



SUPREME COURT OF CANADA

CITATION: Telus
Communications Inc. v.
Federation of Canadian
Municipalities, 2025 SCC 15

APPEAL HEARD: October 16, 2024
JUDGMENT RENDERED: April 25,
2025
DOCKET: 40776

BETWEEN:

**Telus Communications Inc., Quebecor Media Inc.,
Videotron Ltd. and Rogers Communications Canada Inc.**
Appellants

and

**Federation of Canadian Municipalities,
Bell Mobility Inc., Electricity Canada and
His Majesty The King in Right of the Province of British Columbia**
Respondents

- and -

**Attorney General of Quebec, Canadian Telecommunications Association,
Business Council of Canada and Canadian Chamber of Commerce**
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O'Bonsawin and Moreau JJ.

**REASONS FOR
JUDGMENT:** Moreau J. (Wagner C.J. and Karakatsanis, Rowe, Kasirer,
Jamal and O'Bonsawin JJ. concurring)
(paras. 1 to 87)

DISSENTING Côté J. (Martin J. concurring)

REASONS:
(paras. 88 to 173)

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Quebecor Media Inc.,
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2025 SCC 15

File No.: 40776.

2024: October 16; 2025: April 25.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O’Bonsawin and Moreau JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Communications law — Telecommunications — Access to transmission lines on public property — Installation of 5G small cell antennas — Access regime in federal telecommunications statute providing telecommunications carriers qualified right of access to transmission lines situated on public property subject to consent of relevant public authority — CRTC empowered under access regime to determine terms of access to transmission lines where carrier unable to obtain consent from public authority on terms acceptable to it — Whether term “transmission line” in access regime includes 5G small cell antennas — Whether CRTC has jurisdiction to regulate carriers’ access to public property for installation of 5G small cell antennas — Telecommunications Act, S.C. 1993, c. 38, ss. 43, 44.

In 2019, the CRTC issued a notice of consultation to initiate a broad review of mobile wireless services and the associated regulatory framework. Reducing barriers to infrastructure deployment for mobile wireless services, including 5G infrastructure, was a topic of this consultation. Various participants, including several telecommunications carriers, provided comments on the issues associated with obtaining access to different types of infrastructure in order to deploy mobile wireless networks. Under ss. 43 and 44 of the *Telecommunications Act* (“Act”), known as the “access regime”, telecommunications carriers have a qualified right of access to construct, maintain and operate their transmission lines situated on public property, and the CRTC is empowered to determine the applicable terms of access where the carrier cannot obtain consent to access its transmission lines from the relevant public authority on terms that are acceptable to it. The consultation raised the question of whether the

CRTC’s jurisdiction under the access regime to regulate the carriers’ access to public property extended to the installation of 5G small cell antennas. Whereas previous-generation mobile wireless networks relied on approximately 13,000 large cell antenna towers across Canada to transmit intelligence from wireline networks to users’ devices, 5G networks employ low-powered small cell antennas. Due to their low range, complete 5G connectivity across Canada will require an estimated 250,000 to 300,000 small cell antennas. Because 5G small cell antennas are mounted on structures such as telephone poles, lamp posts, bus shelters, or buildings, many of which are located on municipally owned public property, the deployment of 5G infrastructure across Canada will require carriers to access public property to install, maintain and operate 5G small cell antennas.

The CRTC interpreted the meaning of “transmission line” in ss. 43 and 44 of the Act and concluded that it did not have jurisdiction under the access regime to adjudicate disputes over access to 5G small cell antennas situated on public property. In the CRTC’s view, “transmission line” did not include 5G small cell antennas or any wireless infrastructure for two reasons. First, the ordinary meaning of the term “transmission line” and the context of the Act demonstrate that Parliament intended the term to refer only to wireline infrastructure. Second, a narrow interpretation of “transmission line” appropriately recognized the broader statutory scheme enacted by Parliament, including the scheme of the closely related *Radiocommunication Act*, which provides the Minister of Industry with the power to approve sites for the placement of antenna systems. The CRTC’s decision was appealed by a carrier to the

Federal Court of Appeal, which confirmed the CRTC’s interpretation of “transmission line”.

Held (Côté and Martin JJ. dissenting): The appeal should be dismissed.

Per Wagner C.J. and Karakatsanis, Rowe, Kasirer, Jamal, O’Bonsawin and **Moreau JJ.**: The CRTC was correct in concluding that it does not have jurisdiction under the access regime to adjudicate disputes over access to 5G small cell antennas situated on public property. The term “transmission line” only refers to wireline infrastructure. The ordinary meaning of “transmission line” and the text of ss. 43 and 44 of the Act have a strong physical and linear connotation that readily applies to wireline infrastructure like wires or cables, but not to antennas. Likewise, the broader context of the Act, including other defined terms and the Act’s legislative history, supports the narrower interpretation. It would be inconsistent with the text, context and purpose of ss. 43 and 44 of the Act to say that Parliament intended the term to extend to antennas. Parliament’s balancing of the carriers’ interests against those of public authorities must be respected.

In accordance with the modern approach to statutory interpretation, the meaning of a statutory provision is determined by reference to its text, context and purpose. Statutory interpretation is centered on the intent of the legislature at the time of enactment and courts are bound to give effect to that intent. This principle does not, however, prevent courts from applying statutes to new or evolving circumstances. Legislatures frequently use broad or open-textured language to cover circumstances

that are neither in existence nor in their contemplation, in order to ensure the long-term objects of an enactment without constantly reopening the statute. Properly understood, there is no contradiction between the principles that the interpretative exercise is grounded in the intent of the enacting legislature and that statutes can be applied to circumstances that were not contemplated by the legislature. Dynamic interpretation is situated firmly within the modern approach. There is no bright line between statutes that are static and statutes that are dynamic. The degree to which a provision is capable of applying to new circumstances, including new technology, is an interpretive question that must be answered by reading the text and context consistent with the legislature's purpose.

The ordinary meaning of “transmission line” in ss. 43 and 44 of the Act suggests that Parliament intended it to capture wireline infrastructure only. Most dictionary definitions of the term “line” contemplate a physical and tangible pathway and its pairing with the word “transmission” gives it a strong physical connotation. Physical lines can use different types of technology, for example coaxial or fibre-optic cables, and still readily align with an ordinary meaning of “transmission line”. But antennas do not fit naturally within that ordinary meaning because they transmit intelligence by means of electromagnetic waves in space without artificial guide, rather than along physical pathways. An antenna cannot ordinarily be described as a transmission line even though it must necessarily be attached to one. The ordinary meaning of “transmission line” supports a narrow interpretation of the term and consequently a narrow application of the access regime.

The immediate context of the term “transmission line” in ss. 43 and 44 supports the notion that a “transmission line” is a physical linear pathway. Section 43 speaks of entering on and breaking up property to construct transmission lines, on, over, under or along a highway or other public place. Section 44(a) refers to carriers burying or altering the route of a transmission line and s. 45 deals with the laying of drainage or utility pipes on, over, under or along a transmission line. The provisions as a whole suggest physical, linear undertakings. Antennas cannot be buried under or run along public property and antennas do not follow a “route” which one could alter. The transmission of intelligence from antennas is similarly incompatible with the use of “transmission line” in ss. 43 and 44. Radio waves do not follow a defined path. They emanate outwards from antennas in multiple directions. They are not buried or constructed and do not require breaking up public property. A signal transmitted by an antenna cannot “run” on, over, under or along public property, nor does it require statutory regulation to ensure access for installation, operation or maintenance.

With respect to the broader context, other terms in the Act are defined broadly to incorporate essentially any form of telecommunications. Parliament is presumed to have chosen to use different terms to indicate different meanings. It was open to Parliament to use “transmission facility”, which is defined at s. 2(1) and includes wireless infrastructure like antennas, in the access provisions of the Act. Instead, Parliament used the distinct term “transmission line”, a term that has an ordinary meaning strongly associated with wireline, and not wireless, infrastructure. The Act’s legislative history and evolution also demonstrate that antennas or other

wireless equipment have never been part of the access regime. The Act was drafted to ensure that new technologies do not frustrate the Act's operation, but Parliament only intended to expand the access regime to wireline equipment that is functionally equivalent to the wires that had been covered by the old access regime.

The purposes of the Act do not require a broad interpretation of “transmission line” or justify overriding Parliament’s clear intention to grant carriers a qualified right of access to wireline infrastructure only. General policy objectives cannot, on their own, give the CRTC jurisdiction over a specific matter. The broad objective in s. 7(a) of the Act to facilitate the orderly development of telecommunications does not require that the Act be interpreted in the way that is most favourable to the telecommunications carriers. Important countervailing policy objectives support the differential treatment of wireless and wireline equipment in a network. Procedures for antenna installation, introduced pursuant to s. 5 of the *Radiocommunication Act*, reflect that Parliament is mindful of the specific impacts that antennas have on local communities and the risks associated with their deployment. As well, municipal structures may not be designed to accommodate 5G small cell antennas and local communities may have unique aesthetic or environmental concerns relating to antenna siting. As such, Parliament intended to leave access to these sites up to good faith negotiations between carriers and the relevant public authorities.

The purpose of the access regime and the rights it grants are not frustrated by an interpretation of “transmission line” that is technologically neutral as it relates to

wireline infrastructure, but excludes other technology like antennas. An access regime that applies to wireline but not wireless equipment in a mobile wireless telecommunications network is not the regime most favourable to the carriers' deployment of 5G infrastructure, but this does not mean the narrower interpretation leads to an absurd result; it is not unreasonable, illogical, incompatible with other provisions of the Act, does not defeat the purpose of the Act, nor does it render any part of the Act pointless or futile.

Per Côté and Martin JJ. (dissenting): The appeal should be allowed. There is disagreement with the majority that the installation of 5G small cells is outside the scope of the access regime in the Act. Properly interpreted, the term “transmission line” includes 5G small cells. This interpretation accords with the text and with the grammatical and ordinary meaning of the term “transmission line”. It is also the only interpretation that allows the Act and the *Radiocommunication Act* to operate together effectively, as Parliament intended, and that aligns with and respects Parliament's desire for technological neutrality in light of rapid technological development.

The modern approach to statutory interpretation requires consideration of the text of the relevant provisions. In the absence of a legislative definition of “transmission line”, the focus is on the grammatical and ordinary meaning of the text. One way to read the term “transmission line” is to conclude that it refers to a physical line, involving a physical or tangible pathway. Assuming that this narrow interpretation is the correct one, this definition of “transmission line” necessarily includes 5G small

cells, which attach to and extend existing transmission lines. 5G small cells are mounted on structures like telephone poles, lamp posts, and buildings and are hard-wired into carriers' existing wireline transport networks as part of a single, integrated telecommunications network. The wired components of small cell networks are indisputably transmission lines, even if the term is interpreted as referring only to physical or wired lines.

However, the plain meaning of the words can also support a broader interpretation that does not require a physical connection. Further elements of the grammatical and ordinary meaning point towards an interpretation of ss. 43 and 44 of the Act that is inclusive of 5G small cells. Transmission in this context means the transmission of intelligence as opposed to, for example, electricity. Intelligence is defined broadly in s. 2(1) of the Act to include signs, signals, writing, images, sounds or intelligence of any nature. While it is true that for cell phone users, no physical connection lines run between antennas and their phones, courts have referred to the transmission of radio signals between cell towers and cell phones as occurring along a "line of sight". These references to a "line" of sight without a wired connection suggest that there is a linear transmission of telecommunications between two points. The more expansive interpretation that captures wireless connections also accords with a colloquial use of the word "line" in a technological context. One may refer to a device being "*online*" to suggest that it is connected to the Internet. But this connection is not always a wired one. In this sense, a transmission line can best be understood as a connection between two points that transmits intelligence.

Furthermore, both the external context — the relationship between the Act and the *Radiocommunication Act* — and the internal context — the location of s. 43 within the Act — accord with a broader, wireless interpretation of “transmission line”. First, Parliament has enacted two statutes to govern access to and the location of antennas, respectively, in the Act and the *Radiocommunication Act*. These two statutes have developed concomitantly and are part of an interconnected statutory scheme. As they operate in tandem, they suggest that, in the process of selecting a location for 5G small cells, the CRTC has the power to grant access when the carrier and the municipality or other public authority are unable to reach an agreement. Although the *Radiocommunication Act* does not contain an access regime comparable to the one in the Act, its s. 5(1)(f) grants the Minister the jurisdiction to approve each site on which radio apparatus, including antenna systems, may be located and to approve the erection of antenna-supporting structures. The Minister’s site approval authority does not extend to authorizing access to a particular site. Ministerial authorization to install an antenna on a site under the *Radiocommunication Act* is granted only after access to a site has been negotiated. In the process of selecting a location for the structure on which a 5G small cell will be hard wired, the CRTC has the power to grant access even where the carrier and the municipality or other public authority are unable to reach an agreement. Once this access is granted, the carrier will then seek authorization from the Minister. There is no conflict created by the two statutes; it is a coherent scheme.

Second, the internal context of the Act also suggests that 5G small cells are captured by the words “transmission line”. The presumption of consistent expression

— which provides that different terms in a single piece of legislation must be understood to have different meanings — is applied not as a rule, but rather as a supposition that draws its strength from the context. In the instant case, the presumption used to distinguish the expressions “transmission line” and “transmission facility” is considerably weakened by the distinct purposes and legislative histories of the two expressions. These expressions relate to separate regimes in the Act: “transmission line” relates to the access regime set out in ss. 43 to 45, while “transmission facility” is used in s. 16, the provision on the requirement of Canadian ownership and control. Furthermore, the fact that ss. 43 to 45 of the Act grant carriers the power to make physical changes to land to carry out the installation of wireline technology is of no moment. Even if there were a definition of “transmission line” that expressly included antennas, these provisions would be necessary for the implementation of wireline connections. This does not preclude the installation of infrastructure that does not require breaking up land. A carrier would still need to enter on property to install 5G small cells, which may still be placed on existing infrastructure.

