

**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***

**Reply Comments
of
Xplornet Communications Inc.**

January 28, 2019

INTRODUCTION AND EXECUTIVE SUMMARY

1. Xplornet Communications Inc. (“Xplornet”) has reviewed interventions filed by interested parties in relation to Telecom Notice of Consultation CRTC 2018-422, *Call for comments – Proceeding to establish a mandatory code for Internet services* (“TNC 2018-422”) and is pleased to provide its reply comments.
2. As a preliminary manner, Xplornet agrees with parties to this proceeding that, if an Internet Code of Conduct (“Internet Code” or “Code”) is adopted, the Commission should declare such a code to be a single, complete national code that applies to the delivery of broadband services. While the Commission considered that it would be appropriate for service providers to be required to comply with both federal and provincial regulation when it adopted the Wireless Code of Conduct (“Wireless Code”), this approach should not be adopted with respect to broadband services. Provincial regulation impacting the contractual process related to broadband services necessarily impacts service delivery and is likely to decrease the affordability of broadband services for Canadians – a key priority of the Government of Canada. Provincial rules should not be permitted to frustrate federal objectives in this manner. The only way to ensure that this does not happen is for the Commission to displace provincial regulation with respect to broadband services.
3. Having reviewed the evidence filed by parties to-date, Xplornet notes that there is a large degree of consensus concerning a number of issues. In particular, Xplornet notes that many parties agree that, if an Internet Code is adopted, then:
 - 1) All Internet Service Providers (“ISPs”) should be subject to the Code, and not only the large, facilities-based ISPs as proposed in TNC 2018-422;
 - 2) The Internet Code should not apply to small businesses;
 - 3) Early cancellation fees (“ECFs”) associated with Internet access services should not be subject to caps, as proposed in TNC 2018-422;
 - 4) The notification requirements for data overage charges established in TRP 2016-496¹ remain appropriate; and
 - 5) The Commission for Complaints for Telecom-television Services (“CCTS”) should administer the Code.
4. Xplornet supports these positions.
5. With respect to the implementation of the Code, Xplornet notes that parties have advanced varying proposals for the length of an implementation period that should be provided, should the Code be adopted, ranging from as little as six months, to as many as 24 months. Xplornet reiterates its view that a minimum of 12 months

¹ Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada’s digital economy*.

should be provided to ISPs and that the Code should come into force all at once and not through a phased-in approach. Furthermore, the Code should be applied only to new contracts. If any provisions are applied to existing contracts, these should be limited to matters that do not impact the contractual relationship that was entered between the parties.

IF ADOPTED, THE COMMISSION SHOULD DECLARE THE INTERNET CODE TO BE A SINGLE, COMPLETE NATIONAL CODE FOR BROADBAND SERVICES

6. Xplornet fully supports the position put forward by Bell Canada² and Telus³ that, if it determines to adopt an Internet Code, the Commission should declare the Code to be the single, complete, national code that applies to the delivery of broadband services in order to displace the application of provincial regulation to broadband services.
7. At present, provincial governments maintain legislation that seeks to regulate the delivery of Internet access services by ISPs to consumers. For example, the Government of Quebec has submitted a fulsome submission⁴ in the present proceeding describing the nature of the laws that it has adopted that it applies to ISPs.
8. Provincial regulation of this nature is problematic for a number of reasons and should be clearly displaced by federal rules.
9. In the context of the Wireless Code, the Commission declined to declare that regulation to be a single, complete national code, and consequently, Wireless Service Providers remain required to comply with provincial legislation across the country. The Commission should not implement an Internet Code in this same manner.
10. Xplornet submits that provincial rules that regulate the contractual relationship between an ISP and its customers necessarily regulate service delivery. By impacting service delivery, provincial governments may inappropriately frustrate federal telecommunications objectives. The federal government is the only authority with the appropriate expertise and jurisdiction to regulate telecommunications.
11. To provide an illustrative example, we may look at the case of ECFs. In our Intervention,⁵ we provided detailed evidence concerning why it is not appropriate for the Internet Code to impose limits on ECFs.
12. ECFs are required by ISPs in order to make the installation of broadband services more affordable for Canadians, and in particular rural Canadians. Indeed, the

² Bell Canada, Intervention, paragraph 7.

