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

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Final Submission

of

Xplornet Communications Inc.

April 23, 2019

INTRODUCTION AND EXECUTIVE SUMMARY

1. Xplornet Communications Inc. ("Xplornet") is pleased to file its Final Submission with respect to Telecom Notice of Consultation CRTC 2018-422, *Call for comments – Proceeding to establish a mandatory code for Internet services* ("TNC 2018-422").

2. Xplornet believes that the adoption of an Internet Code (or "Code") that is drafted to reflect the realities of providing broadband service – and in particular, the realities of providing broadband service in rural and remote areas – could have a positive impact for Canadians.

3. If the Commission is to adopt the proposed language provided in Appendix 1 to TNC 2018-422, Xplornet requests that the Commission also adopt certain modifications that will ensure that the Code effectively and fairly extends its protections to Canadians and does not impact the ability for service providers to deliver affordable broadband services, in particular in rural areas of the country. These modifications can be divided into three broad categories: 1) modifications concerning the application of the Code, 2) modifications concerning the substance of the Code, and 3) modifications concerning the implementation of the Code.

4. With respect to the application of the Code, we request that the Commission apply the Code in the following manner, should it be adopted:

   - The Code should be equally applied to all service providers, and not only the 10 facilities-based providers as proposed in TNC 2018-422;

   - If the Code is to apply to small business, the definition of small business should be revised to only include small business customer purchasing services provided in accordance with a service provider's standard terms and conditions; and

   - The Commission should declare the Code to be a single, comprehensive consumer protection regime applicable to broadband services in order to displace provincial legislation that has significant potential to interfere with federal objectives promoting affordable broadband services for Canadians.

5. With respect to the substance of the Code, we request that the Commission adopt the following modifications in order to ensure that the Code may be efficiently implemented and that the Code recognizes the realities of providing broadband service to Canadians:

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

   - The Code should not prevent the use fees such as equipment return fees;

- The notification requirements for data overage charges established in TRP 2016-496[1] remain appropriate and further measures should not be adopted;

- Service providers should be required to correct disconnections performed in error "as soon as reasonably possible" and not within one business day;

- Pre-sale quotes should not be required; and

- End-of-contract notifications should only be required where the contract will auto-renew into a new fixed-term.

6. With respect to implementing the Code, we request that if the Code is to be adopted, it be implemented in the following manner:

   - The Code should not impact existing contracts;

   - Providers should be allowed a period of 12 months to implement the Code;

   - The Code should not be phased in over time; and

   - Compliance reports should minimize administrative burden.

7. We expand on these recommendations below.

THE APPLICATION OF THE INTERNET CODE

The Code should be equally applied to all service providers, and not only the 10 facilities-based providers proposed in TNC 2018-422

8. 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 Internet service providers ("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."[2]

9. 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.

10. While CNOC has argued that extending the application of the Internet Code to smaller providers "would not translate into a meaningful contribution towards

[1] Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada's digital economy*.
[2] TNC 2018-422, paragraph 3.

relieving the leading causes of consumer complaints,"[3] multiple parties have provided evidence to demonstrate that applying the Code only to large, facilities-based carriers does not adequately protect consumers.

11. By not applying the Code to resellers and smaller providers, parties have demonstrated that there would be a significant number of Canadians who 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;[4]
    2) TekSavvy – one of the 10 largest ISPs in the country – would not be subject to the Code;[5] 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.[6]

12. Furthermore, the record demonstrates that smaller providers and resellers are engaging in practices that generate significant numbers of complaints. Indeed, parties have aptly underscored the following statistics concerning complaints to the Commission for Complaints for Telecom-television Services ("CCTS"):

    - CCTS complaints concerning TekSavvy have increased by 293% over last year;[7]
    - TekSavvy receives more complaints than Telus in relation to a much smaller base of customers;[8]
    - Comwave, a small provider, has received:
        - more complaints about Internet services than Telus;[9]
        - nearly 50% more complaints than Shaw;[10]
        - more than double the complaints of Cogeco;[11] and
        - nearly 4x the complaints of Eastlink;[12]
    - Primus has more complaints than Cogeco and Sasktel;[13] and that
    - Vonage, TekSavvy and Acanac all have more complaints than Sasktel.[14]

