

# 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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November 2019

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Canadian Cataloguing and Publication Data

Unraveling Webs of Uncertainty: What an Internet Code could mean for Canadian  
Consumers

## Acknowledgments

The Public Interest Advocacy Centre has received funding from Innovation, Science and Economic Development Canada's Contributions Program for Non-profit Consumer and Voluntary Organizations.

The views expressed in this report are not necessarily those of Innovation, Science and Economic Development Canada or of the Government of Canada.

PIAC would like to extend its sincere appreciation and gratitude to our Methodologist, Bram Abramson, for his support and guidance in the completion of a review of this report. Please note that the views expressed in this report are not of the Methodologist. We also acknowledge and thank all our focus group participants and stakeholders who responded to our questionnaire and contributed to our better understanding of the issues raised in this report.

## 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 qualitative research, entailing four focus group sessions, and stakeholder consultations and review of secondary resources including consumer survey based-quantitative data and 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 consumers express dissatisfaction with respect to certain issues, and that there is a general lack of consumer protection regime to address these issues

by way of rules, suggesting that it could be useful to have an Internet Code to fill the gap arising from this absence of rules. 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 primary qualitative and secondary research, the details of which are noted below, 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 make the following suggestion:

- ❖ 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, and studies consumer issues regarding retail Internet access services to analyze whether and how an Internet Code could help in advancing consumer interests in relation 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,<sup>1</sup> to assess whether and to what extent it addresses the consumer concerns indicated by our research, and what gaps remain.

This research report seeks to address the regulatory gaps relating to consumers’ home internet access; while specifically, focusing on the content of a potential Internet Code, it considers other regulatory tools as pertinent, to protect the interests of consumers in relation to retail Internet access. 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, Digital Subscriber Line (DSL) accompanying phone lines, fibre-optic connection, satellite, dial-up telephone line, fixed wireless, and USB or other wireless stick. It does not mean mobile wireless Internet delivered to cellphones.

The Public Interest Advocacy Centre (PIAC), boycotted the Commission’s proceeding on an Internet Code, after the denial of PIAC’s request by the CRTC for more time to develop a public interest position based on comprehensive research and evidence.<sup>2</sup> Many other public interest groups and consumer groups supported PIAC’s request for more time,<sup>3</sup> which we find necessary to deliberate and produce concrete analysis and suggestions for a strong consumer protection framework, rather, than a weak framework; which lacks a thorough review of consumer issues to precede the drafting of an Internet Code. With this report, we present our analysis on the framework required to regulate home internet services, focusing on an average consumer’s perspective. We also analyze the specific provisions of the Commission’s Internet Code Working Document, and as applicable, comparisons are made with the Wireless Code’s content and provisions.

Access to home internet is unsurprisingly a critical part of Canadians’ daily lives. EKOS’s research report from 2016, “Let’s Talk Broadband,” noted that home Internet data service remained the

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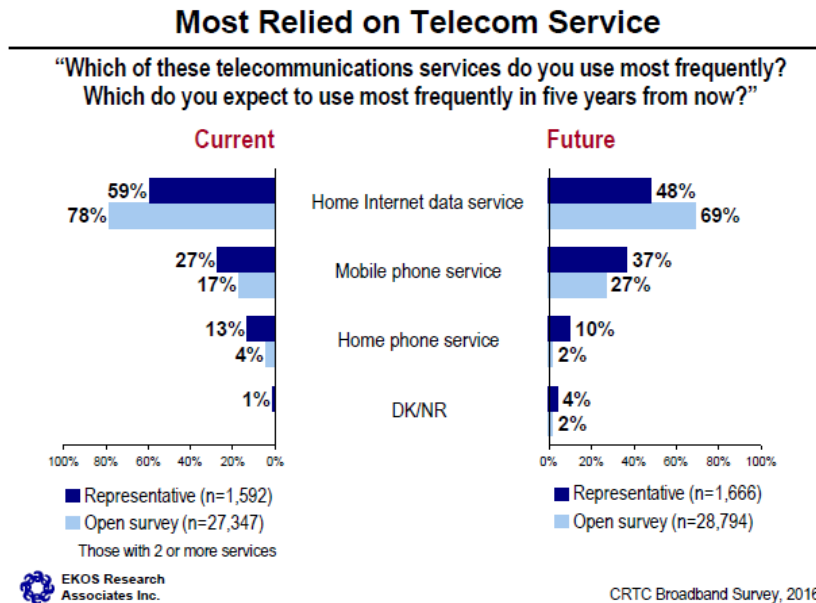
<sup>1</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422 See Telecom Notice of Consultation CRTC 2018-422, online: <<https://crtc.gc.ca/eng/archive/2018/2018-422.htm>>, and Appendix 2 for discussion questions.

<sup>2</sup> 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/>>.

<sup>3</sup> *Ibid.*

most relied on telecom service.<sup>4</sup> Based on its nationally representative survey (consisting of 1,666 Canadians, 18 years and older)<sup>5</sup> and an open survey (involving 28,794 Canadians)<sup>6</sup> with some variances noted in the number of current users (see figure 1-1),<sup>7</sup> it found that more than half of Canadians used their home Internet data service the most, and expect to continue using it most often, five years from now; amidst other findings.<sup>8</sup>

**Figure 1-1. EKOS Report, Let’s Talk Broadband - Most Relied on Telecom Service**



Source: EKOS Research, [Let’s Talk Broadband](#)

Likewise, the Canadian Internet Registration Authority’s (CIRA) Internet Factbook 2018, notes that nearly 90% of Canadians use the Internet with 86% of Canadians having a broadband Internet connection at home, and 74% spending between three and four hours online per day,<sup>9</sup> and yet internet remains one of the most complained about communications service, with the most service delivery issues in recent years; as indicated by the CCTS Annual Reports, 2017-18, and 2017-16.<sup>10</sup>

<sup>4</sup> EKOS Research Associates Inc., “Let’s Talk Broadband” Findings Report, submitted to Canadian Radio-television and Telecommunications Commission (March 18, 2016), online: <<http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2016/030-15-e/report.pdf>> at p.18-21.

<sup>5</sup> EKOS Research Associates Inc., “Let’s Talk Broadband” at p.2.

<sup>6</sup> EKOS Research Associates Inc., “Let’s Talk Broadband” at p.2.

<sup>7</sup> EKOS Research Associates Inc., “Let’s Talk Broadband” at p.19.

<sup>8</sup> EKOS Research Associates Inc., “Let’s Talk Broadband” at p.18-21.

<sup>9</sup> Canada’s Internet Factbook 2018, Canada’s source for current internet data, online:

<<https://cira.ca/factbook/canada%E2%80%99s-internet-factbook-2018>> (cited source: ITU 2016); and we also referred to Canada’s Internet Factbook: Infographic, online: <<https://cira.ca/sites/default/files/public/factbook-infographic-2018-en.png>>.

<sup>10</sup> CCTS, 2017-18 Annual Report, online: <<https://www.ccts-cprst.ca/report/annual-report-2017-2018/>>; and

Internet services continue to be delivered and operated without a specific regulatory framework dedicated to protecting the consumer interest. The CCTS Annual Report 2017-18 notes that within the total complaint issues reported by service type, 29.2% complaints were about the Internet,<sup>11</sup> i.e. a total of 8,987 Internet complaints out of 30,734 leading complaint issues.<sup>12</sup> The main Internet issues related to: billing, contract dispute, service delivery, and credit management.<sup>13</sup> The most recent, CCTS Mid-Year Report 2018-19 also notes that out of a total of 22,175 complaint issues, 6,154 complaints were about Internet services.<sup>14</sup>

**Figure 1-2. CCTS, Leading Complaint Issues by Service Type (2017-18)**

**TABLE 2: LEADING COMPLAINT ISSUES, BROKEN DOWN BY SERVICE TYPE**

Service	Billing	Contract dispute	Service delivery	Credit management	Total
Wireless	5,393	4,880	1,947	537	12,757
Internet	3,223	2,909	2,580	275	8,987
Local phone	2,034	1,933	1,242	145	5,354
TV	1,448	1,163	560	77	3,248
Long distance	203	95	81	4	383
Directory assistance	1	0	0	0	1
White page directories	0	0	0	0	0
Operator services	4	0	0	0	4
<b>TOTAL</b>	<b>12,306</b>	<b>10,980</b>	<b>6,410</b>	<b>1,038</b>	<b>30,734</b>

Source: CCTS, [2017-18 Annual Report](#)

## 1.2 Methodology

### Overall Approach

The research sought to:

- a) investigate consumer protections included in Canada’s communications regulatory framework for retail Internet access services;

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CCTS, Annual Report 2016-17, online: <<https://www.ccts-cprst.ca/wp-content/uploads/2017/11/CCTS-Annual-Report-2016-2017.pdf>>. The cited and all other CCTS reports are available at its website, see:<<https://www.ccts-cprst.ca/codes-stats-and-reports/ccts-reports/annual-and-mid-year-reports/>>.

<sup>11</sup> CCTS, 2017-18 Annual Report, at p.9.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> CCTS, Mid-Year Report, August 2018-January 2019, online: <<https://www.ccts-cprst.ca/report/mid-year-report-2018-2019/>>.

- b) identify areas that may require further consumer protection measures to be established within Canadian communications regulation; and
- c) note the relevance of consumer protections in other jurisdictions' retail Internet regulations that are absent from, but could usefully be pursued, in Canadian communications regulation.

The research methods employed to pursue these three goals consisted of:

- secondary research, involving documentary reviews, environmental scans, and review of current complaint datasets from the CCTS; followed by
- primary qualitative research: four focus group sessions; and written inquiries to consult selected stakeholders, such as regulatory bodies and industry participants; and review of consumer input submitted to the CRTC during its proceeding on establishing a mandatory code for Internet services.

These methods were selected based on PIAC's past experiences with consumers on other projects, which indicated the importance of one-to-one interactions with consumers, supported by reaching out to different stakeholders. The secondary research was done at the outset and informed our understanding and design of the focus group sessions and stakeholder consultations.

## Secondary Research

The purpose of secondary research was to find evidence and details regarding consumer issues relating to retail Internet access, and at the same time review Canadian and international regulatory practices, with the latter meant to serve as point of reference on what practices could be useful for advancing consumer interests in Canada. Background research, an environmental scan and study of secondary resources were undertaken in the initial phase of the research to subsequent primary qualitative research, leading to the drafting of this report. This background research included, but was not limited to, the CRTC's regulatory policies and decisions we deemed to be pertinent; reports issued by the Commission for Complaints for Telecom Television Services (CCTS); our review of larger Canadian ISPs' broadband advertisements; international regulatory practices; and the secondary quantitative studies noted below.

These secondary resources provided insight into consumer issues regarding retail Internet access and directed our attention to regulatory measures that could be useful for Canada. For instance, the datasets from the CCTS Reports identified consumer issues generally complained about in relation to retail Internet access services; and also provided anecdotal evidence of consumer experiences. Our review of regulatory practices from the United Kingdom, Australia, United States of America, Germany, and Finland with respect to retail Internet access services, especially

broadband speed and broadband speed advertising, revealed several measures that could usefully be considered for Canada's regulatory framework.

### Focus Group Sessions

The primary qualitative research for this report consisted of four focus group sessions, conducted with home Internet users in August 2018. These sessions were facilitated by the Environics Research Group. Two sessions were conducted in Toronto, in English; and two sessions in Montreal, with one in English and one in French. The focus group participants were required to be adult users of home Internet who paid for these services. The participants in each session were a mix of men and women from a range of income levels, levels of education, and adult age cohorts. These participants were recruited by Environics from the general public through social media postings, and excluded persons who had taken part in other research projects concerning telecommunications. Environics did not screen for people with particular occupations, except to screen out people who worked for an advertising agency, public relations agency, as a journalist, or at a telecommunications company. The content from each session was provided to PIAC in audio-visual format as well as in the form of written transcripts, consistent with consents secured from all focus group participants ahead of time. Each focus group participant was compensated with a small amount of \$100 for his or her time, which was to compensate for any inconvenience of lost time.

The purpose of these focus groups was to identify common consumer concerns regarding retail Internet access, and gather their views on the complaint handling processes and more specifically, on their view of the need, scope and viability of an Internet Code as a means for redressing their concerns. The discussion guide for these focus group sessions entailed four main parts. The first part asked the focus group participants to share details regarding their use of home Internet: how often they use it, and for what reasons. This was included in order to understand common reasons for using home Internet, and to identify common trends. The second part explored whether and what problems were faced by these participants in relation to home Internet access services.

The third part asked participants to share their experiences in filing complaints with their Internet service providers or any other agency, including the CCTS and/or the CRTC, or attempting to file complaints, including the prevailing challenges and outcomes. It also explored, why some participants chose not to complain, and whether they knew about the CCTS as a body charged specifically with hearing complaints of this type. Finally, the fourth part of the discussions considered the participants' views on the need for, scope of, and ways to publicize an Internet Code.

The content of this discussion guide was informed by our background research, including the complaints datasets from the CCTS reports, indicating that consumers continue to face problems in accessing home Internet services.

We used focus groups for this research because this approach provides a useful and unique platform for direct, thick engagement with consumers, enabling one-to-one conversations between the facilitator and focus group participants in a way that can focus on specific issues and identify new ones. In several instances, the focus group participants shared issues based on their personal experience, which we were not aware of and/or did not come across in our background research. These sessions also allowed us to consider the specific and different contexts in which issues arise, enabling us to better understand the issue(s) raised. At the same time, focus groups provide an opportunity to seek immediate clarifications on any points and/or concerns raised by the focus group participants. Our research report and its findings significantly rely on the focus group participants' feedback to canvas consumer issues and perspectives. We believe these provide an important contribution to the research regarding consumer issues and perspectives on retail Internet access.

We are mindful of the limitations of this research method. Focus group participants reflect a small, and not necessarily representative, sample of consumers. Participants' views and concerns may not portray a general picture of consumer concerns or views on any matter. The discussions from these sessions cannot be deemed to be conclusive: accordingly, we have relied on other resources to test the consumer concerns and views encountered in focus group research, such as quantitative data, secondary research on consumer issues and complaints, and public input to the CRTC. However, the feedback received from these focus group sessions remains, despite its limitations, valuable in identifying consumer perspectives and providing new evidence of practices encountered in the marketplace.

### Stakeholder Consultations

A second form of primary qualitative research consisted of consulting stakeholders to gather their views on current retail Internet access service regulations, identify what aspects of Internet service were, in their view, of concern to consumers and stakeholders; and gain insight as to the working and application of a potential Internet Code - particularly, exploring what issues could be dealt with by an Internet Code, what challenges to expect if such a Code were to be implemented, and how these challenges could be addressed. The stakeholder questionnaire's first section asked about consumer issues and complaints regarding retail Internet access services; and sought to canvas views on which issues may require regulatory attention; the second part focused on the specifics of a potential Internet Code, such as its scope, application and enforcement.

For these stakeholder consultations we contacted 63 stakeholders, including, consumer groups, Internet service providers (ISPs), government, provincial and regulatory organizations, academics and international organizations. These were selected after a preliminary search of relevant stakeholders who might be interested in the issues raised by this project, with further reference to PIAC’s previous projects and stakeholder lists and consultations. The stakeholders were emailed a questionnaire, which we finalized after receiving review input from the outside Methodologist; and were requested to return the completed questionnaire by email or schedule an interview over the phone, as preferred.

In total, two telephone interviews were held, six responses were emailed, and one stakeholder referred us to other resources instead of doing either. Overall, we received feedback from nine of the 63 stakeholders (14.3 percent). Some responses provided useful insight as to consumer issues relating to retail Internet access, based on their experiences and dealings; and on the use and scope of an Internet Code to redress these issues. Some stakeholders directed us to the responses filed in the Canadian Radio-television and Telecommunications Commission’s (CRTC) proceeding to create a mandatory Code for the Internet services. Of non-respondents, some stated that they did not have the evidence to adequately respond to the queries raised by the questionnaire.

**Quantitative Research**

At the outset, we planned to conduct “bottom-up” online consumer surveys with an approximate sample size of 2000 respondents with both English and French representation, where feasible, in order to test the insights gleaned through in-depth focus groups as well as our initial secondary research. This was to be facilitated through a national research firm. However, due to budgetary limitations, this survey could not be carried out, and our report’s methodology had to be revised. Instead of a consumer survey, we have therefore instead relied on the following secondary, “bottom-up” survey-based studies:

**Table 3-1 Consumer-Survey-Based Studies Relied on**

<b>Study Author and Date</b>	<b>Relevance</b>	<b>Reliability and Limitations, as applicable</b>
CCTS Datasets Annual and Mid-Year Reports, with the Annual Report for the years 2017-18, 2016-17, 2015-16, 2014-15 and the Mid-Year Report for 2018-19.	Referred for facts and figures on consumer complaints and issues regarding retail Internet access.	Remains a useful quantitative resource.

<p>EKOS Research Associates Inc., “Let’s Talk Broadband” Findings Report, submitted to Canadian Radio-television and Telecommunications Commission (March 18, 2016).</p>	<p>Referred for facts and figures on consumer needs, use and views on retail Internet access services.</p>	<p>This report provides details from two surveys- nationally representative and open survey. This was conducted as a part of the CRTC’s national consultation to examine which telecommunication services are necessary for Canadians to participate meaningfully in the digital economy, and determine the under-served and unserved areas.</p> <p>These details are from a previous time-period and do not provide the most recent figures and details.</p>
<p>CIRA, Canada’s Internet Factbook 2018.</p>	<p>Referred for Canadian’s home internet usage and trends.</p>	<p>Provides recent quantitative data on Canadians’ household use and importance of the home Internet.</p>
<p>PIAC (Laman Meshadiyeva &amp; Janet Lo), “Transparency in Broadband Advertising to Canadian Consumers” (2013).</p>	<p>Referred for an online consumer survey regarding Canadians’ views on Internet performance and broadband speed; and to review ISPs’ broadband speed advertising practices.</p>	<p>Provides quantitative data on broadband speed advertising in a Canadian context. This study is from 2013. That said, the consumer concerns raised here still remain relevant as noted ahead in this report.</p>

In addition to these bottom-up quantitative consumer studies, we relied on the CRTC *Communications Monitoring Report 2018* for residential retail Internet household use, expenses,

and home Internet trends; and residential Internet market information, including subscription growth rate versus population growth rate. This report does not include information about discrepancies between broadband speeds advertised and speeds typically delivered.

We acknowledge that, without conducting survey research to test the insights gathered in focus groups, the nature of this report's assessments of gaps in consumer experience remain more indicative and less empirical, particular in view of the time lag between this report and the bottom-up secondary research on which we rely. It is hoped that these assessments will help inform further research going forward, including research evaluating measures adopted by the CRTC in the interim.

### 1.3 Main Aspects

Overall, we explore these main aspects with this report:

- a. analyze consumer problems and concerns relating to home internet access;
- b. explore the scope and content of a potential Internet Code;
- c. examine the Canadian regulatory framework on the Internet services and review the international practices to assess their relevance and application in Canada; and
- d. briefly look at the application of several codes, and their interplay with one another, mainly, the Wireless Code, the Television Service Provider Code (TVSP) and a potential Internet Code; this is to assess what would be a clear, easy to understand and workable regulatory framework for protecting the rights and interests of telecommunication consumers.

## 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 believe a code is unlikely to resolve all consumer issues regarding retail Internet access. 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.

This section also briefly mentions about the existing complaint handling processes, and prevailing challenges; in order to identify if there are any gaps in the current complaint handling processes, and note how an Internet Code could help in addressing them.

We engage in a quantitative study of home internet usage to identify trends for understanding consumers' needs and expectations, starting with a qualitative consideration of different uses of home Internet. Our research indicates that this may vary, depending on demographics- age group, number of members in a household, location, and any vulnerable persons' needs. An upward trend can be observed with respect to home internet use, with more users subscribing to home internet services, and a demand for faster speeds and more data consumption. Next, we consider the problems faced by the consumers in accessing home internet.

### 2.2 Home Internet Access – Usage and trends

#### 2.2.1 Household Use

Our focus groups indicated that in general, home internet remains an 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 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 common uses of the home internet noted from our focus groups, include:

- Communicating online- sending emails, engaging in social media
- Entertainment- watching YouTube, Netflix, listening to music and related activities
- Retail- shopping, selling and buying items online
- Getting information- checking news, research and working
- Educational- studying, learning

- Other work-related purposes.

Some comments from our focus group sessions:

P: [...] my dependency on the internet is, it's large. I use the internet profoundly to communicate, promote, learn, so I'm quite busy with that and on the personal side of it, being self-employed it feels like the same thing, I'm basically using the internet as a communication tool. I work for people who are not always in Toronto and there is a magazine ad I've taken pictures for since 2012, based out of the United Kingdom, I've never said one word to the editor in person. Yet, I have a wonderful relationship with her [laughter]. Because we're just...<sup>15</sup>

ME: [...] I'm on the internet everyday personally I do my shopping, a lot of shopping, searching, I'll search if I'm wondering how to clean something or do something, I'll go onto YouTube...<sup>16</sup>

K: [...] I use the internet everyday pretty well. I mostly use the search bar and I listen to a lot of music and shows on there. I use it for email, music, watching Netflix, YouTube, today before I came I was having problems with my Internet and the computer, there's always a tutorial there to teach you how to get by with things, so it's a great thing to use.<sup>17</sup>

J: [...]. I do photography, I do film, television things, so entertainment business in general is kind of where I sit. My internet usage... 95% YouTube probably, I live on YouTube, everything that I need to know or want to learn or want to look up...<sup>18</sup>

R: [...] I have Rogers at home and I'm on the internet all the time...Facebook, Instagram, playing games, anything really that passes the five-minute break that I get or whatever. So pretty familiar with online [.]<sup>19</sup>

AL: [...] I'm the executive director of a business association and both at work and home use the internet extensively. I have actually a 7-year-old daughter who is probably more proficient than I am [.]<sup>20</sup>

Hi, my name is Maria. I'm an accounting assistant. I use Internet for most of my...everything I do basically is around Internet. I shop a lot online, I watch TV, and I buy even my groceries online.<sup>21</sup>

I'm Isabelle. My provider is Bell. [...] So basically, I have three children living at home with me, and my boys, they're twins, [...] their homework is all based on a portal. It's all Internet-based. So, my signal and the importance of the Internet.<sup>22</sup>

These examples clearly indicate the importance of the home internet in meeting participants' daily needs and expectations. Likewise, the Canada's Internet Factbook 2018, by the Canadian Internet Registration Authority (CIRA) noted that 54% Canadians with home internet at least occasionally

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<sup>15</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>16</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>17</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>18</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>19</sup> PIAC Focus group 2 in Toronto, August 22, 2018 (written transcript).

<sup>20</sup> PIAC Focus group 2 in Toronto, August 22, 2018 (written transcript).

<sup>21</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>22</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

work from home, with 20% saying they very often do.<sup>23</sup> Also, 84% of those who work from home say that high-quality Internet access is important, with 55% saying it is critically important.<sup>24</sup> With regard to how Canadians access the internet, in 2018, 88% accessed it through desktop and laptop, 72% through smartphone and mobile, 46% through tablet (iPad, etc.), 17% through TV and 5% through voice and connected-home devices.<sup>25</sup>

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 (includes all Internet services without reference to speed).<sup>26</sup> It also indicates that vast majority of high-income households subscribed to Internet services in 2016, compared to less than two thirds of the lowest-income households.<sup>27</sup> Internet use from home in the first income quintile was 22.2 percentage points lower than the overall average of 87.4% and 17.5 percentage points lower than in the second income quintile.<sup>28</sup> Home computers still remain an important part of Canadian households, with an average of 84.1% home computer ownership in 2016 for all income quintiles (noted per 100 households). See figure 2-1.

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<sup>23</sup> Canadian Internet Registration Authority, "Canada's Internet Factbook 2018," online: <<https://cira.ca/factbook/canada%E2%80%99s-internet-factbook-2018>>.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Canadian Radio-Television and Telecommunications Commission, Communications Monitoring Report (hereafter referred to as CRTC), 2018, online: <<https://crtc.gc.ca/pubs/cm2018-en.pdf>>; (referred to as "2018 CMR") at p.25. Communications Monitoring Report (CMR) 2018 at p. 25.

<sup>27</sup> CRTC, Communications Monitoring Report, 2018, online: <<https://crtc.gc.ca/pubs/cm2018-en.pdf>> at p.25.

<sup>28</sup> *Ibid.*

## Figure 2-1. Home Computer ownership and Internet use from home per 100 households

Table 1.4 Home computer ownership and Internet use from home per 100 households, by income quintile

Technology	Year	Household income less than \$32,090 (first quintile)	Household income from \$32,091 to \$55,470 (second quintile)	Household income from \$55,471 to \$85,336 (third quintile)	Household income from \$85,337 to \$130,045 (fourth quintile)	Household income over \$130,046 (fifth quintile)	Average for all quintiles
Home computer	2012	62.1	76.3	90.5	93.9	97.4	84.0
	2013	64.4	80.6	89.8	95.4	97.9	85.6
	2014	64.3	78.1	87.7	94.0	97.4	84.3
	2015	61.9	79.6	89.1	95.3	96.6	84.5
	2016	63.9	78.0	89.1	93.4	96.2	84.1
	Growth 2015-2016 (%)	3.2	-2.0	0.0	-2.0	-0.4	-0.4
Internet use from home	2012	55.9	72.4	87.6	93.1	98.5	81.5
	2013	59.7	77.6	89.0	94.9	98.4	83.9
	2014	63.5	78.5	88.7	95.5	98.3	84.9
	2015	64.4	82.1	92.8	97.2	98.2	86.9
	2016	65.2	82.7	93.3	97.9	98.1	87.4
	Growth 2015-2016 (%)	1.2	0.7	0.5	0.7	-0.1	0.6

Source: Statistics Canada's Survey of Household Spending, custom request for a breakdown of Table 11-10-0223-01

Source: CRTC's Communications Monitoring Report (CMR) 2018 (Table 1.4)

### Household Spending

The 2018 CMR shows an increase in average monthly household spending on internet services, from \$36.50 in 2012, to \$40.67 in 2013, to \$42.42 in 2014, \$46.50 in 2015 and \$49.50 in 2016.<sup>29</sup> (See figures 2-2 and figure 2-3 for monthly household spending on the internet, by income quintiles). The 2018 CMR mentions about the limits in using these figures for analyzing adoption and spending trends; as they are noted to reflect only average expenditures, which may be over-reported or under-reported from actual spending, and do not reflect consumption of free services.<sup>30</sup>

### Figure 2-2. Average Monthly household spending on Internet services

Year	2012	2013	2014	2015	2016
Average Monthly Spending	36.5	40.67	42.42	46.50	49.50

Source: Data extracted from the CRTC's Communications Monitoring Report (CMR) 2018 (Figure 1.4).

<sup>29</sup> CRTC, 2018, online: <<https://crtc.gc.ca/pubs/cmr2018-en.pdf>> at p 28. (See its Figure 1.4).

<sup>30</sup> CRTC, Communications Monitoring Report, 2018, online: <<https://crtc.gc.ca/pubs/cmr2018-en.pdf>> at p 28.

**Figure 2-3. Average five-year monthly household spending on internet services by income quintile**

Year	First quintile	Second quintile	Third quintile	Fourth quintile	Fifth quintile	Average of all quintiles	CAGR of average of all quintiles (2012-2016)
2012	22.00	31.50	40.67	42.17	46.25	36.50	7.9%
2013	25.58	35.25	42.08	48.00	52.42	40.67	
2014	29.50	37.17	44.17	48.75	52.67	42.42	
2015	30.58	41.58	49.92	53.75	56.83	46.50	
2016	32.17	43.58	52.00	58.00	61.92	49.50	
Growth 2015-2016	5.2%	4.8%	4.2%	7.9%	9.0%	6.5%	

Source: Data extracted from the CRTC’s Communications Monitoring Report (CMR) 2018 (Table 1.5)

Overall, household spending on communication services has seen an increase, including the internet, and mobile services, with a decrease for landline in 2012-2016, and somewhat constant spending for television distribution from 2012 to 2014, with slight decreases in 2015 and 2016.<sup>31</sup> It is important to note inflation affects household spending, which needs to be taken into account in conducting any inquiry into such spending.

**Location**

Household spending on the Internet saw an increase in both the urban and rural regions. The 2018 CMR notes that expenditures on the Internet services in urban centres, increased steadily from 2012 to 2016.<sup>32</sup> An increasing trend can also be observed for rural communities.<sup>33</sup> Overall, residents of rural communities were noted to have a higher total spending of \$227.83 on communication services, than those residing in urban centers whose total household expenditure was of \$218.25; noted to be because of the slightly higher prices offered in rural areas where there are fewer service providers.<sup>34</sup> Also, urban households generally had access to lower internet

<sup>31</sup> 2018 CMR at p 28. (See its Figure 1.4).  
<sup>32</sup> CRTC, CMR, 2018 at p 31. (See its Figure 1.5).  
<sup>33</sup> CRTC, CMR, 2018 at p 32. (See its Figure 1.6).  
<sup>34</sup> CRTC, CMR, 2018 at p 32.

service prices in 2017 and had more number of internet service providers (ISPs) to choose from than rural households (on average, four ISPs), with urban households having access to eight ISPs.<sup>35</sup>

## Age Group

Consumer spending on the Internet appears to vary depending on the age group. The 2018 CMR notes that households whose reference person (one who handles financial matters) is aged between 40 to 54, they spent the most on communications services, while those with reference persons aged 65 years or over spent the least.<sup>36</sup> The report also indicates that usage habits tend to differ based on the age group. Notably, older households (whose reference person is 65 years or above) spend the most on television distribution services, and the least on Internet services.<sup>37</sup> Whereas, the younger households (whose reference person is aged under 30) tend to spend more on the Internet and mobile services than the older generation.<sup>38</sup>

## Vulnerable Consumer Needs

Our stakeholder consultation with Deaf Wireless Canada, indicated that people with special needs significantly rely on the Internet to meet their communications needs.<sup>39</sup> A survey conducted by the Canadian Association of the Deaf-Association des Sourds du Canada (CAD-ASC) and its standing committee: Deaf Wireless Canada Consultative Committee, (DWCC), involving a total of 135 Deaf, Deaf-Blind and Hard of Hearing [DDBHH] individuals, indicated the accessibility challenges in this respect.<sup>40</sup>

### 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;<sup>41</sup> with the majority of revenues being generated by residential

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<sup>35</sup> CRTC, CMR, 2018 at p 56.

<sup>36</sup> CRTC, CMR, 2018 at p 33.

<sup>37</sup> CRTC, CMR, 2018 at p 33.

<sup>38</sup> *Ibid.*

<sup>39</sup> PIAC's Stakeholder Consultation with Deaf Wireless Canada (March 15, 2019). Also, see the Fair Communications Sales Coalition (consisting of the Public Interest Advocacy Centre, ACORN Canada, National Pensioners Federation and Canadian Association of Retired Persons) regarding TNC 2018-246 (Report regarding the retail sales practices of Canada's large telecommunications carriers) for consumer experiences in relation to misleading sales practices, which also draws attention to vulnerable consumer's communication needs, including the internet services, see online: <<https://services.crtc.gc.ca/pub/ListeInterventionList/Documents.aspx?ID=276637&en=2018-246&dt=i&lang=e&S=C&PA=a&PT=nc&PST=a>>.

<sup>40</sup> CAD-ASC et al., "An Accessible Internet Code for Deaf, Deaf-Blind, and Hard of Hearing Canadians [Survey Report]," (March 4, 2019) Submission to TNC 2018-422 - Proceeding to establish a mandatory code for Internet services, online: <[http://www.deafwireless.ca/wp-content/uploads/2019/03/CAD-ASC-et-al-An-Accessible-Internet-Code-Survey-Analysis-TNC-2018-422\\_FINAL.pdf](http://www.deafwireless.ca/wp-content/uploads/2019/03/CAD-ASC-et-al-An-Accessible-Internet-Code-Survey-Analysis-TNC-2018-422_FINAL.pdf)>.

