

UNRAVELING WEBS OF UNCERTAINTY: WHAT AN INTERNET CODE COULD MEAN FOR CANADIAN CONSUMERS



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

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Executive Summary

With this report, PIAC sought to: review the current regulatory framework for retail internet access services in Canada; analyze whether and how an Internet Code could help in addressing common consumer issues found relating to internet access; and gain insight from international practices into regulation of retail internet access.

Our findings are based on primary and secondary research entailing four focus group sessions, stakeholder consultations and review of secondary resources including different regulatory regimes found in other countries. We also take into account individual interventions and comments submitted to the CRTC during its proceeding to establish a mandatory Code for Internet services.

Internet access remains integral for Canadians to perform various daily-activities, with increasing demand and use of home internet. Our research indicated several consumer issues relating to retail internet access; we explore some of these issues in detail to determine the best regulatory approach to address them. Many of our focus group participants, and numerous consumer intervenors in the CRTC proceeding expressed dissatisfaction with their home internet speed, stating it is slow, inconsistent, and/or not worth the price they pay for it. Internet speed advertising was noted to be another common issue as many consumers stated that their home internet speed was not as advertised. Although some of our focus group participants did demonstrate some understanding of factors that might affect Internet access speed, in general participants appeared to be unaware of these factors and/or had limited information and understanding of the factors. Many focus group participants and intervenors also cited billing issues, relating to exceeding data caps and incurring overage fees, with other concerns regarding cancellation fees and the challenges in switching providers.

Our focus groups in general supported having an Internet Code, and so did several intervenors, who would like to have basic compliance standards in relation to home internet access. Many intervenors appeared to view an Internet Code as a means of balancing consumer and service provider power, and/or facilitating consumer interests in the market. Quite a few intervenors emphasized on the essentiality and importance of internet in their daily lives, recommending it to be regulated like any other public utility. That said, if and when an Internet Code is implemented, which seems likely to be in the next year, considerable attention should be given to awareness and public outreach initiatives, as many consumers remain unaware of the similarly intended Wireless Code, even though it has been in place since 2013.

Our review of consumer accounts and experiences and our study of the prevailing regulatory gaps regarding retail internet access indicate that it would be useful to have an Internet Code to fill the void arising from the general lack of consumer protection in this space. For completion

purposes, our report undertook an examination of the Commission’s Draft Internet Code Working Document, to assess whether and to what extent it fills this regulatory gap; with specific comments on some issues. Our study of international practices revealed several useful regulatory practices that in our view should be considered for application in Canada; specifically, regarding broadband speed measurement and advertising, and billing issues.

Based on our research, we found it appropriate to recommend some measures that are specific to the content and scope of a potential Internet Code, and other suggestions as ancillary regulatory practices, which we believe remain necessary for a comprehensive consumer protection regime on retail internet access services. For ease of implementation, these recommendations are divided in two stages; first and second. This is to allow for a gradual and reasonable progression of the Canadian regulatory framework.

For the first stage, we suggest:

- ❖ The Commission should continue its proceeding towards creating an Internet Code; however, 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.
- ❖ The Commission should consider including issues regarding broadband speed and misleading advertising in a potential Internet Code. However, this seems unlikely as the Commission’s proceeding on an Internet Code expressly excludes broadband speed concerns; thus, we suggest that the Commission should consider mandating a separate regulatory regime for broadband speed measurement representations and quality of service parameters outside a potential Internet Code. This could have additional benefits as the Commission can incorporate data from its ongoing broadband measurement studies done through SamKnows and integrate the competition aspects of it.
- ❖ This regime also could mandate disclosure standards, both pre-sale and post-sale. The principles and rules included in Ofcom’s Voluntary Code of Practice (Residential) regarding Better Broadband Speed Information, is a useful model. More specifically, Canada should consider having advertising and representation rules requiring the ISPs to provide average speed estimates to be expected at peak network usage times, rather than continue to permit misleading “up to” or theoretical maximum speed claims.

Under the quality of service aspects of the new broadband speed regulatory regime, all ISPs should be required to provide a minimum guaranteed baseline download and upload speed, and consumers should have a right to exit any retail Internet access service agreement (and any “bundled” set of services which includes a retail Internet access service element) without penalty, if these baseline speeds are not consistently achievable

at the promised level for 30 days, as provided for in Ofcom's code of practice regarding broadband speeds.

- ❖ Additionally, the Competition Bureau and the Commission should work together and/or convene to have an inquiry on broadband speed and quality advertising. They should work on a feasible plan for addressing the issues regarding misleading broadband speed advertising, by consulting with different stakeholders, including ISPs and consumer groups. Such a plan should include introducing advertising guidelines with specifics as to how information regarding broadband speed is advertised i.e. its content and style to address the misleading aspect of these ads; and have enforcement measures in place.
- ❖ The CRTC should, within the next two years, launch a public proceeding to review the level and nature of competition in the retail Internet access services market, applicable pricing and related matters, as is presently being done for the retail wireless services market.
- ❖ The Commission should take action to implement the suggestions it made to improve consumer protection in its Report on Misleading or Aggressive Communications Retail Sales Practices; and should prioritize those applicable to retail Internet access services, including suitability standards for the sale of residential retail Internet access services.

For the second stage, we suggest:

- ❖ The Commission should consider in the long-term to have a single, mandatory and universal telecommunications code that applies to all telecommunications services providers for all telecommunications services and all broadcasting distribution services, rather than a patchwork of consumer protection regimes under various codes of conduct that may be difficult for the public to understand and enforce. Australia's Telecommunications Consumer Protections Code (TCP Code) could be a model to follow in designing a similar regime in Canada, which should incorporate the present Wireless Code, the TV Service Provider Code, the Deposit and Disconnections Code; a possible Sales Practices Code; and, presumably, the soon-to-be-released Internet Code. The CRTC should launch a public proceeding to frame this single Telecommunications Code within 3 years, with a view to having the Telecommunications Code in place within 5 years.

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Chapter 1: Introduction

1.1 Purpose and Scope

This report reviews the current regulatory framework of Canada's Internet market, to analyze whether and how an Internet Code could help advance consumer interests relating to home Internet access; with insight drawn from international practices. We also analyze the Canadian Radio-television and Telecommunications Commission's (Commission) Draft Internet Code Working Document,¹ to assess whether and to what extent it addresses the consumer concerns indicated by our research, and what gaps remain. We clarify at the outset that this report only deals with fixed (i.e. wired) retail Internet access in Canada. This means only those Internet connections facilitated at home by Cable modem, DSL enabled phone line (DSL-digital subscriber line), fibre-optic connection, satellite, dial-up telephone line and USB or other wireless stick; excluding wireless connections on cellphones i.e. Internet on the cellular network.

The Public Interest Advocacy Centre (PIAC), boycotted the Commission's proceeding on an Internet Code, after the denial of its request for more time to develop a public interest position based on comprehensive research and evidence.² Many other public interest groups and consumer groups supported PIAC's request for more time,³ which we find necessary to deliberate and produce concrete analysis and suggestions for a strong consumer protection framework. With this report, we seek to present our analysis on the regulatory framework for retail Internet access, focusing on an average consumer's perspective.

1.2 Methodology and Main Aspects

The findings of this report and its suggestions are based on primary research; consisting of four focus group sessions, conducted in Toronto and Montreal in August 2018, and stakeholder consultations- involving other consumer groups, service providers, government, provincial and regulatory organizations, academics and international organizations; and secondary research. This was supplemented with the information resources from the Commission's proceeding to establish an Internet Code. Overall, we; analyze consumer problems and concerns relating to home Internet access; explore the scope and content of a potential Internet Code; examine the Canadian regulatory framework on the Internet services and review the international practices to assess their relevance for Canada; and briefly look at the application of several codes, and their interplay with one another.

¹ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422 See Telecom Notice of Consultation CRTC 2018-422, online: <<https://crtc.gc.ca/eng/archive/2018/2018-422.htm>>, and Appendix 2 for discussion questions.

² Public Interest Advocacy Centre, Media Release: PIAC to Boycott CRTC "Internet Code" Proceeding, online: <<https://www.piac.ca/our-specialities/piac-to-boycott-crtc-internet-code-proceeding/>>.

³ *Ibid.*

Chapter 2: Home Internet Services: Consumer Issues and Complaints

2.1 Introduction

This section examines consumer issues relating to home internet access services to inform our analysis regarding the potential need and scope of an Internet Code. We consider issues that in our view are most amenable to regulation through a code; and briefly, look at other issues and regulatory measures required to fill in the consumer protection gaps. We begin with a study of consumers' home Internet usage to identify trends, and then review consumer concerns.

2.2 Home Internet Access – Usage and trends

2.2.1 Household Use

Our focus groups indicated that in general, home internet remains an increasingly important means of facilitating communication, entertainment, educational, and work- related needs. The frequency of internet use seemed to vary depending on demographics. Also, specific use of the internet, and data consumed appeared to vary depending on the number of people in a household, and/or their age groups. Some focus group participants were more active users than others. Many focus group participants indicated that they used the internet for various reasons, and some stated that their use is for limited purposes, but is gradually increasing. The CRTC's 2018 Communications Monitoring Report (CMR), indicates that 98% of Canadians households have access to fixed broadband internet access and more than 87% of Canadians households have a home Internet subscription.⁴

2.2.2 Household Use and Trends

The 2018 CMR found the retail fixed internet sector to be the fastest-growing sector all of the telecommunication sectors in 2017; with the majority of revenues being generated by residential access services (80% or 8.8 billion).⁵ It noted that Canadians continue to use more data, subscribe to faster and larger packages and spend more money on internet services.⁶ In 2017, 86% households subscribed to Internet service, with an increase in subscriptions by 3.9%, as compared to 2016.⁷

⁴ Canadian Radio-Television and Telecommunications Commission, Communications Monitoring Report (hereafter referred to as CRTC), 2018, online: <<https://crtc.gc.ca/pubs/cmr2018-en.pdf>>; (CMR 2018) at p.25.

