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## **Telecommunications Act (TCA)**

of 30 April 1997 (Status as of 1 March 2018)

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*The Federal Assembly of the Swiss Confederation,  
based on Article 36 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.

AS 1997 2187

<sup>1</sup> [BS 1 3]. Art. 92 of the Constitution of 18 Apr. 1999 corresponds today to the cited provision (SR 101).

<sup>2</sup> Amended by Annex No 5 of the FA of 6 Oct. 2000 on the Surveillance of Post and Telecommunications, in force since 1 Jan. 2002 (AS 2001 3096; BBl 1998 4241).  
<sup>3</sup> BBl 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; BBl 2003 7951).

**Art. 2<sup>5</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>6</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;
- 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>.<sup>7</sup> *fully unbundled access to the local loop* means provision of access to the local loop for another telecommunications service provider for utilisation of the entire frequency spectrum of the twisted pair metallic line;
- d<sup>ter</sup>.<sup>8</sup> *fast bitstream access* means establishment of a high-speed connection to the subscriber from the exchange to the building connection on the twisted pair metallic line by a telecommunications service provider and making this connection available to another provider for the provision of broadband services;
- e.<sup>9</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;
- e<sup>bis</sup>.<sup>10</sup> *leased lines* means provision of transparent transmission capacities via point-to-point connections;

<sup>5</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>6</sup> SR 784.40

<sup>7</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>8</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>9</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>10</sup> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

- eter.<sup>11</sup> *cable ducts* means underground pipes in which lines for transmission of information by telecommunications techniques are conveyed, including the access shafts;
- f. *addressing resources* means communication parameters and numbering elements such as code numbers, subscribers' telephone numbers and short numbers;
- g. *communication parameters* means elements 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;
- h.<sup>12</sup> *radio and television programme service* means sequence of programmes as defined in Article 2 RTVA<sup>13</sup>.

## Chapter 2 Telecommunications Services

### Section 1 Common Provisions

#### Art. 4<sup>14</sup> Notification requirement

<sup>1</sup> Any person providing a telecommunications service must notify the Federal Office of Communications (the Office) of this. The Office registers telecommunications service providers who have notified.

<sup>2</sup> The Federal Council may provide for exceptions, in particular for telecommunications services of limited economic and technical significance.

<sup>3</sup> It shall regulate the notification procedure as well as the regular updating of the list of telecommunications service providers.

#### Art. 5<sup>15</sup> Undertakings under foreign law

In the absence of any international obligations to the contrary, the Federal Communications Commission (the Commission) may prohibit undertakings incorporated under foreign law from providing telecommunications services in Switzerland unless reciprocal rights are granted.

<sup>11</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>12</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>13</sup> SR 784.40

<sup>14</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>15</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. 6<sup>16</sup>** Requirements for telecommunications service providers

Any person providing a telecommunications service must:

- a. have the necessary technical capacities;
- b. comply with the applicable legislation, in particular this Act, the RTVA<sup>17</sup> and the relevant implementation provisions;
- c. comply with employment legislation and guarantee the working conditions that are customary in the sector;
- d. offer an appropriate number of apprenticeships.

**Art. 6a<sup>18</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>19</sup> on the Surveillance of Postal and Telecommunications Traffic.

**Art. 7–10<sup>20</sup>****Art. 11<sup>21</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 their services:

- a. fully unbundled access to the local loop;
- b. fast bitstream access for four years;
- c. rebilling for fixed network local loops;

<sup>16</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; BBI 2003 1569).

<sup>17</sup> SR 784.40

<sup>18</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; BBI 2013 2683).

<sup>19</sup> SR 780.1

<sup>20</sup> Repealed by No I of the FA of 24 March 2006, with effect from 1 Apr. 2007 (AS 2007 921; BBI 2003 7951).

<sup>21</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; BBI 2003 1569).

