

ABRIDGED

Via GCKey

19 December 2018

Mr. Claude Doucet
Secretary General
CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION
Ottawa (Ontario) K1A 0N2

**Re: Telecom Notice of Consultation CRTC 2018-422 – *Call for comments –
Proceeding to establish a mandatory code for Internet services*
Cogeco's Initial Submission**

Dear Mr. Doucet:

Cogeco Communications Inc. on behalf of its subsidiary Cogeco Connexion Inc. (Cogeco) is pleased to submit its initial submission in the above-noted proceeding.

Pursuant to section 39 of the *Telecommunications Act* and section 32 of the *Canadian Radio-Television and Telecommunications Commission Rules of Practice and Procedure*, certain information provided in this submission has been provided in confidence to the Commission. This information is commercially sensitive and is treated consistently in a highly confidential manner by Cogeco. Public disclosure of this information would provide existing and potential competitors with strategic information that would enable competitors to develop marketing strategies, sales tactics and compensation plans which could prejudice Cogeco's competitive position and hence cause specific direct harm to Cogeco. Therefore, Cogeco requests that the Commission neither publish nor reveal this confidential information. An abridged version of these responses is being provided for the public record.

Trusting the whole is satisfactory we remain.

Yours truly,



Leonard D. Eichel
Senior Director, Regulatory Affairs, Telecommunications

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I. EXECUTIVE SUMMARY

ES1. While supporting the Commission's initiative in setting baseline protections for Internet access services consumers with a proposed mandatory code of conduct (the "**Internet Code**"), Cogeco maintains that such code is not necessary to address a so-called systemic industry issue.

ES2. Nevertheless, should the Commission proceed with the Internet Code as proposed, Cogeco submits that several adjustments are required in order to achieve a fair balance between providing protection for consumers and allowing Internet service providers ("**ISPs**") to operate their business in a competitive and efficient manner.

ES3. A recurring concern highlighted by Cogeco is the importance of ensuring that the proposed Internet Code be consistent with the current tools in place, namely other industry codes such as the Television Service Provider Code (the "**TVSP Code**") and provincial consumer protection legislation.

ES4. Regarding the application of the proposed Internet Code, Cogeco submits that it should apply equally to all ISPs, including resellers, regardless of size and number of subscribers, throughout Canada.

ES5. The proposed Internet Code ought also to apply to all retail fixed Internet services provided to individuals in all regions of Canada, regardless of underlying technology or the business models of the ISP. However, given the major operational distinctions between the delivery of Internet services to individuals and small businesses, Cogeco strongly recommends that the proposed Internet Code, like the TVSP Code, not apply to small businesses.

ES6. Regarding implementation, Cogeco submits that extensive efforts and resources will be necessary in order to implement the proposed Internet Code. In this context, a period of at least 12 months from the date of its publication will be required to implement the Internet Code, in order to allow ISPs sufficient time to make any

required operational changes in order to comply with its provisions as well as to assess whether any unique barriers come up that would make the implementation of a specific provision technically impossible or financially unreasonable.

ES7. Finally, should the Internet Code be implemented as proposed, Cogeco agrees with the Commission's preliminary views regarding its administration, enforcement, promotion and review.

II. INTRODUCTION

1. This initial submission is filed by Cogeco Communications Inc. on behalf of its subsidiary Cogeco Connexion Inc. ("**Cogeco**") in response to Telecom Notice of Consultation CRTC 2018-422 (the "**Notice**") issued on 9 November 2018 (the "**Notice**").

2. The Notice posed a number of specific questions regarding the establishment of a mandatory code of conduct to address the clarity and content of service contracts for retail fixed Internet access services and related issues (the "**Internet Code**").

3. Cogeco appreciates the opportunity to provide comments on this important matter and on the preliminary views set out by the Commission.

III. PRELIMINARY COMMENTS

4. As stated by Cogeco in the context of the ongoing consultation on the sales practices of Canada's large telecommunications carriers (Telecom and Broadcasting Notice of Consultation CRTC 2018-246, or the "**Sales Practices Proceeding**"), Cogeco's sales philosophy is focused on customer satisfaction, with a particular emphasis placed on transparency and clarity in all interactions with its customers.

5. Cogeco therefore supports the Commission's overall goal of ensuring that Canadians have the necessary information to make informed choices about their Internet services and are empowered in their relationships with their Internet service

providers, whether they are facilities-based providers or resellers (together referred to as the “ISPs”).

6. Cogeco further agrees that service contracts should be clear, understandable and as consumer friendly as possible, and further, that consumers must have a firm understanding of the commitment they are making when selecting services from an ISP.