³ Telus, Intervention, paragraph 4.

⁴ See the Intervention filed by the Ministère de la culture et des communications and the Office de la protection du consommateur on behalf of the Government of Quebec (“Government of Quebec”).

⁵ See, Xplornet, Intervention, paragraphs 22 to 24.

provision of broadband services involves significant up-front costs, particularly when connecting a new subscriber in a rural or remote area. In order to connect a subscriber, the ISP must visit the customer's home. For a rural or remote installation, it is not uncommon for travel costs alone to amount to hundreds or even thousands of dollars (for example, in areas without road access). At the home, important hardware must be installed by a technician for the subscriber to connect to our fixed wireless or satellite networks.

13. At Xplornet, it is our mission to make fast, affordable, high-speed broadband services available to rural Canadians. We understand that it is extremely burdensome for customers to be asked to cover these up-front costs as a one-time fee on installation. Imposing installation costs as a one-time fee reduces the affordability of services and represents a significant barrier to activation. Contract periods and ECFs help us to manage high installation costs in order to make services more accessible to Canadians by avoiding the need for high up-front fees. In exchange for an agreement to receive service for a certain period of time, we are able to perform an installation without imposing significant up-front installation fees. ECFs are used to help us recover installation fees if the customer does not keep their service for the agreed upon amount of time.
14. Affordability of broadband services has been identified as a key priority for the Government of Canada. In its Innovation Agenda,⁶ the Government of Canada stated its priority to foster the ability of Canadians to compete in the digital world.⁷ As part of this priority, the Innovation Agenda declares that “Canada must also do more to give rural communities and low-income Canadians affordable access to high-speed Internet so that they can participate fully in a digital and global economy for a better quality of life.”⁸
15. Contract periods with ECFs thus allow us to make our services more affordable for Canadians, consistent with the Government of Canada's goals.
16. In light of this, we have recommended that the Commission not impose limits on ECFs should it adopt an Internet Code. Removing the ability for ISPs to recover installation costs through ECFs would prevent ISPs from using contracts to avoid imposing high up-front installation charges. Without the ability to offset installation charges through ECFs, ISPs would be forced to either impose up-front charges, or to increase monthly rates. In either case, this would harm broadband affordability and would run against the Government of Canada's goals. If the Commission is to adopt an Internet Code, we have recommended that provisions related to ECFs be modeled after those set out in the Television Service Provider Code of Conduct (“TVSP Code”). The TVSP Code does not limit ECFs, but requires service providers to be transparent about how ECFs are applied.

⁶ Government of Canada, *Canada: A nation of innovators*, June 2016. Available online: [https://www.ic.gc.ca/eic/site/062.nsf/vwapj/InnovationNation_Report-EN.pdf/\\$file/InnovationNation_Report-EN.pdf](https://www.ic.gc.ca/eic/site/062.nsf/vwapj/InnovationNation_Report-EN.pdf/$file/InnovationNation_Report-EN.pdf)

⁷ Innovation Agenda, page 6.

⁸ Innovation Agenda, page 6.

17. For illustrative purposes, we will assume that the Commission implements an Internet Code that does not impose limits on ECFs in order to promote the affordability of broadband services, consistent with the Government of Canada's Innovation Agenda. Unless the Commission declares the Internet Code to be a single, complete national code to displace provincial regulation, federal objectives will be undermined by provincial rules.
18. For example, certain provinces, such as Newfoundland and Labrador, and Quebec, have enacted legislation that limits the ECFs that ISPs can charge. As explained above, limitations of this nature directly impact the delivery of broadband services and result in higher costs to consumers, reducing broadband affordability.
19. Unless the Commission explicitly displaces provincial legislation as it relates to Internet services, ISPs would be required to comply with provincial requirements, including ECF caps, regardless of a Commission determination not to limit ECFs. There would be no operational conflict between the Internet Code, which would include no limits on ECFs, and the provisions of provincial legislation, in order to engage the doctrine of paramountcy.
20. For these reasons, Xplornet agrees that it is essential that the Commission declare the Internet Code to be a single, national code that displaces provincial regulation, should a Code be adopted. Such a declaration is necessary to ensure that provincial rules do not frustrate federal broadband priorities.

