

**Before the Canadian Radio-television and
Telecommunications Commission**

**Telecom Notice of Consultation
CRTC 2018-422**

***Call for comments – Proceeding to establish a
mandatory code for Internet services***

**Intervention
of
Xplornet Communications Inc.**

ABRIDGED

December 19, 2018

INTRODUCTION AND EXECUTIVE SUMMARY

1. This Intervention is filed by Xplornet Communications Inc. (“Xplornet”) in accordance with the procedure set out in Telecom Notice of Consultation CRTC 2018-422, *Call for comments – Proceeding to establish a mandatory code for Internet services* (“TNC 2018-422”).
2. In TNC 2018-422, the Commission stated its preliminary view that the creation of an Internet Code (“Internet Code” or “Code”) would address consumer concerns related to contract clarity, clarity of promotional offers and prevention of bill shock, as well as reduce barriers to switching providers, in the context of Internet services. Similar codes are already in place with respect to mobile wireless services and television services through the Wireless Code of Conduct¹ (“Wireless Code”) and the Television Service Provider Code of Conduct² (“TVSP Code”). The Commission has provided a draft Code as Appendix 1 to TNC 2018-422 that draws on language from the Wireless Code and the TVSP Code. Parties have been asked to comment on the appropriateness of the adoption of an Internet Code, and assuming an Internet Code is adopted, the appropriateness of the various proposed clauses.
3. Xplornet was founded almost 15 years ago with a simple mission: to make fast, affordable, high-speed broadband services available to rural Canadians across the country. Since then, we have established ourselves across the country as a facilities-based, competitive provider with a vast national network. Xplornet’s LTE fixed wireless network extends across every province and is complemented by broad coverage from state-of-the-art high-throughput satellites. Today, we are offering rural and remote Canadians home Internet packages with speeds of 25 Mbps and unlimited usage. Over the next two years, we will be leveraging innovative technologies to increase our service offerings. We are proud to connect more than 350,000 rural and remote homes and businesses across every province and territory.
4. At Xplornet, we work on a daily basis to provide our customers with the best possible experience that we can. Consistent with our customer-focused approach to business, we do not object to the adoption of an Internet Code. In our final submission in the TBNC 2018-246³ proceeding, we stated our belief that the adoption of certain provisions of the Wireless Code to broadband services could be appropriate to provide consumers with additional protections against misleading and aggressive sales practices. In particular, we suggested that the provisions of the Wireless Code, with modifications as necessary for the broadband context, relating to transparency (e.g., critical information summaries) and trial periods could be appropriate.

¹ Established in Telecom Regulatory Policy CRTC 2013-271, *The Wireless Code* and most recently reviewed in Telecom Regulatory Policy CRTC 2017-200, *Review of the Wireless Code*.

² Established in Broadcasting Regulatory Policy CRTC 2016-1, *The Television Service Provider Code*.

³ Telecom and Broadcasting Notice of Consultation CRTC 2018-246, *Report regarding the retail sales practices of Canada’s large telecommunications carriers*.

