BEFORE THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

IN THE MATTER OF AN APPLICATION BY THE PUBLIC INTEREST ADVOCACY CENTRE (PIAC) AND THE CONSUMERS' ASSOCIATION OF CANADA (CAC)
(APPLICANTS)

REGARDING CERTAIN TELECOMMUNICATIONS SERVICE PROVIDER BILLING PRACTICES PURSUANT TO PART 1 OF THE *CRTC RULES OF PRACTICE AND PROCEDURE* AND SECTIONS 24, 25, 27(1), 27(2), 55(c), and 56 of the *TELECOMMUNICATIONS ACT* DIRECTED TO

BELL ALIANT REGIONAL COMMUNICATIONS, LIMITED PARTNERSHIP, BELL CANADA, MTS INC., SASKATCHEWAN TELECOMMUNICATIONS, TELUS COMMUNICATIONS COMPANY, DATA & AUDIO VISUAL ENTERPRISES WIRELESS INC. (MOBILICITY), GLOBALIVE WIRELESS MANAGEMENT CORP., YAK COMMUNICATIONS (CANADA) CORP., PUBLIC MOBILE INC., NOVUS ENTERTAINMENT INC., SHAW TELECOM INC., ROGERS COMMUNICATIONS PARTNERSHIP, VIDÉOTRON G.P., BROOKE TELECOM CO-OPERATIVE LIMITED, BRUCE TELECOM, CITYWEST TELEPHONE CORPORATION, COCHRANE TELECOM SERVICES, COOPTEL COOP DE TELECOMMUNICATION, EXECULINK TELECOM INC., GOSFIELD NORTH COMMUNICATIONS CO-OPERATIVE LIMITED, HURON TELECOMMUNICATIONS CO-OPERATIVE LIMITED, LA CIE DE TÉLÉPHONE DE COURCELLES INC., LA COMPAGNIE DE TÉLÉPHONE DE LAMBTON INC., LA COMPAGNIE DE TELEPHONE DE ST.-VICTOR, LA COMPAGNIE DE TELEPHONE UPTON INC., LANSDOWNE RURAL TELEPHONE COMPANY LTD., MORNINGTON COMMUNICATIONS CO-OPERATIVE LIMITED, NEXICOM TELECOMMUNICATIONS INC., NORTH FRONTENAC TELEPHONE CORPORATION LTD., NRTC COMMUNICATIONS, O.N. TEL INC. (ONTERA), QUADRO COMMUNICATIONS CO-OPERATIVE INC., ROXBOROUGH TELEPHONE COMPANY LIMITED, SOGOTEL INC., TÉLÉPHONE MILOT INC., TBAYTEL, TÉLÉPHONE DE ST.-ÉPHREM INC., TÉLÉPHONE GUÈVREMONT INC., WTC COMMUNICATIONS, TUCKERSMITH COMMUNICATIONS CO-OPERATIVE LIMITED, WIGHTMAN TELECOM LTD., ALL COMMUNICATIONS NETWORK OF CANADA CO., AOL CANADA INC., CONVERGIA NETWORKS INC., DISTRIBUTEL COMMUNICATIONS LIMITED, DERYTELECOM INC., FIBERNETICS CORPORATION, GOLD LINE TELEMANAGEMENT INC., INTERNATIONAL COMWAVE TELECOMMUNICATIONS, IRISTEL TECHNOLOGIES INC., MASKATEL INC., PRIMUS TELECOMMUNICATIONS CANADA INC., SEARS CONNECT INC., SSI MICRO LTD., TEKSAVVY SOLUTIONS INC., TÉLÉCOMMUNICATIONS XITTEL INC., VANCOUVER TELEPHONE COMPANY LIMITED, VONAGE CANADA CORP., WESTMAN MEDIA COOPERATIVE LTD., XPLORNET COMMUNICATIONS INC.
(RESPONDENTS)

22 October 2013

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TABLE OF CONTENTS

1. NATURE OF APPLICATION

1. The Public Interest Advocacy Centre (**PIAC**) and Consumers' Association of Canada (**CAC**) file this Application under Part 1 and s. 3 of the *CRTC Rules of Practice and Procedure* [1] as well as under ss. 24, 25, 27(1), 27(2), 55(c), and 56 of the *Telecommunications Act* [2] (the "*Act*") regarding the billing practices of certain Telecommunications Service Providers (**TSPs**) for telecommunications services, including wireline telephone, wireless services, and Internet service. More particularly, our focus in this Application is upon the practice certain TSPs have initiated to charge a fee for providing (or continuing to provide) billing in a paper format (the "**paper bill fee**").

2. For all regulated standalone Primary Exchange Service (**PES**) customers and for wireline customers in regulated areas, such charges constitute an unauthorized rate increase.