⁵ CRTC, CMR 2018 at p 120-121.

⁶ *Ibid.*

⁷ *Ibid.*

Data Usage and Internet Speed

During our research, two aspects of the internet access; data usage and available caps; and the internet speed, appeared to be critical for meeting consumers' daily needs and demands. The importance of these two aspects, amidst others, was apparent by the anecdotes we heard during our focus groups, and some consumer interventions, submitted to the CRTC during its proceeding on a mandatory code for Internet service. Similarly, the CCTS 2017-18 Annual report notes the increasing demand for the internet services, speed and data packages.⁸

The 2018 CMR indicates that the average monthly data usage by high-speed internet service subscribers increased by 30% from 2016 to 2017,⁹ with the residential average revenue per subscriber increasing by 5.5% from 2016, i.e. to \$58.49 per month.¹⁰ Similarly, the average combined download and upload data usage increased since 2016, getting to 166.2 GB per month in 2017.¹¹ Subscriptions to internet service packages with unlimited monthly data transfer also went up from 12% in 2013 to 37% in 2017.¹² \$94 million were paid in internet overages by Canadian households, down from 100 million paid in 2016.¹³

The Internet speed remains significant for consumers, with more demand for faster internet speeds. The 2018 CMR notes that the average download internet speed subscribed to, continued to rise to an average of 68 Mbps in 2017, much higher than the 15 Mbps average in 2013.¹⁴ Also, subscriptions to internet service packages with speed of 50 Mbps or higher, went up from 19% of total subscriptions in 2015 to 39% in 2017.¹⁵ The percentage of households subscribing to these packages were also noted to rise from 16% to 33% during this time.¹⁶ While the majority of Canadians were found to not subscribe to an Internet service meeting the CRTC's target speeds of 50 Mbps downstream and 10 Mbps upstream, Canadians were found to increasingly subscribe to faster Internet services.¹⁷

Concluding Remarks

Based on the above, it is clear that access to home internet is crucial for meeting consumer's daily needs, with an increase in internet subscriptions, rise in demand for faster connections, and

⁸ See: Commission for Complaints for Telecom-Television Services (CCTS), 2017-18, Annual Report, online: <https://www.ccts-cprst.ca/wp-content/uploads/2018/11/CCTS-Annual-Report-2017-2018.pdf> at p.18.

⁹ CRTC, CMR, 2018 at p.122, 125. (See Infographic 5.2).

¹⁰ CRTC, CMR, 2018, Infographic 5.2.

¹¹ CRTC, CMR, 2018 at p 125.

¹² CRTC, CMR, 2018, Infographic 5.2.

¹³ CRTC, CMR, 2018 at p 125. This information is based on the data provided by the larger ISPs to the CRTC. (p.125 of CMR 2018).

¹⁴ CMR 2018, Infographic 5.2.

¹⁵ CMR 2018, Infographic 5.3.

¹⁶ *Ibid.*

¹⁷ CMR 2018, at p. 126.

more data consumption. Data usage-its availability, and internet speed appeared as prominent aspects for meeting consumers’ needs and expectations, amidst others. Therefore, we contend that these aspects should in particular be included in the Internet Code, to effectively address issues arising in relation to them.

2.3 Home Internet Access - Issues and Concerns

Our research indicates that consumers continue to face several problems with their home internet connection, and the use of current complaint processes in this regard remains limited. The following came across as prominent consumer issues:

- Home Internet Speed Issues: Slow Connection, Poor Quality of Service and Misleading Advertising
- Billing Issues: Exceeding Data Caps, Overage Charges
- Contract Clarity Issues
- Cancellation Issues

2.3.1 Home Internet Speed Issues

With regard to home internet speed, we came across the following issues:

- (a) slow connection and poor quality of service- many consumers are dissatisfied with their home internet speed, claiming that it is slower than what they paid for and/or expected to receive; getting poor quality of service; and
- (b) misleading advertising- the internet speed delivered to them is not as advertised.

Slow Connection and Poor Quality of Service

In general, we heard many focus group participants sharing concerns regarding their home Internet speed; many participants claimed that it is not what they expected to receive, with some stating that their home internet speed remains inconsistent, slow and/or subject to throttling. Some participants were aware of the factors that affected their Internet speed i.e. the time of day, for instance, in the evenings, when the use of the home internet is relatively higher then slower connections were reported. At other times a slower connection was found to arise, based on location(s) – particularly, for those residing in buildings. We saw similar concerns in the consumer interventions submitted to the Commission pertaining to a mandatory code for Internet services, citing problems regarding slow speed and/or poor quality of service.¹⁸

In the absence of clear standards to be followed regarding the Internet speed delivered, factors affecting it and standardized monitoring tools for checking the delivered speed, many consumers

¹⁸ See: Intervention 5 (TNC CRTC, 2018-422) [Weise, Ryan]; Intervention 105 [Nokes Kyle]; and Intervention 28 [Jeffreys, Lynne].

are left to rely on random measurement tools with uncertain results and expectations. The CCTS reports also confirm that many consumers continue to remain dissatisfied with their Internet speed and receive poor quality of service.¹⁹

Misleading Advertising

Another issue eminently raised during the focus groups, and cited as one of the foremost concerns in several consumer interventions,²⁰ was misleading internet speed advertising. Many Canadian internet service providers continue to use “up to” speed advertising for marketing internet services to consumers. PIAC’s examination of “up to” speed advertising practices of selected service providers in its earlier report, revealed clear disclosure gaps.²¹ These informational gaps, still exist; as our current review of the internet speed advertisements show that the details on qualifications to the advertised speed are not always easy to find, often included in the footnotes or near the footnotes.²² Likewise, consumer interventions also pointed to the gaps between the “up to” speed claims and the actual speed delivered.²³ During our stakeholder consultation, one stakeholder mentioned about the current use of “up to” speed advertisements; and few stakeholders confirmed that consumers continue to face false internet speed advertising.²⁴

Main Observations –Inclusion in the Internet Code and Other Regulatory Measures

Based on the above evidence and consumer accounts, it is clear that home Internet speed remains crucial for meeting consumer needs, and we believe it would be appropriate to regulate it through a code by mandating the service providers to provide clarity to consumers regarding the performance claims of the Internet speed. Also, the CRTC should have clear, easily accessible, and widely publicized internet speed measurement standards that should be monitored by it. We note that the CRTC does conduct a project on Internet speed measurements, i.e. Measuring Broadband Canada project, which tests the speeds of home wireline broadband Internet services.²⁵ However, the efficacy of such practices could be increased if they are included in a

¹⁹ See: CCTS, 2017-18, Annual Report at p.17; CCTS, 2017-18, Annual Report, Case Study # 3, at p.18. Also, see Case Study # 1 (regarding internet speed and usage limits) and Case Study # 2 (regarding issues relating to the internet speed) at p. 18. The 2016-17 Annual Report also indicated consumer issues regarding the poor quality of service and slow internet speed. See: CCTS, Annual Report 2016-17, Case Study # 2 at p.20.

²⁰ See: Intervention 1 (TNC CRTC, 2018-422) [Rogers, Christopher]; Intervention 19 [Mills, Jamey]; and Intervention 117 [Weber, Sean].

²¹ Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.14-23.

²² See: Rogers Internet Plans, online: <https://www.rogers.com/consumer/internet> (last accessed in May 2019).

²³ See: Intervention 44 (TNC CRTC, 2018-422) [Colthurst, Kyle]; and Intervention 122 (TNC CRTC, 2018-422) [Dupuis, Don].

²⁴ See, PIAC’s Stakeholder Consultation with the province of Nova Scotia, (March 13, 2019) mentioning about rural internet speed being misrepresented. Also see: PIAC’s Stakeholder Consultation with ABC Communications, (March 20, 2019), indicating that internet speed is one of the issues usually complained about.

²⁵ CRTC, Measuring Broadband Canada project, online: <https://www.canada.ca/en/radio-television-telecommunications/news/2019/05/crtc-seeks-the-participation-of-canadians-to-test-home-broadband-internet-speeds.html?hootPostID=87e6889778765a2bd6003d5e9cff8ec6>; CRTC, Broadband Measurement Project, online: <https://crtc.gc.ca/eng/internet/proj.htm>; CRTC [Report], SamKnows Analysis of Broadband Performance in Canada - March & April 2016, online:

code, engaged in more regularly, and monitored by the CRTC. The data obtained from these studies also needs to be better publicized to reach out more Canadians.

If broadband speed is not included in a potential Internet Code, which seems likely as the CRTC clearly excludes broadband speed concerns; then the CRTC should consider mandating a separate regulatory regime for broadband speed measurement representations outside a potential Internet Code. This could have additional benefits with the Commission able to incorporate data from its broadband measurement studies done through SamKnows, and integrate the competition aspects of it. This could also involve mandating disclosure standards, both pre-sale and post-sale. This report's chapter on international practices provides more insight as to what useful regulatory practices could be adopted in Canada. Particularly, see Ofcom's voluntary codes on broadband speed;²⁶ and the Australian telecommunications consumer protections code.²⁷

Considering the prevailing issues regarding misleading Internet speed advertising, the CRTC and the Competition bureau should consider playing an active role in laying down the groundwork for clear and transparent advertising standards. The measures and guidelines of the Australian Competition and Consumer Commission and/or UK Advertising Standards Authority remain a useful reference.