7. While fully supporting the CRTC's initiative in setting baseline protections for consumers with an Internet Code, Cogeco cautions against an overly prescriptive and intrusive tool which would limit ISPs' abilities to differentiate themselves on the basis of customer relations initiatives they may wish to undertake as part of the normal operation of a free market in the provision of Internet services.

8. Therefore, as discussed in the following paragraphs, the provisions of the Internet Code should strive to strike a balance between providing protection and empowerment for consumers of Internet services and allowing ISPs and the industry in general enough maneuverability in their day-to-day operations and marketing activities to continue to compete effectively, differentiate themselves in the marketplace, and serve their customers well.

9. Furthermore, as explained in greater detail below, to ensure that every Canadian retail Internet service customer is afforded the protections set out in the proposed Internet Code, it is imperative that it apply to all ISPs – including all ISPs subscribing to wholesale Internet tariffs - regardless of size and number of subscribers, throughout Canada.

10. Finally, before moving on to comments specific to the questions for all parties asked by the Commission regarding the Internet Code, Cogeco submits that the Commission should be mindful of potential conflicting provisions in the proposed Internet Code and those which may already be found in various consumer protection codes and provincial legislation.

11. As such, as a recurring comment throughout this submission, Cogeco advocates for uniformity and consistency between the current tools in place and the ones proposed in the Internet Code. Indeed, the goal of implementing an Internet Code should be to provide more clarity and to avoid confusion for consumers that could result from a patchwork of conflicting rights and obligations. To this end, Cogeco is of the view that the Internet Code should endeavor to mirror the Television Service Provider Code of Conduct (the “**TVSP Code**”) to the greatest extent possible.

IV. NEED FOR THE INTERNET CODE (Q7)

12. While being mindful of consumer concerns about Internet services and related issues, Cogeco respectfully disagrees with the Commission's preliminary view that the creation of the Internet Code is “*necessary*” to respond to such concerns.

13. For example, while the CRTC relies on the Commission for Complaints for Telecom-Television Services' (the “**CCTS**”) reports to demonstrate consumer complaints about Internet services in order to conclude that there is a need for an industry code, Cogeco submits that such reports point towards a much greater volume of consumer complaints that concern wireless services – a service already regulated by a specific Wireless Code – than Internet services.

14. In fact, in its most recent Annual Report (2017-2018)¹, the CCTS reports that 12,757 complaints (42% of total) concern wireless services, in comparison with 8,987 complaints (29% of total) which concern Internet services.

15. In the 2017-2018 reporting year, wireless issues increased by 49% compared to 2016-2017 and customers continued to raise more issues overall about wireless services than any other type of telecommunications service.

¹ <https://www.ccts-cprst.ca/wp-content/uploads/2018/11/CCTS-Annual-Report-2017-2018.pdf>

16. Cogeco also notes that the top 2 issues concerning Internet services raised to the CCTS relate to intermittent and complete loss of service (18.3%) and incorrect billing (15.5%), two areas that can hardly be addressed by an Internet Code.

17. In this context, Cogeco wishes to reiterate its opinion, echoed by several other service providers during the Sales Practices Proceeding, to the effect that, any reported customer dissatisfaction with telecom service providers is a result of misbehavior by specific industry participants and not of a systemic industry issue to be addressed by the Commission with a mandatory code of conduct.

V. CONTENT OF THE INTERNET CODE (Q8)

18. Should the Commission determine to proceed with the Internet Code as set out in the Notice, Cogeco submits the following recommendations for the Commission's consideration.

Adjustments to Internet Code Working Document

A. Clarity of offers

19. On the issue of language generally, Cogeco supports the Commission's proposal calling for the use of clear and plain language when ISPs communicate with their customers.

20. With respect to Subsection 5 – Clarity of offers, Cogeco submits to the Commission that Option 1 appears to be sufficient in ensuring that Canadians understand the service offers presented to them by ISPs.

21. Option 1 provides the following:

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.*

22. In fact, Option 1 is in line with Cogeco's current ENGAGE sales process which focuses on 6 key steps on which sales agents are trained in order to complete any interaction with a customer. Every current or prospective Cogeco customer currently receives an offer containing information required in Option 1, including during telephone calls and through door-to-door interactions. Cogeco's promotional material also includes the key information proposed in Option 1. Furthermore, a written summary of an offer made to a customer before a sale is finalized is currently provided at the customer's request.

23. Option 1 is also similar to the requirement currently set out for television service providers pursuant to the TVSP Code. Therefore, the application of Option 1 would ensure that prospective customers of television and Internet services are treated equally and consistently.

24. As such, Cogeco urges the Commission to avoid setting a prescriptive and potentially invasive requirement as that suggested by Option 2.