TOPICS THAT ARE SUBJECT TO A LARGE DEGREE OF CONSENSUS

21. Having reviewed evidence filed by parties, Xplornet notes that there is broad support in relation to a number of topics proposed in the Internet Code.

The Internet Code should apply to all ISPs

22. Xplornet notes that there has been significant opposition to the Commission's proposal that the Internet Code, if adopted, would only be applied to the large, facilities-based ISPs, 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."⁹
23. There is significant evidence on the record that the Commission's proposal does not strike an appropriate balance between addressing consumer concerns and managing regulatory burden for smaller carriers or resellers.
24. While CNOC has argued that extending application of the Internet Code to smaller providers "would not translate into a meaningful contribution towards relieving the

⁹ TNC 2018-422, paragraph 3.

leading causes of consumer complaints,”¹⁰ multiple parties have provided evidence to demonstrate that applying the Code only to large, facilities-based carriers does not adequately protect consumers.

25. By not applying the Code to resellers and smaller providers, parties have demonstrated that there would be a significant number of Canadians that would not benefit from the Code’s protections. Indeed, parties have highlighted that:

- 1) Six of the top 25 ISPs would not be subject to the Code;¹¹
- 2) TekSavvy – one of the 10 largest ISPs in the country – would not be subject to the Code;¹² and that
- 3) The Commission’s assumption that 87% of Canadians would be covered by the Code overstates the percentage of Canadians who would benefit from the Code in areas of the country where resellers are more present, like Ontario and Quebec. In these areas, only 81% of Canadians would be covered by the Code.¹³

26. It is clear that not applying the Code to smaller providers and resellers would leave many Canadians without the benefits that the Code would offer. As argued by Quebecor, consumers should not have to wonder whether or not they are able to benefit from the Code’s protections.¹⁴ It should not matter to consumers if their service provider is providing service through resold facilities, or if the facilities are properly owned by the service provider, or if their provider is large or small, in order to benefit from the Code.

27. Complaint statistics from the CCTS further highlight the importance of applying the Code to all providers. According to CCTS data, 21% of complaints related to Internet issues would not have benefitted from the protections of the Internet Code in 2017-2018, had there been a code in place that applied to only the Internet services of the large, facilities-based ISPs. Complaints concerning smaller providers and resellers are not proportionate to the market of customers they serve.

28. There is evidence on the record that demonstrates that smaller providers and resellers are engaging in practices that generate significant numbers of complaints. Indeed, parties have aptly underscored that:

- CCTS complaints concerning TekSavvy have increased by 293% over last year;¹⁵
- TekSavvy receives more complaints than Telus in relation to a much smaller base of customers;¹⁶

¹⁰ CNOC, Intervention, paragraph 5.

¹¹ Conseil provincial du secteur des communications, Intervention, paragraph 34.

¹² Xplornet, Intervention, paragraph 56.

¹³ Cogeco, Intervention, paragraph 86.

¹⁴ Quebecor, Intervention, paragraphs 7 to 8.

¹⁵ Shaw, Intervention, paragraph 80.

¹⁶ Telus, Intervention, paragraph 17.

