function are guaranteed.
- b. The internet domains are managed in a transparent and non-discriminatory manner if they are the responsibility of public corporations.

<sup>91</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>92</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>93</sup> SR 611.0

<sup>94</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

- c. The proprietors of and applicants for domain names are protected from the misuse of their personal data.

**Art. 28<sup>e95</sup>** Management of internet domains: Modalities

The Federal Council shall regulate the modalities for managing internet domains and their subordinate domain names; in doing so, it shall take account of the rules applied internationally. It may in particular:

- a. lay down the conditions for the allocation, use, blocking, transfer and withdrawal of domain names that are subordinate to the domains that are the responsibility of the Confederation;
- b. regulate the processing of personal data in connection with domains that fall within the scope of this Act, including the provision of a publicly accessible database that guarantees everyone access to information about the proprietors of domain names;
- c. provide for measures that prevent the unlawful use of domain names or the use of domain names that is contrary to public order, and regulate cooperation with specialised private or public bodies in this sector;
- d. determine the institutional, functional and operational organisation of the domains that are the responsibility of the Confederation;
- e. regulate the management of domains for which public corporations other than the Confederation or private individuals resident in Switzerland are responsible;
- f. issue provisions relating to generic domains of particular political, cultural, geographical or religious significance, provided this is necessary in order to safeguard Switzerland's interests.

**Art. 29** Obligation to provide information

Any holder of addressing resources shall be required to provide the competent authority with the information it needs to manage the addressing resources that have been assigned.

**Art. 30<sup>96</sup>** Exclusion of compensation

Modification by the authorities of numbering plans or regulations for the management of addressing resources shall not constitute grounds for any claim for compensation.

<sup>95</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>96</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

**Art. 30a**<sup>97</sup> Data processing and administrative assistance

Articles 13a and 13b on data processing and administrative assistance apply.

## Chapter 5 Telecommunications Installations

**Art. 31**<sup>98</sup> Import, offering, making available on the market and putting into service<sup>99</sup>

<sup>1</sup> The Federal Council may adopt technical regulations on the import, offering, making available on the market and putting into service of telecommunications installations, in particular in respect of basic technical requirements with regard to telecommunications, evaluation of conformity, certification of conformity, declaration of conformity, markings, registration and the obligation to provide proof (Art. 3 of the Federal Act of 6 October 1995<sup>100</sup> on Technical Barriers to Trade).<sup>101</sup>

<sup>2</sup> If the Federal Council has laid down basic technical requirements with regard to telecommunications within the meaning of paragraph 1, OFCOM shall generally, in order to concretise them:<sup>102</sup>

- a. designate technical standards, compliance with which shall be deemed to constitute fulfilment of the basic requirements; or
- b.<sup>103</sup> declare technical standards, European Union legal instruments or other rules binding.

<sup>3</sup> In implementing paragraph 2, OFCOM shall take the relevant international standards into account; any derogations shall require the consent of the State Secretariat for Economic Affairs.

<sup>3bis</sup> OFCOM may draw up and publish technical standards.<sup>104</sup>

<sup>4</sup> If the Federal Council has not adopted any basic technical requirements with regard to telecommunications within the meaning of paragraph 1, or if OFCOM has not concretised them in accordance with paragraph 2, the person offering, making

<sup>97</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>98</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBI 2003 7951).

<sup>99</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>100</sup> SR 946.51

<sup>101</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>102</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>103</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>104</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

available on the market<sup>105</sup> or putting into service a telecommunications installation must ensure that it complies with the recognised rules of telecommunications engineering. These shall be deemed to include, first and foremost, any internationally harmonised technical standards. In the absence of such standards, the technical specifications of OFCOM or, in the absence of such specifications, the national standards shall apply.

<sup>5</sup> If it is necessary for technical telecommunications security reasons, OFCOM may rule that certain telecommunications installations may be entrusted only to specially qualified persons. It may regulate the detailed rules of such entrusting.

### **Art. 32** Installation and operation

A telecommunications installation may only be installed and operated if it complied with the regulations in force when it was first made available on the market, installed or put into service and if it has been kept in that state. The Federal Council may define exceptions.<sup>106</sup>

### **Art. 32a**<sup>107</sup> Telecommunications installations to guarantee public safety

The Federal Council shall regulate the import, offering, making available on the market, putting into service, installation and operation of telecommunications installations which must be used by authorities in the interest of public safety.

### **Art. 32b**<sup>108</sup> Prohibition of installations and devices that cause interference

<sup>1</sup> It is prohibited to manufacture, import, offer, make available on the market, possess, put into service, install or operate telecommunications installations and other devices that are intended to interfere with or prevent telecommunications or broadcasting.

