



# **Lawful Access Proposals**

***Proposals with Respect to Compelling Interception  
Capability and Access to Subscriber Information***

***March 2005***

# Modernizing Investigative Techniques



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## Background on Lawful Access

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## Lawful access consists of:

- ✓ lawful interception of telecommunications; and
  - ✓ search and seizure of information
- Essential in the prevention, investigation and prosecution of serious offences, organized crime and threats to national security
  - These techniques are only used pursuant to lawful authorization and in a manner that recognizes the rights of individuals under the Canadian *Charter of Rights and Freedoms*

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## Lawful Access Authorities:

- The *Criminal Code* outlines the requirements to be met by law enforcement to receive a judicial authorization to intercept private communications and for search warrants
- The *Canadian Security Intelligence Service (CSIS) Act* provides statutory authority and outlines the requirements for CSIS to apply to the Federal Court of Canada to obtain a warrant to perform its duties

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## Oversight & Accountability:

- There are a number of oversight and accountability mechanisms for lawful access, including:
  - ✓ *Charter of Rights and Freedoms*
  - ✓ Privacy legislation
  - ✓ The Courts
  - ✓ Annual reporting to Parliament
  - ✓ Commission for Public Complaints Against the RCMP
  - ✓ The Security Intelligence Review Committee
  - ✓ The Privacy Commissioner

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## Policy Objectives of Proposals:

### Protection of Privacy

- The protection of privacy is a fundamental concern of the Government of Canada
- Lawful access is not used to monitor everyone's telephone and Internet communications and nothing being proposed will change that
- All interceptions will continue to require lawful authorization
- Lawful access will continue to be subject to rigorous reporting and accountability to ensure a balance between the police's investigative needs and the rights and freedoms of Canadians

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## Public Consultations:

- During the fall and winter of 2002, over 20 meetings were held with a broad range of stakeholders on the basis of a consultation document
- Over 300 written submissions were received, and a summary of these submissions was released to the public in August 2003 ([http://canada.justice.gc.ca/en/cons/cons\\_index.html](http://canada.justice.gc.ca/en/cons/cons_index.html))
  - Police services and provincial criminal justice officials strongly supported the proposals and want the government to take prompt action
  - Private sector stakeholders sought greater details to better assess the potential costs
  - Human rights advocates were concerned about the potential impact of the proposals, including the protection of privacy



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## Policy Objectives of Proposals:

### Costs

- The proposal is to minimize the costs to industry and governments by putting in place clear requirements for lawful interception that can be factored in during the design stage of new technologies - when lawful interception capabilities are provided for at the engineering stage of network architecture, the costs are a fraction of that of a retrofit of existing equipment
- It is proposed that the impact on industry be minimized by requiring a gradual implementation of intercept capability
- The proposal is that all networks would not be required to be intercept-capable at the outset

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## Policy Objectives of Proposals:

### Costs (continued)

- Telecommunications service providers would only be required to maintain existing intercept capabilities and to build in intercept capability as they make specific upgrades to their networks
- The intended end result would be that when, for business reasons, telecommunications service providers spend money on new equipment, they would also be required to bear some additional costs for public safety, which would be a small proportion of the cost of the new equipment
- In this way, over time, law enforcement and national security agencies would gain a lawful access capability without imposing an undue burden on the telecommunications service providers

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## Proposed Infrastructure Obligations:

- Would be consistent with international technical requirements, the U.S., U.K. and Australia already have similar requirements in place
- No “made in Canada” standards proposed
- Administrative guidelines may identify whether particular technical solutions could meet requirements
- Informal Government-Industry forum to be established

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## Proposals Respecting Interception Capability

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## Policy Objectives of Proposals:

### Scope

- The pace of change in the telecommunications sector and the increasing convergence of different types of telecommunications technology necessitates a broad scope, which is as technology neutral as possible, so as to be sufficiently flexible to encompass changes in the industry
- Placing requirements on all types of telecommunications service providers may prevent individual sectors or companies from being put at a competitive disadvantage

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## Application of the Proposals:

- The proposals would apply to persons who provide telecommunications services to the public, whether they provide the services directly or indirectly, or independently or as part of a group or association of persons (referred to as Telecommunications Service Providers or TSPs)
- The scope would include mechanisms to limit its application, in whole or in part
  - For example, small TSPs (under 100,000 subscribers) would be exempt from some requirements deemed too costly

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## Application of the Proposals:

### Proposed Partial Exemptions For “Backbone” and “International Gateway” Providers:

- Would apply to class of TSPs who transmit telecommunications on behalf of other TSPs, who do not modify particular telecommunications transmitted and do not authenticate the end users of the services of those other TSPs, in respect of the services provided to the other TSPs