5. While the Commission's proposed Internet Code goes beyond the proposal Xplornet put forward in the TBNC 2018-246 proceeding, we do believe that the adoption of an Internet Code that is drafted to reflect the realities of broadband services – and in particular, the realities of providing broadband service in rural and remote areas – could have a positive impact for Canadians. The Code should seek to provide customers with protections related to transparency, but should avoid regulating competitive elements (e.g., such as price and pricing structure (up-front fees vs cancellation fees, etc.)), because doing so would reduce innovation and limit providers from making diverse service offerings available that best suit customers' needs.
6. If the Commission is to adopt an Internet Code, Xplornet submits that the Code should be adopted to apply to all new contracts for fixed Internet services offered by all service providers, regardless of whether a provider is a facilities-based providers or a reseller, and regardless of the provider's size. We believe that all Canadians should receive the same protections in relation to the purchase of fixed Internet services and considerations of regulatory burden for resellers and smaller providers do not warrant overriding the public interest and denying certain Canadians the benefits that an Internet Code would afford. Indeed, from our experience as a company that began as a small service provider not that long ago, smaller providers may experience the least amount of burden in adopting an Internet Code as their systems and processes are likely more nimble and easy to change than those of the larger providers. Furthermore, applying the Code to only large, facilities-based providers as the Commission has proposed would introduce significant regulatory and competitive asymmetries in the rural areas in which we operate, contrary to the Policy Direction.⁴ As we are most often competing only with smaller service providers who would not be subject to the Code in rural areas, an asymmetric application of the Code could disadvantage our company, distort the competitive dynamics in rural areas and ultimately harm rural consumers. Accordingly, Xplornet submits that the Internet Code, if adopted, should apply to all service providers.
7. In this submission, we provide our comments on the draft Internet Code that the Commission provided as Appendix 2 to TNC 2018-422. A number of our comments are specifically designed to provide feedback to the Commission on the specific impacts that the proposed Internet Code could have for rural Canadians. Certain clauses require modification as the language as proposed would impair our ability to offer affordable broadband services to rural Canadians.
8. A prime example of a clause that would impair our ability to serve rural Canadians is the Commission's proposed language governing early cancellation fees. Xplornet's early cancellation fees are not in place to serve as penalties, but are required in order for us to offer service to rural Canadians in an affordable manner. The costs of completing installations in rural and remote regions can be significant, with travel costs alone amounting to hundreds, even thousands, of dollars. In order

⁴ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355.

to provide service to rural customers as affordably as possible, we need to be able to recover the unique and significant costs associated with rural installations over the course of time. Cancellation fees are required to mitigate the risk that we will not be able to recover these fees over time as anticipated.

9. If the Commission limits the portion of the installation costs that we can recover over the course of a contract period through a cap on cancellation fees, Xplornet will be forced to recover these costs through other means, such as requiring significant one-time installation charges and/or raising monthly rates. In either case, the effect of imposing caps on installation fees would be to make our services less affordable for rural Canadians. For this reason, we are recommending that the Commission not adopt caps for cancellation fees, but instead adopt an approach similar to that used in the TVSP Code that requires any service provider that intends to rely on early cancellation fees to ensure that those fees, and how they are calculated, is clearly described to the customer in a transparent manner.
10. We also recommend that the Commission remove language from the draft Code that prevents providers from charging any fees other than cancellation fees in the event that a customer discontinues their service. When an Xplornet customer cancels service, we will reuse the hardware from that customer's home to serve a new customer. We thus ask that the customer who is terminating service to return their hardware to us. If the hardware is not returned, we charge an equipment return fee. Xplornet should not be prevented from charging equipment return fees by a potential Internet Code.
11. In this submission, we additionally provide our comments on certain other clauses proposed in the draft Internet Code, including those for which the Commission has advanced a number of options for how a clause could be drafted and specifically sought comments on the appropriateness of each potential option.
12. Should the Commission implement the Code, Xplornet recommends that service providers be granted a period of 12 months to operationalize the changes that would be necessary. As adopting an Internet Code would require numerous system changes, it is likely not feasible to implement a Code in a period of less than 12 months.
13. We support the Commission's view that the Code, if adopted, should be administered by the Commission for Complaints for Telecom-television Services (CCTS) and enforced by the Commission.
14. Certain information contained in this submission is being filed in confidence with the Commission.⁵ The information Xplornet is filing in confidence represents

⁵ This information is filed in confidence in accordance section 39 of the *Telecommunications Act* and the directions provided by the Commission in the Appendix to Broadcasting and Telecom Information Bulletin CRTC 2010-961, *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, as amended in Broadcasting and Telecom Information Bulletin CRTC 2010-961-1. The confidential information contained within this submission represents confidential third-party information for the purposes of subsection 20(1) of the *Access to Information Act*.

financial information that is not publicly available and that is consistently treated as confidential by our company. If this information were released on the public record, it would provide Xplornet's competitors with important information about Xplornet's business and would prejudice Xplornet's competitive position, causing material financial harm. We are providing an abridged version of this submission for the public record.

XPLORNET'S COMMENTS ON THE PROPOSED INTERNET CODE

15. In Appendix 2 to TNC 2018-422, the Commission has requested that all parties respond to 13 specific questions (numbered as questions 7 through 19). Our responses to these questions are below. We note that we have maintained the numbering for these questions as it appears in Appendix 2 to TNC 2018-422.