<sup>2</sup> Article 32a is reserved.

### **Art. 33** Surveillance

<sup>1</sup> In order to check compliance with the regulations on the import, offering, making available on the market, putting into service, installation and operation of telecommunications installations, OFCOM shall have access during normal working hours to the premises where such installations are located.<sup>109</sup>

<sup>105</sup> Term in accordance with Annex No 4 of the FA of 16 June 2017, in force since 1 Jan. 2018 (AS 2017 5607; BBl 2016 7133). This amendment has been made throughout the text.

<sup>106</sup> Second sentence inserted by virtue of No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>107</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>108</sup> Amended by Annex No 4 of the FA of 16 June 2017, in force since 1 Jan. 2018 (AS 2017 5607; BBl 2016 7133).

<sup>109</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).



<sup>2</sup> The Federal Council shall regulate the right of access to telecommunications installations that are subject to military secrecy regulations.

<sup>3</sup> If a telecommunications installation fails to comply with the regulations, OFCOM shall take the necessary measures. It may, in particular, restrict or prohibit the installation, operation, import, offering and making available on the market of such an installation, order it to be restored to a state that complies with the regulations or returned, or confiscate it without compensation.<sup>110</sup>

<sup>4</sup> OFCOM may publish the information on measures under paragraph 3 and make it accessible online if there is a public interest in doing so.<sup>111</sup>

<sup>5</sup> It may provide, publish or make accessible online information on ongoing administrative or criminal proceedings only if there is an overriding public or private interest in doing so.<sup>112</sup>

<sup>6</sup> It may participate in international databases for the exchange of information between market surveillance authorities. It may only record data in such databases if their transmission to foreign authorities would be permitted under Article 13b.<sup>113</sup>

#### **Art. 34** Interference

<sup>1</sup> If a telecommunications installation causes interference to telecommunications or broadcasting, OFCOM may require the operator to modify it at his own expense or to suspend operation of the installation, even if it complies with the regulations on the import, offering, making available on the market, putting into service, installation and operation applicable to it.<sup>114</sup>

<sup>1bis</sup> If telecommunications installations disrupt or may disrupt the use of frequency spectrums that require increased protection, the Office may restrict or forbid the offering and making available on the market of such installations, even if they comply with the regulations concerning their offering and making available on the market.<sup>115</sup>

<sup>1ter</sup> The Federal Council shall regulate the conditions under which the following authorities may for the following purposes install, put into service or operate a telecommunications installation which causes interference:

- a. the police and the law enforcement authorities, in order to guarantee public safety and security;

<sup>110</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>111</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>112</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>113</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>114</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>115</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Amended by Annex No 2 of the FA of 12 June 2009, in force since 1 July 2010 (AS 2010 2617; BBl 2008 7275).

- b. the Federal Intelligence Service, in order to guarantee the protection and security of its employees, information and installations.<sup>116</sup>

<sup>1</sup>quarter If lawful interference disproportionately disrupts other public or third-party interests, paragraph 1 applies.<sup>117</sup>

<sup>2</sup> In order to determine the source of the interference to telecommunications or broadcasting, OFCOM shall grant access to all telecommunications installations.<sup>118</sup>

**Art. 34a**<sup>119</sup> Processing of data and administrative assistance

Articles 13a and 13b concerning processing of data and administrative assistance shall apply to Articles 31–34.

**Art. 35** Use of land

<sup>1</sup> Owners of land in public use (such as roads, footpaths, squares, waterways, lakes and banks and shorelines) are required to allow providers of telecommunications services to use that land to install and operate lines and public pay telephones, provided those installations do not interfere with the public use of the land.<sup>120</sup>

<sup>2</sup> Providers of telecommunications services shall take account of the purpose and the use to which the property in question is put and shall bear the cost of restoring it to its original state.<sup>121</sup> They shall be required to move their lines if the owner of the property wishes to use it for a purpose that is incompatible with their presence.

<sup>3</sup> The Federal Council shall regulate the details, in particular the providers' duty of co-ordination and the conditions governing the relocation of lines and public pay telephones.<sup>122</sup>

<sup>4</sup> The authorisation procedure shall be simple and rapid. No compensation other than an administrative charge to cover costs may be levied for the use of the land, provided that it does not interfere with its public use.

<sup>116</sup> Inserted by No I of the FA of 24 March 2006 (AS 2007 921; BBl 2003 7951). Amended by Annex No II 13 of the Intelligence Service Act of 25 Sept. 2015, in force since 1 Sept. 2017 (AS 2017 4095; BBl 2014 2105).