25. In fact, the proposed requirement set out as Option 2 requiring seeking personal contact information from prospective customers (including a name, an email address, an address, etc.) to send a Critical Information Summary (the "CIS") appears overly intrusive, particularly at a pre-sale stage.

26. Moreover, requiring a CIS to be provided at a pre-sale stage for prospective Internet services customers, while not requiring one to be provided for prospective television services customers pursuant to the TVSP Code, may only result in confusion for prospective customers.

B. Permanent copy of the contract

27. With regard to the potential requirement of providing permanent copies of the contract and related documents to customers, Cogeco submits that the default selection of paper or electronic copy should be left to the discretion of the ISP (within the limitation prescribed by provincial legislation), given the current trend to migrate information concerning the customer's account to paperless methods. ISPs would nevertheless remain obliged to provide a paper copy of the contract and related documents upon request, free of charge, to the client.

28. Moreover, Cogeco submits that the timeframes set out in this section, which include an immediate provision of the copy of the contract if the agreement is made in person, a 15-day period to provide a paper copy of the contract for contracts not agreed to in person, and a 30-day timeframe following receipt of the contract to cancel it in certain circumstances, are inconsistent with similar provisions in the consumer protection acts of Ontario and Québec.

29. In this case, Cogeco submits that the Commission should consider the consumer protections already in place throughout Canada and avoid creating a range of conflicting mechanisms which will be difficult to manage and implement for ISPs, as well as creating a confusing protection regime for consumers. As such, Cogeco recommends the CRTC harmonize their proposed timeframes with those found in existing consumer protection legislation, in an effort to reduce implementation barriers for ISPs.

C. Critical Information Summary

30. Cogeco submits that, conceptually speaking, the CIS is a valid process for ensuring that customers receive key information regarding the terms and conditions regulating to their contract with an ISP.

31. However, Cogeco supports Option 1 presented in this section and urges the Commission to not impose the application of Option 2.

32. In fact, in terms of timing, Cogeco recognizes that the CIS ought to be remitted to the customer at the time the permanent copy of the contract is provided (Option 1). Doing so would ensure that customers have both a full and a summarized-version of their definitive agreement with their ISP.

33. However, expecting a service provider to *also* provide a CIS at the time of the offer (as suggested in Option 2) may, on the other hand, lead to confusion for customers and tempt them to disregard one or the other, or both CIS', ultimately restricting them from obtaining all the relevant information concerning their recent purchase.

34. Cogeco refers the Commission to our comments made in paragraphs 24 to 26 above as further reasons against the requirement to provide a CIS for prospective customers at the time of an offer as suggested in Option 2 of the proposed Internet Code.

D. Changes to contracts and related documents

35. Cogeco submits that, as worded, this proposed section can be quite misleading and is extremely confusing.

36. For example, while making a superfluous distinction between "*key contract terms and conditions*" and "*other terms and conditions*", this section omits from making a crucial distinction between fixed-term and indeterminate term agreements.

37. As a result, the current wording of Subsection 1 – *Changes to key contract terms and conditions* seems to imply that in the case of indeterminate term agreements, an ISP may never change key contract terms and conditions, as a

customer is always in a “*commitment period*”, defined to be a current month or billing cycle for indeterminate term agreements.

38. Cogeco submits that this interpretation would inevitably lead to absurd conclusions, preventing an ISP from ever making necessary operational changes to adapt to the market, including to its offered services. This conclusion would further appear to be in violation of provincial consumer protection legislation, where, for instance, the Québec *Consumer Protection Act* specifically allows a business to amend a contract by sending a 30-day prior notice of change.

39. Furthermore, Cogeco submits that, as currently worded, Subsection 2 – *Changes to other contract terms and conditions or related documents*, appears to place an inordinate administrative burden on an ISP, as it would require an ISP to inform the customer of any and all minor changes brought to the contract or to related documents. This process, as worded, would potentially flood the customers with communications which may not be relevant to them.

40. Cogeco therefore recommends addressing the issue of change notifications in the following manner (leaving the details of the wording to the Commission's discretion):

- Under a fixed-term agreement, the ISP shall not amend the contract, unless the consumer agrees to the amendment explicitly;
- Under an indeterminate term agreement, the ISP may only amend the contract by providing a prior 30-day notice to the consumer;
- Minor amendments which do not result in any material changes to the contract between a customer and the ISP shall not be communicated to the customer.

These clarifications to the language relating to change notifications will ensure that the customers remain fully aware of any relevant changes affecting their Internet service while allowing ISPs to adapt to changing operational circumstances as required.