- Comwave, a small provider, has received:
 - o more complaints about Internet services than Telus;¹⁷
 - o nearly 50% more complaints than Shaw;¹⁸
 - o more than double the complaints of Cogeco;¹⁹ and
 - o nearly 4x the complaints of Eastlink;²⁰
- Primus has more complaints than Cogeco and Sasktel;²¹ and that
- Vonage, TekSavvy and Acanac all have more complaints than Sasktel.²²

29. Furthermore, Comwave has also been found to have contravened the *Competition Act* through its business practices. As noted by the Competition Bureau (“Bureau”), “in 2016 the Bureau found that Comwave Networks Inc. (“Comwave”) misrepresented its internet and home phone services as “unlimited”, when in fact there were monthly caps on usage”.²³

30. Accordingly, evidence filed by parties concerning practices and complaints of smaller providers and resellers demonstrates that these ISPs should also be subject to the Code, if a Code is adopted.

31. Beyond the evidence above, Xplornet submits that it would be contrary to the Policy Direction²⁴ to only apply the Code to the large, facilities-based providers. 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.²⁵ By extending adherence to the Code to only the large, facilities-based ISPs, the Commission would be creating significant competitive asymmetries in the marketplace.

32. Applying the Code to only the large, facilities-based ISPs would create particular asymmetries in the rural and remote areas of the country where we operate. In these areas, we face vigorous competition from a significant number of smaller ISPs that would not be subject to the Code. An asymmetrical application of the Code could distort competitive dynamics in rural Canada, disadvantage our business and ultimately confuse and harm rural consumers.

33. Other parties have expressed the same concerns. Sasktel has explained as follows:

“...in Saskatchewan, the Commission’s proposal would apply to SaskTel, Shaw, and Xplornet, regardless of their contribution to the

¹⁷ *Ibid.*

¹⁸ Mark Goldberg, Intervention, paragraph 20.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*; Union des consommateurs, Intervention, paragraph 162.

²² Mark Goldberg, Intervention, paragraph 20; Union, Intervention, paragraph 162.

²³ Bureau, Intervention, paragraph 55.

²⁴ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355 (“Policy Direction”).

²⁵ Policy Direction, section 1(b)(iii).

complaints being registered. It would not apply to alternate ISPs, small fixed wireless suppliers, or Access Communications. This would result in unregulated providers being handed a regulated competitive advantage. In cases where those being more heavily regulated are indeed worse offenders, such unequal treatment may be valid and would incent the offenders to improve. However, when the empirical evidence shows that this is not the case, unequal treatment is unjustified.

Access Communications is a major cable provider in Saskatchewan and a facilities-based fixed line alternative for internet services for large portions of our Rate Bands A, B, and C, including Regina, Prince Albert, Melville, Yorkton, Esterhazy, Estevan and Weyburn. Competition between SaskTel and Access in these cities leads to many customers switching between the two. The proposed code would give Access a competitive advantage in these cities despite SaskTel's market behaviour not having demonstrated a need to be corrected. For instance, should the code retain its extremely low penalties for early termination and apply to SaskTel but not to Access, then Access could easily pay out termination fees for customers it attracts and then lock those customers into more binding contracts. Access would also have more flexibility to discount installation charges or monthly fees since their contracts would be binding. SaskTel would not be able to respond to such actions."²⁶

34. Bell Canada,²⁷ Eastlink²⁸ and Quebecor²⁹ have also raised concerns about the impact that the asymmetrical application of the Code would have on market dynamics.
35. Xplornet submits that none of the harms outlined above can be justified by reasons of undue regulatory burden for smaller providers as contemplated by the Commission. Indeed, CanWISP, the CCSA, CNOC and TekSavvy have all filed comments on the proceeding record and none of these parties has provided any evidence of undue regulatory burden to justify their exclusion from the Code's application.
36. TekSavvy has merely asserted that there would be a heavy regulatory burden to complying with the Code³⁰ and CNOC has simply stated that its members have estimated that it could cost "tens of thousands of dollars to hundreds of thousands of dollars" to implement the draft Code.³¹

²⁶ Sasktel, Intervention, paragraph 57 to 58.

²⁷ Bell Canada, Intervention, paragraph 12.

²⁸ Eastlink, Intervention, paragraph 49.

²⁹ Quebecor, Intervention, paragraphs 9 to 11.