<sup>117</sup> Inserted by Annex No II 13 des Intelligence Service Act of 25 Sept. 2015, in force since 1 Sept. 2017 (AS 2017 4095; BBl 2014 2105).

<sup>118</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>119</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>120</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>121</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>122</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

**Art. 35a**<sup>123</sup> Other connections

<sup>1</sup> Building owners and must tolerate, insofar as it is reasonable, additional connections to dwellings or business premises other than the connection of their choice, if a telecommunications service provider so requests and pays the costs thereof.<sup>124</sup>

<sup>2</sup> Connection of buildings in accordance with the cantonal development stipulations is reserved.

<sup>3</sup> No charge for utilisation shall be levied if:

- a. the tenant directly forgoes use of a new connection;
- b. the connection contract is cancelled; the telecommunications service provider or the lessor shall allow a reasonable cancellation period.<sup>125</sup>

<sup>4</sup> The telecommunications service provider or the lessor may place under seal and verify unused connections. No costs may be charged for sealing and removing seals.<sup>126</sup>

**Art. 35b**<sup>127</sup> Access to the building entry point and joint use of installations within buildings

<sup>1</sup> Every telecommunications service provider shall have a right of access to the building entry point and of joint use of the installations within the building intended for telecommunications transmission provided this is technically justifiable and there is no other good cause for refusal.

<sup>2</sup> Building owners and telecommunications service providers must allow the joint use of the installations within the building in a transparent and non-discriminatory manner.

<sup>3</sup> Building owners and shall make the required information on the installations within the building available to the providers on request.

<sup>4</sup> Providers who have financed an installation must be compensated appropriately.

<sup>5</sup> If requested to do so, ComCom shall rule on disputes between telecommunications service providers relating to access to the building entry point or the conditions for joint use. Article 11b applies by analogy.

**Art. 36** Right of compulsory purchase and joint use

<sup>1</sup> If the establishment of a telecommunications installation is in the public interest, DETEC<sup>128</sup> may grant the right of compulsory purchase. The procedure shall be

<sup>123</sup> Inserted by Annex No II 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS 2007 737; BBl 2003 1569).

<sup>124</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>125</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>126</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>127</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

conducted in accordance with the Federal Act of 20 June 1930<sup>129</sup> on Compulsory Purchase.

<sup>2</sup> OFCOM may on application, for reasons of public interest, in particular to take account of technical problems or the planning needs or protection of the countryside, national heritage, the environment, nature or animals, require providers of telecommunications services to accord to a third party, in return for appropriate compensation, the right to make joint use of its telecommunications installations and other installations, such as cable ducts and transmitter locations, if they have sufficient capacity.<sup>130</sup>

<sup>3</sup> Under the same conditions, OFCOM may require providers of telecommunications services to co-install and joint use of telecommunications installations and other installations, such as cable ducts and transmitter locations.<sup>131</sup>

**Art. 36a**<sup>132</sup> Protection of existing lines

Lines owned by telecommunications service providers that are in existence when the Amendment of 22 March 2019 comes into force and are located in sewers which were constructed for the purpose of spatial planning development may only be removed from the sewers for good cause. Providers of telecommunications services shall, where possible, be offered alternative ducts for their lines.

**Art. 37**<sup>133</sup> Ownership of lines

<sup>1</sup> Lines for the transmission of information by means of telecommunications techniques and cable ducts shall be the property of the providers of telecommunications services who have installed them or acquired them from third parties.

<sup>2</sup> Any owner of land who wilfully or through gross negligence damages a telecommunications service provider's line or cable duct on his property shall be liable for the damage.

**Art. 37a**<sup>134</sup> Amateur radio

<sup>1</sup> The authorities may provide a simplified licensing procedure for simple wire and rod antennas and for antennas on light masts with a similar appearance to flagpoles.

<sup>128</sup> Name in accordance with No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559). This change has been made throughout the text.

<sup>129</sup> SR 711

<sup>130</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>131</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>132</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>133</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>134</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>2</sup> The maintenance of an antenna or its replacement with an antenna of a similar size does not require authorisation.

## Chapter 6 Fees

### Art. 38<sup>135</sup> Fee for financing the universal service

<sup>1</sup> OFCOM shall collect from providers of telecommunications services a fee, the revenue from which shall be used exclusively to finance the uncovered costs of the universal service in accordance with Article 16 and the costs for the administration of the financing mechanism.