13. Comwave has also been found to have contravened the *Competition Act* through its business practices. As noted by the Competition Bureau ("Bureau"), "in 2016

[3] CNOC, Intervention, paragraph 5.
[4] Conseil provincial du secteur des communications, Intervention, paragraph 34.
[5] Xplornet, Intervention, paragraph 56.
[6] Cogeco, Intervention, paragraph 86.
[7] Shaw, Intervention, paragraph 80.
[8] Telus, Intervention, paragraph 17.
[9] *Ibid.*
[10] Mark Goldberg, Intervention, paragraph 20.
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*; Union des consommateurs, Intervention, paragraph 162.
[14] Mark Goldberg, Intervention, paragraph 20; Union, Intervention, paragraph 162.

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".[15]

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

15. Beyond the evidence above, Xplornet submits that it would be contrary to the Policy Direction[16] 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 measures in a symmetrical and competitively neutral manner.[17] By extending adherence to the Code to only the large, facilities-based ISPs, the Commission would be creating significant competitive asymmetries in the marketplace.

16. 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.

17. Bell Canada,[18] Eastlink,[19] Quebecor[20] and Sasktel[21] have also raised concerns about the impact that the asymmetrical application of the Code would have on market dynamics.

18. Xplornet submits that the harms that would be caused by not applying the Code to all service providers cannot 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 compelling evidence of undue regulatory burden to justify their exclusion from the Code's application.

19. TekSavvy has merely asserted that there would be a heavy regulatory burden to complying with the Code[22] 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.[23]

[15] Bureau, Intervention, paragraph 55.
[16] Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355 ("Policy Direction").
[17] Policy Direction, section 1(b)(iii).
[18] Bell Canada, Intervention, paragraph 12.
[19] Eastlink, Intervention, paragraph 49.
[20] Quebecor, Intervention, paragraphs 9 to 11.
[21] Sasktel, Intervention, paragraph 57 to 58.
[22] TekSavvy, Intervention, paragraph 6.
[23] CNOC, Intervention, paragraph 18.

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

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

If the Code is to apply to small business, the definition of small business should be revised to only include small business customer purchasing services provided in accordance with standard terms and conditions

22. 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,[24] Cogeco,[25] Eastlink,[26] Quebecor,[27] Rogers,[28] Shaw[29] and Telus[30] have all provided comments of this nature.

23. Xplornet particularly agrees with Bell Canada[31] and Telus[32] that many 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.

24. As we described in our response to Xplornet(CRTC)4Mar19-App1-2 TNC 2018-422, at Xplornet, we have two types of small business customers according to the Commission's current definition of small business[33]: 1) small business customers who buy standard services that are provided in accordance with our general terms and conditions; and 2) business customers who buy customized solutions through individually negotiated contracts entered through our Commercial Services group, but whose average monthly telecommunications bill is under $2,500.

25. If adopted, we would not object to the Internet Code applying to the first variety of small business customers. Indeed, these small business customers purchase services through our regular sales channels and are not distinguished from our residential customers in our systems.

[24] Bell Canada, Intervention, paragraph 14.
[25] Cogeco, Intervention, paragraph 94.
[26] Eastlink, Intervention, paragraph 52.
[27] Quebecor, Intervention, paragraphs 28 to 31.
[28] Rogers, Intervention, paragraph 42.
[29] Shaw, Intervention, paragraph 26.
[30] Telus, Intervention, paragraph 22.
[31] Bell Canada, Intervention, paragraph 14.
[32] Telus, Intervention, paragraph 22.
[33] Meaning a business whose average monthly telecommunications bill is under $2,500.