3. Additionally, TSPs, including several of the incumbent cable and telephone companies, who have previously provided paper bills and now force their customers to pay for this functionality have essentially extracted a business cost of their core service and compelled customers who wish to receive paper statements to pay an additional charge on top of the service rates. Consumers are in effect being penalized. For merely continuing to use their service as they always had, they are being forced to pay twice for the privilege of continuing to receive paper bills. The paper bill fee disproportionately targets consumers who, for a variety of reasons, effectively have no choice but to accept it. Consumers are unjustly penalized for not subscribing to electronic billing ("**e-billing**").

4. Forcing all telecommunications service customers, regardless of their location or TSP, to incur an additional charge for a printed bill is an unjustly discriminatory practice which is inconsistent with a number of objectives of Canada's telecommunications policy. The manner in which such charges have been imposed by TSPs on their customers suggests that market forces in this area have been inadequate to protect the interests of consumers. Commission intervention is therefore warranted.

5. It is important to highlight that disclosure alone is inadequate to solve this issue. In many cases, customers who receive printed bills are unable to avoid the charge for a variety of reasons, as further discussed below. Moreover, almost all the major national telecommunications service providers, including several of the incumbent cable and

[1] SOR/2010-277.
[2] S.C. 1993, c. 38.

telephone companies as well as smaller TSPs such as Wind and Tbaytel all charge paper bill fees.[3]

6. PIAC and CAC request that the Commission:

   (i) Declare that the paper bill fee is an unauthorized rate increase for all regulated standalone PES customers and all customers in regulated markets;
   (ii) Order the respondent TSPs to refund to the customers in section (i) all monies, with interest, collected under such charges;
   (iii) Declare that the paper bill fees violate s. 27(2) of the *Telecommunications Act* and prohibit these charges;
   (iv) Amend the CRTC Wireless Code[4] to include a provision prohibiting charges for providing paper bills;
   (v) Require all TSPs to provide paper billing (and in alternate formats) at the customer's choice at no additional charge; and
   (vi) Order the respondent TSPs to reimburse our costs of participating in this proceeding under s. 56 of the *Telecommunications Act*.

2. FACTS

(a) The paper bill fee

7. A number of TSPs[5], including some Incumbent Local Exchange Carriers (**ILECs**)[6] have, since at least 2010[7], required customers who wish to receive or to continue receiving printed billing to incur supplementary charges for such billing. The supplementary

[3] These TSPs include the Bell Companies (including Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Solo, Télébec, and Virgin Mobile), Distributel Communications Limited, Globalive Wireless Management Corp. (WIND Movile), Maskatel Inc., Primus Telecommunications Canada, Inc., Rogers Communications Partnership, TBayTel, Téléphone Guèvrement Inc., Telus Communications Company, and several members of the Independent Telecommunications Providers Association.
[4] Published in Telecom Regulatory Policy 2013-271.
[5] The Bell Companies, Distributel, Maskatel, Primus, Rogers,TBayTel, Telephone Guevremont, Telus, WIND and several members of the Independent Telecommunications Providers Association.
[6] For instance, the Bell Companies and Telus.
[7] See, for instance: Vancouver Sun, "Telus joins other mobile providers with paper bill fee" (18 August 2010), online: Vancouver Sun <http://www.vancouversun.com/technology/Telus+joins+other+mobile+providers+with+paper+bill/3415480/story.html>.

charges are imposed in addition to the monthly service prices (some tariffed, as the case may be) these service providers charge for the underlying telecommunications services consumers purchase. Such supplementary charges are typically billed to customers as an additional line item on their monthly statement. Printed invoices were a functionality that many TSPs, including all of the ILECs, had, until recently, been providing as part of the services supplied for the monthly rates their customers had been paying.

8. On a number of occasions in the last several months, the Commission has noted that consumers have been complaining about the supplementary paper billing charges. The Commission initially responded to these complaints by initiating fact finding activity.[8] The answers received by the Commission have been posted on the Commission's website. More recently, the Commission issued directives to ILECs to provide certain information to their customers regarding the supplemental paper billing charges.

9. On 23 April 2012, the Commission made a request to Bell Canada for more information after receiving a number of complaints from consumers about a $2 monthly fee for paper bills the company had launched.[9] Following a year-long correspondence between the Commission and Bell, the CRTC expanded its request for information to 61 communications companies across Canada.[10] As of 16 October 2013, 41 responses had been posted on the CRTC website.

10. Based on the information made available on the Commission's website, it appears that while some companies such as MTS Inc., Saskatchewan Telecommunications and Shaw Telecom G.P. do not charge a paper bill fee for any services, many others, including Bell Canada, Rogers Communications Partnership, and Telus Communications Company impose charges which vary from $0.99[11] to $4[12], depending upon the TSP, to provide printed billing to their customers.