<sup>2</sup> The total amount of the fees must cover the costs listed in paragraph 1; the fee shall be fixed in proportion to the turnover of the telecommunications services provided.

<sup>3</sup> The Federal Council may exempt from the fee those providers whose turnover from the telecommunications services provided is below a defined amount.

<sup>4</sup> It shall regulate the detailed rules for provision of the information which is required for the apportionment and monitoring of the costs listed in paragraph 1.

### Art. 39<sup>136</sup> Licence fees for radiocommunications

<sup>1</sup> The licensing authority shall charge a fee for radiocommunications licences. No fee shall be charged for radiocommunications licences intended for broadcasting licensed radio or television programme services in accordance with the RTVA<sup>137, 138</sup>

<sup>2</sup> The amount of the fees shall be calculated on the basis of:

- a. the frequency range allocated, the class of frequency and the value of the frequencies;
- b. the bandwidth allocated;
- c. the territorial scope; and
- d. the temporal scope.

<sup>3</sup> If a frequency may also be used to broadcast both licensed radio or television programme services and to transmit other radio and television programme services and information, the latter is subject to a licence fee proportional to usage.<sup>139</sup>

<sup>3bis</sup> In order to facilitate the introduction of new broadcasting technologies in terms of Article 58 RTVA, or to safeguard the diversity of programming in areas inade-

<sup>135</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>136</sup> Amended by Annex No II 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS 2007 737; BBl 2003 1569).

<sup>137</sup> SR 784.40

<sup>138</sup> Amended by Annex No 4 of the FA of 26 Sept. 2014, in force since 1 Dec. 2017 (AS 2016 2131, 2017 5929; BBl 2013 4975).

<sup>139</sup> Amended by Annex No 4 of the FA of 26 Sept. 2014, in force since 1 Dec. 2017 (AS 2016 2131, 2017 5929; BBl 2013 4975).

quately covered by wireless terrestrial services, the Federal Council may reduce the licence fee for broadcasting radio and television programme services.<sup>140</sup>

<sup>4</sup> If the radiocommunications licence is granted by auction, the licence fee shall correspond to the amount of the bid, less administrative charges for the invitation to tender and the granting of the licence. The licensing authority may fix a minimum bid.

<sup>5</sup> The Federal Council may waive payment of the radiocommunications licence fee in the case of the following bodies, provided that they do not supply telecommunications services and that they make rational use of frequencies:

- a. authorities and public law bodies and establishments of the Confederation, cantons and communes, provided that they use the frequency spectrum exclusively for tasks for which they bear sole responsibility;
- b. public transport undertakings;
- c.<sup>141</sup> the institutional beneficiaries of preferential rights, immunities and facilities under Article 2 paragraph 1 letters a, b and d–l of the Host State Act of 22 June 2007<sup>142</sup>;
- d.<sup>143</sup> legal entities under private law, provided they perform public tasks on behalf of the Confederation, cantons or communes.

**Art. 39a**<sup>144</sup> Funding of accompanying measures

The Federal Council may use part of the proceeds from licence fees under Article 39 for accompanying measures such as research and surveys in connection with radio-based technologies.

**Art. 40**<sup>145</sup> Administrative charges

<sup>1</sup> The competent authority shall make an administrative charge for its decisions and services to cover its expenses, in particular in connection with:

- a.<sup>146</sup> the surveillance of providers of telecommunications services;
- b.<sup>147</sup> the decisions concerning access, provision of directory data, interoperability and the joint use of installations;

<sup>140</sup> Inserted by Annex No 4 of the FA of 26 Sept. 2014, in force since 1 Dec. 2017 (AS 2016 2131, 2017 5929; BBl 2013 4975).

<sup>141</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>142</sup> SR 192.12

<sup>143</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>144</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>145</sup> Amended by Art. 106 para. 2 of the FA of 24 March 2006 on Radio and Television, in force since 1 Apr. 2007 (AS 2007 737; BBl 2003 1569).

<sup>146</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

- c. the resolution of disputes between customers and providers of telecommunications services or value-added services;
- d.<sup>148</sup> the granting, amendment and cancellation of universal service licences and radiocommunications licences, surveillance thereof and registration for the use of frequencies;
- e. the management and technical monitoring of the frequency spectrum and satellite orbital positions;
- f. the management, assignment and revocation of addressing resources;
- g. the registration and surveillance of telecommunications installations.