- 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>4</sup> Providers of telecommunications services shall provide the Office with a copy of their access agreement. Unless there is some overriding public or private interest not to do so, the Office 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>22</sup>** Disputes regarding access

<sup>1</sup> If providers of telecommunications services do not agree within three months on the access conditions, the Commission shall decide at the request of one party and based on the proposal made by the Office. 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, the Office shall consult the Competition Commission. The latter may publish its position.

<sup>3</sup> The Commission 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>23</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>24</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>22</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>23</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>24</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>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.

**Art. 12a<sup>25</sup>** Information on telecommunications services

<sup>1</sup> The Federal Council requires providers of telecommunications services to guarantee the transparency of prices for subscribers.

<sup>2</sup> It may require providers of telecommunications services to publish information concerning the quality of the telecommunications services provided by them. It shall regulate the form and content of the publication.

<sup>3</sup> The Office may promote the provision of information about telecommunications services.

**Art. 12b<sup>26</sup>** Value-added services

<sup>1</sup> The Federal Council shall regulate value-added services in order to prevent their misuse. In particular, it shall fix upper price limits, issue regulations for the indication of prices and prescribe a registered office or branch office in Switzerland, taking international obligations into account.

<sup>2</sup> Charges for value-added services above a defined threshold amount may be imposed only with the express consent of users. The Federal Council shall set this amount and issue regulations according to which value-added services which are billed by providers of telecommunications services along with other services can be identified as such on the basis of the numbers.

**Art. 12c<sup>27</sup>** Dispute resolution

<sup>1</sup> The Office 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.

<sup>25</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>26</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>27</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

**Art. 12<sup>d28</sup>** Directories

<sup>1</sup> Directories of telecommunications services customers may be published. Customers are free to allow themselves to be entered in these directories.

<sup>2</sup> The Federal Council shall define the minimum content of an entry.

**Art. 13<sup>29</sup>** Provision of information by the Office

<sup>1</sup> Unless there is an overriding public or private interest in not doing so, the Office 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>a30</sup>** Processing of data

<sup>1</sup> The Commission and the Office 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.

**Art. 13<sup>b31</sup>** Administrative assistance

<sup>1</sup> The Commission and the Office 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>28</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>29</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>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> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS 2007 921; BBl 2003 7951).

<sup>2</sup> Subject to international agreements to the contrary, the Commission and the Office 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 the Commission or the Office or on the basis of a general authorisation in a treaty.

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

<sup>4</sup> Swiss authorities shall forward to the Commission and the Office 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>32</sup>**

### **Art. 14<sup>33</sup>** The licence

<sup>1</sup> The Commission 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-discrimination and transparency. The Federal Council regulates the details.

<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, the Commission 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.

<sup>32</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>33</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. 15** Conditions for granting the licence

Any person wishing to obtain a universal service licence must:

- a. have the necessary technical capacities;
- b.<sup>34</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>35</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>36</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>37</sup>

- a.<sup>38</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;
- d.<sup>39</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>40</sup> ...<sup>41</sup>

<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).

<sup>35</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>36</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>37</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>38</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>39</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>40</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>41</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>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>42</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 (the Department).

<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.

#### **Art. 18**<sup>43</sup>

#### **Art. 19**<sup>44</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 the Office each year.

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

<sup>42</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>43</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>44</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. 19a**<sup>45</sup> Transfer and amendment of the licence

The transfer and amendment of the universal service licence are subject to Articles 24*d* and 24*e*.

**Art. 19b**<sup>46</sup> Publication by the Office

Unless there is some overriding public or private interest not to do so, the Office 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>47</sup>**Art. 20**<sup>48</sup> Access to emergency calls

Providers of services of the universal service must implement access to emergency call services so that callers can be located.

**Art. 21**<sup>49</sup> Provision of directory data

<sup>1</sup> Providers of services of the universal service shall maintain a directory of their customers.

