

# PRELIMINARY VERSION

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## Legislative Summary

# BILL S-242: AN ACT TO AMEND THE RADIOCOMMUNICATION ACT

44-1-S242-E

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For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

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*Legislative Summary of Bill S-242*  
(Preliminary version)

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CONTENTS

1	BACKGROUND .....	1
1.1	Background on Spectrum Management in Canada.....	1
2	DESCRIPTION AND ANALYSIS.....	2
2.1	Creation of New Spectrum Deployment Condition .....	2
2.2	Revocation and Reissuance of Licence .....	3
2.3	Transitional Provision .....	4

## LEGISLATIVE SUMMARY OF BILL S-242, AN ACT TO AMEND THE RADIOCOMMUNICATION ACT

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### 1 BACKGROUND

Bill S-242, An Act to amend the Radiocommunication Act, was introduced in the Senate by the Honourable Senator Dennis Glen Patterson on 23 March 2022.<sup>1</sup> The bill was considered by the Standing Senate Committee on Transport and Communications, which reported it with amendments on 30 March 2023. The Senate passed the bill at third reading on 20 April 2023. On 11 May 2023, Member of Parliament Ryan Williams introduced the bill in the House of Commons. On 19 September 2023, the House of Commons began second reading of Bill S-242.

The bill amends the *Radiocommunication Act* to add a condition to licences on the deployment of radio frequency spectrum. Licence holders must meet two criteria to satisfy that condition: they must, within three years after a licence issued, deploy the spectrum to at least 50% of the population covered by the licence, and they must do so while providing service to at least 50% of the population within each smaller service area tier (Tier 5) located within the geographic area covered by the licence. The bill also provides measures enabling the Minister of Industry to strip a licence from a holder who does not satisfy the new condition.

This legislative summary briefly outlines the measures set out in the bill.

#### 1.1 BACKGROUND ON SPECTRUM MANAGEMENT IN CANADA

The electromagnetic spectrum includes electric and magnetic energy waves, which are transmitted at the speed of light. The spectrum includes several types of waves with varying wavelengths (or frequency bands), one of which is the radio frequency range. This is a human-made range that serves as a channel for sending and receiving wireless signals (in this document, the term “spectrum” is used only in the sense of a range of radio frequencies). Spectrum is therefore central to wireless services management.

In Canada, Innovation, Science and Economic Development Canada (ISED) manages spectrum by assigning frequencies and issuing licences (whereas the Canadian Radio-Television and Telecommunications Commission (CRTC) manages spectrum used for broadcasting). In general, ISED assigns them on a first-come, first-served basis, although since 1999 it has also held public auctions to assign licences where demand exceeds supply. ISED sets the parameters of upcoming auctions through public consultations with various stakeholders.<sup>2</sup> Licences are divided into five tiers of service areas, based on Statistics Canada’s census subdivisions, and they cover the whole of Canada.<sup>3</sup>

- Tier 1 is an area covering all of Canada;
- Tier 2 consists of 14 provincial and large regional service areas;
- Tier 3 consists of 59 regional service areas;
- Tier 4 consists of 172 localized service areas (divided based on Statistics Canada's 1996 census subdivisions);<sup>4</sup> and
- Tier 5 consists of 654 service areas. The government established these areas in July 2019 after hearing concerns from a number of stakeholders about the size of licences.<sup>5</sup>

Deployment requirements vary from licence to licence, depending on licence tier and population density.

Rural regions rely heavily on wireless services for their broadband Internet access. However, these regions often have less access to spectrum licences because, as noted by various stakeholders, including in a report shared by the CRTC<sup>6</sup> and in reports of the House of Commons Standing Committee on Industry, Science and Technology,<sup>7</sup> incumbent telecommunication service providers prefer to use their spectrum licences in more densely populated areas, which are more profitable.<sup>8</sup>

## 2 DESCRIPTION AND ANALYSIS

### 2.1 CREATION OF NEW SPECTRUM DEPLOYMENT CONDITION

Clause 1(1) of Bill S-242 adds several subsections to section 5 of the *Radiocommunication Act*, including new sections 5(1.11) and 5(1.12).

Section 5(1)(a)(i.1) of the *Radiocommunication Act* grants the Minister of Industry the power to issue spectrum licences and fix their terms and conditions. The *Radiocommunication Act* does not specify these terms and conditions. New section 5(1.11), created by Bill S-242, adds a condition of spectrum deployment to each licence under the *Radiocommunication Act*. The holder of a licence must meet two deployment criteria to fulfill this condition:

- under new paragraph 5(1.11)(a), the holder of a licence must deploy the spectrum so as to provide service to at least 50% of the population within the geographic area covered by the licence; and
- to ensure the minimum service level imposed better includes rural and remote regions, new paragraph 5(1.11)(b) stipulates that, in deploying the spectrum to 50% of the population covered by the licence, the holder must do so in a way that

provides service to at least 50% of the population in each Tier 5 service area located within the geographic area covered by the licence.