2.3.2 Billing Issues and Main Observations –Inclusion in the Internet Code

By billing issues, we generally, mean increase in charges when a promotional offer ends; and exceeding data caps and incurring overage fees. Our research shows that consumers continue to face billing issues. One consumer intervenor pointed to increased charges on the internet bill of a senior, despite no (or limited) data use, and lack of support from the service provider, to address this issue.²⁸ Some focus group participants mentioned about increase in rates, which was not readily apparent as it was mentioned in fine print; with some participants sharing difficulties in reaching their service providers to sort out billing issues. The CCTS reports clearly indicate that billing issues remain one of the most complained about issues.²⁹ PIAC's stakeholder consultation also showed that billing issues remain one of the major consumer concerns.³⁰

<<https://crtc.gc.ca/eng/publications/reports/rp160929/rp160929.htm>>. (Last accessed in May 2019).

²⁶ Ofcom [webpage], "Guide to the Broadband Speeds Codes of Practice," online:

<<https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/broadband-speeds-codes-practice>>.

²⁷ Communications Alliance Ltd, "Industry Code Telecommunications Consumer Protections Code," C628:2015, Incorporating Variation No.1/2018, online:

<https://www.commsalliance.com.au/_data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf>. [Australian Telecommunications Consumer Protections code or the TCP Code]. (See section 4.2).

²⁸ See: Intervention 103 (TNC CRTC, 2018-422) [Sas, Carl].

²⁹ See: CCTS, 2017-18, Annual Report, at p.9; CCTS, 2018-19, Mid-Year Report, online: <<https://pub.ccts-cprst.ca/2018-2019-mid-year-report/>>; CCTS, 2016-17, Annual Report, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/11/CCTS-Annual-Report-2016-2017.pdf> at p.10; and

We believe that the billing problems regarding home Internet access could be clearly addressed by introducing cogent and transparent rules in a code. Reference could be made to the provisions found in the Australian telecommunications consumer protection code (see chapter 4 for more details).³¹ Issues regarding data usage, exceeding limits and incurring overage fees continue to distress consumers. We submit that a code could be useful in addressing these aspects by mandating rules regarding caps on overage fees, standardizing the applicable notifications and alert systems to allow consumers to be better informed.

2.3.3 Contract Clarity Issues and Main Observations –Inclusion in the Internet Code

Lack of disclosure and unclear contract terms and conditions appeared to be a common problem for many focus group participants and consumer intervenors. Some of their specific concerns included, difficult to understand terms and conditions, the duration of the contract and/or the terms of the promotional offers were not clear. Few participants also cited concerns of being locked into long contracts, and/or the contract being automatically renewed. Another focus group participant shared an experience relating to unclear contract terms for when the rental modem had to be paid for. Some consumer intervenors also expressed concerns over the contract terms being changed without any clear notice.³²

Considering the problems noted, we argue that there is a clear need to address the lack of clarity relating to internet contracts, and a code could be appropriate means to do so. We believe that a code could mandate the rules regarding transparency; requiring the use of clear, simple and plain language in contracts, which specifically, make it clear what is the applicable duration of a contract and specifics of any promotional offers, and what are the special terms and conditions (if any) in relation to any promos, and when do they expire. PIAC’s suggestions in its research report on the consumer choice in telecommunications and broadcasting regarding having month-to-month contracts remain a useful option to consider for consumers.³³

2.3.4 Cancellation Issues and Main Observations –Inclusion in the Internet Code

Cancellation issues remain another common consumer issue. These were raised during our focus groups and in the consumer interventions; generally, with respect to early cancellation charges,

CCTS, 2015-16, Annual Report, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/06/CCTS-Annual-Report-2015-2016.pdf> at p.11.

³⁰ PIAC’s Stakeholder Consultation with ABC Communications, (March 20, 2019); with Consumer Protection BC, (March 19, 2019); with the province of Nova Scotia, (March 13, 2019); with Consumers Council of Canada, (March 8, 2019); and with Manitoba Branch of the Consumers’ Association of Canada, with contributions from Public Interest Law Centre of Legal Aid Manitoba (dated March 25, 2019). Deaf Wireless Canada, during PIAC’s consultation, mentioned that the consumers with special needs, often find it hard to understand these bills. (dated March 15, 2019).

³¹ Communications Alliance Ltd, TCP Code, see section 5. Also see, section 6.5.2.

³² See, Intervention 28 (TNC CRTC, 2018-422) [Jeffreys, Lynne].

³³ PIAC, “Consumer Choice in telecommunications and broadcasting” (May 2019) [add publishing details].

Notably, some consumer intervenors also shared issues in relation to switching providers, see: Interventions 7, 17, 22, 54, 68 and 79 (TNC CRTC, 2018-422).

which were often found to be burdensome and affected consumers' decision and/or ability to switch service providers.³⁴ One intervenor mentioned about the long-wait times to reach customer support for cancelling services, and coordinating for installing the new connection.³⁵ Generally, several focus group participants expressed frustration at paying cancellation charges. One participant shared an experience regarding his Internet cancellation reaching collections when he temporarily suspended his Internet service, because he did not renew it fast enough, with the provider claiming that he had not returned the equipment.³⁶

Contract cancellations, particularly the early cancellation charges remain problematic and burdensome for consumers. We believe an Internet code could be a useful regulatory measure for placing clear limits by having caps on early cancellation fees; and also providing clear and accurate information to consumers that remains easy to access and read.

2.3.5 Other Issues

Our research also indicated several other consumer issues in relation to home Internet access services, such as; high pricing, lack of choices in the home Internet market, credit history being affected, poor customer service/long waiting times, barriers to switching- lack of email portability, installation, rental equipment, and other technical connection issues (e.g. configuring the router). These issues also require regulatory attention to adequately protect consumer interests.

2.4 Complaint Handling Processes – Service Providers and the CCTS

We received limited feedback from the service providers in relation to their complaint handling process, and the challenges in this respect. The focus group participants shared various experiences in relation to customer support. Some participants did not complain because of the high waiting times; and few did not get any results. Also, some participants did get results, however, they had to wait for a while to get a response. Participants were generally not aware of the CCTS. Some insight can be drawn from a report by Union des consommateurs, “Telecommunications and Customer Service”, which noted that it remains challenging to assess the overall efficiency of customer service with certainty and objectivity as it found few or no tools or data for conducting an in-depth study of the current situation.³⁷ It recommended, amidst other suggestions that the Commission should require the telecom providers to adopt customer service policies that are customer-centric.³⁸

³⁴ Intervention 24 (TNC CRTC, 2018-422) [Fedorowich, John].

³⁵ Intervention 115 (TNC CRTC, 2018-422) [Calman, Shelby].

³⁶ See, PIAC Focus group 1 in Toronto, August 22, 2018.

³⁷ Union des consommateurs, “Telecommunications and Customer Service” (June 2018) at p.49. See online: <<http://www.uniondesconsommateurs.ca/docu/rapports2018/2018-ServiceClient-Eng.pdf>>. The details of this organization are also noted on p.34 of the cited report.

³⁸ Union des consommateurs, “Telecommunications and Customer Service” (June 2018) at p.53-54.

The volume of complaints received by the CCTS have continued to increase, with the CCTS, Mid-Year Report 2018-19, indicating a 44% rise in the accepted complaints.³⁹ However, as indicated by our research, many consumers generally remain unaware of the CCTS; showing a clear need for greater awareness initiatives in this respect.

2.5 Conclusion

Considering the above inquiry, it is apparent that consumers face many problems in relation to home Internet access services; that could be addressed by an Internet Code. Based on our research, we contend that commonly raised issues such as the Internet speed and advertising, billing issues, contract clarity and cancellation issues should be necessarily addressed by a code, in addition to other issues. However, if the Internet speed and its advertising issues cannot be included in a potential Internet Code, then the CRTC should consider mandating a separate regulatory regime for broadband speed measurement representations outside a potential Internet Code; which could have additional benefits as the Commission can incorporate data from its broadband measurement studies done through SamKnows, and integrate the competition aspects of it. This should involve mandating disclosure standards, both pre-sale and post-sale.

³⁹ CCTS, 2018-19, Mid-Year Report, online: <<https://pub.ccts-cprst.ca/2018-2019-mid-year-report/>>.

Chapter 3.1: Canadian Regulatory Framework – Internet Services

3.1.1 Introduction

This section outlines the regulation of retail Internet access services prior to the CRTC's proceeding to establish an Internet Code.⁴⁰ In effect, there is an utter lack, with only a few recent tangential rules, of regulation on this service, and this lack of regulation has persisted since 1997, when this area of telecommunications in Canada was “forborne” from regulation by the CRTC.

3.1.2 Canadian Retail Internet Access Regulatory Policies and Decisions

a. Jurisdiction and Basis for Regulations

Retail Internet access service is a telecommunications service, just as is voice telephone service. “Telecommunications” is defined in s. 2 of the *Telecommunications Act* as: “[...] the emission, transmission or reception of intelligence by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system”. Thus all methods of providing retail internet access service, whether delivered over wires or wirelessly, whether via electrical or optical systems, legally, are covered by the Act, as Internet services of all types are effectively exactly that: transmission of intelligence in many forms (video, email, web pages, etc., etc.).