<sup>1bis</sup> No administrative fees in terms of paragraph 1 letters d and e shall be charged for radiocommunications licences issued to the armed forces, civil defence, the Border Guard, the police, the fire brigade, emergency and rescue services operating exclusively in the public interest and civilian command staffs.<sup>149</sup>

<sup>2</sup> If an activity as defined in paragraph 1 concerns telecommunications services or radiocommunications licences which are used in whole or in part for the broadcasting of radio or television programme services, the authority may take account of the limited financial resources of the broadcaster who holds the right of access and who is directly or indirectly affected by the charge.

<sup>3</sup> If responsibility for any of the activities listed in paragraph 1 has been delegated to a third party, that party may be required to submit the prices of its services to OFCOM for approval, in particular if no competition exists for these services.

<sup>4</sup> DETEC may set upper price limits, in particular if the price level in a specific market implies abuse.

**Art. 41<sup>150</sup>** Fixing and collection of fees

The Federal Council shall regulate the detailed arrangements for the collection of fees and the financing of the universal service and fix the amount of the fees for radiocommunications licences and the administrative charges.

**Art. 42** Guarantees

The authority responsible for collecting the fees may require the person responsible for paying them to provide appropriate guarantees.

<sup>147</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>148</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>149</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

<sup>150</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBI 2017 6559).

## Chapter 7 Telecommunications Confidentiality and Data Protection and Protection of Children and Minors<sup>151</sup>

### Art. 43 Obligation of confidentiality

No person who is or has been responsible for providing a telecommunications service may disclose to a third party information relating to subscribers' communications or give anyone else an opportunity to do so.

### Art. 44<sup>152</sup>

### Art. 45 Disclosure of information to subscribers

<sup>1</sup> The customer may require the provider of telecommunications services to inform him of the data on which invoices are based, in particular the addressing resources, the times when calls were made and the payment due.

<sup>2</sup> Any person requiring this data to trace nuisance calls or unfair mass advertising may require the provider of telecommunications services to inform him of the name and address of the subscribers whose lines were used to make the calls in question.<sup>153</sup>

### Art. 45a<sup>154</sup> Unfair mass advertising

<sup>1</sup> Providers of telecommunications services shall combat unfair mass advertising (Art. 3 let. o of the Federal Act of 19 December 1986<sup>155</sup> on Unfair Competition).

<sup>2</sup> The Federal Council may define measures that are appropriate and necessary to combat unfair mass advertising.

### Art. 45b<sup>156</sup> Location data

Providers of telecommunications services may process data concerning locations of customers only for the telecommunications services and charging purposes; they may only process it for other services if they have first obtained the consent of customers, or in anonymised form.

<sup>151</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>152</sup> Repealed by No II 31 of the FA of 20 March 2008 on the Formal Revision of Federal Legislation, with effect from 1 Aug. 2008, with effect from 1 Aug. 2008 (AS 2008 3437; BBl 2007 6121).

<sup>153</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>154</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>155</sup> SR 241

<sup>156</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).



**Art. 45c**<sup>157</sup> Data on external equipment

Processing of data on external equipment by means of transmission using telecommunications techniques is permitted only:

- a. for telecommunications services and charging purposes; or
- b. if users are informed about the processing and its purpose and are informed that they may refuse to allow processing.

**Art. 46** Protection of privacy

The Federal Council shall regulate, in particular, the identification of the caller's line, call forwarding, the use of data relating to telecommunications traffic and the security of telecommunications services with regard to interception and interference by unauthorised persons. In so doing, it shall take account of the need to protect the privacy of telecommunications users and of overriding public interests.

**Art. 46a**<sup>158</sup> Protection of children and minors

<sup>1</sup> The Federal Council may issue regulations to protect children and minors from the dangers arising from the use of telecommunications services. In particular, it may require providers of internet access to advise their customers on the options for the protection of children and minors.

<sup>2</sup> In order that information with pornographic content in accordance with Article 197 paragraphs 4 and 5 of the Criminal Code<sup>159</sup> may be quickly and globally deleted, OFCOM, the Federal Office of Police and the competent cantonal bodies shall coordinate suitable measures. For this purpose, reporting offices operated by third parties and foreign authorities may be consulted and supported. The Federal Council shall regulate the details.

<sup>3</sup> Telecommunications service providers shall block information with pornographic content in accordance with Article 197 paragraphs 4 and 5 of the Criminal Code that is brought to their attention by the Federal Office of Police. Telecommunications service providers shall report to the Federal Office of Police suspected cases of information with pornographic content in accordance with Article 197 paragraphs 4 and 5 of the Criminal Code which they have come across by chance in the course of their activities or which have been brought to their attention in writing by third parties.