Dynamic interpretation, i.e. an interpretation that is not frozen in time and can evolve with technology, must be considered in assessing the object and purpose of the Act. General objectives of the Act as set out in s. 7 — such as facilitating orderly development of a telecommunications system, rendering reliable and affordable telecommunications services of high quality accessible to Canadians, enhancing efficiency and competitiveness, ensuring that regulation, where required, is efficient and effective, and responding to economic and social requirements of users — reflect

a dynamic approach. These policy objectives do not ground the CRTC’s jurisdiction on their own — rather, they inform how the access regime must be interpreted. An interpretation of “transmission line” that disentitles carriers from seeking recourse through the access regime in the Act runs contrary to these objectives. Parliament incorporated a commitment to technological neutrality into the Act by using the words “transmission line” and its decision not to define “transmission line” is an indication that the term was left open so that it could grow. According to the principle of technological neutrality, since 5G networks carry the exact same telecommunications and serve the exact same purpose as networks that consist of physical cables or wires, they are functionally equivalent and should be subject to the same treatment under the law.

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By Moreau J.

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The Queen, [1984] 2 S.C.R. 232; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *United States of America v. Dynar*, [1997] 2 S.C.R. 462; *R. v. D.L.W.*, 2016 SCC 22, [2016] 1 S.C.R. 402; *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575; *R. (Quintavalle) v. Secretary of State for Health*, [2003] UKHL 13, [2003] 2 A.C. 687; *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724; *Rogers Communications Inc. v. Voltage Pictures, LLC*, 2018 SCC 38, [2018] 2 S.C.R. 643; *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948; *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45, [2015] 3 S.C.R. 219; *R. v. Steele*, 2014 SCC 61, [2014] 3 S.C.R. 138; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Edmonton (City) v. 360Networks Canada Ltd.*, 2007 FCA 106, [2007] 4 F.C.R. 747; *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303; *R. v. Breault*, 2023 SCC 9; *TELUS Communications Inc. v. Wellman*, 2019 SCC 19, [2019] 2 S.C.R. 144; *John v. Ballingall*, 2017 ONCA 579, 136 O.R. (3d) 305; *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101, 480 D.L.R. (4th) 1; *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57, [2015] 3 S.C.R. 615; *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31; *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97; *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 S.C.R. 467; *Calgary (City) v. Bell Canada Inc.*, 2020 ABCA 211, 7 Alta. L.R. (7th) 1; *La Presse inc. v. Quebec*, 2023 SCC 22.

By Côté J. (dissenting)

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APPEAL from a judgment of the Federal Court of Appeal (de Montigny, Locke and LeBlanc JJ.A.), 2023 FCA 79, 16 Admin. L.R. (7th) 32, 41 M.P.L.R. (6th) 19, 480 D.L.R. (4th) 709, [2023] F.C.J. No. 498 (Lexis), 2023 CarswellNat 1012 (WL),

affirming a decision of the Canadian Radio-television and Telecommunications Commission, *Telecom Regulatory Policy CRTC 2021-130*, April 15, 2021 (online: <https://crtc.gc.ca/eng/archive/2021/2021-130.pdf>). Appeal dismissed, Côté and Martin JJ. dissenting.

Ewa Krajewska, Michael Ryan, Alex Smith and Brandon Chung, for the appellant Telus Communications Inc.

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The judgment of Wagner C.J. and Karakatsanis, Rowe, Kasirer, Jamal, O’Bonsawin and Moreau JJ. was delivered by

MOREAU J. —

I. Overview

[1] This appeal is about the proper interpretation of the term “transmission line” in ss. 43 and 44 of the *Telecommunications Act*, S.C. 1993, c. 38 (“Act”). These provisions are known as the “access regime”. They give telecommunications carriers a qualified right of access to construct, maintain and operate their transmission lines situated on public property. Where the carrier cannot obtain consent to access its

transmission lines from the relevant public authority on terms that are acceptable to it, the Canadian Radio-television and Telecommunications Commission (“CRTC”) is empowered to determine the applicable terms of access.

[2] The appellant telecommunications carriers — Telus Communications Inc., Quebecor Media Inc., Videotron Ltd. and Rogers Communications Canada Inc. (collectively the “carriers”) — ask this Court to depart from the interpretation adopted by the Federal Court of Appeal and the CRTC that restricts the meaning of “transmission line” to wireline infrastructure. They ask this Court to declare instead that “transmission line” can include the “small cell” antennas used in new fifth-generation (“5G”) mobile wireless networks. In support of their position, they invite this Court to consider the role of dynamic interpretation and technological neutrality in the interpretation of the Act and, more broadly, in the modern approach to statutory interpretation.

[3] I would dismiss the appeal. The term “transmission line” only refers to wireline infrastructure. It would be inconsistent with the text, context and purpose of ss. 43 and 44 of the Act to say that Parliament intended the term to extend to antennas. The ordinary meaning of “transmission line” and the text of ss. 43 and 44 have a strong physical and linear connotation that readily applies to wireline infrastructure like wires or cables, but not to antennas. Likewise, the broader context of the Act, including other defined terms and the Act’s legislative history, supports the narrower interpretation. The general policy objectives in s. 7 of the Act do not require the interpretation of

“transmission line” that is the most advantageous to the carriers. Parliament’s balancing of the carriers’ interests against those of public authorities must be respected. The narrower interpretation does not lead to absurd consequences nor does it raise federalism concerns, as the carriers have suggested.

[4] Ultimately, this is not an appeal about whether wireless service is important to Canadians, nor about whether the Act broadly aspires to technological neutrality. No one would seriously dispute these points. Instead, this appeal is about the proper scope of the CRTC’s power under the Act. The carriers’ interpretation would, as the CRTC itself recognized in the proceedings below, overstep principled limits inherent to the access regime.

[5] For these reasons, the CRTC was correct in concluding that it does not have jurisdiction under the access regime to adjudicate disputes over access to 5G small cell antennas situated on public property. Parliament intended to leave access to these sites up to good faith negotiation between carriers and the relevant public authorities such as municipalities. If legislative change is desirable in light of evolving policy considerations, that is the role of Parliament.

II. Background

A. *The Technology*

[6] Canadian telecommunications carriers are in the midst of upgrading their 5G mobile wireless networks, which the CRTC described in 2019 as a “major transformation” in Canadian telecommunications (*Telecom Notice of Consultation CRTC 2019-57*, February 28, 2019 (online), at para. 18). 5G networks offer faster connectivity and enhanced data capability that will support new applications including the “Internet of Things” (*Telecom Regulatory Policy CRTC 2021-130*, April 15, 2021 (online) (“CRTC Decision”), at para. 2). Following an auction process in 2021 and 2023, carriers acquired the rights to use the radio frequencies needed for 5G data transmission in exchange for payments to the federal government totalling over \$11 billion.

[7] Previous-generation mobile wireless networks have relied on approximately 13,000 large cell antenna towers across Canada to transmit intelligence from their wireline networks to users’ devices. 5G networks employ low-powered small cell antennas. Due to their low range, complete 5G connectivity across Canada will require an estimated 250,000 to 300,000 small cell antennas. While significantly smaller than previous-generation large cell antenna towers, 5G small cell antennas function in essentially the same way. They transmit wireless signals in multiple directions to devices, but still rely on intelligence transmitted through the wires or cables of a carrier’s wireline network. Therefore, a carrier’s mobile wireless network can be understood as involving a combination of both wireline equipment (e.g., fibre-optic cables) and wireless equipment (e.g., 5G small cell antennas).

[8] 5G small cell antennas are not usually free-standing. Instead, they are mounted on existing structures such as telephone poles, lamp posts, bus shelters, or buildings. Many of these structures are located on municipally owned public property. This means the deployment of 5G infrastructure across Canada will require carriers to access public property to install, maintain and operate 5G small cell antennas.

B. *The Relevant Statutory Scheme*

[9] The Act is part of an “interconnected statutory scheme” governing telecommunications in Canada (*Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489, at para. 34). The Act concerns telecommunications services provided to the public and the regulation of carriers. As Gonthier J. explained in *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476, the broad purpose of the Act is to “encourage and regulate the development of an orderly, reliable, affordable and efficient telecommunications infrastructure for Canada” (para. 38; see also Act, s. 7).

[10] Section 43 of the Act grants carriers a qualified right of access to enter and break up highways or other public places to construct, maintain or operate its transmission lines with the consent of the relevant public authority, often a municipality (ss. 43(2) and 43(3)). Where a carrier is unable to obtain consent on terms acceptable to it through negotiation, it may ask the CRTC to intervene and set out terms of access (s. 43(4)). The CRTC can also grant permission for persons to access the supporting

structure of a transmission line constructed on public property (s. 43(5)). A municipality can seek an order from the CRTC under s. 44 to prohibit activity that could otherwise be authorized under s. 43.

[11] The full text of the access regime provisions is as follows:

43 (1) In this section and section 44, *distribution undertaking* has the same meaning as in subsection 2(1) of the *Broadcasting Act*.

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

(3) No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.

(4) Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines.

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.

44 On application by a municipality or other public authority, the Commission may

(a) order a Canadian carrier or distribution undertaking, subject to any conditions that the Commission determines, to bury or alter the route of any transmission line situated or proposed to be situated within the jurisdiction of the municipality or public authority; or

(b) prohibit the construction, maintenance or operation by a Canadian carrier or distribution undertaking of any such transmission line except as directed by the Commission.

Other relevant provisions of the Act and the *Radiocommunication Act*, R.S.C. 1985, c. R-2, are appended to these reasons.

[12] The *Radiocommunication Act* is part of the same interrelated scheme. It deals with the “allocation of specified radio frequencies, the authorization to possess and operate radio apparatuses, and the technical regulation of the radio spectrum” (*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 44; see S. Handa et al., *Communications Law in Canada* (loose-leaf), at §§ 3.62-3.65).

[13] Although the carriers have purchased the necessary spectrum licences to transmit 5G, these licences do not permit them to install 5G small cell antennas wherever they choose. Section 5(1)(f) of the *Radiocommunication Act* vests the Minister of Industry with the authority to approve “each site on which radio apparatus, including antenna systems, may be located” (see Handa et al., §§ 3.71-3.73). Generally speaking, as part of the current ministerial approval process, the carrier must consult with the relevant land-use authorities before installing antennas (see Spectrum Management and Telecommunications, *CPC-2-0-03 — Radiocommunication and*

Broadcasting Antenna Systems (2022), at s. 4.1). However, because 5G small cell antennas are “[n]on-tower structures”, in that they attach to existing structures, they are currently excluded from these consultation requirements (see s. 6).

[14] The *Radiocommunication Act* is silent on access; it does not grant carriers a right to access public property to install antennas or establish a dispute resolution mechanism. Carriers must obtain access to antenna sites through negotiation with the property owner, whether public or private.

C. *Procedural History*

(1) CRTC Consultation and Decision

[15] In February 2019, the CRTC issued *Telecom Notice of Consultation CRTC 2019-57* for the purpose of initiating a broad review of mobile wireless services and the associated regulatory framework. The review focused on three key areas: (1) competition in the retail mobile wireless service market; (2) the current regulatory framework for wholesale mobile wireless services; and (3) the future of mobile wireless services in Canada.

[16] Notably for this appeal, reducing barriers to infrastructure deployment for mobile wireless services, including 5G infrastructure, was a topic of the 2019 consultation. Various parties, including the carriers, provided comments on the issues associated with obtaining access to different types of infrastructure in order to deploy

mobile wireless networks and whether changes could or should be made to the CRTC's existing rules to facilitate such access. This raised the question of whether the CRTC's jurisdiction to regulate carriers' access to public property extended to the installation of 5G small cell antennas, requiring the CRTC to interpret the meaning of "transmission line" in ss. 43 and 44 of the Act.

[17] The CRTC's interpretation of "transmission line" is found within its voluminous Decision on the various issues encompassing the 2019 consultation. The CRTC concluded that "transmission line" did not include 5G small cell antennas or any wireless infrastructure for two reasons.

[18] First, according to the CRTC, the ordinary meaning of the term "transmission line" and the context of the Act demonstrate that Parliament intended the term to refer only to wireline infrastructure. Although the Act does not define "transmission line", s. 2(1) of the Act defines "transmission facility" as "any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points", subject to some exceptions. The CRTC found this definition to be highly significant in that it showed that Parliament "was aware that there were technologies that transmit telecommunications wirelessly" (CRTC Decision, at para. 481). Therefore, "transmission line" must mean something distinct from "transmission facility". Given the "all-encompassing scope" of "transmission facility", Parliament must have intended "transmission line" to apply more narrowly (para. 482). Further, dictionary

definitions of the word “line” — such as a “wire or cable for a telephone” — led the CRTC to conclude that “Parliament meant to capture ‘transmission cables’ and ‘transmission wires’” (paras. 483-84, quoting *Canadian Oxford Dictionary* (2nd ed. 2004), at p. 892).

[19] Second, the CRTC concluded that a narrow interpretation of “transmission line” “appropriately recognizes the broader statutory scheme enacted by Parliament, including the scheme of the closely related *Radiocommunication Act*, which provides the Minister of Industry with the power to approve sites for the placement of radio apparatus” (para. 485).