However, it is not clear under the *Telecommunications Act* that all internet access services providers are directly regulated by the CRTC. While the argument is technical and legally complex (in part due to the constitutional niceties of how telecommunications is handled in a constitutional division of powers analysis between the federal and provincial governments), there is a history of uncertainty at the CRTC as to whether the ownership and operation of “transmission facilities” and other terms defined in the Act includes just those companies with physical wires or also those that just lease them (defined as “telecommunications common carriers” and “Canadian carriers”), as opposed to those that do not have these “facilities” (i.e., those companies that simply operate computers and billing equipment and purely “resell” other companies’ internet services). Thus, “resellers” of telecommunications, rather than “telecommunications common carriers” and especially “Canadian carriers” are often legally less obviously subject to CRTC requirements like those listed just below. The nature of Internet access services is that resale of internet services is relatively easier than resale of traditional switched telephone services. This ease of being a reseller matters, as the CRTC has in the past

⁴⁰ Telecom Notice of Consultation CRTC 2018-422. Online: <https://crtc.gc.ca/eng/archive/2018/2018-422.htm> See also: Telecom Notice of Consultation CRTC 2018-422-1, online: <https://crtc.gc.ca/eng/archive/2018/2018-422-1.htm> and Telecom Notice of Consultation CRTC 2018-422-2, online: <https://crtc.gc.ca/eng/archive/2018/2018-422-2.htm> which define the additional procedure in this proceeding.

been reticent to impose obligations on resellers it would otherwise impose on those companies with physical facilities.⁴¹

The CRTC has several major powers under the Act.⁴² The CRTC also has a “forbearance” power; that is, the CRTC may choose to abstain from using or applying certain of the regulatory powers listed above,⁴³ in two circumstances:

1. where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives;⁴⁴
2. Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users.⁴⁵

Note that although both of these forbearance “powers” can effectively be used in the same way, the first option is permissive and the second option is mandatory. That is, if the Commission believes forbearance would help achieve the policy objectives in s. 7 of the Act, it may forbear, or not; if it finds “as a question of fact” that the interests of users will be protected by competition (instead of regulation) it must forbear (but only to the extent that such competition protects users’ interests).

In decisions in 1997,⁴⁶ 1998,⁴⁷ and 1999,⁴⁸ the CRTC concluded that the retail internet access market was competitive enough to protect the interests of users. It also concluded, in each decision, that forbearance would advance the telecommunications policy objectives. It forbore from only certain of the powers mentioned above. In particular, it permitted the ISP companies to avoid rate regulation (subs. 27(1)), meaning they could charge what they liked. It likewise relieved them from filing tariffs and from all other potential quality of service regulation. However, the CRTC did keep its powers over ISPs to impose conditions of service (s. 24) and its power to block unjust discrimination (subs. 27(2)).

⁴¹ Note that the Telecommunications Act was amended in 2014 to provide the CRTC with limited direct powers over resellers, including the right to impose conditions akin to those under s. 24 of the Act. See s. 24.1.

⁴² See sections, 24, 25, 27(1) and (2), 29, 31, 37 and 40.

⁴³ Namely, sections 24, 25, 27, 29 and 31, wholly or in part and, if desired, upon certain conditions being met.

⁴⁴ See subs. 34(1).

⁴⁵ See subs. 34(2).

⁴⁶ See Telecom Order CRTC 97-471. Effectively, this is the decision forbearing from “telcos” regulation on offering Internet access service.

⁴⁷ See Telecom Decision CRTC 98-9, REGULATION UNDER THE TELECOMMUNICATIONS ACT OF CERTAIN TELECOMMUNICATIONS SERVICES OFFERED BY “BROADCAST CARRIERS” (9 July 1998), at para. 77. Effectively, this is the decision forbearing from “cablecos” regulation on offering Internet access service.

⁴⁸ See Telecom Order CRTC 99-592, FORBEARANCE FROM RETAIL INTERNET SERVICES (25 June 1999). Effectively, this is the decision forbearing from “all other carriers not already forborne” regulation on offering Internet access service.

We note that it was certainly open to the CRTC to conclude the market probably was competitive then. At that time, small and non-incumbent telco/cableco ISPs accounted for almost a third (~32%) of the market as the major telcos and cablecos had not yet entered the market in a big way.⁴⁹ Probably the same finding could not be made now. As demonstrated in the most recent CRTC Communications Monitoring Report,⁵⁰ even adding in Xplornet as an “independent ISP”,⁵¹ the new category of “independent ISPs” have only 12-13% of the ISP market based either on subscribers or revenues.⁵²

As explained by the authors of the Canadian Media Concentration Research Project, local markets for retail Internet access service are actually very concentrated, in that not all “incumbent” ISPs operate in each others’ “territories” (meaning largely the traditional incumbent telephone company “operating territories” and cable company “footprints”), therefore, in each local market and in particular smaller markets that attract fewer competitors, the major telcos and cablecos often hover in the subscriber and revenue percentages of 85%-90%.⁵³

One indication of whether the retail Internet access services market would be found to be competitive now (and by extension, deemed to “protect the interests of users”) is found in recent CRTC wholesale Internet access decisions. In Telecom Regulatory Policy CRTC 2015-326, Review of wholesale wireline services and associated policies (22 July 2015), the CRTC stated that the wholesale market was not sufficiently competitive to ensure retail competition and regulated the access and rates (that is, set tariffs) for resellers to buy their internet access from the major ISPs.

To date, however, the CRTC has avoided a direct examination of the competition levels in the retail Internet access services market. Instead, it has contented itself with the Internet Code proceeding and an analysis, presently ongoing, of the wireless retail services market. In brief, then, we have a retail Internet access services market that has no pricing constraints (that is, is forborne) and has been for exactly 20 years. As the forbearance sections of the

⁴⁹ See CMCPR, “Media and Internet Concentration in Canada, 1984 – 2017”, heading: “Internet Access”, pp. 41-44. Online: <http://www.cmcpr.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984-2017-01112019.pdf>

⁵⁰ CRTC, Communications Monitoring Report, 2018, at p. 111. Online: <https://crtc.gc.ca/pubs/cm2018-en.pdf>

⁵¹ Even adding Xplornet as an independent ISP is dubious, given the CRTC before this year did not count the satellite internet service as a wholesale-based “reseller” ISP but rather as a different form of facilities-based carrier. See Letter of Teksavvy to Mr. Claude Doucet, Secretary General Canadian Radio-television and Telecommunications Commission, 13 February 2019 (online: <https://teksavvy.com/Media/Default/Regulatory/TekSavvy-Letter-CRTC-CMR2018.pdf>):

Departing from at least 9 years of consistent methodological practice²⁷ to create a new classification of Canadian telecommunications service provider (“Independent ISPs”), by inexplicably combining two preexisting categories, namely: (i) resellers (such as TekSavvy), and (ii) other facilities-based service providers (such as Xplornet), to support a single statistic: “Independent ISPs accounted for 13% of Internet service subscriptions”, thereby obscuring statistics for the traditional “reseller” category alone”.

⁵² *Ibid.*, at p. 43.

⁵³ *Ibid.*, at pp. 42-43.

Telecommunications Act do not require a review of previous forbearance decisions in light of changed circumstances, it will be up to a telecommunications company, a public interest group or a very determined individual to bring an application to the CRTC to review the continued appropriateness of retail Internet access forbearance.

Since that time, being the early 1990s, the retail internet access market was effectively unregulated. However, in the period from the late 2000s to the 2010s and beyond the Internet access services market has been indirectly regulated on certain aspects by virtue of the CRTC requiring all telecommunications services to be subject to, firstly, a complaints commissioner regime (see Telecom Decision CRTC 2007-130, *Establishment of an independent telecommunications consumer agency* (20 December 2007)⁵⁴ and Broadcasting and Telecom Regulatory Policy CRTC 2016-102, *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.* (17 March 2016)⁵⁵ as well as place a limit on cancellation fees billed in advance (see Broadcasting and Telecom Regulatory Policy CRTC 2014-576, *Prohibition of 30-day cancellation policies* (6 November 2014)⁵⁶).

Therefore a customer may complain to the CCTS about their ISP for basic overbilling and other basic complaints and may cancel his or her contract effective the date of the cancellation; however, there are no Internet-specific rules outside those applied to all telecommunications services by these two decisions. Finally, the CRTC in its *Review of basic telecommunications services*, Telecom Regulatory Policy 2016-496, declared that broadband Internet was a basic telecommunications service, and as part of that framework decision, implemented certain consumer disclosure and reporting requirements on ISPs. These are described in the policy decision.⁵⁷

However, outside of these notification and transparency requirements, the CRTC has not otherwise seen fit to regulate consumer protection or pricing aspects of retail Internet access services. The stage is therefore set, within the CRTC's remaining non-forborne powers, for it to further its policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the *Telecommunications Act* by creating an Internet Code; and to address consumer concerns relating to internet services including limiting overage fees and contract changes and related issues under s. 24 and subs. 27(2) of the Act.

⁵⁴ Online: <https://crtc.gc.ca/eng/archive/2007/dt2007-130.htm>

⁵⁵ Online: <https://crtc.gc.ca/eng/archive/2016/2016-102.htm>

⁵⁶ Online: <https://crtc.gc.ca/eng/archive/2014/2014-576.htm>

⁵⁷ See its Telecom Regulatory Policy 2016-49, paras 235-239.

Chapter 3.2: The CRTC's Internet Code Working Document

The Commission initiated a proceeding to establish a mandatory code for Internet services in November 2018,⁵⁸ with the final submissions due in April 2019.⁵⁹ This section reviews the Commission's proposed "Internet Code Working Document" (also referred as the Code or the draft Internet Code).⁶⁰ We draw comparisons with the Wireless Code, where applicable.⁶¹ We seek to assess whether any issues omitted from this draft Internet Code, should be included for adequately protecting consumer interests; and comment on some issues that in our view merit necessary attention.