<sup>2</sup> They shall allow other providers of telecommunications services, or of services which are based on directory data, access to the minimum content in accordance with Article 12*d* paragraph 2; they shall allow electronic access even if they have not themselves published the said directories.

<sup>3</sup> Access shall be provided in accordance with international standards and in a transparent and non-discriminatory manner at cost-oriented prices. Articles 11*a* and 11*b* apply for the resolution of disputes.

**Art. 21a**<sup>50</sup> Interoperability

<sup>1</sup> Providers of services of the universal service must ensure the capability of communication between all users of these services (interoperability).

<sup>45</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>46</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>47</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>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> Inserted by No I of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS **2007** 921; BBl **2003** 7951).

<sup>2</sup> The Federal Council may extend this obligation to other telecommunications services which are publicly accessible and satisfy a widespread need. It may prescribe interfaces for access to the service in accordance with international standards. The Office issues the necessary technical and administrative regulations.

<sup>3</sup> Providers obliged to provide interoperability must offer interconnection even if they are not dominant in the market. Articles 11 paragraph 4, 11a paragraphs 1 and 3 and 11b apply to agreements and decisions regarding interconnection. The Federal Council may impose further obligations on providers who are obliged to provide interoperability.

**Art. 21b<sup>51</sup>** Leased lines

The Commission may oblige providers of telecommunications services to offer leased lines in certain areas in accordance with international standards at cost-oriented prices. It shall publish its decisions.

### Chapter 3 Radiocommunications

**Art. 22** Licence requirement

<sup>1</sup> Any person wishing to use the radiocommunications frequency spectrum must obtain a licence.

<sup>2</sup> The armed forces and civil defence do not require a licence in order to use the frequencies allocated to them in the course of their duties.

<sup>3</sup> The Federal Council may provide for other exceptions if the technical means employed to use the frequencies are of limited importance.

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

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

- a. have the necessary technical capacities;
- b.<sup>52</sup> undertake to comply with the applicable legislation, in particular this Act, the RTVA<sup>53</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>3</sup> A licence shall be granted only if, having regard to the national frequency allocation plan, enough frequencies are available.

<sup>51</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>52</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>53</sup> SR 784.40

<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. In cases of doubt, the licensing authority shall consult the Competition Commission.

#### **Art. 24** Granting of the licence

<sup>1</sup> A radiocommunications licence shall, as a rule, be granted on the basis of a public invitation to tender if it is intended to provide telecommunications services using the requested frequencies and there are not enough frequencies available to meet all applicants' present and future needs.

<sup>1bis</sup> The Federal Council shall define the principles governing the granting of radiocommunications licences which are entirely or partially intended for the broadcasting of radio and television programme services.<sup>54</sup>

<sup>2</sup> The Federal Council shall regulate the procedure. It shall be conducted in accordance with the principles of objectivity, non-discrimination and transparency and guarantee the confidential character of all information provided by applicants.<sup>55</sup>

<sup>3</sup> For the first-instance procedure concerning the public invitation to tender and for the appeals procedure, in particular with regard to evaluation of the entries 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>56</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. opening and justification of decisions (Art. 34 and 35 APA).<sup>57</sup>

<sup>4</sup> In the procedure concerning the public invitation to tender, interim decisions are not in themselves contestable by means of appeal.<sup>58</sup>

#### **Art. 24a**<sup>59</sup> Licensing authority

<sup>1</sup> The Commission is the licensing authority.

<sup>2</sup> It may transfer individual tasks to the Office.

<sup>54</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>55</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>56</sup> SR **172.021**

<sup>57</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>58</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>59</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. 24b**<sup>60</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.

**Art. 24c**<sup>61</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>62</sup> Transfer of the licence

<sup>1</sup> The licence may be transferred in part or as a whole to a third party only with the consent of the licensing authority. This also applies to the economic transfer of the licence.

<sup>2</sup> An economic transfer of the licence occurs when a company has obtained control of the licensee in accordance with the law on cartels.