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## Application of the Proposals:

### Proposed Partial Exemptions For Certain Classes of TSPs:

- TSPs who provide telecommunications services ancillary to their principal function of operating a post-secondary educational institution, library, community centre, restaurant, hotel, apartment building or condominium
- These TSPs' obligations would be limited to the obligation to:
  - provide, upon request, information relating to their telecommunications facilities and services available to their subscribers
  - to indicate the TSP from whom it obtains or provides telecommunications services and
  - to provide to an authorized person (i.e. with a warrant) information on the telecommunications services and features that it provides to a person who is the subject of an interception, as well as information on the particular telecommunications facilities used to provide those services



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## Application of the Proposals:

### Proposed Exemptions from the Entirety of the Proposals for Certain Classes of TSPs:

- TSPs in respect of telecommunications services that they provide principally to themselves or to their employees and not to the public
- TSPs who provide telecommunications services ancillary to their principal function of operating an elementary or secondary school, hospital, place of worship, retirement homes, telecommunications research network (e.g., CANARIE)
- TSPs who are broadcasting undertakings as defined in subsection 2(1) under the *Broadcasting Act*, only in respect of broadcasting

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## Application of the Proposals:

### Order in Council Exemptions:

- Governor in Council would have the authority to provide time limited exemptions (up to a maximum of two years) to classes of TSPs or to individual TSPs from all or some of the requirements

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## General Obligations and Operational Requirements

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## Proposed Infrastructure Obligations: General Obligations

- The General Obligations would require a TSP to have the identified capabilities at the outset
- These obligations would apply “network-wide”
- These obligations would be with respect to: Provision of Intercepted Information in a Certain Manner; Treatments; Location Information; Quality of Service; and Security & Confidentiality

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## Proposed Infrastructure Obligations: General Obligations

- A TSP would be required to remove any encoding, compression, encryption or any other treatment of intercepted information:
  - a) That the TSP applies to the telecommunications; and
  - b) That another person has applied on behalf of the TSP where the TSP already has the ability to remove it
- If a TSP's telecommunication facilities cannot remove the treatment, the TSP could provide the authorized person with the means and information necessary to remove the treatment
- The TSP would have no obligation under (a) or (b) where a subscriber or user applied the treatment and has exclusive control over its removal

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## Proposed Infrastructure Obligations: General Obligations

- A TSP would be required to provide authorized persons all information in the possession or control of the TSP respecting the location of equipment that is subject to an interception
- This information would be the most accurate location known to the TSP relating to the equipment that is subject to an interception

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## Proposed Infrastructure Obligations: General Obligations

- A TSP would be required to comply with confidentiality and security measures

### Confidentiality of Intercepted Information

- A TSP would be required to ensure that only authorized persons are able to obtain access to intercepted information
- A TSP would be required to ensure that an authorized person from one authorized agency is not able to determine whether particular telecommunications are subject to interception by an authorized person from another authorized agency

### Security of Facilities

- A TSP would be required to take all reasonable steps to ensure that only designated employees are able to access those parts of the transmission apparatus and the related hardware and software that are used solely for interception

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## Proposed Infrastructure Obligations: Operational Requirements

- A TSP operating applicable transmission apparatus would be required to have the capability to meet the Operational Requirements for all information generated by or transmitted through that apparatus
- Transmission apparatus already deployed would be “grandfathered” with existing interception capability
- A TSP who has or acquires the ability to meet an Operational Requirement for transmission apparatus used by the TSP would be required to maintain that ability
- When a TSP begins to operate transmission apparatus or installs certain new software for transmission apparatus, the TSP would be required to meet the Operational Requirements
- These obligations would be with respect to: Interception of Subject’s Telecommunications; Isolation; Real-time Interception; Correlation; and Simultaneous Interceptions



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## Proposed Infrastructure Obligations: Operational Requirements

- For the applicable transmission apparatus, a TSP would be required to have the capability:
    - to isolate the information that is authorized to be intercepted from other information including:
      - (i) isolating the telecommunications of the person whose telecommunications are authorized to be intercepted from those of other persons; and
      - (ii) isolating the transmission data of the person whose telecommunications are authorized to be intercepted from his or her telecommunications
- and to provide that information to authorized persons

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## Other Requirements

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## Ministerial Compliance Orders:

- It is proposed that the Minister could, if necessary in his or her opinion, order a TSP to comply with any General Obligation or Operational Requirement in a particular manner or within a particular time, even if the requirement is not yet applicable to the TSP
- If the Minister makes a Compliance Order, the Minister could:
  - (a) pay a TSP an amount that the Minister considers reasonable towards the initial costs of certain expenses that the Minister considers necessary to comply with the order; or
  - (b) provide a TSP with any equipment or other things that the Minister considers necessary to comply with the order

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## Informational Obligations: Mandatory Reporting

- Every TSP that is providing telecommunications services would be required to submit a report to the Minister within six months after the proposals come into effect, in a certain form and manner, containing information:
  - (a) concerning the TSP's capability to meet the Operational Requirements; and
  - (b) that the Minister may require for administrative purposes

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## Informational Obligations: Obligation to Provide Information

- A TSP, at the request of a peace officer, an employee of CSIS or the RCMP, would be required to:
  - (a) provide information relating to its telecommunications facilities used to provide telecommunications services to its subscribers
  - (b) indicate what telecommunications services are available to its subscribers
  - (c) provide the name, address and telephone number of any TSP from whom it obtains or to whom it provides telecommunications services, if it has that information
- A TSP, at the request of an authorized person, would be required to provide information on the telecommunications services and features that it provides to a person who is a subject of an interception, as well as information on the particular telecommunications facilities and transmission apparatus that are used to provide the services and features to the interception subject

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## Inspections and Offences:

- The Minister could designate any qualified person as an inspector for the purpose of verifying compliance
- Penalties for the key provisions would include prosecution on indictment with a fine not exceeding \$500,000 or a prison term up to five years
- If a corporation commits an offence, every officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence would be guilty of the offence

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## Proposals Respecting Access to Subscriber Information

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## Subscriber Information:

- Every TSP, in accordance with the prescribed details, would be required to provide to designated persons, on request, any information in its possession or control respecting the name, address and prescribed identifiers of any subscriber to its telecommunications service
- The Commissioner of the RCMP (or delegate) or the Competition Bureau, Director of CSIS, or chief of a police service could name any employee whose duties are to protect national security or law enforcement as a designated person for the purposes of requesting subscriber information
- The proposal will not:
  - require the mandatory collection or retention of subscriber information
  - impose “know your customer” obligations
  - require the development of a national database to access subscriber information



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## Subscriber Information to be Provided on Request:

- The following are the identifiers a TSP would be required to provide to a designated person, on written or oral request, if available:
  - (a) where the designated person provides a subscriber's name, a TSP would be required to provide the subscriber's address, telephony subscriber service identifier and Internet subscriber service identifier
  - (b) where the designated person provides a subscriber's name and a date and time, a TSP would be required to provide the subscriber's dynamic IP address
  - (c) where the designated person provides a subscriber's address, a TSP would be required to provide the subscriber's name, telephony subscriber service identifier and Internet subscriber service identifier

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## Subscriber Information to be Provided on Request (continued):

- The following are the identifiers a TSP would be required to provide to a designated person, on written or oral request, if available:
  - (d) where the designated person provides a subscriber's address and a date and time, a TSP would be required to provide the subscriber's dynamic IP address
  - (e) where the designated person provides one or more of the subscriber's telephony subscriber service identifiers, a TSP would be required to provide the subscriber's name, address, and Internet subscriber service identifier
  - (f) where the designated person provides one or more of a subscriber's telephony subscriber service identifiers and a date and time, a TSP would be required to provide the subscriber's dynamic IP address

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## Subscriber Information to be Provided on Request (continued):

- The following are the identifiers a TSP would be required to provide to a designated person, on written or oral request, if available:
  - (g) where the designated person provides one or more of a subscriber's Internet subscriber service identifiers, a TSP would be required to provide the subscriber's name, address and telephony subscriber service identifier
  - (h) where the designated person provides one or more of a subscriber's Internet subscriber service identifiers and a date and time, a TSP would be required to provide the subscriber's dynamic IP address

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## Subscriber Information: Security & Confidentiality Requirements

- A TSP would be required to ensure that the following information is kept confidential and not disclosed to any unauthorized person, unless disclosure is required by law:
  - the content of any request for subscriber information by a designated person
  - the content of any subscriber information provided to a designated person
  - the number of requests for subscriber information that have been performed
  - the procedures used to provide subscriber information
  - any information relating to the technology or technique employed in providing subscriber information
  - any other information relating to the provision of subscriber information

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## Subscriber Information: Timing and Accuracy of Information