Q7: The need for the Code

16. Xplornet does not object to the adoption of an Internet Code. In our final submission in the TBNC 2018-246 proceeding, we stated our belief that the adoption of certain provisions of the Wireless Code to broadband services could be appropriate to provide consumers with additional protections against misleading and aggressive sales practices. In particular, we suggested that the provisions of the Wireless Code, with modifications as necessary for the broadband context, relating to transparency (e.g., critical information summaries) and trial periods could be appropriate.

17. While the Commission's proposed Code goes beyond the proposal we put forward in the TBNC 2018-246 proceeding, we believe that the adoption of a Code that is properly drafted to reflect the realities of broadband services – and in particular, the realities of providing broadband service in rural and remote areas – could have a positive impact for Canadians.

Q8: Content of the Code

18. In this section, we provide our comments on provisions of the Commission's draft Code that are not covered in responding to subsequent questions.

Adjustments to the Code

19. In our review of the Code, we have noted certain provisions that are of high importance to our business, as if adopted as drafted, these provisions would impair our ability to provide affordable broadband service to Canadians in rural and remote regions of Canada. Indeed, it is essential that the Code account for the realities of serving Canadians in hard-to-access locations that are not in urban centres. The items discussed here are in addition to the discussion provided in response to Q9 relating to the Commission's proposal to apply the Code only to the large, facilities-based service providers. As we demonstrate below, applying the Code to only these service providers would cause significant regulatory and

competitive asymmetries in the rural areas in which we operate that could impair our business.

Early Cancellation Fees

20. In its draft Code, the Commission has adopted provisions relating to early cancellation fees similar to those that apply in the Wireless Code. Xplornet submits that there are fundamental differences in the delivery of mobile wireless and fixed services that make the application of these provisions inappropriate in the context of broadband services, and in particular, rural broadband services.
21. In the mobile wireless context, the Commission has structured the provisions relating to early cancellation fees to allow wireless service providers (WSPs) to recover costs associated with hardware, specifically handsets. However, in the draft Code, broadband providers are precluded from similarly recovering the costs associated with hardware. The proposed clause G.1.(i) states that “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.”
22. Installing broadband service involves significant amounts of hardware, beyond standard customer premise equipment, such as a modem or router. For our customers, we must also install antenna equipment outside the house, including a reflector dish for our satellite customer. The hardware involved in an installation of our services has a cost of # [REDACTED] #. When a customer cancels, we reuse this equipment to serve a new customer, provided the technology remains current. We thus ask our customers to return the equipment. If a customer who cancels service with us does not return the equipment, we charge an “Equipment Return Fee”. This fee will be refunded at any time if the hardware is subsequently returned to us. We believe that the language that prohibits fees other than early cancellation fees should be removed from clause G.1.(i) because the equipment remains Xplornet’s property and Xplornet should not be prohibited from recovering its equipment or an amount to compensate for equipment that has been kept by the customer. Instead, we would suggest replacing the language with a requirement that service providers who intend to charge any other fees on cancellation, such as a hardware return fee (or liquidated damages for retaining the service provider’s equipment), should be required to transparently describe these fees to customers.
23. We also do not believe that the Code should provide limits on early cancellation fees, as different types of services may need to have early cancellation fees at different amounts. We note that the TVSP Code allows service providers to set early cancellation fees that are appropriate given the nature of their business. The TVSP Code protects consumers by ensuring that, where a television service provider intends to apply early cancellation fees, information concerning those fees and how they are calculated is clearly set out in the customer contract. As broadband is a fixed service, like television service, we believe that any provision relating to early cancellation fees in the Code should be structured in this manner and not impose a cap on cancellation fees.

