

Notice

*This English translation has no official character. The only authentic texts are the German, French and Italian versions published in the Official Compendium of Federal Law (RO).*

*The present text includes the amendments made by the Federal Chambers on 24 March 2006 as part of the amendment of the Telecommunications Law and the adoption of the new Law on Radio and Television. The amended provisions are underlined.*

# Telecommunications Law

of 30 April 1997 (status on April 1, 2007)

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*The Federal Assembly of the Swiss Confederation,*

Having regard to Article 36 of the Constitution<sup>1</sup>,

Having regard to the Federal Council's message of 10 June 1996<sup>2</sup>,

*Hereby adopts the following law:*

## Chapter 1: General provisions

### Art. 1 Aim

<sup>1</sup>The aim of this Law 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. protect users of telecommunications services from unfair mass advertising and from abuse associated with value-added services.

### Art. 2 Subject

This Law shall regulate the transmission of information by means of telecommunications techniques, including the transmission of radio and television programme services, in so far as the federal law of 24 March 2006 on radio and television (LRTV)<sup>3</sup> does not provide otherwise.

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<sup>1</sup> Art. 92 of the Swiss Federal Constitution of April, 18, 1999, corresponds to this rule.

<sup>2</sup> Federal Bulletin 1996 III 1405

<sup>3</sup> RS 784.40

## Art. 3 Definitions

For the purposes of this Law:

- a. *information* shall mean signs, signals, characters, images, sounds and any other form of representation addressed to human or other living beings or to machines;
- b. *telecommunications service* shall mean the transmission of information for third parties by means of telecommunications techniques;
- c. *transmission by means of telecommunications techniques* shall mean the sending or receiving of information, by wire, cable or radio, by means of electrical, magnetic or optical signals or other electromagnetic signals;
- d. *telecommunications installations* shall mean apparatus, lines or equipment intended for the transmission of information by means of telecommunications techniques or used for that purpose;
- d<sup>bis</sup>. *fully unbundled access to the local loop* shall mean provision of access to the local loop for another telecommunication services provider for utilisation of the entire frequency spectrum of the twisted pair metallic line;
- d<sup>ter</sup>. *fast bitstream access* shall mean the establishment of a high-speed connection to the subscriber from the exchange to the domestic connection on the twisted pair metallic line by a telecommunication services provider and cession of this connection to another provider for the provision of broadband services;
- e. *interconnection* shall mean the establishment of access by the connection of the installations and services of two telecommunication services providers, enabling them to operate together in accordance with logical systems and telecommunications techniques and allowing access to the services of third parties;
- e<sup>bis</sup>. *leased lines* shall mean the provision of transparent transmission capacities via point-to-point connections;
- e<sup>ter</sup>. *cable ducts* shall mean underground pipes in which lines for transmission of information by telecommunications techniques are conveyed, including the access shafts;
- f. *addressing resources* shall mean communication parameters and numbering elements such as code numbers, subscribers' telephone numbers and abbreviated numbers;
- g. *communication parameters* shall mean 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. *radio and television programme service*: a series of programmes under the terms of art. 2 LRTV<sup>4</sup>.

## Chapter 2: Telecommunications services

### Section 1: Common provisions

#### Art. 4 Notification requirements

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

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

<sup>3</sup> It shall regulate the notification procedure as well as the regular updating of the list of telecommunication

<sup>4</sup> RS 784.40

services providers.

**Art. 5**            Undertakings under foreign law

In so far as no international obligations oppose this, the Federal Communications Commission (the Commission) may forbid undertakings incorporated under foreign law from providing telecommunications services in Switzerland unless reciprocal rights are granted.

**Art. 6**            Requirements of telecommunication services providers

Anyone providing a telecommunications service must:

- a. have the necessary technical capacities;
- b. comply with the applicable legislation, in particular this Law, the Law of 24 March 2006 on radio and television<sup>5</sup> and the relevant implementing provisions;
- c. comply with the industrial law and the provisions on working conditions applicable in the sector;
- d. offer an appropriate number of apprenticeships.