3.2.1 Commission's Draft Internet Code Working Document

a. Objectives

The purpose of the Commission's draft Internet Code is to "better inform consumers of retail fixed Internet access services of their rights and responsibilities contained in their contracts with Internet service providers."⁶² The specific objectives of this Code are; (i) make it easier for individual and small business customers to obtain and understand the information in their Internet service contracts; (ii) establish consumer-friendly business practices for the Internet service industry where necessary; and (iii) contribute to a dynamic Internet market.⁶³

The first objective is relatively straightforward i.e. to simplify the information in Internet service contracts, making it more accessible and easier to understand. However, the terminology in the second and third objectives remains vague. There is no clear definition of "consumer-friendly practices," or a "dynamic Internet market." We suggest it is important that these terms are clearly defined to avoid confusion, and provide clarity as to their interpretation and application.

b. Application

This Code at the time of writing, is intended to apply to all Internet services provided to individual and small business consumers by large facilities-based Internet service providers (large ISPs).⁶⁴ We believe that it would be fair and practical for an Internet Code to apply to all the Internet service providers (also referred as ISPs) immediately; to provide clarity, certainty,

⁵⁸ The Canadian Radio-television and Telecommunications Commission, Telecom Notice of Consultation CRTC [TNC] 2018-422, online: <<https://crtc.gc.ca/eng/archive/2018/2018-422.htm>>.

⁵⁹ Telecom Notice of Consultation CRTC 2018-422-2, revised deadlines for submission of responses to requests for information: 4 April 2019; and revised deadline for final submissions: 23 April 2019.

⁶⁰ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, Internet Code Working Document.

⁶¹ Telecom Regulatory Policy CRTC 2017-200, Review of the Wireless Code; and reference made to Telecom Regulatory Policy CRTC 2013-271, The Wireless Code.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ TNC CRTC 2018-422, also see its Appendix 1 and footnote 4 on who is included in the large facilities-based ISPs.

and allow for better checks and balances. The Wireless Code, a mandatory code established in 2013 by the CRTC, for wireless service providers, also applies to all retail mobile wireless voice and data services provided to individual and small business consumers in Canada.⁶⁵ It applies to all wireless contracts as of June 3, 2015.⁶⁶ The uniform application of the Wireless Code, seemingly ensures that regardless of the provider, every consumer is entitled to the same set of protections, and that should be the case for an Internet Code. If an Internet Code is not made applicable to all the ISPs initially, then smaller ISPs should have a phase-in period of at most 2 years.

c. Comparing Draft Internet Code's Provisions with the Wireless Code: Specifics

See below for a brief overview of the major differences found:

A. Clarity

There are two additional provisions found in the draft Internet Code regarding unsolicited services and clarity of offers.⁶⁷ These provisions do not prohibit promotional pricing, but instead specifically, state that such promotional offers must be clearly identified throughout a sales interaction. The draft Internet Code also provides two options for service providers in order to meet the clarity of offers provisions.⁶⁸ The first option does not require the explanation to be in writing, but is specific about which parts of the contract must be addressed clearly. The second option requires a Critical Information Summary (CIS) to be provided in writing, which, among other specifications, also includes the same requirement of clear terms for promotional pricing.

B. Contracts and Related Documents

The Wireless Code contracts differ from Internet access service contracts because of the distinct wireless services offered- postpaid and prepaid services. As this distinction does not exist with Internet services, thus, it is not reflected in the draft Internet Code. Notably, there is an additional provision in the draft Code that addresses cancellation periods when the terms and conditions of the contract conflict with the terms and conditions to which the customer agreed. The key contract terms and conditions listed in this section of the draft Internet Code also require disclosure and explanation of any time-limited discount or promotion, as well as if there is an installation fee or related charges.⁶⁹

⁶⁵ See Telecom Regulatory Policy CRTC 2017-200, online: <<https://crtc.gc.ca/eng/archive/2017/2017-200.htm>>.

⁶⁶ Wireless Code Public Opinion Research 2018, prepared for the Canadian Radio-television and Telecommunications Commission, (Report date- March 1, 2018, produced by Kantar TNS).

⁶⁷ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, A.4 and A.5.

⁶⁸ *Ibid.*

⁶⁹ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, B.

C. Critical Information Summary

The draft Internet Code includes a second option for service providers that would require a providing a pre-sale CIS when a potential customer is given an offer of service.

D. Changes to Contracts and Related Documents and E. Bill Management

Under the draft Internet Code, a service provider may change a key contract term or condition during the commitment period without the account holder's or authorized user's express consent if it clearly benefits the customer by increasing the customer's usage allowance or speed for a single service.⁷⁰ We note that there is a requirement to notify users once they have exceeded their data usage, but there is no requirement under the first option to suspend service once their cap has been reached (a provision which is found in the Wireless Code).⁷¹

F. Equipment Issues

F.1 (Service calls, including visits to residences for installation and repairs) and F.2 (Service outages [and rebates]) are not included in the Wireless Code.

G. Contract Cancellation and Extension

The method for calculating the amount owed when a customer cancels their contract before the end of the commitment period in the draft Internet Code differs from the Wireless Code, with provisions for fixed, and indeterminate contracts.⁷² The draft Internet Code proposes two options for the service providers i.e. an option of either a 15 or 30 days trial period/cooling-off period which differs from the Wireless Code's mandated fifteen (15) day trial period/cooling-off period, and proposes 30 or 45 days for customers with disability.⁷³ The usage limits for trial/cooling-off periods in the draft Internet Code must correspond to the permitted monthly usage specified in the customer's contract, whether the contract includes limited or unlimited monthly use.⁷⁴ The Wireless Code standard trial period usage limits are required to correspond to at least half of the permitted monthly usage specified in the customer's contract. The draft Internet Code also contains a provision, which is not in the Wireless Code specifying refunds for Internet services, specifically, prepaid services.⁷⁵ The draft Internet Code also specifies in the contract extension section that service providers are not required to provide a new permanent copy of a month-to-month contract every month.⁷⁶

⁷⁰ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, D.

⁷¹ *Ibid.* See section E.

⁷² Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.1.

⁷³ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.2.

⁷⁴ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.2.

⁷⁵ Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.4 and G.5.

⁷⁶ *Ibid.*

d. Major Differences: Draft Internet Code and the Wireless Code

Promotional Periods

The draft Internet Code requires ISPs to be transparent about the contract length, pricing, and of other details, such as, promotional and discounted pricing.⁷⁷ The Wireless Code however, does not permit promotional pricing of “key terms”, unlike the Internet Code.⁷⁸ We believe this difference is concerning, as it allows ISPs to offer discounts to consumers who are unlikely –to read the fine print specifying the length of the promotion and the ultimate price, regardless of the clarity of the language. This will allow ISPs to change the applicable pricing during the contract term, which, we suggest, should not be permitted given the clear evidence from consumers during the Sales Practices Report proceeding at CRTC that promotional pricing is not being clearly described by sales agents. We believe it would be appropriate to apply the same approach as the Wireless Code, that is, no changes to prices of key terms during the commitment period.

Discrepancy between Verbal Agreements and Service received

The draft Internet Code’s Section B, “Contracts and related documents,” subsection 3 “Cancellation period when the permanent contract conflicts with the customer’s agreement,” seeks to address the concern that often customers are made promises by customer service representatives that are not upheld in the contract they receive. This provision allows customers to cancel their contract without paying an early cancellation fee, in case of a conflict between the terms of the permanent contract with the terms agreed to, or when the contract is not provided in the required time frame; within 30 days of receiving the permanent contract. This change is a step in the right direction, for ensuring that customers are not paying for services they do not require, and receive the services they agreed to. The one issue with this provision is the 30-day time limit – a customer may not realize until well past 30 days that the services they are receiving does not match what is written in their contract, or what was promised to them when a customer service representative made the initial offer. For specific issues (see part f).

e. Overall Scope

The Commission’s draft Internet Code covers contract clarity and how contracts must be provisioned and changed, bill management tools, contract cancellation and extension.⁷⁹ Whereas, it clearly excludes some issues, including, broadband measurement and advertised speeds, false advertising; contending that the latter are addressed by other regulatory mechanisms.⁸⁰ Our research indicates that many of these excluded issues remain common consumer concerns, often

⁷⁷ Appendix 1, TNC 2018-422, section A, A.5(c) and B.4(i)(b).

⁷⁸ Appendix 1 to Telecom Regulatory Policy CRTC 2017-200, A, B.1 (Key contract terms and conditions).

⁷⁹ CRTC, TNC, 2018-422 [Introduction]

⁸⁰ The issues outside the scope of CRTC, TNC, 2018-422 are found under [Paragraph 45].

cited as a reason for customer dissatisfaction and/or for raising complaints. We believe that an Internet code could play a vital role in providing consumers with a clear resource mechanism, to address their home Internet problems and fill a significant regulatory gap. At present, no clear and parallel mechanism exists. Moreover, even if the Internet speed and false advertising, are covered under other regulatory processes, none of them appear to mandate certain and specific standards within the user contracts; leaving it open to the Internet service providers to steer their use and application, often based on advancing their economic and business interests; rather than providing adequate consumer safeguards. Thus, we reiterate that in addition to the issues already addressed by the draft Code, broadband speeds, and false advertising should be included.