24. Having a set cap of 10% of fees that remain to be billed under the contract to a maximum of \$50 is simply not workable across our business. We incur significant costs to install service for customers in rural and remote areas. Indeed, the travel costs alone reach rural areas, let alone remote areas that may not have road access, may amount to hundreds of dollars. For remote areas, travel costs can be in the thousands of dollars. If a customer can cancel after subscribing to service for a short period of time, and we are limited to an early cancellation fee of \$50, we would need to restructure our pricing, whereby installation costs would be recovered through means other than agreements to receive service for a defined period of time. These changes would result in higher one-time installation costs at the time of subscribing or higher monthly service fees. In either case, these pricing changes would have a significant impact on our ability to offer affordable service to rural and remote Canadians.
25. Accordingly, in relation to early cancellation fees, we recommend that the Commission implement two changes:
- 1) We recommend that the Commission remove language that prevents companies from charging other fees to a customer who has cancelled in addition to early cancellation fees, such as fees related to the cost of unreturned hardware. Instead, if other fees are to be charged, the Commission should require service providers to transparently disclose such fees to consumers; and
 - 2) We recommend that the Commission adopt language similar to that in the TVSP Code for early cancellation fees. This language ensures that customers will understand when any early cancellation fees will be applied and how they will be calculated, without setting a cap on early cancellation fees. Such a provision would protect consumers while allowing service providers to set early cancellation fees that are appropriate for their business and enable them to provide service to consumers on a more affordable basis.

Disconnections

26. Another change that we recommend be adopted to account for the provision of service in rural and remote contexts relates to the Commission's proposed provisions concerning disconnections. Specifically, in section I.1.(iii), the Commission has rightly proposed that, where a service provider disconnects a customer in error, the service provider should be required to reconnect service in a short period of time. We agree with this principle; however, we note that the Commission has specifically required service providers to restore service in such a context "no later than one business day after they are made aware of the error".
27. In providing service to rural and remote customers, we would make all efforts to restore service to the customer as soon as possible in the even of a disconnection in error, but as travel time alone could require more than one business day to reach the customer, it is not reasonable for this requirement to be broadly imposed

across the industry. Further, a technician often has to enter a customer's premise to facilitate a reconnection, which can only be done with the permission of the customer. The service provider cannot enter into the premises without consent.

28. As a result, we recommend that this language be changed to require a service provider to restore service "as soon as reasonably possible after they are made aware of the error." This modification would ensure that customers are provided with strong protections, while recognizing the realities of serving in rural and remote areas of Canada.
29. In addition to these clauses that have specific consequences for us as a rural broadband provider, we are recommending other changes to the Code.

Clarity of offers and critical information summary

30. With respect to clause A.5 (Clarity of offers), the Commission has put forward two proposals for requirements governing the information to be provided to customers at the time that an offer is presented. Under the first option, the service provider would be required to provide the customer with specific information relating to: 1) the duration of the offer, 2) the price of service after any time-limited discounts expire, and 3) any customer obligations relating to commitment periods, early cancellation fees and the acceptance of promotional offers.
31. Xplornet supports this option. We believe that ensuring that customers understand these key details address customer concerns related to transparency of offers.
32. Under the Commission's second proposal, the service provider would be required to provide a written pre-sale critical information summary to a customer within 24 hours of making a specific offer to the customer. In our view, this requirement requires system support from service providers to implement, and thus raises the regulatory burden associated with implementing the Code for providers, should it be adopted.
33. We believe that the key objective that this provision of the Code should strive to achieve is to ensure that customers have all of the information they need to understand an offer clearly presented to them. As we believe that option 1 will be effective in attaining this goal, and may likely be more efficiently implemented for service providers, requiring fewer system changes, we support the adoption of option 1.
34. At clause C.1.(i) (Critical Information Summary), the Commission has asked if a critical information summary should be provided to the customer with a copy of their permanent contract, or if it should be provided with an offer of service. Consistent with our position on clause A.5 (clarity of offers), we believe that a critical information summary should be provided with a copy of the permanent contract. At the time an offer is extended, the service provider should not be required to have a written pre-sale document; the provider should be required to

review key pieces of information with the customer, as described in option 1 for clause A.5.