26. However, we do not believe that the Internet Code should apply to the customized solutions sold through our Commercial Services group. Indeed, we provide small amounts of commercial services to large national and multi-national clients. Under the Commission's current definition, the contracts of large, highly sophisticated companies who are purchasing customized Internet access products would be subject to the Code simply because their average monthly telecommunications bill is below $2,500. We do not believe that the Commission intends for the Code to apply to these relationships.

27. If the Internet Code were to apply to these commercial relationships, instead of providing protections to the consumer, it would significantly hinder our ability to develop customized solutions.

28. For this reason, if the current definition of small business is to be used, we do not support the application of the Code to small businesses. If the Commission believes that small businesses who are not commercial customers should benefit from the Code's protections, we would have no objection to such a determination; however, a new definition of small business would need to be adopted. To this end, Xplornet would recommend the Commission's current definition be modified as follows:

> "A small business is defined as one whose ***services are provided in accordance with a provider's standard terms of service, and*** ***whose*** monthly telecommunications bill is under $2,500"

The Commission should declare the Internet Code to be a single, complete national code for broadband services

29. Xplornet fully supports the position put forward by other parties[34] that, if it determines to adopt an Internet Code, the Commission should declare the Code to be a single, complete, national code that applies to the delivery of broadband services in order to displace the application of provincial regulation to broadband services.

30. As telecommunications is an area of exclusive federal jurisdiction, only a specifically-designed federal regime should apply to broadband Internet services. As the expert Canadian telecommunications regulator, the Commission is best placed to oversee a comprehensive consumer protection regime for broadband Internet that may best foster the protection of consumers while promoting affordability of service and investments in broadband infrastructure.

31. Unlike Commission oversight, provincial laws and regulations are not designed to consider the realities associated with the delivery of broadband Internet services. Provincial consumer protection laws are laws of general application that are enacted to govern the delivery of goods and services to consumers. Complying

[34] See, for example, Telus(CRTC)4Mar19-A1-3 and Bell et al(CRTC)4Mar19-A1.3.

with these laws of general application can have significant impacts for telecommunications service providers ("TSPs") with harmful consequences for Canadians, and in particular, rural Canadians. These are inappropriate consequences that should be avoided.

32. In our response to Xplornet(CRTC)4Mar19-App1-3 TNC 2018-422, we provided numerous examples of clauses that have been enacted by provincial legislatures that impair the delivery of affordable broadband services to Canadians. Compliance with provincial requirements will have negative impacts for Canadians by driving less flexible service offerings and higher prices. For example:

    - Limits on the use of ECFs remove the ability for ISPs to use commitment periods to avoid imposing high up-front costs to recover installation fees;[35]

    - Limits on changes to non-key contract terms make it impossible for ISPs to use contracts, as changes to policies, such as privacy policies and fair use policies, are not possible to implement;[36] and

    - Limits on the use of equipment return fees mean ISPs will be required to recover equipment costs through service fees, driving rates higher.[37]

33. The impact of these provincial requirements runs entirely against federal broadband policy. The availability and affordability of broadband services has been identified as a key priority for the Government of Canada. In its Innovation Agenda,[38] the Government of Canada stated its priority to foster the ability of Canadians to compete in the digital world.[39] 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."[40]

34. For these reasons, we have recommended that the Commission make certain modifications to the proposed language of the Code to ensure the Code promotes federal objectives. We similarly recommend that the Commission declare the Code to be a single, complete consumer protection regime applicable to broadband services in order to displace provincial legislation. This is

[35] For example, the Newfoundland and Labrador *Consumer Protection and Business Practices Act*, SNL2009 Chapter C31.1, limits the ECF fees that can be applied (see section 35.9) as does the Quebec *Consumer Protection Act*, chapter P-40.1 ("*Consumer Protection Act*") (see section 214.7).

[36] For example, under section 11.2 of the *Consumer Protection Act*, service providers are prevented from changing non-key contract terms without the express consent of the subscriber.

[37] For example, section 13 of the *Consumer Protection Act* specifically prohibits a service provider from charging a fixed amount on the failure of the customer to perform an obligation. In this case, that would mean that the service provider would be prevented from charging an equipment return fee to a subscriber who does not return their customer premise equipment on service cancellation.