E. Bill Management

41. With respect to data monitoring tools, Cogeco submits that the Commission should take into consideration the fact that more and more Internet service packages are becoming unlimited, rather than capped at a certain usage level. Therefore, Cogeco submits that data monitoring tools are of little to no benefit for unlimited Internet services' subscribers.

42. With respect to notification of data overage charges, pursuant to the Commission's expectations set out in *Telecom Regulatory Policy CRTC 2016-496*, Cogeco has ensured that our customers are already notified in the manner described in Option 1 of this subsection.

43. As such, Cogeco submits that Option 2 is not necessary, either as an alternative to Option 1 since compliance with Option 1 has just been confirmed by Cogeco last year, or as an addition to Option 1, as Option 1 strikes a sufficient balance of informing customers without flooding them with too many notifications.

44. Furthermore, Option 2, as proposed, appears to be administratively impossible to set up from a billing perspective. While our internal systems are able to track customers' usage (and therefore notify them accordingly), they are unable to track a customer reaching a certain dollar-value in data overage charges and therefore notify the customer of such in real-time. Such a change in operational notifications would require significant re-work of our recently-installed customer management system, as well as – in Cogeco's view – providing additional instances where customers would become dissatisfied with their ISP because of such a rule. As such, Cogeco submits that this additional notification and account management requirement is not required,

nor does it provide sufficient benefit to consumers and therefore, should be removed from any final Internet Code provisions.

G. 1 Early cancellation fees

45. Cogeco strongly opposes the early cancellation fee cap set out in this proposed section of the Internet Code.

46. Cogeco submits that early cancellation fees are not to be construed as a revenue-making strategy for an ISP, but rather a method in place for an ISP to recover costs incurred to set up a customer with new services and/or equipment.

47. For instance, if an installation required the dispatch of a service truck and the services of two technicians, the cost of this kind of installation to the ISP greatly exceeds the \$50 cap limit proposed by the Commission.

48. Cogeco submits that the ISP should therefore be able to recover a sizable portion of any costs incurred to defray any loss of revenue on that service. Cogeco further submits that ISPs should be entitled to set out reasonable early cancellation fees at their discretion, as long as the terms and conditions related to these fees are clearly explained to the customer well in advance and compliant with the relevant consumer protection legislation.

49. In addition, Cogeco would note that, given that the TVSP Code contains no such cap on early cancellation fees, Cogeco recommends, for uniformity purposes, avoiding the addition of such a cap in the proposed Internet Code.

G.2 Trial period/cooling-off period

50. With regard to the introduction of a trial or cooling off period for Internet services, Cogeco acknowledges the Commission's intent that special consideration be given to the issues faced by Canadian consumers with disabilities when they wish to subscribe to Internet services offered by an ISP.

51. Cogeco supports the inclusion of an additional provision in the Code to ensure that Canadian consumers with disabilities be given the opportunity to evaluate the Internet services to which they wish to subscribe during a reasonable trial period. Cogeco also supports the proposal to allow consumers with disabilities to terminate their service agreement before the expiry of such trial period without facing penalties, installation fees or early cancellation fees if these services do not meet their needs.

52. Cogeco acknowledges that the underlying rationale for such a trial period is the specific needs of Canadian consumers with disabilities, and the constraints or limitations they may face in determining whether their specific needs can actually be met through the Internet service devices and/or features offered by the ISP in relation to such specific needs.

53. Cogeco again submits that, for uniformity purposes with the current TVSP Code, an appropriate duration for a trial period for people with disabilities would be 30-calendar days as proposed by the Commission. Cogeco submits that this period would provide ample time for such customers to determine whether the Internet service devices and/or features meet their specific needs.

54. In addition, Cogeco submits that the following additional conditions should apply in order to allow the customer to take advantage of the trial period:

- a) the customer must specifically self-identify as a person with a disability at the time the request for Internet services is made to the ISP;
- b) the Internet service, as requested by the customer, must be a new service, i.e an Internet service to which the customer has not subscribed in the previous 12 months from the same ISP;
- c) the customer must return to the ISP the equipment provided by the ISP in near-new condition; and
- d) the customer must pay to the ISP all applicable usage fees for the use of the Internet service during the trial period;

55. Furthermore, Cogeco would recommend that the proposed subsection iv) of the *Trial period/cooling-off period* section, which provides that for customers with

disabilities, the permitted usage amounts be at least double the service provider's general usage amounts for the standard trial period, be re-written for using consistent terminology for clarity purposes, as it uses a variety of similar expressions such as "*standard trial period usage*", "*general usage*" and "*permitted usage*", without providing any definitions for such expressions.