³⁰ TekSavvy, Intervention, paragraph 6.

³¹ CNOC, Intervention, paragraph 18.

37. Xplornet does not believe that smaller providers or resellers will experience undue regulatory burden to implement 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, 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. Indeed, Rothschild – former operator of the small ISP RipNET – is the only service provider that has recommended that the Internet Code could be implemented in a six-month timeframe.³² As described in more detail below, all other service providers have requested a materially longer implementation period. This attests that the burden imposed on smaller providers is likely less than that imposed on larger ISPs.

38. Accordingly, we submit that concerns of undue regulatory burden do not justify the the harms outlined above to warrant exclusion of smaller ISPs and resellers from the Code's application.

39. For all of these reasons, we submit that the Code should be uniformly applied to all ISPs, if adopted.

The Internet Code should not apply to small businesses

40. Xplornet notes that a large number of parties have filed comments to recommend that the Internet Code, if adopted, should only apply to consumers and not to small businesses. Bell Canada,³³ Cogeco,³⁴ Eastlink,³⁵ Quebecor,³⁶ Rogers,³⁷ Shaw³⁸ and Telus³⁹ have all provided comments of this nature.

41. Xplornet particularly agrees with Bell Canada⁴⁰ and Telus⁴¹ that small businesses today benefit from uniquely negotiated contracts that provide customized service solutions that are different from those sought by residential consumers. The provisions of the Internet Code could reduce the flexibility that ISPs require to provide customized solutions to small businesses at affordable prices. As a result, Xplornet believes that it is not in the interest of small businesses for their relationships to be governed by the Code.

³² Rothschild, Intervention, page 3.

³³ Bell Canada, Intervention, paragraph 14.

³⁴ Cogeco, Intervention, paragraph 94.

³⁵ Eastlink, Intervention, paragraph 52.

³⁶ Quebecor, Intervention, paragraphs 28 to 31.

³⁷ Rogers, Intervention, paragraph 42.

³⁸ Shaw, Intervention, paragraph 26.

³⁹ Telus, Intervention, paragraph 22.

⁴⁰ Bell Canada, Intervention, paragraph 14.

⁴¹ Telus, Intervention, paragraph 22.

42. Xplornet thus supports the view that an Internet Code should not apply to small businesses.

Early cancellation fees associated with Internet access services should not be subject to caps, as proposed in TNC 2018-422

43. Xplornet described in detail above the reasons why any provisions related to ECFs adopted in an Internet Code should be based on provisions in the TVSP Code and should not limit the ability of ISPs to use contracts to increase the affordability of their services.

44. Numerous other parties have agreed that caps on ECFs will make broadband services less affordable for consumers, contrary to the goals of the Government of Canada:

- Bell Canada has described that limiting ECFs to \$50 would remove the benefit of contracts for consumers, reducing affordability of services;⁴²
- CNOC has argued that ECFs should allow ISPs to recover the costs of any incentives extended to the customer (e.g., the amortization of installation fees);⁴³
- Distributel has echoed concerns that caps on ECFs will limit the offers that it can make available to consumers, harming affordability;⁴⁴
- Eastlink has argued that caps on ECFs are particularly damaging for rural customers, as ISPs need to be able to recover installation costs;⁴⁵
- Sasktel has described how limiting ECFs will result in higher up-front costs for consumers, as ISPs will not be able to use contracts to amortize installation costs;⁴⁶ and
- Telus has detailed that capping ECFs will remove the benefits of contracts, preventing ISPs from extending incentive gifts to customers and removing the ability for ISPs to amortize their installation costs over time.⁴⁷

45. Xplornet continues to recommend that provisions relating to ECFs that may be included in an Internet Code must provide the appropriate balance between ensuring consumers understand their rights and obligations under service contracts and fostering affordability of services. Adopting provisions such as those in the TVSP Code, which ensure transparency in how ECFs will be applied but do not cap ECFs, would be most appropriate for the Internet Code, if adopted.