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

[39] Innovation Agenda, page 6.

[40] *Ibid.*

necessary to ensure that provincial laws of general application do not frustrate federal broadband objectives.

THE SUBSTANCE OF THE INTERNET CODE

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

35. Xplornet submits that any provisions related to ECFs adopted in the Code should be based on provisions in the Television Service Provider Code of Conduct ("TVSP Code") and should not impose limits on the use of ECFs.

36. 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;[41]

    - 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);[42]

    - Distributel has echoed concerns that caps on ECFs will limit the offers that it can make available to consumers, harming affordability;[43]

    - Eastlink has argued that caps on ECFs are particularly damaging for rural customers, as ISPs need to be able to recover installation costs;[44]

    - 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;[45] 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.[46]

37. Indeed, fixed-term contracts and ECFs are essential tools that are needed to make the installation of broadband services more affordable for Canadians, and in particular rural Canadians. Unlike most products and services, the 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

[41] Bell Canada, Intervention, paragraph 28.
[42] CNOC, Intervention, page 20.
[43] Distributel, Intervention, paragraphs 11 to 13.
[44] Eastlink, Intervention, paragraphs 47 and 51.
[45] Sasktel, Intervention, paragraphs 39 to 42.
[46] Telus, Intervention, paragraphs 31 to 37.

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.

38. Contract periods and ECFs help us to manage high installation costs in order to make services more affordable for 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.

39. If we are limited in our ability to use ECFs in conjunction with commitment periods to offset installation costs, we will be required to recover these fees in other methods, which may include higher up-front fees and higher service fees. In either case, this will harm the affordability of our services for rural Canadians.

40. Accordingly, we submit that the Commission should not include caps on ECFs in the Code. Instead, the Commission should adopt provisions such as those in the TVSP Code, which ensure transparency in how ECFs will be applied without capping ECFs. This would provide the appropriate balance between ensuring consumers understand their rights and obligations under service contracts and fostering affordability of services.

The Code should not prevent the use of equipment return fees

41. In addition to concerns about caps on ECFs, Xplornet also requests 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, such as equipment return fees. Eastlink,[47] Quebecor[48] and Rogers[49] have also expressed concerns about being prevented from recovering charges other than ECFs on cancellation.

42. 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 customers. 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.

[47] Eastlink, Intervention, paragraph 51.
[48] Quebecor, Intervention, paragraph 17.
[49] Rogers, Intervention, paragraph 16.

43. 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.

44. Clause B.3.(i) similarly 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.

45. Instead of prohibiting charges of this nature, the Code should require service providers who intend to charge any other fees on cancellation, such as an equipment return fee (or liquidated damages for retaining the service provider's equipment), to transparently describe these fees to customers.

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

46. 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.

47. 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.

48. 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.

49. Having reviewed comments 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.

50. Indeed, in addition to Xplornet, Bell Canada,[50] CNOC,[51] Cogeco,[52] Quebecor,[53] Rogers[54] and Telus[55] have all supported the adoption of Option 1.

[50] Bell Canada, Intervention, paragraph 24.
[51] CNOC, Intervention, paragraph 18.
[52] Cogeco, Intervention, paragraph 44.
[53] Quebecor, Intervention, paragraph 56 to 63.
[54] Rogers, Intervention, paragraphs 23 to 24.
[55] Telus, Intervention, paragraph 59.

51. 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.

52. 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.

53. Cogeco,[56] Quebecor[57] and Rogers[58] have all expressed similar concerns about the time and cost involved in implementing real-time rating functionality.

54. 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.

Disconnections performed in error should be corrected "as soon as reasonably possible" and not within one business day

55. 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".

56. 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 event of a disconnection in error, but as travel time alone could require more than one

[56] Cogeco, Intervention, paragraph 44.
[57] Quebecor, Intervention, Appendix, paragraphs 14 and 59.
[58] Rogers, Intervention, paragraphs 23 to 24.