56. Cogeco further questions the proposed requirement to provide double the permitted usage for persons with disabilities during the standard trial period, as it may mislead the customers into believing they will be obtaining more than what they actually signed up for during this trial period. The trial period therefore will not properly allow customers to assess whether the service meets their needs, as they will receive something different during this time than what they chose once the trial period is over.

57. Furthermore, Cogeco respectfully submits that while the underlying rationale for a trial period is the specific needs of Canadian consumers with disabilities and the particular constraints or limitations they may face in determining whether their specific needs can actually be met through the Internet service devices and/or features offered by the ISPs in relation to such specific needs, this underlying rationale does not apply to the vast majority of Canadian consumers who do not have a disability.

58. As further explained below, Cogeco submits that there are sound public policy reasons for not extending a trial period to all Canadian consumers generally.

59. First, Cogeco submits that the Commission should avoid creating any conflict or confusion with respect to the application of civil and consumer protection laws in effect dealing with cancellation of service agreements by consumers generally.

60. Second, subject to compliance with Broadcasting and Telecom Regulatory Policy CRTC 2014-576 which prohibits 30-day cancellation for local voice, Internet and broadcasting distribution services, as well as in compliance with civil and consumer protection laws in effect, cancellation terms in service agreements, when applicable, serve a valid and economically useful purpose by ensuring that these agreements are

not concluded lightly by consumers and that service providers are not required to write off equipment and other costs that were intended to be amortized over the agreed term of the service agreement.

61. Third, trial periods are used by some ISPs as marketing tools to differentiate themselves and their offerings when serving the same market. Cogeco submits that the Commission should refrain from regulating such aspects of the relationship between ISPs and their customers, especially with those customers who do not have any special needs.

62. Fourth, Cogeco submits that there is a real risk that customers could use a trial period to essentially 'ISP-hop' from one provider to another. This kind of behaviour has been noticed in specific parts of the market, as consumers 'hop' from one ISP to another based on the promotion they can receive. This kind of behaviour increases the customer acquisition cost for all ISPs, as well as generally depressing the receipt of revenues to effectively recoup that acquisition cost. Those costs, if not adequately recovered, are then redistributed to all other paying customers, which has an effect on the overall profitability of offering Internet services.

63. Finally, Cogeco wishes to caution the Commission on the risk that Canadian consumers may associate a trial period with a *free* usage period for the Internet services offered by an ISP. This may therefore lead some customers to expect a free trial period and result in confusion and frustration at the expiry of this period upon receipt of a first bill and thus be a trigger for increased consumer's complaints.

G. 3 Cancellation date

64. With regard to the cancellation date language in the proposed Internet Code, Cogeco recommends adding the following wording to Section (i): "*subject to any applicable early cancellation fees set out in G.1*". This addition is to correct any possible misinterpretation that may lead customers into believing that they can cancel their contract at any time and not expect to pay any fees.

G. 5 Contract extension

65. Cogeco submits that subsection (ii) relating to notifications prior to the end of a commitment period ought to be removed for the following reasons.

66. First, the Commission suggests a 90-day notice requirement before “*the end of the initial commitment period*”, without defining this notion, leaving this section open for interpretation. Moreover, it appears to unjustifiably assume that a customer only deserves this supplementary reminder of the ending of the initial commitment period and not of future commitment periods. This distinction between an initial and further commitment periods may actually mislead the customer in relying on such reminders for all upcoming commitment periods.

67. Second, a variety of ISP customers enjoy fixed-term promotions to benefit from an advantageous limited-time offer. These terms vary from a few weeks to several months. In this context, it is not practical to contemplate the provision of a 90-day prior notice before the end of a promotional period as the promotion length could in fact be shorter than the 90-day prior notice for example.

68. Third, in consideration of all other requirements set out in the proposed Internet Code, namely the provision of a “*clear*” CIS and written contract to the customer by an ISP which must already contain information regarding the end of a commitment period, Cogeco does not believe that a further explanation and/or reminder of this is required.

69. While appreciating the importance of enabling customers’ understanding of the key terms and conditions applicable to their relationship with an ISP, Cogeco submits that the requirement of providing such advance notice seems to merely confuse customers rather than provide a clarification of their terms, and only adds to the number of other notifications and information they must keep track of should this Internet Code go into effect.

I. Disconnection

70. Cogeco submits that this proposed section, as worded, is too prescriptive for ISPs, as it seeks to prescribe exactly when, how and why a disconnection may occur.

71. Cogeco recommends the Commission adopt the same language it had set out in the TVSP Code for disconnection, which provides a workable balance for ISPs in managing their operational environments as well as providing protection for consumers.