Mandating Clear Disclosure Requirements: Internet Speed and Misleading Speed Advertising

PIAC in its previous report noted that more standardized disclosure by ISPs [regarding the Internet speed] would greatly increase consumers' abilities to evaluate broadband package offerings in the market, to find the best match, depending on their need, and make comparisons.⁸¹ As observed earlier, many of our focus group participants seemed to be aware of the speed tests available to measure their home Internet speed. However, there seemed to be no consistency and clear understanding of the measurements obtained, and/or an appreciation of the factors that may affect these test results; also, not all participants knew how to measure their home Internet speed. An Internet Code could be a useful medium for mandating clear disclosure requirements and measurement standards. If not, then the Commission should consider having a separate regime for regulating broadband speed matters.

f. Specific Issues Requiring Action- Key Observations

We include our key remarks on some issues raised during the CRTC's proceeding regarding an Internet Code that we believe, if left unaddressed, may significantly, affect consumer interests. This should not be viewed as an all-inclusive review, rather, selective comments on some issues.

- **Pre-sale Critical Information Summary (CIS):** An Internet Code should mandate the provision of a pre-sale CIS i.e. before the Internet services contract is signed, enabling a consumer to compare offers, and in view of that, make a well-informed decision. Also, consumers should be given a reasonable time to read the offer and decide if they would like to pursue it or not. This should be provided as a separate document to compare offerings, and as a part of the final service contract.

⁸¹ Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.4, 43. See its Appendix C: Tools Consumers Can Use To Measure Broadband Speed And Performance (p. 58-59); and Appendix D: Consumers International Broadband Disclosure Statement (p. 60-61).

- **Placing Caps on Early Cancellation fees:** Given the consumer distress, and increasing volume of complaints regarding ECFs, it would be only fair for the Code to place caps on ECFs. We support the current provision in the draft Code for setting caps on ECFs.⁸²
- **Trial Periods:** An Internet Code should provide trial periods to allow consumers some flexibility to test the Internet service offerings before entering in a contract.⁸³ We support the current provision of the draft Internet Code that the standard trial period usage limits must correspond to the permitted monthly usage specified in the user contract.⁸⁴ If not, then Union des consommateurs’ earlier recommendation during the Review of the Wireless Code, should be applied i.e. “[t]rial period usage limits should be set to at least half of the permitted usage under the contract selected by the customer.” This is to allow users to experience the full functionality on offer. The Code should also clearly specify when the trial period starts; and which should be when the service begins and the customer receives a copy of his or her contract, with the CIS.
- **Data usage- Options: Notification and Overage fees:** Users should be given clear control over the application of overage data charges, as tracking data usage and paying overages remains a major concern. 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, could be effective in addressing the consumer issues, and find the draft Code’s Option 2 to align better with consumer interests.⁸⁵
- **Application to New and/or Existing Contracts:** In our view, all provisions of the draft Internet Code should apply to new and existing contracts upon the implementation date, to allow for uniform application of the regulatory protections; unless it would result in exceptional and proven administrative costs. Also, certain provisions such as pre-sale CIS would be less useful for already existing customers.

⁸² Appendix 1 to TNC CRTC 2018-422, section G.1.

⁸³ Appendix 1 to TNC CRTC 2018-422, section G.2.

⁸⁴ Appendix 1 to TNC CRTC 2018-422, section G.2 (iv).

⁸⁵ Appendix 1 to TNC CRTC 2018-422, section E. (see E.3- Option 2).

Chapter 3.3: Consumer Views and Perspectives

3.3.1 Introduction

We review consumers' feedback on an Internet Code- its necessity, scope, and functionality. It is important to appreciate that this study is based on our focus group sessions, and consumer interventions and feedback given to the Commission, and does not by itself provide a quantitative analysis as to what consumers want, and think of an Internet Code. This discussion seeks to provide some indication as to what consumers think of an Internet Code.

3.3.2 Focus Group Participants – Key Observations

Overall, several focus group participants showed interest in having a code to regulate the internet access services, with few expressing doubts as to its need, implications or potential effectiveness. Many participants seemed to support having rules that could be referred to in case of any complaints and/or disputes relating to Internet access services. Several issues were raised by the participants that they felt should be addressed by a code, including: contract clarity, clear disclosure in case of changes in fees, trial periods, cancellation fees, rate at which the data is provided, Internet speed in relation to service delivery, advertising and disclosure of issues affecting it, and pricing. Few participants suggested having one telecommunications code, covering both the wireless and Internet access services, noted to be intertwined. It is clear from our research that measures for raising public awareness of an Internet Code would require considerable attention; as low awareness still remains a problem for the Wireless Code. We believe that another important measure would be having regular public opinion research, based on tested awareness, rather than self-reported awareness.

3.3.3 Consumer Interventions and Feedback on Facebook Page – Key Observations

The consumer interventions confirmed that consumers in general remain receptive to the idea of an Internet Code, and would like to see basic standards set for compliance by the Internet service providers. Many intervenors appeared to view a code as a means of balancing, and/or facilitating consumer interests in the market. Quite a few intervenors emphasized on the importance of internet in their daily lives, recommending it to be regulated like any other public utility. Some intervenors suggested imposing fines and penalties for non-compliance. Though, few intervenors questioned the effectiveness of a code in addressing consumers' internet service problems. The comments provided on the Commission's Facebook page, largely indicated consumer issues relating to Internet access services. Notably, the feedback provided to the Commission during its proceeding's different stages, in general lacked the views of many consumer groups, following the PIAC led boycott.

Chapter 3.4: Existing Regulatory Codes

3.4.1 Introduction

We briefly consider the interplay of existing regulatory codes of conduct in Canada, in order to determine any potential overlaps and possible duplication. Our underlying concern is the potential and extent of consumer confusion caused by different codes for telecommunication services, and the need to gain a better understanding of consumer outlook.

3.4.2 Complexities and Concerns

In Commission’s preliminary view, “[s]ince the Wireless Code already applies to mobile wireless data services, including mobile Internet services, it is not necessary for the Internet Code to also apply to such services.”⁸⁶ The Commission asked if changes were required, under avoiding duplication with Wireless Code, during its proceeding to create a mandatory code for Internet services.⁸⁷ The CCTS noted in its intervention to the Commission that whatever new rules are created, they should treat customers of similar services similarly; explaining that protections should be the same, recognizing the unique challenges presented by each service.⁸⁸

We agree with the CCTS’s remarks regarding similar protections to be provided for similar services; however, we believe that this could be challenging to achieve; and it is likely that there could be some inconsistency in the kind of consumer protections offered by each code. We find that in considering the interplay of different codes, it is crucial to factor in the implications of such codes on consumers i.e. their awareness and use in relation to identifying and enforcing their rights. As of now, it is a well-noted that consumer awareness of the CCTS remains low; and as noted in our previous section, relatively few consumers are aware of the Wireless Code.

Having several codes running in parallel could cause administration challenges, and importantly, result in consumer confusion. We heard similar concerns during our stakeholder consultations. We asked our stakeholders for their views on the operating of different codes and their interplay. Some stakeholders indicated about the potential overlaps between different codes, and expressed support for having one telecommunications code with uniform protections; with one stakeholder, CAC Manitoba with input from the Public Interest law Centre (“PILC,” Legal Aid, Manitoba) referred us to research, showing consumer confusion caused by different codes in effect.⁸⁹

⁸⁶ Appendix 2 to Telecom Notice of Consultation CRTC 2018-422, question 11.

⁸⁷ *Ibid.*

⁸⁸ Intervention of CCTS, Telecom Notice of Consultation CRTC 2018-422, Call for comments — Proceeding to establish a mandatory code for Internet services, (19 December 2018) at p.14.

⁸⁹ Response to PIAC’s Stakeholder Consultation, Gloria Desorcy, Director, Manitoba Branch of the Consumers’ Association of Canada, with contributions from Katrine Dilay, Lawyer, Public Interest Law Centre of Legal Aid Manitoba, dated March 25, 2019.

3.4.3 Concluding Remarks

We believe it is crucial that while designing any consumer code to place emphasis on the consumer issues it seeks to resolve and aim for clarity, efficacy and public engagement for constant improvement. In our view, it is integral for the Commission to mandate similar protections for similar services. We argue that it would be unfair to exclude and/or limit the application of any substantive protections found in the Wireless Code, from a potential Internet Code. If the Commission decides to limit any protections available under the Wireless Code, then it must clearly consider and provide detailed reasoning and analysis for doing so.

We contend that the Commission should in the long-term, consider having a comprehensive framework covering different aspects of the telecommunication services for effectively addressing consumer issues. We believe this would have positive ramifications for consumer protection, with uniform application of standards regarding disclosure, service delivery and other related issues. Australia's Telecommunications Consumer Protections Code (TCP Code)⁹⁰ provides a useful example in this respect.

⁹⁰ Communications Alliance Ltd, Industry Code, Telecommunications Consumer Protections Code, C628:2015 (Incorporating Variation No.1/2018), online: <https://www.commsalliance.com.au/_data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf>.

Chapter 4: International Regulatory Regimes and Practices

4.1 Introduction

This section explores some international regulatory practices regarding internet access services. The aim is to analyze and assess their application in the Canadian context.

4.2 United Kingdom (UK)

4.2.1 Ofcom: Regulatory Measures and Practices

In the UK, the Office of Communications (Ofcom) regulates communications services.⁹¹ Ofcom has specific Guidance Codes of Practice and regulatory measures to regulate Internet access services and its certain aspects.