<sup>41</sup> CRTC, Communications Monitoring Report, 2018 at p 120-121.

access services (80% or 8.8 billion).<sup>42</sup> It noted that Canadians continue to use more data, subscribe to faster and larger packages and spend more money on internet services.<sup>43</sup> See figure 2.4, which shows a summary of a rise in the demand of residential fixed internet, with higher speeds being used and more data being consumed from 2013 to 2017.

**Figure 2-4. Summary of Residential Fixed Internet – Overall Statistics (CRTC collected data)**

Residential Fixed Internet	2013	2017
Households with a fixed Internet subscription (%)	80%	86%
Average download speed (GB)	15.6 GB	68.3 GB
Subscribers to 50+ Mbps service (%)	5.0%	38.6%
Average monthly data usage	50.8 GB	166.2 GB
Monthly ARPU (\$)	\$44.50	\$58.49

*Source: CRTC's Communications Monitoring Report (CMR) 2018 (Data extracted from Infographic 4.10).*

In 2017, 86% households subscribed to Internet service, with an increase in subscriptions by 3.9%, as compared to 2016.<sup>44</sup> The majority of residential internet subscriptions for each year from 2013 to 2017, were reported to be for the cable-based carriers, followed by the incumbent TSPs, and then other service providers. See figure 2.5 to see the specific increase in residential internet service subscriptions- categorized under, incumbent TSPs, cable-based carriers and other service providers.<sup>45</sup> The above discussion was meant to explore Canadian household's use of retail Internet access services, and determine their reliance on it in their day-to-day lives, and at the same time, help us better understand consumers' overall expectations regarding retail Internet services.

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<sup>42</sup> *Ibid.*

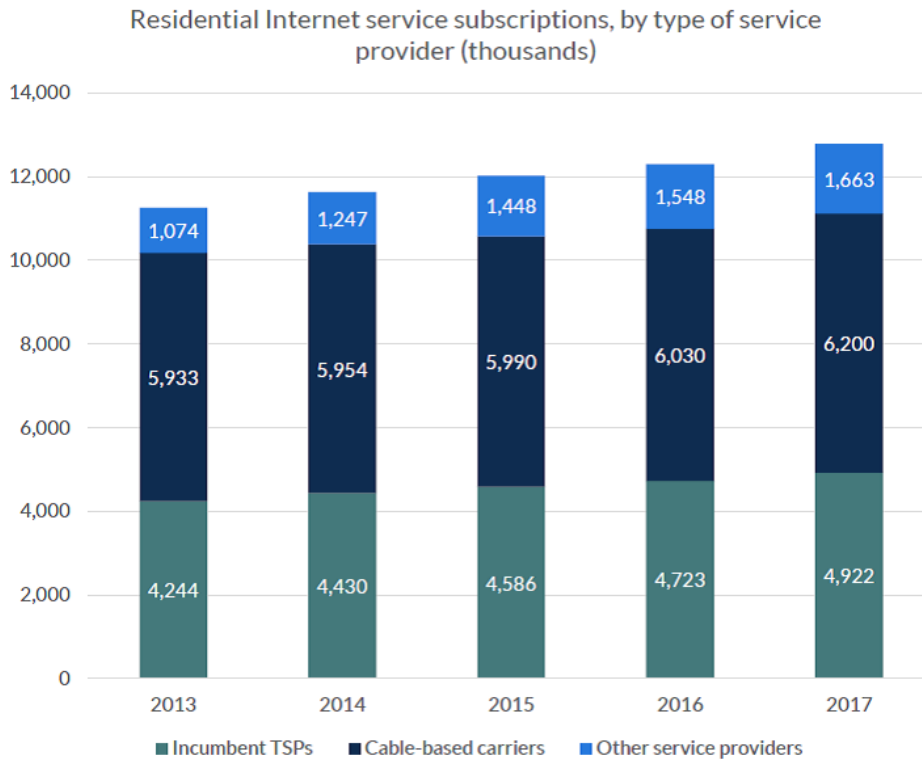
<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> CRTC, CMR, 2018 at p 124 (See its Figure 5.1).

**Figure 2-5. Increase in Residential Internet Service Subscribers (by service provider)**

Figure 5.1 Residential Internet service subscriptions, by type of service provider (thousands)



Source: CRTC data collection

Source: CRTC’s Communications Monitoring Report (CMR) 2018 (Figure 5.1)

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 of the Internet access, amidst others, was apparent from 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 services. The details of which, are noted in the next chapter.

Similarly, the CCTS 2017-18 Annual report notes the increasing demand for the Internet services, speed and data packages. Stating that the “With the popularity of online streaming and internet gaming, internet service demands have never been greater. Customers should ensure that they are subscribing for a service that will meet their usage needs. We encourage internet providers to ensure that they fully canvass user needs before recommending the appropriate package of speeds and usage limits.”<sup>46</sup>

<sup>46</sup> 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.

Likewise, CIRA's research shows that out of those Canadians with a home internet connection, 93% stated that having access to high-speed Internet at home is important.<sup>47</sup> 96% of them stated that high quality Internet access is important at home with 59% stating this as critically important.<sup>48</sup> CIRA's research also notes that three quarters of Canadians who currently have a home internet connection would be unlikely to purchase a home in an area that lacked access to high-speed internet.<sup>49</sup> We consider some details regarding these aspects.

### Data Usage:

The 2018 CMR indicates that the average monthly data usage by high-speed internet service subscribers increased by 30% from 2016 to 2017,<sup>50</sup> with the residential average revenue per subscriber increasing by 5.5% from 2016, i.e. to \$58.49 per month.<sup>51</sup> Similarly, the average combined download and upload data usage increased since 2016, getting to 166.2 GB per month in 2017.<sup>52</sup> Specifically, the average amount of data downloaded by residential Internet service subscribers increased by 31% between 2016 and 2017 to 153GB per month, and by an average of 36% annually from 2013 to 2017.<sup>53</sup> Average upload amounts were also noted to rise by 15% in 2017, reaching an average of 13GB per month.<sup>54</sup> These increases from 2013 to 2017, resulted in average uploaded data per subscriber doubling while average downloaded data tripled.<sup>55</sup>

Subscriptions to internet service packages with unlimited monthly data transfer also went up from 12% in 2013 to 37% in 2017.<sup>56</sup> \$94 million were paid in internet overages by Canadian households in 2017, down from 100 million paid in 2016.<sup>57</sup> These findings from the CMR suggest that users' demand for data has gone up, and apparently, the overages paid by them have gone down. However, please be mindful that the information provided in this 2018 CMR is based on the data provided by the larger internet service providers to the CRTC.<sup>58</sup>

### Internet Speed:

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

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<sup>47</sup> Canadian Internet Registration Authority, Canada's Internet Factbook 2018.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> CRTC, CMR, 2018 at p.122, 125. (See Infographic 5.2).

<sup>51</sup> CRTC, CMR, 2018, Infographic 5.2.

<sup>52</sup> CRTC, CMR, 2018 at p 125.

<sup>53</sup> CRTC, CMR, 2018 at p 127.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> CRTC, CMR, 2018, Infographic 5.2.

<sup>57</sup> CRTC, CMR, 2018 at p 125.

<sup>58</sup> *Ibid.*

an average of 68 Mbps in 2017, much higher than the 15 Mbps average in 2013.<sup>59</sup> 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.<sup>60</sup> The percentage of households subscribing to these packages were also noted to rise from 16% to 33% during this time.<sup>61</sup> 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.<sup>62</sup>

## Concluding Remarks

Based on the above, it is clear that access to home internet is crucial for meeting consumers' daily needs, with an increase in internet subscriptions, rise in demand for faster connections, and more data consumption. The household spending on the internet services continued to see a rise, with some variances noted between urban and rural regions, based on the service providers available. We note ahead in our review of focus group sessions and the consumer input provided to the CRTC during its proceeding to establish a mandatory code for Internet services that data usage-its availability, and Internet speed appear as prominent aspects for meeting consumers' needs and expectations, amidst others. This will be used to support our understanding on what issues could be addressed through an Internet Code. Next, we explore the consumer issues relating to retail internet access.

### 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. It is important to note that even if certain issues are amenable to regulation from a code, it might be necessary to have additional and ancillary regulatory measures in place, to be able to fully and effectively address them.

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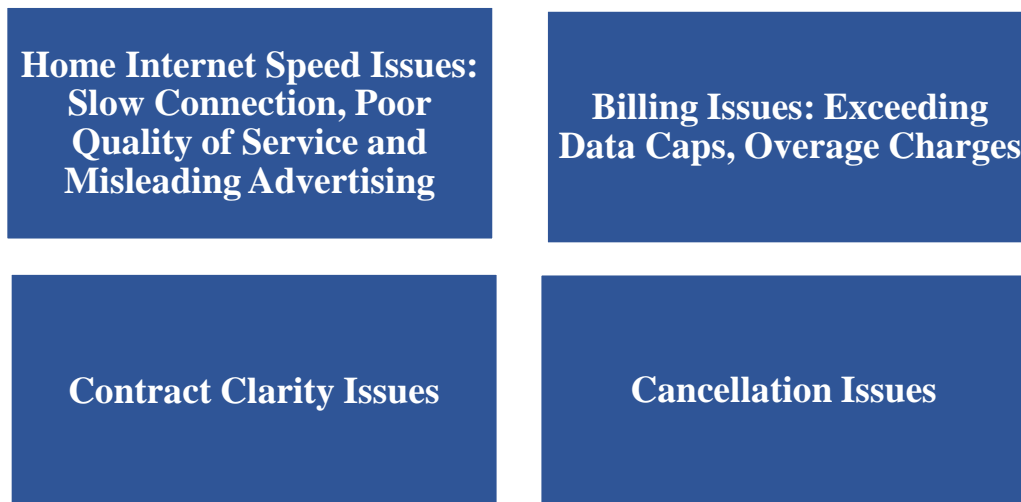
<sup>59</sup> CMR 2018, Infographic 5.2.

<sup>60</sup> CMR 2018, Infographic 5.3.

<sup>61</sup> *Ibid.*

<sup>62</sup> Canadian Radio-Television and Telecommunications Commission, Communications Monitoring Report, 2018, online: <<https://crtc.gc.ca/pubs/cmr2018-en.pdf>> at p 126.

The following came across as prominent consumer issues relating to the home Internet access:



### 2.3.1 Home Internet Speed Issues

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

- (a) slow connection- this means 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 affecting the 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) - those residing in buildings.

Is there a lot of variance in terms of speed when it comes to Internet service? [Question from the moderator]

**Yeah.**

**Yeah.**

**There is, yeah.**

**Yeah.**

**And you're supposed to have the highest speed, and then, you can actually verify your speed on your phone to see how fast it's going. And then, you call them and say, "This is not the speed I'm paying for," and then they're like, "Well, there's nothing we can do."<sup>63</sup>**

Specific Internet-speed related problems shared by the focus group participants:

S: I was having problems where the speed just wasn't consistent, this was when I was with Rogers, I was supposed to have 60/10 or 60/15 and I was noticing if I went to speed.net to check my speeds, it was not, because I could just feel there was a lag [.]<sup>64</sup>

S: yeah it was super slow, or the more device that were going on to it just seemed like they weren't responding and so...

K: Because you're sharing the network

S: I know but I mean honestly, with the amount of... we should not have an issue, there's more than enough bandwidth for it [.]<sup>65</sup>

[...] S: They were throttling mine at one point

K: With Rogers, yeah

S: When I was streaming [.]<sup>66</sup>

M: So who else has ever had speed problems? [Question by the moderator]

**A: Yeah, cause of the building thing, I moved out a while ago, but at like 5:30-6 when everyone got home, you could tell when everyone else was home using it, it was way slower [.]<sup>67</sup>**

P: All sorts of stuff, also just very slow, reaction – it just doesn't move fast [.]<sup>68</sup>

“K: [...] the internet was slow and dropping out all the time with Rogers, is with Rogers whoever is on the internet at that time you're sharing it with everyone [.]<sup>69</sup>

M: So when you were with Rogers you had problems with the speed, like what? [Question by the moderator]

**ME: Buffering, that circle that would go around**

**K: If you load a new page, it just like...**

**M: When you see that distressing circle**

**ME: Yeah, its super annoying**

**S: Or even like trying to play Netflix**

**M: You'll be right at the most climatic moment**

**S: And it stops, yeah exactly [.]<sup>70</sup>**

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<sup>63</sup> PIAC Focus group 2, Montreal, August 23, 2018 (written transcript).

<sup>64</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>65</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>66</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>67</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>68</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>69</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>70</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

K: And if you're steaming movies a lot of the times, if you're streaming movies on Rogers, depending on the time of day, even the movie will buffer out, like you have to wait for it to load, like, I don't know [.]<sup>71</sup>

One participant shared an experience- where it took 23 hours to send 100 images online because of the slow upload speed. Some participants stated that their internet speed might be affected by the number of people using and/or specific home connection- wired/wireless. For one participant, knowing the precise speed did not matter as long as his needs were being met, and he knew what was required to be paid. Overall, participants expressed discontent with their home Internet speeds.

P: I had to send almost 100 images to a magazine in Germany and they wanted these images at a certain size and I had to go on to their server to do this, it took 23 hours [.]

K: Yeah, because your upload speed is very slow [.]<sup>72</sup>

P: You know what, I don't know but I do think that. I might be wrong but I think there's an issue of time of day and amount of activity that is going on, sometimes in the middle of the day sometimes things do move slower, maybe the network is more congested [.]<sup>73</sup>

MA: The speed slows down and recently I had it I guess, there were some technical issues and it was down for a day, two days I think because it takes that long for someone to come and check it [.]<sup>74</sup>

I've had...not so much with the...because I'm with TekSavvy, on their cable package now, but when I was on their DSL package, I had a lot of issues with...like, it felt like my connection was being throttled during certain hours, and it wasn't as fast as it was supposed to be. Or it would, like, drop. Like, if I was playing a game, I would lose my connection. So, that's why I switched to cable, and I've had fewer issues since, but I had definitely a lot of similar issues.<sup>75</sup>

We saw similar concerns, in the consumer interventions submitted to the Commission regarding a mandatory code for Internet services:

We live in rural area and pay more than \$100 per month for 100GB cap at max 20 mpbs. Speed is always not up to par, and paying way too much for a 100GB cap. Not too many choices out there<sup>76</sup>

High speed cable or DSL internet should be more widely available in rural areas. Satellite is too unreliable and cellular is too expensive. Data caps should be higher if not abolished [...]<sup>77</sup>

One intervenor cited concerns regarding the challenges in getting the required internet speed, and the problems faced in seeking to resolve the speed issues:

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<sup>71</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>72</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>73</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>74</sup> PIAC Focus group 2 in Toronto, August 22, 2018 (written transcript).

<sup>75</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>76</sup> Intervention 5 (TNC CRTC, 2018-422) [Weise, Ryan].

<sup>77</sup> Intervention 105 (TNC CRTC, 2018-422) [Nokes Kyle].

[...] currently have a problem with Bell because their internet is not holding the required speed using video on demand. I don't have tv with them and Shaw has already done their part now it's Bell's turn. I don't know if Bell is tweaking something now when I go to stream a video which has only started Oct 31. Prior to that Sep 14th it works fine and for every year for the past 4 years. Just out of the blue it started. They don't own up to their problems with the internet. I spoke with Bell and was told it was a Shaw problem, so I called and they replaced the satellite head. Works fine except when connected to the internet. There was a wee bit of improvement but didn't last. So now back to Bell to have them replace the modem/router.<sup>78</sup>

Many focus group participants knew how to check the speed of their home Internet connection, including specifics about what tools are available to do so, and what is meant by certain concepts—throttling, difference between download and upload speeds. Some focus group participants were not sure about what was promised to them by their service provider(s). It is important to note that our focus group participants reflect a sample of consumers and even then not all participants appeared to be aware of such tools. 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 are left to rely on random measurement tools with uncertain results and expectations. See some excerpts:

S: Yeah so if you go on there, if you ever wanted to check how fast your internet is actually working. So if its advertised that you're supposed to get a certain amount, you' can go on and check [.]<sup>79</sup>

M: What is throttling? [Question by the moderator]

**S: When they slow down the speed, so you get buffering, things aren't running**

**K: It's slow, it pauses**

**S: The performance, the quality, if something is supposed to be in 1080HD, you just find it's not looking very nice [.]<sup>80</sup>**

M: How many of you, like what is the speed of your internet connection at home, how any of you know, or at least what it's supposed to be? [Question by the moderator]

**A: 250 something, 250 a second**

**M: 250 a second**

**K: It's MB per second**

**MO: I think since it hasn't been giving me any problems, I used to check before and now that it's...<sup>81</sup>**

“M: As far as you know, [...] are there any online tools available, like how would you even measure your internet speed if you wanted to know how fast is my internet? [Moderator]

**K: Speedtest.net**

M: How many of you have ever heard of that [Moderator]

**[S, K, J, and A put their hands up indicating they've heard of the ...]**

**P: I've used something like it, wasn't that one it was different**

M: There's like an app... [Moderator]

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<sup>78</sup> Intervention 28 (TNC CRTC, 2018-422) [Jeffreys, Lynne].

<sup>79</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>80</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>81</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

**K: Rogers, Bell, TELUS, they all have their own on their websites [.]”<sup>82</sup>**

“M: How many of you understand the difference between download and upload speed? A, how would you describe it? [Question by the Moderator]

**A: It’s the direction, if you download something you’re taking it, if I’m downloading something its coming from the server to my device, if I’m uploading it’s the direction, a photo on Instagram is uploading [.]**

**P: And the most important feature, whether you’re uploading or downloading is stability, that it arrives one way or another [.]<sup>83</sup>**

M: Do most people assume that your download and upload speed would be the same, or is there a difference? [Question by the Moderator]

**K: There is a difference but it should be the same, mines the same now**

**S: Really, used to always be that the download speed was much higher**

**K: If you’re getting 100 download, you’re getting like 12-15 upload**

M: So the upload is much slower?

**K: Yeah [.]<sup>84</sup>**

PIAC’s consumer survey for an earlier report on transparency in broadband advertising to Canadian consumers, revealed similar results in relation to consumer awareness of these aspects of the Internet service.<sup>85</sup> For instance, it showed that 72% of the survey respondents were very familiar with what is meant by download speed; this was correctly noted to be not surprising as most internet service providers advertise in terms of maximum download speed.<sup>86</sup> Some providers include upload speeds in their advertisements as well (see figure 2-6). 66% of the respondents were found to be very familiar or somewhat familiar with upload speed.<sup>87</sup>

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<sup>82</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>83</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>84</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>85</sup> Laman Meshadiyeva & Janet Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) *Public Interest Advocacy Centre*, [PIAC], online:

[http://www.piac.ca/wp-content/uploads/2014/11/piac\\_transparency\\_broadband\\_ads\\_final.pdf](http://www.piac.ca/wp-content/uploads/2014/11/piac_transparency_broadband_ads_final.pdf).

<sup>86</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.13.

<sup>87</sup> *Ibid.*

**Figure 2-6. Screenshot from Bell’s website on internet packages, including “up to” speed advertising (from May 2019)**

The screenshot shows the 'Packages' section of Bell's website. At the top, a navigation bar includes 'Internet', 'Why Bell', 'Packages', 'Features', 'Fibre', 'Wi-Fi', 'Mobile Internet', and 'Promotions'. Below this, the 'Packages' heading is followed by the instruction 'Choose the speed that suits your needs.' Three package cards are displayed:

- Gigabit Fibe 1.5:** 'Fibre to your home', 'View details', 'Up to 1.5 Gbps<sup>1</sup> Total download speed', 'Up to 940 Mbps<sup>2</sup> Upload speed', 'Unlimited Monthly usage', '\$114.95/mo.', '\$59.95 one-time activation fee.', 'Check availability' button.
- Gigabit Fibe:** 'Fibre to your home', 'View details', 'Up to 1 Gbps<sup>1</sup> Total download speed', 'Up to 750 Mbps<sup>2</sup> Upload speed', 'Unlimited Monthly usage', '\$104.95/mo.', '\$59.95 one-time activation fee.', 'Check availability' button.
- Fibe 500:** 'Fibre to your home', 'View details', 'Up to 500 Mbps Download speed', 'Up to 500 Mbps Upload speed', 'Unlimited Monthly usage', '\$94.95/mo.', '\$59.95 one-time activation fee.', 'Check availability' button.

A 'BONUS' section below the packages states: 'Whole Home Wi-Fi pods Included. Learn more about Whole Home Wi-Fi'. A 'RECOMMENDED' banner is placed above the 'Gigabit Fibe' package.

During its previous survey, PIAC had also asked about the level of importance denoted to these aspects by the consumers. The majority of respondents i.e. 83% stated that download speed was very important or somewhat important when choosing an internet service provider for their home;<sup>88</sup> yet many of them (75%) did not know the advertised maximum download speed of their home internet service.<sup>89</sup> Around 75% found upload speed to be very important or somewhat important when choosing which internet service provider to use for their home.<sup>90</sup> Evidence of consumers facing issues relating to internet speed can also be noted from the CCTS’s reports (see figure 2-7).

<sup>88</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.13.

<sup>89</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.13.

<sup>90</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.13.

## Figure 2-7. Case Study from the CCTS 2017-18 Annual Report

A customer in suburban Montreal, QC complained that, although he signed up for an internet service including a download speed of 5 Mbps, he had been only receiving around 1.5-1.8 Mbps. He indicated that the service provider's technicians attempted several times to resolve the issue, without success: they were only able to increase the speed to 4 Mbps for a couple of hours, after which it decreased again. As a resolution, the customer requested that the provider deliver the speed he was paying for and provide a 12-month credit of his monthly fees to compensate for the inadequate quality of his internet service. The provider determined that, given its infrastructure and considering the location of the customer's residence, it had provided him with the best possible speed it could provide to him. The provider also pointed out that the customer was not under a contract and that he could cancel at any time without any penalty. In response to the customer's requested resolution, the provider offered to provide the customer with a \$10 credit for 12 months to address the inadequate quality of service. We investigated the complaint, reviewed the provider's terms of service, confirmed that the provider had attempted several times to resolve the technical issues the customer was experiencing and determined that, in this context, the resolution offered by the provider was reasonable. The complaint was closed under Section 9.1.f of our Procedural Code.<sup>91</sup> [Direct Quote from The CCTS Case Study].

The CCTS reports confirm that many consumers continue to remain dissatisfied with their Internet speed and receive poor quality of service. Its 2017-18 Annual Report notes that the number of issues related to the delivery of internet service increased by 77% [from the last reporting year].<sup>92</sup> More particularly, it noted that customers continue to raise concerns about the quality of their internet service, such as slow speeds or intermittent outages, amidst other issues.<sup>93</sup> The 2016-17 Annual Report also indicated consumer issues regarding the poor quality of service and slow internet speed.<sup>94</sup>

### Misleading Advertising

Another issue eminently raised during the focus groups, and cited as one of the foremost concerns in several consumer interventions, was misleading internet speed advertising. Many participants and consumer intervenors indicated that the internet speed delivered to them was not as advertised. At other instances, they reported facing misleading sales practices. For example:

My internet service provider is Xplornet. They must be held accountable for their lack of follow through on advertised speeds. Average speeds are typically 10% of the advertised speed. They are allowed to get away with this because of the wording of their policies. They also do not offer competitive packages in terms of bandwidth because they know that customers have no other choice. I have a 25 megabit LTE connection with 500 gigabytes per month of bandwidth usage. In 2018 this is not an acceptable amount. This is the number one issue that our household has.<sup>95</sup>

<sup>91</sup> 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

<sup>92</sup> CCTS, 2017-18, Annual Report at p.17.

<sup>93</sup> *Ibid.*

<sup>94</sup> CCTS, Annual Report 2016-17, Case Study # 2 at p.20.

<sup>95</sup> Intervention 1 (TNC CRTC, 2018-422) [Rogers, Christopher].

[...] my internet speed is never the speed advertised by my supplier, Telus, it is always much slower. This is specific to playing video games online, streaming video via Netflix and downloading. Accountability of service is mandatory and should be regulated.<sup>96</sup>

I believe current advertising and pricing used by internet companies is misleading and predatory as speeds advertised are rarely if ever accurate. Companies claim advertised speeds to be their potential maximum and almost exclusively deliver speeds far below those advertised. I believe the speeds paid for should be labelled as the minimum guaranteed speed. I further believe the throttling of some services to conserve bandwidth should not be allowed as we as consumers are paying for a service and should be able to use it as desired. The internet has become a necessity in our world and it can be prohibitively expensive for low income families to access. I believe all Canadians should have a right to access the information and knowledge that comes with internet access and introductory pricing should reflect that.<sup>97</sup>

The problem I had, like I said earlier, with the maximum capacity because of where I lived. At that time, I had two megabyte maximum speed, and they were selling between 10 and 15 megabytes. So, you were paying for 10 or for 15, but you had only two.

[...]

So, and they don't tell you, even if they know. Two techs from Bell, when they came in for other reason, when I explained them, they told me, "We know. You are the farthest you can be in the network." And Fibe wasn't installed then. Where I live is one of the first place they installed Fibe because of that. But I was years paying something I didn't have.<sup>98</sup>

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.<sup>99</sup> More specifically, it found that the information provided by Rogers did not contain a thorough explanation of factors that may mitigate the consumers' ability to achieve the maximum download and upload speeds.<sup>100</sup> A recent review of the Roger's internet speed advertisements indicates that qualifications to the maximum speed can only be accessed after clicking on details, then on "How to get your best speeds," and scrolling down to find "Also keep in mind that your WiFi coverage and speed can be impacted by many factors [...]."<sup>101</sup>

PIAC's earlier report noted that in some cases, information about qualifications to the advertised speed was not easily accessible. For example, Bell was noted to include such information in footnotes; which remained time-consuming and challenging to locate.<sup>102</sup> TELUS was found to replace "up to" speed claims on its websites with a range of speed, those were also noted to lack a

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<sup>96</sup> Intervention 19 (TNC CRTC, 2018-422) [Mills, Jamey].

<sup>97</sup> Intervention 117 (TNC CRTC, 2018-422) [Weber, Sean].

<sup>98</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>99</sup> Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.14-23.

<sup>100</sup> Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.14-15.

<sup>101</sup> Rogers Internet Plans, online: <https://www.rogers.com/consumer/internet> (last accessed in May 2019).

<sup>102</sup> Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.15-16.

thorough explanation of factors that may mitigate the consumer’s ability to achieve the advertised range of download and maximum upload speeds.<sup>103</sup>

Informational gaps, still exist; as our current review of the selected 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. For instance, factors limiting the advertised internet speed are mentioned at the lower-end of the webpage for Bell’s Internet packages<sup>104</sup> (see figure 2-8).

**Figure 2-8. Screenshot from Bell’s website on Home Internet packages (June 2019)**

Internet Why Bell Packages Features Fibre Wi-Fi Mobile Internet Promotions

Home Hub 1000 with wireless N technology included.

Upgrade to AC technology with the Home Hub 3000 for only \$199.95

Learn more

Offer and pricing details

Details	
Bell Internet	\$67.95/mo.
One time modem rental fee	\$79.95
One time modem rental fee discount	-\$79.95

Available to new residential customers in Ontario, where access and technology permit. For certain offers, the customer must select e-billing and create a MyBell profile. Price is subject to increase during your subscription. Any change made to services may affect the price and/or result in the loss of credits or promotions, as the case may be, as eligibility conditions may vary. Modem rental required; one-time modem rental fee waived for new customers. Internet data usage 50 GB/mo.; \$4.00/additional GB (max. \$100/mo.). Subject to change without notice and cannot be combined with any other offer. Taxes extra. Other conditions apply, including minimum system requirements.

1. Conditions apply; see bell.ca/fullinstall.  
 2. Upload and download access speeds will vary depending on the distance between the customer's modem and switching equipment from Bell. Download access speed: min 0.13 Mbps and max. 5 Mbps. Upload access speed: min. 0.08 Mbps and max. 0.68 Mbps. Actual speeds experienced on the Internet may vary with customer's configuration, Internet traffic, server, environmental conditions or other factors.

Source: Bell, [Internet Packages \(Fibe 50\)](#)

Also, notably some inconsistency is found in Bell’s different advertisements for home Internet access as some advertisements include what speed most customers will get with the maximum and minimum speeds (see figure 2-9); however, other advertisements do not include such maximum and minimum speeds (see figure 2-10). Though, in both cases, details regarding specific limitations are not clearly provided upfront. Also, no indication could be found as to any time(s) when the speed may be lower than what is generally expected.

<sup>103</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.17-18.

<sup>104</sup> Bell Canada, [Internet] Packages, online: <[https://www.bell.ca/Bell\\_Internet/Internet\\_access](https://www.bell.ca/Bell_Internet/Internet_access)>. (Last accessed, May 2019)

**Figure 2-9. Screenshot from Bell's website, Fibe 50 Package (June 2019)**

Speed and usage	Minimum	Most customers get	Maximum
Download Speed	46 Mbps	50 Mbps	50 Mbps
Upload Speed <sup>2</sup>	1.90 Mbps	7.5 Mbps	10 Mbps
Included monthly usage	Unlimited		

Source: Bell, [Internet Packages \(Fibe 50\)](#)

**Figure 2-10. Screenshot from Bell's website, Gigabit Fibe (June 2019)**

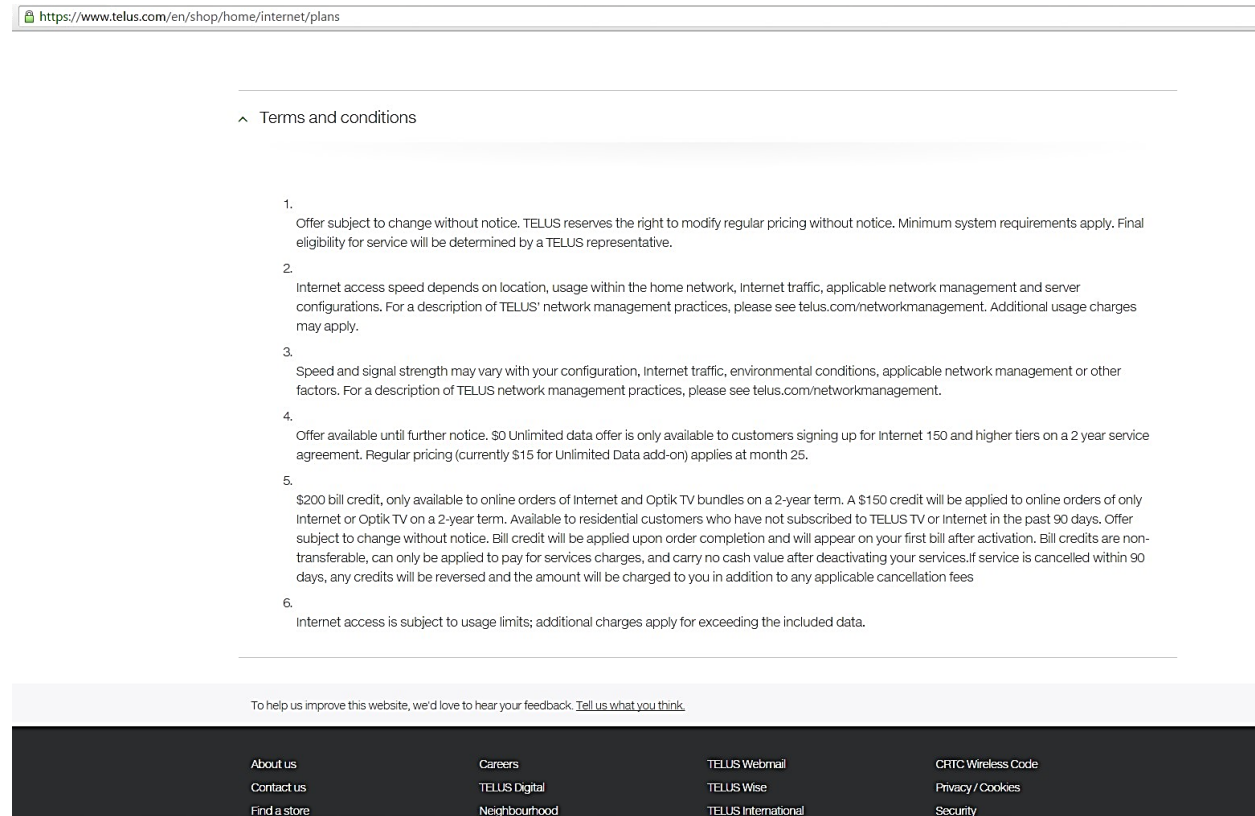
Speed and usage	
Total download speed <sup>1</sup>	1 Gbps <sup>2</sup>
Upload speed	750 Mbps <sup>3</sup>
Included monthly usage	Unlimited

<sup>1</sup>Today, the average maximum speed most wireless devices can enjoy is between 150 and 300 Mbps. With Gigabit Fibe, you'll ensure more of your devices can perform at their best, at the same time.