⁴² Bell Canada, Intervention, paragraph 28.

⁴³ CNOC, Intervention, page 20.

⁴⁴ Distributel, Intervention, paragraphs 11 to 13.

⁴⁵ Eastlink, Intervention, paragraphs 47 and 51.

⁴⁶ Sasktel, Intervention, paragraphs 39 to 42.

⁴⁷ Telus, Intervention, paragraphs 31 to 37.

46. In addition to concerns about caps on ECFs, Xplornet also recommends 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. Eastlink,⁴⁸ Quebecor⁴⁹ and Rogers⁵⁰ have also expressed concerns about being prevented from recovering charges other than ECFs on cancellation. The delivery of broadband service is complex and varies considerably for each consumer based on the customer's location and the technology being used to serve the customer. There is no one-sized-fits-all solution that can be applied, and providers require the flexibility to design solutions that best meet the needs of individual customers.
47. Equipment return fees are a common example of other fees that may be payable on cancellation in addition to ECFs. 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. When an Xplornet customer cancels service, we may reuse the hardware from that customer's home, if in good condition, to serve a new customer. We thus ask that the customer who is terminating service return their hardware to us. If the hardware is not returned, we charge an equipment return fee. This fee will be refunded at any time if the hardware is subsequently returned to us. ISPs should not be prevented from charging equipment return fees by a potential Internet Code.
48. To this end, we recommend that the language in G.1.(i) that 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 an early cancellation fee" be removed from the Internet Code. Instead, the Code should require that any fees that may be payable on cancellation, such as equipment return fees, be transparently set out in the contract.
49. Xplornet further agrees with Rogers⁵¹ that a similar change is required in clause B.3.(i). This clause prevents a service provider from recovering an equipment return fee in the event the contract is cancelled within the first 30 days for reasons relating to the delivery and content of the permanent contract. The broadband equipment that we install at a customer's premise remains Xplornet's property and we should not be prevented from ensuring the equipment, or the cost of such equipment, is returned to us on cancellation.

The notification requirements for data overage charges established in TRP 2016-496 remain appropriate

50. In the proposed Internet Code, the Commission has put forward two potential options that could be adopted in relation to notifications for data overage charges.

⁴⁸ Eastlink, Intervention, paragraph 51.

⁴⁹ Quebecor, Intervention, paragraph 17.

⁵⁰ Rogers, Intervention, paragraph 16.

⁵¹ Rogers, Intervention, paragraph 16.

51. The first proposal is consistent with the expectations set out in TRP 2016-496. 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.
52. Under option 2, the Commission has proposed that a service provider would be required to notify customers once they reach certain dollar values 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.
53. Having reviewed interventions from parties, we have noted that there is a large degree of support for option 1 and a number of parties have demonstrated that adopting option 2 would not be appropriate.
54. Indeed, in addition to Xplornet, Bell Canada,⁵² CNOC,⁵³ Cogeco,⁵⁴ Quebecor,⁵⁵ Rogers⁵⁶ and Telus⁵⁷ have all supported the adoption of option 1.
55. Reasons supporting the adoption of option 1 are threefold: 1) the requirements of option 1 have already been implemented by ISPs and there is no evidence that they are not providing sufficient protections to consumers; 2) ISP systems are not designed to provide real-time rating information to consumers and implementing this functionality would require significant time and financial resources; and 3) option 2 involves the suspension of service, which has significant consequences for households, including removing access to Voice of Internet Protocol ("VoIP") services that provide access to 9-1-1.
56. In Xplornet's case, 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. 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.
57. Cogeco, Quebecor and Rogers have all expressed similar concerns about the time and cost involved in implementing real-time rating functionality. As stated by Cogeco:

⁵² Bell Canada, Intervention, paragraph 24.

⁵³ CNOC, Intervention, paragraph 18.

⁵⁴ Cogeco, Intervention, paragraph 44.

⁵⁵ Quebecor, Intervention, paragraph 56 to 63.