<sup>157</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>158</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>159</sup> SR 311.0

## Chapter 8 Vital National Interests

### Art. 47<sup>160</sup> Security communication

<sup>1</sup> The Federal Council shall determine the telecommunications services that telecommunications service providers must provide in order that the armed forces, civil defence, Border Guard, police, fire brigade, the rescue services and the civilian authorities can fulfil their duties in all circumstances.

<sup>2</sup> It may require providers with a view to and in special and exceptional situations to make premises and installations available and to tolerate exercises.

<sup>3</sup> It shall regulate the compensation for these services, having due regard to the interests of the provider.

<sup>4</sup> It may require the necessary personnel to serve if a special situation so requires.

<sup>5</sup> The provisions on requisition and the General's powers under Armed Forces Act of 3 February 1995<sup>161</sup> are reserved.

### Art. 48 Restriction of telecommunications

<sup>1</sup> The Federal Council may order the surveillance, restriction or interruption of telecommunications in extraordinary circumstances or when vital national interests require it. It shall regulate the question of any indemnity payable for carrying out these tasks, having due regard to the interests of the persons required to perform them.<sup>162</sup>

<sup>2</sup> The measures described in paragraph 1 shall not constitute grounds for any claim for damages or reimbursement of fees.

### Art. 48a<sup>163</sup> Security

<sup>1</sup> Telecommunications service providers shall take action against the unauthorised manipulation of telecommunications installations by telecommunications transmissions. They are entitled to reroute or block connections and to suppress information in order to protect the installations.

<sup>2</sup> To protect against hazards, avoid damage and minimise risks, the Federal Council may issue provisions on the security of information and of telecommunications infrastructures and services, in particular in relation to:

- a. availability;
- b. operation;

<sup>160</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>161</sup> SR **510.10**

<sup>162</sup> Second sentence amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

<sup>163</sup> Inserted by No I of the FA of 24 March 2006 (AS **2007** 921; BBl **2003** 7951). Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

- c. securing redundant infrastructures;
- d. reporting interference;
- e. tracing processes;
- f. rerouting or blocking connections and suppressing information in accordance with paragraph 1.

## Chapter 9 Criminal Provisions

### Art. 49 Falsification or suppression of information

<sup>1</sup> Any person carrying on an activity in connection with a telecommunications service shall be liable to a custodial sentence not exceeding three years or to a monetary penalty if he:<sup>164</sup>

- a. falsifies or suppresses information;
- b. gives any third party the opportunity to do so.

<sup>2</sup> Any person who deceives a person carrying on an activity in connection with a telecommunications service into falsifying or suppressing information shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.<sup>165</sup>

### Art. 50 Misuse of information

Any person who by means of a telecommunications installation receives private information that is not intended for him and who uses it or communicates it to third parties without permission shall be liable to a custodial sentence not exceeding one year or to a monetary penalty.<sup>166</sup>

### Art. 51<sup>167</sup>

### Art. 52 Contraventions

<sup>1</sup> Any person who:

- a.<sup>168</sup> ...
- b.<sup>169</sup> uses the frequency spectrum:

<sup>164</sup> Amended by Art. 333 of the Criminal Code in the version contained in the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459; BBl **1999** 1979).

<sup>165</sup> Amended by Art. 333 of the Criminal Code in the version contained in the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459; BBl **1999** 1979).

<sup>166</sup> Amended by Art. 333 of the Criminal Code in the version contained in the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459; BBl **1999** 1979).

<sup>167</sup> Repealed by Annex No 4 of the FA of 16 June 2017, with effect from 1 Jan. 2018 (AS **2017** 5607; BBl **2016** 7133).

<sup>168</sup> Repealed by No I of the FA of 22 March 2019, with effect from 1 Jan. 2021 (AS **2020** 6159; BBl **2017** 6559).

1. without the required licence,
  2. without the required advance notice,
  3. without holding the required proficiency certificate, or
  4. in breach of the regulations on use or the licence;
- c.<sup>170</sup> puts addressing resources that are managed at national level into service without being entitled to do so;
- d.<sup>171</sup> imports, offers, makes available on the market or puts into service telecommunications installations that do not comply with the regulations in force;
- e. installs or operates telecommunications installations that do not comply with the regulations in force;
- f. hands over telecommunications installations to unauthorised persons;
- g.<sup>172</sup> manufactures, imports, offers, makes available on the market, possesses, puts into service, installs or operates telecommunications installations or other devices that are intended to interfere with or prevent telecommunications or broadcasting

shall be liable to a fine not exceeding CHF 100,000.<sup>173</sup>

<sup>2</sup> If the offence is committed through negligence, the fine shall not exceed CHF 50,000.