**Art. 24e**<sup>63</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>64</sup> Provision of information by the Office

<sup>1</sup> Provided there are no overriding public or private interests, the Office shall provide the name and address of the licensee, and information on the subject of the licence, the rights and obligations attached to the licence, the frequency assignments and the transmitter locations.

<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> The Office shall manage the frequency spectrum and the Swiss utilisation rights and orbital positions of satellites in accordance with the relevant international

<sup>60</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>61</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>62</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>63</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>64</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS **2007** 921; BBl **2003** 7951).

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>2</sup> The national frequency allocation plan is subject to the approval of the Federal Council.<sup>65</sup>

**Art. 26**            Technical monitoring

<sup>1</sup> The Office 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> The Office 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.

**Art. 27<sup>66</sup>**        Processing of data and administrative assistance

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

## **Chapter 4    Addressing Resources**

**Art. 28**            Management and assignment

<sup>1</sup> The Office shall manage the addressing resources in accordance with international standards. It shall take appropriate measures to ensure a sufficient supply of numbering elements and communication parameters. It may allow the holders of basic resources to assign subordinate addressing resources.

<sup>2</sup> In special cases, the Office may delegate its responsibility for the management and assignment of certain addressing resources to third parties. The Federal Council shall fix the detailed rules for implementation, in particular the arrangements for surveillance by the Office.

<sup>65</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>66</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>2bis</sup> The Federal Council 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 onus of proof. The right of holders of addressing resources and third parties to bring civil actions is reserved.<sup>67</sup>

<sup>3</sup> The Commission shall approve national numbering plans.

<sup>4</sup> Providers of telecommunications services shall ensure number portability and freedom of choice of service provider in the matter of national and international connections. The Commission shall fix the detailed rules for implementation in the light of technical developments and international harmonisation.

#### **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**           Compensation

The partial or complete modification by the authorities of numbering plans or regulations for the management of communication parameters shall not constitute grounds for any claim for compensation.

### **Chapter 5   Telecommunications Installations**

#### **Art. 31<sup>68</sup>**       Offering, making available on the market<sup>69</sup> and putting into service

<sup>1</sup> The Federal Council may adopt technical regulations on the 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>70</sup> on Technical Barriers to Trade).

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

<sup>67</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>68</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>69</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>70</sup> SR **946.51**



- a. designate technical standards, compliance with which shall be deemed to constitute fulfilment of the basic requirements; or
- b. declare technical standards or other rules binding.

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

<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 the Office has not concretised them in accordance with paragraph 2, the person offering, making available on the market<sup>71</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 the Office or, in the absence of such specifications, the national standards shall apply.

<sup>5</sup> If it is necessary for technical telecommunications security reasons, the Office 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>72</sup>

#### **Art. 32a**<sup>73</sup> Telecommunications installations to guarantee public safety

The Federal Council shall regulate the 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>74</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>71</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>72</sup> Second clause 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>73</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>74</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>2</sup> Article 32a is reserved.

### **Art. 33**            Surveillance

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

<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, the Office shall take the necessary measures. It may, in particular, restrict or prohibit the installation, operation, 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.

### **Art. 34**            Interference

<sup>1</sup> If a telecommunications installation causes interference to telecommunications or broadcasting, the Office 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 offering, making available on the market, putting into service, installation and operation applicable to it.

<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>75</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;
- b. the Federal Intelligence Service, in order to guarantee the protection and security of its employees, information and installations.<sup>76</sup>

<sup>1quater</sup> If lawful interference disproportionately disrupts other public or third-party interests, paragraph 1 applies.<sup>77</sup>

<sup>75</sup> Inserted by No I of the FA of 24 March 2006 (AS **2007** 921; BBI **2003** 7951). Amended by Annex No 2 of the FA of 12 June 2009, in force since 1 July 2010 (AS **2010** 2617; BBI **2008** 7275)

<sup>76</sup> Inserted by No I of the FA of 24 March 2006 (AS **2007** 921; BBI **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; BBI **2014** 2105).