**Art. 7-10**<sup>6</sup>

**Art. 11**            Granting of access by market-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-based 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. charging for fixed network local loops;
- d. interconnection;
- e. leased lines;
- f. access to cable ducts, in so far as 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 shall regulate the detailed rules for implementation.

<sup>4</sup> Providers of telecommunications services shall provide the Office with a copy of their agreement regarding access. Unless there is some overriding public or private reason 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 transmission of radio and television programme services.

**Art. 11a**            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 on application 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 arrangements. It may accord interim legal protection.

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<sup>5</sup> RS 784.40

<sup>6</sup> Rescinded

<sup>2</sup> If the question of dominance in the market has to be assessed, the Office shall consult the Competition Commission. The latter may publish its comments.

<sup>3</sup> The Commission shall decide within seven months of receipt of the application.

<sup>4</sup> It shall regulate the type and form of billing and financial information which market-dominant providers of telecommunications services must submit in the procedure according to para. 1.

**Art. 11b** 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** Bundling of services

<sup>1</sup> Market-dominant providers of telecommunications services may bundle their services, in so far as they also offer individually the services included in the bundle.

<sup>2</sup> Services need not be offered individually if they can only be offered in the bundle because of 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 it controls or which is controlled by it, paragraphs 1 and 2 shall apply.

**Art. 12a** Information regarding 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** Added-value services

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

<sup>2</sup> Charges for added-value services above a defined threshold amount may be imposed only with the explicit consent of users. The Federal Council shall set this amount and issue regulations according to which added-value 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** Dispute resolution

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

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

<sup>3</sup> The parties are not bound by the agency's decision.

<sup>4</sup> The Federal Council shall regulate the detailed rules for implementation.

**Art. 12d**      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**      Disclosure of information by the Office

<sup>1</sup> Unless there is some overriding public or private reason not to do so, the Office shall give on request information concerning the name and address of the provider of telecommunications services or added-value services, the services provided by it and administrative or criminal prosecutions and penalties.

<sup>2</sup> It may publish that information and make it accessible online if it is of public interest.

<sup>3</sup> Only in the case of overriding public or private interest can it give information concerning current administrative or criminal prosecutions, publish that information or make it accessible online.

**Art. 13a**      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 personal profiles, in so far as 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, 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 and archiving and destruction of data.

**Art. 13b**      Official assistance

<sup>1</sup> The Commission and the Office shall transmit to other Swiss authorities data which these authorities need in order to fulfil their legal duties. These data also include sensitive data and personal profiles obtained in administrative or administrative penalty procedures. The data are made accessible individually, on lists or on electronic media.

<sup>2</sup> Subject to international agreements to the contrary, the Commission and the Office may only transfer data to foreign supervisory authorities in the telecommunications sector, including sensitive data and personal profiles obtained in administrative or administrative penalty procedures, if these authorities:

- a. use such data exclusively to exercise supervision over telecommunications services or for purposes of market surveillance;
- b. are bound by official or professional secrecy; and
- c. forward these data to competent authorities and bodies which are entrusted with supervisory 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 an inter-state agreement.

<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 data and personal profiles. The data are made accessible individually, on lists or on electronic media.

## **Section 2: Universal service licence**

### **Art. 14**      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 periodically awards one or more universal service licences.

<sup>2</sup> The licence is associated with the condition to provide all or specific services of the universal service (art. 16) to all sectors of the population within the area covered by the licence.

<sup>3</sup> An invitation to tender is issued for the award of the licence. The procedure shall be conducted in accordance with the principles of objectivity, non-discrimination and transparency. The Federal Council shall regulate the detailed rules for implementation.

<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 appropriate candidatures, 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.

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

Anyone wishing to obtain a licence to provide a universal service must:

- a. have the necessary technical capacities;
- b. 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, within the meaning of Article 19, will be required;
- c. undertake to comply with the applicable legislation, in particular this Law and its implementing provisions, and the licence conditions;
- d. undertake to comply with the provisions of industrial law and the provisions on working conditions applicable in the sector.