### **Art. 53** Failure to comply with regulations

Any person who, intentionally or through negligence, infringes any other provision of the telecommunications legislation, a treaty or international agreement on the subject, or violates a decision taken on the basis of such provisions and notified to him with an indication of the penalties available under this Article, shall be liable to a fine not exceeding CHF 5000.

### **Art. 54** Other criminal provisions

Articles 14 to 18 of the Federal Act of 22 March 1974<sup>174</sup> on Administrative Criminal Law apply.

<sup>169</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>170</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>171</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>172</sup> Inserted by Annex No 4 of the FA of 16 June 2017, in force since 1 Jan. 2018 (AS 2017 5607; BBl 2016 7133).

<sup>173</sup> Amended by Art. 333 of the Criminal Code in the version contained in the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459; BBl 1999 1979).

<sup>174</sup> SR 313.0

**Art. 55** Jurisdiction

<sup>1</sup> Offences within the meaning of Articles 52 to 54 shall be prosecuted and adjudicated by DETEC in accordance with the provisions of the Federal Act of 22 March 1974<sup>175</sup> on Administrative Criminal Law.

<sup>2</sup> DETEC may delegate to OFCOM the tasks of prosecution and adjudication of offences, as well as the enforcement of decisions.

**Chapter 10 ComCom****Art. 56** ComCom

<sup>1</sup> The Federal Council shall elect a Federal Communications Commission consisting of five to seven members and shall appoint the Chairman and Vice-Chairman. The members must be independent specialists.

<sup>2</sup> ComCom shall not be required to follow instructions from the Federal Council or DETEC when taking its decisions. It shall be independent of the administrative authorities. It shall have its own secretariat.

<sup>3</sup> ComCom shall adopt rules relating to its organisation and management, which must be approved by the Federal Council.

<sup>4</sup> ComCom shall be funded by administrative charges. The Federal Council shall regulate the details.

**Art. 57** Duties of ComCom

<sup>1</sup> ComCom shall perform the duties and take the decisions for which it is responsible in terms of this Act and its implementing provisions. It shall inform the public of its activities and produce a report each year for the Federal Council.

<sup>2</sup> For the purpose of implementing telecommunications legislation, ComCom may seek the assistance of OFCOM and give it instructions.

**Chapter 11 Surveillance and Legal Remedies****Art. 58**<sup>176</sup> Surveillance

<sup>1</sup> OFCOM shall ensure that international telecommunications law, this Act, its implementing provisions, and licences are complied with. It may assign certain surveillance tasks to organisations incorporated under private law and co-operate with such organisations.

<sup>2</sup> If OFCOM detects an infringement of the law, it may:<sup>177</sup>

<sup>175</sup> SR 313.0

<sup>176</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

- a. call on the legal or natural person responsible for the infringement to remedy the infringement or take measures to prevent any repetition of it; the person responsible for the infringement must inform OFCOM of the measures it has taken;
- b. require the legal or natural person responsible for the infringement to surrender to the Confederation any revenue generated during the infringement;
- c. make the licence subject to conditions;
- d. restrict, suspend, revoke or withdraw the licence or restrict, suspend or totally forbid the activity of the legal or natural person responsible for the infringement;
- e.<sup>178</sup> withdraw the proficiency certificate from the holder or make it subject to conditions.

<sup>3</sup> OFCOM shall withdraw the licence if essential conditions for granting it cease to be fulfilled.

<sup>4</sup> If the licence has been granted by ComCom, ComCom shall take the corresponding measures based on the proposal made by OFCOM.

<sup>5</sup> The competent authority may take precautionary measures.

#### **Art. 59** Obligation to disclose information

<sup>1</sup> The persons subject to this Act shall be obliged to provide the competent authority with the information required to implement and evaluate this Act.<sup>179</sup>

<sup>2</sup> They must provide OFCOM regularly with the necessary information to produce official telecommunications statistics.<sup>180</sup>

<sup>2bis</sup> Data collected or submitted for statistical purposes may be used for other purposes only if:

- a. a federal act explicitly allows this;
- b. the person concerned consents in writing;
- c. this serves the evaluation of telecommunications legislation; or
- d. this serves as a basis for necessary regulatory decisions.<sup>181</sup>

<sup>2ter</sup> OFCOM may publish market shares.<sup>182</sup>

<sup>177</sup> Amended by No 1 of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>178</sup> Inserted by No 1 of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>179</sup> Amended by No 1 of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>180</sup> Amended by No 1 of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>181</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>182</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>3</sup> The Federal Council shall regulate the details.