<sup>77</sup> Inserted by Annex No II 13 des Intelligence Service Act of 25 Sept. 2015, in force since 1 Sept. 2017 (AS **2017** 4095; BBI **2014** 2105).

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

**Art. 34a**<sup>78</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>79</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>80</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>81</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.

**Art. 35a**<sup>82</sup> Other connections

<sup>1</sup> The owner shall tolerate, in addition to the connection as defined in Article 16, other connections if the latter are required by a tenant prepared to bear the costs thereof.

<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>78</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>79</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>80</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>81</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>82</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>4</sup> The telecommunications service provider or the lessor may place under seal and verify unused connections.

**Art. 36** Right of expropriation and joint use

<sup>1</sup> If the establishment of a telecommunications installation is in the public interest, the Department may grant the right to expropriate. The procedure shall be conducted in accordance with the Federal Act of 20 June 1930<sup>83</sup> on Expropriation.

<sup>2</sup> The Office 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>84</sup>

<sup>3</sup> Under the same conditions, the Office may require providers of telecommunications services to co-install and co-use telecommunications installations and other installations, such as cable ducts and transmitter locations.<sup>85</sup>

**Art. 37**<sup>86</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.

## Chapter 6 Fees

**Art. 38**<sup>87</sup> Fee for financing the universal service

<sup>1</sup> The Office 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>83</sup> SR 711

<sup>84</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>85</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>86</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>87</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>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>88</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>89,90</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>91</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 inadequately covered by wireless terrestrial services, the Federal Council may reduce the licence fee for broadcasting radio and television programme services.<sup>92</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:

<sup>88</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>89</sup> SR **784.40**

<sup>90</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>91</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>92</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).

- 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. diplomatic representations, permanent missions, consular posts and inter-governmental organisations;
- d. private bodies, provided they perform duties of public interest on behalf of the Confederation, cantons or communes.

**Art. 40<sup>93</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. the registration and surveillance of providers of telecommunications services;
- b. the decisions concerning access, provision of directory data, interoperability, leased lines and the joint use of installations;
- c. the resolution of disputes between customers and providers of telecommunications services or value-added services;
- d. the granting, surveillance, amendment and cancellation of universal service licences and radiocommunications licences;
- 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>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 the Office for approval, in particular if no competition exists for these services.

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

<sup>93</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).

**Art. 41** Fixing and collection of fees<sup>94</sup>

<sup>1</sup> 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.<sup>95</sup>

<sup>2</sup> The Department shall fix the amount of the administrative charges. The task of fixing the amount of fees of limited scope may be delegated to the Office.

**Art. 42** Guarantees

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

**Chapter 7****Telecommunications Confidentiality and Data Protection<sup>96</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>97</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>98</sup>

<sup>94</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>95</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>96</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>97</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>98</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. 45a<sup>99</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>100</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>101</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.

**Art. 45c<sup>102</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.

**Chapter 8 Vital National Interests****Art. 47** Services in extraordinary circumstances

<sup>1</sup> The Federal Council shall decide the services that providers of telecommunications services must provide in extraordinary circumstances, in particular to meet the communication requirements of the armed forces, civil defence, the police, the rescue services and the civilian authorities. It shall regulate the compensation, having due regard to the interests of the provider.

<sup>99</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS **2007** 921; BBI **2003** 7951).

<sup>100</sup> SR **241**

<sup>101</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS **2007** 921; BBI **2003** 7951).

<sup>102</sup> Inserted by No 1 of the FA of 24 March 2006, in force since 1 Apr. 2007 (AS **2007** 921; BBI **2003** 7951).



<sup>2</sup> The Federal Council may oblige the necessary staff to serve should the extraordinary circumstances require it. In the case of telecommunications installations, the provisions on requisition are reserved.