11. Some companies, such as Bragg Communications Incorporated (Eastlink)[13] and Shaw[14] offer their customers rebates for switching to electronic billing, but these are normally one-time payments. Rogers does not appear to charge the paper bill fee for customers without an internet connection.[15] Telus imposes a paper bill charge only on Telus

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[8] See: CRTC Letter dated 3 July 2013, CRTC Reference 8480-B54-X, and Responses.
[9] CRTC Letter dated 23 April 2012, CRTC Reference 8480-B54-X.
[10] CRTC Letter dated 3 July 2013, CRTC Reference 8480-B54-X.
[11] For Primus residential service customers.
Primus(CRTC)Jul3-1.
[12] For WIND Mobile customers.
WIND Mobile(CRTC)03Jul13 - 1.
[13] Eastlink has offered 10 AIR MILES rewards or, at times, a $5.00 credit.
Eastlink Letter dated 18 July 2013, CRTC Reference 8480-B54-X, at p. 2.
[14] Shaw has offered one time Pay-Per-View credits or one-time $5.00 account credits.
Shaw(CRTC)3July2013-1 at p. 1.
[15] Rogers(CRTC)3Jul13-1 at p. 2.

internet customers – although as of 16 October 2013, it appears to have removed its paper bill fee and replaced it with a one-time $2 donation to the Nature Conservancy of Canada for every customer that switches to e-billing.[16]

12. Some TSPs, including Bell, Rogers, Telus and Eastlink have created fee exemptions for some customers. Such exemptions appear to be available solely to visually-impaired or other customers who receive bills in alternate formats.[17] The TSPs have not elaborated on how burdensome the process to register for an exemption might be – the availability of exemptions was not often clearly stated on TSP websites – but Bell states that once registered, the exemption is incorporated into its billing system.[18]

13. The exemptions appear to differ substantially between service providers and also appear to be somewhat arbitrary. While we acknowledge that in a competitive marketplace differences between service provider practices are to be expected, the seemingly arbitrary manner in which exemptions and exceptions are set presents additional, and unnecessary, challenges for consumers trying to compare the costs and benefits of service providers' service offerings.

(b) Canadian consumer view of paper bill fees

14. Earlier this year, PIAC commissioned Environics Research Group to conduct a survey of Canadians' views of the imposition of extra fees for paper billing (the "**Environics Survey**"). The survey was conducted over the phone with 2,005 individuals across Canada aged 18 years or older between August and September 2013. Its objective was to gauge consumer opinion of and comfort level with fees for paper bills in general. A copy of the Environics Survey is attached as Appendix A.

15. The survey showed that most Canadians disagree with the institution of a paper bill fee. Responses obtained by Environics showed that 74% of respondents somewhat disapproved or strongly disapproved (56%) of companies charging people extra fees "to get their bills on paper by regular mail." Of the survey respondents, 83% somewhat agreed or strongly agreed (60%) that people should have the right to get a paper bill in

[16] TELUS(CRTC)03July13-2 at p. 2;
See also: TELUS, *Go paperless*, online: TELUS <http://mobility.telus.com/en/BC/Billing-Support/go-paperless.shtml>.
[17] The Companies(CRTC)3Jul13-2 at p. 2;
Rogers(CRTC)3Jul13-2 at p. 1;
TELUS(CRTC)03July13-2 at p. 2;
Eastlink Letter dated 18 July 2013, CRTC Reference 8480-B54-X, at p. 2.
[18] The Companies(CRTC)3Jul13-2 at p. 7.

the mail from a company without having to pay an extra fee and that this was part of the company's cost of doing business.

16. Our research also points to an important consideration which TSPs who impose paper billing charges appear to have overlooked. TSPs who apply such charges appear to assume that all Canadians are familiar and comfortable with the e-billing process. This, however, simply is not true.

17. The Environics Survey showed that 33% of respondents are "not very comfortable" or "not at all comfortable" with receiving bills or invoices online, with another 5% stating they could not receive online bills even if they wanted to because they had no internet access.

18. Survey participants cited a number of reasons for this discomfort, including security concerns (33%), just preferring paper (16%), having no internet access or not using computers at all (15%), not feeling comfortable enough using computers (12%), and finding it easier to read paper bills (4%). Similarly, 33% respondents still paid their bills mostly by mail or in-person, and 27% were not very comfortable or not at all comfortable with paying their bills online or electronically. Where respondents were faced with a paper bill fee, 54% have paid it to receive a paper statement.

(c) Disproportionate effect of paper bill fees on vulnerable and low-income consumers

19. We are particularly concerned that the paper bill fee has a disproportionately harmful effect on vulnerable and low-income consumers, many who essentially have no choice but to pay it. The recent BMO Annual Rainy Day Survey, conducted in July 2013, found that 23% of its respondents were already living paycheque to paycheque.[19] Seventeen percent had less than $1,000 in savings.[20] Regarding Internet access, the 2010 Canadian Internet Use Survey[21] reported that only 54% of households in the lowest income quartile had home internet access, against 97% in the highest quartile. As a result, these consumers are more likely to pay the paper bill fee because e-billing would impose additional burdens and costs that would exceed the monthly fee, including

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[19] BMO*, BMO Annual Rainy Day Survey: Majority of Canadians Have Less Than $10,000 Set Aside in Emergency Savings* (7 August 2013), online: BMO <http://newsroom.bmo.com/press-releases/bmo-annual-rainy-day-survey-majority-of-canadians-tsx-bmo-201308070890662001>.