72. In line with the TVSP Code provisions to that effect, this section ought to specify that the service provider must explain to a customer in any written agreement or related documents its policy for disconnection of service, including:

- the grounds for disconnection;
- when and how disconnection may occur;
- what notice will be provided before disconnection occurs;
- when a customer can and cannot be disconnected when disputing charges
- when a customer's account may be referred to a collection agency for missed payment; and
- the cost to reconnect the service, if applicable.

73. Nevertheless, should the Commission wish to maintain this section as is, Cogeco submits that subsection 3 (i)(a) ought to be rewritten as follows:

- a. *If the customer provides a reasonable ground for disputing the reasons for the disconnection and notifies the service provider of such on or before the scheduled disconnection date listed in the notice.*

This clarification would offer the customer some protection against potentially unjustified disconnections, while prohibiting the customer from raising arbitrary or unfounded reasons to avoid a justified disconnection.

Definitions

74. Cogeco submits the following proposed changes of some of the definitions in the latter part of the proposed Internet Code document:

- a) The definition of “*fixed-term contracts*” should avoid mentioning a “*usual*” duration of one or two years, as it appears to be an unfounded generalization;
- b) The definition of “*Key contract terms and conditions*” should clearly identify which contract terms and conditions the Commission deems as “*key*” for the benefit of all parties. In Cogeco’s understanding, these refer to items a. to d. in Section B) 4) (i) and as such, this reference should be included in the definition; and
- c) The definition of “*early cancellation fee*” must specify that it is only applicable in the case of a fixed-term agreement, as section G.1. (i)(b) states that “*for indeterminate contracts, a service provider must not charge an early cancellation fee*”.

Bundles

75. With respect to bundles of communication services, Cogeco wishes to point out to the Commission that given the recent multiplication of industry codes, the Commission should strive for uniformity and consistency between such codes.

76. As such, the proposed Internet Code should avoid creating different rules from those already in place, namely in the TVSP Code.

77. Cogeco urges the Commission to be sensitive to this concern for the benefit of both ISPs and consumers. As such, while the management of a different set of rules for each offered communication service constitutes operational complexity for service providers, the differences in applicable rules based on the services included in a bundle will also result in confusion, misunderstanding and at times frustration for

customers which in turn, may lead to an increase in complaints which is an outcome all wish to avoid.

Cost to implement proposed provisions in Internet Code Working Document

78. Given the preliminary stage of the proposed Internet Code, filled with “and/or” options, it is a difficult task to anticipate costs and time required to implement such options.

79. That being said, Cogeco has taken the elements of the proposed Code to our internal data architects to have them analyse the potential changes that would be required to internal systems to accommodate all the various provisions. As the Commission is aware, Cogeco has just completed a major fork-lift upgrade of its customer management systems in both Ontario and Quebec. This upgrade took multiple years to complete, and once implemented, resulted in a number of customer service challenges that severely strained internal resources and led to a measurable increase in complaints against Cogeco during the implementation phase and stabilization period. The company is therefore reluctant to make additional major changes to the system in the short term, in order to ensure a certain amount of stability in our efforts to return to our usual high quality customer service and stabilize our customer acquisition strategies.

80. Now that Cogeco is in the final phase of this project, adapting the newly implemented platform that has yet to be fully stabilized, taking into account the proposed sections of the Internet Code would engender additional system changes requests, mobilize our technical employees and require another round of adaptations to our system. Based on the proposed provisions of the Internet Code, Cogeco's internal resources – in association with our external vendor – have estimated a considerable effort in several areas that require changes: contract terms, early cancellation fees in relation to bundles, treatment of collections issues as well as changes to our customer self-service portal. All of these areas combined would involve

– at a very high level – an effort on the part of our external vendor of between ##### days of total effort, in addition to another ##### days of effort for internal resources to ensure that internal systems that feed into our customer management system are passing the correct information and flags. This effort translates into an overall combined cost of approximately CDN#####.

VI. APPLICATION OF THE CODE TO ISPS (Q9)

81. Cogeco opposes the Commission's preliminary view to the effect that "*since 87% of Canadians with Internet services purchase their retail Internet subscriptions from a "traditional telephone" or "cable" company, limiting the initial application of the Internet Code to large facilities-based Internet service providers (ISPs) would strike an appropriate balance between addressing consumer concerns and not placing a heavy regulatory burden on smaller carriers or resellers*".

82. The same figure, recently used in the preliminary view expressed by the Competition Bureau in May 2018 at the beginning of its study regarding competition in broadband services, originates from the CRTC 2017 Communications Monitoring Report.

83. Cogeco notes that this 87% market share figure does not adequately reflect the state of competition from resellers when one looks at the Québec and Ontario provinces where most resellers are active and where competition is strong.