Notifications for overage charges

35. At clause E.3 (Notification – Data overage charges), the Commission has made two proposals in relation to the notifications to be provided to customers who have incurred data overage charges.
36. The first proposal is consistent with the expectations set out in TRP 2016-496.⁶ Under this option, where a customer incurs data overage charges, the service provider is required to notify the customer where they can find information about: 1) the provider's account management tools, 2) the data used by common activities, and 3) alternative plans that may better suit their needs.
37. We believe that this is the correct approach that should be adopted in the Code, should the Code be adopted. Xplornet, and likely most other providers, has already implemented these practices, and we believe that they are working well to empower customers to make decisions to effectively manage their data requirements.
38. Under option 2, the Commission has proposed that a service provider would be required to notify customers once they reach certain dollar values worth of overage charges. The customer would also be given the ability to suspend additional data overage charges during the billing cycle. The customer could opt out of these notifications at any time.
39. A requirement to provide real-time rating information would necessitate a significant investment in our systems. Our systems are designed to provide real-time usage information; however, our systems are not able to translate usage information into billing information in real time. Usage is only translated into billing information once a billing cycle. If we were required to build the functionality to provide real-time rating information as contemplated by option 2, this could be financially unreasonable for our business, potentially requiring an investment of over # [REDACTED]#. In addition to the financial resources that would be required to implement option 2, we would also require a significant amount of time to design and build this functionality. Designing and implementing a significant change of this nature could potentially require more than 12 months.
40. As we believe that the requirements set out in option 1 provide effective tools to customers who incur overage charges to plan and manage their data usage, and adopting option 2 could be financially unreasonable for our company, we urge the Commission to adopt option 1 for this clause.

⁶ Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada's digital economy*.

Contract extension

41. At section G.5.(ii) (Contract extensions), we note that the Commission proposed that service providers should be required to provide a notification to a customer on a fixed-term contract at least 90 days prior to the end of the contract period, whether or not the contract will be automatically renewed into a new commitment period.
42. We believe that notice as contemplated by the Commission is entirely appropriate where a contract will be auto-renewed into a new commitment period at the end of the initial commitment period, unless the customer takes a particular action to stop the auto-renewal.
43. However, where a customer's contract will not auto-renew into a new commitment period at the end of the initial period, but will continue on a month-to-month basis at the same terms and conditions, we do not see the need for a notice to be sent to the customer as contemplated by the Commission.
44. We recommend that this requirement be modified to only require notice to be provided at least 90 days before the end of an initial commitment period if either: 1) the customer's contract will auto-renew into a new commitment period without intervention from the customer, or 2) if any key terms and conditions associated with the customer's service will change at the end of the initial commitment period.

Trial periods

45. At Xplornet, we are strong promoters of trial periods. As we described in our submissions in the TBNC 2018-246, proceeding, we offer our customers a 30-day full money-back guarantee when subscribing to our services.
46. In setting a mandatory, regulated trial period, we submit that the Commission should strive to set a requirement that provides customers with a meaningful opportunity to assess a service and to cancel without penalty if it is not suitable, and that does not expose service providers to potential abuse. We believe that the trial period provisions in the draft Internet Code could expose service providers to potential abuse if adopted as drafted.
47. For example, the Commission has proposed that the amount of data that a customer should be able to use during a trial period should correspond to the monthly bandwidth allowance. In the case of fixed services, bandwidth amounts can be hundreds of gigabytes of data, or unlimited usage. Providing a trial period that would allow a customer to use hundreds of gigabytes, or an unlimited amount, of data with the ability to cancel without penalty could easily encourage abuse.
48. Xplornet recommends that the Commission set an amount of bandwidth to be included in a trial period that would allow customers to meaningfully trial the service, without encouraging abusive practices. We submit that a mandated trial period that provide 15 days and 25 GBs of usage would be appropriate. This time

period should be extended to 30 days and the usage doubled to 50 GBs for persons with disabilities.

Key provisions

49. The Commission has asked parties to detail which provisions they believe represent the key provisions of the Internet Code. As noted above, in the TBNC 2018-246 proceeding, we stated our belief that the adoption of certain provisions of the Wireless Code to broadband services could be appropriate to provide consumers with additional protections against misleading and aggressive sales practices. In particular, we suggested that the provisions of the Wireless Code, with modifications as necessary for the broadband context, relating to transparency (e.g., critical information summaries) and trial periods could be appropriate. We thus believe that these provisions are likely the most important to address consumer concerns.

Bundles

50. With respect to the Commission's question regarding potential issues with bundles, in our view, given that the Wireless Code and the TVSP Code are already in force, generally aligning the provisions of the Code with the Wireless Code and TVSP Code would likely generally resolve any bundling concerns. As we have noted throughout our submission, while it is appropriate to model an Internet Code on the Wireless Code and the TVSP Code, an Internet Code must be adapted to account for the unique realities of providing fixed broadband services to customers across the country.