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.

57. 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.

Pre-sale quotes should not be required

58. 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.

59. Xplornet supports this option. We believe that this option will effectively ensure that customers understand the key details related to service offers.

60. 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.

61. While certain providers have implemented formal pre-sales quotes, and at Xplornet, we provide a written summary of the package information discussed to customers who inquire about our services, we do not believe that formal pre-sales quotes should be a regulatory requirement.

62. Option 1 will ensure that customers have all of the necessary information to make informed service choices and Option 2 goes over and above this requirement. While the Commission could encourage service providers to implement Option 2, this should not be a regulatory requirement set out in the Code.

Service providers should only be required to provide end-of-contract notifications where a contract will auto-renew into a new fixed term

63. 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 contact 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.

64. 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.

65. 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 on 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.

66. 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.

IMPLEMENTATION OF THE INTERNET CODE

The Code should not impact existing contracts

67. Should the Commission adopt the Code, Xplornet recommends that it should apply only to new and amended contracts. Other parties share this view, including Bell Canada,[59] Cogeco,[60] CNOC,[61] Eastlink,[62] Quebecor,[63] Rogers,[64] Sasktel,[65] Shaw[66] and Telus.[67]

68. We note that certain parties, like the CCTS, have suggested that certain provisions of the Internet Code may be applied to existing contracts.[68] 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

[59] Bell, Intervention, paragraph 32.
[60] Cogeco, Intervention, paragraph 102.
[61] CNOC, Intervention, paragraph 32.
[62] Eastlink, Intervention, paragraph 18.
[63] Quebecor, Intervention, Appendix, paragraph 17.
[64] Rogers, Intervention, paragraph 55.
[65] Sasktel, Intervention, paragraph 68.
[66] Shaw, Intervention, paragraph 61.
[67] Telus, Intervention, paragraph 27.
[68] CCTS, Intervention, paragraph 83.

(e.g., potential clauses relating to ECFs) and should be limited to matters such as disconnection protocols. At most, only sections D, E, F, and I of the proposed Code should apply on a retrospective basis to pre-existing contracts.

Providers should be allowed a period of 12 months to implement the Code

69. Concerning a timeline to implement the Code, service providers have made recommendations spanning from six months to 24 months.

70. Xplornet submits service providers should be allowed a period of 12 months to implement the Code.

71. In our response to Xplornet(CRTC)4Mar19-App4-C TNC 2018-422, we noted that the majority of the modifications that would be required for us to comply with proposed provisions of the Code could be individually implemented within a period of three to six months. However, coordinating multiple changes will require more time and it would not be reasonable to require providers to implement the Code within a period of 6 months. Changes to our systems will need to be incorporated as part of planned system updates that take place at set intervals. There are certain parts of the year when it is not possible to implement changes to our systems at all. Accordingly, a period of 12 months is necessary to allow providers the time needed to coordinate multiple technical system changes.

72. We note that Eastlink[69] and CNOC[70] have also supported an implementation timeframe of 12 months.

73. If complex requirements are adopted, such as Option 2 for data overage notifications – which we submit 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.[71]

If adopted, the Code should not be phased in over time

74. 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.

[69] Eastlink, Intervention, paragraph 72.
[70] CNOC, Intervention, paragraph 31.
[71] Quebecor, Intervention, paragraph 58.

Compliance reports should minimize administrative burden

75. 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.

76. To this end, 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.[72]

CONCLUSION

77. Xplornet believes that the adoption of an Internet Code that is drafted to reflect the realities of providing broadband service – and in particular, the realities of providing broadband service in rural and remote areas – could have a positive impact for Canadians.

78. If the Commission is to adopt the proposed language provided in Appendix 1 to TNC 2018-422, Xplornet requests that the Commission also adopt the modifications set out in this submission in order to ensure that the Code effectively and fairly extends its protections to Canadians and does not impact the ability for service providers to provide services in an affordable manner, in particular in rural areas of the country.

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

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[72] Shaw, Intervention, paragraph A7.