### **Art. 16**      Scope of the universal service

<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:

- a. 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. access to the Swiss directories of subscribers to the public telephone service; the Federal Council may require a holder of the universal service licence to maintain a directory of all customers of services forming part of the universal service (general directory);
- e. ...<sup>7</sup>

<sup>1bis</sup> Services forming part of the universal service must be ensured nationally in such a way that disabled people 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 hearing and visually impaired and those with reduced mobility;
- b. a switching and transcription service is provided for the hearing impaired;
- c. an information and switching service is provided for the visually impaired.

<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 connection to the Federal Department of Transport, Communications and Energy (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 forming part of the universal service must be available throughout the country and must be of a certain quality. The Federal Council shall decide the quality criteria.

<sup>2</sup> The Federal Council shall endeavour to ensure that charges do not depend upon distance. It shall periodically fix upper limits for the prices 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>8</sup>

##### **Art. 19**            Financial compensation

<sup>1</sup> If it is clear before the award of the licence that, even with cost-effective 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 licence-holder in receipt of financial compensation must present all the information required for cost evaluation and cost control, in particular the billing and finance information, to the Office each year.

<sup>3</sup> The Federal Council shall regulate the detailed rules for implementation.

##### **Art. 19a**            Transfer and amendment of the licence

Articles 24d and 24e shall apply to the transfer and amendment of the universal service licence.

##### **Art. 19b**            Publication by the Office

Unless there is some overriding public or private reason 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.

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<sup>7</sup> Rescinded

<sup>8</sup> Rescinded

### **Section 3: Obligations derived from the provision of specific services**

#### **Art. 20**      Access to emergency calls

Providers of telecommunications services forming part of the universal service must organise access to emergency call services so that calls can be traced.

#### **Art. 21**      Provision of directory data

<sup>1</sup> Providers of services forming part 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 12d para. 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-based prices. Articles 11a and 11b apply for the resolution of disputes.

#### **Art. 21a**      Interoperability

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

<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 para. 4, 11a paras 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**      Leased lines

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

### **Chapter 3: Radiocommunications**

#### **Art. 22**      Licence requirements

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

<sup>2</sup> The armed forces and civil defence shall not be required to have 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 scope.



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

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

- a. have the necessary technical capacities;
- b. undertake to comply with the applicable legislation, in particular this Law, the LRTV<sup>9</sup> and 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 plan for their allocation, 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. In case 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 an open invitation to tender if the frequencies used serve to provide telecommunications services 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 transmission of radio and television programme services.

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

<sup>3</sup> For the first-instance procedure concerning the public invitation to tender and for the complaints procedure, i.e. 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 law of 20 December 1968<sup>10</sup> concerning the administrative procedure (LAP):

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

<sup>4</sup> In the procedure concerning the public invitation to tender, interim decisions are not independently contestable by means of a complaint.

**Art. 24a**            Licensing authority

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

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<sup>9</sup> RS 784.40

<sup>10</sup> RS 172.021

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

**Art. 24b**      Special licensing regulations

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

**Art. 24c**      Term of the licence

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

**Art. 24d**      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 provisions of the law relating to cartels.

**Art. 24e**      Amendment and revocation of the licence

<sup>1</sup> The licensing authority may adapt the licence to changes in actual or legal conditions or revoke it 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**      Provision of information by the Office

<sup>1</sup> In so far as there are no overriding public or private interests, the Office shall provide information on the name and address of the licensee, the subject of the licence, the rights and obligations attached to the licence, the frequency allocations 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 satellite orbital positions 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 plan for the allocation of frequencies.

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

**Art. 26**      Technical supervision

<sup>1</sup> The Office shall monitor the frequency spectrum for the purposes of planning and supervising its use.

<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 Law, any recordings that may constitute evidence shall be passed to the competent authority. Any other recording must be destroyed immediately.

**Art. 27**            Data processing and official assistance

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

## **Chapter 4: Addressing resources**

**Art. 28**            Management and allocation

<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 allocate subordinate addressing resources.

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

<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 civil actions by holders of addressing resources and third parties is reserved.

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

<sup>4</sup> Providers of telecommunications services shall ensure that numbers are portable and that providers of services have freedom of choice 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 disclose information

Any holder of addressing resources shall be required to provide the competent authorities with the information they need to manage the addressing resources that have been allocated.