⁵⁶ Rogers, Intervention, paragraphs 23 to 24.

⁵⁷ Telus, Intervention, paragraph 59.

“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.”⁵⁸

58. Quebecor⁵⁹ has estimated that it would require 18-24 months to implement option 2, if adopted. Both Rogers⁶⁰ and Quebecor⁶¹ have expressed concerns over the significant costs that would be involved.

59. CNOC,⁶² Quebecor⁶³ and Rogers⁶⁴ have also raised concerns with respect to the suspension of a customer’s service. CNOC has explained that, unlike with wireless services, where if data is suspended, voice and text functions remain active, this is not the case with broadband. Other functions relied on by users – such as VoIP telephone service – depend on the underlying broadband service. Therefore, if the underlying broadband service is suspended, services like VoIP will no longer function. This is problematic because VoIP provides access to emergency services, like 9-1-1.⁶⁵

60. For all of these reasons, Xplornet continues to recommend that option 1 be adopted. Option 1 represents a proportionate and effective means to ensure that consumers are notified about data overages.

The CCTS should administer the Code

61. Xplornet notes that there is a very high degree of consensus that the CCTS should administer the Internet Code, if adopted. No party has objected to this position.

62. The CCTS has noted that, if the Code is applied to the regulated services of Northwestel, complaints concerning these services would need to be heard by the

⁵⁸ Cogeco, Intervention, paragraph 44.

⁵⁹ Quebecor, Intervention, Appendix, paragraph 14.

⁶⁰ Rogers, Intervention, paragraphs 23 to 24.

⁶¹ Quebecor, Intervention, paragraph 59.

⁶² CNOC, Intervention, paragraph 18.

⁶³ Quebecor, Intervention, paragraph 58.

⁶⁴ Rogers, Intervention, paragraphs 23 to 24.

⁶⁵ CNOC, Intervention, paragraph 18.

Commission. The CCTS is not authorized to receive complaints about regulated services.⁶⁶

IMPLEMENTATION OF THE INTERNET CODE

63. There has been considerable discussion presented by parties concerning the implementation of the Code, if adopted.

64. Indeed, parties have made various submissions concerning: 1) how much time should be allowed for parties to implement the Code; 2) whether the Code should be implemented all at once or in a phased-in manner; 3) whether the Code should be applied to only new and amended contracts, or if it should also apply to existing contracts; and 4) how compliance with the Code should be reported.

65. Concerning a timeline to implement the Code, service providers have made recommendations spanning from six months to 24 months. The CCTS has identified that it would require a four-month period to process the Code in order to administer it.⁶⁷

66. As noted above, the only provider that has suggested that the Internet Code could be implemented in as little as six months is Rothschild. Rothschild provided its views from its perspective as a former operator of a small ISP, RipNET. Rothschild's position is consistent with our opinion that the regulatory burden of implementing the Code is likely less for smaller ISPs. The systems used by smaller ISPs are often less complex and may be more easily changed than those of the larger providers. While a six-month period may be appropriate for small ISPs, we do not believe that a six-month timeframe would be appropriate for most ISPs.

67. Xplornet submits that service providers should be provided with an implementation period of at least 12 months, assuming that particularly complex items, such as option 2 for data overage notifications, as discussed above, are not adopted.

68. The introduction of the Code will require all ISPs to perform system changes. For larger providers, this type of work requires time, as changes 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.

69. We note that Eastlink⁶⁸ and CNOC⁶⁹ have also supported an implementation timeframe of 12 months.

⁶⁶ CCTS, Intervention, paragraph 70.

⁶⁷ CCTS, Intervention, paragraph 79.

⁶⁸ Eastlink, Intervention, paragraph 72.

⁶⁹ CNOC, Intervention, paragraph 31.