[20] *Ibid*. The affordability of such charges should be a significant concern: customers who cannot afford internet service, for instance, are likely to be those most seriously affected monthly charges of up to $4 for each paper bill that they receive.

[21] Statistics Canada, *Canadian Internet Use Survey*, online: StatsCan < http://www.statcan.gc.ca/daily-quotidien/110525/dq110525b-eng.htm>.

finding access to a computer, internet and e-mail. Given these circumstances, paper bill fees appear to disproportionately and negatively penalize lower income consumers.

20. Furthermore, other consumers, including seniors and customers with disabilities, experience additional challenges to accessing and using e-billing. Although internet usage rates among older Canadians have increased in recent years, they continue to trail those of other Canadians. For instance, the Canadian Internet Use Survey found that only 51% of those aged 65 to 74 and 27% of those aged 75 years and older used the Internet, compared with 94% of individuals under the age of 45 and 80% of those aged 45 to 64.[22] A 2012 survey conducted by the Canadian Association of Retired Persons (CARP) found that 75% of respondent members disagreed with banks and utilities charging for paper bills.[23] Two thirds of members characterized paper billing as "not such a good thing"—44% of all respondents said this was primarily because seniors do not have computers, 11% said it was because seniors preferred paper bills for bookkeeping, and 9% said it was because it would cost more for those on fixed incomes.[24]

21. While there are few statistics on internet use by Canadian consumers with disabilities, a 2010 survey by the Pew Research Center found that only 54% of U.S. adults living with a disability go online (compared with 81% of adults without a disability).[25] In addition to specific mental and physical limitations to using the internet, these individuals were also more likely than other adults to live in low-income households, to have low levels of education, or to be older.[26]

22. The imposition of paper bill fees thus appears to disproportionately and unfairly target consumers who, for a variety of reasons, effectively have no choice but to accept them. These are also often the consumers who can least afford such charges.

(d) Lack of responsiveness in Canada's telecommunications marketplace to consumers' needs.

23. In a fully functioning competitive marketplace, one would expect that service providers such as Bell Canada, Rogers Communications and others would be mindful of consumer

[22] Statistics Canada, *Individual Internet use and E-commerce*, online: StatsCan < http://www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm>.
[23] CARP, *CARP Seniors' Discounts Poll Report* (27 July 2012), online: CARP < http://www.carp.ca/wp-content/uploads/2012/07/Senior-Discounts-reportNEW.pdf> at p. 7.
[24] *Ibid* at p. 8.
[25] Susannah Fox, *Americans Living With Disability and Their Technology Profile* (2011), online: Pew Research Center < http://pewinternet.org/Reports/2011/Disability.aspx> at p. 3.
[26] *Ibid* at p. 2.

perceptions regarding the imposition of punitive surcharges such as those for paper bills. One would expect that TSPs would strive to avoid irritating or annoying current or potential customers. Concern regarding consumer response, however, does not appear to have been a significant factor in shaping TSP practices regarding paper billing.

24. Market forces in Canada's telecommunications market place do not appear to have had any significant impact in dissuading TSPs from imposing paper billing surcharges. Bell and its leading competitor in Ontario, Rogers, do not appear to have been concerned about the potential of customer losses as a result of the imposition of paper bill surcharges, despite the steady stream of complaints to consumer groups, the Commission, and elected representatives.

25. When asked by the Commission whether an incentive-based approach to e-billing that would not create an undue burden on vulnerable consumers might be preferable, Bell Canada and its affiliates simply countered with the paternalistic assertion that it has "long been accepted in the field of behavioural economics that the value function is steeper for losses than for gains,"[27] citing an article published in the Journal of Economic Behavior and Organization in 1980. Bell also suggested that the paper bill fee was a common charge in other service sectors as well, such as banking.[28]

26. Based on the responses received by the Commission from the Bell companies and other carriers, few if any attempts appear to have been made by the carriers to assess consumer views regarding such charges. Bell Canada's reliance in its defense of the charges on the contention that "the value function is steeper for losses than for gains" appears to denote considerable indifference to its customers' views.

27. As discussed earlier, our own research indicates that Canadians do not support paper billing surcharges. The same research also suggests that a significant proportion of Canadians are not comfortable with electronic billing. In addition, many Canadians do not have convenient access to the technology needed to make use of electronic billing. The views of all of these Canadians appear to have been ignored by TSPs.

[27] Letter from "The Companies" dated 21 December 2012, CRTC Reference 8495-1-8492-B54 at para. 13.
[28] The Companies Letter dated 21 December 2012, CRTC Reference 8495-1-8492-B54 at para. 11.