Source: Bell, [Internet Packages \(Gigabit Fibe\)](#)

Similarly, TELUS’s Internet packages include these limits under its terms and conditions, near the footnotes (see figure 2-11).<sup>105</sup> These conditions are not easily and readily accessible, as they are under a drop down menu, only visible once consumers click on term and conditions.

**Figure 2-11. Screenshot from TELUS’s website, Terms and conditions (June 2019)**



Source: [TELUS \[webpage\], Home Internet](#)

Likewise, for Shaw, PIAC noted earlier that it was not easy to locate information on the limitations that would affect the consumer’s ability to achieve the advertised maximum speeds, and also that it does not provide average or typical download and upload speeds that consumers can expect to get from each package.<sup>106</sup> Our recent study of Shaw’s website showed that such conditions are mentioned in footnotes, with one example being, “Connection speeds may vary based on modem equipment, client device capability, building wiring, internet traffic and environmental conditions. "Up to" speeds are based on optimal conditions.”<sup>107</sup> This is stated in fine-print, and is not readily accessible.

<sup>105</sup> TELUS, Internet (Plans), online: <<https://www.telus.com/en/shop/home/internet/plans>>. (Last accessed, May 2019)

<sup>106</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.18-19.

<sup>107</sup> Shaw’s website, Internet Plans, online: <<https://www.shaw.ca/internet/plans/?cid=internet-double-speed-view-internet-plans>>. (Last accessed, May 2019)

PIAC's former consumer survey also asked consumers about their expectations from these "up to" speed advertisements. The majority of respondents (70%) believed that their maximum download connection speed at home should be as fast as the advertised maximum download speed; with 56% stating that they would expect to get the maximum download speed always or most of the time.<sup>108</sup>

Likewise, consumer interventions also point to the gaps between the "up to" speed claims and the actual speed delivered. For example:

I feel internet service providers should not be able to charge high prices for mediocre services. For example, Bell Canada charges more than anyone for a portion of the speeds the other providers offer.

All packages are advertised "up to" so many Mbps, this should be regulated. What is acceptable and unacceptable in this instance? If I'm paying for "up to" 50mbps is it ok for the service to only run at 25mbps? [...]<sup>109</sup>

We need internet providers to have reliable and consistency internet. If they advertise speeds "up to" a certain speed, they than should be able to at least provide 75% of their actual speed on a regular basis. As an example, my broadband provider advertise "up to 10 MB " but my speeds fluctuate from 3 MB to 10 MB and very really are above 7 MB.<sup>110</sup>

During our recent consultation, one stakeholder mentioned about the current use of "up to" speed advertisements; and some stakeholders from those who responded to our survey, confirmed that consumers continue to face false internet speed advertising. For instance, the province of Nova Scotia, pointed to the rural internet speeds being misrepresented.<sup>111</sup> ABC Communications, mentioned that internet speed is one of the issues usually complained about.<sup>112</sup> It noted that it is important to point out that there could be technical reasons why the speed does not match up. That's why internet speeds are advertised as "up to"; and a reasonable target would be reaching around 80% of the maximum advertised speed.<sup>113</sup> Other secondary resources also present evidence of the home internet speed being slower than that advertised.<sup>114</sup>

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<sup>108</sup> Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.20.

<sup>109</sup> Intervention 44 (TNC CRTC, 2018-422) [Colthurst, Kyle].

<sup>110</sup> Intervention 122 (TNC CRTC, 2018-422) [Dupuis, Don].

<sup>111</sup> PIAC's Stakeholder Consultation with the Province of Nova Scotia, (March 13, 2019).

<sup>112</sup> PIAC's Stakeholder Consultation with ABC Communications, (March 20, 2019).

<sup>113</sup> *Ibid.*

<sup>114</sup> See, Susan Noakes, "Telecom mediator sees 57% spike in complaints in 2017-18, mainly about wireless," *CBC News* (27 November 2018), online: <<https://www.cbc.ca/news/business/ccts-november-2018-telecom-complaints-1.4921033>>. Emily Chung, "Advertised internet speeds not backed up by data," *CBC News* (Posted: 24 January 2013, last updated 25 January 2013), online: <<https://www.cbc.ca/news/technology/advertised-internet-speeds-not-backed-up-by-data-1.1390455>>; Jane Wakefield, "Broadband firms must ditch 'misleading' speed ads," *BBC News* (23 November 2017), online: <<https://www.bbc.com/news/technology-42079941>>.

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

Based on the above evidence and consumer accounts, it appears that home Internet speed remains crucial for meeting consumer needs, and that slow speed and poor quality of service remain common concerns, suggesting a need for regulatory attention. In chapter 3.1 of this report we consider the existing regulatory regimes on retail Internet access and their limitations; which show the consumer protection gaps in relation to retail Internet access services. We believe it could be appropriate to regulate home Internet speed through a code, which should reflect consumers' actual concerns and perspectives. The CRTC's proceeding to establish a mandatory code for Internet services, has placed broadband measurement and advertised speeds as out of scope; this does not align well with our findings, which clearly indicate that consumers continue to face problems with the internet speed delivered to them; calling for a clear regulatory action to protect consumer interests.

We contend that the code could address this 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.<sup>115</sup> However, the efficacy of such practices could be increased if they are included in a 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, enabling greater awareness and participation.

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 that provide clear and detailed obligations regarding disclosure and also provide the right to

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<sup>115</sup> 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: <<https://crtc.gc.ca/eng/publications/reports/rp160929/rp160929.htm>>; and CRTC [Report], SamKnows Analysis of Broadband Performance in Canada – October & November 2015, online: <<https://crtc.gc.ca/eng/publications/reports/rp160317/rp160317.htm>>. (Last accessed in May 2019).

exit a contract without penalty, if the internet speed falls below the minimum guaranteed speed for more than 30 days;<sup>116</sup> and the Australian telecommunications consumer protections code.<sup>117</sup>

We believe that the current information resources on the home internet speed do not appear to provide a comprehensive overview of issues that might affect the internet speed.<sup>118</sup> We contend that the Commission should review such information practices and be more actively involved in collecting data from the industry regarding home internet speed performances, which should be included the CMRs. The current CMRs do report some statistics regarding the high-speed residential internet subscriptions by the upload/download capacity (GB), subscriptions by advertised speeds, average upload and download usage by high-speed residential internet subscribers, broadband service availability by speed (% of households) and some figures regarding the pertinent revenues (to name a few); but it does not provide figures regarding the actual speed performances and their variances from the maximum speed that was originally included in the contract(s).

Some insight on reporting initiatives could be drawn from Ofcom's home broadband performance reporting measures.<sup>119</sup> Ofcom not only provides a report with data and analysis regarding the performance of UK fixed-line broadband services delivered to residential consumers, but also provides consumer summaries, chart data, panelist and interactive data.<sup>120</sup>

It appears from the focus groups and consumer interventions that misleading advertising of the internet speed, cause significant distress to consumers. Based on this feedback, and the secondary resources relied on; we believe that in effect, the current internet speed advertising practices, remain unfair as they fail to adequately inform consumers of the actual speed of the retail Internet delivered to them. A clear regulatory mechanism is called for to address the gaps found between the maximum advertised speeds, and what is actually delivered to consumers.

We believe it could be useful to have regulatory provisions that mandate fair and honest broadband advertising practices and standards to provide more clarity and guidance to consumers on what to

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<sup>116</sup> 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>>.

<sup>117</sup> 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](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).

<sup>118</sup> Canadian Radio-Television and Telecommunications Commission, What you should know about Internet speeds (webpage), online: <<https://crtc.gc.ca/eng/internet/performance.htm>>. (Last accessed in May 2019).

<sup>119</sup> Ofcom, UK home broadband performance, November 2017, online: <<https://www.ofcom.org.uk/research-and-data/telecoms-research/broadband-research/home-broadband-performance-2017>>. Specifically, "[i]t provides information on the average performance of ADSL, cable and fibre-to-the-cabinet broadband packages, presented at a national level, as well as separately for a number of the UK's most popular ISP packages."

<sup>120</sup> *Ibid.*

expect in terms of the actual broadband speed delivered to them. Considering the extent of this problem, the CRTC should play an active role in laying down the groundwork for clear and transparent advertising standards; either defined in a code, similar to how the Australian telecommunications consumer protections code has addressed it,<sup>121</sup> or through a separate regulatory regime. The Australian code includes clear rules applicable to the content of advertising of telecommunication services, and rules in relation to the medium, terms for special promotions, and other related measures.<sup>122</sup>

At the same time, the Competition Bureau could also play an important role, by working together with the CRTC to lay down 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. We look at these practices in more detail ahead. See our previous report, where PIAC suggested that in addition to its existing guidelines, the Competition Bureau may consider enforcement actions or introducing specific guidelines targeted to how advertising claims about internet speed performance are conveyed to the consumers; or how testing these claims should be conducted in order to be deemed adequate and proper.<sup>123</sup>

The German regulator Bundesnetzagentur has also delineated plans for holding the internet service providers accountable, when they do not provide the promised broadband speeds to customers.<sup>124</sup> The referred news report includes a comment by the Jochen Homann, President of the Federal Network Agency, noting that: “We want to clearly define for the user when a non-contractual performance with respect to the download speed is available for stationary broadband connections [.]” As per the report, when the German internet service providers will not be able to deliver the promised speeds, the internet service “[s]hall be considered as a non-contractual service.”<sup>125</sup>

### 2.3.2 Billing Issues

By billing issues, we generally, mean increase in charges when a promotional offer ends, exceeding data caps and incurring overage charges. Our research shows that consumers continue to face billing issues. At some instances, consumers have reported seeing extra charges on their bills even when they were on a one or two year contract. For example:

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<sup>121</sup> 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](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]

<sup>122</sup> Communications Alliance Ltd, “Industry Code Telecommunications Consumer Protections Code,” at p.30-34. (See section 4.2).

<sup>123</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.5.

<sup>124</sup> 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/>>.

<sup>125</sup> *Ibid.*

Bell Canada offers a low rate for their Internet Service on a one or two year contract at what they say is a fixed price and once you agree the monthly price keeps going up every couple of months. [...].<sup>126</sup>

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.<sup>127</sup> Some focus group participants mentioned about increase in rates, which was not readily apparent as it was mentioned in fine print. See:

**[...] But I've had that or then, like, these surprise increases, you know? They lock you in, "Oh, yeah, we're going to give you this rate," and all of a sudden, you find out two months later that there was something small.**

Something in the fine print. [Comment from moderator]

**That they've increased it, but they told you on page three that you never read, that sort of thing.**<sup>128</sup>

Some focus group participants expressed difficulties in reaching their service providers to sort out billing issues, including, figuring out the duration of the promotional offers and/or rebates. Few participants said that they were able to resolve these issues by calling customer support, however, it remained inconvenient and time-consuming for some participants to do so. For example:

[...] when I was with Bell, all of a sudden you saw a higher bill then you have to call and spend all that time screaming and yelling then they say oh, we'll give you another one and it was constant. I'm now with Bell but they do the same thing, they just take off channels, they adjust things [...].<sup>129</sup>

M: [...] What about has anyone ever had incorrect charges, or that the price went up without... [Question from moderator]

**J: I've had spikes in data that put the price up but it's always been adjusted**

M: But have you had to call them? [Question from moderator]

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<sup>126</sup> Intervention 26 (TNC CRTC, 2018-422) [Goldberg, Joshua].

<sup>127</sup> See: Intervention 103 (TNC CRTC, 2018-422) [Sas, Carl].

My spouse and I are presently looking after her mothers affairs who is 80 Years old and still living on her own. She has had a phone and internet connection with Shaw for years. Now that she is having difficulties, we are helping with her monthly bills and were shocked to see her internet connection which is also required for her phone has risen from a modest affordable monthly charge to over \$104.30 per month. Upon checking her data usage, it has been registered at ZERO (0) for as far back as the bills allow to be tracked. When inquiring about her usage, she keeps the connection because services convince her she needs a connection to download forms etc. such as government, banking, insurance to survive. We visited the Shaw internet web page and found the cheapest rate for a Senior is over \$70.00 a month for a connection that offers 150 GB download which is never used, the cheaper rates or plans are no longer offered on the web pages. Her monthly income does not increase to the rates that the plans increase but what erks us even more is no one connects with her from Shaw to find a happy medium but they have her on a monthly payment plan which they remove the \$104.30 regardless. Banks and other services have plans for seniors but it is clear that internet providers have no such interest but robbing Seniors on a fixed budget. If she removes the internet connection, she'll save \$840.00 a year which is quite significant to a Senior on a limited budget. Unfortunately, I'm positive that she is not the only one as computers and technical capabilities diminish with age but companies do not feel any guilt in abusing or stealing these from the ones who can least afford it.

<sup>128</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>129</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

**J: Oh yeah, you definitely have to call, like any other business they'll take your money unless you tell them whoa, something is going on here. But every single time it's been adjusted - those things actually work to my benefit because every time something goes wrong I usually call customer service and I get it to go further back even more than it was [.]**<sup>130</sup>

What sorts of billing problems? [Question from moderator]

**That like, they offer you rebates. The rebates never goes in and all kind of stuff. I was afraid to call them to do a change because everything goes wrong when they change something. They seems to have changed...**

You mean, like, if you change your package. [Comment from moderator]

**Yeah, if you change something on your fees, everything would go wrong, and then you have to call them and call them and call them. Just to be plugged the first time...because where I live, when I got there, only Bell was available. It was an old building, so Videotron didn't go there, so I had to switch to Bell. It took me 27 phone call to have...**<sup>131</sup>

[...] it refers to our billing cycle, and its not always in the fine print because they'll give you the promotion where, "I'll bundle up your package, and we'll give you this promotion." And then, all of a sudden, your rebate disappears.

Yeah.

Yeah.

And then, when you call, they say, "Oh, well, the rebates could disappear at any time." Yeah, but it's not written. It's like, they arbitrarily... So then, they'll negotiate. You have to call them...[...]

Yes, and then, you have to call and spend like three or four hours. I don't know how you did 27 calls because every time it's one hour.

Yeah.

And eventually, they'll give you something, but it's like, they'll change how. They say, "Well, we could leave the base price like this, and we'll give you a one-shot deal all the time." So, they just play around...<sup>132</sup>

The Commission for Complaints for Telecom-Television Services (CCTS) reports clearly indicate that billing remains one of the most complained about issues. The CCTS Annual Report 2017-18 shows that out of a total of 8,987 Internet complaints, 3,223 were about billing.<sup>133</sup> Likewise, the most recent CCTS Mid-Year Report 2018-19, shows that incorrect charge was the most complained about internet service issue, with 1,085 complaints.<sup>134</sup> Billing has remained one of the most-complained about issue in the previous years as well. The CCTS Annual Report 2016-17, reported 2,156 complaints related to billing out of 5,763 total internet related complaints.<sup>135</sup> The CCTS Annual Report 2015-16, reported 1,634 complaints related to billing out of 4,177

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<sup>130</sup>PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>131</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>132</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>133</sup> CCTS, 2017-18, Annual Report, at p.9.

<sup>134</sup> Commission for Complaints for Telecom-Television Services (CCTS), 2018-19, Mid-Year Report, online: <<https://pub.ccts-cprst.ca/2018-2019-mid-year-report/>>.

<sup>135</sup> Commission for Complaints for Telecom-Television Services (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.

internet complaints.<sup>136</sup> The CCTS Annual Report 2014-15, reported 2,203 complaints related to billing out of 5,045 internet complaints.<sup>137</sup>

PIAC's stakeholder consultation also showed that billing issues remain one of the major consumer concerns. ABC communications stated that billing issues often give rise to complaints, usually arising because of excess data usage; and when cheaper rates end.<sup>138</sup> It noted that watching videos, streaming and downloading games can cause a lot of data usage, where a family can easily push a Terabyte.<sup>139</sup> Their company offers some useful tips on their website, in this regard- such as not streaming at ultra HD, though, they currently do not provide any alerts.<sup>140</sup> Consumer Protection BC, and the province of Nova Scotia also pointed to billing issues giving rise to complaints.<sup>141</sup> Consumers Council of Canada also listed billing disagreements as one of the consumer concerns.<sup>142</sup>

Manitoba Branch of the Consumers' Association of Canada, with contributions from Public Interest Law Centre of Legal Aid Manitoba (CAC Manitoba and PILC), mentioned that unexpected charges on bills remained one of the major issues complained about. CAC Manitoba and PILC noted that the kind of unexpected costs found to arise include; rate increases; data caps and end-of-month offers to increase data (noting that Manitobans are not used to having data limits to begin with, and are often surprised at offers to "add more data" for one month, or to increase their monthly data, both at an additional cost); unpredictable end of "special offers" (noted to be a concern because consumers are never given written dates on which a "special" price will end and they will go forward to regular pricing and sometimes, the regular pricing will have increased by then) and other related issues.<sup>143</sup>

Another concern raised in relation to these bills is that they remain difficult to understand. Deaf Wireless Canada, during PIAC's consultation, mentioned that the consumers with special needs, often find it hard to understand these bills.<sup>144</sup>

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<sup>136</sup> Commission for Complaints for Telecom-Television Services (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.

<sup>137</sup> Commission for Complaints for Telecom-Television Services (CCTS), 2014-15, Annual Report, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2014-2015.pdf> at p.10.

<sup>138</sup> PIAC's Stakeholder Consultation with ABC Communications, (March 20, 2019).

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> PIAC's Stakeholder Consultation with Consumer Protection BC, (March 19, 2019) and PIAC's Stakeholder Consultation with the province of Nova Scotia, (March 13, 2019).

<sup>142</sup> PIAC's Stakeholder Consultation with Consumers Council of Canada, (March 8, 2019).

<sup>143</sup> PIAC's Stakeholder Consultation with Manitoba Branch of the Consumers' Association of Canada, with contributions from Public Interest Law Centre of Legal Aid Manitoba (dated March 25, 2019).

<sup>144</sup> PIAC's Stakeholder Consultation with Deaf Wireless Canada (March 15, 2019).

## Exceeding Data caps and Incurring Overage Fees

As noted earlier, we came across evidence of the importance of data, its increased demand and use during our focus groups; and some consumer interventions submitted to the CRTC. They emphasized on its importance; and raised concerns regarding the data limits that are not always easy to follow and track, and overages. One intervenor from Ontario, commented:

My comment is, if the internet providers are going to impose a data limit (cap) on my internet, which I completely DISAGREE with, they should have to shutdown the internet at that limit (cap). All this \$50 over the limit stuff is a complete money grab!!!

I have to use the cell based hub internet, because of where I live, and they keep telling me that they can't turn it off at our limit, but has no issues shutting it down at \$50 over the limit.

I really need unlimited internet, we are a family of 6, with 4 school aged kids, and have 2 separate modems that give us 200GB total and we are constantly going over our limit.

The other issue I have is that their data trackers are 4 to 12 hours out of date! This makes it next to impossible for us to use all of our data, which we paid for, without going over! [...]<sup>145</sup>

Another intervenor, Wilson, Murray stated:

I think Internet service providers should have to specify the exact amount of bandwidth you are allowed to use without breaking their terms of service for an unlimited plan. I was told I was uploading too much and would have my Internet cut off, yet I pay for an unlimited package. When I asked how much I can use or what is fair, they would only tell me use less [.] And would not give me a number. I think that if you are impeding on other peoples [.] Internet with your usage in breaking their terms of service they must provide proof and give you a number of how much you are were allowed to use. I believe they are over selling the Internet to networks instead of upgrading their infrastructure. The future of the Internet is going to require a lot more upload and download with IP cameras away home monitoring systems video game streaming And cloud back up's. If it's not really unlimited then we need to be given a number not be threatened and told use less and not be told how much less.<sup>146</sup>

An intervenor, Ebing, Jenika from BC, stated:

[...] I believe that with the increase of streaming services and internet usage, that internet data caps should be removed on internet plans for the prices that they charge, as well as providing clearer messaging in advertisements that indicate the actual price and contract obligations of plans (not just offering the sale price, then doubling it after one year and holding you on a contract). Breaking down the contract with easier language will allow consumers the opportunity to review what is being signed and make an informed decision. Making sure the CRTC favours consumers is important, as the loss of competition is substantial in the Canadian media economy, and the

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<sup>145</sup> Intervention 94, Telecom Notice of Consultation CRTC 2018-422- Call for comments – Proceeding to establish a mandatory code for Internet services (TNC CRTC, 2018-422) [Bastedo, Jason].

<sup>146</sup> Intervention 58 (TNC CRTC, 2018-422).

Commission needs to make concerted efforts in protect Canadian citizens and their rising cost of living.<sup>147</sup>

Likewise, our focus group participants also cited concerns regarding their data usage and exceeding limits, and/or not being aware of the applicable limits, and getting charged for it. For example:

**A: Up until a few months ago I had limited, but I went a tiny but over one month hey charged me so much extra that I switched to unlimited**

M: So how much extra did you get charged or how did that happen? [Comment by moderator]

**A: It was almost double for the month, but I used maybe like 5% over, maybe a few gigs, but I was charged...**<sup>148</sup>

M: But have you ever had any problems with your monthly data cap, like have you ever thought you had an unlimited data account but had a cap or that the cap was lower than you thought it was? [Comment by moderator]

**P: Definitely, at first that's what I thought, I didn't know exactly what it is. And so, I was streaming lots of sports and video, nothing eats into your usage faster than video, so... I found a website that I could watch any football game, no matter what and any wrestling match, any basketball, any hockey, anything sports related and**

M: You were like a kid in a candy shop [Comment by moderator]

That said, some focus group participants said that they monitor their usage limits, and knew how and where to find information regarding data usage.

P: Honestly I was having a great time until I got the bill and it was like okay, now I understand... but you have to learn<sup>149</sup>

“M: Where does that banner appear on your laptop? [Comment by the moderator]

**A: If this is your screen, it's just a little thing at the top and there's a link, if you click it, at least if its Rogers, then you get to this meter sowing how much is left**

**K: I've got emails from Rogers saying, like 'after 75% you're getting close'**

**MO: Sometimes you don't get those, so it's better to just check on your own to make sure [.]”<sup>150</sup>**

## Main Observations –Inclusion in the Internet Code

Billing issues remain a common concern for consumers; reported as the most complained about issue in the CCTS's reports. Not surprisingly, they were often cited as a concern during our stakeholder consultation. Many consumer intervenors and focus group participants expressed support for introducing regulatory measures to address billing issues.

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<sup>147</sup> Intervention 51 (TNC CRTC, 2018-422).

<sup>148</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>149</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>150</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

We believe that the billing problems regarding home Internet access could be addressed by introducing cogent and transparent rules in a code, like those adopted in the Australian telecommunications consumer protection code.<sup>151</sup> These not only provide rules relating to the information about charging bills and payment processes, but also charging policies and rules, content of a bill, rules for the timing of a bill and for verifying changes.<sup>152</sup>

Based on the above, it is clear that 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. Inference can be drawn from international practices in this regard, see data usage notifications adopted in the Australian telecommunications consumer protection code.<sup>153</sup>

### 2.3.3 Contract Clarity Issues

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 was not always clear and neither were the terms of the promotional offers. Some participants cited concerns of being locked into long contracts, and/or the contract being automatically renewed. For example:

It was the auto-renewal that really got me, kind of riled me up because I wanted to terminate it, but then it renewed without me knowing, and I think it was just a question of days because I didn't know my billing cycle by heart. And that happened, and I had to stay for another extra two years or face penalties. So, I was...I'm going to stick with you guys just because I have to, and then, of course, you know, I make sure to know my date.<sup>154</sup>

Another participant shared an experience in relation to unclear contract terms for when the rental modem had to be paid for. See:

Well, I had it at one point when we had the old...we had this rinky-dink modem, and all of a sudden, it started billing us seven dollars. I call them, I go, "What's this seven dollars?" Oh, well, your period of contract is finished, so we're going to start billing you.<sup>155</sup>

Some consumer intervenors also expressed distress over the contract terms being changed without any clear notice. For instance:

The internet providers need to be honest to people when they sign up for something. When you make a change to your service(s) these companies should tell you if a services has changed from

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<sup>151</sup> Communications Alliance Ltd, "Industry Code Telecommunications Consumer Protections Code," (See section 5).

<sup>152</sup> *Ibid.*

<sup>153</sup> Communications Alliance Ltd, "Industry Code Telecommunications Consumer Protections Code," (See section 6.5.2).

<sup>154</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

<sup>155</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

how you know it as to a completely different name which may not reflect the change within it. For example: in 2012 I switched over to Bell for my internet and phone. At the time my phone landline was a regulated landline under CRTC. I didn't find out until this year that my current "home phone package" was changed when I added the internet. Never did the salesperson tell me that if I change this plan I would no longer have the residential line sometimes called access line. I don't know if I can get rid of Bell and switch back to the old way and find a cheaper internet. I would never have switched knowing what I now know. I fortunately have all the bills from Bell and could go back to see the change over.

Bell and the others should not be allowed to have a contract but in that contract the right to increase prices at whim. What good is that contract? If you negotiate for a price it should stay the same price till your contract ends, otherwise why have them in the first place. All these services are getting way out of hand that the average "joe" is being priced right out of the mark. [...].<sup>156</sup>

## Main Observations –Inclusion in the Internet Code

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 an appropriate means to do so. We believe that a code could mandate the rules regarding transparency; requiring the use of a clear, simple and plain language in contracts, which specifically, make it clear what is the applicable duration of a contract and limiting any intermittent changes to the duration and key terms of the Internet service contracts.

Overall, 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. Specifically, it notes that the CRTC should place an eventual ban on multi-year contract lock-ins for all communications services so that all customers would, eventually, be on month-to-month contracts and free to move to an alternative provider and/or service plan at any time.<sup>157</sup> Notably, some consumer intervenors shared issues with respect to switching providers.<sup>158</sup>

### 2.3.4 Cancellation issues

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, which were often found to be burdensome and affected consumers' decision and/or ability to switch service providers. For example:

We have found that the rates charged for internet service by Bell Canada, and penalties imposed for cancellation of their service is too high. Our Community Hall was on a 3 year contract with Bell for Internet service, and we found the fees of approximately \$56 per month to be too high. After approximately 1 year we asked to cancel. Bell said we would be charged approximately \$500 as a cancellation fee. This is an excessive charge. We protested more than once, and Bell was adamant

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<sup>156</sup> Intervention 28 (TNC CRTC, 2018-422) [Jeffreys, Lynne].

<sup>157</sup> PIAC, "Consumer Choice in telecommunications and broadcasting" (May 2019) [add publishing details].

<sup>158</sup> See Interventions 7, 17, 22, 54, 68 and 79 (TNC CRTC, 2018-422).

that we must pay that amount to cancel early. In the end, after much dispute, the fee was waived. However, our point is that such excessive charges should never be allowed.<sup>159</sup>

Another intervenor mentioned about the long-wait times to reach customer support for cancelling services, and coordinating for the required installation for the new connection.

It is pretty much impossible to cancel internet and switch providers as there are extremely long wait times to talk to customer service representatives as well as find a time where they can do a home installation for new internet.<sup>160</sup>

The focus group participants shared various concerns regarding cancellations. Some participants knew about the cancellation rules provided in the Wireless Code. 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.<sup>161</sup> Again, several participants expressed frustration at paying cancellation charges.

S: More like they force you to give 30 days' notice to cancel

M: Or they'll charge you for the whole...

S: Yeah like you have to, like if I wanted to cancel, they'll like this will start 30 days from the period and it's like I want to cancel now

M: You want to cancel NOW

S: Yeah, like I'm not under contract I don't know why I need to give 30 days to cancel, I think that's kind of BS. Because if I'm not happy why do I have to wait?[".]"<sup>162</sup>

There was a lot of things we really didn't know. The thing that most people were complaining about was the whole contract and the cancellation fees that were crazy, because they could charge you for every month of cancellation. And at one point, if you changed it, they made, like, a limit. And getting rid of it altogether is a good thing.<sup>163</sup>

## Main Observations –Inclusion in the Internet Code

Contract cancellations, particularly the early cancellation charges remain problematic and burdensome for consumers; as noted from their feedback. We believe an Internet code could be a useful regulatory measure for placing clear limits in this regard. One such measure could be placing caps on early cancellation fees; and also providing clear and accurate information to consumers that remains easy to access and read. We note that an Internet Code could be a useful and one stop, easy-to-access medium for consumers to address their issues regarding retail Internet access services, similar to the Wireless Code for wireless services.

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<sup>159</sup> Intervention 24 (TNC CRTC, 2018-422) [Fedorowich, John].

<sup>160</sup> Intervention 115 (TNC CRTC, 2018-422) [Calman, Shelby].

<sup>161</sup> See, PIAC Focus group 1 in Toronto, August 22, 2018.

<sup>162</sup> PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript).

<sup>163</sup> PIAC Focus group 2 in Montreal, August 23, 2018 (written transcript).

### 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

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. These complaints generally appeared to be in relation to billing issues. Participants were generally not aware of the CCTS. Some of them were interested in knowing about it; how it works, and how can they complain to it.

Some insight can be drawn from a report by Union des consommateurs, “Telecommunications and Customer Service” that reviewed the customer services in Canada and suggested some solutions to address the identified problems.<sup>164</sup> The report 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.<sup>165</sup>

It recommended, amidst other suggestions that the Commission should require the telecom providers to adopt customer service policies that are customer-centric and that cover various elements developed by the ISO (International Organization for Standardization in relation to customer satisfaction and complaint management) including: visibility; accessibility; responsiveness; objectivity; charges and confidentiality.<sup>166</sup> It also suggested including certain standardized elements, both technical and non-technical in these policies, defined by the Commission, covering matters such as; phone wait times for reaching customer service; response and resolution times for certain problems; reserving time for installations, repairs and other services, and delays; monetary compensation for consumers in the event of non-compliance with standardized and other elements; and to make these policies available online, at their website.<sup>167</sup>

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<sup>164</sup> Union des consommateurs, “Telecommunications and Customer Service” (June 2018), online: <<http://www.uniondesconsommateurs.ca/docu/rapports2018/2018-ServiceClient-Eng.pdf>>.

<sup>165</sup> Union des consommateurs, “Telecommunications and Customer Service” (June 2018) at p.49. The details of this organization are also noted on p.34 of the cited report.

<sup>166</sup> Union des consommateurs, “Telecommunications and Customer Service” (June 2018) at p.53-54.

<sup>167</sup> *Ibid.*

## 2.5 Complaint Handling Processes- CCTS

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 complaints accepted.<sup>168</sup> However, as noted, our focus group participants in general appeared to be unaware of the CCTS. Likewise, the CRTC's report on misleading or aggressive communications retail sales practices, also found gaps in the awareness and effectiveness of existing consumer protections (notably, that the CCTS is not well-known by Canadians).<sup>169</sup> It is evident that more awareness initiatives are needed in this respect.

