

Addendum to the Report - Unraveling Webs of Uncertainty: What an Internet Code Could Mean for Canadian Consumers

A. Scope and Commentary

This Addendum provides PIAC's comments on the CRTC's Telecom Regulatory Policy 2019-269 on the Internet Code,¹ released on July 31, 2019 and coming into effect on January 31, 2020;² and which was released as this report was going to be published. We note that even after the release of this Code, the findings and recommendations of this Report remain valid and pertinent. In our view, the CRTC's Internet Code suffers from several flaws, and remains a complete disappointment for advancing consumer interests in relation to retail Internet access services.

Establishing a mandatory Code for retail Internet access services could have been an important step towards closing regulatory gaps and bringing parallel consumer protections for retail Internet access, as those available for wireless services through the Wireless Code; however, in PIAC's view, this has clearly been missed. As stated in our media release, we are concerned with the CRTC's Code because we believe consumers will be confused by its differences from the much more consumer-protective Wireless Code; and find no reason why one standard would apply to wireless services and another, much lower standard applies to retail Internet access service.³

To recap, this report's Chapter 3.2 reviewed some sections of the CRTC's draft Internet Code,⁴ and specifically, commented on certain issues that in our view merit attention from a consumer's perspective. This Addendum provides PIAC's comments on some provisions of the CRTC's Internet Code, whilst, drawing reference to the draft Internet Code and the Wireless Code, as applicable. The scope of this Addendum is limited to commenting on some key areas of consumer concern, and is not meant to be an exhaustive study of all the sections of the CRTC's Internet Code.

¹ Also referred as the CRTC's Internet Code and/or the final version.

² Canadian Radio-television and Telecommunications Commission, Telecom Regulatory Policy CRTC 2019-269, The Internet Code <<https://crtc.gc.ca/eng/archive/2019/2019-269.htm>>. See its Appendix for the Internet Code. May also see, Telecom Regulatory Policy CRTC 2019-269-1.

³ PIAC Media Release, Consumers Left Unprotected by CRTC's Internet Code.

⁴ Canadian Radio-television and Telecommunications Commission, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, online: <<https://crtc.gc.ca/eng/archive/2018/2018-422.htm>>.

Limited Application

To begin with, the CRTC's Internet Code is only applicable to large ISPs.⁵ The final position taken by the CRTC is not any different from their initial view of applying this Code to only the large ISPs, as a measure for striking an appropriate balance between addressing consumer concerns and not placing a heavy regulatory burden on smaller carriers or resellers, noting that 87% of Canadians with Internet services purchase their retail Internet subscriptions from a "traditional telephone" or "cable" company.⁶ We find it hard to see any compelling justification in this approach, and why the Wireless Code, is applicable to all wireless service providers, but this Code does not apply to 13% of retail Internet service provider customers. This also punishes consumers for choosing "small-internet providers" by removing their consumer rights and therefore, constrains the market. The CRTC's premise in its Telecom Regulatory Policy 2019-269 that the large ISPs provide service offerings that are complex and often a part of a bundle,⁷ at the very least lacks the necessary analysis to explain why the complete and seemingly permanent exclusion of small ISPs from being bound by the Internet Code is related to how the service is offered and packaged.

The limited application of the final Internet Code severely restricts its overall efficacy. We stand by our earlier recommendation that the Code should be made applicable to all ISPs immediately, or, if not initially, then smaller ISPs should have a phase-in period of at most 2 years to accommodate any supposed implementation burdens on smaller providers.

Imposes Onerous Early Cancellation Fees

The final Internet Code allows the ISPs to impose burdensome early cancellation fees (ECFs) with a complex set of terms and conditions regarding the quantum of ECFs charged, depending on the value of device subsidy, if applicable.⁸ This remains a surprising addition as the CRTC noted in its Telecom Regulatory Policy 2019-269 that "[s]ubsidized devices are not currently commonplace in the Internet Service market, the Commission anticipates that, in the future, ISPs may wish to offer device subsidies as a means to provide customers with more expensive devices on a cost-deferred basis."⁹ In our view, this provision on ECFs appears to actually lead the industry towards using ECFs as a profit-making practice, rather than having left the present in-market penalty for not returning equipment when consumers choose to leave their retail Internet service provider before the end of their commitment period.

⁵ See Appendix to Telecom Regulatory Policy CRTC 2019-269. Also see: Telecom Regulatory Policy CRTC 2019-269 at paras 90-105, (position of the parties) and 106-127 (Commission's analysis and determinations).

⁶ *Ibid.* Also see, Telecom Notice of Consultation CRTC 2018-422, paras 3, 9-10.

⁷ Telecom Regulatory Policy CRTC 2019-269 at para 112.