Costs to implement proposed provisions in the draft Code

51. If the Code were adopted, we would be required to implement a number of changes to our systems that would require a period of time for us to execute. As we discuss in our response to Q14 below, because implementing the Code will require system changes to be made, we believe that service providers should be provided with an implementation period of 12 months. System changes take time to execute as they must be designed and released as part of system updates that are scheduled to take place at certain points during the year.

52. Although a number of system changes would be required for Xplornet to fully implement the provisions of the Code, in most cases, effecting changes would likely not require us to incur significant costs. An exception to this is the potential requirement that we discussed above in relation to notifications for overage charges. If the Commission were to adopt its second proposed option for this provision (which requires systems to be able to provide real-time rating information in relation to data overage charges), this would require significant resources for us to implement. Our systems do not have the functionality to be able to provide real-time rating information of this nature and we would need to design and build this as a new feature. We believe that undertaking this as a project could cost over #

and require more than 12 months to be completed. If the Commission were to adopt its first option in relation to notifications for overage charges, which aligns with the requirements set out in TRP 2016-496, these costs could be avoided. We believe that the notification requirements established in TRP 2016-496 have been effective in empowering consumers to manage their data needs and we recommend that these provisions be included in the Code if it is adopted.

53. We have recently launched a new mobile business in Manitoba under the brand Xplore Mobile that fully complies with the requirements of the Wireless Code. However, as Xplore Mobile operates on systems that are entirely distinct from those used by Xplornet to provide fixed Internet services, Xplornet would gain few, if any, efficiencies from this work in implementing an Internet Code for its fixed Internet services.

Q9: Application of the Code to ISPs

54. The Commission has proposed that the Code, if adopted, could be applied to only the large facilities-based Internet service providers, which would include Bell Canada, Cogeco, Eastlink, Northwestel, Rogers, Sasktel, Shaw, Telus, Videotron and Xplornet. The Commission has stated that applying the Code to these providers would account for 87% of Canadians and would “strike an appropriate balance between addressing consumer concerns and not placing a heavy regulatory burden on smaller carriers or resellers.”⁷

55. Xplornet does not support the Commission’s view. If the Commission believes that Canadian consumers require the protections set out in the proposed Code, these protections should be extended to all Canadians, regardless of their provider. We do not believe it is appropriate to only extend these protections to 87% of consumers.

56. The Commission’s rationale for not applying the Code to other service providers is a concern that imposing the Code on non-facilities based service providers and smaller providers would result in a heavy regulatory burden for those service providers. By excluding these parties, the Commission is not excluding only small players. Xplornet notes that the Commission has specifically excluded TekSavvy, a large provider that figures within the 10 largest providers in the country. It should not matter to customers if their service provider is providing fixed service through resold facilities, or if the facilities are properly owned by the service provider. Accordingly, we do not support the Commission’s proposal that the Code should only apply to facilities-based providers.

57. Furthermore, Xplornet does not believe it is appropriate to exclude smaller providers from the adhering to the Code. While Xplornet is proud to have grown to become one of the large service providers in Canada, we are from humble beginnings, and not long ago we were a small provider. From our own experience,

⁷ TNC 2018-422, paragraph 3.

we can attest that the Commission's concerns surrounding the imposition of regulatory burden on smaller players by requiring them to adhere to the Code, if adopted, are misplaced. Xplornet believes that the regulatory burden associated with adhering to the Code may be less for smaller providers than it is for larger providers like Xplornet. In the case of smaller providers, the processes used to service a smaller customer base are generally less complex, and may be more easily modified to adopt new practices. Xplornet believes that the providers that the Commission proposes to exclude from adherence to the Code for reasons relating to regulatory burden are in fact the providers who may most easily adopt any changes necessary to adhere to the Code. Accordingly, we do not believe that smaller providers, whether facilities-based or resellers, should be excluded from observing the Code. These considerations should not be used to override the public interest in providing all Canadians with the protections the Code would afford, if adopted.