It is important that when an Internet Code is implemented, it is accompanied with an extensive and regular public outreach plan to ensure that more users are aware of it and able to enforce their rights under this code; with consumer-friendly publications and guides, available in paper, digital and other formats as required for those with special and/or accessibility needs.

## 2.6 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.

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<sup>168</sup> Commission for Complaints for Telecom-Television Services (CCTS), 2018-19, Mid-Year Report, online: <<https://pub.ccts-cprst.ca/2018-2019-mid-year-report/>>; and may also refer to Shruti Shekar, "[Update] CCTS mid-year report shows 44 percent year-over-year increase in telecom complaints," MobilesSyrup (2 April 2019), online: <<https://mobilesyrup.com/2019/04/02/ccts-mid-year-report-2018-2019/>>; and

The Canadian Press, "Billing mistakes and misleading contracts biggest beefs about Canada's phone, internet and TV services," *Ottawa Citizen* (2 April 2019), online: <<https://ottawacitizen.com/telecom/mistakes-on-mobile-internet-and-tv-bills-is-no-1-issue-on-tally-by-ombudsman/wcm/4aad406a-62f3-4974-8c90-bc16ec1dc89d>>.

<sup>169</sup>CRTC, "Report on Misleading or Aggressive Communications Retail Sales Practices," online: <[https://crtc.gc.ca/eng/publications/reports/2018\\_246/](https://crtc.gc.ca/eng/publications/reports/2018_246/)>.

## 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.<sup>170</sup> 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

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<sup>170</sup> 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.

matters, as the CRTC has in the past been reticent to impose obligations on resellers it would otherwise impose on those companies with physical facilities.<sup>171</sup>

The CRTC's major powers under the Act include:

- imposing conditions on Canadian carriers offering and provision of telecommunications service (s. 24);
- requiring “Canadian carriers” to file tariffs (lists of maximum/minimum prices for service) (s. 25);
- requiring Canadian carriers to charge “just and reasonable” rates (subs. 27(1));
- requiring Canadian carriers not to unjustly discriminate between customers, competitors or itself (subs. 27(2));
- approving all agreements made by Canadian carriers with “telecommunications common carriers” (s. 29) and approving any limits of liability proposed by Canadian carriers for carriage of telecommunications (s. 31);
- requiring Canadian carriers to file service information with the Commission (s. 37);
- requiring Canadian carriers to interconnect their telecommunications systems with any other telecommunications systems (s. 40).

As noted above, however, 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,<sup>172</sup> 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;<sup>173</sup>
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.<sup>174</sup>

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<sup>171</sup> 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, which reads:

*Conditions of service — person other than Canadian carrier*

24.1 The offering and provision of any telecommunications service by any person other than a Canadian carrier are subject to any conditions imposed by the Commission, including those relating to

- (a) service terms and conditions in contracts with users of telecommunications services;
- (b) protection of the privacy of those users;
- (c) access to emergency services; and
- (d) access to telecommunications services by persons with disabilities.

<sup>172</sup> Namely, sections 24, 25, 27, 29 and 31, wholly or in part and, if desired, upon certain conditions being met.

<sup>173</sup> See subs. 34(1).

<sup>174</sup> See subs. 34(2).

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,<sup>175</sup> 1998,<sup>176</sup> and 1999,<sup>177</sup> 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)).

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.<sup>178</sup> Probably the same finding could not be made now.

As demonstrated in the most recent CRTC Communications Monitoring Report,<sup>179</sup> even adding in Xplornet as an “independent ISP” (which 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

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<sup>175</sup> See Telecom Order CRTC 97-471. Effectively, this is the decision forbearing from “telcos” regulation on offering Internet access service.

<sup>176</sup> 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.

<sup>177</sup> 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.

<sup>178</sup> See CMCRP, “Media and Internet Concentration in Canada, 1984 – 2017”, heading: “Internet Access”, pp. 41-44. Online: <http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984-2017-01112019.pdf>

<sup>179</sup> CRTC, Communications Monitoring Report, 2018, at p. 111. Online: <https://crtc.gc.ca/pubs/cm2018-en.pdf>

of facilities-based carrier),<sup>180</sup> the new category of “independent ISPs” have only 12-13% of the ISP market based either on subscribers or revenues.<sup>181</sup>

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%.<sup>182</sup>

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 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

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<sup>180</sup> 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 practice<sup>27</sup> 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”.

<sup>181</sup> *Ibid.*, at p. 43.

<sup>182</sup> *Ibid.*, at pp. 42-43.

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 2017)<sup>183</sup> 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)<sup>184</sup> 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)<sup>185</sup>). 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 that all Canadians should receive speeds of 50 Mbps download and 10 Mbps upload, and, as part of that framework decision, implemented certain consumer disclosure and reporting requirements on ISPs. These are described in the policy decision:

235. Accordingly, the Commission expects all ISPs that provide retail fixed broadband Internet access services to individual and small business customers to do the following, within six months of the date of this decision:

- ensure that contracts and related documents clearly explain, in plain language, (i) the services included in the contract; (ii) any limits on the use of those services that could trigger overage charges; (iii) the minimum monthly charge for services included in the contract; (iv) where customers can find information on rates for overage charges; and (v) whether or not there is a maximum data overage charge that might be incurred in a monthly billing cycle, and if so, the amount of that maximum charge;
- provide account management tools that enable customers to monitor their data usage; and
- provide plain-language information on the data usage associated with common online activities.

236. The above-noted information and tools should also be accessible to customers with disabilities.

[...]

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<sup>183</sup> Online: <https://crtc.gc.ca/eng/archive/2007/dt2007-130.htm>

<sup>184</sup> Online: <https://crtc.gc.ca/eng/archive/2016/2016-102.htm>

<sup>185</sup> Online: <https://crtc.gc.ca/eng/archive/2014/2014-576.htm>

238. If consumers were notified of alternative broadband Internet access service plan options that may better suit their needs when they incur data overage charges, they would be empowered to better manage their bills and to avoid bill shock. The availability of usage monitoring tools and data overage notifications would provide consumers with cost certainty and would empower consumers to make better-informed choices.

239. Accordingly, the Commission directs all ISPs that offer retail fixed broadband Internet access services, within six months of the date of this decision, to notify residential and small business customers who have incurred overage charges of where they can find information about (i) the account management tools the ISP offers, (ii) the data usage associated with common online activities, and (iii) alternative plans that may better suit the customer's needs. Customers should be able to opt out of these notifications at any time. Such notifications must be provided each month in which a customer incurs data overage charges, unless the customer opts out of receiving such notifications.

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.

## 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,<sup>186</sup> with the final submissions due in April 2019.<sup>187</sup> This section reviews the Commission’s proposed “Internet Code Working Document” (also referred as the Code or the draft Internet Code).<sup>188</sup> We draw comparisons with the Wireless Code, where applicable.<sup>189</sup> 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.”<sup>190</sup> 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.<sup>191</sup>

The first objective outlined above 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 is 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.

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<sup>186</sup> 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>>.

<sup>187</sup> 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.

<sup>188</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, Internet Code Working Document.

<sup>189</sup> Telecom Regulatory Policy CRTC 2017-200, Review of the Wireless Code; and reference made to Telecom Regulatory Policy CRTC 2013-271, The Wireless Code.

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

### Consumer- friendly business practices:

In the absence of a clear meaning for this phrase, one is left to infer its meaning from the context. In order to gain some clarity regarding its meaning and scope, we refer to the Coalition's intervention (PIAC,<sup>192</sup> CAC,<sup>193</sup> COSCO<sup>194</sup> and NPF<sup>195</sup>) regarding the Review of the Wireless Code (Telecom Notice of Consultation CRTC 2016-293), where it identified a similar gap concerning the objectives of the Wireless Code, and proposed the following business practices as “consumer-unfriendly”:

- customers face barriers to switching other than those which the Commission has previously approved;
- customers are penalized financially or otherwise for choosing to spend less money
- customers are penalized financially or otherwise for choosing to change their service selections
- customers are penalized financially or otherwise for switching service providers
- when the customer switches service provider, the former service provider does not refund money that customers believe the service provider has not earned
- service providers sharing information about the customer or the customer's use of the service without the customer's informed consent.
- service providers overload the customer with so much information as to make comprehension unlikely and informed consent impossible
- service providers bother the customer with phone calls and other communications when the customer is not interested.
- unsubscribing from any given messaging is difficult, subject to delay, is complex, slow, and difficult for the consumer to use.
- service providers charge for a service that is not, and cannot be, provided following cancellation
- service providers violate the spirit of the Commission's rulings, despite technical compliance
- advertising falsely or misleadingly, including in respect of key features, such as data speeds, or relative performance comparisons.
- metering service usage inaccurately; false billing
- customer service practices that require the customer to wait lengthy periods, contact multiple persons, make different phone calls, incur usage charges, and otherwise eat into a customer's time and money to obtain service or address enquiries or concerns
- service providers allow non-account holders to make decisions affecting the account; and
- any marketing or billing schemes which are designed to or having the effect of violating the spirit of the Commission's various efforts to protect consumers and give them some form of protection in the face of the absence of bargaining power; and
- crucially, any business practice whereby the customer reasonably believes they have not been treated fairly or have been treated abusively.<sup>196</sup> [footnotes within this text omitted].

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<sup>192</sup> Public Interest Advocacy Centre, a non-profit organization and registered charity; online: <<https://www.piac.ca/>>.

<sup>193</sup> Consumers Association of Canada, online: <<http://www.consumer.ca/>>.

<sup>194</sup> Council of Senior Citizens' Organization of BC, online: <<http://www.coscobc.org/>>.

<sup>195</sup> National Pensioners Federation, online: <<https://nationalpensionersfederation.ca/>>.

<sup>196</sup> Telecom Notice of Consultation CRTC 2016-293 – Review of the Wireless Code, The Coalition's Intervention (3 October 2016) at p. 13-14. As noted above, the Coalition consists of PIAC, CAC, COSCO and NPF. [This can be accessed from the CRTC's website].

We believe that these business practices remain relevant for the Internet services market as well; and should be considered for clarifying the scope of the Internet Code’s second objective. In our view this Code should indicate what practices are consumer-friendly and what are not; and/or at the very least clearly mention that this objective seeks to protect consumer interests and restrict those business practices that harm consumer interests.

### “Dynamic Internet Market”

We believe it would be apt to apply the Coalition’s analysis of a “dynamic market,” as a “[m]arket where transparent offerings and low switching costs allow customers to obtain services from the provider that best fits their needs [based on the Commission’s policy observations];<sup>197</sup> for an Internet Code’s objective because of the similar nature of services.

To sum up, we view this market as one that empowers consumers, with greater competition, more choice, improved services and reduced barriers to switching. Moreover, the Commission indicated in the Telecom Notice of Consultation CRTC 2018-422 that it is of the preliminary view that it is necessary to establish a mandatory code to address contract contracts and related issues – including contract clarity, bill shock, and barriers to switching service providers [Emphasis added] – for retail fixed Internet access services [...].<sup>198</sup>

### 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).<sup>199</sup> Also, it is meant to be applicable in all provinces and territories, regardless of the status and business models of the service provider, whether purchased on a stand-alone basis or as part of a bundle, and whether purchased in person, online, or over the phone.<sup>200</sup>

The Commission seems to justify the Code’s application to only the large ISPs on the basis that 87% of Canadians with Internet services purchase their retail Internet subscriptions from a traditional telephone or cable company; thus, limiting the initial application of the Code would strike an appropriate balance between addressing consumer concerns and not placing a heavy regulatory burden on smaller carriers or resellers.<sup>201</sup> In the future, the ambit of its application might change as the Commission notes that it could potentially be extended to additional service providers after future policy reviews.<sup>202</sup>

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<sup>197</sup> Telecom Notice of Consultation CRTC 2016-293 – Review of the Wireless Code, The Coalition’s Intervention (3 October 2016) at p.14-17.

<sup>198</sup> Telecom Notice of Consultation CRTC 2018-422. Also see its introduction.

<sup>199</sup> TNC CRTC 2018-422, also see its Appendix 1 and footnote 4 on who is included in the large facilities-based ISPs.

<sup>200</sup> *Ibid.*

<sup>201</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422. Also, see its Appendix 2.

<sup>202</sup> *Ibid.*

Some Internet service providers, have argued against the Code’s application to merely large ISPs; asserting that no valid basis exists for restricting its application, rather, it should apply to all Internet service providers.<sup>203</sup> For instance, Bell in its intervention to the CRTC argued that limiting this Code’s initial application does not strike an appropriate balance between addressing consumer concerns and the regulatory burden on smaller carriers or resellers; and would also not be in accordance with the Policy Direction which requires the Commission to implement non-economic regulatory measures (like industry codes) in as symmetrical and competitively neutral manner as possible.<sup>204</sup>

Similarly, the Commission for Complaints for Telecom- Television Services (CCTS) indicated in its intervention to the Commission (CRTC) that its most recent data shows that customers complain about all types of Internet services providers, not just the large-facilities based Internet service providers.<sup>205</sup> The CCTS argued for broadening the scope of the Internet Code, beyond the large ISPs, to enable more Canadians to have access to its consumer protections, and to simplify the administration process for the CCTS; otherwise it would be applying different standards to some Internet service providers.<sup>206</sup> We heard similar arguments during PIAC’s consultation, with quite a few stakeholders supporting the application of this Code to all Internet service providers; generally advancing support for standard rules and practices.<sup>207</sup> By contrast, several small service-providers generally, pointed to large ISPs being the primary cause of consumer complaints,<sup>208</sup> or that such an application will not be efficient and proportionate to its purpose,<sup>209</sup> and/or cause excessive economic and/or administrative burdens;<sup>210</sup> as major reasons for being exempted from the Code.

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<sup>203</sup> See; Rogers, Final Comments to the Telecom Notice of Consultation CRTC 2018-422- Proceeding to establish a mandatory code for Internet services (April 23, 2019); Final Submission of Bell Canada, “Telecom Notice Of Consultation CRTC 2018-422 – Call For Comments – Proceeding To Establish A Mandatory Code For Internet Services” (23 April 2019); and TELUS Communications Inc., Telecom Notice of Consultation CRTC 2018-422- Proceeding to establish a mandatory code for Internet services, Final Submissions of TELUS (April 23, 2019).

<sup>204</sup> Bell Canada, Telecom Notice of Consultation CRTC 2018-422 – Call for Comments – Proceeding to establish a mandatory code for Internet Services, Intervention of Bell Canada (19 December 2018) at p.7.

<sup>205</sup> 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.11-13.

<sup>206</sup> *Ibid.*

<sup>207</sup> PIAC’s Stakeholder Consultation, Consumers Council of Canada, dated March 8, 2019; PIAC’s Stakeholder Consultation, Deaf Wireless Canada, dated March 15, 2019; and consultation with Manitoba Branch of the Consumers’ Association of Canada, with contributions from Public Interest Law Centre of Legal Aid Manitoba, dated March 25, 2019.

<sup>208</sup> TNC CRTC 2018-422, Intervention of Canadian Network Operators Consortium [CNOC] (19 December 2018) at p. 3, 5-6; and TNC CRTC 2018-422, [Intervention] of the Canadian Communication Systems Alliance (CCSA) (19 December, 2018).

<sup>209</sup> TNC CRTC 2018-422, Reply of CNOC (28 January 2019) at p.3.

<sup>210</sup> See TNC CRTC 2018-422, ITPA Reply Comments (Independent Telecommunications Providers Association) dated 28 January 2019; and TNC CRTC 2018-422, TekSavvy, Reply to call for comments. It stated: “TekSavvy’s intervention in this proceeding supported the Commission’s preliminary view that the application of the Internet Code extend only to “large facilities-based ISP’s in all regions of Canada”. As noted by the Commission, application of the Internet Code to smaller carriers and resellers would impose a heavy regulatory burden on these types of

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; 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.<sup>211</sup> It applies to all wireless contracts as of June 3, 2015.<sup>212</sup> 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 it is not initially made applicable to all ISPs, 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

The CRTC's draft Internet Code mirrors many of the provisions of the Wireless Code. See below for a brief overview of the major differences found:

#### A. Clarity

Like the Wireless Code, after the interpretation provisions, the draft Internet Code begins by addressing clarity of contracts. There are two additional provisions added in this Code:

##### 4. [U]nsolicited services

- i. A service provider must not charge for any device or service that the account holder or authorized user has not expressly purchased.

##### 5. Clarity of offers

- **Option 1:** A service provider must ensure that any offers made to consumers are clearly explained in all communications with consumers, including during telephone calls and door-to-door sales as well as in its promotional material. The explanation of an offer must clearly state the following:
  - a. the duration of the offer;
  - b. in the case of an offer that includes a time-limited discount or other incentive, the price of the service at the end of the time-limited discount or incentive;
  - c. any associated obligations on a consumer in relation to accepting the offer, including the commitment period during which an early cancellation fee can be applied and whether accepting the promotional offer changes other aspects of the customer's contract.

AND/OR

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service providers. In particular, TekSavvy noted that some of the proposed Internet Code requirements are not reflective of the economic realities faced by wholesale-based competitors.” This was reiterated in its final comments.

<sup>211</sup> See Telecom Regulatory Policy CRTC 2017-200, online: <<https://crtc.gc.ca/eng/archive/2017/2017-200.htm>>.

<sup>212</sup> Wireless Code Public Opinion Research 2018, prepared for the Canadian Radio-television and Telecommunications Commission, (Report date- March 1, 2018, produced by Kantar TNS).

- **Option 2:** A service provider must provide a customer with a written pre-sale Critical Information Summary within 24 hours of making a specific offer to a consumer in person, over the phone, or online. See section C of this Appendix (Critical Information Summary) for more information on what a Critical Information Summary must contain and how and when it must be provided.<sup>213</sup>

These provisions do not prohibit promotional pricing, but instead specifically, state that such promotional offers must be clearly identified throughout a sales interaction. As seen above, the draft Internet Code also provides two options for service providers in order to meet the clarity of offers provisions. 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 this Code that addresses cancellation periods when the terms and conditions of the contract conflict with the terms and conditions to which the customer agreed.

### **3. [C]ancellation period when the permanent contract conflicts with the customer's agreement**

- i. If a service provider fails to provide the contract within the required time frame, or if the terms and conditions of the permanent copy of the contract conflict with the terms and conditions that the customer agreed to, the customer may, within 30 calendar days of receiving the permanent copy of the contract, cancel the contract without paying an early cancellation fee or any other penalty.<sup>214</sup>

The key contract terms and conditions listed under this section in the draft Internet Code also require full disclosure and explanation of any time-limited discount or promotion, as well as if there is an installation fee or related charges.<sup>215</sup>

## **C. Critical Information Summary**

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

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<sup>213</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, A.4 and A.5.

<sup>214</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, B.

<sup>215</sup> *Ibid.*

## D. Changes to Contracts and Related Documents

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.<sup>216</sup>

## E. Bill Management

The following provisions under bill management in the draft Internet Code differ from the Wireless Code.

### 1. Notification – Usage limit

- i. A service provider must notify a customer once they reach 100% of their usage limit within a single monthly billing cycle.

### 2. Data monitoring tools

- i. A service provider must offer tools to help a customer monitor and manage their data use and any additional fees incurred during a monthly billing cycle. A service provider is responsible to ensure that such tools are accessible to customers with disabilities.
- ii. A service provider must offer plain-language information on the data usage associated with common online activities. Such information must be made available in accessible formats for people with disabilities.

### 3. Notification – Data overage charges

- **Option 1:** A service provider must notify a customer who has incurred overage charges of where they can find information about (i) the account management tools the service provider offers, (ii) the data usage associated with common online activities, and (iii) alternative plans that may better suit the customer's needs. Customers may opt out of these notifications at any time. Such notifications must be provided each month in which a customer incurs data overage charges, unless the customer opts out of receiving such notifications.

*Note: This approach is consistent with the expectations set out in [Telecom Regulatory Policy 2016-496](#).*

AND/OR

- **Option 2:** A service provider must notify a customer once they reach \$X (e.g. \$0, \$50, \$100) in data overage charges in a single monthly billing cycle. This notification must give the customer the ability to suspend additional data overage charges during this billing cycle. Customers may opt out of these notifications at any time.<sup>217</sup>

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<sup>216</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, D.

<sup>217</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, E.

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).<sup>218</sup>

## **F. Equipment Issues**

This section does not exist in the Wireless Code and is unique to the draft Internet Code.

### **1. Service calls, including visits to residences for installation and repairs**

- i. A service provider must provide a customer with a time frame for when a service call to a residence will begin.
- ii. Before any service call to a residence, a service provider must specify the potential charges associated with the service call, including any minimum charge, if applicable.
- iii. Before any service call to a residence, a service provider must explain to a customer how both the service provider and the customer may cancel or reschedule the appointment, including any associated charges.

### **2. Service outages**

- i. A service provider must explain in its contract and related documents its policy for service outages and how rebates will be applied.<sup>219</sup>

## **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.<sup>220</sup> The provision from the draft Internet Code is stated below.

### **1. Early cancellation fees – General**

- i. If a customer cancels a contract before the end of the commitment period, the service provider must not charge the customer any fee or penalty other than the early cancellation fee. This fee must be calculated in the manner set out below.
  - a. For fixed-term contracts, the early cancellation fee must not exceed the lesser of \$50 or 10% of the minimum monthly charge for the remaining months of the contract, up to a maximum of 24 months. The early cancellation fee must be reduced to \$0 by the end of the commitment period.
  - b. For indeterminate contracts, a service provider must not charge an early cancellation fee.
  - c. When calculating the time remaining in a contract to determine the early cancellation fee, a month that has partially elapsed at the time of cancellation is considered a month completely elapsed.<sup>221</sup>

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<sup>218</sup> *Ibid.*

<sup>219</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422

<sup>220</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.1.

<sup>221</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.1.

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.<sup>222</sup> 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.<sup>223</sup> 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.<sup>224</sup> The provision is below:

#### **4. Refunds for prepaid services not provided following cancellation**

*Note: This rule is set out in Telecom Decision [2016-171](#).*

- i. A service provider must not charge for a service that is not, and cannot be, provided following cancellation.
- ii. All service providers must provide refunds for Internet services following cancellation of such services when some or all of the monthly service fees are billed in advance. The refunds must be pro-rated, based on the number of days left in the last monthly billing cycle after cancellation.<sup>225</sup>

As seen below, 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.

#### **5. Contract extension**

- i. To ensure that customers are not disconnected at the end of the commitment period, a service provider may extend a contract, with the same rates, terms, and conditions, on a month-to-month basis.

*Note: While contracts that automatically renew on a month-to-month basis qualify as new contracts for the purposes of the Code, service providers are not required to provide a new permanent copy of the contract each time a contract renews automatically with the same rates, terms, and conditions. [...]*<sup>226</sup>

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<sup>222</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.2.

<sup>223</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.2.

<sup>224</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, G.4 and G.5.

<sup>225</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422

<sup>226</sup> TNC 2018-422, Appendix 1 to Telecom Notice of Consultation CRTC 2018-422

#### d. Major Differences Between the draft Internet Code and Wireless Code

While there are subtle differences between the draft Internet Code and the existing Wireless Code, we will briefly highlight some major differences and new themes which have emerged.

##### 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.<sup>227</sup> The Wireless Code however, does not permit promotional pricing of “key terms”, unlike the Internet Code.<sup>228</sup> 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 and the terms agreed to, or when the contract is not provided in the required time frame; this cancellation can be done 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.

Section C, “Critical Information Summary,” subsection 1 “General,” proposes a pre-sale plain-language summary for customers. This provision is also a positive change, as it would give customers time to review the offer in writing before agreeing to purchase the service. However, as there are currently two options written into the CRTC’s draft Internet Code, one could surmise that service providers would select the option which only requires customer service representatives to

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<sup>227</sup> Appendix 1, TNC 2018-422, section A, A.5(c) and B.4(i)(b).

<sup>228</sup> Appendix 1 to Telecom Regulatory Policy CRTC 2017-200, A, B.1 (Key contract terms and conditions).

provide a Critical Information Summary when giving a customer a permanent copy of the contract. We consider more specific recommendations and potential gaps in the draft Internet Code below (see part g).

#### e. Overall Scope

The following issues are addressed as “within the scope” of the CRTC’s draft Internet Code:<sup>229</sup>

- **clarity:** plain language, prices, unlimited services, unsolicited services, clarity of offers;
- **contracts and related documents:** how and when contracts and related documents must be provided, including accessible formats for people with disabilities, distance contracts, information that contracts must include (i.e. key contract terms and other contract terms);
- **Critical Information Summary (CIS):** how and when the CIS must be provided, including accessible formats for people with disabilities, content of the CIS;
- **changes to contracts and related documents:** how and when key contract terms may be changed, how and when other contract terms may be changed;
- **bill management tools:** notifications when monthly usage limits are reached, data use monitoring tools;
- **equipment issues:** service calls (including visits to residences for installation and repairs), service outages, warranties;
- **contract cancellation and extension:** early cancellation fees, trial periods, cancellation date (30-day cancellation policy), contract extension (including automatic contract renewal);
- **security deposits:** requesting, reviewing, and returning a security deposit;
- **disconnection:** when disconnection may occur, notice before disconnection, disputing disconnection charges; and
- **other issues** that may be appropriate to respond to consumer concerns regarding contracts for Internet services, excluding issues that are out of the scope of this proceeding (see paragraph 45).<sup>230</sup>

As can be observed from the above, the Commission’s draft Internet Code covers contract clarity and how contracts must be provisioned, changes to contracts and related documents, bill

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<sup>229</sup> CRTC, TNC, 2018-422 [Introduction]

<sup>230</sup> The issues outside the scope of CRTC, TNC, 2018-422 [Paragraph 45] include:

- content on the Internet;
- rates and competitiveness of the marketplace;
- wholesale issues, including the imposition of new regulatory requirements on wholesale providers;
- device and equipment standards;
- broadband measurement and advertised speeds;
- broadband funding decisions;
- Internet traffic management practices (ITMPs) and differential pricing (e.g. zero-rating);
- false advertising;
- privacy obligations of service providers under the Personal Information Protection and Electronic Documents Act (PIPEDA);
- network infrastructure issues;
- participation in the CCTS;
- changes to other Commission consumer codes; and
- the Commission’s enforcement role and its power to impose administrative monetary penalties (AMPs) on telecommunications service providers for violations of the Act or of any decisions or regulations the Commission makes pursuant to the Act.

management tools, contract cancellation and extension. Whereas, it clearly excludes some issues, including, broadband measurement and advertised speeds, false advertising; contending that the latter are addressed by other regulatory mechanisms.

Our research indicates that many of these excluded issues remain common consumer concerns, often cited as a reason for customer dissatisfaction and/or for raising complaints.<sup>231</sup> 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 measurement and advertised speeds, and false advertising should be included, in addition with other measures. Our suggestion is based on what we heard during the focus groups, read in the consumer interventions and came across in our secondary research. We submit that removing some of these issues from the Code (as the current draft Code does) would leave consumers with no easily accessible means of redress, and at the same time, this will affect the Code's ability to achieve its key objectives particularly, to make it easier for individual customers to obtain and understand the information in their contracts, (that would lack disclosure regarding Internet speed); and establish consumer-friendly business practices for the industry, if and as interpreted to mean protecting consumer interests.

### **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.<sup>232</sup> Aptly noting that although there are technical factors affecting the home Internet performance, very little information is provided to consumers by Canadian ISPs about these factors and their effect on the

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<sup>231</sup> See chapter 2 of this report, and the focus group discussions and consumer interventions submitted to the CRTC during its proceeding to create a mandatory code for Internet services- TNC CRTC 2018-422.

<sup>232</sup> Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.4, 43.

achievability of the advertised "up to" speed claim.<sup>233</sup> This is often included in "fine print", with no accompanying explanation on how consumers can check their actual speeds.<sup>234</sup>

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; requiring the service providers to include these details in simple, and plain words in the user contracts, whilst ensuring that this information remains easily noticeable, clear and comprehensive with any and all advertisements.

The CCTS in its intervention to the CRTC, indicated that issues regarding the delivery of Internet service increased by 77 per cent in 2018.<sup>235</sup> It also noted that issues related to the loss of Internet service increased by over 83 per cent compared to last year, and raised more often than any other issue.<sup>236</sup> More specifically, it observed that various factors contributed to intermittent and complete loss of service issues that translated into slow speeds [such as]:

[i]nefficient temporary towers; congestion during peak hours; improper installation; faulty equipment; timeouts; one Internet service provider buying out another provider's customers, thereby generating more congestion; traffic management policy restrictions; technology not accommodating a customer's needs (e.g., higher speeds required for gaming); and service throttling allegations.<sup>237</sup>

The CCTS noted that while non-disclosure, generally speaking, is a major consumer irritant across all services, for Internet service it is not the top irritant, which is service delivery issues.<sup>238</sup> It suggests addressing this with the Commission to consider whether ISPs should be required to disclose certain information about service delivery, for example, broadband speeds, the limits or conditions that may affect speed, and any limitations on service quality.<sup>239</sup>

We suggest that the Code should mandate clear disclosure requirements and standards on the Internet speed, and Internet speed advertising, among other issues. If not, then the Commission should consider having a separate regime for regulating broadband speed matters. Likewise,

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<sup>233</sup> *Ibid.*

<sup>234</sup> Meshadiyeva & Lo, "Transparency in Broadband Advertising to Canadian Consumers" (2013) PIAC, at p.4, 43; also 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).

<sup>235</sup> Commission for Complaints for Telecom-Television services [CCTS], "Commission file 1011-NOC2018-0422-Telecom Notice of Consultation CRTC 2018-422, Call for comments — Proceeding to establish a mandatory code for Internet services- Intervention of CCTS- (19 December 2018) at p.5. [CCTS, TNC 2018-422, Intervention]

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*

<sup>238</sup> CCTS, TNC 2018-422, Intervention at p.10.

<sup>239</sup> *Ibid.*

regulators in several countries have taken steps towards providing clarity in advertising about Internet speeds; with pro-active measures taken by Australia,<sup>240</sup> United Kingdom,<sup>241</sup> and Germany;<sup>242</sup> to name a few. Also, the Federal Communications Commission (FCC) in the United States has focused on providing consumers with trusted tools to test their Internet speeds and have gathered data to measure the state of broadband performance.<sup>243</sup> These international measures will be discussed in detail in the next chapter.

## f. Stakeholder Comments – General Overview

### Internet Service Providers - Overall Reflection

An overview of the service providers' comments on an Internet Code, indicates that many of them only support a minimal version of consumer protections. Several suggestions made by the service providers are directed towards reducing the scope of draft code, by either limiting or removing some of the key protections currently offered by it; i.e. a pre-sale CIS, caps on early cancellation fees, trial periods, data usage options and notifications and other issues. It is important that these issues are given a careful review, to avoid undermining consumer interests.

### Internet Service Providers - Detailed Overview

In general, quite a few ISPs appeared to support the implementation of a Code for Internet services, with some viewing it as unnecessary. Though, many ISPs argued for limiting its scope, so as not to impede the innovation and growth in this sector; and specifically, sought to dilute some consumer protections in the current draft; generally, citing cost concerns, and/or questioning the utility of certain protections and/or arguing about the complexities that may arise for them while implementing some provisions. Small service providers in general argued for their exemption from this Code, indicating that compliance would result in excessive burdens.

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<sup>240</sup> See Australian Competition and Consumer Commission's (ACCC) new published guidance for retail service providers on how to advertise speeds for fixed-line broadband services, including clearly identifying typical peak speeds. See: ACCC, Broadband speed claims: Industry guidance (23 May 2019), online: <<https://www.accc.gov.au/publications/broadband-speed-claims-industry-guidance>>. [See ACCC Speed claims principles].