84. Since the launch of this Competition Bureau market study, several intervenors have expressed concerns and pointed out the that the 87% market share figure can be misleading.

85. For instance, Christian M. Dippon, Ph.D., in an expert report submitted to the Competition Bureau on behalf of TELUS Communications, stated the following:

"The Bureau cites the CRTC CMR 2017 as the source for its understanding that "87% of retail internet subscriptions in Canada were purchased from a traditional telephone and cable company." This number is misleading for at least three reasons. First, the percentage is likely dated, as the Other Service Providers share of both subscribers was growing much more rapidly than that of Incumbent TSPs or Cable Based Carriers. [...]

Second, [...] the (remaining) 13 percent assumes that the relevant product market in 2016 was limited to fixed telephony and cable broadband services only. As Dr. Crandall clarifies, technological advances in recent years and improvements in satellite and mobile wireless technologies have broadened the market to also include satellite and 4G LTE services. [...]

Third, the 13 percent assumes that resellers (and other service providers) target the same population as the facilities-based competitors. However, resellers often do not vie for the same subscribers that their competitors do. [...] This, in turn, implies that although resellers might serve approximately 13 percent of all fixed telephony and cable subscribers they serve about 22 percent (13% / 59.8%) of those subscribers who do not wish to purchase triple-play bundles or 46 percent (13% / 28.4%) of those who wish to purchase broadband as a standalone service.

The specific and narrow focus of resellers renders the 87 percent fixed telephone and cable market-segment share of residential Internet service subscribers misleading."²

86. Furthermore, as submitted by Cogeco in its comments to the Competition Bureau's market study, the reported remaining 13% of market share held by resellers

² [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Appendix_B_Expert_Report_of_Christian_M_Dippon_PhD_ABRIDGED_Revised-2018-11-07.pdf/\\$file/Appendix_B_Expert_Report_of_Christian_M_Dippon_PhD_ABRIDGED_Revised-2018-11-07.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Appendix_B_Expert_Report_of_Christian_M_Dippon_PhD_ABRIDGED_Revised-2018-11-07.pdf/$file/Appendix_B_Expert_Report_of_Christian_M_Dippon_PhD_ABRIDGED_Revised-2018-11-07.pdf)

in Canada is an understatement, when considered on a regional basis³. As the vast majority of reseller broadband customers are located in Ontario and Québec, it is more realistic to calculate the market share of resellers in those two provinces, to arrive at a better indication of reseller market success. Based on such calculations, detailed in the comments, the adjusted market share for the resellers in Ontario and Quebec is not 13% as reported nationally, but rather, 19%.

87. Moreover, a number of ISPs other than the large facilities-based ISPs are already considered “*participating service providers*” for the purpose of the application of other industry codes and fall within the scope of CCTS’ mandate.

88. In addition, the arbitrary differentiation between the rules applicable to large ISPs, subject to the Code, and other ISPs, not subject to the Code, will ultimately penalize the customer and in some cases, go as far as creating a situation of discrimination. For instance, customers with disabilities will only be able to take advantage of trial periods and request a copy of their contract in an accessible format by purchasing their services from large ISPs, thereby limiting consumer choice.

89. We also note that in the most recent CCTS report, internet complaints against some resellers sharply increased and as such, any remedies that the Commission sees fit for the internet industry should apply equally to all those who are providing Internet services to customers whether they be facilities-based or resellers.

90. Finally, and most importantly, the Commission’s proposal in subjecting only large facilities-based ISPs appears to be in direct violation of the Policy Direction cited by the Commission itself in the Notice, which requires the Commission to implement

³ [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/ABR_180831_Cogeco_Comments_Competition_Bureau_Internet_Market_Study.pdf/\\$file/ABR_180831_Cogeco_Comments_Competition_Bureau_Internet_Market_Study.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/ABR_180831_Cogeco_Comments_Competition_Bureau_Internet_Market_Study.pdf/$file/ABR_180831_Cogeco_Comments_Competition_Bureau_Internet_Market_Study.pdf)

non-economic regulatory measures (such as industry codes) “*in as symmetrical and competitively neutral a manner as possible*”⁴.

91. Considering the aforementioned, should the Commission impose the Internet Code as proposed, it should apply equally to all ISPs, regardless of size and number of subscribers, throughout Canada, as of the date of implementation.

VII. APPLICATION OF THE CODE TO CONTRACTS (Q10)

92. Should an Internet Code be imposed by the Commission as proposed in this Notice, we agree with the Commission’s preliminary view that it should apply to all retail fixed Internet services provided to individuals in all regions of Canada, regardless of underlying technology or the business models of the ISP.