New Voluntary Codes of Practice on Broadband Speed

Ofcom's new Broadband Speeds Code of Practice (code) is meant to facilitate clarity for customers by informing them how fast their broadband service is before signing a contract.⁹² More specifically, the code requires broadband service providers to always provide customers with a minimum speed at point of sale, and if it falls below the promised level, the service providers will have one month to improve performance before they must let the customer exit-penalty free.⁹³ Ofcom notes that customers may ask for a discount instead of exiting a service, in some cases where the customer is unlikely to get a better service from anyone else or may not have the option to switch.⁹⁴ Under this code, broadband service providers must be upfront with customers regarding what speeds to expect during peak times as broadband is typically slower during the busiest times of the day i.e. 8:00pm – 10:00pm for people online at home.⁹⁵ The new Better Broadband Speed Information, Voluntary Code of Practice (Residential), also requires service providers to provide customers information post-sale regarding speed estimates, and any

⁹¹ Ofcom [webpage], What is Ofcom? See online: <<https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>>. (Last accessed in June 2019).

⁹² Ofcom [webpage], Clear, honest information before you buy broadband, see online: <<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/clear-information-before-buy-broadband>>. For full codes see: Ofcom [webpage], Codes of practice, see online: <<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice>>. Also see, Ofcom [webpage], "Guide to the Broadband Speeds Codes of Practice," online: <<https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/broadband-speeds-codes-practice>>.

⁹³ *Ibid.* [Additionally], this right to exit also applies to landline and TV packages bought at the same time as broadband.

⁹⁴ Ofcom [webpage], Guide to the Broadband Speeds Codes of Practice.

⁹⁵ *Ibid.*

policies that might affect the broadband speed and what to do if the speed is below the minimum guaranteed speed; and on managing speed problems.⁹⁶

Overall, its principles entail;⁹⁷ realistic information on broadband speeds at point of sale (principle 1); detailed information provided after-sale (principle 2); detailed information on the website (principle 3); managing speed-related problems (principle 4); right to exit the contract without penalty where speed problems cannot be resolved (principle 5); and delivery of the objectives of the Residential Code (principle 6).

Undoubtedly, broadband speed plays a vital role in Canadians' daily lives. Having clear regulatory measures in this regard, particularly, regarding informing consumers about its performance at peak times and otherwise; needs to be given due attention, as done by Ofcom. We believe it could be useful to include broadband speed measurement, in a potential Internet Code; requiring at the very least, clear disclosure requirements regarding Internet speed. If not, then a separate regime on broadband speed representations should be considered for Canada. This should be based on cogent principles, like the Ofcom's code on broadband speed. Many signatory ISPs in the UK follow these standards (see its mystery shopping results).⁹⁸

Automatic Rebates

Ofcom's Automatic Compensation Scheme requires the signatory service providers to provide money back to residential fixed broadband and landline customers without asking for it, when the service does not work.⁹⁹ These service providers have to provide compensation for delayed repairs, missed repairs or delays with the start of a new service.¹⁰⁰ The customer is only required to report the fault to the provider, and if the service is not fixed after two full working days, then the customer does not need to ask for compensation or even contact the service provider again, as the provider already has a system in place to provide compensation automatically if the repair takes too long.¹⁰¹ As of now, an initial £8 is to be provided if the service is not fixed two full working days after reporting it, and then £8 for each full day if it is still not fixed after that.¹⁰²

⁹⁶ Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), publication date March 1, 2018 [became effective from March 1, 2019] at p.4.

⁹⁷ Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.4-19.

⁹⁸ BDRC Continental, "Broadband speeds mystery shopping - Market research report," online: https://www.ofcom.org.uk/data/assets/pdf_file/0022/106753/broadband-speeds-mystery-shopping-october-2017.pdf.

⁹⁹ Ofcom, "Automatic compensation: What you need to know" (April 1, 2019), online: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/costs-and-billing/automatic-compensation-need-know>. Also see: Ofcom, Communications Providers' Voluntary Code of Practice for an Automatic Compensation Scheme dated November 10, 2017.

¹⁰⁰ *Ibid.*

¹⁰¹ Ofcom, "Automatic compensation: What you need to know" (April 1, 2019).

¹⁰² *Ibid.*

There are certain limitations to the application of this scheme i.e. no compensation will be payable in case the loss of service is a result of equipment or activity within the customers' house.¹⁰³ Likewise, no compensation is payable if the customer breaches the contract or causes delay of repair. It also allows providers to place a cap on the amount of compensation paid out after 30 days.¹⁰⁴ We believe that Canada should also consider introducing an automatic compensation scheme, in relation to internet service disconnection and repair issues. This could be an important user-friendly provision in a potential Internet Code, which is likely to reduce the consumer distress caused by the internet modem not working and/or other related repair issues. As noted above, Ofcom's regime is well- balanced as it does not call for blanket automatic compensation, rather, provides a well-defined criteria for payment with set limits.

Enforcement Programmes, Complaints Handling and Reporting on Residential Broadband Speed Performance

Ofcom administers various enforcement programmes, including those that pertain to Internet services, in relation to early termination charges (ETFs),¹⁰⁵ and complaints handling.¹⁰⁶ This and/or similar measures merits attention for application in Canada. Ofcom reports on home broadband performance delivered by residential broadband providers.¹⁰⁷ Ofcom provides a report with its findings on the performance of UK fixed-line broadband services delivered to residential consumers, and also consumer-friendly tools in this regard.¹⁰⁸ In our view, this detailed and regular reporting initiative of Ofcom should be considered for Canada, which could be a useful public resource on home broadband performance.

4.2.2 Advertising Standards Authority (ASA) and Committees of Advertising Practice- (CAP)

Ofcom works with the Advertising Standards Authority and its Committees of Advertising Practice (CAP) to address concerns regarding misleading broadband speed advertising.¹⁰⁹ CAP announced in November 2017, that the numerical speed claims in broadband ads should be based

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Ofcom, Enforcement programme into early termination charges, online: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01199>.

¹⁰⁶ Ofcom, "Enforcement programme into complaints handling" online: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101>. Also see: Ofcom [webpage], Codes of practice; Ofcom, Ofcom approved complaints code of practice for customer service and complaints handling, Annex to General Condition C4; and Ofcom, General Conditions of Entitlement Unofficial Consolidated Version (15 May 2019).

¹⁰⁷ Ofcom [webpage], UK home broadband performance, measurement period November 2018, online: <<https://www.ofcom.org.uk/research-and-data/telecoms-research/broadband-research/home-broadband-performance-2018>>. Also see: 2018 Report, UK Home Broadband Performance, available online.

¹⁰⁸ *Ibid.*

¹⁰⁹ Ofcom, Better information before you buy broadband (March 1, 2018), online: <<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/better-information-broadband-speeds>>.

on the download speed available to at least 50% of customers at peak time (8 pm-10 pm) and described in ads as “average”; moving from the requirement that advertised “up to” speeds should be available to at least 10% of customers (taking effect from May 23, 2018).¹¹⁰ It also suggested that speed-checking facilities should be available on ISPs’ websites and promoted in advertisements when possible.

4.2.3 Key Practices to Consider for Canada

In our view, the following regulatory practices of Ofcom and CAP could be considered:

- ❖ Defining clear broadband speed standards and principles in a regulatory regime that is easily and publicly accessible.
- ❖ Requiring service providers, i.e. signatories of the broadband code (as in the UK), to provide information to customers regarding broadband speed before sale, including specifics regarding the speed estimates at peak times for households.
- ❖ Requiring service providers to provide a minimum guaranteed download speed.
- ❖ Providing consumers with a right to exit the contract without penalty, when the speed falls below the minimum guaranteed speed, and it cannot be fixed within 30 days.
- ❖ Having clear rules and standards on providing broadband speed information to consumers post-sale i.e. details of all speed estimates, and any policies that might affect the broadband speed and what to do if the speed is below the minimum guaranteed speed.
- ❖ Requiring the ISPs to include a speed checker on their websites.
- ❖ Conducting audits of the ISPs’ websites to ensure compliance with the subject code
- ❖ Having an Automatic Compensation Scheme to require the ISPs to provide compensation to residential fixed broadband and landline customers when the service does not work as per defined timelines.
- ❖ Implementing detailed reporting and enforcement programmes.
- ❖ Having mystery shopping exercises to monitor compliance with the subject codes.
- ❖ Having broadband advertising guidelines as done by CAP.

4.3 Australia

4.3.1 The Telecommunications Consumer Protections Code (TCP Code) and the Australian Competition and Consumer Commission (ACCC) Guidelines

The Australian Communications and Media Authority (ACMA) regulates communications matters in Australia.¹¹¹ The Telecommunications Consumer Protections Code (TCP Code) was developed in 2007, with the most recent version at the time of writing being Variation

¹¹⁰ ASA News, New standard on broadband speed claims in ads comes into force today (23 May 2018), online: <<https://www.asa.org.uk/news/new-standard-on-broadband-speed-claims-in-ads-comes-into-force-today.html>>. ASA stands for Advertising Standards Authority. Also see: CAP, Broadband speed claims, Advertising Guidance, <<https://www.asa.org.uk/uploads/assets/uploaded/c7caeaeb-24e0-40d4-a49455747eb51bde.pdf>>.

¹¹¹ Australian Communication and Media Authority (ACMA), online: <<https://www.acma.gov.au/>>.

No.1/2018.¹¹² All providers of telecommunication products are bound by it.¹¹³ Broadly, the TCP Code lays out minimal standards to be followed, covering different aspects of telecommunication services- including: information clarity; dealing appropriately with consumers, in a fair and accurate manner; and provides detailed obligations concerning; telecommunication offers- summary of offers to be provided as best meeting consumer needs, and generally, prior to sale; advertising; selling practices; consumers with different (special needs); contracts (to be available with information on expired offers); customer service; billing; credit and debt management; changing suppliers; and complaint handling. The TCP Code forms an exemplary guide to follow for designing a regulatory framework in Canada, covering all telecommunication services and products.