- (2) Federal Court of Appeal, 2023 FCA 79, 16 Admin. L.R. (7th) 32 (de Montigny, Locke and LeBlanc JJ.A.)

[20] Telus appealed the CRTC Decision, challenging, among other things, the CRTC’s conclusion that “transmission line” does not include wireless telecommunications infrastructure.

[21] The Federal Court of Appeal confirmed the CRTC’s interpretation of “transmission line” and unanimously dismissed the carriers’ appeal. In reaching this conclusion, the court considered the grammatical and ordinary meaning of the words “transmission line”, the internal context of the provisions and other related provisions of the Act, the interplay between the Act and the *Radiocommunication Act*, and Parliament’s policy objectives.

[22] The Court of Appeal agreed with the CRTC that the ordinary meaning of “line” is a physical or tangible pathway, and that this meaning is consistent with ss. 43 and 44. It also agreed with the CRTC that in keeping with the presumption of consistent expression, transmission line must be a narrower subset of “transmission facility”, because “transmission facility” is defined broadly in the Act. The court rejected the carriers’ argument that a dynamic interpretation leads to a different result, because the term “transmission line” was a specific term used in a technical context. Finally, the court agreed with the CRTC that because the *Radiocommunication Act* established a scheme for the approval of antenna sites, the installation of 5G small cell antennas “must be handled as a ministerial siting approval issue, not as a qualified right of access subject to the supervision of the CRTC” (para. 100).

[23] The Court of Appeal also held that a general policy objective of the Act, namely the orderly deployment of telecommunications, could not supersede the clear language of the provisions. Parliament purposely chose not to exercise its jurisdiction to regulate access for mobile wireless infrastructure, and instead to leave it up to good faith negotiations between carriers and municipal property owners.

III. Issue

[24] The carriers ask this Court to declare that “transmission line” in ss. 43 and 44 of the Act includes 5G small cell antennas. The sole issue in dispute is whether “transmission line” can bear this meaning.

IV. Standard of Review

[25] The CRTC Decision is subject to a statutory appeal to the Federal Court of Appeal under s. 64(1) of the Act. Absent evidence of a contrary intention, where a legislature has provided for a right of appeal from an administrative decision to a court, the reviewing court is to apply the appellate standards of review (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37). The appellate standards must therefore be applied here. In considering questions of law, including questions of statutory interpretation, the appellate standard of review is correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8).

V. Positions of the Parties

[26] The appellant carriers submit that the efficient development of 5G mobile wireless networks depends on the access regime facilitating the installation of 5G small cell antennas. By fixing the meaning of “transmission line” at the time of enactment and by applying it exclusively to wireline technology, the CRTC and the Court of Appeal have frustrated Parliament’s stated intention for the Act to evolve with new technology and to facilitate an orderly development of telecommunications infrastructure across Canada. While the CRTC and the Court of Appeal acknowledged the critical importance of developing pan-Canadian 5G connectivity, they interpreted “transmission line” in a way that ignored this context.

[27] The carriers add that a narrow interpretation of “transmission line” is at odds with the reality of modern telecommunications infrastructure. So-called “wireless” networks are wireless only for the end user. 5G small cell antennas must be hard-wired into a carrier’s existing wireline network. Holding that “transmission line” only refers to wireline infrastructure invites the absurd consequence that carriers have a right of access to deploy the cables that connect to 5G small cell antennas, but not to the antennas themselves.

[28] The respondents the Federation of Canadian Municipalities, Electricity Canada and British Columbia (collectively the “public authorities”) advocate for the interests of public authorities, such as provinces and municipalities, that are affected by the scope of the access regime. They submit that neither the CRTC nor the Court of Appeal erred. The carriers’ proposed expansion of the meaning of “transmission line” to encompass antennas is an untenable distortion of the access regime. Parliament has consciously enacted a dual framework to govern modern telecommunications infrastructure. Wireline equipment, such as fibre-optic cables, is covered by the access regime and the CRTC dispute resolution mechanism. But Parliament has left the installation of antennas up to good faith negotiation between carriers and public property owners, notably municipalities. This choice should be respected.

[29] The public authorities say the carriers’ position is based on the false premise that Parliament was motivated by a singular goal — the orderly development of telecommunications — when it enacted the Act in 1993. Parliament can, and has,

left some aspects of telecommunications unregulated. Specifically, it refrained from regulating access for antennas to accommodate the legitimate interests that provinces and municipalities have in managing their public property.

VI. Analysis

A. *Principles of Statutory Interpretation*

[30] There is no controversy that, in accordance with the modern approach, the meaning of a statutory provision is determined by reference to its text, context and purpose (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Basque*, 2023 SCC 18, at para. 63; *Auer v. Auer*, 2024 SCC 36, at para. 64; *Piekut v. Canada (National Revenue)*, 2025 SCC 13, at para. 42).

[31] The parties disagree on how legislation should be interpreted in response to changing circumstances. The carriers maintain that statutory terms are not “confined to their meaning” at the time of enactment and that the CRTC and the Court of Appeal erred in adopting a “static” rather than “dynamic” interpretation (A.F., Telus, at para. 65). The public authorities maintain that the carriers misconstrue the principle of dynamic interpretation by wrongly asserting that legislative terms can grow in meaning over time. Statutes, though enacted in the past, are interpreted and applied in the present. If circumstances have evolved between these two points in time, what bearing does this evolution have on the interpretive exercise?

[32] Statutory interpretation is centered on the intent of the legislature at the time of enactment and courts are bound to give effect to that intent (see *Perka v. The Queen*, [1984] 2 S.C.R. 232, at pp. 264-66; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 335; *United States of America v. Dynar*, [1997] 2 S.C.R. 462, at para. 45; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at para. 24; R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 6.01[1]). Courts must be careful not to “exceed their institutional role” by engaging in political questions raised by changes subsequent to enactment, which are better addressed by legislatures (Sullivan, at § 6.01[3]).

[33] This principle does not, however, prevent courts from applying statutes to new or evolving circumstances. It is uncontroversial that, in the exercise of their legislative authority, enacting legislatures can use broad or open-textured language to cover circumstances that are neither in existence nor in their contemplation (see *R. v. D.L.W.*, 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 61; *Perka*, at p. 265; Côté and Devinat, at para. 285). Indeed, they frequently do so to ensure the long-term objects of an enactment can be achieved without constantly reopening the statute (see Sullivan, § 6.01[2]).

[34] A legislature may in this way intend that a provision be interpreted dynamically, in that the provision should be capable of applying to new sociological or technological circumstances as they arise (Sullivan, at § 6.03). If this original intention is to be preserved, courts must interpret broad or open-textured concepts in a manner

sensitive to the evolving context (see *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575, at para. 38). Such an approach does not detract from the enacting legislature’s will — it furthers it. This principle has been codified in s. 10 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that the law is “always speaking” and “shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning”.

[35] Properly understood, there is no contradiction between the principles that the interpretive exercise is grounded in the intent of the enacting legislature and that statutes can be applied to circumstances that were not contemplated by the legislature. Lord Bingham’s dictum in *R. (Quintavalle) v. Secretary of State for Health*, [2003] UKHL 13, [2003] 2 A.C. 687, at para. 9, illustrates this point:

There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now.

[36] In this way, dynamic interpretation is situated firmly within the modern approach. There is no bright line between statutes that are “static” and statutes that are “dynamic”. The degree to which a provision is capable of applying to new circumstances, including new technology, is an interpretive question like any other that must be answered by reading the text in context and consistent with the legislature’s purpose.

[37] The real disagreement between the parties in this case concerns what Parliament intended “transmission line” to mean, and whether 5G small cell antennas are captured by that meaning.

B. *The Proper Interpretation of “Transmission Line”*

[38] Reading the term “transmission line” in its full context and consistent with the purpose of the access regime confirms that Parliament did not intend to extend the qualified access rights in ss. 43 and 44 to antennas, including 5G small cell antennas.

(1) The Ordinary Meaning of “Transmission Line”

[39] As “transmission line” is not defined in the Act, we look first to its ordinary meaning.

[40] The carriers submit that the ordinary meaning of transmission line is broad enough to mean a physical or non-physical path between points in a network. They say a “wire” is a physical pathway, but a “line” may be physical or non-physical. In particular, Rogers asks the Court to recognize wireless transmission infrastructure, including 5G small cell antennas, as “functionally equivalent” to wireline infrastructure because they transmit the same intelligence. Although antennas are not physical “lines”, they do the same thing and should therefore be covered by the access regime. Alternatively, if the Court were to adopt the CRTC’s narrower ordinary meaning, that “line” refers only to a physical or tangible path, the carriers submit that because

antennas are hard-wired into the wireline network, they are part of the physical transmission line.

[41] The respondent the Federation of Canadian Municipalities submits that the decision-makers were correct to apply dictionary definitions of “line” and conclude it must refer to a linear physical path only. They say it defies common understanding to interpret the word “line” as referring to radio waves that travel through space in all directions.

[42] I agree with the CRTC and the Court of Appeal that the ordinary meaning of “transmission line” suggests that Parliament intended it to capture wireline infrastructure only.

[43] The grammatical and ordinary meaning of a statutory provision is the “natural meaning which appears when the provision is simply read through” (*Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724, at p. 735; see also *Rogers Communications Inc. v. Voltage Pictures, LLC*, 2018 SCC 38, [2018] 2 S.C.R. 643, at para. 28). Dictionary definitions are not determinative. Indeed, Professor Ruth Sullivan cautions against undue reliance on them, noting that the definitions found in dictionaries “cannot . . . indicate the meaning of a word as used in a particular context” (§ 3.03[3]). Dictionary definitions can lead interpreters to hone in on individual words or phrases, and not view a provision in its entirety. Nevertheless, they can assist with ordinary meaning, at least as a starting point (see, e.g., *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948, at para. 84; *ATCO Gas and Pipelines Ltd. v. Alberta*

(*Utilities Commission*), 2015 SCC 45, [2015] 3 S.C.R. 219, at para. 34; *R. v. Steele*, 2014 SCC 61, [2014] 3 S.C.R. 138, at para. 42).

[44] The CRTC noted that most dictionary definitions of the term “line” contemplate a physical and tangible pathway (CRTC Decision, at para. 483). The CRTC also noted that while some dictionary definitions of the French “*ligne*” contemplate both tangible and intangible constructs, *Le Petit Robert* groups definitions of “*ligne*” that refer to telecommunications undertakings under the heading “*fil tendu dans une direction déterminée*” ([TRANSLATION] “line stretching in a given direction”) (para. 483, quoting *Le Petit Robert* (2015), at p. 1458).

[45] In my view, even if there is an abstract definition of “line” that refers to any connection between two points, its pairing with the word “transmission” gives it a strong physical connotation (para. 483). Physical lines can use different types of technology, for example, coaxial or fibre-optic cables, and still readily align with an ordinary meaning of “transmission line”. But antennas, even 5G small cell antennas, do not fit naturally within that ordinary meaning because antennas do not transmit intelligence along physical pathways. Antennas are a form of radio apparatus, equipment that transmits intelligence “by means of electromagnetic waves . . . in space without artificial guide” (*Radiocommunication Act*, s. 2, *sub verbo* “radiocommunication”).

[46] The carriers go on to argue, in the alternative, that the term “transmission line” can capture 5G small cell antennas because they are hard-wired into wireline

equipment. According to Telus, “[i]nsofar as small cells physically attach to (and thereby extend) these transmission lines, small cells themselves must be transmission lines as well” (A.F., at para. 58). I disagree with this assertion, which requires accepting that “transmission line” includes not only the wires and cables that fall within the ordinary meaning of the term, but also *anything* that may be attached to those wires and cables. That is an unnatural use of language. An antenna cannot ordinarily be described as a transmission line even though it must necessarily be attached to one, no more than a toaster is, in ordinary language, a wire merely because a wire connects it through the socket to the electrical grid. The ordinary meaning of “transmission line” does not include any network equipment that is connected to a transmission line, only the transmission lines themselves. As I have explained above, an antenna does not easily fall within this ordinary meaning. And, as I explain below, this view is only further confirmed when the words are read in context and in light of the policy rationale for regulating wireline and wireless equipment differently.

[47] For these reasons, I agree with the CRTC and the Court of Appeal that the ordinary meaning of “transmission line” militates against the carriers’ interpretation. It is not consonant with equipment that conveys intelligence with or without wires. The ordinary meaning of “transmission line” thus supports a narrow interpretation of the term and, consequently, a narrow application of the access regime. However, ordinary meaning is not determinative. It is also necessary to consider context and Parliament’s purposes for enacting the provision in question.

(2) The Access Regime

[48] The Federation of Canadian Municipalities, like the decision-makers below, says that the surrounding provisions show Parliament intended “transmission line” to mean only wireline infrastructure.

[49] I agree that the surrounding text in ss. 43 and 44 supports the notion that a “transmission line” is a physical linear pathway. Section 43 speaks of “enter[ing] on and break[ing] up” property to construct transmission lines, “on, over, under or along a highway or other public place”. Section 44(a) refers to carriers “bury[ing]” or “alter[ing] the route” of a transmission line. And s. 45 deals with the laying of drainage works or utility pipes “on, over, under or along a transmission line”. The construction, operation or maintenance of cables and wires that use any type of transmission technology can easily be understood as requiring any or all of these undertakings.