<sup>3</sup> The provisions on the General's powers, under Article 91 of the Federal Act of 3 February 1995<sup>103</sup> on the Armed Forces and Military Administration, 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 these tasks, having due regard to the interests of the persons required to perform them.

<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>104</sup>      Security and availability

The Federal Council may issue technical and administrative regulations for the security and availability of telecommunications infrastructures and services.

## **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<sup>105</sup> if he:

- 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>106</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

<sup>103</sup> SR **510.10**

<sup>104</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>105</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>106</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).

parties without permission shall be liable to a custodial sentence not exceeding one year or to a monetary penalty.<sup>107</sup>

**Art. 51**<sup>108</sup>

**Art. 52** Contraventions

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

- a.<sup>109</sup> violates the notification requirement in accordance with Article 4;
- b. uses the frequency spectrum without a licence or contrary to the licence conditions;
- c.<sup>110</sup> puts addressing resources not assigned to him into service;
- d. 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>111</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>112</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.

<sup>107</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>108</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>109</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>110</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>111</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>112</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).

**Art. 54** Other criminal provisions

Articles 14 to 18 of the Federal Act of 22 March 1974<sup>113</sup> on Administrative Criminal Law apply.

**Art. 55** Jurisdiction

<sup>1</sup> Offences within the meaning of Articles 52 to 54 shall be prosecuted and adjudicated by the Department in accordance with the provisions of the Federal Act of 22 March 1974<sup>114</sup> on Administrative Criminal Law.

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

**Chapter 10 Communications Commission****Art. 56** Communications Commission

<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> The Commission shall not be required to follow instructions from the Federal Council or the Department when taking its decisions. It shall be independent of the administrative authorities. It shall have its own secretariat.

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

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

**Art. 57** Duties of the Commission

<sup>1</sup> The Commission 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, the Commission may seek the assistance of the Office and give it instructions.

<sup>113</sup> SR 313.0

<sup>114</sup> SR 313.0

## Chapter 11 Surveillance and Legal Remedies

### Art. 58<sup>115</sup> Surveillance

<sup>1</sup> The Office 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 the Office detects an infringement of the law, it may:

- 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 the Office 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.

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

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

<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 this Act.<sup>116</sup>

<sup>2</sup> Providers of telecommunications services subject to notification requirements in accordance with Article 4 must provide the Office regularly with the necessary information to produce official telecommunications statistics.<sup>117</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

<sup>115</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>116</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>117</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. this serves as a basis for necessary regulatory decisions.<sup>118</sup>

<sup>2ter</sup> The Office may publish market shares.<sup>119</sup>

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

#### **Art. 60**<sup>120</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 the Office. It shall judge the cases which do not lie within the competency of the Commission 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>121</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 the Commission is reserved.

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

#### **Art. 63**<sup>122</sup>

#### **Art. 64** International agreements

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

<sup>118</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>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> 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>122</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>2</sup> It may delegate that authority to the Office in the case of international agreements relating to technical or administrative matters.

**Art. 65** Repeal of existing legislation

The Federal Telecommunications Act of 21 June 1991<sup>123</sup> is repealed.

**Section 2 Transitional Provisions**

**Art. 66-68**<sup>124</sup>

**Art. 68a**<sup>125</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.

**Art. 69**<sup>126</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>127</sup>

<sup>123</sup> [AS 1992 581, 1993 901 Annex No 18]

<sup>124</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>125</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>126</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>127</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).

Commencement date:<sup>128</sup>  
Art. 56, 57, 64, 67, 68 on 20 October 1997  
all other provisions on 1 January 1998

<sup>128</sup> FCD of 6 Oct. 1997 (AS 1997 2205).

*Annex*

## **Amendment of existing Legislation**

...<sup>129</sup>

<sup>129</sup> The amendments may be consulted under AS **1997** 2187.