**Art. 30**            Compensation

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

## **Chapter 5: Telecommunications installations**

**Art. 31**            Offering, placing on the market and putting into service

<sup>1</sup> The Federal Council may adopt technical regulations on the offering, placing on the market and putting into service of telecommunications installations, in particular with respect to basic technical requirements with regard to telecommunications, evaluation of conformity, certification of conformity, declaration of conformity, characterisation, registration and obligation to provide proof (art. 3 of the Federal Law of 6 October 1995<sup>11</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 give effect to them:

- 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 given effect to them in accordance with paragraph 2, any person offering, placing on the market 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 authorised persons. It may regulate the detailed rules of such entrusting.

## **Art. 32**            Establishment and operation

A telecommunications installation may only be established and operated if it complied with the regulations in force when it was first placed on the market, put into service or established and if it has been kept in that state. The Federal Council may define exceptions.

### **Art. 32a**            Telecommunications installations to guarantee public safety

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

## **Art. 33**            Supervision

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

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

<sup>3</sup> If a telecommunications installation fails to comply with the regulations, the Office shall take the

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<sup>11</sup> RS 946.51

necessary measures. It may, in particular, restrict or prohibit the establishment, operation, offering and placing 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, placing on the market, establishment, putting into service and operation applicable to it.

<sup>1bis</sup> If several telecommunications installations of the same type interfere with telecommunications traffic or broadcasting, the Office may temporarily restrict or forbid the offering and putting into service of the type even if it complies with the regulations concerning offering and putting into service.

<sup>1ter</sup> The Federal Council shall regulate the conditions under which the police and the authorities responsible for the execution of sentences may in the interest of public safety establish, put into service or operate a telecommunications installation which causes interference. If lawful interference disproportionately disrupts other public or third-party interests, paragraph 1 shall apply.

<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** Processing of data and official assistance

Articles 13a and 13b concerning data processing and official 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) shall authorise 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>2</sup> Providers of telecommunications services shall take account of the use to which the property in question is put and shall bear the cost of restoring it to its original state. 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 fix the detailed rules for implementation, in particular the providers' duty of co-ordination and the conditions governing the relocation of lines and public pay telephones.

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

#### **Art. 35a** Other connections

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

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

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

a. the tenant or farmer directly forgoes use of a new connection;

b. the connection contract is cancelled; the telecommunication services provider or the lessor shall allow a reasonable cancellation period.

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

#### **Art. 36** Right of expropriation and co-utilisation

<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 Law on expropriation<sup>12</sup>.

<sup>2</sup> The Office may on application, for reasons of public interest, in particular to take account of technical problems or the needs of development or protection of the countryside, the national heritage, 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>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.

#### **Art. 37** 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 deliberately or through gross negligence damages a telecommunications services provider's line or cable duct on his property shall be liable for the damage.

## **Chapter 6: Fees**

#### **Art. 38** 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>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** Licence fees in respect of radiocommunications

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<sup>12</sup> RS 711

<sup>1</sup> The licensing authority shall charge a fee for radiocommunications licences. No fee shall be charged for radiocommunications licences intended for the transmission of radio or television programme services in accordance with the provisions of the LRTV <sup>13</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;
- d. the temporal scope.

<sup>3</sup> If a frequency may be used to transmit simultaneously radio or television programme services and other information, transmission is subject to a licence fee proportional to usage.

<sup>4</sup> If the radiocommunications licence is granted to the highest bidder, the licence fee shall correspond to the amount of the bid, less administrative expenses for the invitation to tender and the award 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, public bodies and establishments governed by public law of the Confederation, cantons and local communities, 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 intergovernmental organisations;
- d. private bodies, in so far as they perform duties of public interest on behalf of the Confederation, canton or local community.

#### **Art. 40**      Administrative charges

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

- a. the registration and supervision of providers of telecommunications services;
- b. the decisions concerning access, provision of directory data, interoperability, leased lines and the co-use of installations;
- c. the resolution of disputes between customers and providers of telecommunications services or added-value services;
- d. the award, supervision, amendment and cancellation of universal service licences and radiocommunication licences;
- e. the management and technical monitoring of the frequency spectrum and satellite orbital positions;
- f. the management, allocation and withdrawal of addressing resources;
- g. the registration and monitoring of telecommunications installations.