[50] But antennas cannot be buried “under” or run “along” public property. It is also very difficult to see how one could alter the “route” of an antenna, since antennas, unlike wires and cables, do not follow a “route” in the first place. It is of course true, as the carriers emphasized at the hearing, that some transmission wires and cables will not be buried, nor will they necessarily require breaking up public property. Similarly, I acknowledge that antenna construction could involve entering onto or breaking up public property. However, one can imagine burying a cable or wire or running them over public property in a way that is not possible for antennas. Reading the provisions as a whole calls to mind physical, linear undertakings — the construction of wires or

cables that run on, over, under, or along public property — and all the unique challenges that installation, operation or maintenance of that type of infrastructure may pose.

[51] The transmission of intelligence from antennas is similarly incompatible with the use of “transmission line” in ss. 43 and 44. It is not obvious how a signal transmitted by an antenna can “run” on, over, under or along public property, much less require statutory regulation to ensure access for installation, operation or maintenance. As noted above, s. 2 of the *Radiocommunication Act* establishes that transmission from 5G small cell antennas is transmission “without artificial guide”. Radio waves do not follow a defined path. They emanate outwards from antennas in multiple directions. They are not buried or constructed. And they do not require breaking up public property.

[52] The immediate context of the term “transmission line” in the Act’s access provisions supports the narrower meaning advanced by the public authorities.

(3) The Broader Context

[53] Looking to the entire scheme of the Act, Telus submits that since other terms in the Act, namely “telecommunications service”, “telecommunications facility” and “telecommunications” are defined broadly to incorporate essentially any form of telecommunications (s. 2(1)), “transmission line” should likewise receive a broad construction. Telus further submits that, since the defined terms do not distinguish between wireless and wireline equipment in a network, Parliament clearly intended the

Act to be interpreted in a technologically neutral way that is adaptable to new technology. Therefore, “transmission line” should not be interpreted in a way that restricts its application to only one class of technology.

[54] The public authorities submit that “transmission line” must be interpreted more narrowly than “transmission facility”, a term used in other parts of the Act. Electricity Canada points out that both terms were introduced for the first time in the Act. Therefore, it was open to Parliament to use “transmission facility”, which includes wireless infrastructure like antennas, in the access provisions of the Act. Parliament instead chose to replace “telegraph or telephone line”, the term used in the *Railway Act*, R.S.C. 1985, c. R-3, from which the access regime was carried over to the Act, with the undefined term “transmission line”. The presumption of consistent expression suggests that Parliament must have intended “transmission line” to mean something other than “transmission facility”. Given that the *Railway Act* access regime explicitly only applied to wireline infrastructure, the public authorities submit that Parliament intended “transmission line” to be similarly narrow in scope.

[55] Applying the presumption of consistent expression, when Parliament has chosen to use different terms it is presumed to have done so intentionally “in order to indicate different meanings” (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 81). In this case, there are strong reasons to conclude, in line with this presumption, that Parliament meant something other than “transmission facility” or “telecommunications facility” when it

used the distinct term “transmission line”. Had Parliament wanted to include the very broad range of facilities captured by terms like “transmission facility”, such as antennas, it had terminology on hand to do so. Instead, Parliament used a term that has an ordinary meaning strongly associated with wireline, and not wireless, infrastructure.

[56] I do not agree with the carriers’ position that because “transmission facility” is only used to define the parameters of a “telecommunications common carrier” for the ownership and control regime in s. 16 of the Act, it cannot be used to justify a narrower interpretation of “transmission line”. It is true that the presumption of consistent expression may be more easily rebutted when reviewing provisions found in different parts of a statute, particularly in frequently amended and complex statutes like the *Criminal Code*, R.S.C. 1985, c. C-46, or insurance legislation (*Steele*, at para. 65). But the definition of “transmission facility” in s. 2(1) of the Act is not itself linked to the ownership and control regime. It is a general definition that applies to the Act as a whole, in contrast to other definitions that apply to only a particular part of the Act. Further, since both terms were added to the Act at the same time, it is not obvious why one should assume that “facility” and “line” are merely inadvertent variations of an analogous term. It is clear to me that Parliament understood the difference between a “facility” and a “line”, and its choice should be respected.

[57] Evidence from the Act’s legislative history and evolution also demonstrates that antennas or other wireless equipment have never been part of the

access regime and that Parliament intentionally distinguished antennas from wireline equipment like wires or cables.

[58] The Court of Appeal and the CRTC outlined the history of the access regime, noting that it has been expanded from “telegraph or telephone lines” to “transmission lines” (C.A. reasons, at paras. 43, 83 and 89; CRTC Decision, at para. 477). As observed in *Edmonton (City) v. 360Networks Canada Ltd.*, 2007 FCA 106, [2007] 4 F.C.R. 747, at para. 64, the access regime appeared to have been “drafted, in part at least, by ‘cut and paste’” from the *Railway Act*, but with the new broader term “transmission line” replacing the references to telegraph and telephone lines. The access rights themselves have been “carr[ie]d forward”; their substance remains largely unchanged (see House of Commons, Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture, *Minutes of Proceedings and Evidence of the Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture*, No. 10, 3rd Sess., 34th Parl., May 13, 1993, at pp. 42-43). For example, s. 327 of the *Railway Act* stated as follows:

327. Subject to this section and sections 328 to 332, any company empowered by Special Act or other authority of Parliament to construct, operate and maintain telegraph or telephone lines may, for the purpose of exercising those powers, enter on and, as often as the company thinks proper, break up and open any highway, square or other public place

References to a carrier’s right to “break up” or “open” public property for their lines can be traced back to century-old antecedent versions of the *Railway Act* (see, e.g., *The Railway Act, 1903*, S.C. 1903, c. 58, s. 195).

[59] Other features of the access regime were also imported directly from the *Railway Act*. For example, s. 329(1) of the *Railway Act* contained the same references to constructing lines “on, along, across or under” public property. And s. 329(2) to (4) laid out a similar dispute resolution mechanism to that found in the Act.

[60] Other parts of the *Railway Act* also show that Parliament has long distinguished between wireline and wireless telecommunications infrastructure. As above, the *Railway Act* access regime was clearly reserved for wireline infrastructure only, but s. 2(1) refers to wireless infrastructure — it defines “telegraph” as including “wireless telegraph”. It can be inferred, quite obviously, that wireless telegraphs are not connected by wires. Thus, while the *Railway Act* contemplated wireless telecommunications infrastructure, the *Railway Act* access regime dealt only with wireline. This distinction has been carried forward into the Act.

[61] Parliament did broaden the scope of the access regime when it was moved from the *Railway Act* to the Act. We know that Parliament considered the scope of the access regime at the request of new market entrant cable television companies who sought the same access rights as their competitors. Statements at committee show that cable companies were concerned the existing access regime would put them at a disadvantage vis-à-vis traditional telephone companies (see Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture, No. 2, 3rd Sess., 34th Parl., April 27, 1993, at pp. 14-19; Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture, No. 10, at pp. 42-46; see also D. Butler,

“Implications of the New Telecommunications Act”, in Insight Information Inc., *Profiting from Canada’s Telecommunications Act* (1993), Article III, at pp. 11-12). Ultimately, Parliament extended the access regime to “distribution undertaking[s]” to bring cable companies under the access regime. Replacing “telegraph or telephone line” with “transmission line” ensured the access regime covers all wireline equipment, including the cable companies’ fibre-optic and coaxial cables.

[62] But Hansard does not disclose any indication that Parliament intended to expand the access regime to include wireless radiocommunication apparatus like antennas. The then Minister of Communications introduced the Act as being technologically neutral to ensure that “new technologies” will not make the “regulatory framework spelled out in the [Act] obsolete” (Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture, No. 8, 3rd Sess., 34th Parl., May 11, 1993, at p. 16). I agree that the access regime is technologically neutral as between different wireline technologies, from traditional telegraph wires to modern fibre-optic cables. Just as the Court of Appeal held in *360Networks* that the words “other public place” in the Act should be interpreted flexibly to allow the CRTC to adapt to “the facts of individual cases” (para. 67), the term “transmission line” applies equally to all transmission lines in a carrier’s network. But that does not equate the meaning of “transmission line” with that of “transmission facility”, or mean that “transmission line” encompasses all equipment in a carrier’s mobile wireless network.

[63] The Minister’s comments demonstrate that the Act was drafted to ensure that new technologies do not frustrate the Act’s operation. Antennas are not a new technology that was outside the contemplation of Parliament when it wrote “transmission line” into the Act and did not use “transmission facility”. The *Radiocommunication Act*, which specifically regulates antennas, both predates the Act and remains in force. The carriers have conceded that a 5G small cell antenna operates in essentially the same way as a large cell antenna (albeit with a smaller range). This supports the conclusion that 5G small cell antennas are captured by the *Radiocommunication Act*’s concept of an antenna, which remains the same today as it was when the Act was enacted and which Parliament left outside the scope of the access regime. I do not conclude that 5G small cell antennas can only be regulated by the *Radiocommunication Act*. But in leaving antennas outside the scope of the access regime, Parliament only intended to expand the access regime to wireline equipment that is functionally equivalent to the wires that had been covered by the old access regime.

[64] The carriers’ attempt to analogize this Court’s approach to technological neutrality in the *Copyright Act*, R.S.C. 1985, c. C-42, is not persuasive. Drawing on *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303, the carriers argue that the Act cannot be interpreted in a manner that “either favours or discriminates against any form of technology” (para. 63). In the carriers’ view, the Act regulates the transmission of intelligence (s. 2(1), *sub verbo* “telecommunications”). Therefore, any technology

that transmits intelligence in a functionally equivalent manner must receive the same treatment under the Act.

[65] *Society of Composers* dealt with a decision of the Copyright Board of Canada which determined that the act of making works available online was a separately protected and compensable activity. Therefore, two royalties would be payable when a work is distributed online — one when it is made available and a second when it is actually accessed (para. 15). The Court held that requiring that users pay additional royalties based on a work’s mode of distribution violated the principle of technological neutrality grounded in the *Copyright Act* (para. 7). The statute protects rights related to “*what* the user receives, not *how* the user receives it” (para. 70 (emphasis in original)). For that reason, the Court has, in several cases, affirmed that the *Copyright Act* must treat different technology (i.e., the means of distributing works, or “hows”) neutrally.

[66] In my view, the access regime is a very different legislative scheme from the *Copyright Act*. Sections 43 and 44 of the Act are aimed at addressing issues related to the construction, operation and maintenance of specific types of physical infrastructure. The access regime is not analogous to a scheme that expressly protects the rights to produce or reproduce works, which may be intangible, “in any material form whatever” across various media (*Copyright Act*, s. 3(1)). Even though they both transmit intelligence, antennas and cables are different physical undertakings, and it is

their physical aspect, the construction, operation and maintenance, that the access regime seeks to regulate.

[67] In summary, the carriers have not persuaded me that the broader context of the Act demonstrates that Parliament intended for “transmission line” to include wireless infrastructure, such as antennas. It refers only to wireline infrastructure.

(4) The Purposes of the Act

[68] The term “transmission line” must also be read in harmony with Parliament’s legislative purposes.

[69] The carriers rely on the broad objectives in s. 7 of the Act, principally s. 7(a), the facilitation of the “orderly development” of telecommunications, to assert that “transmission line” should include antennas. The carriers submit that a broad construction best ensures the efficient deployment of 5G infrastructure across Canada. As summarized above, the public authorities submit that the text and context of the access regime suggest Parliament has adopted a “hands off” approach for access to antenna sites. In their view, this approach will not frustrate the purpose of the Act. The public authorities also point to reasonable policy objectives that favour leaving access to antenna sites up to good faith negotiation between carriers and public authorities.

[70] I am not persuaded that the general objectives in s. 7 require a broad interpretation of “transmission line” or justify overriding Parliament’s clear intention

to grant carriers a qualified right of access to their wireline infrastructure only (see, by analogy, *Barrie*, at para. 42). As this Court cautioned in *R. v. Breault*, 2023 SCC 9, even “laudable” policy objectives do not themselves permit courts to apply interpretations that are not consistent with text and context (para. 26; see also *TELUS Communications Inc. v. Wellman*, 2019 SCC 19, [2019] 2 S.C.R. 144, at para. 79). General policy objectives cannot, on their own, give the CRTC jurisdiction over a specific matter (see *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, at paras. 22-23).

[71] As is often the case, the calibration of the access regime required Parliament to balance competing interests. In this case, Parliament has balanced the interests of carriers against those of public authorities. The Court should respect this balancing.

[72] To that end, neither interpretation advanced seems incompatible with the general objectives of the Act. “*Orderly* development” does not require that the Act be interpreted in the way that is most favourable to telecommunications carriers. Indeed, the carriers do not dispute that there are other limits placed on the scope of the access regime — it does not cover private property or utility poles (see *Barrie*). The scope of a carrier’s access rights may also be subject to terms set by the CRTC. Therefore, it is clear that Parliament has not enacted the access regime which would facilitate the deployment of infrastructure most favourable to the carriers. Instead, it suggests clear limits on the scope of the access regime were in fact intended.

[73] There are important countervailing policy objectives that support such limits and in particular the differential treatment of wireline and wireless equipment in a network. The Minister’s powers under s. 5 of the *Radiocommunication Act* are helpful context to discern why the different statutory treatment of antennas and wireline infrastructure should be respected. Innovation, Science and Economic Development Canada’s procedures for antenna installation, introduced pursuant to s. 5 of the *Radiocommunication Act*, reflect that Parliament is mindful of the specific impacts that antennas have on local communities and the risks associated with their deployment. For example, carriers must ensure their antennas do not interfere with other electronic equipment, including other antennas, follow safety guidelines for exposure to radio frequency fields, and comply with appropriate environmental legislation (*CPC-2-0-03 — Radiocommunication and Broadcasting Antenna Systems*, at ss. 7.1-7.2 and 7.4). This applies even to antennas that are excluded from the public consultation process. Further, as British Columbia points out, municipal structures may not be designed to accommodate 5G small cell antennas, and local communities may have unique aesthetic or environmental concerns related to antenna siting. In short, antennas involve different considerations than wires or cables. This supports a parliamentary intention to maintain a distinction between wireless and wireline equipment in the access regime.