58. Additionally, Xplornet also submits that it would run counter to the Policy Direction for the Commission to only apply the Code to the large facilities-based providers as it has proposed. The Policy Direction specifically requires that the Commission, when relying on regulation that is not of an economic nature, implement regulation in a symmetrical and competitively neutral manner. By extending adherence to the Code to Xplornet and not to smaller providers, the Commission would be creating significant competitive asymmetries in the marketplace. Xplornet is the only provider that the Commission proposed be subject to the Code that focuses its business on serving rural and remote populations, particularly in southern Canada.⁸ In the majority of the regions where we serve, we are generally not competing with any of the other large providers who would also be subject to the Code – we are competing with the hundreds of smaller providers who are operating in Canada's rural and remote regions. Accordingly, we would be competing in areas where Xplornet is the only service provider that has a requirement to adhere to the Code. This regulatory asymmetry could disadvantage our company, distort competitive dynamics and ultimately harm rural consumers. Xplornet further submits that this asymmetry could not be justified given that: 1) it is in the public interest for all Canadians to receive equal regulatory protections, and 2) as described above, any considerations of regulatory burden are not well founded to warrant overriding the public interest.

59. Accordingly, we believe that, if the Commission is to adopt the Code, all Internet service providers should be required to observe the Code's requirements.

Q10: Application of the Code to contracts

60. Xplornet supports the Commission preliminary view that the Code, if adopted, should ensure that consumers can benefit from the protections it will provide regardless of 1) where they live within Canada, 2) how they signed up for service,

⁸ We recognize that much of Northwestel's business focuses on serving rural and remote regions of Canada's north, but it does not operate in southern Canada, where Xplornet primarily operates.

3) what technology is used to provide their Internet service, and 4) whether their Internet service is bundled with communications services.

61. Consistent with our response to Q9, Xplornet believes that the Code, if adopted, should provide benefits to all consumers purchasing fixed Internet access services, no matter where they live and who their provider is. All providers should be required to observe the requirements of the Code, if adopted.

Q11: Application of the Code – Avoiding duplication with Wireless Code

62. Xplornet supports the Commission's view that, if the Code is adopted, it should not be applied to mobile wireless Internet services. Mobile wireless services are appropriately subject to the Wireless Code, which is specifically designed to provide consumer protections in the context of mobile wireless services. As the Code should be structured in a manner that accounts for the unique considerations associated with fixed Internet services, the Code should not be applied in a mobile wireless context.

Q12: Application of the Code principles to Northwestel's rate regulated services

63. A potential exception to our position that the Code, if adopted, should be applied equally to all service providers relates to the regulated services of Northwestel.

64. As noted above, as part of the TBNC 2018-246 proceeding, we stated our belief that the adoption of certain provisions of the Wireless Code to broadband services could be appropriate to provide consumers with additional protections against misleading and aggressive sales practices. In particular, we suggested that the provisions of the Wireless Code, with modifications as necessary for the broadband context, relating to transparency (e.g., critical information summaries) and trial periods could be appropriate.

65. Considerations of this nature may not apply to the regulated services of Northwestel. Given that regulated services are offered pursuant to published, tariffed conditions that have been approved by the Commission, additional regulatory intervention related to ensuring clarity of offers, etc., may not be needed.

Q13: Extension requests related to unique barriers

66. The Commission has proposed that where any service provider considers it is facing a unique challenge in implementing the Code, or a specific provision of it, either because the implementation of the element(s) at issue would be either technically impossible or financial unreasonable, the service provider could apply for an extension from the Commission to provide more time to implement the item(s).

67. As described in response to Q9 above, Xplornet believes that the Code, if adopted, should apply to all service providers, regardless of whether they are a facilities-

based provider or a reseller and regardless of their size. Xplornet agrees that, if a service provider feels it will not be able to implement a provision, or it needs more time to implement a provision, that service provider should be able to ask the Commission for an exception from implementing the provision(s), or more time to implement the provision(s), as required.

Q14: Implementation of the Code – Implementation date

68. While the Commission has stated that it believes that a Code should be adopted to provide consumers with needed protections, it has also been conscious of the regulatory burden that adopting the Code may have for service providers.