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

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<sup>13</sup> RS 784.40

<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.

**Art. 41** Fixing and collection of fees

<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 radiocommunication licences.

<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: Confidentiality with respect to telecommunications and data protection**

**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** Surveillance of telecommunications

The Federal Law of 6 October 2000<sup>14</sup> on the surveillance of postal and telecommunications services applies to the surveillance of telecommunications.

**Art. 45** Disclosure of information to subscribers

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

<sup>2</sup> Anyone requiring these 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.

**Art. 45a** Unfair mass advertising

<sup>1</sup> Providers of telecommunications services shall combat unfair mass advertising (art. 3 letter o of the Federal Law of 19 December 1986<sup>15</sup> against unfair competition).

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<sup>14</sup> RS 780.1

<sup>15</sup> RS 241



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

**Art. 45b**      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 them for other services if they have first obtained the consent of customers, or in anonymised form.

**Art. 45c**      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, the rerouting of calls, the use of data relating to telecommunications traffic and the security of telecommunications services with respect to interception and interference by unauthorised persons. In so doing, it shall take account of overriding public interests and the need to protect the privacy of telecommunications users.

## **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 indemnity payable, having due regard to any consequent advantage to the provider.

<sup>2</sup> The Federal Council may order the necessary staff to provide their services, 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 Law of 3 February 1995<sup>16</sup> on the armed forces, are reserved.

**Art. 48**      Restriction of telecommunications

<sup>1</sup> The Federal Council may order 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 any consequent advantage to 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.

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<sup>16</sup> RS 510.10

**Art. 48a**      Security and availability

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

## **Chapter 9: Penalties**

**Art. 49**      Falsification or suppression of information

<sup>1</sup> Anyone exercising an activity in connection with a telecommunications service shall be liable to imprisonment or a fine if he:

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

<sup>2</sup> Anyone who deceives a person exercising an activity in connection with a telecommunications service into falsifying or suppressing information shall be liable to imprisonment or a fine.

**Art. 50**      Misuse of information

Anyone 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 imprisonment for a maximum term of one year or to a fine.

**Art. 51**      Interference in telecommunications or broadcasting

Anyone who establishes or operates a telecommunications installation with the intention of interfering in telecommunications or broadcasting shall be liable to imprisonment for a maximum term of one year or to a fine.

**Art. 52**      Misdemeanours

<sup>1</sup> Anyone shall be liable to detention or a fine not exceeding 100 000 francs, if he:

- a.      violates the registration requirement in accordance with article 4;
- b.      uses the frequency spectrum without licence or contrary to the licence conditions;
- c.      puts addressing resources not allocated to him into service;
- d.      offers, places on the market or puts into service telecommunications installations that do not comply with the regulations in force;
- e.      establishes or operates telecommunications installations that do not comply with the regulations in force;
- f.      passes telecommunications installations to unauthorised persons.

<sup>2</sup> If the person concerned has acted in such a way out of negligence, the fine shall not exceed 50 000 francs.

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

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

**Art. 54** Other penalties

Articles 14 to 18 of the Federal Law on Administrative Penalty Rules<sup>17</sup> shall apply.

**Art. 55** Jurisdiction

<sup>1</sup> Offences within the meaning of Articles 52 to 54 shall be prosecuted and judged by the Department in accordance with the provisions of the Federal Law on Administrative Penalty Rules<sup>18</sup>.

<sup>2</sup> The Department may delegate to the Office the tasks of prosecution, judgment and enforcement, as well as the implementation of legal sanctions under the Federal Law on Administrative Penalty Rules.

## **Chapter 10: Communications Commission**

**Art. 56** Communications Commission

<sup>1</sup> The Federal Council shall appoint a Federal Communications Commission consisting of five to seven members and shall designate 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 fix the detailed rules for implementation.

**Art. 57** Duties of the Commission

<sup>1</sup> The Commission shall perform the duties and take the decisions for which it is responsible under the terms of this Law 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.