[74] The purpose of the access regime and the rights it grants are not frustrated by an interpretation of “transmission line” that is technologically neutral as it relates to wireline infrastructure, but excludes other technology like antennas. I note that, in imposing additional regulations on antenna deployment that do not exist for wireline

equipment, Parliament still had in mind the same “orderly development” objective that the carriers submit would be frustrated if antennas are not covered by the access regime (see *Radiocommunication Act*, s. 5(1)). This is distinguishable from cases where technological neutrality arguments have succeeded. For example, in *John v. Ballingall*, 2017 ONCA 579, 136 O.R. (3d) 305, at para. 23, the Court of Appeal for Ontario held that the word “newspaper” in s. 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c. L.12, was not limited to print articles. Libel published on a newspaper’s website is also actionable. Restricting how the libelous material is disseminated frustrates the purpose of the provision, which is to establish a right of action against the dissemination of libelous content (paras. 22-23). But limiting the scope of the access regime to wireline infrastructure does not frustrate carriers’ ability to access that infrastructure, nor does it frustrate the overall purposes of the Act, namely the “orderly development” of telecommunications in Canada. I am not persuaded that the Court should adopt an interpretation of “transmission line” that is technologically neutral as between all types of equipment that a carrier may deploy throughout its network or that Parliament’s purposes in enacting the access regime are undermined by the narrower interpretation of “transmission line”.

(5) Absurd Consequences

[75] Finally, the carriers argue that a narrow interpretation of “transmission line” leads to the absurd result that the wireline equipment in a mobile wireless network (the cable) is covered by the access regime while other, necessary, equipment (the

antenna) is not. Quebecor and Videotron submit that because it is impossible to operate 5G transmission lines without small cell antennas, the same access rights should apply to the entire network, i.e., to both the cables and the antennas. Likewise, Rogers submits that Parliament could not have intended to grant carriers a right of access to deploy the cables that connect to 5G small cell antennas, but not the antennas themselves.

[76] The consequences of a particular interpretation are a component of the modern approach to statutory interpretation. Consequences that are consistent with the purpose and scheme of the legislation are presumed to have been intended. Conversely, consequences that are absurd or otherwise unacceptable are presumed not to have been intended (*Rizzo*, at para. 27; *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101, 480 D.L.R. (4th) 1, at paras. 42-43; see also R. Sullivan, “Statutory Interpretation in a New Nutshell” (2003), 82 *Can. Bar Rev.* 51, at p. 64).

[77] I agree with the carriers that an access regime that applies to wireline equipment in a mobile wireless telecommunications network but not wireless equipment is not the regime most favourable to the deployment of 5G infrastructure, a regime that Parliament could have enacted. It will require them to negotiate with municipalities without recourse to the CRTC. That said, this does not mean the narrower interpretation leads to an absurd result; it is not unreasonable, illogical, incompatible with other provisions of the Act, does not defeat the purpose of the Act, nor does it render any part of the Act pointless or futile (*Rizzo*, at para. 27).

[78] I am not persuaded that a narrow interpretation of “transmission line” is likely to lead to an absurd consequence of impeding the Act’s overall objectives. There was evidence before the CRTC that delays in accessing public property could run up to two years. But the CRTC found that municipalities or other public authorities have not “systematically” interfered with the deployment of 5G infrastructure (CRTC Decision, at para. 475). This factual finding is entitled to deference. The carriers have failed to establish that regulating access to the wireline and wireless equipment in a network differently would frustrate the orderly deployment of the carriers’ telecommunications infrastructure — 5G or otherwise — across Canada.

[79] Further, in my view, there is no absurdity in the fact that some equipment, such as wire or cables, are subject to the access regime but other equipment, such as antennas are not. As I earlier noted, antennas have specific impacts and risks that are not engaged when carriers install, maintain and operate wires or cables. The access regime, by contrast, has clearly been designed with linear infrastructure in mind. As a result, subjecting all connected infrastructure, including 5G small cell antennas or previous-generation large cell antenna towers to the access regime without regard for these impacts and risks could give rise to concerns about unintended consequences. The same is true even if I draw a distinction between 5G small cell antennas and large cell antennas — they have many of the same impacts and risks, such as frequency interference, exposure safety, etc.

[80] In interpreting Parliament’s intent and applying it to developing circumstances, courts must be careful not to engage in policy choices best left to legislatures. “It is not for the Court to do by ‘interpretation’ what Parliament chose not to do by enactment” (*Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57, [2015] 3 S.C.R. 615, at para. 53).

(6) Federalism Concerns

[81] Quebecor and Videotron submit that the interpretation adopted by the CRTC and the Court of Appeal amounts to a conclusion that Parliament has impermissibly delegated to municipalities the power to determine the placement of 5G small cell antennas, which is within its exclusive competence. The carriers say these federalism concerns militate towards the broader reading of “transmission line”. In response, British Columbia submits that the carriers’ position is based on too rigid a view of jurisdictional boundaries, which this Court has long rejected in favour of cooperative federalism. The Court of Appeal did not assume that municipalities are constitutionally competent to intrude into federal jurisdiction, it did not suggest that Parliament has delegated exclusive federal powers to municipalities, and the carriers have not made out a case on the evidence that there is provincial legislation that would interfere with siting.

[82] This Court does not lightly wade into constitutional disputes that are unnecessary to resolve the appeal before it (see *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and*

Employment), 2023 SCC 31, at para. 108; *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97, at paras. 9-10). The carriers have not impugned the validity of any particular provincial or municipal action, nor would it have been appropriate for them to do so in the context of this appeal. If the carriers believe that a province or municipality has unconstitutionally interfered with Parliament’s exclusive jurisdiction over the siting of telecommunications facilities and telecommunications undertakings under ss. 91(29) and 92(10)(a) of the *Constitution Act, 1867*, the proper recourse would be to challenge those actions if and when they arise (see, e.g., *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 S.C.R. 467; *Calgary (City) v. Bell Canada Inc.*, 2020 ABCA 211, 7 Alta. L.R. (7th) 1).

[83] I am not persuaded that the carriers’ arguments on this point require an interpretation of “transmission line” that would displace Parliament’s decision to leave access to antenna sites up to good faith negotiation between carriers and public property owners. As discussed above, the carriers have not shown, in any event, that a limited access regime has impeded the orderly development of telecommunications infrastructure since 1993, nor that a limited access regime is likely to impede the orderly development of telecommunications infrastructure in the future.

(7) Legislative Review Panels

[84] I am comforted in my reading of the Act by the fact that those who have studied it closely similarly attributed the narrower meaning to the term “transmission

line”. The public authorities directed the Court’s attention to a 2020 legislative review report which recommended, as the Court of Appeal summarized in its reasons, “that all access matters, for both wireless and wireline infrastructure, be placed under the jurisdiction of the CRTC, and that oversight of the radiocommunication and broadcasting antenna siting process should similarly be assigned by the Minister to the CRTC” (para. 115; see Broadcasting and Telecommunications Legislative Review Panel, *Canada’s Communications Future: Time to Act — Final Report* (2020), at p. 92). This was the second of two recommendations to Parliament that all access issues be placed under the CRTC’s jurisdiction, the first having been in a 2006 legislative review report (see Telecommunications Policy Review Panel, *Telecommunications Policy Review Panel: Final Report 2006* (2006), at pp. 5-4 to 5-12).

[85] This Court has found amendments that were proposed and then abandoned to be immaterial to determining the meaning of the legislation that would otherwise have been amended (see *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 63). Similarly, Parliament’s apparent inaction in the face of the above recommendations does not in itself establish that “transmission line” bears the meaning urged by the public authorities. Nevertheless, I find support in the fact that the reports recommending this legislative change, penned by those who have studied this legislation closely, align with my conclusion that the current access regime does not apply to antennas.

VII. Conclusion

[86] For all these reasons, I conclude that the term “transmission line” refers to wireline transmission infrastructure only. This interpretation of “transmission line” means that ss. 43 and 44 of the Act do not grant carriers a qualified right of access for antennas — including 5G small cell antennas — located on public property, nor do they authorize the CRTC to adjudicate disputes over access to those antennas.

[87] I would therefore dismiss the appeal, with costs to the Federation of Canadian Municipalities, Electricity Canada and His Majesty The King in Right of the Province of British Columbia.

The reasons of Côté and Martin JJ. were delivered by

Côté J. —

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I. Overview

[88] Mobile wireless services are a key component of the day-to-day life of Canadians and the country’s digital economy. Not only do they facilitate communications, but they have also become essential for commerce, culture, entertainment, safety, and learning. Mobile wireless services have been the largest and fastest-growing sector of the telecommunications industry in recent years, and the deployment of new technologies such as fifth-generation (“5G”) networks is expected to continue that trend. There is no doubt that the functioning of our society is dependent on the proper operation of these networks.

[89] The great speed of technological development — coupled with our ever-growing reliance on these technologies in our day-to-day life — motivated Parliament to develop the *Telecommunications Act*, S.C. 1993, c. 38 (“Act”), and the *Radiocommunication Act*, R.S.C. 1985, c. R-2, with technological neutrality in mind. During the committee stage of Bill C-62, which became the *Telecommunications Act*, the Minister of Communications at the time, Perrin Beatty, noted that the government

“deliberately se[t] a framework which will be flexible for the future” and aimed to “have a bill that was technologically neutral” to ensure that Canada would have “a regulatory structure in place that was flexible and modern” (House of Commons, Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture, *Minutes of Proceedings and Evidence of the Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture*, No. 8, 3rd Sess., 34th Parl., May 11, 1993, at p. 16). Technological neutrality allows our laws to continue to operate without requiring constant amendment to adapt to constant technological change. It also provides certainty and predictability for wireless services carriers who carry out the very technological development on which we rely.

[90] These two statutes have developed in parallel and concomitantly. They are closely interrelated. In the past, our Court has clearly stated that the *Broadcasting Act*, S.C. 1991, c. 11, the *Radiocommunication Act* and the *Telecommunications Act* operate as an interconnected statutory scheme (*Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489 (“*Reference re Broadcasting*”), at paras. 34 and 37).

[91] Upgrading to 5G technology requires major upgrades to current networks through the deployment of 5G small cells across the country. These small cells work by utilizing low-powered antennas that are mounted on poles, lamp posts, and buildings and that are hard-wired to existing networks. Though existing networks operate with

only 13,000 large cell towers, over 250,000 5G small cells will have to be installed in order for 5G networks to function.

[92] This appeal requires our Court to determine whether and how the applicable legislation enables wireless services carriers to operationalize this significant upgrade and, more particularly, whether the access regime provided for in ss. 43 and 44 of the *Telecommunications Act* can facilitate the installation of 5G small cells. Since the early 1900s, the access regime has been essential to the development of Canada’s telecommunications networks. To decide the appeal, the Court must interpret the term “transmission line” found in ss. 43 and 44 of the *Telecommunications Act* and determine whether it captures 5G small cells. If it does capture 5G small cells, then the Canadian Radio-television and Telecommunications Commission (“CRTC” or “Commission”) will be able to grant carriers access to public sites to install them, in cases where a carrier and a public entity cannot come to an agreement. If 5G small cells are not captured by the definition of “transmission line”, then carriers will have to individually negotiate all site access, with no possibility of applying to the CRTC in cases where there is an impasse. In other words, an interpretation that does not include 5G small cells in the definition of “transmission line” will make it significantly more difficult — and in some instances impossible — for carriers to implement significant upgrades to Canadian mobile networks.

[93] My colleague Moreau J. adopts such an interpretation, concluding that the installation of 5G small cells is outside the scope of the access regime in the

Telecommunications Act. With respect, I cannot and do not agree. In my view, the text, context, and purpose of the *Telecommunications Act* make it clear that the term “transmission line” includes 5G small cells. This interpretation accords with the text and with the grammatical and ordinary meaning of the term “transmission line”. It is also the only interpretation that allows the *Telecommunications Act* and the *Radiocommunication Act* to operate together effectively, as Parliament intended. And finally, it is the only interpretation that aligns with and respects Parliament’s desire for technological neutrality in light of rapid technological development.

II. Background

[94] In the last two decades, the CRTC has issued a number of directives concerning the terms and conditions that national wireless carriers must adhere to in order to protect consumers and encourage competition.

[95] In February 2019, the CRTC issued *Telecom Notice of Consultation CRTC 2019-57* (online) for the purpose of initiating a broad review of mobile wireless services and their associated regulatory framework. Participants in this process included telecommunications carriers such as the appellants. When participants were invited to comment on the matter, an issue arose regarding the CRTC’s jurisdiction over access to municipal infrastructure and other public spaces for the installation of 5G small cells. This issue required the CRTC to interpret the term “transmission line” in s. 43 of the *Telecommunications Act*.

[96] On April 15, 2021, the CRTC released its decision through *Telecom Regulatory Policy CRTC 2021-130* (online) (“CRTC decision”) and concluded that the term “transmission line” cannot include small cells or any technologies that transmit telecommunications wirelessly.