3. GROUNDS OF APPLICATION

28. PIAC and CAC submit that:
    (a) For all regulated standalone PES customers in forborne markets: the paper bill fee constitutes an unauthorized rate increase;
    (b) For customers in non-forborne markets: the manner in which the effective rate increases with the paper billing fee brings into question compliance with the current price caps regime;
    (c) For all telecommunications customers: the paper bill fee constitutes an unjustly discriminatory practice, contrary to s. 27(2) of the *Act*;
    (d) The paper bill fee effectively acts as a penalty for customers who are merely continuing to make use of the core service they have subscribed to; and
    (e) The paper bill fee is inconsistent with the telecommunications policy objectives.

(a) The paper bill fee is an unauthorized rate increase for all regulated standalone PES customers

29. In Telecom Decision 2006-15, *Forbearance from the regulation of retail local exchange services*, the Commission, among other things, set conditions regarding the supply of primary exchange service (PES) by ILECs in forborne locations. In particular, the Commission imposed a price ceiling on residential stand-alone PES in order to "provide vulnerable and uncontested customers with a safeguard against unreasonable rate increases in a forborne environment."[29] More specifically, the Commission stated:

> 454. In light of the foregoing concerns, the Commission finds it appropriate to maintain its powers and duties under subsection 27(1) of the Act to the extent necessary to impose <u>a price ceiling on stand-alone residential PES</u>. The Commission notes that this price ceiling will apply to the <u>most recent approved rates at time of forbearance for stand-alone PES</u> including touch-tone and primary directory listing, as well as for connection charges. [...] The Commission considers that <u>these charges have a direct impact on the affordability of residential PES service. As such, the Commission considers that, at the time of forbearance, the applicant ILEC will be required to modify its tariffs such that these charges and the limits on them will apply to stand-alone PES in a forborne market.</u>[30] [Emphasis added]

[29] Decision 2006-15 at para. 452.
[30] *Ibid.*

30. Stand-alone PES rates were capped at current levels.

31. PIAC and CAC submit that the paper bill fee is a clear increase above the last calculated rate cap as defined in Telecom Decision 2006-15. Therefore, the ILECs who charge paper bill fees to standalone PES customers have exceeded their authorized rate caps, violating the condition set out in Decision 2006-15. In doing so, these ILECs have imposed a rate that is contrary to the requirement to file new tariffs for Commission approval under s. 25 of the *Act* and that is not just and reasonable under s. 27(1) of the *Act*.

(b) The paper bill fee is an unauthorized rate increase for regulated telephone services in non-forborne markets

32. For customers who live in exchanges still regulated under the most recent price cap, the paper bill fee, if applied there, also represents an increase to local rates. The Bell companies have argued that "the charge for a customer's Home Phone Package plus the $2 monthly fee for the paper bill charge is equal to or less than the approved maximum rate in the rate range for that Home Phone Package service."[31]

33. The Bell companies' reasoning, however, raises significant concerns.

34. Bell argues that the paper bill surcharge does not push the retail cost of a Home Phone Package over the maximum allowable rates set by the Commission in Telecom Decision 2007-27, *Price cap framework for large incumbent local exchange carriers*. However, Bell overlooks the fact that at the time the Commission approved these rates, Bell did not discuss implementing a discrete fee for paper statements, nor did it propose to strip out paper billing from its telephony service offerings. The rates set by the Commission, therefore, did not consider the removal of paper billing from the Bell companies' (or any other ILEC's) service offerings. It is reasonable to expect that if the paper billing functionality the Bell companies were providing had indeed been stripped out of the service offering, the maximum allowable rates would have been different – and lower. This raises two considerations.

35. First, it is inappropriate to consider the impact of the paper billing fees on the basis of the maximum allowable rates set in Decision 2007-27. The service functionality (and associated costs) reflected in the relevant rates included paper billing.

36. If the Commission is to consider the Bell companies' argument regarding its compliance with the current price caps regime, the rates against which the Commission considers

[31] The Companies(CRTC)3Jul13-2 e-Bill at p. 6.

Bell's arguments should be rates from which the costs associated with paper billing have been extracted. Bell never sought a readjustment of its capped rates when it unilaterally decided to strip its telephony services of this functionality. The Bell companies (in Ontario and Quebec) have assigned a value of $2 per month to this functionality. In an allegedly competitive marketplace, we submit that it is reasonable to assume that the Bell companies have assumed that the costs they incur to provide paper billing are at (or close to) this amount. This is the rate they have imposed on their paper-billed customers.

37. Bell's contention that even with a paper billing charge its overall rate is below the "approved maximum rate in the rate range for that Home Phone Package service" raises the further question as to why the company should be permitted to double bill consumers. Bell was already recovering its paper billing costs when its rates were regulated and when going-in rates were set. It now effectively double bills its customers—these consumers have already been paying for a paper bill and now have to pay once again for this functionality.

38. This form of double billing undermines the integrity of the price caps regime set by the Commission in Decision 2007-27. Based on the precedent it has established with paper billing, Bell could presumably strip its basic telephony offering in regulated locations of any functionality and start charging a premium for such functionality. Under Bell's reasoning, it need merely ensure that the resulting rate is below the maximum allowable cap. We submit that this is not consistent with the Commission's intent when it established the current price caps regime and its outcome would not be consistent with the objectives of Canada's telecommunications policy.