⁸ Appendix to Telecom Regulatory Policy CRTC 2019-269, G.1.

⁹ Telecom Regulatory Policy CRTC 2019-269 at para 346.

We believe that the Code’s ECF provision in its current form is likely to substantially increase the consumer costs; as the applicable fees, depending on the contract and the device subsidy, could be significant. Currently, consumers can return the applicable device within a certain timeframe, rather than pay the device’s costs when they cancel a contract early. However, under the new provision, consumers would have to pay the remaining cost of their subsidized device with the early cancellation fee calculated as the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to.¹⁰ This change is likely to decrease consumer welfare.

Moreover, when a subsidized device is not provided as part of the contract for fixed-term contracts, no criteria for limiting ECFs is set out in the Internet Code, thereby allowing the ISPs to set the ECF in the contract at seemingly any amount – limited only by the requirement it be reduced by equal increments over the lesser of 24 months or the total number of months in the contract term, if shorter.¹¹

The final approach taken by the CRTC on ECFs is quite surprising given the clear acknowledgment in Telecom Regulatory Policy 2019-269 that ECFs continue to be a leading cause of customer complaints to the CCTS regarding Internet services.¹² CRTC referred to CCTS’s 2016-2017 report, which stated that complaints on ECFs were raised 392 times that year, 57% more often than the previous year, and that it continues to see a rise in complaints.¹³ If the purpose of the CRTC’s final provision on ECFs was to clarify the applicable charges, it is clearly defeated as it only makes it more difficult for consumers to calculate what they would have to pay in case they decide to leave a contract before the end of its commitment period. Amidst other factors, this may affect consumers’ ability to switch their service providers.

Allows Promotional Pricing

The CRTC’s Internet Code requires the service providers to set out in offers and contracts’ the price and promotions, discounts, incentives, other time-limited offers, and bundles.¹⁴ In effect, this provision effectively allows promotional pricing during the duration of the contract, as discounts or promotions are permitted to be part of the “price.” Note, no promotional pricing is allowed under the Wireless Code.¹⁵ This will not only cause consumer confusion, but exacerbate their billing issues, which remains a major consumer concern. Our research indicates that many consumers remain concerned about an increase in charges when a promotional offer ends.

¹⁰ See, Appendix to Telecom Regulatory Policy CRTC 2019-269, G.1. Also see, Telecom Regulatory Policy CRTC 2019-269 at para 354.

¹¹ *Ibid.*

¹² Telecom Regulatory Policy CRTC 2019-269 at para 343. Also see paras 141-142. For some consumer views regarding early cancellation fees, see para 331-332.

¹³ Telecom Regulatory Policy CRTC 2019-269 at para 343.

¹⁴ Appendix to Telecom Regulatory Policy CRTC 2019-269, A.2.

¹⁵ Appendix 1 to Telecom Regulatory Policy CRTC 2017-200- The Wireless Code, A and B.

No Caps on Data Overage Charges

The final version of the Internet Code only requires the ISPs to notify users on reaching usage limits at different percentages i.e. 75%, 90% and 100%;¹⁶ with no caps on data overage charges and/or no option to suspend Internet services. This is a clear step back from the draft Internet Code, which provided two options for data overage charges- Option 1 and 2, with the latter providing an option to suspend the Internet access services.¹⁷ This is also completely different and contrary to the Wireless Code, which caps data overages, providing that a service provider must suspend data overage charges once they reach \$50 within a single monthly billing cycle, unless the account holder or authorized user expressly consents to pay additional charges.¹⁸

We argue that users should be given clear control over the application of overage data charges. As noted earlier, we believe that giving consumers the option to set their overage limit to \$0 or in other words as to whether or not incur overages, is what is needed for adequately protecting consumer interests, especially in light of the very high overage fee rates on retail Internet access services.

B. Conclusion

This Addendum sought to provide PIAC's comments on the CRTC's Internet Code on some specific matters that in our view warranted attention; specifically, the limited application of the Internet Code, imposing of onerous early cancellation fees, permitting promotional pricing and no caps on data overage charges. The final Internet Code is an unacceptable and frail attempt to advance consumer interests in relation to retail Internet access services; it is certainly a step back from the consumer protection provided in the draft version and the Wireless Code. We aim for our Report's analysis and suggestions to stimulate some important discussions on this matter, and at the same time be a useful resource for providing insight on common areas of consumer concern in this space, and the regulatory measures needed to improve consumer protection.

¹⁶ Appendix to Telecom Regulatory Policy CRTC 2019-269, E.1 and E.3.

¹⁷ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, E.3.

¹⁸ Appendix 1 to Telecom Regulatory Policy CRTC 2017-200- The Wireless Code, E.3.