- A TSP would be required to provide subscriber information to designated persons as soon as possible, and no longer than 72 hours after the request has been received
- If subscriber information is immediately necessary to investigate a threat to national security or an unlawful act that reasonably could be expected to cause serious harm to any person or property, or if an investigation could reasonably be expected to be compromised seriously by delay, a TSP would be required to provide subscriber information to designated persons as soon as possible, and no longer than within 30 minutes after the request has been received
- A TSP would be required to provide the most up-to-date information in its possession

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## Subscriber Information: Safeguards

- A designated person would be required to ensure that a record in relation to a request for subscriber information is retained, and contains the following information:
  - (a) the purpose for the request
  - (b) reference to any Act of Parliament or any Act of the legislature of a province or territory, if relevant
  - (c) a file number or other identifier linking the request to an investigation or other duty; and
  - (d) the name and other relevant identifiers of the person making the request
- This information would have to be retained in accordance with the provisions of any Act of Parliament or any Act of the legislature of a province or territory relating to the retention of information or any applicable policies, and made available for appropriate audit and oversight purposes
- A designated person would be permitted to create a single record in relation to multiple requests for subscriber information when the records for such requests would be identical in nature

# Modernizing Investigative Techniques: Proposed Definitions

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## Proposed Definitions

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- **Authorization** - means an interception authorization pursuant to the *Criminal Code* or a warrant issued under the *Canadian Security Intelligence Service Act*
- **Authorized Persons** - means individuals who are authorized under the *Criminal Code* or the *Canadian Security Intelligence Service Act* to intercept information transmitted by telecommunications
- **Authorized Agency** - means a government agency whose employees or members may include authorized persons
- **Designated Employee** - means a member of the staff of a telecommunications service provider designated by an authorized agency for purposes of interception to perform interception related functions



## Modernizing Investigative Techniques: Proposed Definitions



- **Designated Person** - means a person designated to access subscriber information
- **Intercept** - includes listen to, record or acquire telecommunications, including transmission data and the content of any information that is transmitted by telecommunications, and any data or information that identifies or refers to that content
- **Intercepted Information** - means information that is transmitted by telecommunications and that is intercepted by an authorized person
- **Interception Subject** - means a person whose telecommunications are intercepted by an authorized person

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- **Internet Subscriber Service Identifier** - means one or more unique identifiers associated with a subscriber to a particular Internet telecommunications service, namely, the following:
  - (a) an SMTP electronic mail address; or
  - (b) a fixed IP address
- **Large Telecommunication Service Provider** - means a telecommunications service provider that:
  - (a) provides satellite telecommunications services; or
  - (b) provides telecommunications services and has 100,000 or more subscribers
- **Minister** - means the Minister of Public Safety and Emergency Preparedness (Solicitor General of Canada)

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- **Person** - includes any individual, partnership, body corporate, unincorporated organization, government, government agency and includes:
  - (a) any other person or entity who acts in their name or for their benefit
  - (b) any persons who together provide, directly or indirectly, telecommunications services to the public
- **Subscriber** - a person who is a registered user of the telecommunications services of a telecommunications service provider
- **Telecommunication Facility** - means any facility, transmission apparatus or other thing that is used for telecommunications or for any operation directly connected with telecommunications

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- **Telecommunication Service** - means a service or a feature of a service that is provided by means of telecommunications facilities, whether the telecommunications facilities and any related equipment used to provide the service are owned, leased, or otherwise acquired
- **Telephony Subscriber Service Identifier** - means one or more unique identifiers associated with a subscriber to a particular telephony telecommunications service, namely, the following:
  - (a) a telephone number
  - (b) a Mobile Identification Number (MIN)
  - (c) an Electronic Serial Number (ESN)
  - (d) an International Mobile Equipment Identity number (IMEI)
  - (e) an International Mobile Subscriber Identity number (IMSI)
  - (f) a Subscriber Identify Module (SIM) card number

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- **Transmission Apparatus** - means any prescribed apparatus whose principal functions are one or more of the following, or other similar functions:
  - (a) the switching or routing of telecommunications
  - (b) the input, capture, storage, organization, modification, retrieval, output or other processing of telecommunications; or
  - (c) the control of the speed, code, protocol, content, format, switching or routing or similar aspects of telecommunications

## Modernizing Investigative Techniques: Proposed Definitions



- **Transmission Data** - means data relating to the telecommunications functions of dialling, routing, addressing, or signalling that identifies or purports to identify the origin, type, direction, date, time, duration, size, destination or termination of a telecommunication generated or received by means of a telecommunications facility
- **Unauthorized Person** - means any person that is not:
  - (a) an authorized person;
  - (b) an employee or member of an authorized agency;
  - (c) a designated person; or
  - (d) a designated employee
- **User** - means any person using a telecommunication service whether or not the person is a subscriber