[97] The Federal Court of Appeal affirmed this interpretation. It found that the ordinary meaning of “line” is a physical or tangible pathway and that since 5G small cells have a wireless component, they do not meet this narrow definition. The court applied the presumption of consistent expression, finding that “transmission line” must be given a narrower definition than “transmission facility” — an expression that is defined more broadly in s. 2(1) of the Act as “any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points”. According to the Federal Court of Appeal, the objectives of the *Radiocommunication Act* and the *Telecommunications Act* are implemented through two parallel but distinct frameworks that provide for the approval of antenna installation sites and for access to these sites, respectively. Broadening ss. 43 and 44 of the *Telecommunications Act* would ignore the deliberate choice of Parliament to create a demarcation between the two regimes and would risk creating operational conflicts.

[98] Our Court is now called upon to examine the issue.

III. Relevant Statutory Scheme

[99] Before I begin my analysis, it is useful to outline the objectives of the *Telecommunications Act*. Section 7 of the Act recognizes the “essential role” performed by telecommunications in Canada and sets out the objectives of the Act as follows:

- (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- (d) to promote the ownership and control of Canadian carriers by Canadians;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
- (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
- (h) to respond to the economic and social requirements of users of telecommunications services; and
- (i) to contribute to the protection of the privacy of persons.

[100] Sections 43 and 44 of the *Telecommunications Act* are the provisions relating to what is called the access regime. These provisions read as follows:

43 (1) In this section and section 44, *distribution undertaking* has the same meaning as in subsection 2(1) of the *Broadcasting Act*.

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

(3) No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.

(4) Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines.

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.

44 On application by a municipality or other public authority, the Commission may

(a) order a Canadian carrier or distribution undertaking, subject to any conditions that the Commission determines, to bury or alter the route of any transmission line situated or proposed to be situated within the jurisdiction of the municipality or public authority; or

(b) prohibit the construction, maintenance or operation by a Canadian carrier or distribution undertaking of any such transmission line except as directed by the Commission.

[101] Section 43(2) provides that carriers may enter a public place for the purpose of constructing, maintaining, and operating transmission lines as long as they do not unduly interfere with the public use and enjoyment of that place. Ordinarily, the consent of a municipality or other public authority is required to install a transmission line (s. 43(3)). However, s. 43 confers adjudicative powers on the CRTC enabling it to grant access to a site for the installation of a transmission line when a municipality or other public authority refuses to consent (s. 43(4)). In such a case, the CRTC has the power to state the terms and conditions of this access (*ibid.*). The interpretation of the term “transmission line” therefore serves as a gateway to the access regime. Moreover, under s. 43(5), a person who provides services to the public may also apply to the CRTC to gain access to the supporting structure of a transmission line. As for s. 44, it codifies the right of municipalities and other public authorities to apply to the CRTC for various orders against a carrier.

[102] Therefore, although carriers must still negotiate agreements for the construction and installation of transmission lines or for access to the supporting structure of a transmission line, ss. 43 and 44 create an access regime that significantly facilitates the construction and installation of transmission lines — a regime of great importance in a context where over 250,000 installations must be made to operationalize network upgrades.

[103] The *Radiocommunication Act*, on the other hand, regulates the operation of devices that use the radio spectrum by establishing a licensing system. Under

s. 5(1)(f) of the *Radiocommunication Act*, the Minister of Industry (“Minister”) has jurisdiction to “approve each site on which radio apparatus, including antenna systems, may be located, and approve the erection of all masts, towers and other antenna-supporting structures”. However, as I will discuss in greater detail later, this power of approval does not give the Minister the ability to regulate access to sites for the installation of these antennas, unlike the regime outlined in the *Telecommunications Act*.

IV. Analysis

[104] The starting point in any statutory interpretation exercise in Canada is based on the modern approach, under which the words of a provision must be interpreted “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26).

[105] In *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476, our Court relied on the modern approach to determine whether s. 43(5) of the *Telecommunications Act* could allow private distributors to have access to the power poles of a municipality for the purpose of supporting cable television transmission lines and whether this access was under the jurisdiction of the CRTC (see para. 20). To reach its conclusion, the Court considered (1) the grammatical and ordinary meaning of ss. 43 and 44 of the Act; (2) the internal context of ss. 43 and 44;

(3) the external context of s. 43, including other provisions of the Act; and (4) the policy objectives of the Act.

[106] Just as the Federal Court of Appeal did in its reasons, I draw upon the legal framework used in *Barrie* to determine whether the CRTC has jurisdiction over 5G small cells. However, unlike the Federal Court of Appeal, I reach the conclusion that the words “transmission line” in ss. 43 and 44 of the *Telecommunications Act* include wireless lines.

[107] First, I consider the grammatical and ordinary meaning of the words “transmission line”. I conclude that this expression alone suggests that 5G small cells are within the scope of the access regime in the *Telecommunications Act*. Indeed, even if the words “transmission line” were said to include only wireline connections, 5G small cells would be captured by this definition. This conclusion, however, does not end the analysis, because the plain meaning of “transmission line” can also be interpreted as including more than just wireline connections. Second, I continue the analysis by considering the external and internal contexts of the access regime provisions, which bolster an interpretation of “transmission line” that includes wireless lines. Third, and last, I find that a dynamic interpretation of the words “transmission line”, which requires the application of the principle of technological neutrality, suggests that Parliament intended to create an evolving legislative scheme capable of responding to the development of new technologies, including the deployment of 5G small cells.

A. *Grammatical and Ordinary Meaning of the Words “Transmission Line”*

[108] The modern approach to statutory interpretation requires our Court to first consider the text of the relevant provisions. In the absence of a legislative definition, as in this case with respect to “transmission line”, the focus should be on the grammatical and ordinary meaning of the text, i.e., its “natural meaning”.

(1) An Interpretation Requiring a Physical Connection Line May Include 5G Small Cells

[109] One way to read the term “transmission line” is to conclude that it refers to a *physical* line. This was the interpretation favoured by the Federal Court of Appeal, which determined that it must involve a “physical or tangible pathway” (2023 FCA 79, 16 Admin. L.R. (7th) 32, at para. 81).

[110] Assuming, for the purposes of analysis, that this narrow interpretation is the correct one, I am of the view that this definition of “transmission line” necessarily includes 5G small cells. Such cells utilize the physical or tangible pathways described by the Federal Court of Appeal. Indeed, it is noteworthy that wireless facilities such as 5G small cells are mounted on structures like telephone poles, lamp posts, and buildings and are “hard-wired”, usually with fibre-optic cables, into carriers’ existing wireline transport networks as a part of a single, integrated telecommunications network. In this sense, 5G small cells attach to and extend existing transmission lines.

[111] 5G small cells require both a cable to transmit information and a connection to a power source. In a guide prepared by the respondent the Federation of Canadian Municipalities to inform municipalities about the rollout of 5G small cells, titled *Getting it right: Preparing for 5G deployment in your municipality* (2020) (“5G Deployment Guide”), the operation of 5G small cells is outlined as follows:

Small cells rely on a number of physical connections to function. In order for the data to flow into or from the Internet, each small cell antenna must be hard-wired into the carrier’s underground fibre-optic network. Each antenna is also accompanied by various support or control equipment and requires its own power source. Therefore a fiber optic cable conduit and a power supply conduit might need to be constructed where the cables are located underground.

...

... These might be “wireless” as far as the end user is concerned, but for the technology to function, each small cell antenna requires a power source and must usually be physically connected, by a cable, to the rest of the carrier’s Internet network.

...

... Each small cell will have to be connected to the 5G network through cables to transmit the data captured by the small cells or to deliver data to the wireless users and devices. This wire connection component of a carrier’s 5G network will likely be located within your [right of way] and could require the installation of pedestals or cabinets at grade. As per the rules applicable to wireline infrastructure, carriers have a right to use the [right of way] space for these installations but, as we have seen, this right is subject to the terms of your municipality’s consent. Disagreements on the terms of access can be brought to the CRTC by either party for resolution. [Emphasis added; pp. 10 and 15-16.]

[112] Moreover, in the Federation of Canadian Municipalities’ responses to questions posed by the *Telecom Notice of Consultation CRTC 2019-57*, it noted that “[f]rom a technical perspective, there is no such thing as ‘wireless’ 5G technology: 5G

small cells have to be connected through a wire Each cell also requires a direct power supply, also fed by wires” (*CRTC Telecom Notice 2019-57 — FCM Responses to the Commission’s Questions*, 2019 (online), at p. 6). Therefore, the wired components of small cell networks are indisputably transmission lines, even if I assume that the term should be interpreted as referring only to physical or wired lines.

[113] My colleague takes the position that the fact that antennas are hard-wired does not mean that they must be understood to be transmission lines in and of themselves (para. 46). I disagree.

[114] 5G small cells cannot function without the two elements; the antenna component of small cells is dependent on the wired component. 5G small cells cannot be split into wired and non-wired components when *both* are required for the 5G infrastructure to be operative. With respect, my colleague’s analogy between a 5G small cell and a toaster is inapposite. Small cells contain both a power source and a secondary wire to connect the antenna to the rest of the carrier’s network. Most importantly, this secondary wire is *critical* because it allows the antenna to interact with all of the other antennas in the carrier’s entire network. 5G technology only works where 5G small cells are in close proximity to each other. Without such proximity, the antennas are purposeless; they are only effective in the aggregate. Toasters are plugged in for individual use. They do not need to connect to every other toaster in order to function.

[115] Although the Federal Court of Appeal noted that 5G small cell antennas must be “hard-wired into the carrier’s wireline network” and that they are, to that extent, “no different from the traditional cell phone antennas installed on tall towers and buildings over the last decade” (para. 12), the conclusion it reached in its interpretation of the term “transmission line” gave no effect to that factual finding.

[116] The appellants argue that this in itself would be sufficient to dispose of this appeal. However, I am of the view that, according to the principles established in *La Presse inc. v. Quebec*, 2023 SCC 22, at paras. 23-24, the analysis must go further, since the plain meaning of the words can also support a broader interpretation that does not require a physical connection. Stopping the analysis at this wired definition of “line” divorces the definition from the first word used in the expression — *transmission* — and further divorces the definition from the context of the *Telecommunications Act* and the regulatory regime.

(2) The Grammatical and Ordinary Meaning Supports a Broader Interpretation of “Transmission Line”

[117] Further elements of the grammatical and ordinary meaning point towards an interpretation of ss. 43 and 44 of the *Telecommunications Act* that is inclusive of 5G small cells.

[118] Our Court held in *Barrie* that “transmission” in this context means the transmission of “intelligence” as opposed to, for example, electricity (paras. 33-34). A

“transmission line” can therefore be understood as a line that transmits intelligence. And “intelligence” is defined broadly in s. 2(1) of the Act: “. . . signs, signals, writing, images, sounds or intelligence of any nature”.

[119] The appellant Rogers Communications Canada Inc. suggests that the CRTC and the Federal Court of Appeal inappropriately placed too much reliance on the dictionary definition of the word “line” to conclude that a transmission line must be physically wired (A.F., at para. 65).

[120] Of course, when one or two words are the focal point of an interpretation, as in this case, it could be standard practice for courts to refer to dictionary definitions to determine “the outer boundaries of appropriate usage for each sense of a word” (see C. Hutchison, *The Modern Principle of Statutory Interpretation* (2nd ed. 2022), at §3.04). However, while dictionary definitions may be a good starting point, they are not determinative. At this early stage of interpretation, they should have only a “presumptive meaning”, which must be verified, if not revised, against the context, purpose, and intent of the statute (*ibid.*, citing B. G. Slocum, *Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation* (2015), at p. 22).

[121] In my view, the Federal Court of Appeal and the CRTC erred in dismissing the possibility that the ordinary meaning of “transmission line” in the telecommunications context might also include a wireless type of line. An analysis of a few dictionary definitions and of 5G technology itself does not *a priori* rule out the possibility that a transmission line could be wireless.

[122] While it is true that for cell phone users, no physical connection lines run between antennas and their phones, the intervener the Business Council of Canada helpfully points out that the plain meaning of “line” in the telecommunications context is less conclusive than the dictionary definitions relied on by the CRTC would suggest (I.F., at para. 14).

[123] Indeed, in the past, courts have referred to the transmission of radio signals between cell towers and cell phones as occurring along a “line of sight” (*R. v. Gordon*, 2015 ONSC 1192, at para. 85; *R. v. Kanagasivam*, 2016 ONSC 1993, at para. 13). As suggested by the Business Council of Canada, these references to a “line” of sight without a wired connection suggest that there is a linear transmission of telecommunications between two points. Thus, while the Federal Court of Appeal rejected the appellants’ argument on the ground that “an antenna does not create a linear path but a sphere” (para. 84), this seems not to be entirely correct from a technological standpoint.

[124] The more expansive interpretation that captures wireless connections also accords with a colloquial use of the word “line” in a technological context. For example, one may refer to a device being “*online*” to suggest that it is connected to the Internet. But this connection is not always a wired one. In this sense, a transmission line can best be understood as a connection between two points that transmits intelligence.

[125] A plain reading of the words “transmission line” therefore reveals an ambiguity that requires us to continue the analysis, looking to the context and purpose behind ss. 43 and 44 of the *Telecommunications Act* to ascertain its correct meaning (*La Presse*, at paras. 23-24).

B. *Context of the Provision*

[126] Both the relationship between the *Telecommunications Act* and the *Radiocommunication Act* (the external context) and the location of s. 43 within the *Telecommunications Act* (the internal context) accord with a broader, wireless interpretation of “transmission line”. I will examine each in turn.

(1) External Context: Interplay Between the Two Statutes

[127] The external context of ss. 43 and 44 in addition to the relationship between these sections and the antenna site approval regime contained in the *Radiocommunication Act* support the conclusion I arrive at. Parliament has enacted two statutes to govern access to and the location of antennas, respectively, in the *Telecommunications Act* and the *Radiocommunication Act*. As they operate in tandem, these two statutes suggest that, in the process of selecting a location for 5G small cells, the CRTC has the power to grant access when the carrier and the municipality or other public authority are unable to reach an agreement. I conclude that stripping the CRTC of its jurisdiction over access to a site for the installation of 5G small cells would have

the effect of giving a veto to a municipality or other public authority, which could not have been Parliament's intent.