Advertising – Standards and Limits (The TCP Code)

Unlike Canada, Australia’s telecommunications regulatory framework clearly and explicitly deals with issues regarding advertising. Section 4.2 of its TCP Code deals with content of advertising, mandates fairness and transparency.¹¹⁴ It also lists several prohibitory practices.¹¹⁵ Our research shows that advertising on Internet access services in Canada still remains lacking, where often qualifying conditions are not easily accessible. We believe that adopting a provision such as 4.2 of the TCP Code in a potential Internet Code or as a separate regulatory regime could better inform consumers about the factors affecting their Internet speed.

ACCC– Broadband speed claims (Industry Guidance)

The Australian Competition and Consumer Commission (ACCC) has Broadband Speed Claims – Industry Guidance (with the most recent version issued in May 2019).¹¹⁶ This guidance lays down clear principles; broadly, calling for the easy availability and prominent disclosure of information to consumers i.e. typical busy period speeds, factors that affect service performance, with performance information to be presented in such a manner that could be easily compared (standardizing the contents of such information and how it is reported- see ACCC’s guidance- Appendix A); and operational and technical support to be given in case of issues regarding internet speed and performance. Canada has no equivalent guidance framework in place. We believe that ACCC’s principles based approach on speed claims merits consideration for Canada.

¹¹² Communications Alliance Ltd, TCP Code at p.6.
<https://www.commsalliance.com.au/_data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf>. This is developed by Communications Alliance’s Industry Consumer Advisory Group, and registered by the ACMA.

¹¹³ Communications Alliance Ltd, TCP Code at p.1.

¹¹⁴ Communications Alliance Ltd, TCP Code at p.30.

¹¹⁵ Communications Alliance Ltd, TCP Code at p.30-32, for more details see p.30-34.

¹¹⁶ Australian Competition and Consumer Commission (ACCC), Broadband Speed Claims – Industry Guidance (May 2019), online: <<https://www.accc.gov.au/system/files/Broadband%20speed%20claims%20%20-%20Industry%20guidance%20-%20May%202019.pdf>>.

Billing – Standards and Limits (The TCP Code)

Chapter 5 of the TCP’s Code deals with billing, it essentially sets out the information to be provided by the suppliers in relation to billing and charges to customers arising out of the supply of telecommunications products. Amidst other specifics, it requires that information about billing procedures and billing options must be made available by the supplier before one becomes a customer. It also provides standards and/or obligations regarding the content of a bill, timing of bill, verifying charges, payments options and related rights.¹¹⁷ Billing issues remain a common concern for Canadian consumers; either because of unclear charges, sudden increase in rate and applicable pricing, exceeding data limits, and incurring overage fees or its content being unclear. The TCP Code’s billing provision could be referred as a prototype to address billing issues through a potential Internet Code.

4.3.2 Key Practices to Consider for Canada

Overall, we support adopting a consumer centric code in Canada, as the TCP Code. More specifically, we believe the following measures could be useful considerations:

- ❖ Defining advertising standards in a code for clarity, transparency, easier administration and monitoring.
- ❖ Standardizing the content of a bill and having clear rules regarding changes and updates.
- ❖ Introducing Broadband speed advertising guidelines as done by the ACCC.

4.4 United States of America (U.S.) and Some Other Countries

In the U.S., the Federal Communications Commission (FCC) regulates interstate and international communications services.¹¹⁸ Some insight can be drawn from its internet speed reporting practices and reliance on a clear criteria i.e. “80/80” metric, which measures the minimum speed that at least 80% of subscribers experience at least 80% of the time over peak periods.¹¹⁹ Its Measuring Fixed Broadband - Eighth Report, based on data collected in September 2017, provides download and upload speed measurements of ISPs, and also a measure of how consistently ISPs provide their advertised speed with the use of their “80/80” metric.¹²⁰ We note that several countries in particular, have issued measures on broadband speed advertising.¹²¹

¹¹⁷ Communications Alliance Ltd, TCP Code at p.37-44.

¹¹⁸ Federal Communications Commission [webpage], About the FCC, online: <<https://www.fcc.gov/about/overview>>.

¹¹⁹ FCC, Eighth Measuring Broadband America Fixed Broadband Report, A Report on Consumer Fixed Broadband Performance in the United States, online: <<https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-eighth-report>>.

¹²⁰ *Ibid.*

¹²¹ See Germany’s practices, Jamie Davies, “German regulator to tackle misleading broadband speeds – take note Ofcom” *telecoms.com* (13 April 2017), online: <<http://telecoms.com/481359/german-regulator-to-tackle-misleading-broadband-speeds-take-note-ofcom/>> and for Finland’s practices, see Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.33; now comes under Traficom.

Chapter 5: Conclusions and Recommendations

5.1 Conclusions

With this report, PIAC sought to: better understand the gaps in Canada’s current regulatory framework for retail internet access services; identify common consumer issues relating to internet access; and analyze whether and how an Internet Code could be helpful in advancing consumer interests, with insight drawn from international practices. Our study of the regulatory framework prior to the Commission’s proceeding to establish a mandatory code for Internet services showed that there is an utter lack, with only a few recent tangential rules, of regulation on this service, and that this lack of regulation has persisted since 1997, when this area of telecommunications in Canada was “forborne” from regulation by the CRTC.

Our research confirmed that in general, Internet access remains integral for Canadians to perform various daily-activities. We saw an upward trend with increasing home internet use, as more users are subscribing to home internet services, and a rise in demand for faster speeds and more data consumption. Data usage and internet speed appeared as prominent aspects for meeting consumers’ internet needs and expectations.

We found that many consumers continue to face problems with home internet access that could be addressed by an Internet Code. More specifically, our research showed that consumers are dissatisfied with their home internet speed, citing concerns regarding slow speeds, poor quality of service, and misleading internet speed advertising, claiming that their home internet speed is not as advertised. They also continue to face overbilling and unclear billing, lack of contract clarity and cancellation issues.

Our analysis of the Commission’s proceeding to establish a mandatory code for Internet services showed apparent gaps with respect to its explicit exclusion of issues regarding broadband speed and false advertising, which we find remain the most prominent consumer concern with retail internet access. Many countries have been pro-actively taking measures to address these issues, and Canada should consider doing the same. Our study of international practices indicated significant progress is taking place on regulating internet access services with extensive and detailed codes and guidelines in place; some specific practices found useful for Canada have been noted in the recommendations.

5.2 Recommendations

Based on our research, we found it appropriate to recommend some measures that are specific to the content and scope of a potential Internet Code, and other suggestions as ancillary regulatory practices, which we believe remain necessary for a comprehensive consumer protection regime

on retail internet access services. For ease of implementation, these recommendations are divided in two stages; first and second. This is to allow for a gradual and reasonable progression of the Canadian regulatory framework.

For the first stage, we suggest:

- ❖ The Commission should continue its proceeding towards creating an Internet Code; however, 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.
- ❖ The Commission should consider including issues regarding broadband speed and misleading advertising in a potential Internet Code. However, this seems unlikely as the Commission's proceeding on an Internet Code expressly excludes broadband speed concerns; thus, we suggest that the Commission should consider mandating a separate regulatory regime for broadband speed measurement representations and quality of service parameters outside a potential Internet Code. This could have additional benefits as the Commission can incorporate data from its ongoing broadband measurement studies done through SamKnows and integrate the competition aspects of it.
- ❖ This regime also could mandate disclosure standards, both pre-sale and post-sale. The principles and rules included in Ofcom's Voluntary Code of Practice (Residential) regarding Better Broadband Speed Information, is a useful model. More specifically, Canada should consider having advertising and representation rules requiring the ISPs to provide average speed estimates to be expected at peak network usage times, rather than continue to permit misleading "up to" or theoretical maximum speed claims.

Under the quality of service aspects of the new broadband speed regulatory regime, all ISPs should be required to provide a minimum guaranteed baseline download and upload speed, and consumers should have a right to exit any retail Internet access service agreement (and any "bundled" set of services which includes a retail Internet access service element) without penalty, if these baseline speeds are not consistently achievable at the promised level for 30 days, as provided for in Ofcom's code of practice regarding broadband speeds.

- ❖ Additionally, the Competition Bureau and the Commission should work together and/or convene to have an inquiry on broadband speed and quality advertising. They should work on a feasible plan for addressing the issues regarding misleading broadband speed advertising, by consulting with different stakeholders, including ISPs and consumer groups. Such a plan should include introducing advertising guidelines with specifics as to

how information regarding broadband speed is advertised i.e. its content and style to address the misleading aspect of these ads; and have enforcement measures in place.

- ❖ The CRTC should, within the next two years, launch a public proceeding to review the level and nature of competition in the retail Internet access services market, applicable pricing and related matters, as is presently being done for the retail wireless services market.
- ❖ The Commission should take action to implement the suggestions it made to improve consumer protection in its Report on Misleading or Aggressive Communications Retail Sales Practices; and should prioritize those applicable to retail Internet access services, including suitability standards for the sale of residential retail Internet access services.

For the second stage, we suggest:

- ❖ The Commission should consider in the long-term to have a single, mandatory and universal telecommunications code that applies to all telecommunications services providers for all telecommunications services and all broadcasting distribution services, rather than a patchwork of consumer protection regimes under various codes of conduct that may be difficult for the public to understand and enforce. Australia's Telecommunications Consumer Protections Code (TCP Code) could be a model to follow in designing a similar regime in Canada, which should incorporate the present Wireless Code, the TV Service Provider Code, the Deposit and Disconnections Code; a possible Sales Practices Code; and, presumably, the soon-to-be-released Internet Code. The CRTC should launch a public proceeding to frame this single Telecommunications Code within 3 years, with a view to having the Telecommunications Code in place within 5 years.