70. If complex requirements are adopted, such as option 2 for data overage notifications – which we argue is not necessary – additional time beyond a 12-month period would likely be required. We agree with parties that implementing a provision of this nature could take up to 24 months.⁷⁰
71. If the Commission is to adopt a Code, Xplornet recommends that the Code should come into force all at once and should not be phased in over time. 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.
72. Rogers has suggested that a phased-in approach could be appropriate because certain elements proposed in the Code are similar to requirements of the Wireless Code.⁷¹ We disagree that parallels between the Wireless Code and an Internet Code create synergies for providers to facilitate a phased-in implementation. In our own case, while Xplore Mobile complies with the Wireless Code, Xplore Mobile operates on systems that are distinct from those used by Xplornet to provide fixed Internet services. Xplornet would gain few efficiencies from this work in implementing an Internet Code for its fixed Internet services.
73. The CCTS has additionally recommended that having the Code come into effect all at once would make the Code easier to administer and easier for consumers to understand.⁷²
74. Xplornet continues to recommend that, if a Code is adopted, it should come into force all at once.
75. When any Code adopted comes into force, Xplornet recommends that it should apply only to new and amended contracts. Other parties share this view, including Bell Canada,⁷³ Cogeco,⁷⁴ CNOC,⁷⁵ Eastlink,⁷⁶ Quebecor,⁷⁷ Rogers,⁷⁸ Sasktel,⁷⁹ Shaw⁸⁰ and Telus.⁸¹
76. We note that certain parties, like the CCTS, have suggested that certain provisions of the Internet Code may be applied to existing contracts.⁸² If any clauses are to be applied to existing contracts, these clauses should not be those that impact the contractual relationship that was entered between the parties (e.g., potential

⁷⁰ Quebecor, Intervention, paragraph 58.

⁷¹ Rogers, Intervention, paragraph 50.

⁷² CCTS, Intervention, paragraph 77.

⁷³ Bell, Intervention, paragraph 32.

⁷⁴ Cogeco, Intervention, paragraph 102.

⁷⁵ CNOC, Intervention, paragraph 32.

⁷⁶ Eastlink, Intervention, paragraph 18.

⁷⁷ Quebecor, Intervention, Appendix, paragraph 17.

⁷⁸ Rogers, Intervention, paragraph 55.

⁷⁹ Sasktel, Intervention, paragraph 68.

⁸⁰ Shaw, Intervention, paragraph 61.

⁸¹ Telus, Intervention, paragraph 27.

⁸² CCTS, Intervention, paragraph 83.

clauses relating to ECFs) and should be limited to matters such as disconnection protocols.

77. Finally, with respect to implementation reports concerning compliance with the Code, Xplornet suggests that the Commission should be mindful not to impose additional administrative burden and cost for all service providers. Xplornet supports Shaw's recommendation that the Commission could ensure that providers have implemented the Code by requesting a written certification from each ISP attesting to compliance.⁸³

CONCLUSION

78. Xplornet agrees with parties to this proceeding that, if an Internet Code is adopted, the Commission should declare such a code to be a single, complete national code that applies to the delivery of broadband services in order to displace provincial regulation. This is necessary to ensure that provincial regulation does not frustrate federal broadband priorities.

79. Having reviewed the evidence filed by parties to-date, Xplornet notes that there is a large degree of consensus concerning a number of issues. In particular, Xplornet notes that many parties agree that, if an Internet Code is adopted, then:

- 1) All ISPs should be subject to the Code, and not only the large, facilities-based ISPs;
- 2) The Internet Code should not apply to small businesses;
- 3) ECFs should not be subject to caps;
- 4) The notification requirements for data overage charges established in TRP 2016-496 remain appropriate; and
- 5) The CCTS should administer the Code.

80. Xplornet supports these positions.

81. With respect to the Code's implementation, Xplornet reiterates its view that a minimum of 12 months should be provided to ISPs and that the Code should come into force all at once and not through a phased-in approach. Furthermore, the Code should be applied only to new contracts. If any provisions are applied to existing contracts, these should be limited to matters that do not impact the contractual relationship that was entered between parties.

82. We thank the Commission for the opportunity to provide these comments.

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⁸³ Shaw, Intervention, paragraph A7.