The licence holder must meet the two criteria within three years after the licence is issued.

New subsection 5(1.12) provides that, if a licence holder sells their licence within three years after it is issued, the licence remains subject to the condition set out in subsection 5(1.11). Accordingly, a licence holder cannot sell a licence in order to extend the time allowed to satisfy the condition.

## 2.2 REVOCATION AND REISSUANCE OF LICENCE

Clause 1(2) of Bill S-242 adds subsections 5(3) to 5(9) to the *Radiocommunication Act* in order to give the Minister legislative measures in case a licence holder fails to satisfy the new spectrum deployment condition within three years.

New section 5(3) stipulates that, if the Minister is satisfied that the holder of a spectrum licence has failed to comply with the condition set out in section 5(1.11), the Minister may revoke the licence by sending the holder a notice of revocation specifying the effective date of the revocation. However, the Minister must give the licence holder an opportunity to make representations regarding the notice of revocation before revoking the licence (section 5(4)).

New section 5(5) establishes the effective date of a notice of licence revocation. If the holder is not using the spectrum to provide service to the population within the geographic area covered by the licence, the licence is revoked on the day on which the notice of revocation is sent. In any other case, the licence is revoked 180 days after the Minister sends the notice of revocation.

However, at any time after the notice of revocation is sent but before its effective date, the Minister may consent to the licence holder in question arranging for a third party to assume the provision of service to the population (or part of the population) covered by the licence (section 5(6)). The Minister may also issue to a third party a licence that is subordinate to the licence to be revoked if the Minister is satisfied that doing so would enable the requirements set out in subsection 5(1.11) to be met and if the holder of the licence to be revoked is in compliance with all the other terms and conditions of the licence. When a licence for which a notice of revocation has been sent is subordinated, the notice is cancelled, and the three-year period referred to in section 5(1.11) is deemed to begin on the day the subordinate licence is issued (sections 5(6.1) and 5(6.2)).

Section 5(7) provides that, if the holder of a licence that is to be revoked for failure to meet the deployment condition set out in section 5(1.11) is unable to arrange for the provision of service within the geographic area covered by the licence to be assumed by another person, the holder must surrender the licence to the Minister by written notice. If the holder does not do so, the holder is deemed liable for any loss or damage suffered by any person within the geographic area covered by the licence and may be sued for damages in a court of competent jurisdiction. A licence that is surrendered is deemed revoked on the day the notice of surrender is sent rather than on the date provided by section 5(5).

Under sections 5(8) and 5(9), the Minister has 60 days after the revocation or surrender of a licence to reissue the licence through a competitive bidding or other reallocation process. Neither the holder of the revoked licence nor its affiliates are eligible to participate in the reallocation process.

### 2.3 TRANSITIONAL PROVISION

The transitional provision is designed to impose the new condition set out in section 5(1.11) on licences issued before that condition is added to the *Radiocommunication Act*, but without penalizing their holders for not having already met the requirements. Clauses 2(1) and 2(2) work together to ensure that, once Bill S-242 comes into force, all spectrum licence holders will have three years to satisfy the condition in section 5(1.11).

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#### NOTES

1. [Bill S-242, An Act to amend the Radiocommunication Act](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
2. Government of Canada, [Framework for Spectrum Auctions in Canada](#), Issue 3, March 2011.
3. Government of Canada, [Service areas for competitive licensing](#).
4. Statistics Canada, [Census subdivision](#).
5. Government of Canada, [Decision on a New Set of Service Areas for Spectrum Licensing](#), July 2019.
6. Kris Joseph, [Analysis of Canadian Wireless Spectrum Auctions: Licence Ownership and Deployment in the 700 MHz, 2500 MHz and 3500 MHz Frequency Ranges](#), Report prepared for the Canadian Radio-television and Telecommunications Commission.
7. House of Commons, Standing Committee on Industry, Science and Technology (INDU), [Broadband Connectivity in Rural Canada: Overcoming the Digital Divide](#), Eleventh report, April 2018; and INDU, [Affordability and Accessibility of Telecommunications Services in Canada: Encouraging Competition to \(Finally\) Bridge the Digital Divide](#), Seventh report, June 2021.
8. Sarah Lemelin-Bellerose, "[Understanding Spectrum Management in Canada](#)," *HillNotes*, Library of Parliament, 10 May 2021.