(c) The paper bill fee unjustly discriminates against consumers contrary to section 27(2) of the *Act*

39. Sections 27(2) and (4) of the Telecommunications Act provide that:

> (2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an <u>undue or unreasonable preference</u> toward any person, including itself, <u>or subject any person to an undue or unreasonable disadvantage</u>.
>
> …
>
> (4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

40. Section 27(2) prohibits Canadian carriers from engaging in unjust discrimination and conferring undue preferences or disadvantages towards any person.

41. When it forbore from regulating rates for local telephony services, the Commission retained its powers under section 24 of the Act and maintained the Canadian carriers' obligations in section 27(2) and (4) of the Act.[32]

42. The imposition of the paper billing surcharge by TSPs constitutes unjust discrimination under s. 27(2) of the *Act* in that it effectively penalizes telecommunications customers who are not subscribed to electronic billing. The surcharge unjustly discriminates against many consumers who may not have access to the Internet or who may not be comfortable using e-billing. The paper billing surcharges also singles out economically vulnerable consumers who may not have the means to own computer equipment or to maintain Internet access. It is evident, as discussed earlier, that access to electronic billing technology presents significant challenges for many Canadian consumers. The imposition of a surcharge for paper billing unjustly discriminates against these consumers.

43. We also draw the Commission's attention to the fact that many consumers are now effectively tied to a TSP as a result of lengthy and complex bundled service arrangements. The Commission has already found that many service providers make extensive use of bundled service arrangements.[33] These lengthy and complex bundling arrangements seriously undermine consumers' ability to migrate from one TSP to another in the event that the TSP unilaterally imposes on its customers an additional charge, such as the paper billing surcharge.

44. Consumers who have entered into complex bundled multi-service, multi-year service arrangements offered by several incumbent cable and telephone companies typically do not have the flexibility to consider alternatives to their current PES offering unless they are prepared to incur potentially significant penalties.

45. In Telecom Notice of Consultation 2012-557, *Proceeding to establish a mandatory code for mobile wireless services*, the Commission had found that:

> [C]onsumers need additional tools to <u>better understand their basic rights, as well as their service providers' responsibilities with respect to mobile wireless services</u>, in order to

[32] *Forbearance from the regulation of retail local exchange services*, as modified by Order Varying Telecom Decision CRTC 2006-15, P.C. 2007-532. For Competitive Local Exchange Carriers, see Telecom Decision CRTC 97-8 Local Competition, in particular, the Commission determination at paras. 265 and 266.

[33] For example, in Decision 2006-15, paragraph 48. The prevalence of such serving arrangements appears to have grown substantially since then. See the Commission's *Communications Monitoring Report*, September 2013, Table 2.2.6 which sets out growth rates for bundled service arrangements. Based on the Commission's information, since 2008 the number of telephone subscriptions provided on a bundled basis has passed from 5.8 million to 10 million.

participate in the competitive market in an informed and effective manner.[34] [Emphasis added]

46. Billing is an essential part of the contractual relationship between a TSP and its customer. It is the means by which a TSP reaffirms its service responsibilities to a customer and a customer clearly understands their financial obligations to the TSP. Therefore, the ability of a customer to access, understand, and act upon their billing statement is critical.

47. As was emphasized by the Commission in Telecom Regulatory Policy 2013-271, not all Canadians are able to access or use electronic versions of documents.[35] These include, as discussed earlier, a wide range of consumers. Moreover, the customers within this group who cannot afford internet service, for instance, are those who are most likely to be seriously affected by up to $4 <u>monthly</u> charges for <u>each</u> paper bill that they receive. The imposition of surcharges that many consumers cannot afford and a form of technology that many may not be comfortable with prevents a significant group of customers from clearly understanding their rights and the responsibilities of their service providers.

48. Environmentally-friendly policies are worthy initiatives. However, billing is in many cases the only way by which customers can examine and understand their services and financial obligations to a TSP. Even if electronic statements were to be set as a “default” billing format, customers ought to be able to sign up for free monthly paper statements or alternative formats (with billing details) in a simple and straightforward way.

49. Ultimately, a charge for printed billing is likely an attempt by TSPs to exploit customers who have little alternative. The paper bill fee essentially shifts a cost of operating a business – providing paper bill statements – from TSPs to their customers. In the case of the ILECs in particular, these costs were already being recovered by the service provider through its regulated rates. Thus, the paper bill fee is also a form of undue preference carriers have given themselves to the detriment of Canadian consumers, contrary to s. 27(2). The paper bill fee effectively constitutes a form of double billing.

<u>(d) The paper bill fee effectively acts as a penalty for customers who are merely continuing to make use of the core service they have subscribed to</u>

50. Moreover, the paper bill fee is, in effect, a penalty for consumers who have not done anything but failed to register for electronic billing. It is an extraction of a cost of service and an imposition of that cost as an additional charge on TSP customers, many of whom

[34] At para. 1.
[35] Telecom Regulatory Policy 2013-271, *The Wireless Code*, at para. 52.

have merely continued to subscribe to the same service as they had before the implementation of the paper bill fee.