69. As set out in response to Q9, above, Xplornet believes that the regulatory burden associated with adopting the Code should not be a consideration to not require resellers and smaller service providers from observing the Code's requirements, if adopted. However, in terms of regulatory burden, Xplornet submits that the burden associated with adopting the Code could be meaningfully reduced if all elements of the Code were to come into force at the same time. A staggered approach to implementing the Code creates additional burden for service providers to manage and should be avoided.

70. If the Commission is to adopt the Code, Xplornet submits that service providers should be provided with an implementation period of 12 months. Adopting the Code will likely require at least some system changes to be implemented for all providers, and likely many system changes for certain providers. Implementing system changes cannot be done quickly by service providers. Changes of this nature must be implemented as part of planned system updates that take place at set intervals. As a result, even minor system changes that appear simple in nature can take several weeks to a few months to be executed. In light of the number of specific requirements set out in the Code, we do not believe that it would be reasonable to require service providers to implement the Code in a period of less than 12 months.

Q15: Implementation of the Code – Application to new, amended and/or existing contracts

71. Xplornet supports the Commission's preliminary view that the Code should apply to new contracts (including contracts that are signed, changed or renewed) after the Code's implementation date.

72. As noted above in our discussion of the key provisions of the Code, as set out in our response to Q8, we believe that the key provisions of the Code that are required by consumers are those related to transparency and trial periods. Given that these items both relate to entry into new contracts with service providers, we submit that providing for all new contracts to be subject to the Code will ensure that the most important benefits are extended to Canadians.

Q16: Implementation of the Code – Implementation reports

73. Should the Commission adopt the Code, we would be open to providing implementation reports to the Commission to confirm that we have adopted the Code as required, but suggest that the Commission should be mindful not to impose additional administrative burden and cost for all service providers.

Q17: Administration and enforcement of the Code

74. We agree with the Commission's view that the Code should be administered by the CCTS and enforced by the Commission.

Q18: Promotion of the Code

75. Xplornet believes that the Code, if adopted, should be promoted in a similar manner to the Wireless Code.

76. Internally, we have provided training and resources to our employees concerning the Wireless Code. If an Internet Code is adopted, we would similarly ensure that our employees are well versed in the Code's requirements.

Q19: Measuring effectiveness and review of the Code

77. Xplornet believes that the Commission could review the Code no sooner than in three after the Code is fully in force for all customers. A period of a minimum of three years is required to gather data on the Code's effectiveness.

78. We believe that the Commission should be able to assess the effectiveness of the Code through an analysis of CCTS complaint statistics.

CONCLUSION

79. Xplornet does not object to the adoption of the Code. In our final submission in the TBNC 2018-246 proceeding, we stated our belief that the adoption of certain provisions of the Wireless Code to broadband services could be appropriate to provide consumers with additional protections against misleading and aggressive sales practices. In particular, we suggested that the provisions of the Wireless Code, with modifications as necessary for the broadband context, relating to transparency (e.g., critical information summaries) and trial periods could be appropriate.

80. If the Commission is to adopt the Code, Xplornet submits that the Code should be adopted to apply to all new contracts for fixed Internet services offered by all service providers, regardless of whether a provider is a facilities-based provider or a reseller, and regardless of the provider's size. This is necessary to ensure all Canadians are able to fully benefit from the provisions of the Code and to avoid introducing regulatory and competitive asymmetries. Such a Code should seek to provide customers with protections related to transparency, but should avoid regulating competitive elements (such as price and pricing structure (e.g., up-front

fees vs cancellation fees, etc.)), because doing so would reduce innovation and limit providers from making diverse service offerings available that best suit customers' needs.

81. In this submission, we have recommended a number of changes to the proposed provisions of the Code. Certain of our provisions are required to ensure that the Code, if adopted, properly accounts for the unique considerations that apply to the delivery of fixed Internet services, and in particular, the delivery of fixed Internet service in rural and remote regions of Canada. For example, the Commission should not create provisions that put caps on early cancellation fees that will serve to make fixed Internet services less affordable for rural Canadians.
82. We believe that a Code that is implemented in a manner that properly accounts for the realities of providing broadband service, including the provision of broadband services in rural and remote contexts, could have a positive impact for Canadians.
83. We thank the Commission for the opportunity to provide these comments.

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