[128] As I mentioned earlier, the *Telecommunications Act* and the *Radiocommunication Act* have developed concomitantly and are part of an “interconnected statutory scheme” (*Reference re Broadcasting*, at para. 34). Parliament must be presumed to deal with the same subject matter in different statutes with “harmony, coherence, and consistency” (para. 37, citing *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867, at para. 52, and R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 325-26).

[129] The access regime contained in the *Telecommunications Act* grants the CRTC the power to authorize access to a site to install a transmission line and to adjudicate any dispute between municipalities or other public authorities and carriers with respect to this access. For its part, the *Radiocommunication Act* does not contain an access regime comparable to the one in the *Telecommunications Act*. However, s. 5(1)(f) of the *Radiocommunication Act* does grant the Minister the jurisdiction to approve each site on which radio apparatus, including antenna systems, may be located and to approve the erection of antenna-supporting structures.

[130] A harmonious interpretation of these provisions requires our Court to acknowledge the fundamental difference between the power of the Minister under the *Radiocommunication Act* to “authorize” an installation site and the power of the CRTC under the *Telecommunications Act* to grant access to the same site. The Minister's site

approval authority does not extend to authorizing *access* to a particular site. Nothing in the *Radiocommunication Act* suggests otherwise. In addition, the *Radiocommunication Act* provides no mechanism for the Minister to manage disputes that may arise between a carrier and a public entity in the event of an impasse over access. The Minister’s sole power to resolve disputes is set out in circular *CPC-2-0-03 — Radiocommunication and Broadcasting Antenna Systems* (2022) and relates only to impasses arising in the discussions between the parties regarding the construction of an antenna system (*Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 S.C.R. 467, at para. 9).

[131] Indeed, this Court in *Châteauguay* never confirmed that the Minister has any power regarding access to *public land*. In that case, the Minister exercised his site approval authority to grant Rogers authorization to install an antenna on private property. Following the approval, the city of Châteauguay nonetheless issued a “notice of reserve” that had the effect of prohibiting construction on the private property in question. That case was not about the access regime.

[132] The Minister’s power under the *Radiocommunication Act* is not a power to grant access rights. Indeed, if it were, one would expect this to be explicitly stated, given the access regime that is already laid out in the *Telecommunications Act*.

[133] Adopting my colleague’s interpretation would have the effect of preventing the CRTC from determining the conditions of access to a site contemplated for the installation of 5G small cells. This means that a municipality or other public authority

would, in effect, have a veto if a carrier could not reach an agreement with it to obtain access to an installation site. Writing for a majority of our Court in *Châteauguay*, Wagner J. (as he then was) and I declined to recognize such a power of a municipality in light of Parliament’s exclusive jurisdiction over telecommunications (para. 42).

[134] Ministerial authorization to install an antenna on a site under the *Radiocommunication Act* is granted only *after* access to a site has been negotiated. The Federation of Canadian Municipalities says this in the 5G Deployment Guide, which states that, “[c]ontrary to the *Telecommunications Act*, carriers do not enjoy any rights of access to install transmission antennas, including small cells, and must negotiate access on a case-by-case basis” (p. 12). The document further states:

The legal framework for antennas is completely different and is set out under the *Radiocommunication Act*. Contrary to wires and cables, carriers do not have any rights to access property for the purposes of installing transmission antennas. Carriers must negotiate on an equal footing with the owners of the assets where they wish to install an antenna. Typically, carriers purchase or lease the land to install large towers or, if they wish to attach a smaller antenna to an existing structure (rooftop, building wall, utility pole, etc.), they negotiate an occupancy agreement with the owner, which usually includes some form of rent. Of course, any owner is free to refuse.

Once they have secured a location for an antenna, carriers must apply to Innovation, Science and Economic Development Canada (ISED) for technical approval. ISED will assess each application based on the Antenna Systems Procedure (Client Procedures Circular CPC-2-0-03). For stand-alone tower structures, regardless of height, the procedure provides for formal consultations with the municipality as the local land-use planning authority. However, 5G small cell installations on existing structures (towers and non-tower structures such as a building or power pole) are excluded from this requirement as long as the height of the structure is not increased by more than 25 percent. [Emphasis added; p. 14.]

[135] The appellant Telus Communications Inc., in response to the CRTC's requests for information, similarly stated that the Minister's power to authorize a site does not include the power to grant access (A.R., vol. V, at pp. 1768-69):

However, subsection 5(f) does not, on its face, grant carriers rights to access any particular site. In practice, carriers are responsible for obtaining rights to access the sites at which they intend to install towers, such as by entering into leases. The subsequent approval process is undertaken under ISED processes, which in many cases requires community consultation (but not in all cases). The exercise of subsection 5(f) powers is like land-use and zoning powers exercised by municipalities in respect of other industries that are not federally regulated.

In contrast, section 43 of the *Telecommunications Act* gives carriers actual access rights, to highways and other public places for the purpose of constructing transmission lines. The two statutes are, therefore, complementary: a carrier could exercise a right to access public land to install the tower, and the ISED process would then address whether that was a permissible location for the purpose. Alternatively, a carrier could negotiate access to private lands (without a section 43 access right), and the ISED process would continue to apply. These powers are tangential, but in no way conflict. Accordingly, applicable principles of statutory interpretation demand that both powers continue in full force in effect. [Emphasis added.]

[136] Though the issue is whether a 5G small cell would fall within the meaning of "transmission line" in ss. 43 and 44 of the *Telecommunications Act*, there is no dispute about the fact that a 5G small cell would also be regulated by the *Radiocommunication Act*. The licence for the antenna and the approval of the site contemplated for the 5G small cell are under the Minister's jurisdiction. And if a carrier cannot negotiate access to a site, then it will never proceed to obtain ministerial authorization.

[137] I am of the view that the interplay between the two statutes can be summarized as follows: in the process of selecting a location for the structure on which a 5G small cell will be hard-wired, the CRTC has the power to grant access even where the carrier and the municipality or other public authority are unable to reach an agreement. Once this access is granted, the carrier will then seek authorization from the Minister. There is no conflict created by the two statutes. They operate in tandem without any issue. This is a coherent scheme.

[138] My colleague notes that the *Radiocommunication Act* reflects that Parliament “is mindful of the specific impacts that antennas have on local communities and the risks associated with their deployment” (para. 73). I do not dispute that 5G small cells may come with risks similar to those associated with large antennas. As I explain above, ministerial authorization for an antenna site is granted *after* access is already settled. Ministerial authorization is the way in which those risks are addressed. I disagree with my colleague that the existence of the *Radiocommunication Act* and its regulations for antenna siting approval suggests that Parliament intended to provide an access regime for wireline technology only (para. 63). The *Radiocommunication Act* is responsive to the unique risks that both my colleague and I acknowledge are posed by antennas. No intent on the part of Parliament to leave antennas out of the access regime in the *Telecommunications Act* can be extrapolated from the mere existence of another statute. This is especially true given the interrelated and overlapping operation of the two statutes.

[139] Moreover, I do not dispute that Parliament had “orderly development” in mind when it enacted these additional rules for antenna deployment, as my colleague writes (para. 74). Enacting these rules as part of one regime — the *Radiocommunication Act* — aligns with an “orderly development” objective. Nevertheless, failing to recognize 5G small cells as falling within the definition of “transmission line” for the purposes of the access regime in the *Telecommunications Act* would go *against* this objective.

[140] According to my colleague’s interpretation, the wired component of 5G small cells would be governed by the access regime in the *Telecommunications Act*, while the antenna, the wireless component, would be outside the scope of that regime. This *does* produce absurd results, contrary to my colleague’s conclusion (paras. 75-79). Carriers would have the possibility of resorting to CRTC adjudication to obtain access to install the wired component of 5G small cells, with no such possibility for the installation of the other component.

[141] My colleague is right to say that the scope of a carrier’s access rights may also be subject to terms set by the CRTC (para. 72). But whatever these terms are, the point is that access will be granted in some way or form, as opposed to an approach that creates a *de facto* veto power for municipalities and other public authorities. Given that Parliament was no doubt aware of the existence of antennas when it used the term “transmission line” and created the access regime, it could not have intended to have

an access regime for telecommunications that dealt with wireline technology while leaving no access regime at all for wireless technology.

(2) Internal Context of the *Telecommunications Act*

[142] The internal context of the Act also supports the conclusion that 5G small cells are captured by the words “transmission line”. In my view, the presumption of consistent expression used by the Federal Court of Appeal to distinguish the expressions “transmission line” and “transmission facility” found in the *Telecommunications Act* is considerably weakened by the distinct purposes and legislative histories of the two expressions.

[143] In its analysis of the internal context of the Act, the Federal Court of Appeal relied on the presumption of consistent expression to reach the conclusion that wireless transmission lines are not under the jurisdiction of the CRTC.

[144] The expression “transmission line” is undefined in the Act. “Transmission facility” however, is defined in s. 2(1). It refers to “any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus”. According to the Federal Court of Appeal, in light of this broad definition of “transmission facility”, the words “transmission line” must be given a different, narrower interpretation.

[145] The presumption of consistent expression provides that, “when different terms are used in a single piece of legislation, they must be understood to have different meanings” (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 81). This assumes that “[i]f Parliament has chosen to use different terms, it must have done so intentionally in order to indicate different meanings” (*ibid.*).

[146] However, the presumption can be rebutted by other principles of interpretation. As our Court wrote in *R. v. Steele*, 2014 SCC 61, [2014] 3 S.C.R. 138, “there may be situations in which the presumption of consistent expression is clearly rebutted by other principles of interpretation and, as a result, the intended meaning . . . may vary between statutes and even, in some circumstances, within them” (para. 51). Pierre-André Côté and Mathieu Devinat explain that the presumption of consistent expression is applied not as a rule, but rather as a supposition that draws its strength from the context (*Interprétation des lois* (5th ed. 2021), at para. 1147):

[TRANSLATION] The presumption of consistent expression should therefore not be applied without taking into account the textual environment of each expression. It is a presumption whose weight may vary depending on the quality of the legislative drafting: the perception that the text being examined was drafted with a greater or a lesser degree of care will therefore contribute to giving the principle more or less weight. Another factor that may come into play: the degree of proximity, in the text, between the two expressions that are presumed to have the same meaning.

[147] With respect, I am of the view that the Federal Court of Appeal failed to consider certain elements that weakened the presumption in this case. The expressions

“transmission line” and “transmission facility” have distinct purposes and legislative histories.

[148] Indeed, these expressions relate to separate regimes in the Act: “transmission line” relates to the access regime set out in ss. 43 to 45, while “transmission facility” is used in s. 16, the provision on the requirement of Canadian ownership and control. While these provisions were adopted as part of the same legislative reform initiative, the statutory history reveals different policy purposes that affect the strength of the presumption of consistent expression.

[149] The term “transmission facility” was introduced almost a century after the enactment of the access regime, which was formerly set out in the *Railway Act*, R.S.C. 1985, c. R-3 — the Act that was replaced by the *Telecommunications Act*. The ownership and control regime in Part II of the Act sets out who is eligible to operate as a telecommunications common carrier. The definition of “transmission facility” alone plays no other role in any other section of the Act — only as part of other definitions that are used throughout the Act, such as the definition of “telecommunications facility”.

[150] The mere fact that the definition of “transmission facility” appears in the definitions section of the Act rather than in s. 16 is of no moment. On its face, this fact seems to strengthen rather than weaken the presumption. However, although the definition appears at the beginning of the Act, this expression is used in only three other places in the Act. The expression “transmission facility” appears in s. 16(2), under the

heading “Eligibility”. This provision states that a Canadian carrier is eligible to operate as a telecommunications common carrier if, among other requirements, it “owns or operates only a transmission facility that is referred to in subsection (5)” (s. 16(2)(b)). This is a critical provision; it sets out what entities are considered telecommunications common carriers and are thus vested with various powers and privileges throughout the Act. Indeed, the definition of “telecommunications common carrier” is closely linked to the definition of “transmission facility”. The expression “telecommunications common carrier” is defined in s. 2(1) as “a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation”.

[151] The only other places where Parliament uses the expression “transmission facility” in the Act are s. 5, titled “Application”, and s. 7, in listing the objectives of the Act. All that s. 5 does is clarify that “[a] trustee, trustee in bankruptcy, receiver, sequestrator, manager, administrator of the property of another or any other person who, under the authority of any court, or any legal instrument or act, operates any transmission facility of a Canadian carrier is subject to this Act.”

[152] Given that Parliament wished to refer to this expression for the purpose of clarifying who is subject to the Act — a purpose that would not belong within the general eligibility provision — it makes natural sense for “transmission facility” to be defined at the beginning of the Act. Furthermore, s. 7(e) states that one of the objectives of the Act is “to promote the use of Canadian transmission facilities for

telecommunications within Canada and between Canada and points outside Canada”. This does not bestow any powers upon telecommunications carriers — it outlines a very broad objective which uses the widest possible scope of the definition. Moreover, just because the definition appears at the beginning of the legislation does not mean that it functionally applies broadly; the expression is used in an operative and substantive manner only in s. 16 of the Act. I note as well that the definition of “telecommunications” itself in s. 2(1) of the Act — a term appearing in the title of the legislation — includes the transmission of intelligence “by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system”. This definition includes radio waves. But even more importantly, it demonstrates that Parliament knew to use the word “wire” or “cable” when it was specifically referring to a physical line.