51. Billing is a part of the core service provided by communications providers. It has, for instance, historically formed part of the framework for price caps on Home Phone service in non-forborne locations.[36] In its 2008 review of additional charges,[37] Ofcom considered whether billing charges, such as paper bill fees, could be considered "core terms"—that is, those relating to "the definition of the main subject matter of the contract" or to "the adequacy of the price or remuneration, as against the goods or services supplied in exchange."[38] Ofcom found that billing charges could be considered core terms

> in cases where they are presented in such a way that the typical consumer would regard them as part of the price he is paying for the services he is buying, not a separate incidental additional charge.[39]

In other words, the costs associated with billing may constitute "core terms" that form part of the provision of that telecommunications service.

52. PIAC and CAC submit that providing bills in any format forms a core term of that service, one that goes to the definition of the main subject matter of the contract. It has always formed part of the core cost of that service. Therefore, the paper bill fee is an extraction of that core cost and an imposition of it as an additional charge on consumers. TSP customers should not be penalized for simply continuing to use a feature that had always been a part of their communications service.

53. The effect of paper bill fees is, in fact, similar to that of late payment fees. In Telecom Decision 2006-15, *Forbearance from the regulation of retail local exchange services*, the Commission found that late payment, interest and not sufficient funds (NSF) cheque charges had "a direct impact on the affordability of residential PES service."[40] Although the Commission forbore from regulating these charges in forborne markets in Telecom Regulatory Policy 2009-424,[41] it re-affirmed the impact of these charges on affordability

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[36] See, for instance: Bell Access Services Tariff 7516 at Item 42, and Telus Carrier Access Tariff 21462 at Item 207;
Telecom Decision 2002-34, *Regulatory framework for second price cap period* at paras. 801-806; and Telecom Decision 95-21, *Implementation of regulatory framework – Splitting of the rate base and related issues* at Section II(A)(4).

[37] U.K. Office of Communications ("Ofcom"), *Ofcom Review of Additional Charges Including Non-Direct Debit Charges and Early Termination Charges* (2008), online: Ofcom <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/addchargestatement.pdf> [Ofcom Review of Additional Charges].

[38] See: *Unfair Terms in Consumer Contract Regulations 1999*, 1999 No. 2083, r. 6(2).

[39] Ofcom Review of Additional Charges at 7.

[40] At para. 454.

[41] Telecom Regulatory Policy 2009-424, *Revised regulatory requirements for management of customer accounts*, at para. 38.

and chose to maintain some price protection in regulated markets.[42] Paper bill fees also have a direct impact on the affordability of a service, so their effect on consumers is similar to that of late payment or NSF charges – except that in the case of paper bill fees the customer has not done anything wrong; they have merely failed to agree to receive bills in electronic format only.

54. Allowing fees such as those of paper bill fees – those that form part of the core service and cost of doing business that have been extracted and imposed as additional fees on consumers – can set a dangerous precedent for additional charges TSPs could further implement down the line. Theoretically, for instance, TSPs could begin to impose a "non-bundling fee" for customers who were only subscribed to standalone services, rather than bundled services, by arguing that standalone services reduce billing efficiency and thus incurred additional costs.

(e) The paper bill fee is inconsistent with the telecommunications policy objectives

55. In s. 47 of the *Act*, Parliament has directed that:

> 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.

56. Among the s. 7 objectives of Canadian telecommunications policy it has set, Parliament has specified that policy should:

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

57. Parliament also specified that policy should ensure that carriers

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

58. Policy should also

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[42] *Ibid* at paras. 33 and 38.

(h) …respond to the economic and social requirements of users of telecommunications services;

59. Paper bill fees are inconsistent with all of these policy objectives. The imposition of surcharges for billing that consumers can access and understand does not strengthen the social and economic fabric of Canada. Such charges penalize low-income consumers as well as those who are not comfortable with electronic commerce technology.

60. The imposition of paper billing surcharges similarly does little for affordability and, indeed, creates an additional and unwarranted cost for access to telecommunications services for many of Canada's most vulnerable consumers.

61. Paper billing fees also do not respond to the requirements of many consumers. As our own research shows, these surcharges are highly unpopular and are correctly perceived by many consumers as an attempt by TSPs to impose their own business objectives at the expense of consumers.

4. UNFOUNDED TSP REGULATORY AND ENVIRONMENTAL ARGUMENTS

(a) Regulatory arguments: The CRTC is not prohibited from proscribing the paper bill fee

62. Many TSPs have suggested that a regulatory response to the paper bill fee would be beyond the Commission's scope of power. We disagree and will address these types of arguments in this section. The first was advanced by Bell, which argued that its overall rate, including the paper bill fee, was still below the approved maximum rate for Home Phone Package service in non-forborne areas. We addressed this claim in section 3(b) of this application.