**Art. 60**<sup>183</sup> Administrative penalties

<sup>1</sup> If an enterprise infringes the applicable law, the licence or a decision having force of law, it may be required to pay an amount up to 10 percent of the amount of its average turnover in Switzerland in the last three financial years.

<sup>2</sup> Cases of failure to comply shall be investigated by OFCOM. It shall judge the cases which do not lie within the competency of ComCom in accordance with Article 58 paragraph 4.

<sup>3</sup> When assessing the penalty, the competent authority shall take account in particular of the gravity of the infringement and the enterprise's financial situation.

**Art. 61**<sup>184</sup>

## **Chapter 12 Final Provisions**

### **Section 1 Implementation and Repeal of existing Legislation**

**Art. 62** Implementation

<sup>1</sup> The Federal Council shall implement this Act. The responsibility of ComCom is reserved.

<sup>2</sup> The Federal Council may delegate to OFCOM the duty of adopting the necessary administrative and technical regulations.

**Art. 63**<sup>185</sup>

**Art. 64** International cooperation and agreements<sup>186</sup>

<sup>1</sup> The Federal Council shall have authority to conclude international agreements on matters falling within the ambit of this Act.

<sup>2</sup> It may delegate that authority to OFCOM in the case of international agreements relating to technical or administrative matters.

<sup>3</sup> ComCom shall carry out the tasks within the scope of its responsibilities at an international level and shall represent Switzerland in the related international organisations.<sup>187</sup>

<sup>183</sup> Amended by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>184</sup> Repealed by Annex No 86 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

<sup>185</sup> Repealed by Annex No 86 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

<sup>186</sup> Amended by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>4</sup> OFCOM shall represent Switzerland's interests in international forums and organisations, in particular in relation to internet governance.<sup>188</sup>

<sup>5</sup> In order to strengthen the representation of Swiss interests, OFCOM may on request grant organisations in its areas of responsibility financial assistance that is not granted under international agreements in accordance with paragraphs 1 and 2.<sup>189</sup>

<sup>6</sup> The amount of financial assistance is determined by the importance of the organisation, project or measure to the representation of Swiss interests and by the other funding options available to the recipient. The financial assistance may not exceed 66 per cent of the total cost of the service funded.<sup>190</sup>

**Art. 65** Repeal of existing legislation

The Federal Telecommunications Act of 21 June 1991<sup>191</sup> is repealed.

**Section 2 Transitional Provisions**

**Art. 66–68**<sup>192</sup>

**Art. 68a**<sup>193</sup> Transitional provisions concerning the Amendment of 24 March 2006

<sup>1</sup> The services provided on the commencement of the Amendment of 24 March 2006 as part of a telecommunications services licence are deemed to have been notified as defined in Article 4 paragraph 1. The radiocommunications licences which are included in the rescinded telecommunications services licences remain valid and acquire the terms and conditions associated therewith.

<sup>2</sup> The existing conditions for the universal service licence under the old law shall apply until the expiry of its term.

<sup>187</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>188</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>189</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>190</sup> Inserted by No I of the FA of 22 March 2019, in force since 1 Jan. 2021 (AS 2020 6159; BBl 2017 6559).

<sup>191</sup> [AS 1992 581, 1993 901 Annex No 18]

<sup>192</sup> Repealed by No II 31 of the FA of 20 March 2008 on the Formal Revision of Federal Legislation, with effect from 1 Aug. 2008, with effect from 1 Aug. 2008 (AS 2008 3437; BBl 2007 6121).

<sup>193</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).



**Art. 69**<sup>194</sup>

### **Section 3 Referendum and Commencement**

**Art. 70**

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

<sup>3</sup> ...<sup>195</sup>

Commencement date:<sup>196</sup>

Art. 56, 57, 64, 67, 68 on 20 October 1997  
all other provisions on 1 January 1998

<sup>194</sup> Repealed by No II 31 of the FA of 20 March 2008, with effect from 1 Aug. 2008 (AS **2008** 3437; BBl **2007** 6121).

<sup>195</sup> Repealed by No II 31 of the FA of 20 March 2008 on the Formal Revision of Federal Legislation, with effect from 1 Aug. 2008 (AS **2008** 3437; BBl **2007** 6121).

<sup>196</sup> FCD of 6 Oct. 1997.

*Annex*

## **Amendment of existing Legislation**

...<sup>197</sup>

<sup>197</sup> The amendments may be consulted under AS **1997** 2187.