<sup>241</sup> Ofcom, 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>>. (Last accessed in May 2019). From March 1, 2019 a new broadband speeds code of practice is in effect, for clearer information about broadband speeds. To access, Codes of Practice, see: <<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice>>.

<sup>242</sup> The Bundesnetzagentur (Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway) of [Germany] to “hold ISPs accountable for when customers should be compensated for not receiving promised broadband speeds.” See: 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/>>. Also see, Press release, The Bundesnetzagentur publishes its first report on broadband measurements, (27 March 2017).

<sup>243</sup> See Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.4, 22, 36-37.

Rogers Communications, for instance, supports the implementation of a Code for the Internet services, and suggests that it should match the proceeding and approach taken to establish the television service provider code (TVSP).<sup>244</sup> It notes that “[t]he frequent bundling of TV and Internet services for residential customers also reinforces our position that an approach which, to the greatest extent possible, matches the provisions and implementation timeframe of the Internet Code to that of the TVSP Code would ensure a positive outcome for all stakeholders.”<sup>245</sup> At the same time, Rogers finds it necessary to ensure that this Code takes into account the operational constraints faced by service providers, and that it does not adversely affect future demand, investment and innovation (it listed issues that may affect future innovation, such as: inclusion of small business customers in the Code’s scope; and adoption of measures such as trial periods, early cancellation fees, and contract length would harm the small business Internet market if implemented).<sup>246</sup>

Like Rogers, Bell Canada also generally supports the creation of the Internet Code, along with the other consumer codes noted to be effective in addressing consumer concerns.<sup>247</sup> However, it finds it essential to factor in this Code the differences in the nature and market of the wireless services, TV and the Internet services.<sup>248</sup> It also notes that it is important to not impose structural reforms on the Internet services market nor alter the current business models.<sup>249</sup>

On the contrary, TELUS argued that this Code is unnecessary, contending that the Internet services in Canada is competitively provided [with the competition already addressing many problems the Code seeks to fix], resulting in “[e]xcellent results in terms of affordability, availability and capital investment.”<sup>250</sup> Also, that if the Commission does intend to regulate Internet services, it must do so within certain limits and have minimum sets of rules necessary.<sup>251</sup>

Similarly, SaskTel finds that an Internet Code is not required.<sup>252</sup> Also, if the Code is implemented, those providers who generate the majority of complaints should be subject to it (main offenders) with the market forces allowed to continue to govern the behaviour of those who are not generating significant volumes of complaints.<sup>253</sup> It also notes that there is a significantly higher per customer

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<sup>244</sup> Rogers, Final Comments to the Telecom Notice of Consultation CRTC 2018-422- Proceeding to establish a mandatory code for Internet services (April 23, 2019).

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*

<sup>247</sup> Final Submission of Bell Canada, “Telecom Notice Of Consultation CRTC 2018-422 – Call For Comments – Proceeding To Establish A Mandatory Code For Internet Services” (23 April 2019).

<sup>248</sup> *Ibid.*

<sup>249</sup> *Ibid.*

<sup>250</sup> TELUS Communications Inc., Telecom Notice of Consultation CRTC 2018-422- Proceeding to establish a mandatory code for Internet services, Final Submissions of TELUS (April 23, 2019).

<sup>251</sup> *Ibid.*

<sup>252</sup> SaskTel, Telecom Notice of Consultation CRTC 2018-422 - Proceeding to establish a mandatory code for Internet services – INTERVENTION (December 19, 2018).

<sup>253</sup> SaskTel, TNC CRTC 2018-422 – Intervention at p.6.

complaint rate among some of the smaller Internet service providers than among the larger service providers.<sup>254</sup>

Xplornet Communications believes that an Internet Code, drafted to reflect the realities of providing broadband service, particularly, providing broadband service in rural and remote areas, could have a positive impact.<sup>255</sup> However, Xplornet argues that while the Code should seek to protect consumer interests relating to transparency, it should avoid regulating competitive elements, namely- price, pricing structure (up-front fees vs cancellation fees, etc.)), claiming that otherwise it would affect innovation and limit providers from making diverse service offerings.<sup>256</sup>

Cogeco states that while it supports the initiative in setting baseline protections for Internet access services with a proposed mandatory code of conduct, it does not find it necessary to address a “so-called systemic industry issue.”<sup>257</sup> The systemic- industry issue is mentioned in generic terms, with limited discussion. Cogeco supports providing clarity to consumers, enabling them to make well-informed decisions, but disagrees with the need for a Code based on the CCTS’s reports; which it notes has majority of complaints pertaining to wireless services.<sup>258</sup> It also questions the ability of the Code to address the top internet issues- intermittent and complete loss of service and billing.<sup>259</sup> However, as will be discussed ahead, certain aspects of these and other internet issues could be addressed by a Code.

Cogeco also states that if the Commission is to proceed with a code, then suggests that the current draft ought to be adjusted to take into account its five main recommendations i.e.; not be overly prescriptive; be consistent with the other industry codes and more specifically, the TVSP Code; not mandate trial/cooling-off periods; apply to all Canadian Internet service providers; and not apply to the small business market.<sup>260</sup>

Distributel Communications Limited in its final submission, reiterated its view of the primary goal of the Internet Code i.e. to ensure that consumers are provided all material terms, conditions, and policies associated with an Internet service on a clear and easily understandable basis [to allow for

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<sup>254</sup> SaskTel, Telecom Notice of Consultation CRTC 2018-422 - Proceeding to establish a mandatory code for Internet services – Final Comments (23 April 2019). It refers to submissions made by CNOC- and argues that CNOC and other service providers should not be exempted from the new Code simply because they are not the traditional targets of regulation.

<sup>255</sup> Xplornet Communications Inc., Telecom Notice of Consultation CRTC 2018-422, Call for comments – Proceeding to establish a mandatory code for Internet services - Final Submission of Xplornet Communications Inc. (23 April 2019).

<sup>256</sup> Xplornet Communications Inc., Telecom Notice of Consultation CRTC 2018-422, Call for comments – Proceeding to establish a mandatory code for Internet services – Intervention [Abridged] (December 19, 2018).

<sup>257</sup> Cogeco Communications, Regulatory Affairs, Telecom Notice of Consultation CRTC 2018-422 – Call for comments – Proceeding to establish a mandatory code for Internet services- Cogeco’s Initial Submission, (December 19, 2018).

<sup>258</sup> *Ibid.*

<sup>259</sup> *Ibid.*

<sup>260</sup> Cogeco Communications, Telecom Notice of Consultation CRTC 2018-422 (the “Notice”) – Call for comments – Proceeding to establish a mandatory code for Internet services- Cogeco Final submission (April 23, 2019).

informed decision-making].<sup>261</sup> Also, that the goal of the Code should not be to impose retail type regulations on retail Internet services, rather, to keep consumers informed with necessary information.<sup>262</sup>

CNOC argues that the Code should only apply to all retail fixed Internet services provided to individuals and businesses by the large ISPs.<sup>263</sup> It supports the Internet Code's requirement that Internet service providers communicate with their customers in a clear manner, however, amidst other submissions, it argues that the providers should not be prevented from using key legal terminology in their agreements when there is no plain language alternative.<sup>264</sup>

## Government Organizations – Overall Reflection

Both the CCTS and the Competition Bureau support the idea that consumers should be given more protection when being sold Internet services. The CCTS' submission focuses more on sales interactions and misleading sales, whereas the Competition Bureau's submission specifically, outlines certain requirements it believes should be implemented in order to encourage more competition, lower prices, and improve quality of service.

## Government Organizations - Detailed Overview

### Competition Bureau

The Competition Bureau supports the establishing of a mandatory code for the Internet services to address customer contracts and related issues.<sup>265</sup> With its initial comments, it largely recommended creating a framework that encourages competition in Internet services, with lower prices, high quality of service and greater innovation.<sup>266</sup> In this regard it suggested:

- Customers should receive quotes that are clear, simple and standardized;
- The Code should be competitively neutral, without being unduly burdensome;
- Advertised prices should include all mandatory fees;
- Services represented as “unlimited” should actually be unlimited; and,
- The Code should be reviewed regularly, and in concurrence with other codes.<sup>267</sup>

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<sup>261</sup> Distributel Communications Limited, Telecom Notice of Consultation CRTC 2018-422 – Call for comments – Proceeding to establish a mandatory code for Internet services – Final Submission of Distributel Communications Limited. (April 23, 2019).

<sup>262</sup> *Ibid.*

<sup>263</sup> Final Submission of Canadian Network Operators Consortium Inc., Telecom Notice Of Consultation CRTC 2018-422 Call For Comments – Proceeding To Establish A Mandatory Code For Internet Services, As Amended By Telecom Notice Of Consultation CRTC 2018-422-1 And Telecom Notice Of Consultation CRTC 2018-422-2, (23 April 2019). Also, see: CNOC's initial submission, TNC CRTC 2018-422, Intervention (19 December 2018).

<sup>264</sup> *Ibid.*

<sup>265</sup> Competition Bureau, Telecom Notice of Consultation CRTC 2018-422- Proceeding to establish a mandatory code for Internet services- Comments of the Competition Bureau (December 19, 2018).

<sup>266</sup> Competition Bureau, TNC 2018-422, Comments of the Competition Bureau at p.4.

<sup>267</sup> *Ibid.*

The Competition Bureau also argued for minimizing the effects of switching costs that tend to affect consumer switching [both monetary costs- cancellation fees, and non-monetary costs- time and mental burden attached with searching for a new provider and making comparisons], depriving consumers and the businesses of the benefits of competition.<sup>268</sup> With regard to consumers receiving a clear quote, it suggested that the CRTC mandate a clear, simple, standardized quote that would be provided to a customer after an offer is discussed with a service provider or its third party representative to allow the customer to compare offers from competing service providers more easily (this is to promote switching and competition).<sup>269</sup> It listed specific factors that should be in a quote- initial monthly “all-in” price, duration of initial monthly “all-in” price, monthly “all-in” price after the promotion ends, any one-time costs, monthly usage allowance, average performance at peak times, cancellation fees, and other related aspects.<sup>270</sup>

With respect to advertised prices- it noted that price advertisements should clearly include all mandatory costs, rather, than place them in fine print disclaimers.<sup>271</sup> It also discussed about how drip pricing can be false or misleading to consumers.<sup>272</sup> It explained drip pricing as a “[c]ompany advertising prices that are unavailable because of the subsequent imposition of non-optional fees.”<sup>273</sup> It contends for the advertised price to include all-in price, including the modem fee.<sup>274</sup> In its reply, the Competition Bureau, reiterated its earlier position and submitted that there continues to be disparity in what consumers expected to be offered and what is actually offered to them, amidst other submissions; and that a post-sale cis is not sufficient to prevent pre-sale non-disclosure and reduce consumer confusion.<sup>275</sup>

## CCTS

The CCTS views the Internet Code’s core objective is disclosure i.e. ensuring all consumers have the information they need to make informed choices.<sup>276</sup> Based on its datasets, it indicated the increasing number of complaints relating to the Internet services; with the top five Internet issues

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<sup>268</sup> Competition Bureau, TNC 2018-422, Comments of the Competition Bureau at p.4-7. Also, see: Public Interest Advocacy Centre, “Consumer Choice in Telecommunications and Broadcasting,” (May 2019), online: <<https://www.piac.ca/wp-content/uploads/2019/05/PIAC-Final-Report-Consumer-Choice-in-Telecom-and-Broadcasting-.pdf>>, a study on the barriers to consumer switching in the communications services market; and Competition Bureau, Market Study Notice: Competition in Broadband Services, online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04360.html>>; and Competition Bureau Broadband Market Study Update, (October 16, 2018) online: <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04399.html>>.

<sup>269</sup> Competition Bureau, TNC 2018-422, Comments of the Competition Bureau at p.7.

<sup>270</sup> Competition Bureau, TNC 2018-422, Comments of the Competition Bureau at p.8-9.

<sup>271</sup> Competition Bureau, TNC 2018-422, Comments of the Competition Bureau at p.12-13.

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> *Ibid.*

<sup>275</sup> Competition Bureau, Telecom Notice of Consultation CRTC 2018-422- Proceeding to establish a mandatory code for Internet services- Competition Bureau reply to interventions (January 28, [2019]).

<sup>276</sup> CCTS, Commission file 1011-NOC2018-0422 - Telecom Notice of Consultation CRTC 2018-422, Call for comments — Proceeding to establish a mandatory code for Internet services, as amended- Final Submission of CCTS (23 April 2019) at p.1-2.

in 2017-18 being: intermittent and complete loss of service (18.3%), incorrect billing (15.5%), non-disclosure of information/misleading information (12.8%), legitimacy and amount of early cancellation fee (6.5%), and charges for services bit received after cancellation/30 cancellation policy (5.9%).<sup>277</sup> In relation to creating awareness of the Internet Code, the CCTS believes that at a minimum, the customers should be informed about the baseline rules and the main rules at the point of sale and in related offer or sales documents.<sup>278</sup> Amidst other observations; it re-emphasized on major issues regarding sales practices:

The major sales practice issue, arising in over half of the complaints we sampled, is a mismatch between what the customer was expecting or informed when they subscribed to service and their subsequent experience with the service. This mismatch between expectations and outcomes often manifests itself in complaints about billing charges, service delivery or usage, and changes to any of these that take the customer by surprise. In sum, customers often fail to appreciate the circumstances under which their price may change (either through rate increases, promotions expiring, or services plans changing), or their service attributes changing, and this causes complaints to CCTS. In many cases, this arises from the service provider having failed to disclose, or having ineffectively disclosed, key aspects of the contract, service or pricing.<sup>279</sup>

#### g. Specific Issues Requiring Action

We consider 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.

##### (i) Pre-sale Critical Information Summary (CIS)

Many ISPs generally seemed to support the provision of a CIS, however, several ISPs expressed concerns regarding a pre-sale CIS; with some arguing that it is not necessary, serves no benefit, and/or indicating cost issues. As described above, the draft Code as of now provides two options in relation to clarity of offers, with the second option requiring a provision of a pre-sale CIS;

**Option 1:** A service provider must ensure that any offers made to consumers are clearly explained in all communications with consumers, including during telephone calls and door-to-door sales as well as in its promotional material. The explanation of an offer must clearly state the following:  
the duration of the offer;  
in the case of an offer that includes a time-limited discount or other incentive, the price of the service at the end of the time-limited discount or incentive;  
any associated obligations on a consumer in relation to accepting the offer, including the commitment period during which an early cancellation fee can be applied and whether accepting the promotional offer changes other aspects of the customer's contract.  
AND/OR

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<sup>277</sup> CCTS, TNC 2018-422, Intervention at p.4-5.

<sup>278</sup> CCTS, TNC 2018-422, Intervention at p.9.

<sup>279</sup> CCTS, TNC 2018-422, Intervention at p.10.

**Option 2:** A service provider must provide a customer with a written pre-sale Critical Information Summary within 24 hours of making a specific offer to a consumer in person, over the phone, or online. See section C of this Appendix (Critical Information Summary) [see below] for more information on what a Critical Information Summary must contain and how and when it must be provided.<sup>280</sup>

Section C of the draft Code provides two options regarding when a CIS must be provided; i.e. when a permanent copy of the contract is provided and/or when a consumer is provided an offer of service, a pre-sale plain language summary given in paper or electronic format.<sup>281</sup>

### C. Critical Information Summary

#### 1. General

- i. A service provider must provide a Critical Information Summary
  - o Option 1: to a customer when it provides a permanent copy of the contract;AND/OR
  - o Option 2: to a consumer when it provides an offer of service (i.e. a pre-sale plain-language summary, provided as either a paper document or a permanent electronic document).

This document summarizes the most important elements of the contract for the customer.<sup>282</sup>

The CCTS finds the application of these options unclear; inquiring whether the Commission is seeking to impose a requirement to provide two different Critical Information Summaries — one pre-sale, and one post-sale reflecting the agreed terms.<sup>283</sup> It has asked the Commission to clarify if Option 2 would replace the requirement to provide a Critical Information Summary (Section C) or if ISPs would be required to give the customer (i) a pre-sale CIS; (ii) a copy of the contract; and (iii) a CIS.<sup>284</sup> It broadly supports provisions on pre-sale disclosure and consumer understanding of key terms of the proposed contract.<sup>285</sup>

Several service providers have expressed support for Option 1, rather, than Option 2; in effect, objecting to a pre-sale CIS. For instance, Rogers notes that a pre-sale CIS was rejected during the Wireless Code proceeding and also that it provides no material benefit for consumers.<sup>286</sup> It pointed to other ISPs, including Rogers and Fido already providing an option to new customers of receiving a summary or quotes for different communications services, and that a pre-sale CIS could result in greater misunderstandings.<sup>287</sup> Similarly, Bell finds a pre-sale CIS unnecessary to address the issue of a mismatch between the customer expectations and the reality of what is offered to them,

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<sup>280</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section A.5.

<sup>281</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section C.

<sup>282</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section C.

<sup>283</sup> CCTS, Appendix “A” - CCTS’ Detailed Comments on Internet Code Working Document - TNC 2018-422, Call for comments – Proceeding to establish a mandatory code for Internet services – Question 8 at p.5

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> Rogers, Final Comments to the TNC CRTC 2018-422 at p. 8-9.

<sup>287</sup> Rogers, TNC CRTC 2018-422, Call for Comments – Proceeding to establish a mandatory code for Internet services: Internet Code Working Document, [Intervention] (19 December 2019) at p.5-7, see, paras 16-20.

and that it would be costly.<sup>288</sup> SaskTel notes that it has no concerns providing clarity and CIS once the customers have agreed to purchase service, with a prior sale CIS found to increase the complexity of introducing the code, be costly; and that it may increase confusion for customers.<sup>289</sup> TELUS argued that the Commission should wait to see the results of ISP's present quoting system under development, and cited cost concerns.<sup>290</sup>

We contend that the purpose of a CIS is to make consumers aware of different Internet services for making a well-informed decision, which would be defeated if this summary is not provided before a sale is completed. To ensure that a CIS adequately informs consumers of Internet services, it should be offered pre-sale, within 24 hours of making a specific offer in person, over the phone or online. We refer to PIAC/CAC/COSCO's earlier submission during the Wireless Code proceeding (Telecom Notice of Consultation CRTC 2012-557), where it aptly argued that a personalized information summary should be provided as an offer by the wireless service providers, before the customer signs a contract, in order to allow customers to be able to compare offers, and see which offer best suits their needs.<sup>291</sup> PIAC/CAC/COSCO also suggested to make these summaries standardized, and provided as a part of the final service contract and a separate document.<sup>292</sup>

“[W]ireless service providers must provide the Personalized Information Summary as an "offer" before the customer signs the contract. This Personalized Information Summary must be provided to allow consumers to compare offers provided by each supplier which best suit their needs. We strongly prefer the Personalized Information Summary to be standardized between carriers to aid consumers in comparing various offers. The Personalized Information Summary should be presented both as a separate document to facilitate consumers' consideration of various offers and as part of the WSP's final service contract.”<sup>293</sup>

PIAC/CAC/COSCO also pertinently pointed out that in-store brochures, which may be helpful in explaining the range of plans and add-ons, rarely provide clear explanations of key contractual terms.<sup>294</sup> Also, that a copy of a "dummy contract" is not an efficient or effective tool to help consumers navigate and compare contract terms between providers.<sup>295</sup>

We note that these issues are not unique to wireless offerings, and also arise in case of Internet access services. In our view, these issues could be addressed by a pre-sale CIS, ensuring that consumers get clear information beforehand, and based on that decide whether to take up an

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<sup>288</sup> Bell Canada, TNC CRTC 2018-422- Final Submission at p. 6-7.

<sup>289</sup> SaskTel, TNC CRTC 2018-422 – Final Comments at p.7-8.

<sup>290</sup> TELUS Communications Inc., TNC CRTC 2018-422- Final Submissions of TELUS at p.9-10.

<sup>291</sup> Telecom Notice of Consultation CRTC 2012-557, Proceeding to establish a mandatory code for mobile wireless services, Final Written Comments of the Public Interest Advocacy Centre, Consumers' Association of Canada, Council of Senior Citizens' Organizations of British Columbia [PIAC/CAC/COSCO] (March 1, 2013) at p. 5, and 21-23. Also see: PIAC/CAC/COSCO Final Written Comments to TNC CRTC 2012-557, Appendix A, Consumer and Public Interest Groups Consensus Positions on the draft Wireless Code (March 1, 2013).

<sup>292</sup> *Ibid.*

<sup>293</sup> PIAC/CAC/COSCO, Final Written Comments to TNC CRTC 2012-557, Appendix A, (March 1, 2013).

<sup>294</sup> PIAC/CAC/COSCO, Final Reply Comments to TNC CRTC 2012-557, (March 15, 2013) at p.6.

<sup>295</sup> *Ibid.*

Internet service or not. Accordingly, we submit that an Internet Code should mandate the provision of a CIS before the Internet services contract is signed, enabling a consumer to compare offers, and in view of that, make a well-informed decision. At the same time, consumers should also be given a reasonable time to read the offer and decide if they would like to pursue it or not.

We note that the Competition Bureau has also argued for a pre-sale CIS along with a clear, simple and standardized quote, with the latter to be included at the beginning of the CIS (summarizing key components of the contract).<sup>296</sup> We believe that a pre-sale CIS (offered before signing a contract) will provide the much needed clarity and reduce consumer confusion. Moreover, leaving it to the service providers to come up with a quoting system, with no mandate as to the applicable standard and timeframe of a CIS would most likely result in status quo, with no clarity, and uniformity of practice. We reiterate that an Internet Code should mandate a standard pre-sale CIS, provided as a separate document to compare offerings, and as a part of the final service contract.

## (ii) Placing Caps on Early Cancellation fees

The CRTC's draft Internet Code rightly requires the terms on early cancellation fees to be included in the Key contract terms and conditions;<sup>297</sup> (they cannot be changed except with the express consent of the user). Under the current draft, these terms include the total early cancellation fees; the amount by which the early cancellation fee will decrease each month; and the date on which the customer will no longer be subject to the early cancellation fee.<sup>298</sup> The current draft, amidst other specifics, provides a criteria for calculating an early cancellation fee, defining its limits.<sup>299</sup> As of now, it reads:

- i. If a customer cancels a contract before the end of the commitment period, the service provider must not charge the customer any fee or penalty other than the early cancellation fee. This fee must be calculated in the manner set out below.
  - a. For fixed-term contracts, the early cancellation fee must not exceed the lesser of **\$50 or 10% of the minimum monthly charge** [Emphasis added] for the remaining months of the contract, up to a maximum of 24 months. The early cancellation fee must be reduced to \$0 by the end of the commitment period.
  - b. For indeterminate contracts, a service provider must not charge an early cancellation fee.
  - c. When calculating the time remaining in a contract to determine the early cancellation fee, a month that has partially elapsed at the time of cancellation is considered a month completely elapsed.<sup>300</sup>

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<sup>296</sup> Competition Bureau, TNC 2018-422, Comments of the Competition Bureau at p.4-11.

Also see: Competition Bureau, TNC CRTC 2018-422- Competition Bureau reply to interventions.

<sup>297</sup> Key contract terms and conditions have been defined as: "The elements of the contract that the customer agreed to upon entering into the contract and will receive for the duration of the contract, and that the service provider cannot change without the customer's express consent." See: Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, Definitions. Also see, section D of Appendix 1 to Telecom Notice of Consultation CRTC 2018-422.

<sup>298</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section B.4.

<sup>299</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section G.1.

<sup>300</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section G.1.

Many service providers have argued against placing a cap on early cancellation fees (ECFs). For instance, Rogers submitted that there should be no cap on early cancellation fees, arguing it to be inappropriate for wireline Internet, and that the CRTC has underestimated the upfront costs involved for this service.<sup>301</sup> Likewise, Bell has objected to the Code's provision on capping ECFs; arguing that the proposed formula for the ECFs is "[e]ntirely inadequate and inconsistent with the fundamental legal principle that an ECF should be a genuine pre-estimate of the damages suffered by the wronged party when a fixed term contract is terminated early."<sup>302</sup> TELUS argued for maintaining pricing flexibility,<sup>303</sup> and that imposing hard caps on ECFs would have negative outcomes for consumers.<sup>304</sup> It contended that the proposed provision of the Code does not factor in the costs borne by the ISPs, often far in excess of \$50 when signing in new customers, and that the ISPs also bear the costs of installation.<sup>305</sup> SaskTel, Xplornet and CNOC have also objected to imposing strict limits on ECFs.<sup>306</sup>

We believe it is essential for an Internet Code to set caps on ECFs, which remain a significant consumer concern that more often than not affect consumers' decision and/or ability to change service providers;<sup>307</sup> warranting the need for clear and transparent limits. It is particularly concerning to leave it to the service providers to determine the amounts of ECFs with no clear parameters and transparency measures in place. High ECFs remain problematic and hinder consumer choice and ability to switch providers.<sup>308</sup> The CCTS 2017-18 Annual report, documented 1,627 complaints on legitimacy and amount of early termination fees (ETF), with the majority of these complaints relating to the Internet i.e. 580, out of which 71 were about the amount of ETF, and 509 about the legitimacy of ETF.<sup>309</sup> The CCTS also notes an increasing trend in complaints relating to the Internet, including the early cancellation fees.<sup>310</sup>

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. This is to allow consumers to know with some certainty what ECFs will apply when they cancel a contract early. Likewise, the Wireless Code also defines a clear criterion for calculating the early cancellation fees; with the provision regarding no subsidized device being

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<sup>301</sup> Rogers, Final Comments to the TNC CRTC 2018-422 at p.9-10.

<sup>302</sup> Bell Canada, TNC CRTC 2018-422- Final Submission at p.7.

<sup>303</sup> TELUS Communications Inc., TNC CRTC 2018-422- Final Submissions of TELUS at p.7-8.

<sup>304</sup> TELUS Communications Inc., TNC CRTC 2018-422- Final Submissions of TELUS at p.8-9.

<sup>305</sup> *Ibid.*

<sup>306</sup> See the Final comments of SaskTel, Xplornet and CNOC to TNC CRTC, 2018-422.

<sup>307</sup> See Intervention 24 (TNC CRTC, 2018-422) [Fedorowich, John], Intervention 115 (TNC CRTC, 2018-422) [Calman, Shelby] and Intervention 83 (TNC CRTC, 2018-422) [Lester, Chris (Organization - Lester-Legault)]. Also, see Chapter 2 of this research report.

<sup>308</sup> Public Interest Advocacy Centre, "Consumer Choice in Telecommunications and Broadcasting," (May 2019) at p.19-21 and see p. 22-23 for PIAC Survey of Consumers of Telecommunications and Broadcast Distribution Services – Conclusions.

<sup>309</sup> CCTS 2017-18 Annual report, Appendix B at p.70.

<sup>310</sup> Telecom Notice of Consultation CRTC 2018-422, Context.

pertinent for Internet services as well.<sup>311</sup> Notably, even with mandated limits under the Wireless Code, the CCTS confirmed 8 breaches of contract cancellation and extension in its 2017-18 Annual report, with 3 confirmed breaches (2.7%) relating to ECFs-General.<sup>312</sup> This indicates the clear need for setting ascertainable standards and ensuring their compliance through a code.

We find no compelling basis for omitting caps on ECFs for wireline services, and to distinguish between wireless and wireline services, in relation to ECFs. Not placing clear limits means consumers will continue to face exorbitant early cancellation fees with no clarity and certainty as to what costs would arise in case they decide to and/or need to cancel their Internet connection.

During the Wireless Code proceeding, PIAC/CAC/COSCO argued that whatever, early termination fee (ETF) is planned, its formula should not entrench any specific business model;<sup>313</sup> and we contend the same should be the case for an Internet Code; also, the applicable formula should be clear, transparent that factors in consumer interests.

Additionally, we suggest that these ECFs should be reported annually to the CRTC and published in the CMRs; this is to allow consumers to be able to make comparisons, and be aware of the upcoming costs in case they decide to leave a contract early. This all could be included as a reporting provision, in the Code.

In the unlikely event, where no caps are set for ECFs; at a minimum, these fees should be subject to annual fairness reviews, based on consumer complaints and issues reported by the CCTS. Some insight can be drawn from Ofcom's "Enforcement programme into early termination charges" for administering such future checks.<sup>314</sup> Under this programme, Ofcom examines the charges imposed by communication providers (including those providing fixed line telephony, broadband, mobile, and/or pay TV services to consumers) when consumers on fixed term contracts terminate their contracts early.<sup>315</sup> Ofcom notes that it is collecting information and reviewing consumer complaints to assess any transparency and fairness concerns regarding early termination charges.<sup>316</sup> That said, any future review should not be taken as an opportunity to increase the costs incurred by the consumers. Also, as suggested by Citizens Advice (a group of charities in the U.K) that when exit fees rises above inflation, the networks should be required to explain how their costs have increased.<sup>317</sup>

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<sup>311</sup>Appendix 1 to Telecom Regulatory Policy CRTC 2017-200, The Wireless Code, section G, see: G.3.

<sup>312</sup> CCTS 2017-18 Annual report, Code of Conduct Reporting, Table 3: Wireless Code Confirmed Breaches by Section, at p.11.

<sup>313</sup> PIAC/CAC/COSCO, Final Written Comments to TNC CRTC 2012-557, (March 1, 2013) at p. 29. Also see: PIAC/CAC/COSCO, Final Written Comments to TNC CRTC 2012-557, Appendix A, (March 1, 2013).

<sup>314</sup> Ofcom, Enforcement programme into early termination charges (15 January 2019), online: <[https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01199](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01199)>.

<sup>315</sup> *Ibid.*

<sup>316</sup> *Ibid.*

<sup>317</sup> Citizens Advice, Broadband exit fees (March 2018), online:

<<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Exit%20Fees%20-%20Final%20Edits.pdf>>.

### (iii) Trial Periods

The Code presently, allows trial periods of 15 or 30 calendar days;<sup>318</sup> and a minimum of 30 or 45 calendar days for person identifying himself or herself with a disability.<sup>319</sup> A trial period is also required to be provided for a new or modified plan.<sup>320</sup> A person identifying himself or herself with a disability must be offered an extended trial period, for a minimum of 30 or 45 calendar days.<sup>321</sup>

Many service providers have proposed removing the provision on trial periods from the draft Code. Rogers has questioned its importance, asserting that it would increase costs and create complexities for service providers.<sup>322</sup> Similarly, Bell argued against having trial periods, as unlike wireless services, there are no issues with coverage or individual devices- like handsets, and a 30 day trial period will be inevitably abused.<sup>323</sup>

Shaw and Cogeco in their final submissions to the CRTC also in general opposed including trial periods in an Internet Code.<sup>324</sup> Shaw remarked that it does not consider a trial period for wireline Internet services to be necessary.<sup>325</sup> It argued as unlike wireless services, an Internet service is

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<sup>318</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section G.2 (Trial period/cooling-off period under Contract cancellation and extension).

<sup>319</sup> *Ibid.* [See: Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section G.2].

<sup>320</sup> *Ibid.*

<sup>321</sup> *Ibid.* The full section added for reference:

#### **2. Trial period/cooling-off period**

- i. When a new customer agrees to a contract through which they are subject to an early cancellation fee, a service provider must offer the customer a trial period lasting a minimum of [option: 15 or 30] calendar days to enable the customer to determine whether the service meets their needs.  
In addition, when an existing customer agrees to a new or modified plan through which they are subject to an early cancellation fee or other penalty for leaving a contract early, a service provider must offer the customer a trial period lasting a minimum of [option: 15 or 30] calendar days to enable the customer to determine whether the service meets their needs. The existing customer must have the option to revert to their previous plan at the end of the trial period.
- ii. If a customer self-identifies as a person with a disability, the service provider must offer an extended trial period lasting a minimum of [option: 30 or 45] calendar days to enable the customer to determine whether the service meets their needs.
- iii. The trial period must start on the date on which service begins.
- iv. The standard trial period usage limits must correspond to the permitted monthly usage specified in the customer's contract, whether the contract includes limited or unlimited monthly use. For customers with disabilities, the permitted usage amounts must be at least double the service provider's general usage amounts for the standard trial period.
- v. During the trial period, customers may cancel their contract without penalty, [option: installation fees], or early cancellation fees if they have
  - a. used less than the permitted usage; and
  - b. returned any gift with purchase and equipment provided by the service provider, in near-new condition, including original packaging, if applicable.