63. Both Bell and Telus have also suggested that they are entitled to charge the paper bill fee in forborne areas where PES is bundled with another communications service, such as Internet.[43] Telus maintains that this is because the fee is an Internet-related charge.

[43] The Companies(CRTC)3Jul13-3 e-Bill at p. 7; and

As the bills for bundled services all arrive on one statement, Bell and Telus cannot argue that the paper bill fee imposed is only a charge related to other services separate from PES. PES remains a regulated service and the cost of PES is affected by the application of a paper bill fee. It would be misleading to say that PES is no longer a separate regulated service merely because it is bundled or, indeed, just billed with other services.

64. Moreover, both Bell and Telus have argued that their Wireless and Internet services are forborne from Commission rate regulation.[44] When it forbore from approving rates for these services, the Commission retained its powers under s. 24 of the *Act*. We submit that under this section, the Commission may impose any conditions on the offering and provision of a telecommunications service by a Canadian carrier. Therefore, the Commission is permitted to impose conditions to address consumer concerns that a competitive market cannot resolve, particularly where the conditions are necessary to fulfill the telecommunications policy objectives, including ss. 7(a), 7(b) and 7(h). This is what the Commission did in creating the Wireless Code[45] to ensure that consumers could better understand their basic rights and their service providers' responsibilities with respect to their wireless services. We submit that the Commission is permitted to do the same here with respect to paper bill fees.

(b) Environmental arguments: TSPs have not shown a genuine commitment to "green-friendly" practices by passing on e-billing savings to customers

65. Many TSPs argued that the paper bill fee was an environmentally-friendly policy and that "green-friendly" initiatives were appreciated by their customers.[46] While we support environmentally friendly measures, we question the veracity of claims that because TSPs' preference for electronic billing may reflect environmental concerns, consumers should be penalized if they wish to receive (or to continue receiving) printed invoices.

66. We would expect that if TSPs were genuinely primarily driven by environmental concerns, instead of exploiting electronic billing as an opportunity to add to their customers' costs, they would be pursuing policies designed to provide incentives to their customers to do away with paper billing. Instead of offering incentives which, in our view, would provide evidence to consumers that these TSPs are in fact prepared to share the

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TELUS(CRTC)03July13-2 at p. 1.
[44] The Companies(CRTC)3Jul13-3 e-Bill at p. 3; and TELUS(CRTC)03July13-2 at pp. 1-2.
[45] Telecom Regulatory Policy 2013-271.
[46] See, for instance: The Companies Letter dated 21 December 2012, CRTC Reference 8495-1-8492-B54 at paras. 3, 12 and 14; Eastlink Letter dated 18 July 2013, CRTC Reference 8480-B54-X, at p. 2; and WIND Mobile(CRTC)3Jul13 - 2 at p. 2.

savings they expect to realize from the implementation of an allegedly more environmentally friendly way of doing business with their customers, most TSPs have simply sought to promote electronic billing in a manner which generated new sources of revenues to the company, and added costs for its customers.

67. Moreover, we note in this respect the view expressed by one TSP's customers – in one instance Rogers Communications, for example – that supplemental charges for paper billing do not appear to have been accompanied by significant changes by the TSP to reduce direct mail marketing material to customers. There is unfortunately no evidence on the record of this proceeding nor are we aware of any publicly available information to indicate whether this is or is not the case but we submit that if TSPs are in fact committed to the suppression of paper billing for environmental reasons, they should also be prepared to provide evidence that they are doing away (or have done away) with direct mail marketing campaigns. We submit that the continued reliance by a TSP on direct mail marketing casts doubt upon the genuineness of arguments that environmental considerations are at the root of paper billing charges.

5. NATURE OF DECISION SOUGHT

68. There, PIAC and CAC request that the Commission:

   (i) Declare that the paper bill fee is an unauthorized rate increase for all regulated standalone PES customers and customers in regulated markets;
   (ii) Order the TSPs to refund all monies, with interest, collected under this charge to the customers included in section (i);
   (iii) Declare that the paper bill fees violate s. 27(2) of the *Telecommunications Act* and prohibit these charges;
   (iv) Amend the CRTC Wireless Code[47] to include a provision prohibiting charges for providing paper bills; and
   (v) Require all TSPs to provide paper billing (and in alternate formats) at the customer's choice at no additional charge.

69. TSPs should be ordered to notify their customers in writing of the elimination of the paper bill fee and to inform them of how they may register for e-billing if they choose to do so.

[47] Published in Telecom Regulatory Policy 2013-271.

70. Finally, we request our costs of making this Part 1 application in accordance with s. 56 of the *Act*.

71. This application is available online at: http://www.piac.ca/files/part_1_pay_for_paper_bills_final.pdf and is available via e-mail if requested from: lawford@piac.ca .

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Top of Page
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APPENDIX A: Environics 2013 Survey on Paper Bill Fees

Please see attachment, APPENDIX A: Environics 2013 Survey on Paper Bill Fees.

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