[153] Furthermore, my colleague makes the point that ss. 43 to 45 of the Act “cal[l] to mind physical, linear undertakings”, given that these provisions refer to entering and breaking up property and constructing transmission lines “on, over, under or along” public infrastructure (paras. 50-51).

[154] With respect, this derives far too much meaning from the fact that the Act contemplates physical undertakings. The fact that the Act grants carriers the power to make physical changes to land to carry out the installation of wireline technology is of no moment. As long as the term “transmission line” includes physical connections, which we all agree is the case, these provisions are necessary. Even if there were a

definition of “transmission line” that expressly included antennas, these provisions would be necessary for the implementation of wireline connections. This does not preclude the installation of infrastructure that does not require breaking up land. No provision is necessary where physical alterations to land are not needed for installation. And in any event, a carrier would still need to “enter on” property to install 5G small cells, which may still be placed “on” existing infrastructure. They may also require the breaking up of property in some cases, as acknowledged by my colleague (para. 50).

C. *Object and Purpose of the Telecommunications Act*

[155] The principles of dynamic interpretation, i.e., an interpretation that is not frozen in time and can evolve with technology, must be considered at the stage where the court needs to assess the purpose of the Act. The principles of dynamic interpretation have long been applied in the telecommunications context (see A.F., *Telus*, at paras. 72-75).

[156] In *Edmonton (City) v. 360Networks Canada Ltd.*, 2007 FCA 106, [2007] 4 F.C.R. 747, the Federal Court of Appeal considered the meaning of the words “highway or other public place” in s. 43 of the *Telecommunications Act*. In that case, the parties were disputing whether light rail transit lands in the city of Edmonton should be considered an “other public place”. Evans J.A. acknowledged an interpretive problem with the words “highway or other public place”, which, like “transmission line”, had their roots in older versions of the Act (see para. 60). Ultimately, Evans J.A. chose a broader interpretation that would allow “other public place” to include all of the light

rail transit lands. He found that a narrower interpretation would have “thwart[ed] the effective administration of the legislation” in a manner inconsistent with its objectives, including “encouraging the efficient and orderly development of communications networks” and providing a regulatory framework “responsive to advances in telecommunications technology and to the introduction of a competitive business environment and market forces” (para. 64).

[157] Had the Federal Court of Appeal in the present case adopted the same contextual, dynamic approach as in *360Networks* when interpreting “transmission line”, it would have concluded that the term should be interpreted as encompassing wireless transmission infrastructure.

[158] This dynamic approach is also reflected in s. 10 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which states that “[t]he law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.”

[159] Moreover, various elements related to Parliament’s intent in enacting and reforming the *Telecommunications Act* point towards the applicability of a dynamic interpretation in this case. Let me explain.

[160] The general objectives of the Act as set out in s. 7 reflect a dynamic approach. Section 7 recognizes the “essential role” performed by telecommunications

in Canada and sets out the Act’s objectives as being, among other things, “to facilitate the orderly development throughout Canada of a telecommunications system”, “to render reliable and affordable telecommunications services of high quality accessible to Canadians”, “to enhance the efficiency and competitiveness . . . of Canadian telecommunications”, “to ensure that regulation, where required, is efficient and effective”, and “to respond to the economic and social requirements of users of telecommunications services”.

[161] An efficient and effective telecommunications regulatory regime that facilitates reliable, high quality services throughout Canada is one that makes it easier — not more difficult — for carriers to carry out the major upgrades necessary to develop Canada’s telecommunications networks. Of course, these policy objectives do not ground the CRTC’s jurisdiction on their own — rather, they inform how the access regime must be interpreted. With respect, an interpretation of “transmission line” that disentitles carriers from seeking recourse through the access regime in the *Telecommunications Act* runs contrary to these objectives. Requiring carriers to negotiate access with municipalities or other public authorities without recourse to the CRTC in case of an impasse will naturally make it harder to deploy 5G infrastructure. The sheer number of 5G small cells that must be deployed — at least 250,000 compared to only 13,000 large cell towers — significantly increases the difficulty of negotiation due to the fact that 20 times the number of antennas must be installed in the same amount of space.

[162] As the appellant Telus points out in its factum, Cabinet directions indicate that the CRTC is committed to technological neutrality. The 2006 direction instructed the CRTC to “ensure . . . technological and competitive neutrality . . . to the greatest extent possible” (*Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, s. 1(b)(iv)), while the 2019 direction required the CRTC to consider how its decisions “enable innovation in telecommunications services, including new technologies and differentiated service offerings” (*Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, s. 1(a)(vi)). This was further affirmed in the most recent Cabinet direction in 2023 (*Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, s. 2(f)). This direction is not just about technological neutrality, since it relates specifically to the access regime. It requires the CRTC to take measures “mandating improved access to support structures, such as telephone poles and conduits, as well as identifying and addressing other barriers to timely deployment of telecommunications networks” (s. 18(b)).

[163] My colleague takes a narrow approach to technological neutrality in this case, concluding that the term “transmission line” is technologically neutral only in the sense that it applies to wireline technologies of any kind. With respect, the legislative history cuts against such a narrow interpretation. The 1993 enactment of the *Telecommunications Act* replaced the *Railway Act*, in order to create a full legislative

scheme addressing telecommunications and to “modernize the regime and take into account the new technology” (C.A. reasons, at para. 88).

[164] The Act was created by Bill C-62, *An Act respecting telecommunications*, 3rd Sess., 34th Parl., 1992. As mentioned earlier, during the committee stage in the House of Commons, the Minister of Communications, Perrin Beatty, said the following about the proposed legislation:

The bill deliberately sets a framework which will be flexible for the future. One of the things we wanted to avoid was a situation where new technologies would rapidly make the regulatory framework spelled out in the bill obsolete. We wanted to have a bill that was technologically neutral that would set out the broad objectives in terms of what we’re trying to obtain and ensure that we had a regulatory structure in place that was flexible and modern. [Emphasis added.]

(Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture, No. 8, at p. 16)

[165] Parliament’s decision not to define “transmission line” — a term with “no technical meaning” — is also an indication that the term was left open so that it could grow (A.F., *Telus*, at para. 82, citing *Barrie*, at para. 14). Several other terms in the *Telecommunications Act* also apply regardless of which technology is being used. For example, the expressions “telecommunications service”, “telecommunications facility”, and “telecommunications” are all drafted broadly to incorporate essentially any form of telecommunication (see para. 85; s. 2(1)).

[166] This demonstrates that Parliament incorporated a commitment to technological neutrality into the Act by using the words “transmission line”. Given how rapidly technology can evolve, this makes good sense; the statute does not have to be updated as a result of technological advances and is broad enough to encompass technologies that we do not yet have.

[167] According to the principle of technological neutrality, since 5G networks carry the exact same telecommunications and serve the exact same purpose as networks that consist of physical cables or wires, they are functionally equivalent and should be subject to the same treatment under the law (see A.F., Rogers, at paras. 80-88).

[168] The principle of technological neutrality has mostly been applied by our Court in the context of copyright law. In *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34, [2012] 2 S.C.R. 231, the principle was described as follows:

In our view, the Board’s conclusion that a separate, “communication” tariff applied to downloads of musical works violates the principle of technological neutrality, which requires that the *Copyright Act* apply equally between traditional and more technologically advanced forms of the same media The principle of technological neutrality is reflected in s. 3(1) of the *Act*, which describes a right to produce or reproduce a work “in any material form whatever”. In our view, there is no practical difference between buying a durable copy of the work in a store, receiving a copy in the mail, or downloading an identical copy using the Internet. The Internet is simply a technological taxi that delivers a durable copy of the same work to the end user. [para. 5]

[169] Recently, in *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303, Rowe J., writing for the majority, reiterated that “[t]he principle of technological neutrality holds that, absent parliamentary intent to the contrary, the *Copyright Act* should not be interpreted in a way that either favours or discriminates against any form of technology” (para. 63 (emphasis added)).

[170] My colleague is right that the *Copyright Act*, R.S.C. 1985, c. C-42, is a very different legislative scheme (para. 66). But this alone does not warrant rejecting Parliament’s very clear intention, in enacting the *Telecommunications Act*, to create a legislative scheme that will not become obsolete with changing technologies. Therefore, the principle of technological neutrality cannot be interpreted as applying only in the *Copyright Act* context.

V. Conclusion

[171] Overall, the text, context, and purpose all suggest that 5G small cells are included in the meaning of the term “transmission line” in the *Telecommunications Act*. The grammatical and ordinary meaning of “transmission line” that limits a “line” to a physical connection clearly includes 5G small cells, given that they have a wired component. However, upon further consideration of the meaning of the word “line”, the internal and the external context of the provisions in which the term appears, and the purpose of the Act, it is clear that Parliament intended a far broader meaning than a physical connection line. “Transmission line” is a broad, flexible term that is defined

in some cases as including wireless connections. This also accords with a colloquial understanding of the word “line”.

[172] A correct interpretation is one that considers how the two regimes operate together. The *Telecommunications Act* and the *Radiocommunication Act* operate in tandem, with the CRTC being able to grant access to a site in the event that a carrier and a municipality cannot agree. Only then will the Minister authorize a site. There is no conflict between the two regimes. Any other interpretation is detached from the purpose of the *Telecommunications Act*; a broad definition of “transmission line” reflects the need for technological neutrality. It is a term intended to capture new technologies as they emerge over time.

[173] For the reasons set out above, I would allow the appeal and affirm an interpretation of the term “transmission line” that includes 5G small cells.

APPENDIX

Relevant Statutory Provisions

Telecommunications Act, S.C. 1993, c. 38

7 It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada’s identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- (d) to promote the ownership and control of Canadian carriers by Canadians;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
- (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
- (h) to respond to the economic and social requirements of users of telecommunications services; and
- (i) to contribute to the protection of the privacy of persons.

42 (1) Subject to any contrary provision in any Act other than this Act or any special Act, the Commission may, by order, in the exercise of its powers under this Act or any special Act, require or permit any telecommunications facilities to be provided, constructed, installed, altered, moved, operated, used, repaired or maintained or any property to be acquired or any system or method to be adopted, by any person interested in or affected by the order, and at or within such time, subject to such conditions as to compensation or otherwise and under such supervision as the Commission determines to be just and expedient.

(2) The Commission may specify by whom, in what proportion and at or within what time the cost of doing anything required or permitted to be done under subsection (1) shall be paid.

43 (1) In this section and section 44, *distribution undertaking* has the same meaning as in subsection 2(1) of the *Broadcasting Act*.

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

(3) No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the

municipality or other public authority having jurisdiction over the highway or other public place.

(4) Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines.

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.

44 On application by a municipality or other public authority, the Commission may

(a) order a Canadian carrier or distribution undertaking, subject to any conditions that the Commission determines, to bury or alter the route of any transmission line situated or proposed to be situated within the jurisdiction of the municipality or public authority; or

(b) prohibit the construction, maintenance or operation by a Canadian carrier or distribution undertaking of any such transmission line except as directed by the Commission.

45 On application by a municipality or other public authority, or by an owner of land, the Commission may authorize the construction of drainage works or the laying of utility pipes on, over, under or along a transmission line of a Canadian carrier or any lands used for the purposes of a transmission line, subject to any conditions that the Commission determines.

46 (1) If, in the opinion of a Canadian carrier, the taking or acquisition by the carrier of any land, an interest or, in the Province of Quebec, a right in any land without the consent of the owner is required for the purpose of providing telecommunications services to the public, the carrier may, with the approval of the Commission, so advise the appropriate Minister in relation to Part I of the *Expropriation Act*.

(2) The Commission shall provide a copy of its approval to the Minister, to the appropriate Minister in relation to Part I of the *Expropriation Act* and to each owner of, or person having an interest or right in, the land.

(3) For the purposes of the *Expropriation Act*, if the appropriate Minister advised under subsection (1) is of the opinion that the land or the interest or right in land is required for the purpose of providing telecommunications services to the public,

(a) the land or the interest or right in land is deemed to be, in the opinion of that Minister, required for a public work or other public purpose;

(b) a reference to the Crown in that Act is deemed to be a reference to the Canadian carrier; and

(c) the carrier is liable to pay any amounts required to be paid under subsection 10(9) and sections 25, 29 and 36 of that Act in respect of the land or the interest or right in land.

(4) The expenses incurred in carrying out any function of the Attorney General of Canada under the *Expropriation Act* in relation to any land or any interest or right in land referred to in subsection (3) constitute a debt due to Her Majesty in right of Canada by the Canadian carrier and are recoverable in a court of competent jurisdiction.

47 The Commission shall exercise its powers and perform its duties under this Act and any special Act

(a) with a view to implementing the Canadian telecommunications policy objectives and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27; and

(b) in accordance with any orders made by the Governor in Council under section 8 or any standards prescribed by the Minister under section 15.

48 (1) The Commission may, on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II, except in relation to international submarine cables, Part III or this Part or under any special Act, and the Commission shall inquire into any matter on which it is required to report or take action under section 14.

(1.1) The Commission may, on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under sections 51 to 53 of the *Accessible Canada Act*.

(2) The decision of the Commission that a person is or is not an interested person is binding and conclusive.

Radiocommunication Act, R.S.C. 1985, c. R-2

5 (1) Subject to any regulations made under section 6, the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada,

...

(f) approve each site on which radio apparatus, including antenna systems, may be located, and approve the erection of all masts, towers and other antenna-supporting structures;

Appeal dismissed with costs, CÔTÉ and MARTIN JJ. dissenting.

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