## **Chapter 11: Supervision and legal remedies**

**Art. 58** Supervision

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

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<sup>17</sup> RS 313.0

<sup>18</sup> RS 313.0

<sup>2</sup> If the Office finds an infringement of the laws in force, 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. impose charges on the licence;
- 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 at the request of 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 Law shall be required to provide the competent authority with the necessary information to implement this Law.

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

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

- a. a federal law 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>2ter</sup> The Office may publish market shares.

<sup>3</sup> The Federal Council shall fix the detailed rules for implementation.

#### **Art. 60**            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 last 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 according to article 58 paragraph 4.

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

#### **Art. 61**<sup>19</sup>

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<sup>19</sup> Rescinded

## **Chapter 12: Final provisions**

### **Section 1: Enforcement and repeal of the Law in force**

#### **Art. 62**            Enforcement

<sup>1</sup> The Federal Council shall be responsible for enforcing this Law. 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>20</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 Law.

<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 the Law in force

The Federal Telecommunications Law of 21 June 1991<sup>21</sup> shall be repealed.

### **Section 2: Transitional provisions**

#### **Art. 66**            Guarantees for the provision of the universal service

<sup>1</sup> The Federal telecommunications undertaking (Telecom PTT) shall be required to provide the universal service within the meaning of Article 16(1) over the whole national territory for five years from the entry into force of this Law. The licensing authority shall grant it a licence for that purpose. Telecom PTT may not claim contributions to investment within the meaning of Article 19 during that period.

<sup>2</sup> Telecom PTT shall be granted a radiocommunications licence to operate a national mobile telephone network, including the necessary radio links, for ten years from the entry into force of this Law.

<sup>3</sup> Telecom PTT shall be granted a radiocommunications licence to guarantee provision of the universal service for five years from the entry into force of this Law.

#### **Art. 67**            Continuation of the PTT undertaking's activities under the new Law

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<sup>20</sup> Rescinded

<sup>21</sup> RO 1992 581, 1993 901

<sup>1</sup> When this Law enters into force, the Federal Council shall decide which of the PTT undertaking's activities, in addition to those that are necessary to guarantee provision of the universal service, shall be subject to a licence requirement in accordance with Articles 4, 14 and 22. Telecom PTT shall be authorised to continue those activities until a licence is granted under the new Law but for no more than five years from the entry into force of this Law.

<sup>2</sup> Telecom PTT shall be granted a radiocommunications licence to operate two national radio paging networks and the Speedcom network for ten years from the entry into force of this Law, in accordance with the extent to which those networks are developed at that time.

<sup>3</sup> The PTT undertaking shall submit to the Office, no later than the date on which this Law enters into force, an overview of the activities that are subject to a licence requirement in accordance with Articles 4, 14 and 22.

<sup>4</sup> The PTT undertaking may not claim compensation in connection with this transitional provision.

#### **Art. 68** Licences and authorisations granted under the previous Law

<sup>1</sup> Licences and authorisations granted under the previous Law shall remain valid in accordance with the previous provisions until a licence is granted under the new Law but for no more than five years from the entry into force of this Law.

<sup>2</sup> The PTT undertaking shall submit to the Office, no later than the date on which this Law enters into force, an overview of the licences and authorisations it has granted.

<sup>3</sup> The Office shall if possible avoid costs in connection with modifying licences or authorisations issued under the old Law to bring them into line with the new Law. Should such costs nevertheless arise, they will be reimbursed unless the modification is necessary to protect important public interests.

#### **Art. 68a** Transitional provisions concerning the amendment of 24 March 2006

<sup>1</sup> The services provided on the entry into force 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 radiocommunication 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** Regulation of detailed rules for implementation

The Federal Council shall regulate the detailed rules for the implementation of the transitional provisions.

### **Section 3: Referendum and entry into force**

#### **Art. 70**

<sup>1</sup> This Law shall be subject to optional referendum.

<sup>2</sup> The Federal Council shall decide the date on which it is to enter into force.

<sup>3</sup> The amendment to Article 36(1)(b) of the Federal Law of 21 June 1991<sup>22</sup> on radio and television shall enter into force only if Switzerland participates in the MEDIA 95 programme.

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<sup>22</sup> RO 1992 601, 1993 3354, 1997 2187, 2000 1891, 2001 2790, 2002 1904