[See: Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section G.2].

<sup>322</sup> Rogers, Final Comments to the TNC CRTC 2018-422 at p.10.

<sup>323</sup> Bell Canada, TNC CRTC 2018-422- Final Submission at p.8. Also, see: Bell Canada, TNC CRTC, 2018-422 – Intervention of Bell Canada at p.12-13.

<sup>324</sup> Shaw, TNC CRTC, 2018-422, Final Reply (23 April 2019) at p. 8-9; and Cogeco, TNC CRTC 2018-422, Cogeco Final Submission (23 April 2019).

<sup>325</sup> Shaw, TNC CRTC, 2018-422, Final Reply (23 April 2019) at p. 8-9.

installed and tested at a fixed location; it contended that no issues arise as to the suitability of a personal subsidized device, nor any coverage issues.<sup>326</sup> That said, Shaw supports a trial period for persons with disabilities.<sup>327</sup>

We believe that a trial period remains essential for a wireline service as well as the wireless service, giving consumers time to consider the suitability of the offered Internet service, and see whether it meets their needs or not. Many consumers in general seem to get an Internet service for a long-term, rather, than for a short duration. PIAC's report on "Consumer choice in telecommunications and broadcasting," shows that many users are in the status quo camp i.e. stay with their current provider for communications services, including Internet service, rather, than switch.<sup>328</sup> The report noted the two set of factors limit consumer choice in the Canadian retail communications services market: costs involved, and human behavioural cognitive biases.<sup>329</sup> It is only fair that consumers are given some flexibility early-on to decide whether they want to use the Internet service for a longer duration or not. It will spare them from the difficulties arising in relation to switching, including paying early cancellation fees. This might also be useful in reducing customer churn for service providers, with their customers given a chance earlier to test out their offerings.

In our view, it would be apt to follow 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.<sup>330</sup> If not, then Union des consommateurs' earlier recommendation for setting minimum limits relating to trial periods (referred to and supported by the Coalition) 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."<sup>331</sup> This is to allow users to experience the full functionality on offer.<sup>332</sup> This will give users a fair chance to try out the offerings, and at the same time ensure clarity and transparency as to the applicable limits.

CCTS in its intervention to the CRTC, aptly suggested to clarify when the trial period starts; it recommended amending the current provision as follows: "The trial period must start on the date on which service begins, for example, when the installation of the service is completed."<sup>333</sup> We note that it is essential for an Internet Code to clearly specify when the trial period starts that should be when the service begins and when the customer receives a copy of his or her contract, with the CIS; clearly explaining all the applicable terms.

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<sup>326</sup> *Ibid.*

<sup>327</sup> *Ibid.*

<sup>328</sup> PIAC "Consumer Choice in Telecommunications and Broadcasting," (May 2019) at p.14-15 (referring to the CRTC's survey) and also see its own consumer survey results at p.15-23.

<sup>329</sup> *Ibid.*

<sup>330</sup> Appendix 1 to TNC CRTC 2018-422, section G.2 (iv).

<sup>331</sup> The Coalition, Reply Comments, Telecom Notice of Consultation CRTC 2016-293, Review of the Wireless Code (16 November 2016) at p.8, 13-14. Reference was made to Union des consommateurs, First Intervention at paras. 84.

<sup>332</sup> *Ibid.*

<sup>333</sup> CCTS, Appendix "A" - CCTS' Detailed Comments on Internet Code Working Document - TNC 2018-422, Call for comments – Proceeding to establish a mandatory code for Internet services – Question 8 at p. 11.

#### (iv) Data usage- Options: Notification and Overage fees

The Commission noted the consumer challenges relating to tracking data usage in the Telecom Regulatory Policy 2016-496, establishing new expectations for ISPs to meet regarding bill shock and contract clarity.<sup>334</sup> It stated:

“[w]ith respect to fixed broadband Internet access services, the data usage associated with common online activities can be complex and difficult for consumers to estimate. The record of this proceeding revealed that many Canadians are unaware of certain basic elements of their Internet access service contracts, including their monthly data usage limits [resulting in bill shock from inadvertently exceeding of data limits].”<sup>335</sup>

Data overages for fixed broadband Internet services were also found to vary considerably between different service providers, with only few ISPs noted to have maximum overage charges in a monthly billing cycle.<sup>336</sup> Whilst, requiring the ISPs to explain in plain language: the services offered, limits on usage that could trigger overage charges, minimum monthly charge for services, and disclosure related to data overages; the Commission requires all ISPs that offer retail fixed broadband services to notify residential and business customers who have experienced overage fees on where to find information on “(i) the account management tools the ISP offers, (ii) the data usage associated with common online activities, and (iii) alternative plans that may better suit the customer’s needs.”<sup>337</sup>

The current draft Code requires the ISPs to provide notifications when a customer reaches 100% of their data limit within a single billing cycle; provide data monitoring tools; and two specific options for providing notifications on data overages: Option 1- to inform those customers who have incurred overage charges with where to find information on account management tools, data usage and alternative plans [in line with the Telecom Policy 2016-496]; and/or Option 2- a service provider must notify a customer when they reach a set amount in data overage charges in a single billing cycle and also give the customer the ability to suspend additional overage charges during this billing cycle, with an opt-out option from these notifications.<sup>338</sup>

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<sup>334</sup> Telecom Notice of Consultation CRTC 2018-422, Context. Also see, Telecom Regulatory Policy 2016-496, online: <<https://crtc.gc.ca/eng/archive/2016/2016-496.htm>>.

<sup>335</sup> *Ibid.*

<sup>336</sup> *Ibid.*

<sup>337</sup> *Ibid.*

<sup>338</sup> See: Appendix 1 to Telecom Notice of Consultation CRTC 2018-422, section E. (added here for reference)

#### **E. Bill management**

##### **1. Notification – Usage limit**

- i. A service provider must notify a customer once they reach 100% of their usage limit within a single monthly billing cycle.

##### **2. Data monitoring tools**

- i. A service provider must offer tools to help a customer monitor and manage their data use and any additional fees incurred during a monthly billing cycle. A service provider is responsible to ensure that such tools are accessible to customers with disabilities.

Several service providers in general support Option 1, rather, than Option 2, and find it unnecessary and/or problematic to allow users to suspend additional data overage charges. For example, Rogers supports the Commission's Option 1 (notifications only), noted to be largely covered under the Telecom Regulatory Policy CRTC 2016-496; and contends that the costs of implementing Option 2 far outweighs the perceived customer benefit, and that it is logistically very complex to manage in a residential setting with multiple users.<sup>339</sup>

Likewise, Bell supports Option 1, it notes that the ISPs are already required to notify customers who incur overage about account management tools, the data usage associated with common online activities and alternative plans that may better suit the customers' needs, which the customer is best positioned to determine.<sup>340</sup> Also, noting that Option 2, adapted from the Wireless Code, was meant to address specific consumer concerns about wireless services, it is overly prescriptive, along with the ability to suspend service when tools are already available to help consumers manage their accounts and data usage.<sup>341</sup> Similarly, Xplornet also noted that the notification requirements for data overage charges under Telecom regulatory policy 2016-496 are appropriate, no further measures needed.<sup>342</sup>

CNOC did not object to Option 1; however, shared concerns regarding option 2, noting that allowing consumers to suspend additional data overage charges during a billing cycle; would mean suspension of Internet service, raising public safety concerns as customers would not have access to 9-1-1 and emergency services and notifications.<sup>343</sup> It suggests if the Commission adopts Option 2, then it should determine a standard notification text for informing consumers about the potential risks of suspending Internet services.<sup>344</sup> It also noted that small providers may not have the

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- ii. A service provider must offer plain-language information on the data usage associated with common online activities. Such information must be made available in accessible formats for people with disabilities.

### 3. Notification – Data overage charges

- **Option 1:** A service provider must notify a customer who has incurred overage charges of where they can find information about (i) the account management tools the service provider offers, (ii) the data usage associated with common online activities, and (iii) alternative plans that may better suit the customer's needs. Customers may opt out of these notifications at any time. Such notifications must be provided each month in which a customer incurs data overage charges, unless the customer opts out of receiving such notifications.

*Note: This approach is consistent with the expectations set out in [Telecom Regulatory Policy 2016-496](#). AND/OR*

- **Option 2:** A service provider must notify a customer once they reach \$X (e.g. \$0, \$50, \$100) in data overage charges in a single monthly billing cycle. This notification must give the customer the ability to suspend additional data overage charges during this billing cycle. Customers may opt out of these notifications at any time.

<sup>339</sup> Rogers, Final Comments to the TNC CRTC 2018-422 at p.10-11.

<sup>340</sup> Bell Canada, TNC CRTC 2018-422, Intervention (19 December 2018) at p.11-12. Also see: Bell Canada, TNC CRTC 2018-422- Final Submission at p.7-8.

<sup>341</sup> Bell Canada, TNC CRTC 2018-422, Intervention (19 December 2018) at p.11-12.

<sup>342</sup> Xplornet Communications Inc., TNC CRTC 2018-422, Final Submission (April 23, 2019) at p.2, 10-11.

<sup>343</sup> CNOC, TNC CRTC 2018-422, Intervention of CNOC at p.18-19.

<sup>344</sup> *Ibid.*

technical means to allow for immediate suspension of service upon request.<sup>345</sup> CNOc contends that Option 2 is unnecessary as consumers have a simple and straightforward self-help solution i.e. shut-off or disconnect their modem, and not incur any further data overage fees.

We submit that providing users with more control over the application of overage data charges would be a significant step towards protecting consumer interests, as tracking data usage remains a major concern.<sup>346</sup> We believe that the Coalition's argument from the Review of Wireless Code of giving consumers the option to set their overage limit to \$0 or in other words as to whether or not incur overages [...],<sup>347</sup> remains quite pertinent and appropriate to address consumer issues in relation to data overages arising from the use of Internet services. The Coalition aptly noted that such a measure would eliminate bill shock and give service providers a strong incentive to allow customers to customize their overage limit.<sup>348</sup> The draft code's Option 2 appears to be more aligned with consumer interests, allowing users to have control over their usage and charges.

We note that CNOc's public safety concerns may be mitigated with the availability and access to other communications services. As for technical feasibilities, more evidence and details are needed to better address this.

We also suggest that for greater clarity, the application of any overage charges even after notification, should be allowed only after getting consumers sufficient consent, as recommended by the Coalition during the Review of the Wireless Code.<sup>349</sup> This consent should be separate from any prior agreement, as rightly noted by the Coalition that agreement to standard contractual terms or inaction does not provide sufficient consent.<sup>350</sup> Option 1 on its own is unlikely to protect consumer interests, and will leave the consumer issues concerning tracking data usage and paying overage charges, unaddressed. As noted in the previous chapter, several focus group participants and consumer intervenors expressed concerns regarding tracking their data usage, and in particular about paying overage fees.<sup>351</sup>

#### (v) Application to New and/or Existing Contracts

The Commission's preliminary view is that when the Code comes into effect, it will apply to new contracts, which include contracts that are signed, changed, or renewed on or after the Code's implementation date.<sup>352</sup> It asked whether the Code should also apply to existing contracts- if so,

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<sup>345</sup> *Ibid.*

<sup>346</sup> See the Commission's observations in the Telecom Regulatory Policy CRTC 2016-496.

<sup>347</sup> The Coalition, Reply Comments, Telecom Notice of Consultation CRTC 2016-293, Review of the Wireless Code (16 November 2016) at p.19.

<sup>348</sup> *Ibid.*

<sup>349</sup> *Ibid.*

<sup>350</sup> *Ibid.*

<sup>351</sup> See: Intervention 94, Telecom Notice of Consultation CRTC 2018-422- Call for comments – Proceeding to establish a mandatory code for Internet services (TNC CRTC, 2018-422) [Bastedo, Jason], see chapter 2 of this report for more details.

<sup>352</sup> Appendix 2 to Telecom Notice of Consultation CRTC 2018-422, Question 15.

how?<sup>353</sup> The draft Code includes several Options in this respect.<sup>354</sup> We remain of the view that all provisions of the 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.

### 3.2.2 Concluding Remarks

Based on the above analysis, we contend that there are apparent gaps regarding the scope of the Commission's draft Code; with some issues requiring particular attention. For one, we note that the explicit exclusion of broadband speed measurement and false advertising remains inconsistent with its objectives; as these issues remain a common distress for consumers, which merit inclusion in the Code to address the existing regulatory gaps. As noted earlier, our analysis has focused on the scope of the Code, and certain rules advanced by it. We provide our views on some issues raised during the CRTC's proceeding that we believe, if left unaddressed, may significantly, affect consumer interests. Our observations regarding these issues are:

- **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.
- **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.<sup>355</sup>
- **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.<sup>356</sup> 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.<sup>357</sup> 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

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<sup>353</sup> *Ibid.*

<sup>354</sup> Appendix 1 to Telecom Notice of Consultation CRTC 2018-422.

<sup>355</sup> Appendix 1 to TNC CRTC 2018-422, section G.1.

<sup>356</sup> Appendix 1 to TNC CRTC 2018-422, section G.2.

<sup>357</sup> Appendix 1 to TNC CRTC 2018-422, section G.2 (iv).

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.<sup>358</sup>
- **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.

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<sup>358</sup> 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

The Wireless Code Public Opinion Research is one of the tools used to gauge consumer feedback regarding the Wireless Code, and determine consumers' understanding of their wireless contracts and related rights.<sup>359</sup> This is administered yearly by the Commission's independent consultant, asking Canadians about their mobile plans and experiences with wireless service providers.<sup>360</sup> At the time of writing, no equivalent measure is in place for an Internet Code, as it remains in its initial stage of development. That said, notably, no consumer survey was conducted by the Commission during its proceeding to create a mandatory code for Internet services. Consumers were invited to participate along with other stakeholders by submitting interventions between November 9 and December 19, 2018; and comment on the Commission's Facebook page from February 21 to March 4, 2019.<sup>361</sup> What remains lacking is quantitative data and analysis regarding consumer views on a potential Internet Code, and overall understanding of consumers' needs, demands and concerns regarding an Internet Code.<sup>362</sup>

This section reviews 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 whether they think an Internet Code would be a useful regulatory measure for advancing their rights relating to internet access services. That said, the discussion below seeks to provide some indication as to what consumers think of an Internet Code. We believe regular engagement and consultation with consumers remains vital to establishing a code that is well aligned with consumer needs and perspectives, supplemented by quantitative data and analysis.

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<sup>359</sup> Wireless Code Public Opinion Research 2018, Prepared for the Canadian Radio-television and Telecommunications Commission (Report date: March 1, 2018) at p.9-10, online: <<http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2018/068-17-e/report.pdf>>. The recent report also covering issues regarding television services.

<sup>360</sup> TNC CRTC 2018-422, footnote 14. The results of this research are published on the Commission's website with its most recent report, including, responses to questions regarding the Television Service Provider Code.

<sup>361</sup> Canadian Radio-television and Telecommunications Commission [webpage], Internet Code, <<https://crtc.gc.ca/eng/internet/code.htm>>, providing a link to its Facebook page for public feedback on the creation of a possible Internet Code. (Last accessed in June 2019). After interventions, there were also different timelines for submitting replies, comments and final replies.

<sup>362</sup> Please note that even though no general consumer survey was conducted, a [survey](#) was conducted for deaf, deaf-blind, and hard of hearing Canadians [DDBHH] (with a total of 135 DDBHH participants) by CAD-ASC et al., submitted during TNC CRTC 2018-422 (March 4, 2019). [See [Intervention Report](#)]. This indicated consumer issues with home Internet access services, specific for those with special needs.

### 3.3.2 Focus Group Participants

To begin with, we asked our focus group participants whether they knew about the present Wireless Code. Many focus group participants did not seem to be aware of the Wireless Code.<sup>363</sup> Quite a few participants knew about certain rights and rules advanced by the Wireless Code, though they did not necessarily know its precise origin and link to a code. For instance, some participants knew about trial periods for phones; shorter duration of contracts, and caps on data overages; and other related rights.<sup>364</sup>

Many focus group participants inquired about the Wireless Code from the moderator of the focus groups. A brief overview of the Wireless Code and its function was provided; broadly, it was described as tool to better inform users of wireless services of their rights and obligations under their contracts, enabling easier access and understanding of the applicable terms and conditions. The focus groups were provided the Commission's summarized version of consumer protections under the Wireless Code (see figure 3.3-1),<sup>365</sup> and asked what they thought about it. Many participants reacted positively to the idea that a Wireless Code is in effect, and of those who knew about it, stated that it has changed a lot of things, but still needs improvement.<sup>366</sup> In general, participants thought it was a good idea to have codes of conduct, with one participant stating it makes sense to have businesses abide by certain rules that prevent them from making abusive policies.<sup>367</sup>

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<sup>363</sup> Also see one of the findings from the Wireless Code Public Opinion Research (2018) at p.15.

Despite the Wireless Code being in effect for nearly 5 years, half of Canadians (50%) do not recall hearing or seeing anything about it. There is higher awareness of the Wireless Code among those with a higher education level (clear recall 24-31% for College or University graduates vs. 12% for those with no tertiary education) as well as those with a higher income (clear recall 29-39% for those who earn more than \$60k per year vs. 12-14% for those with an income of less than \$60k per year).

<sup>364</sup> See, PIAC Focus group 1 in Toronto, August 22, 2018 (written transcript) and PIAC Focus group 2 in Toronto, August 22, 2018 (written transcript).

<sup>365</sup> Also, see: The Wireless Code, simplified, online: <<https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>>.

<sup>366</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.31-34.

<sup>367</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.32.

Figure 4.3-1. Wireless Code: Know Your Rights



Source: [CRTC's Website](http://CRTC's Website)

## Need and Scope

We asked our focus groups for their thoughts on having an Internet Code applicable to internet access services, similar to the Wireless Code. Many focus group participants were interested in knowing how an Internet Code would work; what it would entail; and deliberated on how it could be helpful. A few participants stated it would be unnecessary, stating that they are not bothered about the download speed and other specifics, as long as their internet works within the set limits;

whilst others thought it could be useful, more so if it regulates pricing.<sup>368</sup> Also, several participants appeared to support the idea of having rules in place that could be relied on in case they have a dispute with their internet service provider.<sup>369</sup>

Common issues that the participants felt should be addressed by an Internet Code, included: clear language in contracts,<sup>370</sup> clear disclosure of any change in fees, with any time limitation as applicable;<sup>371</sup> trial periods;<sup>372</sup> cancellation fees;<sup>373</sup> rate at which they are getting the data;<sup>374</sup> download and upload internet speed; service delivery and concerns relating to advertising;<sup>375</sup> and one participant mentioned that clear disclosure of the factors that hypothetically affect the internet speed is needed.<sup>376</sup>

When it comes to, especially when you said speed, I think they're very loose on terms, and that's on purpose. And I do think another thing is that sometimes I think they should phase out...like, because a lot of times they still offer, like, some speeds are very low. I think that sometimes some of them should be phased out. So, if we had...

[...]

Yeah, because especially for the world that we live in nowadays, I think that should be taken into account more than everything else, like how much Internet does it take for like, I don't know, a family of four, what not.

[...]

Yeah, exactly, just disclosure. Because you know, Internet has been around for long enough that they know how it works. They know what causes certain issues and what doesn't cause certain issues. But they're very cloak and dagger about that information. They don't want to let you know that there's even issues.<sup>377</sup>

**Like, I would say that there should be some guarantee for minimum speeds for people in Canada. It's not so much an issue in Montreal, but in a lot of places...**

In rural areas. [Comment from the moderator]

**In rural areas, you can't get access to reasonable speeds for your Internet. And I would say, like, you know, that they have to provide the speed they advertise, that there should be some, like, kind of cap on how much you can charge for X speed or like not being able to offer like shitty packages that aren't going to give you usable Internet where you can't even stream a video, things like this.**<sup>378</sup>

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<sup>368</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.34-36

<sup>369</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.44-45.

<sup>370</sup> See: PIAC Focus group 1 in Toronto, August 22, 2018; PIAC Focus group 2 in Toronto, August 22, 2018 and PIAC Focus group 2 in Montreal, August 23, 2018 at p.37-38.

<sup>371</sup> *Ibid.* Also see, PIAC Focus group 2 in Montreal, August 23, 2018 at p.38.

<sup>372</sup> PIAC Focus group 2 in Toronto, August 22, 2018.

<sup>373</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.41.

<sup>374</sup> PIAC Focus group 1 in Toronto, August 22, 2018.

<sup>375</sup> PIAC Focus group 2 in Toronto, August 22, 2018, PIAC Focus group 2 in Montreal, August 23, 2018 at p.36-37.

<sup>376</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.38-39.

<sup>377</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.38-39.

<sup>378</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.37.

One participant would like to have trial periods to test internet speed, before purchasing an internet service, with any outages reflected in the bill.

**MA: I guess one thing that came up is the speed and how they can essentially tell you this is the highest speed you need, and the thing is that you don't have the time to try out all the different speeds because of how difficult it is to change a plan and how expensive it can be so I think they shield allow trials the same way they do cell phones, you're allowed to try different speeds**

M: To figure out what's the lowest speed that still give you what you need [Moderator's comment]

**MA: Exactly something like that, essentially so that you can go with that, without getting something higher and also they have to stick to the speed because I can see them easily being able to change it, every time they vary speed or coverage you should see that o your bill, any outages and if changes...**

M: Yeah, there's a service outage more than x amount of time that you should get... [Moderator's comment]

**MA: Exactly**

M: Compensated some how [Moderator's comment]

**MA: And you should see them on your bill somehow and that ties into the transparency [.]**<sup>379</sup>

Another participant suggested controlling the infrastructure and setting of prices.<sup>380</sup> Indeed many participants expressed support for regulating the prices, and/or standardizing internet service prices.<sup>381</sup> Though one participant expressed some doubt regarding regulation of pricing with a potential code.

M: So they should regulate the prices? [Question from the moderator]

[...]

**MO: Yeah**

**K: Yeah**

**P: Yeah**

**ME: Yeah**<sup>382</sup>

K: I think this still comes down to price and there should be a standard price. You should get a certain amount of gigs for a certain amount/price. Why in Europe can you get 5gigs a month for \$15/month?<sup>383</sup>

Several participants supported having measures against unilateral changes to contract, and transparency. One participant shared an experience of unilateral changes to a contract made by the service provider based on provisions on page 45 of the contract, which is not easy to find. Another participant emphasized on contract clarity that simplifies users' correspondence with the customer support.

**M: [R] what were your thoughts, what are things that should be included?**

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<sup>379</sup> PIAC Focus group 2 in Toronto, August 22, 2018.

<sup>380</sup> PIAC Focus group 1 in Toronto, August 22, 2018.

<sup>381</sup> PIAC Focus group 1 in Toronto, August 22, 2018, PIAC Focus group 2 in Montreal, August 23, 2018 at p.36.

<sup>382</sup> PIAC Focus group 1 in Toronto, August 22, 2018.

<sup>383</sup> PIAC Focus group 1 in Toronto, August 22, 2018.

R: Things like when you sign up and you sign a contract and 18 months into your contract you get a bill saying we have to charge you \$5 more because we're upgrading your area and your like... whoa, I'm still contract and they're like well you signed this contract and on page 45 it says if we want to make the decision to change it to upgrade your area, you agree to pay the difference [...]

R: And you're like what?

**M: It's in the contract until we decide it isn't**

R: Exactly its kind of like they can put words in the contract where it's like, this is the contract but if we want to change some writing the time frame, we can do it, sign here, that's almost how they...

**M: So that's an example that maybe could be regulated**

R: Yeah I mean if you sign a contract and it's two years you can't change it, it can't be changed until the two year [...]<sup>384</sup>

MA: I think a lot of the issues end up being with customer service because of the fact that these issues happen all the time with the company, then you end up having a lot of problems with customer service, and either they take a long time to fix things, or you have to argue with them about things and a lot of that comes from misunderstanding so I think I'm emphasizing transparency in the beginning about the contract, then you don't have to argue with them about something you already knew was there and what not and I think that would solve a lot of the other issues, if the contract was a lot more clear [...]<sup>385</sup>

## Awareness and Promotion

We asked our focus groups how to best inform consumers of an Internet Code; with low awareness being a significant concern with the Wireless Code as well. Some participants suggested that the private companies should be responsible for keeping the consumers informed; either through sending updates, a banner ad; including details within the bills- both paper and electronic versions; and/or have a page for know your rights, available at the companies' websites.<sup>386</sup> Few participants suggested requiring the service providers to inform about the code when they give them the contract; stating that it should be attached with the contract.<sup>387</sup> One participant noted that including a copy of the code with the bill is not effective because many users may not read their bill, rather, it should be verbally communicated, considering it will be not so [long].<sup>388</sup> Another participant would like to see it being provided as a welcome package.<sup>389</sup> Other resources such as, social media,<sup>390</sup> sponsored ads,<sup>391</sup> mailers<sup>392</sup> and news advertising<sup>393</sup> were also mentioned.

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<sup>384</sup> PIAC Focus group 2 in Toronto, August 22, 2018.

<sup>385</sup> PIAC Focus group 2 in Toronto, August 22, 2018.

<sup>386</sup> PIAC Focus group 1 in Toronto, August 22, 2018. Also, see PIAC Focus group 2 in Montreal, August 23, 2018 at p.42.

<sup>387</sup> PIAC Focus group 2 in Toronto, August 22, 2018.

<sup>388</sup> *Ibid.*

<sup>389</sup> PIAC Focus group 2 in Toronto, August 22, 2018,

<sup>390</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.42.

<sup>391</sup> *Ibid.*

<sup>392</sup> *Ibid.*

<sup>393</sup> *Ibid.*

M: Now how should, if there was an internet code to be created, how could it be made available to consumers, like how could they inform people? [Question from the moderator]  
[...]

**A: Well that's the private companies' responsibility, just like Rogers would inform you, like the banner when you're almost done, no matter what site you're on you just get that update and it's just like some companies have to include the government warning, they have to send...**

M: But like for example, with like, I guess they include it within your bill or something like that, like if, I guess, I guess what I'm asking if an internet code were created, how would we make people aware of the fact that it exists? [Question from the moderator]

**A: Create a new bill**

**S: A little thing like... know your rights and have a link to it that you can click on**

M: They should have to have a banner ad on your...

**S: Like a hyperlink**

**K: If you get a paper bill, then it should be included with that, if you get a wireless bill, then it should be on that [.]<sup>394</sup>**

## Concerns

We heard few concerns in relation to an Internet Code, particularly, relating to the costs. For example, one participant inquired whether its costs would be borne by them. She specifically asked whether having such a code meant paying more, and indicated two incidents where she as a consumer had to pay more, mainly referring to television, like pick and pay system.<sup>395</sup> Another participant expressed disappointment from the changes in the Wireless Code on the contract duration, resulting in it being more expensive to get a new cellphone because more costs had to be paid.<sup>396</sup>

## 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 so intertwined. In the section ahead, we will briefly consider the different codes, potential overlaps, and their interplay.

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<sup>394</sup> PIAC Focus group 1 in Toronto, August 22, 2018.

<sup>395</sup> PIAC Focus group 1 in Toronto, August 22, 2018.

<sup>396</sup> PIAC Focus group 2 in Montreal, August 23, 2018 at p.31-32.

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 contend that more the consumers are aware of such a code, the more effective it will be in explaining the rights and obligations of consumers and the internet service providers. Some suggestions from our focus groups for increasing public outreach include; requiring service providers to inform about an Internet Code and its main protections during customer interaction—either at the point of sale, attach it with the contracts, and/or add details in the bills, have ads, and online, through-prominent links on websites and social media.

We believe that another important measure would be having regular public opinion research, based on tested awareness. As noted by the Coalition during the review of the Wireless Code that the Wireless Code Public Opinion research has clear limitations in terms of its reliability of consumer awareness of the Wireless Code, which is based on self-reported awareness, rather than tested awareness;<sup>397</sup> and that it agrees with academics’ Shepherd & Middleton’s argument that knowledge needs to be tested rather than self-assessed.<sup>398</sup>

Additionally, actions such as compliance reporting by service providers at regular intervals, which is publicly available and easily accessible; making promotional materials available in multiple languages, and having public services announcements, could be useful.<sup>399</sup>

### 3.3.3 Consumer Interventions and Feedback on Facebook Page

Several consumer intervenors appeared to support the idea of a regulatory framework for internet access services.<sup>400</sup> Some emphasized on the need for basic standards to be followed,<sup>401</sup> while, quite a few intervenors reflected on the importance of internet in our daily lives and emphasizing on the need to treat internet as a public utility,<sup>402</sup> just like other amenities of life.<sup>403</sup> Some intervenors viewed this code as a medium for ensuring their fair treatment.<sup>404</sup> One intervenor suggested

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<sup>397</sup> Telecom Notice of Consultation CRTC 2016-293 – Review of the Wireless Code, The Coalition, Reply Comments (16 November 2016) at p. 19-20. This Coalition consists of Public Interest Advocacy Centre (PIAC), Consumers Association of Canada (CAC), Council of Senior Citizens’ Organization of BC (COSCO) and National Pensioners Federation (NPF).

<sup>398</sup> *Ibid.* See TNC CRTC 2016-293 – Review of the Wireless Code, Shepherd and Middleton, First Intervention at paras 22-24. They argued that knowledge needs to be tested as the public opinion research shows inconsistent results. (See footnotes on page 5 of the TNC 2016-293, Review of the Wireless Code, The Coalition, Reply Comments (16 November 2016)).

<sup>399</sup> TNC CRTC 2016-293 – Review of the Wireless Code, The Coalition’s Intervention (3 October 2016) at p.91-97. Please refer to this submission for other listed suggestions with pertinent details.

<sup>400</sup> Intervention 23 (TNC CRTC, 2018-422) [Villamizar, Camilo]; Intervention 32 [Gagne, Francis]; Intervention 78 [Hughes, Peter Derek]; Intervention 18 [Gandubert, Charles-Eric]; and Intervention 108 [Fields, Martin].

<sup>401</sup> Intervention 78 (TNC CRTC, 2018-422) [Hughes, Peter Derek].

<sup>402</sup> Intervention 110 (TNC CRTC, 2018-422) [Noakes, Taylor]; Intervention 111 [Dionne-Simard, Dominique] and Intervention 123 [Westgate, Kyle].

<sup>403</sup> Intervention 49 (TNC CRTC, 2018-422) [Sylvain, Pierre].