93. Given the Commission’s foregoing view, which clearly expresses its desire to extend the protections of the Internet Code to the greatest number of consumers, Cogeco submits that it becomes even more important that all ISPs (and not just large facilities-based ISPs) be subject to the Internet Code, as mentioned above.

94. That being said, given the major operational distinctions between the delivery of Internet services to individuals and small businesses, detailed below, Cogeco strongly recommends that the proposed Internet Code, like the TVSP Code, not apply to small businesses.

95. For example, in most cases where Cogeco extends services to small business customers, the company is required to fund a build to a particular business park, street mall or other agglomeration of commercial businesses, as Cogeco has not in past years made it a practice to extend our coaxial network to serve business customers. It is only in the last several years that the company has made a concerted push into various areas in our footprint to extend our network to better take advantage of the opportunities presented by the business market.

⁴ <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-355/page-1.html>

96. Such activities require that the company – in almost all instances – allocate significant capital resources to fund builds to reach individual business customers. As it stands today, the proposed wording of the Internet Code – particularly those sections regarding a trial period and maximum early cancellation fees – is not adequate to address this particularity of our business market. If the Commission were to impose the Internet Code as currently drafted, Cogeco would have to reconsider many of its current investments in reaching business customers with our network, with the overall result being a potential reduction in competition for those markets.

97. As such, Cogeco strongly recommends that the Internet Code not be applied to the small business market.

98. This approach would also be consistent with the TVSP Code, whose application is limited to residential customers.

VIII. APPLICATION OF THE CODE – AVOIDING DUPLICATION WITH WIRELESS CODE (Q11)

99. Since the Wireless Code already applies to mobile wireless data services, including mobile Internet services, Cogeco submits that it is not necessary for the Internet Code to also apply to such services.

IX. IMPLEMENTATION OF THE CODE – IMPLEMENTATION DATE (Q14)

100. At this stage, there are far too many uncertainties related to the application and implementation of this proposed code.

101. As such, Cogeco would prefer that the final version of the Internet Code come into effect 12 months from the date of a CRTC decision on this matter, to allow ISPs sufficient time to make any required operational changes in order to comply with its provisions as well as to assess whether any unique barriers come up that would make

the implementation of a specific provision technically impossible or financially unreasonable.

X. IMPLEMENTATION OF THE CODE – APPLICATION TO NEW, AMENDED, AND/OR EXISTING CONTRACTS (Q15)

102. For operational reasons, Cogeco submits that when the Internet Code comes into effect, it should apply only to new contracts as well as amended contracts as set out in Option 1.

103. This approach would also be consistent with that set out in the TVSP Code at the time of its implementation.

XI. IMPLEMENTATION OF THE CODE – IMPLEMENTATION REPORTS (Q16)

104. Cogeco does not oppose the Commission's preliminary view that ISPs offering services governed by the Code should be required to report to the Commission to demonstrate that they have implemented the Code effectively and on time.

XII. ADMINISTRATION AND ENFORCEMENT OF THE CODE (Q17)

105. Cogeco agrees with the Commission's preliminary view that the Internet Code, if implemented, ought to be administered by the CCTS and enforced by the Commission, for the sake of uniformity between the application and enforcement of all other industry codes.

XIII. PROMOTION OF THE CODE (Q18)

106. Cogeco submits to the Commission that the responsibility of promoting the Internet Code among consumers should fall upon all concerned participants in the industry, including ISPs, the CRTC and the CCTS.

107. Regarding ISPs, Cogeco submits that the following mechanisms would effectively promote the Internet Code:

- Include an explanation as to where customers can find information about the Internet Code in the written contract (as proposed in Section B(4)(i)(m)(6)).
- Should the Internet Code be administered by the CCTS, continue referring to the CCTS and to its future expanded mandate which will then include Internet services on the ISPs websites, on customer bills, and via direct customer notifications.

108. In addition, as of the implementation of the Internet Code, Cogeco's sales representatives will be made aware of the Internet Code, its scope and application, by updates in our internal knowledge portal as well as via ongoing training.

XIV. MEASURING EFFECTIVENESS AND REVIEW OF THE CODE (Q19)

109. With regard to a review period, to ascertain the effectiveness of the proposed Code in the market, Cogeco recommends the Commission set a review period of five years. This would ensure that there is sufficient time for ISPs to implement the code, and work with the Code provisions to assess their impact on the market, before contemplating any additional changes or revisions to the Code's basic elements, which may engender additional implementation costs for ISPs.

XV. CONCLUSION

110. Cogeco appreciates the opportunity to participate in this proceeding.

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