<sup>404</sup> See, Intervention 32 (TNC CRTC, 2018-422) [Gagne, Francis]; and Intervention 53 [Bell, Alexander].

imposing fines for non-compliance, amidst other suggestions for dealing with infringements.<sup>405</sup> Some intervenors viewed this a means of balancing out the market concentration.<sup>406</sup> Examples cited:

Internet is not a luxury like cable TV anymore. It should be regulated the way electricity or water is. The telecoms have proven again and again that they cannot be trusted to treat it as it should. They should have a clear, restrictive code of conduct that would be enforced with fines and penalties for repeated offenders.<sup>407</sup>

Providing an appropriate framework for internet service providers will allow consumers the opportunity to seek competitive prices and reasonable rates. I believe that with the increase of streaming services and internet usage, that internet data caps should be removed on internet plans for the prices that they charge, as well as providing clearer messaging in advertisements that indicate the actual price and contract obligations of plans (not just offering the sale price, then doubling it after one year and holding you on a contract). Breaking down the contract with easier language will allow consumers the opportunity to review what is being signed and make an informed decision. Making sure the CRTC favours consumers is important, as the loss of competition is substantial in the Canadian media economy, and the Commission needs to make concerted efforts in protect Canadian citizens and their rising cost of living.<sup>408</sup>

I am often opposed to government regulation in the private sector, but since there are a limited number of providers in Canada due to a combination of protectionist policies and market demands (or lack thereof), I am in support of an internet code that regulates, manages and enforces the actions and inactions of internet service providers. As long as bodies like the CRTC exist to protect consumers and Canadian companies from foreign competition, I support these types of codes within the industry. I'm sure I speak for many Canadians when I say that I have spent hours waiting on the phone to resolve service issues with Canada's few providers. Often, I am left frustrated. This needs to change.<sup>409</sup>

Some intervenors made detailed submissions regarding what protections they would like to see covered by a code, including but not limited to: pre-sale critical information summary (CIS); any changes to a contract to be communicated to the consumer with an updated CIS, tools for monitoring data usage; and having measures in place for billing disputes (the intervenor had regular out of service area charges from one carrier, during months she did not leave the city, which the carriers' maps said was 100% covered, with no refund for these extra charges).<sup>410</sup> Unsurprisingly, some intervenors emphasized on the need to deal with misleading sales tactics, and proposed different protections to be provided for by this code- transparent offers, cooling off periods, and more time to raise certain billing issues.

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<sup>405</sup> Intervention 69 (TNC CRTC, 2018-422) [Correa, Alan Frederick]. Also see, Intervention 118 (TNC CRTC, 2018-422) [heard, Charles].

<sup>406</sup> Intervention 96 (TNC CRTC, 2018-422) [Williston, James]; and Intervention 107 [Rideout, Justin].

<sup>407</sup> Intervention 49 (TNC CRTC, 2018-422) [Sylvain, Pierre].

<sup>408</sup> Intervention 51 (TNC CRTC, 2018-422) [Ebing, Jenika].

<sup>409</sup> Intervention 87 (TNC CRTC, 2018-422) [Rados, Ryan].

<sup>410</sup> Intervention 39 (TNC CRTC, 2018-422) [Roshak, Natalka].

A code of conduct is required to ensure that consumers' interests are being supported. While a free market is good for the businesses and consumers alike, there must be some basic standards to be followed. This may include issuing documentation to the consumer prior to any agreement being considered in place. That would make all telephone-based or door-to-door based offers transparent and would also act as a "cooling off period". Also consumers should have more than 90 days in which to raise concerns about over-charges to accounts.<sup>411</sup>

The internet is an essential service that should be accessible by every Canadian and person living in Canada. The telecommunication companies that act as access points to this service should not be allowed to force citizens to enter into contracts that make them pay a penalty when they no longer require the service, i.e. the current style of contracts used by telecommunication companies. A mandatory code should prevent this behavior, reinforce net neutrality rules, and put an end to predatory sales tactics, used by the likes of Bell, that affect more vulnerable groups such as the elderly. These are just some of the ways in which a mandatory code for Internet services will benefit Canadians and those living in Canada.<sup>412</sup>

[...] I believe that the CRTC should create a code that will allow them to impose significant fines on any company that engages in these misleading sales practices. For the past several years, they have been engaging in fraud. In my opinion, they're no better than those criminal entities that send you a trial package after telling you that there's no obligation to buy after the trial and then continue to charge you monthly after the trial period is over. The CRTC needs to start cracking down on these criminals, specifically Bell & Rogers. [...]<sup>413</sup>

On the contrary, few consumers expressed doubts concerning the efficacy of an Internet Code, doubting whether it will make any difference, with some consumers questioning the role and ability of the Commission to implement fair rules in this space.<sup>414</sup>

A total of 285 comments were compiled by the Commission from its Facebook page regarding an Internet Code.<sup>415</sup> This compilation consists of two broad categories; general comments; and specific comments- clarity, bill shock, changing service providers, complaint and email.<sup>416</sup> That said, these categories do not appear to be watertight, with contractual, cancellation and other issues found to be randomly placed under different headings. Some specific problems are noted below, please note this is not meant to be exhaustive account of all the comments made, rather, we consider some common issues raised.

Many comments under the general category pertained to having fair pricing; issues with limited data; and internet speed issues- one commentator suggested that at least 75% of the contracted [speed] should be provided, and another commentator stated having actual bottom line speed as

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<sup>411</sup> Intervention 78 (TNC CRTC, 2018-422) [Hughes, Peter Derek].

<sup>412</sup> Intervention 136 (TNC CRTC, 2018-422) [Ryan, Niall].

<sup>413</sup> Intervention 2 (TNC CRTC, 2018-422) [Evans, Robert].

<sup>414</sup> Intervention 6 (TNC CRTC, 2018-422) [Cathie Parsons]; and Intervention 36 [LeBlanc, Marc].

<sup>415</sup> Canadian Radio-television and Telecommunications Commission, Online consultation: Internet Code, online: <<https://crtc.gc.ca/telecom/eng/hearings/2018/2018-422-1oc.htm>>. (Last accessed in June 2019)

<sup>416</sup> *Ibid.*

well as a top end speed guarantee.<sup>417</sup> Other issues entailed- difficulties in switching providers- confusing contract closures, cancellation fees and dealing with a new installation from another carrier.<sup>418</sup> One commentator asked for an online tool to handle cancellations and transitions; also, that the fees should be clear and written in big letters; and there should be no installment fees when switching between one cable company to another, with the other cable company using the same infrastructure.<sup>419</sup>

Another commentator called for more competition in any communications market, and that the ISPs should not have control of the market, [who are] setting higher prices with less customer satisfaction, and the customer service should have a minimum quality standard.<sup>420</sup> Other complaints related to not receiving a copy of the contract when transferred from one service provider to another; and accessibility concerns, demanding the ISPs to provide AS:/LSQ interpreting service to comprehend the contract's terms and conditions.<sup>421</sup>

Under the specific categories, various problems were cited. For example, under clarity; one commentator complained about a removal of the service package that was being used by the commentator, who was told by the sales person to choose another option as the current one will just stop working; also, noting the fact that the short durations of discounts and package deals are downplayed, which could result in double the package price [after the discount ends].<sup>422</sup> Another commentator raised concerns about the steep per month penalties in case one wants to leave a service before the end of the term.<sup>423</sup> One commentator suggested having the contract information simplified in English/French, with any font size anywhere in the contract not to be below size 12 as used in Microsoft Word.<sup>424</sup>

Under bill shock, concerns pertaining to challenges in making adjustments to service bundles were noted; one commentator shared a concern about the inconsistency in billing i.e. between what is promised verbally and what is stated on the monthly bill, with another 90 minutes on hold while reaching an agent, before getting the charges reversed for that month, and then the additional charges are back the next month; and one commentator with accessibility needs complained about having to pay for even those services that are not generally being used.<sup>425</sup>

Again, under changing service providers, several issues were raised, such as: lack of choice, modem limitations in terms of the speed it can offer; inconvenience in changing providers; and

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<sup>417</sup> *Ibid.*

<sup>418</sup> *Ibid.*

<sup>419</sup> *Ibid.*

<sup>420</sup> *Ibid.*

<sup>421</sup> *Ibid.*

<sup>422</sup> *Ibid.*

<sup>423</sup> *Ibid.*

<sup>424</sup> *Ibid.*

<sup>425</sup> *Ibid.*

cancellation fees.<sup>426</sup> One commentator stated it was unfair to be penalized if not satisfied with the internet company and wanting to change, and that the customer should have a right to change or cancel [a service] if they want to.<sup>427</sup> Under complaint, one commentator mentioned about being slightly aware of the CCTS but did not understand the steps to elevate a complaint, which should also be made available in LSQ for those with accessibility needs.<sup>428</sup>

Some other comments pertained to issues regarding lack of enforcement by the Commission, difficulty in submitting complaints to the Commission directly, and that the CCTS has to be given more enforcement powers, and have their scope expanded.<sup>429</sup> Another commentator made specific suggestions, such as; having a minimal acceptable speed that all telcos should offer that should be raised at regular intervals; a minimal ratio between download and upload speed for all internet packages; to be given a choice between at least two different providers for all available internet speeds; must have the option to freeze a rate for a specific period of time and that this should be offered for all internet speeds; and increases in price for existing services cannot exceed a certain percentage.<sup>430</sup>

## 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.

Overall, support was observed for regulatory oversight over internet services and a code was viewed by some intervenors as a means to regulate and manage the conduct of internet service providers in their dealings with customers; including in relation to predatory and/or misleading sales tactics. Notably, the feedback provided to the Commission during this proceeding's different stages, in general lacked the views of many consumer groups, following the PIAC led boycott.

The comments provided on the Commission's Facebook page, largely indicated consumer issues relating to internet access services, with suggestions made regarding contract clarity; removal of

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<sup>426</sup> *Ibid.*

<sup>427</sup> *Ibid.*

<sup>428</sup> *Ibid.*

<sup>429</sup> *Ibid.*

<sup>430</sup> *Ibid.*

barriers to switching- such as cancellation fees; meeting accessibility needs, mandating minimum internet speed standards, and other related remarks.

## Chapter 3.4: Existing Regulatory Codes

### 3.4.1 Introduction

In this section, we briefly look at the existing mandatory codes of conduct in Canada; specifically, the Wireless Code, and the Television Service Provider Code; and comment on their interplay with an Internet Code, in order to determine any potential overlaps and possible duplication. The Commission aptly noted that many consumers purchase their communication services as a bundle as they may receive a discount for doing so.<sup>431</sup> Consequently, a customer who purchases a bundle of Internet, television, and wireless services will receive certain benefits, for instance, a CIS for wireless and television services but may not receive one for internet services.<sup>432</sup> Thus, an Internet Code could be a useful regulatory instrument to provide certain consumer protections for internet services. However, for this to happen in balance with other codes, we believe that an Internet Code's application and ambit needs to be clearly ascertained to avoid any complexities, whilst ensuring that setting boundaries is not used as tool to limit consumer protections. Our underlying concern is the potential and extent of consumer confusion caused by different codes for different services, and the need to gain a better understanding of consumer outlook.

### 3.4.2 Wireless Code

The Wireless Code's history traces back to a series of applications in December 2011.<sup>433</sup> This code was a response to the growing concerns by wireless service providers about the surfacing provincial regulations to address key issues relating to wireless services, such as, contract length, termination and penalty fees, and disclosure.<sup>434</sup> At that time, both the national wireless service providers and consumer representatives including PIAC, approached the Commission to address the quickly growing, inefficient patchwork of consumer protection regulation, taking over the national wireless market.<sup>435</sup> After extensive public consultation, the Commission established the Wireless Code in Telecom Regulatory Policy CRTC 2013-271 (the "Wireless Code Policy").<sup>436</sup> After the review of the Wireless Code, the changes took effect from December 1, 2017 with details

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<sup>431</sup> Telecom Notice of Consultation [TNC] CRTC 2018-422, online: <<https://crtc.gc.ca/eng/archive/2018/2018-422.htm>> at para. 24.

<sup>432</sup> *Ibid.*

<sup>433</sup> Telecom Notice of Consultation CRTC 2016-293 – Review of the Wireless Code, The Coalition's Intervention (3 October 2016) at p.3-6. As noted in the other sections of the report, the Coalition consists of PIAC, CAC, COSCO and NPF.

<sup>434</sup> *Ibid.*

<sup>435</sup> *Ibid.*

<sup>436</sup> Telecom Regulatory Policy CRTC 2013-271, online: <<https://crtc.gc.ca/eng/archive/2013/2013-271.htm>>.

found in the Telecom Regulatory Policy 2017-200.<sup>437</sup> The Wireless Code's objectives are as follows:

- (i) make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;
- (ii) establish consumer-friendly business practices for the wireless service industry where necessary; and
- (iii) contribute to a more dynamic wireless market.<sup>438</sup>

The Wireless Code applies to wireless services, defined as retail mobile wireless voice and data (including text) services [not to fixed Internet services],<sup>439</sup> provided to individual and small business consumers.<sup>440</sup> The Commission in its earlier decision noted the positive implications of the Wireless Code for consumers with a reduction in the wireless complaints, bill shock, and unilateral changes to contract terms and increasing ease of switching providers.<sup>441</sup> Notably, the Annual Wireless Code public opinion research shows the positive impact of the Wireless Code on consumer contracts for mobile wireless services;<sup>442</sup> however, it is important to take into account the relatively low consumer awareness of the Wireless Code that limits its use and enforcement by consumers.

The Commission remarked that based on the CCTS's annual reports, the consumer complaints about internet services involve similar issues as in the case of mobile wireless services (clarity of contracts and related documents, changes to contract terms during the commitment period, automatic contract renewal, early cancellation fees, etc.).<sup>443</sup> However, noting the distinguishing characteristics i.e. the fixed nature of Internet services and other related aspects meant that some but not all rules in the Wireless Code may be relevant to address consumer issues relating to Internet services; and that some aspects of the Television Service provider Code may be relevant for addressing concerns regarding Internet services.<sup>444</sup>

We note that communication services of different nature can in certain cases lead to unique issues, prompting the need for appropriate regulatory measures to address them; however, the differences drawn between fixed and wireless services in the context of these codes have not been explored and explained in sufficient detail during the Commission's proceeding on an Internet Code, to

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<sup>437</sup> Telecom Regulatory Policy 2017-200, online: <<https://crtc.gc.ca/eng/archive/2017/2017-200.htm>>. Also see, CCTS Annotated Guide to the CRTC, Wireless Code, online: <<http://www.ccts-cprst.ca/wp-content/uploads/2017/06/Annotated-Guide-to-the-Wireless-Code.pdf>>; and Canadian Radio-television and Telecommunications Commission, The Wireless Code, simplified, online: <<https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>>.

<sup>438</sup> Telecom Regulatory Policy 2017-200, Appendix 1.

<sup>439</sup> Telecom Regulatory Policy 2017-200, Appendix 1, Definitions.

<sup>440</sup> TNC CRTC 2018-422 at para. 25.

<sup>441</sup> TNC CRTC 2018-422 at para. 27.

<sup>442</sup> TNC CRTC 2018-422 at para. 28.

<sup>443</sup> TNC CRTC 2018-422 at para. 29.

<sup>444</sup> *Ibid.*

warrant as to why certain protections included in the Wireless Code should not be extended and/or included in an Internet Code. Many submissions from some service providers, as noted in the earlier section of this report rely on the distinguishing nature of these services to reject and/or deny the application of certain protections- such as trial periods and caps on early cancellation fees to name few; which without much detail, appear to be an unreasonable attempt to dilute consumer protections.

We believe that any need to distinguish between these type of services needs to necessarily factor in and emphasize on the similarity of the consumer issues arising from each service and accordingly, the content of an Internet code should be designed with priority given to these consumer issues rather, than specific nature of services. Importantly, such consumer codes' key objective in our view is advancing consumer interests, which would be defeated by drawing out these trivial justifications for limiting consumer protections in any respect, under a potential Internet Code.

### **3.4.3 Television Service Provider Code (TVSP Code), Deposit and Disconnection Code**

The Television Service Provider Code (TVSP Code) is a mandatory code to address the consumer problems relating to the television services.<sup>445</sup> Effective from September 1, 2017, the Commission for Complaints for Telecom-Television Services (CCTS) accepts complaints relating to subscription TV services provided by cable, Internet Protocol television (IPTV) and national satellite direct-to-home (DTH) TV service providers.<sup>446</sup> The TVSP Code requires the television service providers to give consumers clear information about their products, services and pricing. Specifically, it requires them to provide:

- A “critical information summary” with a copy of the written agreement in plain language- including a list of channels or packages subscribed to, monthly costs, contract duration, and complaints filing procedure
- Information as to the duration and conditions attached to any promotional offers
- Information as to the charges and time it would take to do any installations and repairs
- Thirty days' notice for any price changes

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<sup>445</sup> Broadcasting Regulatory Policy CRTC 2016-1, online: <<https://crtc.gc.ca/eng/archive/2016/2016-1.htm>>. May also see, Canadian Radio-television and Telecommunications Commission [webpage], The Television Service Provider Code, simplified, online: <<https://crtc.gc.ca/eng/television/services/codesimpl.htm>>.

<sup>446</sup> CCTS, Television Service Provider Code, online: <<https://www.ccts-cprst.ca/codes-stats-and-reports/television-service-provider-code/>>. May also see: Broadcasting Regulatory Policy CRTC 2015-104, Let's Talk TV- Navigating the Road Ahead - Making informed choices about television providers and improving accessibility to television programming, online: <<https://crtc.gc.ca/eng/archive/2015/2015-104.htm>>; and Broadcasting Notice of Consultation CRTC 2015-105 (Call for comments on a Television Service Provider Code of Conduct working document), online: <<https://crtc.gc.ca/eng/archive/2015/2015-105.htm>>.

- A trial period for Canadians with disabilities<sup>447</sup>

After the TVSP Code, consumers are entitled to receive improved information about their TV services, and complaints about bundled services (TV sold with Internet and for wireless or wireline telephone) can be brought to the CCTS.<sup>448</sup> PIAC commented earlier that this code provides limited substantive rights, unlike the Wireless Code, and focuses on making the TV Service provider offers more transparent.<sup>449</sup> Along the same lines, we submit that the Commission should be cautious in relying on the TVSP Code, to lay out the content and scope of a potential Internet Code, which could result in a weak regulatory framework for consumers, resulting in inadequate protections.

The other consumer code, Deposit and Disconnection Code (see the Telecom Decision CRTC 2011-702);<sup>450</sup> remains of limited relevance in this context. This is a mandatory code of conduct that applies to all home telephone services, and is meant to clarify the obligations about when and how a service provider may disconnect a service for failure to pay, and obligations on deposits required by a service provider; this is administered by the CCTS.<sup>451</sup>

#### 3.4.4 Complexities and Concerns

The Commission indicated its preliminary view in the proceeding for an Internet Code that “[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.”<sup>452</sup> The Commission asked if changes were required, under avoiding duplication with Wireless Code.<sup>453</sup> 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.<sup>454</sup>

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

<sup>447</sup> See Public Interest Advocacy Centre, Media release: “CRTC Television Service Provider Code takes effect from September 1: A Step in the Right Direction,” online: <<https://www.piac.ca/crtc-television-service-provider-code-takes-effect-from-september-1-a-step-in-the-right-direction/>>. (Last accessed in June 2019).

<sup>448</sup> *Ibid.*

<sup>449</sup> *Ibid.*

<sup>450</sup> Telecom Decision CRTC 2011-702, [CISC non-consensus report – Draft Deposit and Disconnection Code], online: <<https://crtc.gc.ca/eng/archive/2011/2011-702.htm>>.

<sup>451</sup> CCTS, Deposit and Disconnection Code, online: <<https://www.ccts-cprst.ca/codes-stats-and-reports/deposit-and-disconnection-code/>>.

<sup>452</sup> By this it means that complaints regarding fixed Internet services could be resolved according to an Internet Code, whereas other complaints about mobile wireless data and Internet to be resolved pursuant to the Wireless Code.

<sup>453</sup> Appendix 2 to Telecom Notice of Consultation CRTC 2018-422, question 11.

<sup>454</sup> 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.

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-accepted that consumer awareness of the CCTS remains low;<sup>455</sup> 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 feedback during our stakeholder consultations. We asked our stakeholders for their view 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 referring us to research, showing consumer confusion caused by different codes in effect. For instance, CAC Manitoba in its response to our questionnaire with input from the Public Interest law Centre (“PILC,” Legal Aid, Manitoba) stated:

If separate codes are developed for each aspect of telecom services, there is significant potential for overlap amongst, and conflict between, standards and requirements of the various codes. As a result, there is a risk of confusion amongst consumers. In research conducted by CAC Manitoba in a recent CRTC proceeding, consumers reported on the current consumer protection framework as a confusing maze, which provides insufficient and ineffective consumer protection. A unified Code for telecommunications services, rather than separate codes, would clarify and enhance the confusing and uneven maze of consumer protections.<sup>456</sup>

Consumers Council of Canada observed that many [aspects such as] sales practices, contractual and service-price manipulations as reported, appear to be in-common across different services and stated that adherence to common principles across [these] categories seems necessary. It noted that consumers are expecting some consistency in sales practices and contracting.<sup>457</sup> CAC Manitoba, and PILC also expressed support for having one telecommunications code as many consumers choose internet as a part of package, rather, than a standalone service.<sup>458</sup>

CAC Manitoba is of the opinion that there should be one telecommunications code covering all aspects of telecom service. Many consumers don’t choose internet as a separate service, but rather as part of a package or “bundle” of telecom services. To us, it seems that having separate codes for each service might confuse consumers rather than assist them. Having one telecommunications code would also eliminate “code overlap” for providers.

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<sup>455</sup> See chapter 2 of this Research report.

<sup>456</sup> 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.

<sup>457</sup> Response to PIAC’s Stakeholder Consultation, Consumers Council of Canada, dated March 8, 2019.

<sup>458</sup> Response to PIAC’s Stakeholder Consultation, Manitoba Branch of the Consumers’ Association of Canada, and Public Interest Law Centre of Legal Aid Manitoba, dated March 25, 2019.

In terms of the particular issues to be included in an Internet Code, further engagement directly with Canadian consumers and stakeholders would ensure that a Code responds to the needs and concerns of consumers. Engagement regarding rules to be included in a Code of telecommunications sales practices should be conducted with the general population, as well as with vulnerable groups and groups that may be disproportionately affected by problematic sales practices, such as young people.

One important element to be included in an amalgamated code or an Internet code is that telecommunications carriers should be mandated to provide standardized information based on common definitions regarding their prices and characteristics of their products to enable consumers to compare prices and decide on the suitability of products and services.<sup>459</sup>

### 3.4.5 Concluding Remarks

Based on our brief review above, 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 issues, in relation to fixed wireline and wireless 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 also note that having several codes for governing different services can cause confusion for consumers, resulting in their limited adoption and use; and at this same time, this could also result in administrative challenges. 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 consumers' telecommunication 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)<sup>460</sup> provides a useful example in this respect.

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<sup>459</sup> *Ibid.*

<sup>460</sup> 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](https://www.commsalliance.com.au/_data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf)>. May also see, Australian Communications and Media Authority (ACMA), The TCP Code, online: <<https://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/the-tcp-code-telecommunications-consumer-protections-code-acma>>; and <https://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code>. For details, see Chapter 4 of this report.

## Chapter 4: International Regulatory Regimes and Practices

### 4.1 Introduction

This section will explore some international regulatory practices regarding internet access services. The aim is to analyze and assess their application in the Canadian context. Our suggestions regarding the scope of a potential Internet Code and other regulatory measures required in Canada, draw insight from the international practices, where and as applicable.

### 4.2 United Kingdom (UK): Regulatory Framework and Practices

#### 4.2.1 Ofcom: Regulatory Measures and Practices

In the UK, the Office of Communications (Ofcom) regulates communication services including, broadband, home phones and mobile services, as well as keeping an eye on Television and Radio.<sup>461</sup> Ofcom has specific Guidance Codes of Practice and regulatory measures to regulate Internet services and its certain aspects. We focus on those measures that we believe could be useful for Canada.

#### New Voluntary Codes of Practice on Broadband Speed

Ofcom's key regulatory initiative regarding the broadband speed is revisions to its broadband speed codes that become effective from March 2019; meant to achieve four key changes:<sup>462</sup>

- Improved relevancy of speed estimates by reflecting peak time speeds
- Providing a minimum guaranteed download speed at the point of sale
- Improving the process of the right to exit
- Widening the scope of the codes to cover all technologies.<sup>463</sup>

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.<sup>464</sup> More

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<sup>461</sup> Ofcom [webpage], What is Ofcom? See online: <<https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>>. (Last accessed in June 2019).

<sup>462</sup> 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>>. 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>>.

<sup>463</sup> Ofcom [webpage], Codes of practice, see online: <<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice>>.

<sup>464</sup> 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>>.

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.<sup>465</sup> 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.<sup>466</sup> 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.<sup>467</sup> Also, these new protections apply to all types of broadband package, regardless of whether the connection is copper, fibre or cable.<sup>468</sup>

Ofcom's website also provides a list of the ISPs who have signed up to the new code. The code applies to broadband purchases from March 1, 2019 (services bought before would be subject to the existing codes).<sup>469</sup> This code applies whether people are switching to a new provider or changing their current provider.<sup>470</sup>

Notably, Ofcom's most recent data revealed that only 3 in 20 broadband customers contacted their existing provider proactively and renegotiated their deal last year.<sup>471</sup> Ofcom also found that customers with a basic, copper broadband connection have less than a one-in-five chance of being able to stream Netflix in ultra-high definition; which they would be able to do so if they get entry-level superfast broadband.<sup>472</sup> Ofcom plans to monitor companies' compliance with these new requirements that will be reported next year.<sup>473</sup> The working of this new code and its key protections is explained in the form of an illustration by Ofcom (see figure 4-1) with the use of icons, figures and big fonts, making it easier to read and understand.

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[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>>.

<sup>465</sup> *Ibid.* [Additionally], this right to exit also applies to landline and TV packages bought at the same time as broadband.

<sup>466</sup> Ofcom [webpage], Guide to the Broadband Speeds Codes of Practice. Please note that the other voluntary codes related to broadband speed are Voluntary Code of Practice: Business Broadband Speeds 2016; Voluntary Code of Practice: Residential Broadband Speeds 2015; with their updated versions also available online. See here:

<<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice>>.

<sup>467</sup> *Ibid.*

<sup>468</sup> *Ibid.*

<sup>469</sup> Ofcom [webpage], Codes of practice.

<sup>470</sup> *Ibid.*

<sup>471</sup> Ofcom [webpage], Clear, honest information before you buy broadband.

<sup>472</sup> *Ibid.*

<sup>473</sup> *Ibid.*

**Figure 4-1. Ofcom- New Guidance Code of Practice- Broadband Speed**

**1** Providing more **realistic speed estimates** at the point of sale, which reflect peak times.

Your speed estimate at peak times for postcode XX1 YY2:  
**19.6Mbit/s to 22.2Mbit/s**

**2** Always providing a **minimum guaranteed speed** at the point of sale.

Did you know that if your speed falls below XMbit/s for a sustained period you may have a right to exit your contract.

**3** **Strengthening customers' right to exit** if speeds fall below the minimum guaranteed level.

- Limit the time for provider to improve speed before offering right to exit.
- For residential customers the right to exit will apply to phone and TV services bought at the same time as broadband.

**4** **Ensuring all customers benefit from the codes**, regardless of their broadband technology.

Copper	✓	Applies
Part or full fibre	✓	Applies
Cable	✓	Applies

Source: Ofcom, [Clear, honest information before you buy broadband](#)

Earlier, in its “Statement regarding Better Broadband Speeds Information -Voluntary Codes of Practice,” Ofcom emphasized on the importance of broadband service, which is relied on by people and businesses for completing a wide range of activities;<sup>474</sup> and rightly noted that the speed at which a broadband connection downloads data is a significant factor for customers when they purchase a broadband service; accordingly, customers need realistic information both at the point of sale and in their contract, on what to expect in terms of the broadband speeds they will get.<sup>475</sup> Ofcom’s codes of practice regarding broadband speeds for residential and business customers require its signatories to comply with its conditions i.e. providing estimates of the speeds, customers are likely to receive at the point of sale.<sup>476</sup>

<sup>474</sup> Statement: Better Broadband Speeds Information - Voluntary Codes of Practice [webpage] (published on March 1, 2018), online: <<https://www.ofcom.org.uk/consultations-and-statements/category-1/broadband-speeds-codes-practice>>. Also see: Ofcom, Statement: Better Broadband Speeds Information: Voluntary Codes of Practice [(March 1, 2018), online: <[https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/111696/statement-broadband-speeds.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/111696/statement-broadband-speeds.pdf)>.

<sup>475</sup> *Ibid.*

<sup>476</sup> *Ibid.*

Essentially, the new Better Broadband Speed Information, Voluntary Code of Practice (Residential), requires service providers to provide customers important information at the point of sale i.e. speed estimates likely to be experienced at peak times (8-10 for residential households) and a minimum guaranteed speed, and information after sale- 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; defines specific obligations regarding service providers managing speed problems; and gives customers a right to exit the contract if the speed falls below the minimum threshold.<sup>477</sup> Overall, it entails the following principles (with brief specifics added to provide more context and a better appreciation of their scope and application):<sup>478</sup>

1. **Principle 1: Realistic information on broadband speeds at point of sale**, this requires that:

- the information must be provided at the point of sale and before the sale is agreed
- information must be communicated in the most relevant way to the customer
- Signatories must provide information on the normally available and minimum guaranteed download speeds at the point of sale (including estimated normally available download speed, and minimum guaranteed download speed, regardless of the medium was used to conduct a sale)
- Normally available download speed [to be provided] (ISPs must ensure that the normally available download speed information provided is in the form of a range equivalent to the peak time speeds achieved by the 20th to 80th percentiles of the ISP's customers)
- Normally available upload speed (generally, to be provided as a range)
- Minimum guaranteed download speed (amidst other details, it states that the ISPs may use their own wording to describe the minimum guaranteed download speed, but the wording must make it clear that below this speed, customers can exit the contract without any penalty)
- Testing to reflect peak time performance in the speed estimates
- ISPs may use alternative approaches in some circumstances (ISPs may supplement the normally available speed range with an additional single-point estimate within

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<sup>477</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), publication date March 1, 2018 [became effective from March 1, 2019] at p.4.

<sup>478</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.4-19. The details are added as best found relevant and for context. To see more details, please see the cited source. The previous 2015 Voluntary Code of practice: Broadband Speeds, (version 3.0, dated June 2015) consists of eight principles; for precise wordings and details, see the 2015 Voluntary Code of Practice: Broadband Speeds, online: <[https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/85780/Broadband\\_Speeds\\_Code\\_June\\_2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/85780/Broadband_Speeds_Code_June_2015.pdf)>. May also see BDRC Continental, "Broadband speeds mystery shopping - Market research report," at p.7-9, online: <[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106753/broadband-speeds-mystery-shopping-october-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106753/broadband-speeds-mystery-shopping-october-2017.pdf)>.

that range, provided that it is no higher than the median access speed achieved by the ISP's similar customers)

- Where available, ISPs must use the customer's actual received access line speed as the basis for the estimates provided at point of sale, and
- Other speed information to be given during the sales process (such as explain in clear and meaningful way the actual throughput speed);<sup>479</sup>

2. **Principle 2: Detailed information provided after-sale**, this requires that:

- ISPs must provide detailed information within 7 calendar days of the sale (in a written, durable format, in a way that is clear and transparent to the customer. Most likely to be in an introduction/starter pack sent by letter, email, and/or in my account, with the latter supported with a notification for both upload and download speed)
- Usage limits (where such limits apply, ISPs must provide a means by which users can measure their usage over a billing period, and get advanced notifications, also when users exceed these limits)
- Ongoing correspondence (regarding improvements to the speed);<sup>480</sup>

3. **Principle 3: Detailed information on the website**, this requires:

- ISPs must provide information on their website (this must be clear, and include amidst other requirements, fair usage policies and any criteria used to determine their breach, and actions to be taken in case a user exceeds a usage limit or breaches a fair usage policy; also must include a link to the Residential code, and provide a facility (line/speed checker) on their website so that customers can easily find out the normally available download and upload speed, and minimum guaranteed speed);<sup>481</sup>

4. **Principle 4: Managing speed-related problems**, this requires:

- ISPs must be prepared to deal with these issues; with a robust process for logging the speed problem, identifying the cause of the problem and whether it is or not within their control, and monitor the problem to resolution or until reasonable actions are exhausted, whilst keeping the user informed;<sup>482</sup>

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<sup>479</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.4-9.

<sup>480</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.9-11.

<sup>481</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.11-12.

<sup>482</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.12.

5. **Principle 5: Right to exit the contract without penalty where speed problems cannot be resolved,** this requires:

- Right to exit the contract without penalty if actual download speed falls below the minimum guaranteed download speed given at point of sale (it allows the ISP to offer the right to exit earlier than 30 calendar days if it has taken all reasonable steps to resolve the speed issue, and the download speed still remains below the minimum guaranteed)
- Process for exercising the right to exit (have a robust process in place, the 30-day limit for resolving the matter starts from the point at which the customer reports a speed issue)
- The process for exercising the right to exit must be clear and easy for the customer (as soon as possible after the speed problem is identified, the ISP must tell the customer their minimum download speed, and explain about having a right to exit the contract without penalty, if this issue cannot be resolved within 30 days)
- The ISP can offer other remedies alongside the right to exit (such as discounts or upgrades alongside the right to exit)
- The ISP can choose to ask for equipment to be returned
- The right to exit applies to standalone broadband services and some additional services;<sup>483</sup> and

6. **Principle 6: Delivery of the objectives of the Residential Code**

- Speed information must be as accurate as possible
- Provision of speed information by wholesalers (ISPs contracting with end-user are responsible for providing the speed information described in the Code)
- ISPs must have appropriate supporting processes
- ISPs must support the spirit of the Residential Code
- Implementation.<sup>484</sup>

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. As noted in the earlier chapters, we believe that inclusion of broadband speed and 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, with a clear example available from Ofcom's code on broadband speed. Ofcom's principles based approach could be a useful start for Canada. Above

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<sup>483</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.13-17.

<sup>484</sup> Ofcom, Better Broadband Speed Information, Voluntary Code of Practice (Residential), 2018 at p.17-19.

all, the principle regarding providing realistic information about broadband speeds at the point of sale will not only reduce the mismatch between what consumers expect to receive and what they actually get, but also allow consumers to make a more well-informed decision at the time of purchase, rather, than going through any hassle of exiting a contract as an after-thought.

Even providing detailed information after a point of sale, specifically, regarding usage limits; and having user-friendly information on internet speeds readily available on an ISP's website could be useful in lessening consumer distress and frustrations when it comes to dealing with an internet service that does not meet their expectations. Additionally, having minimum guaranteed speeds, transparency on managing speed related problems, and right to exit a contract when the speed falls below the minimum threshold, and it cannot be resolved within a period of 30 days would be a fair measure to implement, allowing users to exit a contract without penalty in Canada as done in the UK. Overall, Ofcom's principles on broadband speed, remain straightforward, easy to understand and potentially follow, as many signatory ISPs in the UK do (see the mystery shopping results below).

Ofcom's monitoring initiative includes a mystery shopping exercise; with one such exercise conducted between September and December 2016 to assess compliance through ISPs' sales processes online, over the telephone and, where applicable, in-store, which had a total of 2,295 mystery shopping assessments.<sup>485</sup> Additionally, a detailed website audit was also done for each ISP included in the mystery shopping exercise.<sup>486</sup> The results of this mystery shopping provided an extensive and detailed overview of the broadband service providers' practices regarding providing information to customers on speed estimates [in both situations- when and when not prompted for], impact on speed- whether the actual speed received may be lower than estimates, information on action to take if speed is lower than expected, being told about follow-up information, and website audits to check whether and where was a working broadband speed checker located, and how easily could key information be located on an ISP's website.<sup>487</sup>

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<sup>485</sup> BDRC Continental, "Broadband speeds mystery shopping - Market research report," at p. 11.

<sup>486</sup> *Ibid.* For more details regarding website audits, see BDRC Continental, "Broadband speeds mystery shopping - Market research report," at p. 31-34.

<sup>487</sup> For a summary of key findings, see: BDRC Continental, "Broadband speeds mystery shopping - Market research report," at p. 4-6; and for detailed results, see sections 4 and 5, at p.14-39. Some details from the key findings are added here for reference (please note this is only based on the summary of their key findings, for details see the noted sections):

- Speed estimates (telephone assessments): Almost all 99% telephone assessments resulted in an estimate broadband speed either in the form of a range, a point estimate, a minimum guaranteed speed or a throughput speed; including the assessments where the mystery shopper asked for this information, and the information was provided without prompting. From 2013, a 12 percentage point increase was seen in speed information being given in relation to its range (prompted and unprompted), this being 24 points higher than in 2011/12;
- Impact on speed (telephone assessments): Around 40% of shoppers were told that the actual speed that they would receive may be lower than estimated. This more than doubled between 2013 and 2016, from 17% to 40%;
- Information on action to take if speed is lower than expected (telephone assessments): After prompting, in some cases, almost nine in ten (89%) were told that if the speed they received was lower than expected that

A similar measure could be implemented in Canada, as the CRTC already plans to implement a mystery shoppers' program as a regulatory measure to identify and address issues relating to misleading sales practices;<sup>488</sup> in the long-term, this could easily include reviewing service providers' practices regarding disclosure on internet speed- its range and limitations.

### Automatic Rebates

Another noteworthy regulatory initiative by Ofcom is the Automatic Compensation Scheme that 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.<sup>489</sup> These service providers have to provide compensation for delayed repairs, missed repairs or delays with the start of a new service.<sup>490</sup> 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.<sup>491</sup> 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

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they should contact their ISP. One in five (22%) were told without prompting. Also, around two in three (68%) assessments showed that information was ultimately given that in the event of issues with their speed being lower than expected, they would be able to leave the contract; of those who were told that they can take a follow-up action, 33% were given an indication as to the level of difference in speed;

- Follow-up information (telephone assessments): One in five (18%) were told they would receive follow-up information and of these, 78% were given an indication of how this would be conveyed to them;
- Speed estimates (store assessments): This applied to only certain providers with stores. As with shops conducted on telephone, in (98%) store assessments a speed estimate was provided. Also, around nine in ten (89%) were given an estimate in the form of a range, which varied from 76% to 98%. Without prompting, the provision of the range was not as high, being at 61% and 67% for range or midpoint;
- Impact on speed (store assessments): Two in five (42%) were told that their actual speed may be lower than estimated. This information was not specifically prompted for, with almost (47%) were given some information about what could affect the speed of their broadband connection that was not prompted for;
- Web audits: A working broadband speed checker was located on all the ISPs included in the mystery shopping exercise- either on the home page, broadband home page or as noted being one or two clicks away. Reportedly, it was possible to locate most key information on an ISP website with a speed estimate in the form of a range being provided in all instances where this was appropriate. Also, information regarding other matters, such as fair usage policies was often noted to be available but was sometimes necessary to search for.

<sup>488</sup> Canadian Radio-television and Telecommunications Commission, "Report on Misleading or Aggressive Communications Retail Sales Practices," (February 2019), online: [https://crtc.gc.ca/eng/publications/reports/2018\\_246/](https://crtc.gc.ca/eng/publications/reports/2018_246/).

<sup>489</sup> 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>. Please note that under this scheme, if a customer loses both their landline and broadband service at the same time, they will only receive one compensation payment. For more details and context regarding this compensation regime, see: Ofcom, Communications Providers' Voluntary Code of Practice for an Automatic Compensation Scheme dated November 10, 2017, online: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/107691/Annex-1-industry-automatic-compensation-scheme.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/107691/Annex-1-industry-automatic-compensation-scheme.pdf).

<sup>490</sup> *Ibid.*

<sup>491</sup> Ofcom, "Automatic compensation: What you need to know" (April 1, 2019).





for each full day if it is still not fixed after that.<sup>492</sup> Unless agreed otherwise, the compensation will be a credit on the customer's bill.<sup>493</sup> Also, this compensation should be paid by no later than:

- 30 calendar days after a delayed start of a new service is resolved or the service is cancelled;
- 30 calendar days after the loss of service is resolved or the service is terminated;
- 30 calendar days after the date of the missed appointment.<sup>494</sup>

This scheme applies to new orders or problems reported from April 1, 2019.<sup>495</sup> It is important that customers should first check whether their provider has signed up to the scheme.<sup>496</sup> 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.<sup>497</sup> Likewise, no compensation is payable if the customer breaches the contract causing the service failure or the customer prevents it from being resolved i.e. when the appointment for repair is delayed by the customer.<sup>498</sup> Though, in some cases, it may not be clear and/or easy to determine if the loss of service is caused by the activity within the customers' house.

**Figure 5.2- Ofcom: Automatic Compensation Scheme for landline or broadband service**

**Automatic compensation: how it works**

<b>Problem</b>	<b>A landline or broadband customer would be entitled to compensation if...</b>	<b>Amount of compensation</b>
Delayed repair following loss of service	Their service has stopped working and it is not fully fixed after two full working days.	 <b>£8</b> for each calendar day that the service is not repaired
Missed appointments	An engineer does not turn up for a scheduled appointment, or it is cancelled with less than 24 hours' notice.	  <b>£25</b> per missed appointment
Delays with the start of a new service	Their provider promises to start a new service on a particular date, but fails to do so.	 <b>£5</b> for each calendar day of delay, including the missed start date

Source: Ofcom webpage, "[Automatic compensation: What you need to know](#)".

Overall, this current automatic compensation scheme appears to be well-balanced in terms of protecting the interests of consumers and the service providers; as it allows these providers to place a cap on the amount of compensation paid out after 30 days of an automatic compensation

<sup>492</sup> *Ibid.*

<sup>493</sup> *Ibid.*

<sup>494</sup> *Ibid.*

<sup>495</sup> *Ibid.*

<sup>496</sup> *Ibid.*

<sup>497</sup> *Ibid.*

<sup>498</sup> *Ibid.*

payment.<sup>499</sup> This means the providers can provide a notice that automatic compensation payments would stop after further 30 days.<sup>500</sup> Though, then the provider is required to take reasonable steps to provide a suitable alternative service, and in case no alternative service is provided, customers will still be entitled to automatic compensation under the scheme.<sup>501</sup>

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 addition to 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 what would trigger automatic payment, which is connected to the number of days it took to fix the service (if at all) with clearly identified costs to be paid. Also, it is important to reiterate that Ofcom's regime simultaneously, balances out the service providers' interest by placing a 30 days cap on the amount of compensation paid out, subject to the service providers' taking reasonable steps to provide an alternative service within that time.

## Enforcement Programmes

Ofcom administers various enforcement programmes, including those that pertain to internet services, in relation to early termination charges (ETFs),<sup>502</sup> and complaints handling.<sup>503</sup> We made a brief mention of Ofcom's enforcement programme on ETFs in the previous section; and merely reiterate that Ofcom's practice on collection and reviewing of consumer complaints regarding ETFs remains an important transparency and fairness measure. This and/or a similar measure merits attention for application in Canada. This could be covered through a potential Internet Code, where in addition to a provision on limiting the early cancellation fees, we could have a clear data collection and reporting provision to oversee and monitor service providers' compliance. This could be an important step towards addressing the regulatory gap indicated by the CCTS reports, noting that despite mandating clear requirements in the Wireless Code regarding the ETFs, it is still breached by some wireless service providers.<sup>504</sup>

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<sup>499</sup> *Ibid.*

<sup>500</sup> *Ibid.*

<sup>501</sup> *Ibid.*

<sup>502</sup> Ofcom, Enforcement programme into early termination charges, online: <[https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01199](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01199)>.

<sup>503</sup> Ofcom, "Enforcement programme into complaints handling" online: <[https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01101](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101)>. Some other enforcement programmes added only for reference: Ofcom's Enforcement programme into compliance with obligations relating to emergency call access and resilience, see online: <[https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_996](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_996)>; Ofcom, Enforcement programme into Internet Service Providers traffic management practices [closed- May 2019], online: <[https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01210](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01210)> and other such measures.

<sup>504</sup> Please the discussion and details in chapter 3.2 of this report.

## Complaints Handling

Ofcom has detailed complaint handling practices which are meant to standardize the applicable procedures. Section 52 of the Communications Act 2003 places “[a] duty on Ofcom to set general conditions to ensure that communications providers establish and maintain procedures to, amongst other things, handle complaints and resolve disputes between them and their domestic and small business customers.”<sup>505</sup> The applicable condition for complaints handling and dispute resolution is General Condition C4 (GC C4); which requires the procedures followed by the service providers to conform to its Approved Complaints Code, and also to comply with its approved alternative dispute resolution scheme, with penalties (10% of turnover) in place for non-compliance within the specified duration.<sup>506</sup>

Ofcom’s standardized and user-friendly complaint handling practices could be integrated in the existing procedures and processes followed by the service providers; and we believe this would be quite effective when included in a code as done by Ofcom, this would at the very least serve as a basic guideline to be followed, and provide some transparency as to the internal procedures followed by the service providers. A potential Internet Code could consist of a section with provisions regarding complaint handling processes to be followed by the service providers and the CCTS; focusing on the requirement of ease of access to the complaint process, transparency in terms of its duration, administration and reported outcomes. The reports from the CCTS remain an integral source of data and information on complaints, which could be supplemented with additional details drawn from Ofcom’s practices as and where applicable.

## Reporting on Residential Broadband Speed Performance

Ofcom reports on home broadband performance delivered by residential broadband providers.<sup>507</sup> Ofcom collaborates with SamKnows to have consumers have a monitoring unit connected to their router, to allow for a thorough assessment of the speed delivered to them. This exercise takes into consideration other factors that affect it, such as, technology, provider, package, geography and the time of day.<sup>508</sup> 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

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<sup>505</sup> Ofcom [webpage], Codes of practice. Also see: Ofcom, Ofcom approved complaints code of practice for customer service and complaints handling, Annex to General Condition C4, online: <[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/132829/Ofcom-approved-complaints-code-of-practice.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/132829/Ofcom-approved-complaints-code-of-practice.pdf)>; and Ofcom, General Conditions of Entitlement Unofficial Consolidated Version (15 May 2019), online: <[https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/112692/Consolidated-General-Conditions.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf)>.

<sup>506</sup> Ofcom [webpage], Codes of practice.

<sup>507</sup> 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>>. May also see its 2018 Report, UK Home Broadband Performance- The performance of fixed-line broadband delivered to UK residential consumers, online: <[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/147332/home-broadband-report-2018.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/147332/home-broadband-report-2018.pdf)>.

<sup>508</sup> *Ibid.*

regard.<sup>509</sup> In our view, this detailed and regular reporting initiative of Ofcom should be considered for Canada as it could provide useful data and public resources on home broadband performance, which presently, remains limited, making it challenging to determine any trends.

#### 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.<sup>510</sup> It supports the relatively recent changes made by CAP regarding the way broadband speed could be advertised.<sup>511</sup> CAP is a body that writes the UK Advertising Codes.<sup>512</sup>

CAP announced in November 2017, that the numerical speed claims in broadband ads should be based 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.<sup>513</sup> It also suggested that speed-checking facilities should be available on ISPs’ websites and promoted in advertisements when possible. The new guidance applies to residential broadband services, taking effect from May 23, 2018 after a six month implementation period.<sup>514</sup>

These changes were based on research that showed that consumers are “[I]ikely to be materially misled by the advertising of speed claims that follow the current guidance.”<sup>515</sup> This included a consultation involving major ISPs, a trade body representing over 200 ISPs, consumer groups, other think tanks and Ofcom; where strong support was shown for changing the current standards applicable in relation to speed advertising.<sup>516</sup> During this consultation; respondents were asked what they would prefer: median download speed measured at peak-time or over 24 hours; or a range of download speeds available to the 20th to 80th percentile of users measured at peak time or over 24 hours.<sup>517</sup>

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<sup>509</sup> *Ibid.*

<sup>510</sup> 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>>.

<sup>511</sup> *Ibid.*

<sup>512</sup> 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. For the guidance and its details, see: CAP, Broadband speed claims, Advertising Guidance (non-broadcast and broadcast), <<https://www.asa.org.uk/uploads/assets/uploaded/c7caeaeb-24e0-40d4-a49455747eb51bde.pdf>>.

<sup>513</sup> ASA News, New standard on broadband speed claims in ads comes into force today (23 May 2018).

<sup>514</sup> *Ibid.*

<sup>515</sup> *Ibid.*

<sup>516</sup> *Ibid.*

<sup>517</sup> *Ibid.*

After this consultation, CAP concluded that median peak-time download speed was the most meaningful speed measure to customers because customers may interpret a range to apply to them individually, rather, than be a general range.<sup>518</sup> Also, a median i.e. an average speed was deemed to be easily understood, with a peak time measure noted to provide a better indication of the actual speeds consumers are likely to experience.<sup>519</sup> Notably, most respondents argued for median speeds measured at peak time, with more support shown for a single figure over a range.<sup>520</sup>

#### 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.

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<sup>518</sup> *Ibid.*

<sup>519</sup> *Ibid.* A peak time [was noted to be] when traffic volumes are highest and traffic management policies are most likely to apply.

<sup>520</sup> *Ibid.*

### 4.3 Australia: Regulatory Framework and Practices

#### 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.<sup>521</sup> Significant progress was witnessed in Australia when the Telecommunications Consumer Protections Code (TCP Code) was developed in 2007, this was subject to subsequent revisions with the most recent version at the time of writing being Variation No.1/2018 (developed by Communications Alliance's Industry Consumer Advisory Group, and registered by the ACMA).<sup>522</sup> Prior to the TCP Code, consumer protection provisions were found in different industry codes, rather, than one code. The TCP Code is meant "[t]o ensure good service and fair outcomes for all Consumers of Telecommunication Products in Australia."<sup>523</sup> All service providers providing telecommunication products are bound by this the TCP Code.<sup>524</sup>

The TCP Code's key commitments are; consumer will have open, honest and fair dealings with their suppliers and have privacy protections; consumers will receive clear, accurate and relevant information on products and services from their supplier, before and after the point of sale; consumers will have disputes resolved quickly and fairly by the supplier; promotion of products and services to be clear, accurate and not misleading; disadvantaged and vulnerable consumers will be assisted and protected by suppliers; consumers will receive an effective remedy in case of breaches of this code and suppliers will use monitoring and reporting tools for successful implementation of this code.<sup>525</sup>

Broadly, the TCP Code lays out minimal standards to be followed by the service providers 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.<sup>526</sup>

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<sup>521</sup> Australian Communication and Media Authority (ACMA), online: <<https://www.acma.gov.au/>>.

<sup>522</sup> Communications Alliance Ltd, Industry Code, Telecommunications Consumer Protections Code, C628:2015 (Incorporating Variation No.1/2018) at p.6. [Referred as TCP Code], online: <[https://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf](https://www.commsalliance.com.au/_data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf)>.

Please note that Communications Alliance Ltd was "[f]ormed in 1997 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services." (Refer to the TCP Code for more details).

<sup>523</sup> Communications Alliance Ltd, TCP Code at p.1.

<sup>524</sup> *Ibid.*

<sup>525</sup> *Ibid.*

<sup>526</sup> Refer to the TCP Code for more details.

The TCP Code is designed to specifically, protect consumer interests relating to telecommunication matters in Australia; and forms an exemplary point of reference and guide to follow for designing a regulatory framework in Canada, covering not just internet access services but all telecommunication services and products. For the purposes of this research, we refer to merely some provisions that could be useful for Canada, in order to alleviate some of the most common consumer concerns regarding internet access, identified during our research. That said, we suggest a detailed consideration of all its provisions to design a code, which in its true sense, advances and protects consumer interest in telecommunication matters.

### Advertising – Standards and Limits (The TCP Code)

Unlike Canada, Australia’s telecommunications regulatory framework clearly and explicitly deals with issues regarding advertising. For instance, section 4.2 of its TCP Code dealing with content of advertising, mandates fairness and transparency by requiring that “[a] Supplier must include any important conditions, limitations, qualifications or restrictions about an Offer in its Advertising of the Offer, to allow Consumers to make informed choices and to avoid Consumers being misled.”<sup>527</sup> It also lists prohibitory practices, such as:

- (a) **Headline representations:** use headline representations as to a price or offer in circumstances where the overall impression of the price or offer is subsequently qualified by fine print terms and conditions that make it unlikely or impossible that a Consumer, by the ordinary use of their service, could reasonably achieve the benefits offered in the headline representation;
- (b) **Unlimited:** use the term ‘unlimited’ or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network;
- (c) **No exceptions, exclusions or catches:** use the terms ‘no exceptions’, ‘no exclusions’ or ‘no catches’ or equivalent terms without sufficient disclosure when referring to a price or service offer, unless there are genuinely no exceptions to the offer;
- (d) **Free:** use the term ‘free’ or an equivalent term to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the Consumer over the life of the contract by way of higher costs, including by way of higher call charges, higher network access fees, higher early termination fees or higher unlock fees, compared to the costs that would be payable by the Consumer over the life of the contract were the handset or other hardware product or service not provided free of charge;
- (e) **Price per minute:** use headline representations as to a price per minute for mobile phone calls, or calls made using phone cards, in circumstances where there is insufficient disclosure of extra charges including flag fall or call connection fees or for non-standard calls;

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<sup>527</sup> Communications Alliance Ltd, TCP Code at p.30.

- (f) **Bundled products or services:** use headline representations as to price for a particular product or service, unless that product or service is available for purchase at the advertised price without being part of a bundled product or service or the advertised price is clearly identified as the price for that product or service when purchased as part of a bundled product or service;
- (g) **Offer:** use headline representations as to prices for an Offer unless any exclusions are Prominently Displayed;
- (h) **Prices for data allowances:** use unqualified headline representations as to ongoing prices for specified data allowances in circumstances where the price for that data is likely to increase within a reasonable use period;
- (i) **Phone cards:** use headline representations as to the minutes of call time available on phone cards unless those minutes can be achieved by Consumers with ordinary use of the card;
- (j) **Network coverage:** advertise or promote network coverage unless the network coverage is generally available to Consumers in the claimed coverage area;
- (k) **Full minimum quantifiable price:** advertise or promote a periodic price to be paid for a Telecommunications Product without also Prominently Displaying (but not necessarily as prominent as the periodic price) the “single price” as defined in the Competition and Consumer Act;
- (l) **Cap:** use the term “cap” to advertise:
  - (i) any new Offers launched after 1 September 2012 unless the Offers contain a Hard Cap;
  - (ii) any Offers in existence as at 1 September 2012 (existing Offers) in any television, radio and print advertising, provided that a Supplier can still:
    - A. use the term “cap”, or an equivalent term, to advertise existing Offers that contain a Hard Cap; and
    - B. refer to existing Offers that use the term “cap”, or an equivalent term, by their existing name in online information, billing information, Customer Contracts, reference materials for customers, partners and staff, and one-on-one communications with Customers; or
- (m) **Basis of claims:** make claims in Advertising in relation to broadband speed, network coverage and other performance characteristics of a Telecommunications Product unless the Supplier is able to Substantiate such claims. (Suppliers must have regard to the ACCC Information Paper: HFC and Optical Fibre Broadband “Speed” Claims and the Competition and Consumer Act when advertising or promoting broadband speeds or data transfer rates on their networks.)<sup>528</sup>

The above referred provisions cogently identify the applicable standards and limits in relation to advertising, under Australia’s regulatory framework. Our research shows that advertising on internet access services in Canada still remains lacking, where often qualifying conditions and limitations not easily accessible, they are either included in smaller fonts or added in footnotes. There are no clear standards and/or detailed guidelines underlining and identifying some uniform

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<sup>528</sup> Communications Alliance Ltd, TCP Code at p.30-32. For details regarding other provisions such as Advertising medium, Special Promotions, Standard Charges for Text Advertising and other related aspects, see p.32-34.

details to be included in such advertisements, and any criteria to determine what could be sufficient in informing consumers about the applicable limits concerning internet speed. 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, and play a vital role in effectively addressing the consumer distress caused by vague and/or misleading internet speed advertising.

### ACCC– Broadband speed claims (Industry Guidance)

In addition to the provisions on advertising in the TCP Code, the Australian Competition and Consumer Commission (ACCC) has Broadband Speed Claims – Industry Guidance (with the most recent version issued in May 2019). This guidance lays down six clear principles, based on extensive consultation involving network operators, retail service providers (RSPs) and consumer representatives. These guidance principles are:<sup>529</sup>

- **Principle 1:** Consumers should be provided with accurate information about typical busy period speeds that the average consumer on a broadband plan can expect to receive (this is to provide reliable indicators of speed to consumers, enabling them to make well-informed decisions. The “typical busy period speed” is noted to be the speed that the retail plan typically delivers each hour within the busy period; and for residential plans, such a period is identified as between 7-11 pm each day);<sup>530</sup>
- **Principle 2:** Wholesale (access) network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds (to ensure that customers of wholesale access network are not misled, requiring retail service providers that elect to provide speed information based on wholesale access network speeds or maximum attainable line speeds to clearly label it to be so, accompanied with equally prominent statement of typical busy period performance);<sup>531</sup>
- **Principle 3:** Information about the performance of promoted applications should be accurate and sufficiently prominent (to ensure that consumers are seeking to use applications which are promoted by the RSP are better supported in choosing a broadband plan in line with their needs, and to ensure that RSPs that promote or offer broadband plans on the basis of its ability to support or provide access to specific applications, makes claims that are reasonable and able to be substantiated);<sup>532</sup>

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<sup>529</sup> 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>>. (Last accessed in June 2019).

<sup>530</sup> ACCC, Broadband Speed Claims – Industry Guidance (May 2019) at p.6-7.

<sup>531</sup> ACCC, Broadband Speed Claims – Industry Guidance (May 2019) at p.7.

<sup>532</sup> ACCC, Broadband Speed Claims – Industry Guidance (May 2019) at p.8.

- **Principle 4: Factors known to affect service performance should be disclosed to consumers** (this is to assist consumers in their decision making with relevant marketing information to help consumers in trouble shooting and resolving speed and performance issues after purchase; and to ensure RSPs provide accurate information at the point of sale or as soon as practical if not available at that time- location specific information and also information regarding general factors that are likely to affect the performance of fixed line and/or fixed wireless broadband services);<sup>533</sup>
- **Principle 5: Performance information should be presented in a manner that is easily comparable by consumers** (to assist consumers to readily compare speed and performance information of different retail plans offered by a RSP and other RSPs; in this regard a text-based label as part of all residential plan descriptions and marketing materials is found to be most user-friendly and practical for RSPs; calls for standardizing ways of presenting important, comparable information to consumers are made);<sup>534</sup> and
- **Principle 6: RSPs should have systems in place to diagnose and resolve broadband speed issues** (to ensure consumers experiencing unsatisfactory speed and performance issues have their issues resolved, promptly and efficiently by the concerned RSP; and to ensure RSPs have effective business practices to timely identify and resolve issues, and that RSPs provide information, operational support to consumers when there is inconsistency between the performance of consumers' service and RSP's representations and speed and performance).<sup>535</sup>

Similar to the UK, Australia has also laid down clear guidance principles regarding speed claims, focusing on transparency and support for consumers. Broadly, it calls 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 (this could be achieved by standardizing the contents of such information and how it is reported- refer to the 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; with various issues regarding internet speed and performance left to rely on an ad hoc system and practice of service providers, lacking the much needed clarity and transparency. We believe that ACCC's principles based approach on speed claims merits consideration for Canada.

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<sup>533</sup> ACCC, Broadband Speed Claims – Industry Guidance (May 2019) at p.9-12.

<sup>534</sup> ACCC, Broadband Speed Claims – Industry Guidance (May 2019) at p.13-14. Also see its Attachment A to the Guidance—Presentation of typical busy period speeds for residential consumers at p.16-18.

<sup>535</sup> ACCC, Broadband Speed Claims – Industry Guidance (May 2019) at p.14-15.

## 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, its rules require that information about billing procedures and billing options must be made available by the supplier before one becomes a customer.<sup>536</sup> It also provides standards and/or obligations regarding the content of a bill, timing of bill (supplier must ensure that its bills are delivered to the customers in a timely manner), verifying charges, payments options (supplier must facilitate easy payment and verification of payment of bill by its customers) and a supplier offering direct debit facility must ensure that its customers can on request verify all charges and direct debit authorization details, including former customers.<sup>537</sup>

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. We believe having measures that bring about clarity and transparency in the content of a bill and also the applicable charges, would be integral in filling the regulatory gap found relating to billing matters. 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 also having rules regarding changes and/or updates, in order to reduce consumer confusion and surprises.
- ❖ Introducing Broadband speed advertising guidelines as done by the ACCC with clear principles to be followed.

## 4.4 United States of America (U.S.)

In the U.S., the Federal Communications Commission (FCC) regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of

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<sup>536</sup> Communications Alliance Ltd, TCP Code at p.37-44.

<sup>537</sup> *Ibid.*

Columbia and U.S. territories.<sup>538</sup> It is required to implement and enforce U.S.’s communications law and regulations.<sup>539</sup> The U.S.’s regulatory framework includes steps taken to address the issues arising in relation to internet speed- performance and advertising.

We noted in our previous research that FCC found that 80% of consumers did not know what speed they purchased from the ISP; thus, the FCC decided “to undertake several initiatives to help improve the availability of information for consumers”.<sup>540</sup> The Commission initiated the first nationwide broadband performance study of residential wireline services using hardware technology provided by SamKnows.<sup>541</sup>

Some insight can be drawn from its 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;<sup>542</sup> to report on ISPs speed advertisements. Its most recent report, at the time of writing is Measuring Fixed Broadband - Eighth Report, based on data collected in September 2017.<sup>543</sup> Some of its key findings are that the maximum advertised download speeds amongst the service tiers measured by the FCC were between 3-200 Mbps for the duration taken into account for this report; for most of the major broadband providers that were tested, measured download speeds were 100% or better of advertised speeds during the peak hours (7 p.m. to 11 p.m. local time), amidst other findings.<sup>544</sup> This report 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.<sup>545</sup>

#### 4.5 Some Other Countries

Experiences from some other countries also provide useful examples to consider; and see how regulators across various jurisdictions have been pro-actively seeking to address consumer concerns in relation to internet access services. We note that several countries in particular, have issued and/or set out guidelines regarding broadband speed advertising. For instance, in Finland, the Finnish Communications Regulatory Authority (FICORA) has set minimum requirements of how these speeds must be included in consumer contracts i.e. in terms of a range of speed described

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<sup>538</sup> Federal Communications Commission [webspage], About the FCC, online:<<https://www.fcc.gov/about/overview>>.

<sup>539</sup> *Ibid.*

<sup>540</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.22, 36.

<sup>541</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.36-37.

<sup>542</sup> Federal Communications Commission, 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>>.

<sup>543</sup> *Ibid.*

<sup>544</sup> *Ibid.*

<sup>545</sup> *Ibid.*

as an average or in precise terms.<sup>546</sup> Please note now these matters come under Traficom (Finnish Transport and Communications Agency).

As noted earlier, the German regulator Bundesnetzagentur has also laid out plans for holding the internet service providers accountable, when they do not provide the promised broadband speeds to customers.<sup>547</sup> As per the report, when the German internet service providers will not be able to deliver the promised speeds, the internet service “[s]hall be considered as a non-contractual service.”<sup>548</sup>

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<sup>546</sup> Meshadiyeva & Lo, “Transparency in Broadband Advertising to Canadian Consumers” (2013) PIAC, at p.33 referring to Finland, FICORA, “Comparison of broadband services becomes easier - data transmission speeds must be included in consumer contracts in more detail” (November 1, 2011), online: [http://www.ficora.fi/en/index/viestintavirasto/lehdistotiedotteet/2011/P\\_35.html](http://www.ficora.fi/en/index/viestintavirasto/lehdistotiedotteet/2011/P_35.html). The more recent resources referred are: Traficom, Factors affecting the speed and quality of internet connection, online: <https://www.traficom.fi/en/communications/broadband-and-telephone/factors-affecting-speed-and-quality-internet-connection>; and Guidelines on problems in the functionality and availability of telephone and broadband subscriptions, online: <https://www.traficom.fi/en/communications/broadband-and-telephone/guidelines-problems-functionality-and-availability-telephone>.

<sup>547</sup> 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/>.

<sup>548</sup> *Ibid.*

## 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.